



Appeal Decision

Site visit made on 19 February 2018

by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2018

Appeal Ref: APP/F1610/W/17/3188502

Dutch Barn, Welsh Way, Middle Duntisbourne GL7 7AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Whitaker against the decision of Cotswold District Council.
 - The application Ref 17/02087/FUL, dated 18 May 2017, was refused by notice dated 22 September 2017.
 - The development proposed is building works that relate to prior approval application 17/01320/OPANOT (works for conversion of a Dutch Barn to Aparthotel).
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Decision

1. The appeal is allowed and planning permission is granted for building works that relate to prior approval application 17/01320/OPANOT (works for conversion of a Dutch Barn to Aparthotel) at Dutch Barn, Welsh Way, Middle Duntisbourne GL7 7AR in accordance with the terms of the application, Ref 17/02087/FUL, dated 18 May 2017, subject to the conditions in the attached schedule.

Background

2. The appeal site includes a Dutch barn. The appellant has sought to take advantage of the permitted development right under Schedule 2, Part 3, Class R of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for the change of use of the agricultural building (and any land within its curtilage) to a flexible use (specifically a hotel). In May 2017 the Council issued a decision to confirm that prior approval was not required for the change of use. That decision includes two conditions, however those simply reflect the conditions imposed by Class R paragraph R.3.-(2) and paragraph W.-(12) (b).
3. Class R does not allow for any associated operational development to take place as part of the permitted development right. However, it is clear that it is envisaged that building works or other operations may be reasonably necessary to use the building or land for the use proposed under Class R. Where this is necessary, a separate planning application will be required following either the confirmation that prior approval is not required or the grant of it. The application, which is the subject of this appeal, seeks to do just that and it includes works to the building and the creation of a parking and turning area. The existing access would be utilised.

Main issues

4. The main issues are the implications of the extent of the operational development proposed and the location of the site in terms of its proximity to existing settlements.

Reasons

Extent of the proposed works

5. The appeal building is a Dutch barn of fairly typical appearance and construction. It has 4 bays and consists of a metal frame where three of the four walls and the roof are clad in corrugated metal. At the time of my site inspection the metal cladding on the walls did not extend to the ground, but stopped a little over a metre above this level.
6. The term “associated operational development” is defined within Class R. This sets a clear expectation that any such operations are limited to those reasonably necessary so that the building and land can be used for a use granted under Class R. The Council has not raised any concerns that the proposed works themselves go beyond what is reasonably necessary to achieve this, for example by providing superfluous accommodation or features.
7. The existing metal frame would be retained. A ground beam has recently been installed around the entire outside edge of the metal frame. This ground beam is part of the operational development sought within the proposal. The information from the appellant suggests that this sits on top of the original concrete pads. I have no evidence to suggest that this is not the case. It is proposed to add insulated corrugated metal wall cladding which would be supported on the ground beam. The front of the building would include glazed and timber panels similarly supported. The roof would be provided through insulated corrugated metal panels which would be supported on the existing frame.
8. A new ground bearing concrete floor would be provided. Internally two freestanding pods would be built to accommodate bathrooms and a utility room as well as acting as a means of dividing up the internal space to provide two bedroom areas. The appellant has described the works as providing an Aparthotel and the layout would provide accommodation similar to that found in a home (apartment). In essence the operational development proposed would do no more than provide insulated walls and a roof and the basic amenities, including the provision of some parking space, needed so that the building could function as tourist accommodation.
9. The Council’s concern is that the works are so significant that it would go beyond what could reasonably be considered to be the conversion of the building. As well as outlining the works proposed, in support of that view the Council has referenced two appeal decisions and the Hibbitt Case¹.
10. The Hibbitt Case related to development under Class Q of the GPDO which, subject to limitations and conditions, allows for the change of use of agricultural buildings to dwellings along with the building operations reasonably necessary to convert the building. In that case the Inspector had found that the works went well beyond what could reasonably be described as conversion and that they would be so extensive as to comprise rebuilding. The overall conclusion was that the development would not fall within the scope of what

¹ Hibbitt and another v Secretary of State for Communities and Local Government and another [2016] EWHC 2853 (Admin)

