The Planning Inspectorate

Appeal Decision

Site visit made on 18 September 2018

by Kevin Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2018

Appeal Ref: APP/B3438/W/18/3202031
Hayes Gate Farm, Star Bank, Oakamoor, Staffordshire ST10 3BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant prior approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mr and Mrs Mellor against the decision of Staffordshire Moorlands District Council.
- The application Ref DET/2018/0002, dated 19 January 2018, was refused by notice dated 15 March 2018.
- The development proposed is change of use of an agricultural building into one dwelling under class Q.

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for change of use of an agricultural building into one dwelling, at Hayes Gate Farm, Star Bank, Oakamoor, Staffordshire ST10 3BN, in accordance with the terms of the application Ref DET/2018/0002, dated 19 January 2018, and subject to the conditions listed in the attached schedule.

Procedural Matters

2. Since the Council's decision the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018 came into force on 6 April 2018. I have taken this into account along with the subsequent amendments made to the Government's on-line Planning Practice Guidance (PPG), including in respect of Paragraph 105.

3. The Council has confirmed a discrepancy on its decision notice, which refers to drawing 001, whereas it was actually drawing 001 Rev A which was considered as part of the application, and which I have had regard to in considering the appeal.

Main Issues

4. The main issues in this case are whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO; and if so, whether the effects of the development are such as to require refusal of prior approval under paragraphs Q.2.(1) and W.(3).

Reasons

Whether permitted development under Class Q

5. Class Q 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) of the Schedule to the Use Classes Order[1] and any building operations reasonably necessary to convert the building.

6. Paragraph Q.1 sets out restrictions to the permitted development right. The Council found no conflict with any of these restrictions, with the exception of Q.1.(i).

7. Paragraph Q.1.(i) places restrictions on the building operations which can be undertaken. It states that development is not permitted if it would consist of building operations other than: (i) the installation or replacement of — (aa) windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and (ii) partial demolition to the extent reasonably necessary to carry out building operations.

8. The PPG advises[2] that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling, and that for the building to function as a dwelling, some building operations which would affect the external appearance of the building and which would otherwise require planning permission would need to be undertaken and should be permitted. The PPG goes on to state that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.

9. The appeal relates to a single storey barn, which at the time of my visit was vacant, but contained various livestock pens capable of use, and the wider farm was evidently in agricultural use. The barn is a steel portal framed structure, with walls composed of block work to the lower parts, with a combination of timber slats and metal sheeting to upper parts. The building is not weather tight, being open above the height of the pens on the inner side, and various gaps elsewhere in the external materials. An open sided lean-to structure to the side of the barn would be demolished as part of the proposal.

10. The appellant indicates that the existing structural elements of the barn, and external materials, would be retained, with proposed installation of new windows, doors and installation of the necessary utilities for domestic use. Internally, the walls and roof would be lined with a membrane used as a vapour retarder and airtight barrier, and the roof insulated. The concrete floor would be covered in a damp-proof membrane, insulation, heating and flooring. Structural calculations have been submitted in respect of the existing structure.

11. The Council asserts that the appellants' structural calculations[3] are insufficient to demonstrate that the building is structurally sound, and that the extent and

[1] SI 1987/764 – The Town and Country Planning (Use Classes) Order 1987, as amended.
[2] Paragraph: 105 Reference ID: 13-105-20180615
[3] Structural Calculations for the Existing Portal-Frame Agricultural Building at Hayes Gate Farm, dated June 2017

strength of the foundations has not been established. In the absence of this information, the Council considers the appellants have not demonstrated that the building is suitable for conversion to residential use. The calculations are prepared by a structural engineer, and conclude that the building is suitable for conversion to domestic use, and do not indicate concern with respect to the foundations. For my own part, I observed the steel frame appeared to be set into concrete, and noted the depth of the blockwork below the floor level on the south-western side where the ground level falls away considerably. I also observed what appeared to be recently installed steel supports and new timbers within the roof towards the rear end of the building.

12. I am referred by the Council to an appeal decision[4] wherein the Inspector had concern over the lack of a structural survey. As pointed out by that Inspector, such cases will depend on their individual circumstances. It is the case here, however, that details have been submitted with respect to the strength of the existing structure, and its suitability for conversion to residential use. The Council casts doubt on this information, and speculates that the additional steel supports demonstrate a lack of structural integrity, but it does not offer substantive evidence to counter the conclusions of a qualified structural engineer. The fact that some additional supports have been added internally to the building would not, in my view, amount to development within the meaning of Sections 55(1) of the Act, having regard to Section 55(2)(a) which explains that certain operations shall not be taken to involve development, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which: (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building. Therefore, on my reading of the evidence, and observations on site, I find that the building is structurally capable of conversion for the purposes of Class Q.

