



Appeal Decision

Site visit made on 13 July 2017

by Andy Harwood CMS MSc MRTPI

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

Decision date: 15 August 2017

Appeal Ref: APP/X1165/W/16/3161110

**Kemmings Hill Linhay, Lower Yalberton, Long Road, Torbay, Devon
TQ4 7PQ**

- 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 2015¹.
 - The appeal is made by Mr Anthony Goodson against the decision of Torbay Council.
 - The application Ref P/2016/0648, dated 27 May 2016, was refused by notice dated 22 August 2016.
 - The development proposed is the change of use of an agricultural building to create a single dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters and Main Issues

2. The submitted plans show details of some forms of development that are both outside of the application site and which would also be beyond the scope of that permitted by 'class Q'. These include the realignment of the access track, turning circle and terrace. I will not consider those elements as a part of the proposal. I am aware that a separate planning application has been submitted for some of those developments. However, I have no indication of any likelihood of them being approved and as they do not exist I do not give them any weight.
3. I will deal with this proposal on the basis of the proposed change of use of the building and land within its curtilage as defined by the red-line shown on plan '1221 SK/LP' as well as the building operations necessary to convert the building which relate to both Class Q(a) and Class Q(b). Notwithstanding those indications of other areas proposed for residential purposes on the submitted plans, I will consider this application on the basis that all residential use including vehicle parking will take place within the indicated curtilage. There is an opening within the surrounding wall that could potentially allow for a vehicle to access the curtilage from the field.
4. The Council received most of the required information for the submission on 6 June 2016. However, the site is within an area which the Environment Agency (EA) has determined suffers from critical drainage problems. A Flood Risk Assessment was received by the Council on 27 June 2016 and the EA were

¹ GPDO

consulted. Under the provisions of paragraph W of schedule 2, part 3, I have taken the application to have been received in a valid form on 27 June 2016. The requisite 56 day period as set out in paragraph W expired on the 22 August 2016 which is the day on which the Council issued its decision.

5. The main issues are therefore:

- whether the proposed development would meet the requirements for permitted development regarding whether the proposed building operations would be reasonably necessary to convert the building;
- whether the location or siting of the building would make the proposal impractical or undesirable with respect to the effects upon greater horseshoe bats and due to the position of the building distant from nearby roads; and
- whether the proposed development and surrounding area would be kept safe from the effects of surface water.

Reasons

Building operations

6. The existing building is a large, traditional stone linhay. Superficially the building looks to be a robust structure constructed of limestone even though it has no roof. The John Grimes Partnership Visual Condition Inspection (VCI) confirms that the walls have not deteriorated significantly despite the lack of a roof and that the building is of "robust construction, quality of materials and workmanship".
7. Some cracks are present in the structure and there would be a need for re-pointing and reinforcement with bars to "crack stitch" as well as the replacement of lintels where timber has rotted. These works are not fully specified and they will need to be detailed when it comes to carrying out the repairs confirmed in appendix A of the VCI. However, these parts of the works would appear to be minor repairs. The addition of a new roof would be within the scope of Q1(i).
8. The VCI also confirms that the internal addition of a floor would lean on existing internal stonework inside the building. It is clear from looking at the building that although supporting timbers need to be installed, this would be where timbers had previously existed.
9. Section 55(2)(a) of the act excludes from the definition of development, works for the maintenance, improvement, or other alteration of any building which: affect only the interior and do not materially affect the external appearance of the building. The installation of the floor would be an alteration of the structure but one which would be entirely within its current walls, therefore inside the building and not affecting its external appearance. This in my view would fall outside of the definition of development in the act and would not require planning permission whether that was related to Class Q or not. As Class Q is concerned with "development", my view is that those works would not be "development". As a consequence, they are not excluded by its limitations. An additional benefit of the floor would be that it would provide greater lateral stability to the structure. The Planning Practice Guidance where giving advice on building works allowed for by Class Q, states that it is not the intention of the permitted development right to include the construction of new

structural elements. However, the context of that paragraph relates to building operations which would affect the external appearance of the building. This part of this proposal does not conflict with that advice.

10. Since the Council issued its decision, the appellant has instructed a follow up VCI which involved further investigation of footings of the building including intrusive investigations. The Council has had the opportunity to comment on this. This additional structural report states that the foundations are structurally strong enough to support the additional load required to convert the building into a dwelling.
11. The circumstances of this case are very different from the appeal cases referred to by the Council with respect to structural matters. For instance, in the Worcestershire case² related to a complex proposal for conversion of a timber framed and clad building to 3 dwellings with a need for new external walls. The Somerset case³ related to a rusting steel frame building and the structural report was a desk-top based study. The Dorset case⁴ also related to a steel framed building that was open sided and where not only the lack of a full structural survey but also where little details was given.
12. The operations necessary for running electricity would need to cover a long distance. This would be over land within the appellant's control. The expense and practical issues of laying the cable underground could be significant. However these are primarily concerns for the appellant or developer rather than being beyond what is reasonably necessary for the building to function as a dwellinghouse. Similarly, achieving a water supply from a borehole with foul drainage via a private treatment plant and surface water via soakaways are practical solutions. Whether the ground is suitable for additional drainage, I deal with below.
13. Apart from the Council's concerns regarding the structural elements, other parts of Class Q are not in dispute. The required building operations to convert the building would only be what would be reasonably necessary to achieve the proposed use. For these reasons, I conclude that the change of use would constitute permitted development under Class Q.

