



Appeal Decision

Site visit made on 17 November 2020

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2021

Appeal Ref: APP/L3245/X/20/3256290

Barn South of Hilltop, Welshampton, Shropshire SY12 0NN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs. Barbara Mayer against the decision of Shropshire Council.
 - The application Ref 20/01421/CPL, dated 6 April 2020, was refused by notice dated 12 June 2020.
 - 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 described as: conversion of agricultural building to a dwelling, creation of access track, hard standing and garden area.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The creation of an access track would not be permitted development under Class Q and would require separate planning permission.

Main Issue

3. This is whether the Council's decision to refuse to issue an LDC for the conversion of the agricultural building to a dwelling was well-founded. The decision turns on whether the works proposed are in excess of those considered reasonably necessary to facilitate the conversion under Article 3(1) Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Background

4. Class Q of Part 3 of Schedule 2 to the GPDO provides that "Development consisting of— (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; or (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule" is development permitted by the GPDO, subject to limitations and conditions. Among the latter is a pre-commencement requirement to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required

as to the transport and highways impacts, noise impacts, contamination and flooding risks, whether the location or siting of the building makes the change of use otherwise impractical or undesirable, and the design or external appearance of the building.

5. Development may not begin until either (i) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required, (ii) notice is given within 56 days following the date of receiving the application of their determination that such prior approval is required, and that it is given, or (iii) the expiry of 56 days following the date on which the application was received without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination.
6. The appellant applied to the Council for a prior approval determination for the change of use and the works, accompanied by the requisite details. The Council failed to notify the applicant of its determination before the expiry of the relevant period, hence condition Q.2(1) was discharged, and that was affirmed by an appeal¹ made under section 78 of the 1990 Act. However, it is well established that regardless of the outcome of the prior approval process, development can only proceed if it is in any case development permitted by the GDPO.

Reasons

7. The appeal building is a modern, steel-portal-framed building, externally clad in profiled sheeting atop a concrete floor slab. Internally, the frame is exposed with metal stanchions and rafters, and timber purlins and side rails, to which the single skin profile cladding is riveted. The building has no internal subdivisions and was not in use at the time of my visit.
8. The Council's case rests on its view that the works proposed to convert the building into a dwelling house would represent works in excess of those considered 'reasonably necessary' under Schedule 2, Part 3, Q.(b) and Q.1(i)(i) to facilitate the conversion, and the building's suitability of conversion.
9. Schedule 2, Part 3, Class Q of the GPDO permits the change of use of an agricultural building and any land within its curtilage to a dwellinghouse and any building operations reasonably necessary to convert the building to such a use. Paragraph 105 of the Planning Practice Guidance (PPG) assists in defining the scope of allowable works. 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 would otherwise require planning permission. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. 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.

¹ APP/L3245/W/19/3232168 dated 17 September 2019

10. The appellant's structural report informs that the conversion scheme would utilise the existing structure, with a new internal structure added to partition and create the conversion to habitable space. However, the evidence within the drawings indicates otherwise. The appellant points to the Council's misunderstanding regarding the phrase self-supporting partition which she clarifies that it "does not confirm that the existing structural frame is unable to accommodate any additional loading" and that this is substantiated by the structural report and accompanying calculations. That may be the case, however the section Drawings BR-31 rev A and Br-31 rev A show a 140 mm wide insulated timber frame inner skin encompassing the internal walls and roof of the existing building.
11. The drawings also show that a substantial proportion of the existing external steel cladding on the building would remain. Although around the base of the building the cladding would be replaced by three courses of engineering brickwork on top of which would be three courses of blockwork, to window sill level, and this would be covered with 675mm high Cedar cladding. The appellant notes that "these features are proposed purely for aesthetic purposes to enhance the appearance of the proposed dwelling". However, it would seem to me that the purpose of the internal timber frame and the blockwork plinth confirms that the existing structural frame is unable to accommodate the required additional loading.
12. A new concrete floor is also proposed on top of the existing concrete slab that would, in turn, act as a foundation to carry the new timber framed structure and breeze block plinth. This timber framed structure would support the internal partitions to divide the rooms and also the new openings, as shown on Drawings BR-10 rev A and BR-31 rev A. Whilst section plans have been supplied, these fails to show any intersecting attachments to the existing building, resulting in an inability to confirm the exact internal wall build.
13. Reference is made to the case of Hibbitt². The appellant has suggested that there are significant differences between the appeal building and the building subject of the Hibbitt judgement in that the appeal building is enclosed on all sides whereas the Hibbitt building was substantially open on 3 sides. However, I disagree as the case is cited in current PPG Paragraph 105 as an appropriate reference point for considering the difference between conversions and re-building. Whilst references in the Judgement to the previous version of PPG Paragraph 105 must be treated with caution, those parts concerning whether an agricultural building is capable of functioning as a dwelling are still relevant to the current guidance.
14. In the case of Hibbitt, the Court considered whether the works required to bring about the change of use amounted to a re-build or 'fresh' build, rather than a conversion as required by the permitted development right. It was held to be a matter of legitimate planning judgement as to where that line was drawn. However, the Inspector was held to have correctly deemed that the works went a very long way beyond what might sensibly or reasonably be described as a conversion, having noted that the development was in all practical terms starting afresh with only a modest amount of help from the original agricultural building. My earlier findings in this case have strong parallels to this situation, whereby the installation of a new internal timber

² Hibbitt & Another v SSCLG & Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

frame would create the structure for the domestic dwelling. The modest help given by the existing building appears to be limited to providing an outer shell.

15. Having regard to the Hibbitt case and as a matter of fact and degree, I find that the building is not capable of functioning as a dwelling without substantial construction works that go well beyond conversion. The building is hardly more than a skeletal frame with metal sheeting to its walls and roof. It is basically a large agricultural shed without proper foundations and with a concrete slab floor. The proposed works would extend beyond building operations reasonably necessary to convert the building to residential use and the proposal is, essentially considered to be a 'fresh build' within the parameters of a pre-existing structure. I therefore conclude that the works necessary to create a dwelling from the structure onsite would not fall within the scope of that permissible under Class Q(b). It follows that the proposal cannot be permitted development under Article 3(1) Schedule 2, Part 3, Class Q.

Other matters

16. I have been directed to Drawing Ref: BR-20 A (Proposed Elevations) which details a twin lined flue which projects from the original roof line. This addition would not comply with the limitation at paragraph Q.1(h) of Class Q which provides 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.
17. The appellant has also provided a decision notice relating to a prior approval for an agricultural building within the same locality which was allowed on appeal. I note that this building had an existing steel frame, roof and concrete floor which was to be retained. With approximately 50% of the block walls removed to create new openings or replaced with timber cladding. The proposed timber cladding would be attached to a timber frame that would be affixed to the remaining block walls and the steel frame. The appellant confirms that the internal walls would be supported by the existing steel frame, blockwork and concrete floor. From the limited details before me, I consider that the cases are sufficiently dissimilar that different conclusions are justified.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of the conversion of an agricultural building to a dwelling, creation of access track, hard standing and garden area was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR