



Appeal Decision

Site visit made on 3 May 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 MAY 2022

Appeal Ref: APP/N2535/W/22/3290629

Lissingley House, Lissingley Lane, Lissington, Lincoln LN3 5AG

- 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 and Ms B Kynoch against the decision of West Lindsey District Council.
 - The application Ref 143843, dated 8 October 2021, was refused by notice dated 3 December 2021.
 - The development proposed is prior approval for proposed change of use from agricultural building to 1no. dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal relates to Schedule 2, Part 3, Class Q of the General Permitted Development Order (GPDO). Class Q (a) 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 Class C3 use (dwellinghouse). This provision also includes, at (b) any building operations reasonably necessary to convert the building. The proposal includes development subject to both criteria.
3. It is disputed between the parties whether the building was in agricultural use on 20 March 2013, or was last in use for this purpose, as required by Paragraph Q.1(a) of the GPDO. It is also contested whether the scheme only proposes works that are reasonably necessary for the conversion to take place as required by Paragraph Q.1(i) of the GPDO. No other matters are in dispute.

Main Issue

4. Consequently, the main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q.1(a) and (i) of the GPDO.

Reasons

Permitted development

5. Paragraph Q.1(i) of the GPDO identifies the extent of building works permitted under Class Q as being those reasonably necessary for the building to function as a dwellinghouse. These include the installation or replacement of windows, doors, roofs, or exterior walls. The permitted development rights also include partial demolition, to the extent reasonably necessary to carry out such building operations.

6. The Planning Practice Guidance (PPG) advises, amongst other things, that the Class Q right assumes that the agricultural building is capable of functioning as a dwelling. It is therefore not the intention of Class Q to allow rebuilding work which would go beyond 'reasonably necessary'. The question of whether a proposal would be a conversion or rebuild is central to whether the barn is capable of conversion. Furthermore, a rebuild would not necessarily follow total demolition, it is instead a test of substance and planning judgement. This aligns with the conclusions from the *Hibbitt*¹ judgment referred to by the appellants.
7. The appellants structural report indicates that the building is in a reasonable structural condition. I saw that, although there was some corrosion of the portal frame members and bolts, the structural frame appeared to be capably supporting the existing lightweight sheeting.
8. The proposal would involve the installation of windows, doors, roofs, and exterior walls which are all previously identified as being reasonably necessary for a building to function as a dwellinghouse under Class Q. However, to facilitate this development, it is clear from the structural report that the existing structural frame of the building is incapable of supporting these works.
9. As such, the proposal involves two additional portal frames, installing side elevational and end bay roof bracing and replacing or supplementing the eaves beam with a steel member. Based upon my observations of the building during my site visit, I have no reason to question the accuracy of the recommendations of the structural report. These parts are structural elements of the building and would, collectively, consist of structural alterations that would fall outside of those permitted by Class Q(b) and paragraph Q.1(i) having regard to the PPG.
10. The appellants have referred me to an appeal (Ref: 3179581). However, from the evidence before me, that proposal involved retaining the existing structural elements of the building with no new structural additions. This contrasts with the proposal before me, which specifically involves new structural elements.
11. I therefore find that the proposal does not satisfy the requirements of the GPDO, with regard to being permitted development for a change of use from an agricultural building to a dwellinghouse, having particular regard to the requirements of Class Q.1(i).

Agricultural use

12. The GPDO does not define 'agriculture', and thus the meaning set out in s336(1), of the 1990 Town and Country Planning Act applies. This refers to a range of activities including "horticulture, fruit growing, seed growing, dairy farming, and the breeding and keeping of livestock". Furthermore, Part 3, paragraph X of the GPDO defines an 'agricultural building' as "a building used for agriculture, and which is so used for the purposes of a trade or business".
13. The appeal building is a rectangular building, located within land associated with Lissingley House, but outside of its formal garden area. The Council describe the land as manicured. This accurately describes the sites characteristics due to the combination of the well-kept grass, pond, bench,

