
Appeal Decision

Site visit made on 27 June 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 01 July 2016

Appeal Ref: APP/G2245/W/16/3143027

Polands Farm, Four Elms, Edenbridge TB8 6LT

- 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 and Mrs Hely-Hutchinson against the decision of Sevenoaks District Council.
 - The application Ref SE/15/03317/PAC, dated 22 October 2015, was refused by notice dated 9 December 2015.
 - The development proposed is described as a 'prior notification for a change of use from an agricultural use to a dwelling house (C3) and associated operational development'.
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Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3, Class Q (a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use from agriculture to a dwelling house (C3) and associated operational development at Polands Farm, Four Elms, Edenbridge TB8 6LT, in accordance with the terms of the application, Ref: SE/15/03317/PAC, dated 22 October 2015, subject to the attached schedule of conditions.

Preliminary Matters

2. The application for prior approval was submitted without elevations or floor plans and the appellants' supporting statement only focussed on those matters relating to a change of use under Class Q (a)¹ and not the design and external appearance of the scheme. The Council's description of development refers to Class Q but does not refer to whether it was considered under Class Q (a) or Class Q (a) and (b). As such, the Council were asked to confirm on what basis the application for prior approval was considered and, following correspondence, it confirmed that its assessment was pursuant to Class Q (a) and (b) i.e. the proposed change of use of the building and the building operations reasonably necessary to convert it. I have approached my assessment in the same way.

¹ Of The Town and Country Planning (General Permitted Development Order) (England) 2015 (as amended) – Transport, noise, land contamination, flooding and whether the location or siting is impractical or undesirable.

3. The applicant indicates that on the 20 March 2013 the building was used to store hay cropped from an agricultural unit amounting to just 5 acres along with some sheep grazing and egg production. Hay cutting is not necessarily an agricultural use, no evidence has been presented relating to the sheep grazing or egg production and during my site inspection there was no evidence to suggest any existing agricultural activity. Moreover, I observed domestic paraphernalia in the form of a ride on mower and furniture stored within the building. Nevertheless, the Council are satisfied that the building was in an agricultural use on the 20 March 2013 and I have therefore approached my assessment accordingly.

Main Issue

4. The Council are satisfied that the proposal meets all of the criteria contained in Class Q, other than that contained in Paragraph Q.1(i). The main issue is therefore whether the building benefits from permitted development rights under the provisions of Schedule 2, Part 3, Class Q of the GPDO, with particular reference to the limitations and restriction set out in Paragraph Q.1(i).

Reasons

5. The appeal building is located to the south of Poland Farm and is set back from Four Elms Road. It is currently screened from public view by dense landscaping, although it can be glimpsed from Five Fields Lane. To the south of the barn is a stream on slightly lower land and the building is within the flood zone of this stream. The building is an open sided light weight steel framed barn with block work walls. A structural survey has not been submitted but the appellant's state, and the Council does not disagree, that the barn is structurally sound and capable of conversion. The precise method of conversion has not been submitted but the appellants envisage that the existing frame would be in filled with timber and glass and the roof material replaced with a lightweight alternative.
6. The building is located wholly within Flood Zone 2 and partially within Flood Zone 3. The Environment Agency have confirmed that the finished floor level of the barn would need to be increased by a minimum of 300mm if no sleeping accommodation is proposed at ground floor level or 600mm if it is. The Council are of the view that increasing the floor level in this way would constitute a building operation reasonably necessary to convert the building and because this is not a building operation listed in Paragraph Q.1(i), the proposal is not permitted development.
7. The National Planning Practice Guide (PPG) (Paragraph 105 Reference ID: 13-105-20150305) *states that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However, it recognises that for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted..... It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.*

8. In light of the above, I do not share the view that because the works to the floor would be internal, and may not need planning permission in their own right, they have no bearing on whether the building benefits from permitted development right under Class Q. This is because a building would not benefit from the permitted development right if it would require internal alterations to make it structurally strong enough to take the building works required to convert it to a dwelling, including those works listed in Paragraph Q.1(i).
9. As such, the main question in this instance is whether increasing the height of the floor is a structural work required to convert the building to a dwelling. If it is, then it would be a building operation that does not fall within Paragraph Q.1(i) and thus the building would not benefit from the relevant permitted development right. If it is not structural, then the works to the floor would be internal works, which do not constitute development, and have no implication in respect of the permitted development right pursuant to Class Q.
10. The appellant has confirmed that the floor could be a suspended floor laid over the existing solid floor. The suspended floor is not required as a structural element to take any loading or to facilitate the proposed conversion in a structural sense. In effect, it would be required to prevent unacceptable impacts arising from flooding but not as a building operation reasonably necessary to convert the barn. I draw a distinction between the two. Furthermore, the steps required to link the exterior ground level with the internal floor could be wholly internal and thus the works could be completed without extended the building.
11. As such, I conclude that the works to the floor would not be structural and thus the building benefits from the permitted development right under Class Q. The proposed conversion therefore falls to be considered under the prior approval process. In this respect, the Council has not raised any objections in respect of those matters requiring prior approval under Paragraph Q.2 (1) (a) – (f). Accordingly the appeal should be allowed.

Other Matters

12. There is no substantive evidence before me to indicate that the proposed conversion would have an adverse impact on biodiversity and would thus be undesirable. In forming this view I have had regard to the duty imposed in s40 of the Natural Environment and Rural Communities Act 2006.

Conditions and Conclusion

13. I have had regard to the guidance in the PPG and the conditions suggested by the Council. I have imposed a condition requiring a scheme to investigate any possible land contamination because of the historic use of the barn and that the occupants would be sensitive end users. The investigation should take place prior to works commencing as any mitigation may need to be undertaken at a pre commencement stage.
14. In the interests of mitigating flood risk I have attached a condition relating to finished floor levels. As suggested by the appellant, I have attached a condition requiring a design to be approved in the interests of safeguarding the character and appearance of the area.

15. I note the suggestion from an interested party that occupation should only be ancillary, but I have not been presented with any evidence to suggest why this is necessary or whether it is in the scope of the GPDO.
16. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be allowed and approval granted. In granting approval, the appellant should note that the GPDO requires (at Paragraph Q.2 (3)) that development permitted under Class Q (a) and (b) is completed within a period of 3 years starting with the prior approval date.

Graham Chamberlain
INSPECTOR

Schedule of Conditions

1. No development shall be carried on the land within the red line of the submitted site plan until a methodology for a phased contaminated land risk assessment has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out wholly in accordance with the approved methodology, which shall include an assessment of all land within the red line area that will form the proposed curtilage of the property.
2. The finished floor level of the approved dwelling shall be 300mm above the level of the land that surrounds the whole building if there is no sleeping accommodation at ground floor level and 600mm if there is.
3. No development shall be carried out until a design detailing the conversion of the barn has been submitted to and approved in writing by the Local Planning Authority. The design shall include scaled elevations and floor plans. The development shall be implemented in accordance with the approved design.