



Appeal Decision

Site Visit made on 19 January 2021

by Mr A Spencer-Peet BSc.(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 01 February 2021

Appeal Ref: APP/X1118/W/20/3260797

**Barn at NGR 283648 115693, Newland Cross, Down Hill, Tiverton
EX16 8QF**

- 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.
 - The appeal is made by Mr T Day against the decision of North Devon District Council.
 - The application Ref: 71483, dated 28 April 2020, was refused by notice dated 14 July 2020.
 - The development proposed is prior approval for change of use of agricultural building to five dwellinghouses (one larger and four smaller).
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Decision

1. The appeal is dismissed.

Main Issues

2. Class Q (a) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits the 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. Class Q (b) of the GPDO permits building operations reasonably necessary to convert the building referred to in (a) above.
3. Where development is proposed under Class Q(a) together with Class Q(b), and found to be permitted development, it is subject to the condition under paragraph Q.2(1) that before beginning the development, an application must be made to the Local Planning Authority for a determination as to whether the prior approval will be required as to (a) transport and highways impacts, (b) noise impacts, (c) contamination, (d) flooding, (e) location or siting, and (f) the design or external appearance of the building.
4. The Council considers that the appeal site and building was not used solely for an agricultural use as part of an established agricultural unit as required under Q.1(a), and that consequently the appeal proposal is not permitted development. The Council also contends that the cumulative total of the building works proposed to facilitate the residential use would fail to comply with the limitations set out in paragraph Q.1(i) of the GPDO. The Council's decision notice also includes further reasons for refusal in relation to the proposal's effects on highway safety and on protected species.

5. In light of the above, the main issues in this appeal are:

- Whether the proposal would be permitted development, having regard to whether the requirements of Schedule 2, Part 3, Class Q paragraph Q.1(a) of the GPDO would be met,
- Whether the extent of the building operations proposed would be reasonably necessary to convert the building to a dwelling, having regard to the requirements of the GPDO,
- Whether or not the appeal building is suitable for conversion to a dwelling, having regard to its effect on highway safety; and,
- The effect of the proposal on protected species.

Reasons

Permitted Development

6. The appeal site comprises a substantially sized building and the land immediately surrounding that structure, situated adjacent to and accessed from a narrow, winding country lane. The structure is an isolated building within the countryside and has the character and appearance of a large agricultural barn. It is portal framed with a dual pitched roof and is predominately clad in timber boarding set on top of a low concrete block wall.
7. Paragraph Q.1.(a) of the GPDO states that development is not permitted by Class Q if the site was not solely for an agricultural use as part of an established agricultural unit on 20th March 2013 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
8. Planning history for the site indicates that a recent application for prior approval for the change of use of the appeal building under Class Q was dismissed at appeal¹ (the Recent Appeal). The Appellant has put it to me that the Council did not dispute the agricultural use of the building during the consideration of that previous application, nor raised the concern as part of the subsequent appeal. However, the Council maintain that evidence has been submitted by interested parties that challenges the status of the building as at the dates required by the GPDO.
9. In this regard, the Appellant maintains that the building has been part of their agricultural business which they have used for the keeping and breeding of beef, sheep and pigs which were then sold. This contention is supported by the Appellants own correspondence with the Council and with reference to an Agricultural Holding Number.
10. At my site visit, I did not observe any specific agricultural activities at the site. The submissions in this appeal include a number of objections from interested parties which have put it to me that the building has not been used for agriculture or has not been used in relation to agriculture for many years. Whilst I acknowledge that the details provided by the range of objectors is not strictly or absolutely consistent in terms of the number of years for which the building had not been used in agriculture, they are consistent in terms of their

¹ Appeal Reference: APP/X1118/W/19/3238894

substance and in terms of observations made with regards to activity at the site.

11. An “agricultural building” is defined in Part X, Part 3, Schedule 2 of the GPDO as “a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business; and ‘agricultural use’ refers to such uses”. Whilst the definition in paragraph X does not require the activity to make a profit, to be considered an agricultural building, it must be used as part of a trade or business. This to my mind means that the agricultural activity must be undertaken on a commercial and organised footing.
12. I accept that the Appellant has a long association with the appeal site and building. However, there is no evidence in relation to accounts or tax returns to indicate that the activity here has been carried out for the purpose of a trade or business, despite the assertions made by the Appellant. Furthermore, while the Agricultural Holding Number describes the land and buildings that people use for keeping livestock, this would also include livestock kept as pets. Consequently, whilst the Appellant may have obtained an Agricultural Holding Number this does not necessarily indicate that the site was used solely for an agricultural use as part of an established agricultural unit as at the relevant dates.
13. The Appellant has put it to me that their own evidence and statements should not be rejected simply because it is not corroborated, with reference to the judgement in *Gabbitas*². If there is no evidence to contradict or make the appellant’s version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed. Whilst this principle is acknowledged, it is apparent from the details provided by the Council and from a relatively significant number of interested parties that there is evidence which does contradict the information provided by the Appellant.
14. Under paragraph W of the GPDO, the Local Planning Authority may refuse an application where the developer has provided insufficient information to establish whether the development complies with any conditions, limitations or restrictions in Part 3. The burden of proof is on the applicant and in this case, on the basis of the evidence before me, I find there is uncertainty as to whether the site was used solely for an agricultural use as part of an established agricultural unit within the requirements of Schedule 2, Part 3, Class Q paragraph Q.1(a) of the GPDO. Accordingly, the proposal would not be development permitted by Class Q.