13. The Council further contends that the application does not demonstrate the building is capable of functioning as a residential conversion and that significant and extensive demolition and new elements would be required. The Council points to uncertainty in the appellants' submissions regarding whether the existing elements could be retained, including the roof, and that all of the walls would have to be, at least partly, built up.

14. The building is not weather tight at present, and would require additional elements to make it so, principally the addition of Yorkshire boarding to the north-eastern elevation. The plans submitted show the use of the existing blockwork and section of brickwork to the south-eastern elevation. The resulting appearance, therefore, would be not dissimilar to the existing building, which features timber panelling above the blockwork to the south-western side. Where blockwork is incomplete, as on the south-western side, the existing opening would be utilised as part of the proposed fenestration. On their face, none of the proposed works would fall outside of those building operations permitted under Paragraph Q.1, and would be reasonably necessary for the building to function as a dwelling.

15. The Council further refers to the response of its Environmental Health department which raised concern that 'any redundant on site buildings may well have asbestos containing materials (ACM) in their fabric (e.g. asbestos roof)', and should that be the case, more of the existing fabric would need to

[4] Appeal Decision APP/U2370/W/15/3137151 – Dismissed 8 November 2016

be removed than is proposed. These are general and slightly speculative comments, in my view, and do not appear to be based on a site visit. The proposal does not include the replacement of the roof, but rather its upgrading internally to provide insulation and weather proofing, works which would be reasonably necessary in my view. Should asbestos containing materials be identified, separate legislation exists to address this. Moreover, even if this proved to be the case, the replacement of the roof materials, provided they are not structural elements, would fall within the scope of works permissible under Paragraph Q.1(i).

16. That the building would require some building up or replacement of external fabric would not, in this particular case, go beyond the scope of works permissible under paragraph Q.1.(i), which explicitly includes 'installation and replacement' of windows, doors, roofs, or exterior walls. The nature of agricultural buildings will invariably mean that they will not have all of the necessary elements of a residential dwelling, or have them to the necessary standard or condition, hence the provisions of paragraph Q.1.(i). Moreover, whilst the PPG and the notable judgement in the *Hibbitt*[5] case make it clear that the development should not be so extensive as to amount to a 're-build' or 'fresh build', by, for example, reducing the building to a skeletal structure before reconstructing, there is nothing substantive in evidence before me to indicate that is what would occur here. The works proposed by the appellant would retain the majority of the existing structural elements. The replacement and/or upgrading of the roof, walls and floor internally to insulate and waterproof the building, and externally for weatherproofing, would, in my view, fall within the category of reasonably necessary for the building to function as a dwellinghouse.

17. In addition, the insertion of windows and doors would fall within the works permissible under paragraph Q.1.(i). I do not share the Council's view that the number of windows proposed is excessive or unnecessary. The proposed floor plans show, by and large, one window to serve each main room or area within the building, or one window to each elevation in corner rooms. The fact that the open plan lounge and dining room would be served by three windows is, to my mind, acceptable in view of its size and depth, and understandable in view of its south-westerly orientation. I shall separately consider the question of design and appearance below, however, I consider that the proposed windows and doors would be reasonably necessary for the building to function as a dwelling, and would fall within the works permissible under paragraph Q.1.(i).

18. The parties each refer me to other appeal decisions[6] in support of their cases. Whilst I have had regard to each, they involve different individual circumstances, and are not determinative in this appeal, which I have considered on its own merits.

19. Bringing matters together on this first issue, I consider that the proposed building operations would fall within the definition set out in Class Q.1 (i) and that they would not go beyond what would be reasonably necessary for the appeal building to function as a dwellinghouse.

[5] Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)
[6] Appeal Refs APP/N0410/W/17/3188794, APP/J0405/X/16/3150189, APP/P4415/W/18/3198096, APP/T4210/W/17/3182611, APP/C3240/W/17/3181573

20. As such the proposed building operations would fall within those permitted by Class Q(b) and paragraph Q.1.(i), having regard to the PPG. Therefore, the proposed change of use would satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO, having regard to the associated guidance within the PPG, and therefore is development permitted by it.

Whether or not Prior Approval should be granted

21. Paragraph Q.2.(1) lists conditions under which the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to the impact of the development on: (a) transport and highways; (b) noise; (c) contamination; (d) flooding risks; (e) whether the location or siting of the building would make it otherwise impractical or undesirable for the building to be used as a dwellinghouse; and (f) the design or external appearance of the building. The Council's decision notice indicates that prior approval was refused in respect of matters (e) and (f).

