



Appeal Decision

Site visit made on 8 May 2019

by W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2019

Appeal Ref: APP/L3245/W/19/3220888

Agricultural Building A, Rose Cottage, Prees Green, Whitchurch, Shropshire SY13 2BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr Don Carissimo against the decision of Shropshire Council.
 - The application Ref 18/05083/PMBPA, dated 2 November 2018, was refused by notice dated 21 December 2018.
 - The development proposed is described as 'Building A is located to the east of Rose Cottage with access shared and taken off the A49. It is proposed to convert the 84sqm building into a 3 bedroom, one storey dwelling'.
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Decision

1. The appeal is allowed and prior approval is granted for the change of use of the 84sqm agricultural building into a 3 bedroom, 1 storey dwelling at Agricultural Building A, Rose Cottage, Prees Green, Whitchurch, Shropshire SY13 2BN in accordance with the terms of the application, Ref 18/05083/PMBPA, dated 2 November 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The Government published the revised National Planning Policy Framework (the Framework) on 19 February 2019, which forms a material consideration in the determination of the appeal. The principle changes to the Framework relate to the Housing Delivery Test. However, the changes have no material bearing to the main issues before this appeal.
3. For clarity and precision, I have inserted 'Agricultural Building' into the address in the banner heading, which I have taken from the appeal form and the Council's decision notice.
4. The description of the development in the banner heading above is taken from the application form. However, in my decision, I have inserted 'agricultural' into the description of the development from the appeal form, since this is more precise.

Application for costs

5. An application for costs was made by Mr Don Carissimo against Shropshire Council. This application is the subject of a separate Decision.

Background and Main Issues

6. Class Q of Schedule 2, Part 3 of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses). Additionally, Class Q allows building operations and partial demolition which are reasonably necessary to convert the building to a Class C3 use.
7. The Council refused the application on the basis of the building and demolition operations proposed. However, the Council in their submission have raised concerns on whether the change of use would be permitted development having regard to when the building was constructed. In determining whether or not the proposal would be permitted development, it is necessary for me to consider whether the requirements set out in the GPDO for development to be permitted under Class Q would be met.
8. The main issues in this appeal are whether the proposed change of use constitutes permitted development pursuant to Class Q of Schedule 2, Part 3 of the GPDO, having particular regard to:
 - a) whether the site was used solely for an agricultural use as part of an established agricultural unit on the required date;
 - b) whether the building operations and partial demolition of the building is reasonably necessary for the building to function as a dwellinghouse.and, if those requirements are met, whether the proposed change of use would require prior approval under Class Q.2 (1) of Schedule 3, Part 2 of the GPDO.

Reasons

- a) *Whether the site was used solely for an agricultural use as part of an established agricultural unit*
9. Paragraph X of the GPDO for the purposes of Class Q defines an "established agricultural unit" as agricultural land occupied as a unit for the purposes of agriculture on or before 20 March 2013 or for 10 years before the date the development begins. Paragraph Q.1(a) states that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
10. The appeal relates to the change of use and conversion of a barn positioned east of Rose Cottage and accessed from a shared driveway from the A49. The Council in its Statement has raised concerns on the length of time that the building has been in place and indicates that it has been relocated, providing aerial photographs and drawings to support its assertions. In response the appellant has confirmed that there were errors in using base mapping information that was not up to date on previous submissions to the Council and that the building was re-built to a smaller size in March 2011.
11. Additionally, in response to the concerns raised the appellant has provided dated photographs taken during the construction of the building and a letter¹ from the building contractor, providing corroborative evidence. Furthermore, I

¹ Letter from J W Roofing dated 28 April 2019

note all of the previous schemes submitted to the Council dating back to 2015, one which was the subject of an appeal² that form the planning history of the building.

12. Taking into account the evidence before me, I find that the Council's evidence is not sufficient for me, as a matter of fact and degree, to conclude that the building was in anything other than agricultural use on 20 March 2013, or at the time at which the application was considered by the Council and at present. Therefore, I conclude that the criteria under Paragraph Q.1(a) are satisfied.

b) *Whether the building operations and partial demolition are reasonably necessary*

13. Paragraph Q.1(i) states that development is not permitted by Class Q if it would consist of building operations other than 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. Paragraph Q.1(i) also confirms that partial demolition is permitted to the extent reasonably necessary to carry out the building operations allowed by the same paragraph.
14. The barn is a portal frame building with a dual pitched roof and a mesh reinforced concrete slab floor. The existing walls comprise 5 courses of concrete blockwork. Set on the blockwork wall is a timber frame with a sole plate bolted to the solid concrete blockwork wall and a double member at eaves level again bolted together with a central horizontal member. Plastic coated steel profiled external cladding is fixed to this frame to form the upper sections of the walls and the roof. Within the roof are also translucent panels and on each gable end are 2 metal sliding doors.
15. The appeal proposal is for the change of use of a modern barn to form a single dwelling. The proposed external works to the barn would involve the retention of the existing wall cladding and roofing material, the infilling of the existing double door openings to the east and west elevations with materials to match the existing; and the insertion of timber doors and windows as specified on the submitted drawings. The internal structure and beams will remain. Internally, the alterations proposed are limited to create 3no bedrooms, 2no bathrooms, a utility room, and a living / kitchen / dining area. Paragraph 105 of the PPG states that it is not the intention of the permitted development right to include the construction of new structural elements for the building. It also states that internal works are not generally development.
16. The GPDO does not define what is meant by 'reasonably necessary'. However, the Main parties have referred me to the Hibbitt³ judgment, which considers how this element of the GPDO should be interpreted. The Hibbitt judgment found that the building must be capable of conversion to residential use without operations that would amount either to complete or substantial re-building of the pre-existing structure or, in effect, the creation of a new building. As such, if the operations proposed would amount to rebuilding, the appeal should be dismissed on the basis that the proposed development is outside the relevant Class. Whether or not the proposed works go beyond the scope of conversion is a matter of fact and degree and requires an element of judgement.

