



Appeal Decision

Site visit made on 17 December 2019

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Appeal Ref: APP/L3245/W/19/3236202

Meadows View, Foxes Lane, Broughall, Whitchurch, Shropshire SY13 4EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q, Paragraph Q.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Jackson against the decision of Shropshire Council.
 - The application Ref 19/00669/PMBPA, dated 10 January 2019, was refused by notice dated 16 May 2019.
 - The development proposed is a change of use from agricultural to residential use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The proposed development includes a change of use of a building and land and the associated building operations necessary to convert the building. The application was therefore submitted under parts Q(a) and Q(b) and I have considered it on that basis.
3. Schedule 2, Part 3, Paragraph W of the GPDO sets out the prior approval process. It states¹ that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified as being applicable to the development in question.
4. Although the Council considered that the proposed development fell outside the scope of Schedule 2, Part 3, Class Q of the GDPO (Class Q), it proceeded to determine that prior approval for the development was required and was refused. Accordingly, I have addressed the Council's case in full in the interests of clarity and completeness.

Main Issue

5. The main issue is whether the proposal would be permitted development under Class Q.

¹ Paragraph W.(3)

Reasons

Curtilage

6. Class Q(a) provides for the change of use of a building and any land within its curtilage. 'Curtilage' for the purposes of Class Q is defined in paragraph X 'Interpretation of Part 3'. Amongst other things, this limits 'curtilage' to the area of land immediately beside or around the agricultural building which is no larger than the land area occupied by the agricultural building.
7. Section 4 of the application form identifies the extent of the curtilage of the building which would change use as 270m². The area of land occupied by the building has been clarified as 210.18m². As such, the curtilage would exceed the footprint of the building and therefore it could not benefit from deemed permission under Class Q.

Suitable for conversion

8. The scheme includes building works as part of the proposed development. Under paragraph Q.1 (i), development is not permitted by Class Q if development under Class Q(b) would consist of building operations other than those specified and partial demolition necessary to carry out those building operations.
9. The Planning Practice Guidance (PPG) provides advice on the extent of building works which may be carried out in accordance with the permitted development right under this Part. In this regard, it makes clear that the right 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 which would otherwise require planning permission.
10. The Council have referred to the judgement in *Hibbitt v SSCLG* [2016] EWHC 2853 referenced in the PPG. This established 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. It was held that the distinction between a conversion and a rebuild is a matter of legitimate planning judgement.
11. The appellant has set out the scope of additional works required to complete the conversion. Whilst the works to the elevations and within the building would be extensive, they equate to the installation or replacement of windows, doors, roofs, exterior walls and services reasonably necessary for the building to function as a dwelling house which are specified within Q.1 (i).
12. However, the Structural Inspection by Sutcliffe Civil & Structural Engineers (SI), concludes that the steel frame may require structural remediation and improvement to facilitate conversion to a suitable standard for residential purposes. It highlights concerns in relation to the framing baseplates and a requirement to undertake more detailed inspection of the foundations and substrata that supports the structural framework.
13. The SI also suggests a necessity for additional bracing to the roof and full-height bracing between the structural frames. The report also recommends removal and replacement of the floor slab due to the effect of previous uses and potential for contamination.

14. Although the PPG states it may be appropriate to undertake internal structural works, including to allow for a floor, the SI fails to conclude as to the extent of any necessary works. Furthermore, it fails to conclude that the structure is capable of supporting the proposed cladding and alterations to the roof. The extent of the necessary works is undefined and could subsequently extend to the substantial re-building of the main structure and foundations. Based on the submitted evidence, I conclude that there is insufficient information to establish whether the proposed development falls within the scope of reasonably necessary works to convert the building and therefore whether it complies with paragraph Q.1(i) and benefits from deemed permission under Class Q.

Ecology

15. The Council has identified the potential of the development to have an adverse effect on protected species (Great Crested Newts) due to the proximity of the development to a pond. Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty on me to have regard to the likelihood of European Protected Species being present and affected by the proposed development.
16. In support of the appeal, the appellant has provided a commentary advising that due to the distance of the building from the pond, the intervening road and use by cattle it is unlikely that Great Crested Newts would be present on the site. However, in the absence of detail of the location of the pond or survey effort to establish their presence or absence, this level of information is inconclusive for the purposes of assessment under Regulation 9 and therefore insufficient to measure any effect on European Protected Species. Accordingly, I conclude that there is insufficient information to establish whether the siting of the building would make it undesirable to change from agricultural use to a residential one and therefore benefits from the deemed permission under Class Q in that respect.

Other Matters

17. The appellant has referred to another example of prior approval relating to what he considers is a comparable barn elsewhere. In the absence of the full details and the circumstances of that case I am unable to draw comparisons. In any event, I have determined this appeal on its own merits in the light of the evidence before me.

Conclusion

18. For the above reasons, the appeal should be dismissed.

R Hitchcock

INSPECTOR