Building Operations

15. 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 allowed by paragraph Q.1(i)(i).
16. The Planning Practice Guidance (the PPG) states that the permitted development right under Class Q assumes that the agricultural building is

² *Gabbitas v SSE & Newham LBC* [1985] JPL 630

- capable of functioning as a dwelling. In this respect, 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, would be permitted.
17. However, the PPG clarifies 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 use³. It is only where the existing building is already suitable for conversion that the building would be considered to have the permitted development right. This is a matter of fact and degree and requires an element of judgement. My attention has been drawn to the Hibbitt⁴ judgement which relates to the difference between conversions and rebuilding dealt with under Class Q. This is important because if a development does not amount to a conversion it would fail to be development permitted under Class Q (b).
 18. The Appellant's submitted structural report concludes that the proposed conversion would be easy to achieve but notes that various elements of the structure may require upgrading. The structural report has been prepared by a professional company and the author of that report makes it clear that only a visual inspection of the building has been carried out and that, consequently, no inspection of foundations nor the external condition of the roof had been made. Furthermore, it is noted that the structural report confirms that no inspection of all timbering was conducted and therefore it was not possible to determine if the timbering was free from defects or deterioration.
 19. The Appellant has also provided a schedule of works in relation to the appeal scheme. Amongst other matters concerning connection to services and completion of fittings, the proposed works include: insertion of windows and doors whilst retaining block work and all timber cladding, internal walls set in from the exterior walls with insulation, internal walls separating the proposed residential units. Individually, none of these identified proposed works would appear to fall outside the operations given in paragraph Q.1(i) of the GPDO.
 20. Notwithstanding the above, and whilst acknowledging the Appellant's submissions that the existing floor would be used to form a compact base, a new concrete floor would be inserted. In this respect I concur with the Inspector in the Recent Appeal that this would represent a notable alteration to the existing building. Furthermore, as noted above, the structural report confirmed that only a visual inspection was carried out and that it could not be confirmed whether or not the timbering was free from defects or deterioration. In this respect, it cannot be said with certainty that significant elements in respect of timbering would be sufficient or would not need replacing, potentially resulting in substantial works being required.
 21. It is likely that the steel frame already has some type of foundation, however no investigation has been carried out to confirm this. Therefore, there is no substantive evidence before me that the building has any foundations. Consequently, I cannot be certain that the submissions identify the full extent of foundations required for the proposed development. If foundations were required for the whole building, the extent of works may well go beyond

³ Paragraph: 105 Reference ID: 13-105-20180615

⁴ Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin).

maintenance, improvement or other alteration of the building and would therefore be development. Such development would not be permitted under Q.1.(i) of the GPDO.

22. In addition to the above, whilst it is noted that the Appellant's schedule of works states that the existing support columns are of a size which could carry additional vertical loading, there is no substantive evidence, including calculations, before me which confirms that the existing columns could provide support for the additional weight of the proposed insulation for the roof and walls.
23. In combination with the inclusion of a new concrete floor and in the absence of confirmation regarding: the condition of the timbering, the condition and suitability of foundations and that the existing columns would provide support for the additional weight of the proposed roof and wall insulation, there is insufficient information to determine that the existing building and the proposed works would meet the requirement that the building is capable of being converted to dwellings and that those building operations would be to an extent reasonably necessary for the building to function as dwellinghouses. I therefore find that the proposal would not accord with the requirements of paragraph Q.1(i) of the GPDO.

Highway Safety

24. For the reasons given above, as I have concluded that the proposed development is not permitted under Class Q, I have no need to consider the further issues in terms of the criteria contained within Q.2(1) (a) to (f) inclusive of the GPDO.

Protected Species

25. The Council has raised ecological concerns as a reason for refusal on the basis that the appeal building may contain features that make it suitable for use by wildlife. No surveys have been provided with the appeal documentation.
26. While it is acknowledged that protected species are not specifically referred to in the GPDO, paragraph Q.2(1) of the GPDO 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 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.
27. I note that the Council did not specifically request additional information about ecology at the application stage and acknowledge the Appellant's frustration with regards to communication on this important matter. Nonetheless, the Council have put it to me that in light of their conclusion that the appeal proposal would not be permitted under Class Q for the reasons given above, no further requests for information regarding ecology was given. Whilst I note the Appellant's frustrations with the Council's communication and the way in which it handled the application, this matter does not impact on the planning merits of the proposal.

28. Given the scale and condition of the existing building and by reason of its location isolated within the countryside and adjacent to a pond and patches of nearby woodland, the appeal building would, in my view, have the potential to offer suitable habitat for protected species such as bats. As noted above, no information on ecology has been provided and, consequently, I cannot be sure that the Regulations would not be breached by the proposal.
29. For the above reasons and in the absence of any further information regarding ecology, I cannot be sure that there would be no adverse effect on protected species at the appeal site. Therefore, I find that the proposal would conflict with Policy DM08 of the North Devon and Torridge Local Plan 2011-2031⁵ which seeks to conserve, protect and enhance biodiversity and avoid, wherever possible, adverse impacts on protected species.

Conclusion

30. For the reasons given above I conclude that the proposal is not permitted development and that the appeal should be dismissed.

A Spencer-Peet

INSPECTOR

⁵ Adopted October 2018