22. The Council argues that the building is not one which was intended to have a permanent presence on the landscape, being of utilitarian design and built for its functional use as an agricultural building. The Council contends many of the proposed openings are new and unnecessary, in that they serve the same room. The Council further criticises the regular sized appearance, full height form, and very 'domestic' appearance, which, in its view, are not characteristic of a portal framed agricultural building.

23. The very nature of a change from an agricultural building to a dwelling will invariably introduce a more domestic appearance in the form of windows and doors. The proposed fenestration has a regular and symmetrical form to the long elevations, which I consider respects the utilitarian design of the existing building. The full height form of the windows would not be uncharacteristic in my view, given the size of openings commonly found on agricultural buildings. Moreover, on the north-western and south-western elevations, which would be those visible from the road, the fall in levels means that the windows would not appear to extend to ground level from the outside. I also note that, relative to the previously refused application, the fenestration would be more ordered and proportionate to the building.

24. The re-use of the existing block work, and Yorkshire boarding above on the walls, would respect the existing form of the building and its rural setting, and would not appear overly domestic, or out of character with the surrounding agricultural buildings. The conservation rooflights proposed in the roof would not appear excessive or incongruous given their small size relative to the expanse of the roof. Overall, the building would have a simple, ordered appearance in sympathetic materials, which would not, to my mind, result in an unduly prominent or discordant building, but rather one which would maintain much of its existing agricultural character.

25. The Council further argues that the application still proposes a development which, if allowed, would extend the life of a building which was never meant to be permanent, and which would be incongruous with an area of high landscape sensitivity where development should be of a high standard and sensitive to the heritage and landscape of the area. The fact that the proposal would extend the life of the building is not, of itself, a relevant consideration under Class Q. I have no evidence before me to indicate that the building does not exist lawfully or that it should not benefit from the permitted development right

under Class Q, which as its starting point, grants permission for agricultural buildings to be converted to dwellings, and it must therefore be the government's intention that, in principle, such buildings can remain in the landscape and serve a new function as dwellings.

26. The Council refers to the site being located within the Churnet Valley Landscape Character Area, and reference is made to related documents[7]. The Council states that it is an area of high landscape sensitivity, but does not elaborate as to the specific features of the site surroundings which are considered to be important. Notwithstanding this, I have found that the design and appearance of the building would be acceptable in its context. The proposal would serve to improve the appearance of the building relative to its current form. Overall, it would have a negligible effect on the character and appearance of the wider landscape, given it would be no greater in size, would largely maintain the existing shape and materials, and the agricultural appearance already well-established in the landscape. Views of the building would be mainly from the road or the public footpaths to the west, from where the building would continue to be seen within a context of several farm buildings. It would not therefore significantly alter the wider appearance of the surrounding landscape.

27. Therefore, I conclude that the proposal would be acceptable with respect to matter (f) of Paragraph Q.2.(1) relating to the design or external appearance of the building. In reaching this view, I have had regard to the National Planning Policy Framework[8], so far as it is relevant to the subject matter of the prior approval, and find no conflict with its design related aims, set out principally in Chapter 12.

28. The Council also cites conflict with matter (e) of paragraph Q.2.(1), whether the location or siting of the building would make it otherwise impractical or undesirable for the building to be used as a dwellinghouse. This is primarily related to the matters addressed above relating to its position within the landscape. The Council raises no objections to the building's location or siting from the point of view of the prospective living conditions of future occupants, or matters of access, and nothing I have seen or read leads me to have any concerns in these respects. Therefore, in view of this and my findings above, I conclude that the proposal would acceptable with respect to matter (e).

29. The Council did not indicate that prior approval would be required in respect of matters (a) transport and highways; (b) noise; (c) contamination or (d) flooding risks. From everything I have seen and read, including concerns of interested parties in respect of highway matters, I have no reason to conclude otherwise in these respects.

Other Matters

30. The appellant refers to the Council being unable to demonstrate a five year housing land supply. This, however, is not a relevant consideration in the context of an application under Class Q, and therefore I have not had regard to this in reaching my decision.

[7] Staffordshire Moorlands and Churnet Valley Landscape Character Assessments, Staffordshire County Council's 'Planning for Landscape Change' Supplementary Planning Document 2001
[8] Published 24 July 2018

Conditions

31. Paragraph Q.2.(3) of the GPDO stipulates that development under Class Q must be completed within a period of three years from the approved date. Paragraph W(12) requires the development to be carried out in accordance with the approved details. I shall therefore impose a condition specifying the approved plans, in the interests of certainty.

