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## Appeal Decisions

Site visit made on 3 October 2025

by **Grahame J Kean BA (Hons) Solicitor, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 January 2026

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### **Appeal A Ref: APP/K0940/X/23/3332702**

#### **Shed at Yanwath Hall, Yanwath, Penrith, CA10 2HH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
  - The appeal is made by Lowther Estate Trust against Westmorland and Furness Council.
  - The application ref 23/0589 is dated 29 August 2023.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
  - The use for which a certificate of lawful use or development is sought is conversion of the building to create four dwellinghouses (Use Class C3).
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### **Appeal B Ref: APP/K0940/W/25/3363340**

#### **Shed at Yanwath Hall, Yanwath, Penrith, CA10 2LF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant [outline] planning permission.
  - The appeal is made by Lowther Estate Trust against the decision of Westmorland and Furness Council.
  - The application Ref is 2025/0346/FPA.
  - The development proposed is: variation of condition Q.2.(3) (timeframe to complete) for proposed change of use of an agricultural building to 4no dwellinghouses following appeal approval APP/H0928/W/21/3283939 LPA ref 21/0687.
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## **Decision**

### **Appeal A**

1. The appeal is dismissed.

### **Appeal B**

2. The appeal is dismissed.

### **Application for costs**

3. An application for an award of costs was made by Lowther Estate Trust against Westmorland and Furness Council. This application is the subject of a separate decision.

### **Appeal A**

### **Legal framework and main issue**

4. Section 191(2) of the 1990 Act states that a use is lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for

enforcement action has expired or for any other reason); and it does not constitute a contravention of the requirements of any enforcement notice then in force.

5. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) permits change of use of an agricultural building to use as a dwelling together with building operations reasonably necessary to convert the building. Paragraph Q.1 sets out when development is not permitted. Paragraph Q.2 includes a condition that before beginning the development an application must be made to the local planning authority for a determination as to whether prior approval will be required relating to a number of matters.

6. The main issue is whether the Council's refusal to grant an LDC for the proposed change of use was well-founded. The planning merits of the development are not relevant. The onus of proof is on the appellant on the balance of probabilities.

### **Preliminary matter**

7. The appellant did not provide an appeal statement. In its initial appeal documents it submitted that, based on the information in its application, on the balance of probability, the proposal was permitted development in accordance with Class Q and once they heard from the Council later in the appeal process, they would be in a better position to prepare a response. On receipt of the Council's appeal statement, which contained an "indicative" officer report as an appendix, the appellant's final comments did address the Council's case, concluding that the works proposed were within the parameters of works allowed under Class Q.

8. The appeal is against non-determination, but the appellant complains about the "indicative" officer report produced after the appeal was made, questioning its validity and claiming that the Council misdirected itself in stating why the proposal failed the Class Q criteria, rather than applying the balance of probability test. In this respect the appellant has not focussed on the main issue. The report states in effect what the Council's decision would have been had it been made timeously. There is nothing wrong in setting out why the development would not be lawful by reference to one or more of the conditions and limitations in the permitted development legislation.

### **Background**

9. The application was made under s192(1)(a) to establish the lawfulness of a proposed conversion of an agricultural building to four dwellinghouses. A previous appeal decision<sup>1</sup> gave prior approval under Article 3(1) and Class Q for the conversion including partial demolition of this agricultural building to create four dwellinghouses (Use Class C3). Although the parties disputed whether the proposal was permitted development, the issue was limited to the failure to determine the prior approval application, so the specific proposal was not itself considered.

10. In the appeal before me the Council's case is that the proposed development would not be permitted under Class Q, in particular Q(b), Q.1(i) and Q.1(h). Its case on the evidence can be summarised as:

- the works are beyond the external dimensions of the existing building (Q.1(h)); and
- the building is not capable of functioning as a dwelling and the building operations, including demolition and rebuild, are not reasonably necessary for conversion and

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<sup>1</sup> APP/H0928/W/21/3283939 Shed at Yanwath Hall, Penrith CA10 2LF, Decision date: 27/04/2022.

would be a significant rebuild due to the extensive nature of work proposed to the existing structure (Q(b), Q.1(i)).

## Reasons

### *Works beyond the external dimensions of the existing building*

11. Plan 120-121-08 is said to show that the external walls of the proposed dwellings go beyond the red line outline of the existing building/agricultural shed; and plan 120 - 121-09, is said to show that the roofline of the proposed dwellings goes above the red line outline of the existing roof.

12. Class Q.1(h) states that development is not permitted if it would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. The Council emphasises this limitation (although does not mention that paragraph (h) continues: "*other than— (i) extension of the building allowed by paragraph Q.1(i); (ii) protrusions of up to 0.2 metres to accommodate building operations allowed by paragraph Q.1(j)(i)*").

