The Planning Inspectorate

Appeal Decision

Site visit made on 5 January 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal Ref: APP/B3438/W/20/3257859
Heath House Farm Cottage, Ostlers Lane, Cheddleton ST13 7DQ

- 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).
- The appeal is made by Mr John Carr against the decision of Staffordshire Moorlands District Council.
- The application Ref DET/2020/0025, dated 30 May 2020, was refused by notice dated 28 July 2020.
- The development proposed is described as a 'change of use of an existing agricultural building into a single dwelling'.

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. The appeal relates to a barn, set in a field within a larger agricultural holding, which the appellant wishes to use as a single dwelling (Use Class C3) under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (hereafter 'the GPDO').

3. Class Q(b) permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use as a dwellinghouse, along with the building operations reasonably necessary to convert the building. In considering proposals for development under Class Q(b), a determination must first take place as to whether the proposal constitutes permitted development. In the event that it does, Paragraph Q.2.(1) requires the local planning authority to assess the impact of the proposed development on a limited number of 'prior approval' matters. The Council raised no concerns regarding the impact of the scheme on these prior approval matters.

4. The application was refused on the basis that the proposal would amount to a rebuild rather than a conversion, and therefore fell outside the scope of what is permitted by Paragraph Q.1.(b). The site has been the subject of previous similar proposals, notably an application in 2018[1] for which an appeal was dismissed in September 2019[2] ('the 2019 appeal'). A further application was

[1] LPA Ref: DET/2018/0043
[2] Ref: APP/B3438/W/19/3230017

refused in March 2020[3], and an appeal subsequently lodged then withdrawn. I have had regard to the 2019 appeal decision in determining this appeal.

5. The information submitted with the application also raised the question of whether the curtilage for the proposed change of use exceeded the restrictive limit described in Paragraph X of Schedule 2, Part 3 of the GPDO. Although this was not one of the reasons for which the Council refused the application, it is fundamental as to whether or not the proposed development is permitted by Class Q. I therefore sought comments from both parties on the proposed curtilage, and have addressed the matter in my reasons below. As part of their response, the appellant submitted revised plans showing a smaller curtilage. While it is not the purpose of the appeal process to evolve a scheme, in this case the amendments would not fundamentally alter the nature of the proposed development. I am satisfied that no party's interests are prejudiced by my determining the appeal on the basis of the amended plans.

Main Issue

6. The main issue is therefore whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO.

Reasons

Building operations

7. The appeal building is a single-storey steel portal-framed barn, approximately 18m long (on an east-west axis) and 16m wide, around 3.6m high to the eaves and 6m to the ridge. The side and rear elevation walls are built from precast concrete panels approximately 1m high, with vertical profiled steel cladding sheets above to the eaves; the roof is of similar sheeting. The east-facing 'front' elevation is blockwork internally with brick external facing to around 3m high, with open vertical timber boarding above. There are large openings on the front and south side elevations, while translucent panels on the 'rear' (west) and north side elevations also let some light into the building.

8. The proposal is to create a four-bedroom dwelling, and is described as being achieved by retaining the existing roof and exterior walls, installing new timber framed doors and windows in the existing openings, and creating new window openings on the north elevation. There would also be internal works including the construction of a new blockwork 'leaf' within the outer perimeter of the building, an insulated floor over the existing concrete slab, and new ceilings over bedroom areas.

9. Paragraph Q.1.(i) of the GPDO lists the building works permitted to facilitate the change of use of an agricultural building to a dwellinghouse. These are the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services, as well as partial demolition to the extent reasonably necessary to carry out these building operations. The Planning Practice Guidance (the PPG) provides further information in that regard, by stating that the right assumes that the agricultural building is capable of functioning as a dwelling[4]. The PPG adds that it is only where the existing building is already suitable for conversion to residential use that it would be considered to have the permitted development right.

[3] LPA Ref: DET/2020/0002
[4] Paragraph 105 – Reference ID: 13-105-20180615

10. The Council referred in its decision and subsequent appeal statement to the judgment of the High Court in *Hibbitt*[5] in which it was held that, for the permitted development rights under Class Q(b) to apply, the building must be capable of conversion to residential use without operations that would amount to a rebuild of the existing structure or a fresh build, as such works would go beyond what could be considered a conversion. There are differences between the building in *Hibbitt*, which although also a steel portal-framed barn was open on three sides, and that in the case now before me. Nonetheless, *Hibbitt* sets principles which are applicable to this appeal, not least that permitted development rights should be construed conservatively and narrowly, that Class Q is in place to permit the conversion of 'clear-cut cases' and therefore there are inherent limitations, and that it is for the decision maker to exercise judgement in each case by considering the type and extent of works proposed.

11. The application was accompanied by a structural report prepared by a Chartered Engineer in May 2020. While this was on the basis of a visual survey only and no intrusive investigations were carried out, it concluded that 'generally, the building is in good structural condition', it is 'well-constructed and stable for its current purpose', and 'the existing steel frame appears to be more than adequate to support the minor increase in load from insulation and plasterboard'. I note also that in the 2019 appeal decision the Inspector did 'not disagree with the appellant's view that the building appears to be in a good condition'.

12. Beyond its general conclusion about the good structural condition of the steel frame, the 2020 structural report recommended various measures including replacing the side rails supporting the cladding with more robust and closely-spaced rails, introducing rafter stays to stabilise the rafters for wind uplift loads, and additional bracing at lower levels and within the roof slope. Although the report describes these works as minor and indicates that they would be required regardless of the proposed use of the building as a dwelling, this advice indicates to me that the building is not in fact in its current state suitable for conversion to residential use.