Location or siting, impractical or undesirable

14. A single dwelling would not rely upon a large number of vehicle movements. I am not dealing here with a proposal for a track to access the site and any remnant of a track within the field was difficult to identify at my site visit. The appellant clearly intends to access the site by private vehicle and it would not be practical to have no vehicular access. Even without a formal track, it would be possible to use four wheel drive vehicles to access the site at the moment and it is not unconventional to do so. The land between the building and the nearest road to the north is already used to access the land. Access to the site in these terms would be challenging but not in my view impractical or undesirable.
15. It is accepted by the Council that given the lack of cover provided by the existing structure, it is not likely to support roosting bats other than occasional summer roosts within the denser stems of ivy on its exterior. The appellant's

² APP/H1840/W/16/3147004

³ APP/D0121/W/15/3136859

⁴ App/N1215/W/16/3144194

phase 1 ecology report acknowledges that there are hedgebanks and some trees that have potential to support roosting bats but states that they will not be affected by the proposal.

16. The report also acknowledges that species rich hedgebanks are the most ecologically valuable feature for commuting and foraging bats. Furthermore, it is agreed between the parties that the site is within the greater horseshoe bat Sustenance Zone. This is related to the Berry Head component of the South Hams Special Area of Conservation. The appellant's phase 1 ecology report states that it is necessary to ensure that no hedgebank or tree vegetation is removed and the site is not illuminated during or post-development. The sensitivity of foraging bats due to light-spill from the completed development is the particular concern of the Council's ecological advisor. Greater horseshoe bats are sensitive to light and avoid lit areas. Interruption of a 'flyway' by light disturbance may force the bats to find alternative routes which could incur an additional energetic burden when travelling from key foraging areas and roosts.
17. An ecological mitigation statement was prepared on behalf of the appellant. This further identifies the need to very carefully control light spill from both external and internal sources, including that from vehicle headlights. A new dwelling in this location would create further vehicle movements and so this is a significant concern. As a consequence, new hedgebanks to mitigate the effects of vehicle headlights as well lightspill over the hedges near to the building are proposed. The entrance into the curtilage of the building would be closed off due to one of the proposed new hedge banks. Access to the building in this way would require use of surrounding land for parking which would therefore be in residential use rather than agricultural use. The current proposal cannot authorise such use and this is therefore an indication of the impracticality of the location.
18. Furthermore, there would need to be an extensive length of new hedgebank between the site and the existing lane into the field to the north. It is not clear whether those hedgebanks as they are described would in themselves constitute development requiring planning permission not covered by this procedure. This will depend partly upon the type of construction. However what is clear is that an extensive area of land outside of the curtilage of the proposed dwelling would need to be controlled in some way through this procedure. It is possible for decision makers to impose conditions on this type of procedure where they reasonably relate to the subject matter of the prior approval⁵. In considering the ability to impose conditions I would also need to consider not only the tests set out within paragraph 205 of the National Planning Policy Framework (the Framework) but also whether the imposition of conditions would in effect substantially change the proposed development that is within the scope of this appeal. In my view, to require such an extensive length of hedgebank could not reasonably be controlled through this proposal and would substantially change the nature of it due to the impact upon surrounding land.
19. Planning conditions could also be considered relating to the control of light spill from the building following occupation. However, I have no evidence that this would be possible to achieve to the extent set out within the ecological mitigation statement (no more than 0.1 lux over retained hedgebanks).

⁵ GPDO Schedule 2, Part 3, paragraph W(13)

20. Some further ecological concerns also relate to the access from the main road. A small area at the entrance to the track that in turn leads to the field in which the site is located is proposed to have some vegetation removed. However, at the time of my visit vegetation was sufficiently clear to provide reasonable visibility for drivers on emerging from the track.
21. Overall in relation to this matter, due to the extent and nature of the works required to mitigate for harm that would otherwise occur to European protected species, namely the greater horseshoe bat, I consider that the location and siting of the dwelling would be impractical and undesirable. It would not therefore meet the requirements of Class Q 2(e). The proposal would not minimise impacts on biodiversity and would not contribute to halting the overall decline in biodiversity as required by the Framework.
22. I have considered the appellant's comments regarding the "White Rock Master Plan" some details of which have been provided to me. The effects of lighting upon protected species will need to be taken into account by the decision maker when considering the details of any proposals in that area. Neither this nor the other development referred to for 58 holiday lodges nearby have any significant weight and do not create a precedent for allowing this proposal.

Surface water

23. The appellant has provided additional information regarding surface water infiltration. I am satisfied that it would be possible to satisfactorily deal with surface water without causing any harm to drainage within the critical drainage area.

Conclusion

24. I consider that the development would be permitted development within the terms of Class Q of the GPDO. However, I consider that the location and siting of the building makes the proposal impractical and undesirable.
25. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

Andy Harwood

INSPECTOR