



Appeal Decision

Site visit made on 23 September 2025

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2025

Appeal Ref: APP/L3625/W/25/3362387

Lower Duxhurst Farm, 15 Reigate Road, Sidlow, Surrey RH2 8QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Philip and Louise Rowe against Reigate & Banstead Borough Council.
 - The application Ref 24/02328/RET/AP is dated 19 December 2024.
 - The development proposed is described as '*Retrospective application in respect of engineering operations to reduce the floor level within the building*'.
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Decision

1. The appeal is dismissed.

Costs Application

2. An application for costs was made by Philip and Louise Rowe against Reigate & Banstead Borough Council. This application is the subject of a separate decision.

Background and the Council's approach

3. In July 2024, following application made for a determination under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, prior approval (ref 24/01060/PAP3Q) was granted for the conversion and change of use from an agricultural building to two dwellings (Class C3). It is understood that following the commencement of works it became clear that, to achieve the necessary head height, the floor levels of the building would need to be dropped.
4. Accordingly, in December 2024, an application for planning permission (ref 24/02328/RET/AP) was made seeking planning permission, retrospectively, for engineering operations to reduce the floor level within the building. The appellants, therefore, would have presumably expected the new application to hang off the Prior Approval consent.
5. The Council wrote to the appellants on 2 January and 10 January 2025 saying that the information contained in the application was insufficient for it to be registered, and asked for section drawings to be submitted along with plans to show the levels prior to the works being undertaken. In addition, drawings were also requested to show land levels around the building which, the Council says, have changed. In this connection it was further advised that the

description of the development should also be changed to reflect all the works undertaken.

6. I understand that the appellants addressed this, complying with the various requests. However, the Council then wrote again, indicating that it considered the development to amount to a rebuild and, as such, an application was required seeking planning permission for the development in its entirety.
7. The appellants disagreed and subsequently served an Article 12 Notice on the Council saying they believed that the application should be validated as they had complied with all national and local information requirements. In response, the Council said that the building under construction is incapable of being considered as a change of use of the original building and the works, which involved the removal of the supporting structure and excavation, comprised demolition and rebuild. Again, a new application was requested, but the appellants disagreed that this was necessary.
8. With the impasse unresolved the Council's decision not to validate the application was appealed in March 2025. The following month, the Council issued an enforcement notice alleging breaches of planning control termed as 'the demolition of a barn', due to the extent of the works carried out to the building, and 'the construction of two semi-detached residential units with subterranean ground levels'. The notice required for the works to cease, the operational development removed, and the land levels reinstated. The notice was then appealed.
9. Subsequently, in the face of an application submitted seeking full planning permission for the development in its entirety, the Council withdrew the enforcement notice, and the s174 appeal thereby fell away. The new application has yet to be determined, but the s78 appeal against the Council's decision not to validate application ref 24/02328/RET/AP still falls to be determined.

Main Issues

10. In light of the above the main issues in this appeal are:

- 1) whether or not the planning application contains adequate information to enable it to be validated and determined; and
- 2) if so, whether the proposal can be considered an acceptable form of development with regard to relevant planning policies and all other material considerations.

Validity

11. When submitting a planning application, in addition to the standard drawings and reports required by way of national and local requirements, information should be produced with submissions which are reasonable, having regard to the nature and scale of the proposed development, along with any details which could reasonably constitute a material consideration in the determination of the planning application. Such additional information is in accordance with s62(4A) of the Town and Country Planning Act, 1990 (as amended), and also by way of Article 11(3)(C) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

12. The provisions of Class Q, whilst permitting building operations reasonably necessary to convert an agricultural building for residential use, limits this to works that do not materially affect the external appearance of the building or involve new structural elements. This does not allow for excavation and lowering of floor levels, nor does it allow for new foundations or any load-bearing floor slabs.
13. In an interpretation of the above it was held in the judgement of *Hibbit v SSCLG* [2016] EWHC 2853 (Admin) that, for a change of use to be permitted development under Class Q, the building must be capable of conversion without complete or substantial rebuilding or, in effect, the creation of a new building. Accordingly, it is necessary to firstly assess the extent of the works and decide whether they fall within or go beyond the statutory limits.
14. In the above connection the appellant commissioned specialist consultants to provide a structural report as to the suitability of the building's conversion for residential use. The survey found that, although some minor work/upgrading would be required in order to ensure Building Regulations compliance for the required works, the barn structure was of adequate strength and condition, and it was said that no major structural failings exist. Further, it mentions that the main timber structural frames adequately support the weight of the roof, but says also that some of the frames could be strengthened by adding some structural elements such as timber or steel.
15. In the event, notwithstanding the dismantling of the building's walls, and the significant excavations which are readily evident, the Council clearly took the view that the application constituted a stand-alone proposal for development which should, therefore, be subject to relevant planning policies. The Council was also of the view that the building's roof has been heightened. Although the appellant disputes this it would seem to me that there has been some increase in height, albeit marginal.
16. The Hibbit judgement also held that a conversion was conceptually different to a rebuild, with the latter starting where the former finished. Accordingly, a conversion in such instances would, out of necessity, exclude rebuilds.
17. With the above in mind I consider it clear that the works undertaken went significantly beyond those permissible under Class Q and thereby contravened the limitations of the Class Q consent. As a result this could no longer be relied upon. The application may have been submitted in good faith in the belief that the Prior Approval consent remained extant but that is not the case here.
18. The appellant says that they were only seeking retrospective planning permission for development comprising a reduction in floor levels. However, it goes considerably beyond this, given the planning position outlined. The site lies within the Green Belt, where there is a presumption against inappropriate development which includes that put forward for residential purposes. At the time the application, the subject of this appeal, was submitted, the intention to create new residential development was reasonably obvious, given the background, and I consider that the application made was attempting to bypass the assessment of new development in the Green Belt and the fact that the National Planning Policy Framework indicates that inappropriate development is, by definition, harmful to the Green Belt.

19. I find that the Council, by way of its correspondence, was slow to get to the crux of the matter, as it could have imparted the information provided in response to the Article 12 notice at an earlier point. Nonetheless, I must conclude its stance to be correct in the circumstances, particularly as the Prior Approval consent is no longer extant or a consideration.
20. Given my findings, the provisions of Class Q, the application of case law, and the fact that the appellant has made no substantive representations as to the applicability of planning policies to the scheme, the Council was correct not to validate the planning application. Instead, the new application made represents the correct vehicle in this instance in the appellants' attempts to regularise the planning position.
21. I thereby conclude that the application is invalid and does not fall to be determined.

Timothy C King

INSPECTOR