



Appeal Decision

Site visit made on 20 May 2019

by E Symmons BSc (Hons), MSc

an Inspector appointed by the Secretary of State

Decision date: 14 August 2019

Appeal Ref: APP/B3030/W/19/3223635

Southwell Mushroom Farm, Crew Lane, Southwell NG25 0TX

- 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 David Johnson (Premier Mushrooms) against the decision of Newark & Sherwood District Council.
 - The application ref 18/01771/CPRIOR, dated 19 September 2018, was refused by notice dated 19 October 2018.
 - The development proposed is for a change of use, including operational works, from agricultural building to three dwellings.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use, including operational works, from agricultural building to three dwellings, at Southwell Mushroom Farm, Crew Lane, Southwell NG25 0TX, in accordance with the terms of the application 18/01771/CPRIOR, dated 19 September 2018, and subject to the conditions listed in the attached Schedule.

Main Issue

2. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO).

Reasons

3. The appeal relates to a disused building previously used to farm mushrooms. It consists of 13 large growing tunnels running either side of, and accessed from, a central core building. There is a small off-shoot from the central core which housed servicing facilities. The core building is open at one end and enclosed at the other by an office/store. Both the office and servicing building have a roof but the central core is open. The building sits within a large fenced compound which is accessed from Crew Lane which is also a public right of way/bridleway.
4. The position of the proposed dwellings is the central core with associated demolition of the growing tunnels. The core building is constructed from concrete blockwork panel walls upon a mainly concrete raft/slab although the

- office is built on foundations. Each wall panel has a door leading to a growing tunnel. Steel beams span the walkway and support pipes and cables beneath.
5. Class Q of Part 3 of Schedule 2 of the GPDO states at paragraph Q.1.(i) that development under Class Q(b) is not permitted if it would consist of building operations other than: installation or replacement of windows, doors, roofs or external walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house. The permitted development rights also include partial demolition to the extent reasonably necessary to carry out such building operations.
 6. The National Planning Practice Guidance¹ (NPPG) states that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. Nonetheless, it indicates that, for the building to function as a dwelling, some building operations which would affect its external appearance, and which would otherwise require planning permission would be needed and should be permitted. The NPPG further clarifies that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Consequently, it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide the residential use that the building would be considered to have the permitted development right.
 7. The GPDO does not define what is meant by 'reasonably necessary' to allow use as a dwelling. However, the court judgement in the case of *Hibbitt v SSCLG* [2016], considers how this element of the GPDO should be interpreted. The judgment found that the building must be capable of conversion to residential use without operations that would amount either to complete or substantial rebuilding of the pre-existing structure or, in effect, the creation of a new building. If the proposals would amount to rebuilding, the appeal should be dismissed as the proposed development would be outside the relevant Class. Whether or not the proposals go beyond the scope of conversion is a matter of fact and degree and requires an element of judgement.
 8. The Hibbitt judgment involved a structurally sound framework, however the extent of the required works still led the Inspector to conclude that they went beyond what was reasonably necessary. The judge accepted this and concluded that the development was, in all practical terms, starting afresh with only a modest amount of help from the original structure.
 9. A structural report dated April 2018 was prepared by Construction Design Solutions. Based upon observations of the building during my visit, I have no reason to believe the recommendations of the report are not accurate. The report concludes that the concrete slab and side walls show no evidence of structural instability, are suitable to allow incorporation of new doors and windows and could be reduced in height to form structural elements within the proposed dwellings and support a roof. The proposal would involve demolition of the growing tunnels; construction of one end wall and dividing walls between proposed dwellings; reduction in the height of the side walls; incorporation of new windows and doors and trimming of the existing concrete slab.

¹ Paragraph 105: Reference ID: 13-105-20180615. Revision date: 15 June 2018.

10. Based on the evidence provided, I am satisfied the structural integrity of the central core building is sound and would form an integral part of the new dwellings. The building operations would be reasonably necessary in this instance and would not constitute 'rebuild' as described in the Hibbitt judgment. Accordingly, I conclude that the development would not exceed the limitations set out in paragraph Q.1(i) of the GPDO.

Other Matters

11. I have considered the evidence provided by the Council and the appellant with regard to the impact of the proposals on transport and highways; noise impacts; contamination risks; flood risk; location and the design and appearance. These issues were found to be acceptable by the Council, were not part of the reason for refusal and I have no reason to consider otherwise.

Conditions

12. Paragraph W (13) of the GPDO states that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The conditions set out in the accompanying schedule are based on those suggested by the Council and I have considered these in the light of this and Government guidance. I have undertaken some minor editing and rationalisation of the suggested conditions in the interests of precision and clarity. The Council suggested a condition to remove permitted development rights. Paragraph 53 of The Framework states that this should only be done where there is clear justification which I do not consider has been given.
13. Paragraph Q.2.(3) of the GPDO states that Development under Class Q is permitted subject to the condition that development under Class Q(a) and Q(b), must be completed within a period of 3 years starting with the prior approval date.
14. To ensure certainty and clarity, it is necessary to impose a condition setting out the approved plans. Although potential contamination has not been identified as an issue, as no preliminary desktop study has been submitted, conditions 2 and 3 have been included to ensure that the development can be carried out safely without unacceptable risks to workers, other receptors and that risks to future users of the site are minimised.
15. To ensure the proposal has an appropriate appearance condition 4 requires samples of materials and conditions 5 and 6 (incorporating the Council's suggested condition 8), requires details of hard and soft landscaping details and their ongoing establishment and maintenance. Conditions 7, 8 and 9 are included in the interests of highway safety and to ensure surface water from the site is not deposited on the public highway.

Conclusion

16. For the reasons set out above, I conclude that the appeal is allowed and prior approval is granted.

E Symmons

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: (10)001; (20)001; 21(001); (10)002; (20)002; (20)003; (20)004; (20)006; and Structural Appraisal (Construction Design Solutions, April 2018).
- 2) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.
- 3) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is continued.
- 4) No development above damp proof course shall take place until manufacturers details (and samples upon request) of the external facing materials (including colour/finish) have been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in accordance with the approved details.
- 5) Prior to first occupation of the development hereby approved details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - i) means of enclosure;
 - ii) vehicle parking and turning layouts;
 - iii) other vehicle and pedestrian access and circulation areas;
 - iv) hard surfacing materials;
 - v) full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards, and structural cells. The scheme

shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species.

The hard landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

- 6) All soft landscape works comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. All shrub and hedge planting shall be carried out in accordance with BS 3936 -1992 Part 1-Nursery Stock-Specifications for Trees and Shrubs and BS4428-1989 Code of Practice for General Landscape Operations. All tree planting and maintenance shall be in accordance with BS 8545:2014-Trees: from nursery to independence in the landscape - Recommendations. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) No part of the development hereby permitted shall commence until a new access from Crew Lane, further to the east, has been constructed in accordance with details to be first submitted to and approved in writing by the Local Planning Authority, and thereafter constructed in accordance with the approved details.
- 8) No part of the development hereby permitted shall be brought into use until the existing site access that has been made redundant as a consequence of this consent and as shown on drawing no. (10)002 Rev. A01 is permanently closed and the access crossing reinstated as verge in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.
- 9) No part of the development hereby permitted shall be brought into use until the access driveway is constructed with provision to prevent the unregulated discharge of surface water from the driveway to the public highway in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.

END OF SCHEDULE