
Appeal Decision

Site visit made on 3 November 2015

by Paul Singleton BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 November 2015

Appeal Ref: APP/L3245/W/15/3097735

Barn adjacent to Mannings Farm, Hazels Road, Stanton upon Hine Heath, Shropshire SY4 4ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Roger Pinches against the decision of Shropshire Council.
 - The application Ref 14/05220/PMBPA, dated 17 November 2014, was refused by notice dated 30 March 2015.
 - The development proposed is conversion of the existing agricultural building to three residential units.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made under Schedule 2, Part 3, Class MB of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). That statutory instrument has largely been replaced with the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015¹ and equivalent provisions are now included within Schedule 2, Part 3, Class Q of that Order (Class Q). The relevant legislation provides for anything done under the previous provisions to be treated as if done under the new provisions, so an application made under Class MB has effect as if made under Class Q. As both the Council's Statement of Case and the appellant's response refer to this change, there is no prejudice to either party in my proceeding on the basis of the new Class Q.
3. The appellant has indicated an anticipation that there may be two elements of prior approval; first for the proposed demolition and secondly for the proposed change of use. However, the application form used and the description of development given clearly indicate that prior approval is sought for the proposed change of use. The application form and supporting material also included information as to the nature and extent of building works envisaged for the creation of 3 dwellings.
4. The description of development as set out in the application includes text providing details of the building and site. I have taken the first sentence of that description as being a full and sufficient description of the proposal.

¹ SI 2015/596

Main Issue

5. The main issue is whether the proposed conversion would be permitted development.

Reasons

6. Class Q of the GPDO allows a change of use of any building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, and building operations reasonably necessary to convert the building to a use falling within Class C3. The development permitted is subject to a number of exclusions and conditions set out within the subsequent clauses of Class Q and in other parts of the GPDO.
7. The Council has submitted a copy of the planning permission granted in January 1993, Ref No. N/92/921/SH/200, under which the agricultural building was constructed and has drawn my attention to Condition 06 of that permission which reads:

As development in the locality is carefully controlled and generally restricted to that which is essential for agricultural purposes, the building hereby permitted shall be used for agricultural purposes only and shall be removed and the land reinstated to its former condition if at any time it ceases to be used for this purpose.

The appellant has commented that Condition 06 does not specifically withdraw permitted development rights but its existence must be considered having regard to Article 3(4) of GPDO which states that:

Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3² of the Act otherwise than by this Order.

8. Condition 06 imposes an unequivocal restriction on the use of the building and, by virtue of Article 3(4), means that the building does not benefit from permitted development rights under Class Q. The proposal would also fail to meet the following requirements of Class Q.
9. The floor space of the existing building (assessed by the Council to be 1,176 square metres) far exceeds the maximum permitted threshold, of 450 sq m, as set out in Q.1.(b). I note the intention to reduce the size of the building as part of the proposal but Q.1.(b) clearly relates to existing floorspace and there is no provision in the GPDO for this to be assessed on any other basis.
10. Although marked as preliminary, the scheme drawings indicate an intention to provide 3 dwellings which would have a combined floor space in excess of the 450 sq m threshold set out in paragraph Q.1.(h). I concur with the Council's submissions that the reference to floor space in Q.1.(h) does not differentiate between ground and first floor accommodation and that this should be included in the floor space calculation, given that living accommodation is proposed over two storeys.

² The reference is to Part 3 of the Town and Country Planning Act 1990 and the new consolidated 2015 GPDO changed this text from 'III' to '3' only.

11. The scope of demolition proposed would also go beyond that set out in paragraph Q.1.(i)(ii) which limits the extent of demolition allowed to that reasonably necessary to carry out the building operations allowed under paragraph Q.1.(i)(i). The appellant has indicated that the main objective of the proposed demolition is to reduce the size of the existing building below the 450 sq m threshold rather than to facilitate the proposed conversion; for this reason the proposed works would fail the test of reasonable necessity.
12. From my site visit it is apparent that the appeal site is substantially larger than the area occupied by the building itself and that the red line includes open land, to the south of the building, which cannot reasonably be regarded as forming part of its curtilage since this land is neither closely associated with nor serving the purposes of the agricultural building. Accordingly, the area proposed for use in connection with the new dwellings does not fall within either part (a) or (b) of the definition of "curtilage" as set out in the GPDO, Schedule 2, Part 3, Class X and its use for residential purposes would not constitute permitted development under Q(a).
13. The Council is concerned that the building works required for the proposed conversion would go beyond what is reasonably necessary to achieve the proposed residential use as envisaged in paragraph Q(a) and I agree that this is not fully clear from the appellant's submissions. However there is no need for me to reach a definitive view on these matters given my conclusion, for all the reasons set out above, that the proposed development does not benefit from permitted development rights under Class Q. Hence planning permission would be required for any conversion of the building to residential use.
14. An application for planning permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO. For these reasons I conclude that the appeal should be dismissed.

Paul Singleton

INSPECTOR