13. I fully accept that the statutory limitations on permitted development set out in the GPDO should be carefully observed and that a development must fall "fully" or "squarely" within the applicable class of the GPDO for permission to be granted by it. Nor would I seek to apply the concept of *de minimis* to breach of a GPDO limitation.

14. However, I find this part of the Council's case to be an example of legalistic pettifogging. Plan 08 is not in my view intended to show that the proposed walls would in fact protrude at all beyond the outline of the existing building. I am satisfied that the outside line shows the extent of cladding overhanging the block walls underneath, and at a scale of 1:200 the lines need to be thickened to help people reading the plans and to understand what the lines mean. At no stage was it indicated that the building would be made larger and it appears there would be no good reason to do so as the scheme clearly envisaged using some of the external walls.

15. The scheme as I read it is clearly designed around the parameters of Class Q.1 (h) so that external dimensions do not extend beyond the external dimensions of the existing building at any given point. I am also satisfied that this applies to the red dashed line on plan 09 running across the ridge. It is unfortunate that the apparent discrepancies were not, over the course of several years checked with the agents or the architect directly and only raised with them at appeal stage. The Council's objection on this point is not upheld.

### *Whether development would consist of building operations reasonably necessary for a conversion as opposed to a new build.*

16. The building operations shown on the plans seek to convert and alter the agricultural building into four dwellings in three separate blocks. The building is a large and relatively modern, simple steel portal frame with lower concrete panels, corrugated sheeting above and a sheeted roof. It is c63m by c15.2m with a height of some 7m. The building would need extensive work to deliver the proposal.

17. The Council is concerned that the proposed works go beyond what could be deemed reasonably necessary to convert the building. Planning Practice Guidance (PPG) states that the intention of Class Q is not to allow rebuilding works that would go beyond that reasonably necessary to convert the agricultural building to residential use. PPG refers to *Hibbitt and Another v Secretary of State for Communities and Local*

*Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)* (Hibbitt). The case held that Class Q required a proposal to represent a conversion rather than a rebuild, fresh build or new build. The Council also cites *Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin)* in similar vein.

18. The Class Q permission assumes that the building is capable of functioning as a dwelling but for it to do so some building operations that would affect its external appearance and which would otherwise require permission, should be permitted. Thus installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services are allowed as reasonably necessary for the building to function as a dwelling, and partial demolition as reasonably necessary to carry out such works.

19. The current PPG refers to Hibbitt for the difference between conversions and rebuilding. That case was decided when an earlier version of PPG obtained which read as follows:

*“...It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes from the external works to provide for residential use that the building would be considered to have the permitted development right.”<sup>2</sup>*

20. In Hibbitt the Inspector found that the existing structure of the barn would be sufficient to bear the load of the proposed development but that was not key to the decision. The court recognised that works involving new structural elements such as a complete new floor slab or significant new external walls beyond minor repairs, might be considered to support a finding that there is a rebuild.

21. A structural element of a building would commonly be understood as having a load bearing quality. The PPG has been updated, seemingly more closely to follow the statutory wording, and now reads as follows:

*“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.”<sup>3</sup>*

22. In support of the proposal, a structural appraisal was produced by a professionally qualified engineer with experience of converting buildings to dwellings, with full sight of the architect’s plans. His report to the appellant refers to his “superficial structural appraisal of the building” and it is qualified in the following way:

*“we could only observe the general nature of the building superstructure, and internal areas, and some reasonable and experienced assumptions would have to be made with regard to any existing disguised elements such as foundations etc.”*

23. The report found that building’s steel frame was robust, it had some surface corrosion, but no evidence that significantly impacted on the frame itself, the alignment of which was straight and true. The frame relied on steel bracing members, masonry walls and steel tie beams for longitudinal stability. The roof and wall cladding appeared

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<sup>2</sup> Paragraph [105] of the NPPG (Reference ID: 13-105-20150305

<sup>3</sup> Paragraph: 105 Reference ID: 13-105-20180615

to be original and assuming the building was c30-40 years old, there was some evidence of general fatigue (eg the profiled sheet had superficial corrosion, and some of the roof sheeting was likely to be brittle). The ground floor construction appeared very robust, and could act as a firm base supporting a new insulated floor construction. The report then referred to foundations and said the following:

*“Usually the foundations to this type of building would be relatively substantial concrete strip and pad features, which would be suitable to be retained, irrespective of the nature of the required amendments. They should also be suitable to accommodate any intended new loadings.”*

24. The report ended by offering guidance for the conversion. Firstly, to address the corrosion and protect the steelwork it should be shot blast and repainted in situ. The proposed removal of some bays that constitute the framing and some proposed perimeter walls to create the dwellings were noted such that the proposed traditional masonry of the new dwellings would then rely on, and be integrated into the original steel framing, and any new foundations would be integrated into existing foundations.

