
Appeal Decisions

Site visit made on 3 August 2016

by **R M Pritchard MA PhD MRTPI**

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

Decision date: 24th August 2016

Appeal A : Ref: APP/R3325/W/16/3147215

Merricks Farm, Park Lane, Huish Episcopi, Somerset, TA10 ONF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval under Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.
 - The appeal is made by Mr and Mrs S Brooke against the decision of South Somerset District Council.
 - The application Ref 15/05197/PAMB, dated 29 October 2015, was refused by notice dated 23 December 2015.
 - The development proposed is the change of use and conversion of a steel-framed, covered yard barn to residential use.
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Appeal B : Ref: APP/R3325/W/16/3147206

Merricks Farm, Park Lane, Langport, Somerset, TA10 ONF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval under Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.
 - The appeal is made by Mr Simon Brooke against the decision of South Somerset District Council.
 - The application Ref 16/00058, dated 4 January 2016, was refused by notice dated 26 February 2016.
 - The development proposed is the change of use and conversion of an agricultural building to a dwelling.
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Decisions

APPEAL A :

1. The appeal is dismissed.

APPEAL B :

2. The appeal is allowed and approval is granted under the provisions of Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 for the conversion of an agricultural building to a dwelling at land at Merricks Farm, Park Lane, Langport, Somerset, TA10 ONF in accordance with the terms of the application Ref 16/00058, dated 4 January 2016, subject to the following conditions –
 - 1) The development hereby permitted shall be completed not later than three years from the date of this decision.
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- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos 15/1536/03 and 15/1536/02.
- 3) No development shall take place until samples of the materials to be used in the construction of the walls, roofs, windows and doors of the building the change of use of which is hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall define the residential curtilage of the building the change of use of which is hereby permitted and as shown on Drawing No 15/1536/03. Development shall be carried out in accordance with the approved details and these shall thereafter be retained.
- 5) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the building the change of use of which is hereby permitted is first occupied. Development shall be carried out in accordance with the approved details and these shall be retained thereafter.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or other external alterations, other than those expressly authorised by this prior approval, shall be made to the building the change of use of which is hereby permitted.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls, other than those agreed under Condition 4) shall be erected within the curtilage of the building the change of use of which is hereby permitted.

Procedural Notes

3. As indicated in the headings, these two appeals are made by apparently slightly different appellants and on land with slightly different addresses – as set out on the original applications. Although for the conversion of two different buildings to residential use, both are in fact on the same site and in the same ownership. Both applications are accompanied by site plans (Refs 15/1524/03 and 15/1536/03 respectively) that show the building and a small surrounding area enclosed by the 'red line'. In both cases, I consider these to be the areas of the curtilages of the two buildings within which a change of use is proposed. Outside the 'red lines' the rest of the site will remain in agricultural use.

Main Issues

4. I consider that a main issue common to both appeals is the effect of the proposed conversions on the living conditions of their future occupants. In addition, Appeal A raises the additional issue as to whether the agricultural

building is capable of conversion without structural works likely to be contrary to paragraph Q.1(i) of Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 ('the GPDO').

Reasons

Background

5. Merricks Farm lies to the south of the A378, Langport – Curry Rivel road, on higher ground close to the south eastern edge of the Somerset Levels. It is accessed by a pair of narrow and roughly surfaced tracks, Frog and Park Lanes - the former linking to the southern edge of Langport; the latter to a junction with the A378 north east of Curry Rivel.
6. The original farm complex is said to date from the 1890s and its use was originally a combination of farming and quarrying. Many of the original farm buildings were replaced in the 1960s. The current owners, who are the appellants, have owned the farm for over 20 years during which time the principal business has been the production of organic fruit and vegetables. However, Merricks Farm Cottage, close to the farm access was sold off as a separate dwelling some years ago, whilst former stables along Park Lane have been converted into holiday cottages.
7. The two appeals refer to different buildings on the site. Appeal A concerns a steel-framed, open barn that probably dates from the 1960s and which lies behind the holiday cottages towards the south west corner of the farm complex. Appeal B refers to a smaller and older building, formerly a milking parlour, but currently used as a packing shed and store for the farm business, which is to the north of the barn that is the subject of Appeal A.
8. Both applications were submitted under Classes Q(a) and (b) of the GPDO, i.e. they involve the change of use of the two buildings to dwellinghouses (Use Class C3) and the building operations necessary to convert the buildings to that use.
9. It is also intended to carry out other works were the appeals to be successful. In particular, a third building, broadly lying between the two buildings which are the subjects of the appeals, would be demolished and a parking and access area would be laid out immediately to the south of the building which is the subject of Appeal A.

Both appeals: Matters in dispute and not in dispute

10. Paragraph Q.1 sets out certain limitations under which development would not be permitted under Class Q. These principally relate to whether and when the buildings proposed for a change of use may have previously been in agricultural use, limitations on the current and proposed size of the buildings and restrictions if the site is in certain categories of specially designated land, e.g. a Site of Special Scientific Interest, or if the building is listed¹. None of these limitations apply to the appeal site or to either of the buildings, the use of which it is proposed to change.