- was permissible under Class Q and it was not permitted development. The conclusion of the judgement was that the Inspector's analysis was correct.
11. The appellant has sought to draw distinctions between the appeal building and the one in the Hibbitt case. However, given the works proposed, it is understandable why the Council consider that there are similarities such that it may be reasonable to reach the same conclusion; ie that the works in this case also go beyond conversion.
 12. However, I am not convinced that the conclusions in the Hibbitt judgement can be of assistance for this appeal. I have two main reasons for reaching this view. Firstly this appeal involves development under Class R and not Class Q and I will set out, below, why this is an important distinction. Secondly, the Inspector's conclusions in the Hibbitt case led her to reach the view that the proposal was not permitted development. However, in this case the Council has already confirmed that the change of use does not require prior approval and therefore it already benefits from the planning permission granted by the permitted development right.
 13. As part of the permitted development right, Class Q(b) allows for building operations reasonably necessary to convert the building to a dwelling. The concept of conversion is central to the Hibbitt judgement. This is because the building operations within the permitted development right must be reasonably necessary to *convert* the building (emphasis added). However, for the purposes of Class R the term "associated operational development" means "building or other operations in relation to the same building or land which are reasonably necessary to use the building or land for the use proposed under Class R." Unlike in Class Q, the word "convert" is not used.
 14. In the Hibbitt judgement it was not accepted that rebuild was limited to development following a demolition. Where the line should be drawn is a matter of planning judgement. This means that even where some elements of an original building are retained the works could still be of such a magnitude that in practical reality what is being undertaken is a rebuild (or a fresh build). However, in the judgement this conclusion is reached in the context of considering what could reasonably be described as a conversion.
 15. The Hibbitt judgement also makes reference to paragraph 105 of the Planning Practice Guidance (the PPG). At that time the wording clarified that development under Class Q assumed that the agricultural building is capable of functioning as a dwelling, that it is not the intention of the permitted development right to include the construction of new structural elements, and that the existing building should be structurally strong enough to take the loading that comes with the external works. This advice is directly relevant to Class Q and there is nothing to suggest it should apply more widely to other classes. I therefore do not consider that it is of any assistance in this case².
 16. The confirmation by the Council that prior approval was not required means that permission exists for the change of use of the building to a hotel. This is a very significant factor and it cannot be set aside. The development that is subject to this appeal is not for the change of use, nor is it for the construction

² I am aware that paragraph 105 in the PPG has recently been updated and now no longer uses the wording quoted in the Hibbitt judgement. However, it is still only directly relevant to Class Q and so the updated wording is of no consequence to this appeal.

of a new hotel. It is expressly for the building works that relate to implementing the change of use. The works proposed are extensive and would result in new external walls on all four elevations and a new external roof. However, given the nature of the existing building, I cannot envisage that works which were significantly more modest than what is proposed would be sufficient to allow the building and land to be used for its intended purpose. The works would not exceed what is reasonably necessary.

17. The concept of conversion is not embedded in Class R and there is no specific advice in the PPG as to what, if any, limits there should be on the extent of any associated operational development in a subsequent planning application.
18. The Council has referred to a previous appeal decision³ at the site. That related to a planning application to convert the building into two holiday units. In that case the Inspector reached the view that the extent of the works proposed would go well beyond conversion. Policy 28 of the Cotswold District Local Plan (the LP) was relevant and this requires that the building be structurally sound, suitable for, and capable of, conversion to the proposed use without substantial alteration, extension or rebuilding which would be tantamount to the erection of a new building.
19. I do not have full details of that scheme. However, the evidence suggests that the works were more extensive than what is now proposed. Regardless of this, that related to an application for planning permission to convert the building. It is not comparable to the current situation where the permission for the change of use already exists. The conclusions of that appeal decision are not, therefore, decisive. The Council has also referred to an appeal decision⁴ for a site in Wiltshire. However, as that related to Class Q it is not helpful in considering this appeal.
20. On this first main issue I conclude that the associated operational development proposed is reasonably necessary so that the building and land can be used for the use granted under Class R. I do note that the appellant has used the word "conversion" within the description of the development but, given the scope of Class R, I do not consider that this is decisive. Policy 28 of the LP is relevant to converting buildings to alternative uses, and the context of the policy is relevant to both any inherent change of use as well as the building works proposed. Seeking to apply the full rigour of the Policy to associated operational development for Class R development would fetter the application of the GPDO. As such, while matters of detail, such as those related to design would be material, the aspects of the Policy that would fundamentally inhibit the use of the building for its intended purpose under Class R cannot be given any significant weight as the change of use has already been granted.

Location

21. My conclusion on the first main issue is necessarily directly relevant to how I must deal with this second main issue. The starting point for this issue is that I am dealing with a proposal for operational development that will allow the building and land to be used for the purpose for which it already has permission. While not identical, I see that there are some parallels to dealing

³ APP/F1610/W/15/3135647

⁴ APP/Y3940/W/15/3049403

- with an application for the approval of reserved matters after outline planning permission has been granted.
22. The principle that a hotel can be located at the site through the change of use of the building has been established. The concerns the Council has raised in terms of the sites location, including its proximity to other settlements, are related to the use of the building as a hotel. This would not be directly associated with the operational development.
23. In addition to Policy 28, which I have addressed above, the Council has cited Policies 19 and 26 of the LP in its reason for refusal. Policy 19 deals with what types of development is permissible outside of development boundaries and Policy 26 deals with tourism including the provision of new hotels, which should be limited to a number of specified circumstances. Fundamentally both these policies deal with the principle of whether particular types of development are appropriate in terms of the location. This has no direct relevance to an application for operational development only and so there cannot be conflict with these policies. For the same reasons there would also be no conflict with the National Planning Policy Framework.
24. On this second main issue I therefore conclude that the location of the site is not a substantive issue as the change of use of the building is already a settled matter.