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

- greenhouse and shed, access track, parking, and bin storage adjacent to the appeal building.
14. The appeal building is split into two sections, was empty at the time of my site visit and was not being used for any purposes. The section with pre-cast concrete panels is accessed by doorways that are not wide enough to allow vehicles or large agricultural equipment to enter. Moreover, that section contains many plug sockets and a sink, so is unlikely to have been previously used for livestock. The larger section has an open side to the rear and concrete floors, with no firm evidence to indicate how it was used in the past.
 15. Historic aerial photographs of the site from the 1970's and 1980's show a building in a similar position, but with different walls, fenestration, and length. Moreover, it appears to be set back further from the road with the section of the building with pre-cast concrete panels and a pitched roof not in situ. The 1970's photograph appears to show the house and land having a connection to the agricultural field. However, even if I accept that the existing building is the same building that has been altered, rather than a replacement building, the photographs add little to qualify whether the existing building was in agricultural use on 20 March 2013 or was last in use for this purpose and used for the purposes of a trade or business.
 16. The appellants have provided evidence of a Holding Registration Document (the document) for herds of beef cattle, sheep and pigs which is dated 28 June 1996. This clearly indicates that some level of agricultural activity occurred on land associated with the house. The appellants also indicate that there are several records for the keeping of livestock on the site. However, only this document is before me.
 17. The document does not expressly refer to the area of land where the herds were kept, does not demonstrate how the building was used or whether the extent of agricultural activities at that time constituted an existing trade or business, rather than operating on a hobby basis. This is a key point as Paragraph X of Part 3, Schedule 2 of the GPDO stipulates that the use of the buildings must be in association with an agricultural trade or business.
 18. The appellants have referred me to an appeal decision where the Inspector considered that a holding document was not specifically required by the GPDO, and I agree with this conclusion. However, from the evidence before me, in that case it was not disputed that the appeal building was previously part of a piggery unit. Moreover, evidence remained within the building of such a use, with the building containing livestock pens and troughs. This distinguishes it from the appeal proposal before me, where there is no substantive evidence of the building's prior function in connection with an agricultural trade or business.
 19. The appellants purchased the site in 2017 and I'm told the building contained agricultural paraphernalia at that time. However, I have no substantive evidence of this, or any firm details of what such paraphernalia consisted of, which limits the weight I can afford this matter.
 20. A copy of ongoing payments of agricultural drainage rates to the local Internal Drainage Board has been provided. However, it is unclear how the drainage rates are quantified and whether such rates are paid on other land not needed in connection with an agricultural business such as paddocks.

21. Doubt has been cast by the Council as to whether there has been an intervening use of the building since 1996. In this regard, I have been referred to the planning history of the site which includes applications in the mid 1990's for the erection of a building in connection with a proposed cattery/kennels. Moreover, the appellants have also previously referred to this use in prior correspondence with the Council.
22. The appellants indicate that their earlier understanding of this kennels/cattery use was incorrect, and they now believe that the use was never implemented, and no conditions were ever discharged by the Council. Neither party has provided any of the documents relating to this application or any clear robust evidence that the kennels/cattery building, or use was ever implemented. I am not therefore persuaded that this planning history is a determinative matter in relation to this main issue.
23. Drawing the above together, I cannot be satisfied on the balance of probabilities that the building was in agricultural use as part of an agricultural trade or business on 20 March 2013 or was last in use for this purpose, Accordingly the limitation at Paragraph Q.1(a) would apply, meaning the proposal would not be permitted by Class Q of the GPDO.

Other Matters

24. Any benefits from the proposal making an effective use of land and the provision of a family home are not matters that can be taken into account in my consideration of whether the proposal would be permitted development under Schedule 2, Part 3, Class Q.1(a) and (i) of the GPDO.

Conclusion

25. For the above reasons, the appeal is dismissed.

Mr R Walker

INSPECTOR