¹ The relevant paragraph also refers to the fact that the total number of new homes should not exceed 3 dwelling houses. However, this does not include existing dwellings within the farm unit but only those created by the use of the permitted development right set out by the GPDO. It is not therefore relevant to either appeal.

11. However, paragraph Q.1(i)(i) specifies that any building operations carried out should be limited to the replacement of windows, doors, roofs or exterior walls or to the provision of services necessary for the building to function as a dwellinghouse. Paragraph Q.1(i)(ii) also allows any partial demolition to allow the works necessary under Q.1(i)(i) to be carried out. Essentially these paragraphs distinguish between non-structural work, which is permitted, and structural work, which is not. It is this section to which the Council has referred in its reason for refusal specific to Appeal A.
12. In addition to the limitations identified under paragraph Q.1, all proposals under Class Q are also subject to the conditions listed in paragraph Q.2.(1) which are those matters which should be taken into account in deciding whether prior approval should be granted. It is agreed that neither proposal raises any issues in respect of transport and highways impacts, or flooding and contamination risks. Nor, subject to the reservations raised under Q.1(i) in respect of Appeal A, has the Council raised any issue in respect of the design or external appearance of either building.
13. Instead, its common objection to both proposed changes of use is under Q.2(1)(e) which refers to the impracticality or undesirability of the change of use due to the '*...location or siting of the building...*'

Appeals A and B : The effect of the proposed conversions on the living conditions of their future occupants

14. In considering paragraph Q.2 (1)(e), one factor that I accept must be relevant is whether the location or siting of the building proposed for the change of use would result in material harm to the living conditions of its future occupants. The Planning Practice Guidance (PPG) emphasises this point when it refers to change being possibly undesirable '*...if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals*'.
15. The Council's case is that, in the case of both proposed conversions, the proximity of the buildings to other buildings capable of housing livestock would be undesirable as it would result in unacceptable living conditions for future occupants. In advancing this view, the Council concedes that none of the relevant buildings are currently so used to house livestock but takes the view that there remains the future potential for them to do so as well as the possibility of more general farming activity resuming on parts of the site². Its reasons for considering that potential to be feasible seem to relate to the complexity of the site in terms of the numbers of buildings and their relationships, the possibility of the site being split up in the future into different ownerships, and the unwillingness of the appellant(s) to enter into a legal agreement to restrict the use of other buildings on the site.
16. This last point is somewhat confusing as referred to in the Council's two appeal statements. In respect of Appeal B, the appeal statement comments in the third bullet point of the second paragraph that an Undertaking, made under section 106 of the Town and Country Planning Act 1990, to restrict the future use of other buildings on the site would overcome the Council's objection. However, in respect of Appeal A, the appellants having suggested such an

² In the case of both appeals, the changes of use proposed apply only to the buildings and the surrounding land would remain in agricultural use.

Undertaking to restrict the use of buildings for the housing of livestock, the fourth bullet point of the second paragraph comments that this would be insufficient. The reason is apparently that the Council would require the Undertaking to restrict all agricultural operations. However, if this is the Council's position, it seems to go beyond the reason for refusal common to both proposals which although it draws attention to '*...proximity to a farmyard...*' makes specific reference to buildings '*...capable of use for the accommodation of livestock...*'

17. I accept that the current arrangements around the farmyard are relatively complex given the sequence in which buildings have been erected in relation to one another. However, my site visit persuaded me that in respect of future uses the Council's fears are exaggerated. It is self-evident and undisputed that no livestock are currently housed on the farm and have not been so housed for some years. Furthermore, even accepting that agricultural use could re-occur on the site without any permission, I found it difficult to foresee circumstances where, if either conversion took place let alone both, such a use could recommence at the scale likely to result in significant material harm to the living conditions of future occupants.
18. There are a number of factors that combine to cause me to take this view. The combination of the proposed changes of use and the existing Merricks Farm Cottage and the holiday cottages along the Park Lane frontage would create a significant complex of adjacent buildings in residential use. When the associated parking and turning areas plus any landscaping associated with the buildings is taken into account, the opportunities for a return to agricultural use in the immediate vicinity of the appeal buildings seems to me to be limited. Furthermore, if, as the appellant intends, the structure between the two appeal buildings was demolished, the accommodation left to house livestock, together with the small scale of the remaining open yard – under 150m² – would seem to me to be too small to support a viable enterprise.
19. Furthermore, I could not accept the implication that proximity to any agricultural use would be sufficient reason to reject the change of use. Other agricultural uses, such as are mentioned in the PPG, might lead to a degree of noise and disturbance, but I am of the view that those issues associated with the housing of, and support for, livestock, especially perhaps smells, are most likely to produce conditions unacceptable to the living conditions of future occupants. Moreover, it seems to me to be an extreme position to suggest that an association with any agricultural use would lead to unacceptable living conditions. Barns are inherently connected with farms and a change to residential use is likely to be in the context of some agricultural activity.
20. I therefore draw the conclusion that the reason for refusal common to both appeals, namely that both buildings would not '*...be assured of a good standard of amenity...*' if the changes of use took place, cannot be sustained by the evidence. In this respect, therefore, the criterion set by Paragraph Q.2(1)(e) is met.

