



Appeal Decision

Site visit made on 8 January 2018

by **S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16th January 2018

Appeal Ref: APP/V2255/W/17/3183089

Agricultural Barn, Foresters Farm, London Road, Dunkirk ME13 9LG

- 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 B B Stephens and Son against the decision of Swale Borough Council.
 - The application Ref 17/502466/PNQCLA, dated 8 May 2017, was refused by notice dated 4 July 2017.
 - The development proposed is change of use of agricultural building to 2 dwelling houses together with operational development.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was determined under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (GPDO). However the application form does not provide a succinct description of the development. The Council's decision notice and the appeal form both refer to the prior notification and prior approval elements of the process. Nevertheless, it is clear that the proposal seeks a change of use of an agricultural building to two dwellings, so I have adopted this part of the description in this Decision for the sake of brevity.
3. There is no dispute that the current proposal meets the requirements of Schedule 2, Part 3, Paragraphs Q.1(a) to (h) or (j) to (m) of the GPDO.

Main Issue

4. The main issue is whether or not the proposal would constitute permitted development having regard to the provisions of Class Q of the GPDO.

Reasons

5. The appeal barn is a large, rectangular, steel framed building which is significantly longer than it is wide. It has a steep, mono-pitched roof and is enclosed on both its short sides and the smaller long side by trapezoidal section steel cladding. However, its tall north-eastern side is open for more than half its length. The remainder of this elevation also includes openings with large steel sliding doors. The roof is sinusoidal profile asbestos sheeting.

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6. The report on structural feasibility concluded that the steel frame is sufficiently strong to be adapted to a residential use, even though one or two roof purlins have minor damage and would need to be renewed. The steel columns and rafters are significantly larger than is usual with an agricultural building and it would appear that it has been relocated. Whilst the appellant suggests that this provides evidence that the building was designed as 'habitable', given its dimensions, it seems more likely that its previous use could have been commercial. However, as there is no dispute about its agricultural use, any previous use is not material to the current proposal.
7. The structural report concluded that whilst the barn is strong enough to be converted, it would require a lightweight cladding system and full reinstatement of the building's original lateral stability system. The proposal would also include the insertion of a new first/mezzanine floor which would need to be supported independently. In addition, a new and substantial wall of significant width and height would need to be added to the front of the building for approximately half its length.
8. It seems to me that these requirements and additions would amount to structural alterations to the building. This is confirmed by the conclusions of the report which states that 'the structure is ideally suited to being retained and used *within the new residential structure*' (my emphasis). However, such works are specifically excluded by the advice set out in Paragraph 105 of the Planning Practice Guidance (PPG)¹, which states that it is not the intention of the permitted development right to include the construction of new structural elements for the building.
9. I note that the existing cladding on the rear of the barn, which is close to the site boundary, would be retained. However, the steel cladding on the north-west and south-east sides of the building would be replaced with cedar timber cladding. The drawings show that the front elevation of the full length of the building would comprise cedar timber cladding punctuated by large areas of glazing. Both dwellings would have substantial areas of glazing that would occupy almost the full height of the building as well as patio style windows and doors, together with other windows at ground and first floor level. All the windows would have a strong vertical emphasis. These features would be very different in form and appearance from any that currently characterise this utilitarian agricultural barn.
10. Furthermore, it is proposed to replace the asbestos roof with lightweight slates. This would not be a straight forward replacement, as the new roof would include two openings to enable the provision of an internal courtyard within each of the dwellings. The new roof would also incorporate several rooflights.
11. The overarching provisions of Class Q within the GPDO state that for the change of use to be permitted development the building operations must be reasonably necessary to 'convert' the building. If the works go beyond what would amount to a 'conversion', then the development would fail at the first hurdle. The exceptions set out in Q.1(i) allow for the installation or replacement of windows, doors, roofs or external walls, but this is subject to those 'reasonably necessary for the building to function as a dwellinghouse'.

¹ Reference ID: 13-105-20150305

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12. Taken in isolation, some of the individual elements of the appeal proposal could be considered to be acceptable. However, when all the changes required in this case are considered cumulatively, their extent would amount to a significant change to the structure and appearance of the building. Very little of the original building would remain other than its metal frame and the cladding on its rear elevation. It seems to me that these fundamental alterations would go well beyond what could reasonably be described as a 'conversion' and would amount to a 'rebuild'.
13. In coming to this view I have had regard to the various appeal decisions² presented to me by both parties, where Inspectors arrived at different conclusions. However, in each situation the Inspector considered the merits and particular circumstances of the cases before them. In each one the decision as to whether or not the building operations amounted to a conversion or a rebuild, was a matter of planning judgement.
14. This approach was confirmed by the decision of the High Court in the case of *Hibbitt & Another v Secretary of State for Communities and Local Government & Ors*, which was handed down in November 2016 and has been referred to by both parties³ (the Hibbitt case). This is a matter to which I give significant weight, particularly the analysis set out in paragraphs 23-35 of that judgement.
15. The Court's decision is likely to have caused the Council to reconsider the way in which it subsequently assessed applications for prior approval under Class Q of the GPDO. The decision granted by the Council prior to the Hibbitt case, Ref: 16/503223/PNQCLA, dated 13 June 2016, is therefore not directly comparable with the appeal proposal.

Conclusion

16. The proposal would exceed the overarching requirements of Paragraph Q (b) and would not meet the requirements of Paragraph Q.1(i) of the GPDO. The issue of conditions, as set out in Paragraph Q.2(1), is therefore not relevant to the determination of the appeal.
17. For the reasons set out above, I conclude that the proposal would not be permitted development under the provisions of Class Q and that the appeal should be dismissed.

Sheila Holden

INSPECTOR

² Appellant's references: APP/P3040/W/16/3165076, APP/P2935/W/16/3157544, APP/W1145/W/16/3156231
Council's references: APP/R3325/W/16/3154499, APP/V2255/W/17/3173539

³ EWHC 2853 (Admin)