13. The appellant describes the proposal as retaining the existing roof and exterior walls, but the structural report describes the cladding as being in a poor condition and in need of replacement, or at least patch repair. This accords with my observations on site. The east front elevation has open timber boarding which would not keep wind or rain out of the building, and there is a substantial gap between the side walls and roof at eaves level. The scheme as envisaged appears to rely on the erection of the inner blockwork 'leaf' and the new windows and doors to provide an insulated and weathertight dwelling. I have not been provided with details of these internal works, including whether or not the existing concrete floor would be capable of supporting them. However, it appears to me as a matter of fact and degree that the proposal is akin to erecting a new residential building within the existing frame and skin.

14. I acknowledge that the individual elements of the external works proposed fall within those specified in Paragraph Q.1(i), and would be reasonably necessary for the structure to function as a dwelling. However the extent of work which would be required, including elements such as installing additional bracing to the steel frame which would have at least a partly structural role, is to a large

[5] Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

part because the existing building cannot function as a dwelling in its present condition. In respect of the internal construction, the appellant's agent has referred to Section 55(2) of the Town and Country Planning Act 1990 which sets out the operations that do not involve development of land, and includes works that affect only the interior of a building. Nonetheless, in this case the internal works are being put forward to facilitate the change to residential use, and it is reasonable and necessary to take account of their scale and nature in considering whether the provisions of the GPDO apply.

15. In reaching my decision I have had regard to other appeal decisions to which my attention was drawn. These include Hayes Gate Farm where the Inspector addressed a recently-strengthened structure which also required new or replacement external fabric for conversion; Adeney House Farm where the Inspector found that the replacement of external cladding did not fall outside the scope of Class Q; and Northwood Villa, which again addressed the issue of the replacement of external fabric, as well as the installation of a non-structural timber frame[6]. I do not know the precise details of each of these other appeals, but each has one or more individual elements which appear similar to this scheme. However, as I have described in the previous paragraph, I am not satisfied in this case that the appeal building is not at present capable of functioning as a dwelling, and the extent of works required to make it so goes beyond that would be permitted by Class Q. Although I do not disagree with any of the other Inspectors' conclusion, it is not clear that the other appeal decisions are directly comparable to this case, and they do not lend significant weight in support of this proposal.

16. Taken as a whole, the building operations which would be required to provide a building suitable for residential use would be extensive and significant. In my view these are cumulatively of a scale that would reasonably be considered more akin to a rebuild than a conversion of the existing building. I therefore conclude that the proposed development would not satisfy the requirements of Paragraph Q.1.(i) of Schedule 2, Part 3, Class Q of the GPDO, having regard to the associated advice within the Planning Practice Guidance, and is not therefore permitted by it.

Curtilage

17. Paragraph X defines 'curtilage' for the purposes of Class Q as '(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser'.

18. The submitted application included site and location plans showing a red line boundary encompassing the appeal building and surrounding land, as well as an access track from Ostlers Lane. I took this to show the curtilage of the intended change of use, and while no measurements for its area were provided the drawings suggested that it would be considerably larger than the footprint of the agricultural building.

19. In response to my request for comments on this matter, the Council calculated that the area of land within the red line boundary (excluding the access track

[6] References respectively APP/B3438/W/18/3202031, APP/C3240/W/17/3181573, and APP/L3245/W/18/3216271

and the footprint of the agricultural building) far exceeded that of the barn. It was therefore of the view that the proposal did not comply with the restrictions of Class Q. The appellant came to a figure of around 286sqm for the external footprint of the barn, and 257sqm for its internal floor area. They calculated that the parking area and garden (part of which was described as a 'maintenance strip') excluding the access track and an area of hardstanding immediately in front of the parking area would be '2sqm less than the internal footprint of the appeal building', or around 255sqm.

20. I accept the appellant's argument, as in another appeal to which my attention was drawn[7], that the access track would be shared with the existing farming operation and should not be taken as part of the curtilage area in this case. At the same time, although the appellant suggested otherwise, based on the submitted evidence and what I saw on my site visit the area of hardstanding would be closely (and probably exclusively) associated with the proposed dwelling, and so would be part of its curtilage. This is not least because it would be within the area bounded by a post and rail fence with hedgerow which the appellant's other evidence described as separating the domestic curtilage from the remainder of the field. No figure was provided for this area on its own, but the submitted drawings show that it would be at least as large as six parking spaces. In my view this means that, when this hardstanding is included, the curtilage would be larger than the 286sqm occupied by the agricultural building.

21. The amended plans submitted by the appellant show a smaller garden area, reducing the curtilage to an area of around 253sqm which would be smaller than the land area occupied by the building. For reasons I have already described in paragraph 5 above, the amendments did not fundamentally change the nature of the scheme, and the revised proposal would comply with the restrictive limit described in Paragraph X. Had the proposed development been acceptable in other regards it would have been possible to impose a condition which made clear that the permitted change of use was limited to this smaller area.

Other Matters

22. Comments by interested parties in respect of ecology and the Green Belt fell outside the scope of what can be considered in determining a prior approval appeal of this sort, and have had no bearing on my decision.

Conclusion

23. For the reasons given above, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO. It is development for which an application for planning permission would be required.

24. The appeal is therefore dismissed.

M Cryan

Inspector

[7] Ref: APP/R3325/W/15/3129012