



Appeal Decision

Site visit made on 8 July 2025

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st July 2025

Appeal Ref: APP/F2415/X/23/3325270

High Cross Grange, High Cross Road, Claybrooke Magna, Leicestershire, LE17 5AU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Wilson against the decision of Harborough District Council.
 - The application ref 23/00493/CLU, dated 3 April 2023, was refused by notice dated 26 May 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought was described as “building works have begun to convert the existing barn into a residential dwelling, the operational development has consisted of laying a concrete floor and removing the existing cladding to allow for repairs, renovation and remedial works to be carried out before the cladding is reapplied to the structure in accordance with the planning appeal ref. APP/F2415/W/20/3265180”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted under s192 of the Town and Country Planning Act (the 1990 Act) which provides for the certification of any lawful proposed use or operations. However, the Council's decision notice and the appeal form indicate that the application should have been made under s191, which relates to the lawfulness of existing uses or operations. It is evident that the appellants seek to establish that development carried out before the application was made is lawful. Both parties are content for me to determine the appeal pursuant to s191 of the 1990 Act and I have therefore done so.
3. Under Article 3(1) and Schedule 2, Part 3, Class Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), as extant on 28 April 2021, planning permission was granted for a change of use of a building and any land within its curtilage from a use as an agricultural building to a use...as a dwellinghouse together with any building operations reasonably necessary to convert the building.
4. The permission was subject to condition Q.2(1) that, before beginning the development, the developer must apply to the local planning authority for a determination as to whether their prior approval will be required in respect of specified matters. Prior approval for the proposed conversion of an agricultural building to create one residential dwelling unit at High Cross Grange was granted on appeal in April 2021¹.

¹ Appeal Ref. APP/F2415/W/20/3265180

5. The generic planning permission granted by the GPDO is taken to have been crystallised in respect of this particular site and particular development on the date that prior approval was granted. There was no breach of the prior approval condition insofar as the change of use to a dwelling did not begin, because the operations to “convert” the building – that is, to facilitate the change of use – did not begin until after the 2021 appeal had been allowed.
6. However, the Council has since raised concerns that the building operations carried out were “so extensive that they go beyond those accepted as appropriate for a conversion scheme within the limitations of Class Q(b)...” If that is correct, it would follow that what has taken place on the site does not have planning permission at all. The appellant made the LDC application and this appeal essentially to ascertain that the operations and associated change of use do have the benefit of planning permission granted by the GPDO.
7. Under s191(2) of the 1990 Act, uses and operations are lawful at any time if no enforcement action may be taken in respect of them. The key question here is whether the works were carried out with the benefit of the planning permission granted by Article 3(1) and Schedule 2, Part 3, Class Q(b) of the GPDO.
8. The relevant date for ascertaining whether the appeal development is lawful is 3 April 2023, when the LDC application was made. For the purposes of obtaining an LDC, the burden of proof lies with the appellants, with the standard of proof being the balance of probabilities. The decision will be based strictly on the submitted evidence and planning law. The planning merits of the case are not relevant.

Main Issue

9. The main issue is whether the development carried out was permitted under Class Q(b) of Part 3 of Schedule 2 of the GPDO, with regard had to limitation Q.1(i)(i) and the details granted prior approval in April 2021.

Reasons

10. The appeal building is a single storey, former agricultural barn with a roughly square footprint and a pitched roof. The building is clad to all elevations and to the roof with a mix of materials including metal corrugated sheeting and timber boards. Internally the building has a steel frame with timber uprights, and previously had a compacted earth floor.
11. Limitations to what is permitted under Class Q are set out in paragraph Q.1 of Part 3. Works permitted under Class Q(b) are limited to the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).
12. The High Court held in the “Hibbitt” case² that, in order to benefit from Class Q(b) permitted development rights, the building must be capable of conversion to residential use without operations amounting to complete or substantial re-building of the pre-existing structure or, in effect, the creation of a new building. The Planning Practice Guidance (the PPG) thus advises that, while various internal works are not prohibited, the Class Q permitted development right:

² Hibbitt & Another v SSCLG and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

“...assumes that the agricultural building is capable of functioning as a dwelling. The right permits building operations which are reasonably necessary to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission...It is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right”.