32. Paragraph W(13) of Schedule 2, Part 3 of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. The Council has requested seven conditions, of which five are pre-commencement. As of 1 October 2018, any planning permission granted on or after that day with pre-commencement conditions imposed must have the written agreement of the applicant / appellant to the wording of those conditions[9]. I am not provided with such written agreement from the appellant, and shall therefore consider the necessity of the conditions being pre-commencement.

33. Conditions 1 and 2 seek details and samples of the external materials to be used on the building. Given the building's position on the site and the relative distances from which there would be public views of it, I am not persuaded that such levels of scrutiny by the Council of the proposed materials, which are clearly identified on the submitted plans, are necessary. I shall not therefore impose these conditions.

34. Conditions 3 and 4 relate to external walls, fences and other means of enclosure, hard and soft landscaping and planting details. These are typically matters addressed towards the end of the construction process, and I see no reason why details need to be submitted before any works commence. The details have not been submitted, but they are necessary in order to ensure a satisfactory appearance. I shall therefore impose these conditions but with the requirement that they be discharged, and the approved details implemented, prior to first occupation of the dwelling.

35. Conditions 5 and 6 relate to unexpected contamination and soil testing, and are not pre-commencement conditions. Given the existing use of the building and surrounding land for agriculture, and the more sensitive nature of the proposed use, I consider both conditions reasonable and necessary, and shall impose both, with a minor adjustment to the contamination condition to ensure it is not interpreted as being pre-commencement.

36. Finally, condition 7 seeks details of drainage to be submitted prior to the commencement of works. No commentary is made in respect of the drainage matters within the Council's delegated report or appeal statement, and Severn Trent Water states in its consultation response that it does not require a drainage condition to be applied. The need for the condition is therefore unexplained. Therefore, in the absence of a specific reason for the condition, I do not find it necessary and shall not impose it.

37. I also note, within the comments of the Council's ecology advisor and the Environmental Health department, suggestions as to conditions which might be imposed. However, the Council did not subsequently put forward such conditions to be considered. Notwithstanding this, the provisions of Class Q

[9] Section 100ZA(5), and (6) of the Act

permit me to only consider those matters set out at paragraph Q.2.(1), and matters relating to ecology are not relevant therefore to the consideration under Class Q. Whilst a restriction on construction hours would potentially relate to matter (b) noise, the scale of the works is unlikely to lead to excessive noise outside of normal working hours. I have not therefore imposed further conditions in respect of these matters.

Conclusion

38. For the reasons given, I conclude the appeal should be allowed.

Kevin Savage

INSPECTOR

Schedule – Conditions

1) The development hereby permitted shall be carried out in accordance with the following approved plans: 001 Rev A; 002; 003 Rev A; 004 Rev C; 005 Rev G and 006.

2) The development hereby permitted shall not be occupied until details of all walls, fences and other means of enclosure as well as any hard landscaping have first been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the occupation of the building on the site.

3) Prior to first occupation of the development, landscaping and planting details shall be submitted to and approved in writing by the Local Planning Authority. The landscaping shall be fully implemented before the end of the first available dormant season (November to February inclusive) following first occupation of the development hereby approved. The trees and shrubs planted in accordance with this landscaping scheme shall be properly maintained for a period of 5 years following planting. Any plants which within this period are damaged, become diseased, die, are removed or otherwise fail to establish shall be replaced during the next suitable season.

4) In the event that contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. If after consultation with the Local Planning Authority the contamination is considered to pose a possible risk, to human health, buildings and other property and the natural and historical environment (receptors), development should not commence further until a site investigation and risk assessment has been completed in accordance with a scheme to be agreed by the Local Planning Authority. If the contamination investigation and risk assessment indicates that potential risks exists to receptors, development shall not continue until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to the receptors has been prepared, and is subject to the approval in writing of the Local Planning Authority.

5) Prior to bringing the development into first use, all soils that are intended to be used for the proposed garden/ soft landscaping areas should be tested for contamination and assessed for their suitability for the proposed use. Prior to sampling, a suitable methodology for testing the soil should be submitted to and agreed in writing by the Local Planning Authority and should include the sampling frequency, testing schedules, and criteria against which the analytical results will be assessed.

   The results of the soil tests should be submitted to and approved in writing by the Local Planning Authority. If soil results indicate that potential risks exist, development shall not continue until a detailed remediation strategy to bring the site to a condition suitable for the intended use has been prepared and subject to the approval in writing by the Local Planning Authority.

END OF SCHEDULE