25. The existing roof structure was noted as structurally sound and suitable for conversion, but the roof cladding should be replaced with a modern insulated composite panel, with the top surface no higher than the current cladding. Where existing perimeter walls remained, their upper parts could comprise decorative larch cladding with a weatherproof backing, integrated into a new inner insulated lining wall.

26. The report then noted there was higher ground on one side of the building, toward the railway, ground that was “probably” added after the railway itself would have been built on an isolated embankment, adding that:

*“In good faith, it is likely that this [higher ground] can generally be removed from beside the building, without any obvious significant detrimental effects. The ground however should be retained beside the railway, with a safe angle of repose up to same, or another retaining wall will need to be introduced.”*

27. Finally, the report advised that drainage should be designed to comply with relevant design guides and Building Regulations *“taking into account any existing system(s), and ground conditions in the locality. It is currently unclear where any existing system may be present, and where it may outfall to, and this would have to be confirmed during the course of the design development.”*

28. Generally, the superficial nature of the survey is concerning. The qualification placed at the front of the report is significant. Assuming concrete strip and pad foundations do exist which is unconfirmed, these may be suitable for dwellings, however there is for example, no information on site-specific factors such as soil type, ground stability, water levels and so forth, whether by way of a geotechnical survey or otherwise. Also, the lack of firm conclusions on whether and if so to what extent the higher ground (which as I saw was abutting the side elevation) could be removed without detrimental effects, does not add confidence that the existing foundations would be suitable, or that an additional retaining structure would be required. The report in any case clearly envisages some new foundations being integrated into existing ones.

29. The remaining existing concrete ground floor could support a new insulated floor construction which would not be integral to supporting the existing building, however it would need reprofiling, in some areas to a significant extent in my view.

30. The report is satisfied with the structural integrity of the existing building and its suitability for conversion. It describes the steel frame as a robust structure, with some evidence of general fatigue to some of the cladding with a “very robust” ground floor construction. I saw that many parts of the steel frame were corroded, whether this was more than superficial, as considered in the report, was difficult to determine. I recognise the experience of the author of the report, however it relies solely on visual observation rather than any other form of non-destructive testing. I also note, more generally that there are no load bearing calculations before me that can be considered.

31. The PPG advises that for the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q<sup>4</sup> (insofar as the proposal represents a conversion and not a rebuild).

32. The requirement that development amounts to a “conversion” (see the overarching provisions of Class Q) is a separate requirement from the specific limitations and conditions set out in that Class. Thus, the concept of conversion has inherent limits which differentiate it from a rebuild (see Hibbitt at paragraph 26 of the judgment). A rebuild is not limited to a development that follows demolition but is a matter of planning judgement. The fact that the PPG was updated no longer to refer explicitly to “new structural elements”, does not amend the legislation. The guidance reflects the position that the extent of the works, structural or otherwise, is not in itself determinative, but is a factor.

33. In paragraph 33 of Hibbett, Green J picked up on the ambiguity over use of the wording in the PPG “*capable of functioning as a dwelling*” because, as he pointed out, any pre-existing structure, however skeletal could function as a dwelling once the necessary works were complete. The Council said the structure would only be capable of functioning as dwellings after “substantial replacement” or construction of a “significant number of new elements” which would amount to a rebuild.

34. The “reasonably necessary” test in Q.1(j)(i) limits the building operations, assuming they amount to a conversion, to those “*reasonably necessary for the building to function as a dwellinghouse*”. The ratio of Hibbitt was not concerned with whether the works were reasonably necessary (in the sense of not being superfluous, such as a sauna or swimming pool might be) for the building to function as a dwelling. The Council adds to its reason for refusal, that the proposal is not reasonably necessary “for conversion”, which arguably conflates the test of whether (under Q) the proposal is a conversion or a rebuild, with the test of whether (Q.1(j)(i)) the works stipulated, ie windows, doors, roofs, or exterior walls or certain services, are reasonably necessary for the building to function as a dwelling.

35. Looking at the proposal including the submitted plans, under Q.1(j)(i) I cannot say that any of those proposed works would be “unnecessary” to achieve the desired purpose of the scheme but that is a test assumed to apply in relation to a conversion. The court in Hibbitt asked itself whether, even if there is a requirement that the work does not amount to a rebuild, that limit is already incorporated into Class Q by virtue of the other limitations in the Order. It clearly held that the concept of “conversion” introduced a discrete threshold found in the overarching provisions of Class Q (i.e. not in Q.1).

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<sup>4</sup> Paragraph: 105 Reference ID: 13-105-20180615

36. The appeal decisions known as the Lime Tree House Appeal and the Greenhouse Appeal have been considered<sup>5</sup>. They were submitted originally to the Council to show that modern/non-traditional agricultural buildings are being converted elsewhere in the country under the same class Q parameters. I do not doubt this. However, as the appellants acknowledge, applications must be assessed on their individual merits.

37. In the Lime Tree House appeal the phrase “reasonably necessary” was found by the Inspector to be the subject of “important guidance” in the case of Hibbitt, “as to how this element of the GPDO should be interpreted.” Paragraph 23 of the judgement did clarify that the issue there was not about whether the proposed works were reasonably necessary for the building to function as a dwelling. Nevertheless, as to the crucial test of whether or not the works went beyond the scope of conversion, the Inspector was clear in distinguishing Hibbitt, where the building was open on three sides and would have been stripped down to the frame only, from the facts before him where “*the existing building is of sturdy construction, enclosed on three sides and a considerable proportion of the existing building would be retained, including the steel frame, slab floor, timber cladding, sheeting rails and purlins.*”

38. A similar comparison with the facts in Hibbitt was made in the Greenhouse appeal where there was a fully enclosed building, the exterior walls would remain largely unaltered, and the roof would be retained in its entirety, leading to a finding that it was not a skeletal structure. In neither appeal was it found that new structural elements were proposed. I disagree that this is the case with the appeal before me although this is not in itself determinative.

39. Obviously, both cases differ in their detail from the proposal before me. However, the current proposal would require very extensive works including a significant amount of demolition and involve the replacement of the existing structure with three separate blocks of residential development. The works would include four new end gable structural walls, demolition of central sections of the existing building; new front walls to the lower frontage of the dwellings, new roof with insulated steel roofing panels; new timber vertical cladding to external walls above the concrete block walls; windows including Apex roof lights to the south-west and north-east elevations; aluminium doors in the north-west and south-east elevations; ceilings above the rooms, double lined with plasterboard with voids between ceiling structure and mineral wool insulation; and trickle ventilation combined with mechanical extract or passive input ventilation.

40. To achieve the three separate residential blocks, for each proposed gap (made up of two sections) some of the steelwork traversing the building would need to be removed, roofing material removed, concrete plinth removed and the foundation either taken up or remodelled. Removal of these sections would then provide floorspace to create 2no. three-bed dwellings (units one and four) and 2no. two-bedroom dwellings (units two and three). All units would have a new roof with insulated steel roofing panels and new cladding to the external walls above the existing block walls.

41. The submitted report of survey is not conclusive of the full structural integrity of the building which in my opinion has the character of a skeletal structure in respect of which a substantial amount of fundamental work including demolition would be required, incorporating new structural elements. The existing structure may be sufficiently robust to bear the loading from the additional work required but I am not persuaded on the evidence provided that this is so without further information. Be that

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<sup>5</sup> APP/J3720/W/17/3180514; APP/W3330/W/21/3268761.

as it may, to all intents and purposes the original building will have ceased to exist and will have been replaced by new buildings, ie the substantial replacement and significant number of new elements proposed would in my judgement amount to a rebuild (ie a new build) rather than a conversion.

42. In this respect it would fail the test of being a conversion as required under Class Q. As such, the effect of s191(2) of the 1990 Act is that the proposed works would not be lawful at the time the application was made, because they involve development for which planning permission is required but does not currently exist.

#### *Other matters*

43. In light of the foregoing, it is unnecessary to consider an appropriate assessment of the implications for the proposed development being within the within the River Eden Special Area of Conservation.

44. I should also point out that nothing in this decision is intended to fetter the discretion of the local planning authority should an application be made expressly for planning permission for the development the subject of this appeal.

#### **Conclusion**

45. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of conversion of the building to create four dwellinghouses (Use Class C3) that refusal would have been well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

#### **Appeal B**

46. The appealed application sought variation of the condition in Paragraph Q.2(3) that required development the subject of a prior approval (granted on appeal under Ref APP/H0928/W/21/3283939) to be completed within 3 years of the grant. The appeal decision was issued on 27 April 2022. In the event, the question of whether or not the proposed development is permitted development was determined in Appeal A. In light of that decision there is no good reason to vary the said condition.

#### **Conclusion**

47. For the reasons given above the appeal should be dismissed.

*Grahame J Kean*

INSPECTOR