Other matters

25. The Council has referred to a number of policies from its emerging local plan. Essentially, in respect of this particular appeal, they have similar aims to the adopted policies. The examination is at an advanced stage, with a consultation currently taking place in respect of the Main Modifications. I therefore give these policies moderate weight. However, there is nothing within any of these that would lead me to reach a different conclusion on the main issues.
26. The appeal site is located within an Area of Outstanding Natural Beauty (the AONB). The proposed works to the barn would be sympathetic to its character and the surroundings and the parking and turning area is modest and could be screened with landscaping. The development would not cause any harm to the aims of preserving and enhancing the natural beauty of the AONB. There would be some impacts to the character of the area brought about as a result of the change of use and not directly related to the operational development. This, however, falls outside of the scope of the consideration of this appeal.
27. A third party has raised concerns that the development would be contrary to Policy 14 of the LP. This relates to the conversion of historic agricultural buildings of traditional design. The appeal building does not appear to meet with the definition of a historic and traditional building as set out in the supporting text. However, as the principle of reusing the building has been established, the fact that a conversion of it may well fall outside the scope of this Policy, is not a significant factor and it does not alter my conclusions on the main issues.
28. The Council has raised a concern that the appellant has not demonstrated a need for the accommodation. However, that is a matter which relates to the use of the building and not the operational development.

29. I note there are some concerns that allowing this appeal could set a precedent for the reuse of similar buildings. However, I have had to consider this appeal in the specific context that the use of the building as a hotel under Class R has already been established.

Conclusion

30. There would not be conflict with the development plan when it is considered as a whole. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

31. I have imposed a condition specifying the relevant plans as this provides certainty. In the interest of the character and appearance of the area it is necessary to control the finish of the external timber panels. For the same reason, and to minimise loose materials being carried onto the highway it is also necessary that the surfacing of the access, parking and turning area are appropriate. The conditions suggested by the Council stipulate the use of specific materials, however others may be acceptable and so I have worded the condition to allow for this.

32. The construction works approved as part of the development could result in harm to the existing boundary planting, which makes an important contribution to the character of the area. It is therefore necessary that protection for this landscaping is provided. To be effective this must be secured before any works commence. The works to the building are appropriate to the character of the building and area and do not necessitate the provision of additional landscaping. However, the parking area is also part of the development and landscaping would mitigate adverse impacts. It is not necessary that such details are agreed before any other works are undertaken.

33. The operational development could have an ecological impact. However, a number of recommendations are contained within a protected species survey to mitigate this. The Council also suggests the addition of an owl and kestrel box on the site. Given there is some evidence that the building is used for perching by these birds (but not nesting) such provision is reasonable and necessary. The submitted drawings show a number of landscape planting areas (in addition to that located close to the parking area). However, there is no evidence that the operational development proposed as part of the application would make all this planting necessary and so there is not a sound planning reason for there to be a condition to require that it is implemented.

34. It is not necessary to restrict the Use Class of the building as this matter is already dealt with by the GPDO and it is also not a matter that this related to the operational development but rather to the use of the building which is not part of the development being considered in this appeal. Similarly permitted development rights for further development, such as extensions and outbuildings, has already been controlled by the GPDO as flexible uses are treated as having a sui generis use.

35. Contamination risks on site are a matter to be considered when a prior approval application is determined for the change of use. As such any concerns should have been addressed in considering that application and it was possible to impose conditions relevant to this matter if these were necessary. This is not

a matter that should be left for consideration in relation to an application dealing only with the associated operational development. Therefore it would not be reasonable or necessary to impose a condition related to this matter at this stage.

36. Fundamentally, lighting and illumination is related to the change of use and not the operational development. A condition to control this is not therefore directly related to this development and so it should not be imposed.

K Taylor

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 243 – 01 A, 270 – 10, 270 – 11, 270 – 40, 270 – 41, 270 – 42.
- 3) The timber boarding used on the exterior of the building shall be left untreated to weather naturally and permanently retained as such.
- 4) The building shall not be occupied until the surface materials for the access, parking and turning area has been submitted to and approved in writing by the local planning authority. The access, parking, and turning areas shall be provided in accordance with the approved details before the building is occupied and thereafter retained.
- 5) No development shall commence until a scheme which identifies existing trees and hedgerows within the site which are to be retained, together with measures of protection works, has been submitted to and approved in writing by the local planning authority. The protection measures must be provided in accordance with the approved details before any development takes place and it shall be retained for the duration of the construction period.
- 6) Prior to the occupation of the building a soft landscaping scheme for the areas of the site adjacent to the parking and turning area shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall be implemented in accordance with the approved details by the end of the first planting season following the first occupation of the building. Any trees or plants which, within a period of 5 years from the implementation of the landscaping scheme, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
- 7) The development shall be carried out in accordance with the recommendations in section 5 of the Protected Species Assessment (Just Ecology) with the addition of a kestrel and owl box to be mounted on the existing trees or poles on the site prior to the first use of the building as a hotel.