13. The 2021 Inspector granted prior approval for the change of use of the barn and associated building operations subject to a condition which specified that the approved details included various drawings and two Structural Reports (dated June and November 2020). The ‘proposed elevations’ plan (125819-007) showed that the existing corrugated cladding on the east, south and north elevations, the existing timber cladding on the west elevations, and the existing roof of the barn were all to be “retained”. Likewise, the conversion methodology section of the November 2020 Structural Report (the Report) stated that the “existing roof will be retained” and “all four existing walls will remain in their current state, aside from the insertion of some windows and doors”.
14. The Report identified isolated holes, warping and corrosion to the existing cladding and some surface corrosion to the steel frame and thus recommended minor repairs and remedial works. Nonetheless, the Report also stated that the structure of the building was in a good condition, and it would be possible to undertake the upgrades and installations (such as damp proofing) without needing to rebuild the existing fabric. The Report concluded that the building “is structurally sound and capable of conversion without major repair or construction”.
15. At the time of the prior approval application, as acknowledged in paragraph 11 of the 2021 appeal decision, the Council raised concerns that carrying out the change of use would necessitate more extensive works than were shown on the plans, including stripping back the building to its skeletal frame. However, based on the evidence before them, the previous Inspector found that the building was sufficiently robust to accommodate the proposed internal works, and the conversion would utilise the existing fabric of the building.
16. In the course of the works, however, the barn was stripped back to its steel frame. The evidence shows that the timber uprights and lateral wall timbers, which are a structural element of the building, were probably removed and then re-erected. The appellants also removed, treated and then re-attached the external cladding to the walls and roof. In its new position, the cladding sits above rather than level with the new concrete floor slab, and so that it does not cover a new course of brickwork at the base of the building, contrary to the approved section plan³.
17. The appellants contend that the formation of new window and door openings, the coating of the walls and roof, and installation of the membrane and damp proof course – all being works authorised by Class Q(b) and granted prior approval – could only be achieved by first removing the cladding. They argue, via their Legal Opinion, that the removal and reapplication of panels on a piecemeal basis could not amount to a new build, and so the same must be true if the same work is carried out

³ The concrete and dwarf wall were constructed for a new floor slab, which would be permitted under Class Q(b), and not foundations, which would not.

as a single operation. But whether any building works – whether carried out in one or more operations – amounts to the (re-)construction of a building is always a fact and degree question.

18. The Legal Opinion also suggests that the removal of the uprights, timbers and cladding was consistent with the approved plans because the word “retain” should be read as encompassing the “retention of items on site for re-use”; it does not have to mean “retained in the original position”. Whether or not that is generally true, however, the Report was explicit that all four walls would remain in their current state; they would not need to be or actually be rebuilt.
19. Although materials were reused without having been removed from the land, it remains the case that the barn was taken back to its frame and built anew from there. The appellants have not demonstrated that, on the balance of probabilities, the dismantling and reinstatement of the walls, the roof and some of the timber supports did not amount to the (re-) construction of the building as a matter of fact and degree.
20. The High Court was clear in *Hibbitt* that an agricultural building might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that, in practical reality, what is being undertaken is a rebuild. I find that judgment highly relevant, and the same is true of the point made by the previous Inspector that any development “beyond that indicated on the drawings and accompanying structural evidence” subject to the 2021 prior approval would be liable to require a separate grant of planning permission. The appellants have not shown that the works carried out were in accordance with the approved plans and Report, or with the limitations to Class Q(b) set out under paragraph Q.1(i)(i).

Conclusion

21. The appellants have not demonstrated that the building operations carried out by 3 April 2023 were in accordance with the plans and Report granted prior approval on 28 April 2021, or in accordance with the limitations set out in paragraph Q.1(i)(i) of Part 3 to Schedule 2 of the GPDO. I therefore find, on the balance of probabilities, that the building operations carried out before 3 April 2023 amounted to the re-building and not conversion of the appeal barn, and so the existing development is not permitted by Article 3(1) and Class Q(b) of Part 3 of Schedule 2 of the GPDO.
22. On the date of the LDC application, and for the purposes of s191(2) of the 1990 Act, enforcement action could have been taken in respect of the existing development because planning permission was required but not granted for the operations carried out. It is no longer possible to lawfully carry out the building operations and, therefore, the change of use for which prior approval was granted on 28 April 2021.
23. For these reasons, on the evidence now available, I conclude that the Council’s refusal to grant a certificate of lawful use or development was well-founded and the appeal therefore fails. Accordingly, I shall exercise my powers under section 195(3) of the 1990 Act, as amended.

M Ollerenshaw

INSPECTOR