
Appeal Decision

Site visit made on 16 May 2016

by Jennifer Tempest BA(Hons) MA PGDip PGCertHE MRTPI IHBC

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

Decision date: 26 July 2016

Appeal Ref: APP/R3325/W/16/3145488

Land behind Chequers, Smallway Lane, Galhampton, Yeovil, Somerset BA22 7AE

- 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 Mrs A Bees against the decision of South Somerset District Council.
 - The application Ref 15/04455/PAMB dated 30 September 2015, was refused by notice dated 27 November 2015.
 - The development proposed is change of use of agricultural building to a dwellinghouse (Use Class C3) and for associated operational development.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs A Bees against South Somerset Council. This application is the subject of a separate Decision.

Preliminary matters

3. The postcode given for the application site differs from that used on the application form and from the different postcode set out in the grounds of appeal. The postcode used in the heading above is that shown on the Council's decision notice.

Background and Main Issues

4. Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") 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) ("Class Q (a) development"). Additionally, Class Q(b) allows building operations which are reasonably necessary to convert the building to a Class C3 use ("Class Q (b) development"). Paragraph Q1 sets out specific circumstances under which development is not permitted and paragraph Q2 sets out conditions applying variously to Q(a) and Q(b) development.
 5. The Council has refused the application on the basis that the change of use would not be permitted development having regard to the use of the site, the size of the building, the building operations required and the demolition
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operations required. In determining whether or not the proposal would be permitted development, I must consider whether all the requirements set out in the GPDO for development to be permitted under Class Q would be met.

6. The Council also refused the application in relation to the adequacy of the access onto Smallway Lane on the basis that the siting of the building would make it undesirable for use as a dwelling.
7. Taking the above into account, the main issues are:
 - (i) whether the proposed change of use constitutes permitted development pursuant to Class Q(a) and Class Q(b) of Part 3 of Schedule 2 to the GPDO, having particular regard to (1) whether the site was used solely for an agricultural use as part of an established agricultural unit on the required date; (2) whether the cumulative floor space of the building changing use exceeds 450 square metres; (3) whether the size of the proposed curtilage exceeds that allowed (4) whether the building operations are reasonably necessary; and (5) whether the partial demolition of the building is reasonably necessary;and, if the change of use meets those requirements,
 - (ii) whether the transport and highways impacts of the development would be acceptable; and
 - (iii) whether the location or siting of the building would make the proposed change of use impractical or undesirable.

Reasons

Whether permitted development under Class Q

Whether the site was used solely for an agricultural use as part of an established agricultural unit

8. Paragraph X of the GPDO defines an "established agricultural unit" as agricultural land occupied as a unit for the purposes of agriculture on or before 20 March 2013 or for 10 years before the date the development begins. Paragraph Q.1.(a) states that development is not permitted if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 or, if not in use on that date but was in use before that date, when it was last in use.
9. The evidence indicates the building was approved as permitted development in 1997, as an agricultural building for the storage of fodder and machinery. The appellant provided evidence to the Council prior to the appeal proposal being determined regarding the use of the building and associated land. This evidence, presented as a Statutory Declaration made by the appellant, covered the period from January 2010 to April 2015. The evidence includes a detailed account of the way in which the land was used and provides an explanation for the presence on the site of a pony and subsequently (after the relevant date of 20 March 2013) a further temporary use of grazing for horses following flooding of a neighbour's land. Photographs taken by the appellant in 2012 show calves inside the building although these do not show the whole of the building interior.

10. During the course of the appeal, a second Statutory Declaration was submitted. This was made by a person who cared for the appellant's sheep and lambs on the site between May 2012 and March 2013 and states the land was subsequently for the grazing of calves and sheep. Whilst this confirms the agricultural use of the site, this evidence does not state explicitly that there was no mixed use of the site.
11. The Council's photographs taken in September 2014 show loose boxes and horse related items within the agricultural building and two horses in the adjacent field. Two photographs dated October 2011 of the inside of the agricultural building show loose boxes within the agricultural building and a horse or pony outside the building.
12. I have taken into account that the use of land for the grazing of horses would not necessarily result in a mixed use of the holding. The date of the photographs provided by the Council raises some doubts as to whether the building was solely in agricultural use at the time a previous application was being considered, but do not relate to the time of the application which resulted in the current appeal. During my site visit, I did not observe any evidence of horses being kept in the building and there were no loose boxes in the building.
13. I consider that taking into account all the evidence which is before me the Council's evidence is not sufficient for me, as a matter of fact and degree, to conclude that the building was in anything other than agricultural use on 20 March 2013, or at the time on the application was being considered by the Council and at present.