² APP/L3245/W/16/3164599

³ Hibbitt and another v Secretary of State for Communities and Local Government and another [2016] EWHC 2853 (Admin)

17. Furthermore, Planning Practice Guidance⁴ confirms that “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”.
18. The structural appraisal⁵ (the SA) submitted in support of the appeal development indicates no structural defects with the building, and this is not directly challenged by the Council. During my visit the building appeared to be in good condition with no evident structural issues. It further noted that the building is structurally adequate for a conversion to future residential use and no new structural elements would be required for the existing structure. I have no good reason to doubt the conclusions of the SA. Given that the SA appears to have been produced by a suitably qualified authority and in the absence of an equivalent report on the part of the Council, I have given it significant weight. I have found no good reason to conclude that SA is unreliable in any significant respect.
19. Accordingly. The evidence indicates that the works required for the conversion could be built off the existing structure, nor that substantial works would be required to enable the residential conversion of the building or that the works required would be extensive. On this basis, having regard to all the evidence, the building operations would be reasonably necessary in this instance and would not constitute a rebuild as described in the Hibbitt Judgement. Therefore, the proposed development would comply with paragraph Q.1(i) of the GPDO in terms of the extent or scale of building operations being reasonably necessary to convert the building with respect to Class Q (b).

Whether the proposed change of use would require prior approval under Class Q.2 (1)

20. Having confirmed that the proposal would meet Paragraph Q.1 in full, I am satisfied that the proposal would be permitted development, it is necessary to consider matters required to be addressed under prior approval in Paragraph Q.2 (1) of the GPDO as to (a) transport and highways impacts, (b) noise impacts, (c) contamination, (d) flooding, (e) location or siting, and (f) the design or external appearance of the building. The Council has indicated in its Officer Report that it considers the scheme to not satisfy Q.2(1) (c), (d), (e) and (f).
21. However, I note that no objections have been raised from the Council’s Regulatory Services in respect of contaminated land, or from the Council’s Drainage Engineer to the details that have been submitted for the disposal of foul and surface water. With regards to the proposed location and siting, I do not find that the proposed arrangements would be impractical or undesirable given that the animals have been removed from the site in 2016 with no indication from the appellant that they are likely to return.
22. Accordingly, I do not consider it likely that the former pigsties or chicken units would be brought back into agricultural use. Furthermore, the window

⁴ Paragraph Reference: 13-105-20180222 - What works are permitted under the Class Q permitted development right for change of use from an agricultural building to residential use?

⁵ HWA (Structural Engineers) Limited dated 10 October 2018

proposed in the elevation facing the rear garden of the existing house would serve a utility room and as such I find that along with the distances maintained, there would be no significant harmful effects to the living conditions of the occupiers of the existing house. Although, there would be windows on elevations of the building adjacent to the existing yard area. I do not find that this would result in any significant harmful effects to the living conditions of future occupiers. Whilst the proposed development would introduce new openings to the building, I do not consider that this would to the detriment of the design and appearance of the building.

23. Therefore, none of the matters set out at Paragraph Q.2(1)(a) to (f) in the context of this appeal indicate that prior approval should be withheld.

Conditions

24. Paragraph Q.2(3) of the GPDO specifies that development under Class Q must be completed within a period of 3 years starting with the prior approval date, so it is not necessary or reasonable to impose a separate time limit as requested by the Council.
25. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. To ensure certainty and clarity, it is necessary to impose a condition setting out the approved plans.
26. It is necessary to include conditions in relation to the provision of bat and bird boxes and external lighting in the interests of biodiversity and protected species. A condition relating to foul and surface water drainage is also necessary to ensure satisfactory drainage and flood / pollution prevention. I have amended the Council's suggested conditions where necessary to better reflect the requirements of the PPG.

Conclusion

27. For the reasons set out above, I conclude that the appeal is allowed and prior approval is granted.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 01B, 02D, 04E
- 2) Prior to first occupation / use of the building, the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site:
 - A minimum of 1 external woodcrete bat box or integrated bat brick, suitable for nursery or summer roosting for small crevice dwelling bat species.

- A minimum of 1 artificial nest, of either integrated brick design or external box design, suitable for starlings (42mm hole, starling specific), sparrows (32mm hole, terrace design), swifts (swift bricks or boxes) and / or house martins (house martin nesting cups).

The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained and retained for the lifetime of the development.

3) Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out in accordance with the approved details and thereafter maintained and retained for the lifetime of the development.

4) The dwelling hereby permitted shall not be occupied until the surface / foul water drainage works have been implemented fully in accordance with the approved details and thereafter maintained and retained for the life of the development.