Appeal A only

21. The dispute between the Council and the appellants in respect of the structural suitability of the barn relevant to Appeal A focuses on whether the existing foundations and steel frame could carry the loads associated with the change of

- use. If they could not, the existing structure would need to be replaced and the change of use would fail the criterion set by paragraph Q.1(i)(i). I note that a previous application to change the use of the barn (Council Ref 14/04908/PAMB) was refused on precisely these grounds. I have also noted that the Council has raised no such objection to Appeal B, which is described as '*...robust and suitable for conversion...*' with works that would be within the scope of paragraph Q.1(i)(i).
22. The appellants have referred me to a number of examples where colleagues have upheld appeals for similar types of barns as that covered by Appeal A. I have no difficulty in accepting that a steel framed barn could meet the requirements of paragraph Q.1(i)(i) but it also seems to me that each case must be specifically assessed with reference to the structural integrity of the building, its foundations, load-bearing capacity etc. I have therefore given little weight to these other appeals.
23. The Council has raised a number of points that caused it to conclude that in this case, the building would fail the test put forward by paragraph Q.1(i)(i). In particular, following a visit by the Council's Building Control Officer (BCO), it has suggested that the existing structure would not be capable of bearing the increased loadings from a new roof covering, insulation and ceilings, whilst there are concerns as to how the main walls would be supported and junction between the floor and walls designed. The Council has also queried whether sufficient trial pits were dug to establish that adequate foundations exist over the whole footprint of the building.
24. Notwithstanding these comments, the appellants submitted a report by a structural engineer that states that the '*...existing building is structurally adequate to support the additional loading...*'. Nevertheless, the report is a brief document and it did not overcome some of the reservations that I share with the Council.
25. In particular, I agree that where there are issues over the capability of the structure and foundations to bear the additional loads contemplated, it is the responsibility of the applicant/appellant to demonstrate convincingly that the proposed development can be carried out within the statutory requirements. I would have therefore expected more detail to have been submitted by way of architects' drawings etc, which could have then been clearly and explicitly related to the report of the structural engineer. I do not accept the argument that, on the grounds of cost, these should only be provided once permission has been obtained.
26. As example, the appellants and the Council disagree as to whether there is sufficient evidence that there are adequate foundations over the whole extent of where there would be load bearing walls. I agree with the Council that basing the conclusion that they do so on the three trial pits – for which little detail is provided – and map evidence that simply shows a former building sitting on approximately the same footprint as previous buildings is not sufficient. Apart from the difficulties of relating maps of different ages and scales – the claim that the buildings on the 1903 Ordnance Survey map and those plotted on the 'current map' are the same is not completely persuasive - if there are foundations from a Victorian building, they may not meet modern requirements. Setting aside the issue of Building Regulation standards, I am therefore not convinced that enough evidence has been submitted to persuade

me that Appeal A would meet the necessary conditions in terms of its existing structure.

27. I would also comment that I do not fully agree with the appellants' interpretation of Section 55(2)(a) of the 1990 Act. It is true that this section excludes from the definition of development works such as might be needed for the insulation of roofs, construction of ceilings etc as may affect only the interior of a building. However, it does so clearly in the context of '*...the carrying out for the maintenance, improvement or other alteration...*' of a building. By contrast, Class Q refers to works reasonably necessary to convert a building and the Courts have drawn a distinction between maintenance and rebuilding as could be involved in a conversion.
28. Notwithstanding the above, in the case of Appeal A, the appellants have not provided sufficient evidence that the conversion to achieve the change of use could be carried out without what I would assess as structural work. In this respect, I therefore conclude that the conditions required by Paragraph Q.1(i) have not been demonstrably met.

Conclusions

29. For the reasons given above, I therefore conclude that Appeal A should be dismissed but that Appeal B should be allowed and prior approval granted under the terms of Class Q of the Order for a change of use from an agricultural building to Use Class C3.

Conditions

30. I have considered the conditions put before me by the Council that it would wish me to impose were Appeal B to be allowed in the light of policies towards conditions as now set out in the Government's Planning Practice Guidance (PPG), the model conditions included in the still extant Annex to Circular 11/95, *The Use of Conditions in Planning Permissions* and the requirements of Class Q of the Order. In this case, apart from the deemed condition (Paragraph Q.2(3)) that sets a time limit of three years from the date of my decision for the development to be completed, a further condition that it is carried out in accordance with the submitted plans is appropriate and I shall so impose such a condition.
31. The Council has also suggested conditions requiring its approval be given to materials, boundary treatments and any external lighting before any development is undertaken. I agree and shall impose conditions in all these respects. It has also asked for conditions to restrict permitted development rights to extend or further alter the exterior of the building and to erect any outbuildings, other structures or fences, gates or walls. Again, I agree and shall impose such conditions.

R M Pritchard

INSPECTOR