Whether the cumulative floor space of the building changing use exceeds 450 square metres

14. The existing building is constructed from a series of concrete frames each with four supporting uprights or columns. Other than the columns, the floor area of the building is without internal division, with the exception of one partial height concrete block wall between two columns of one frame. There are partial height concrete block walls between the columns along the two long sides of the building, two bays of one shorter side and one bay of the other shorter side. Above the block walls, with the exception of one bay of timber cladding, the building is clad in corrugated metal sheeting. Approximately half of the northern aisle of the building has the metal roof sheeting removed although the timber purlins which supported the sheeting remain.
15. Paragraph Q1(b) states that development is not permitted by Class Q if the cumulative floor space of the existing building changing use exceeds 450 square metres. The existing building in this case is 570 square metres in floor area, of which 339 square metres (as stated on drawing) or 342 square metres (as stated on the application form) are proposed to be converted to a dwelling. A further area, 48 square metres in area according to the Council, is proposed as a covered terrace.
16. The floorspace of the building which would be subject to the proposed change of use would be approximately 390 square metres, and therefore under the 450 square metres allowed under Class Q. The remainder of the building would be demolished with the exception of the concrete frame.

17. The Council refer to an appeal decision¹ with regard to the size of the existing building. However, the definition of a building in Article 2(1) of the GPDO includes 'part of a building'. In this case the appellant proposes the removal of the walls and roof of part of the agricultural building retaining only the frame, and change of use of the remainder of the building which would have a floor area within the prescribed size limits. As Class Q1.(b) addresses the area changing use, on the matter of floor space, I consider the proposal would fall within the scope of permitted development.

The size of the proposed curtilage

18. The application forms state that the cumulative area of land within the curtilage which is proposed to change use is 578 square metres. Paragraph X of Schedule 2 Part 3 sets out that for the purposes of Class Q, curtilage is defined to include an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building.
19. The applicant states that the size of the curtilage would not exceed the size of the existing building, (roughly 580 square metres for each). However, a curtilage of 578 square metres would exceed the floor area of that part of the agricultural building which is proposed for the change use (around 390 square metres). Given the considerations above, that the definition of a building can include part of a building, it is logical that the curtilage should be approached in a consistent manner. Consequently, the stated area of land which is proposed as curtilage at 578 square metres exceeds the size of the agricultural building which is proposed to change use.
20. Based on the evidence provided, therefore, the proposal would fail to comply with the limitations set out in Paragraph X of the GPDO with regard to the definition of curtilage.

Whether the building operations are reasonably necessary

21. The existing agricultural building is sited close to the north eastern boundary of the site. Outside the site and immediately adjacent to the common boundary is a concrete block and timber building. The use or purpose of this building is not stated in the evidence nor was it clear from what I observed during the site visit. The appellant refers to the need to create the north east wall of the proposed dwelling away from the solid wall of the existing building outside the site.
22. Moving the wall of the proposed dwelling away from the adjacent building may be reasonably necessary to comply with building regulations and allow natural light into the building, although to some extent this is also a function of the adopted design. The realignment of the wall would also have the effect of reducing the floor area of the proposed dwelling and brings the size of the building within the cumulative floor space total permitted by Class Q.
23. Guidance on permitted development rights is set out in the Planning Practice Guidance (PPG). Paragraph 105 of the PPG points out that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. It recognises that some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted.

