



Appeal Decision

Site visit made on 17 November 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2020

Appeal Ref: APP/L3245/W/20/3257753

Agricultural Building NW Of Burlton Grange, Burlton, Shropshire, Shrewsbury, SY4 5SX

- 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, Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr P Smith against the decision of Shropshire Council.
 - The application Ref 20/01649/PMBPA, dated 26 March 2020, was refused by notice dated 18 June 2020.
 - The development proposed is change of use of agricultural building to a dwellinghouse.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) The effect of the proposal on great crested newts, and;
 - (b) Whether the extent of the proposed works to the building go beyond those permitted under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO').

Reasons

Great crested newts

3. The appeal site consists of a disused agricultural building and an overgrown track leading to it from the road. The building and access route are in close proximity to an existing pond that is surrounded by trees and vegetation.
4. An Ecological Impact Assessment¹ has been submitted in support of the proposal. This concludes that the pond is considered to have 'excellent' suitability for great crested newts, which are a European Protected Species. In addition, the surrounding tall ruderal habitat and long grassland is considered to offer potential foraging and sheltering habitats for great crested newts. Whilst the majority of these habitats are outside of the site boundary, the proposal would involve the removal of a section of the tall ruderal vegetation, and an area of semi improved grassland, to accommodate both the proposed

¹ Ref 2020-01(06) (Ecolocation, 17 February 2020)

- parking area and access route. These areas would be within around 10 metres of the pond.
5. It is asserted that a full suite of great crested newt surveys is unnecessary due to the limited extent of the proposed clearance works. However, in the absence of detailed surveys, the size of any population and the extent of any impact are unclear. I further note that Natural England's standing advice states that surveys should be requested where there is a suitable water body within 500 metres of the development, or where the site includes refuges such as grassland, scrub, or woodland within 500 metres of such a habitat. It also states that developments within 50 metres of breeding ponds will normally have a high impact on great crested newts. Given the close proximity of the site to the pond, and the proposed incursion into the supporting habitat around it, I consider that newt surveys are necessary in this case.
 6. Paragraph Q.2(1) of the GPDO does not explicitly refer to the effect of a proposal upon protected species. However, it does require consideration of whether the location or siting of a building makes it otherwise impractical or undesirable to create a dwellinghouse. Moreover, Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty to consider relevant Directives and whether there is a reasonable likelihood of European Protected Species being present and affected by a proposal. This applies equally to prior approval applications for proposals that are said to be permitted development.
 7. I note that the building was previously used for agricultural purposes. However, it has been disused for some time, and from the evidence before me, its re-use for these purposes seems only a theoretical possibility. In any case, an agricultural use would be unlikely to necessitate an incursion into the habitat surrounding the pond or the introduction of significant new areas of hard standing.
 8. For the above reasons, and on the available evidence, I am not persuaded that the proposal would avoid negative effects to great crested newts.

Extent of the proposed works

9. Class Q of the GPDO allows for a change of use of a building, and any land within its curtilage, from an agricultural use to a dwellinghouse including building operations reasonably necessary to convert the building. However, Class Q does not allow for the extensive rebuilding of an insubstantial structure to create what would in effect be a new building.
10. Planning Practice Guidance ('PPG') provides further clarification in this regard. It states 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. Accordingly, 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 right².
11. The appeal building is steel-framed and its external walls consist of brickwork. It is a relatively substantial structure, and benefits from an intermittent concrete ground slab, with longitudinal edge strips and a longitudinal middle strip. These appeared to cover approximately 50% of the floor of the building

² Paragraph: 105 Reference ID: 13-105-20180615

when I visited the site. This slab is clearly capable of supporting the existing structure, and I note that the submitted structural report³ found that "*the building remained plumb and true throughout*" (Para 3.9).

12. The proposal would retain the external walls and slab but would replace the corrugated cement fibre roof with composite metal sheeting and insulation. The proposed roofing material would be significantly lighter than the existing, and the structure would therefore be capable of supporting it. Whilst there would be some infilling of the building's southern elevation, that would mostly consist of new bi-fold doors, and only limited sections of new external walling would be required. I further note that it is anticipated that the internal subdivision of the building can be achieved using non-load bearing masonry or timber construction. Any infilling of the existing slab to create a floor and to support the new walling would not go beyond the scope of Class Q in my view. In this regard, the submitted structural report does not indicate that new foundations would be required.
13. My attention has been drawn to 4 recent dismissed appeal decisions⁴ relating to proposals submitted under Class Q of the GPDO. However, those cases relate either to insubstantial structures where little of the original building would be retained, or cases where no structural survey had been submitted. That is not the case here, and I have therefore come to my own view on this matter.
14. For the above reasons, I conclude that the extent of the proposed structural works to the building would not go beyond those permitted under Class Q.

Other Matters

15. The proposal would generate only a modest amount of traffic and there would be appropriate visibility along the access route. I further note that the Highway Authority has not objected to the proposal on safety grounds.
16. Vehicles and pedestrians would need to cross part of a private driveway in order to enter or leave the site. However, rights of access are a civil matter that fall outside of the planning regime.

Conclusion

17. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR

³ Ref MD/jrI/MD631 (Mark Dady Associates, 9 October 2018)

⁴ APP/L3245/W/17/3182104; APP/L3245/W/16/3142701; APP/L3245/W/16/3147814; APP/L3245/W/18/3213885