¹ APP/Q3305/A/14/2229199

24. Whilst the permitted development allows for the installation or replacement of windows, doors, roofs and exterior walls, it does not refer to floors or foundations. The appellant's structural report confirms that the foundations of the concrete block walls are not exposed to view and refers to it being highly likely that a continuous trench fill foundation has been built on three sides to support all elements of the masonry wall. However, as the proposed north east external wall would be built on a new alignment, it could not utilise any existing foundations. The north west elevation of the existing building only has a partial height wall across one third of the elevation and this is within the section of the existing building which is not proposed to form part of the dwelling. The two thirds of this elevation which are proposed as forming the north west wall of the dwelling have no existing walls. The south east wall of the proposed dwelling would be set back from the existing end wall of the building. This wall therefore would also be on a new alignment.
25. The structural report advises that the new façade elements would comprise glazing and insulated lightweight infill panels faced in timber, supported by 'Metsec' lightweight style metal cladding rails with side fixing to the principal concrete frame. The report does not state in terms that there would be no foundations required. However, the appellant's letter of 4 May 2015 states there would be no requirement for any new foundations.
26. The documentation refers to the roof over the northern third of the building being removed. Elsewhere, the corrugated sheet roof would be retained or replaced.
27. The existing floor of the building is not specifically assessed in the structural report but the plans of the existing building show the extent of the concrete flooring, most of which is in the northern aisle of the building and would be outside the proposed dwelling. The remaining floor area, from what I was able to observe during my site visit, comprises compacted hard core or similar. The structural report confirms that a raised timber floor or concrete capping slab would be necessary, but would not entail additional footings or structural works. The appellant points to these being internal rather than external works and therefore not subject to any control.
28. I saw no visible evidence during my site visit of defects in the concrete frame. However, whilst the structural report sets out that the concrete frame would take the loading of the proposed panels, there are no calculations to back this up. Nor are any details given with regard to how the panels would relate to the floor of the proposed dwelling. The appellant provides an extract from an appeal decision² where the Inspector finds that replacing structurally sound elevations and the existing roof sheets would fall within the building operations permitted by Class Q1 (i) and (ii). However, I note that this relates to two walls of one of three buildings being converted and there is no indication that the replacement walls would be on a new alignment. Accordingly, I do not find that the decision is directly comparable with the proposals before me.

Whether the partial demolition of the building is reasonably necessary

29. Paragraph Q1 (i) (ii) states that development is not permitted by Class Q if the development under Class Q (b) would consist of building operations other than partial demolition to the extent reasonably necessary to carry out building

² APP/Q3305/A/14/2228593

operations allowed by paragraph Q.1. (i)(i). Notwithstanding the appellant's reasons for moving the wall away from the boundary the proposed demolition, amounting to around one third of the floor space of the existing building whilst retaining the concrete frame, would have the effect of reducing the size of the building to bring it within the floor space allowances for permitted development. Although the written evidence refers only to removal of the roof cladding, the proposed elevations and plans indicate that the block walls and wall cladding would also be removed along the north east, south east and north west elevations.

Conclusion in respect of building operations and demolition.

30. The proposal entails the removal of the existing walls and allows for the removal and partial replacement of the roof covering. Such changes would reduce the building to its concrete frame, prior to the proposed erection of new walls and potentially a new roof. Of the four exterior walls, all would be new. Two would be on a different alignment from existing walls and one would be a wall created where currently no wall exists.
31. Whilst Q.1.(i) allows for the installation or replacement of windows, doors, roofs and walls, Class Q is based on the change of use of an agricultural building. The proposal would require the creation of new external walls for three sides of the proposed dwelling on alignments where currently there are no walls and no foundations. The building operations and demolition would, on the evidence before me, and as a matter of fact and degree, amount to rebuilding and thus go beyond what is reasonably necessary to change the use of the building in terms of conversion works permitted under Q.1.(i).

Conclusion

32. Taken as a whole, I consider the proposal could not reasonably be described as a change of use and I consider that the works would, as a matter of fact and degree, amount to a new building rather than a conversion. I therefore conclude that for this reason, and for the reasons given above, the works proposed to create a dwelling would not fall within the scope of what is permitted under Class Q.
33. Accordingly, as the proposals would not be permitted development, it is not necessary for me to consider matters relating to transport and highways or whether the proposal would be impractical or undesirable.
34. I conclude that the appeal should be dismissed.

Jennifer Tempest

INSPECTOR