Please, make yourself at home

Jack Parker looks at permitted development rights for the conversion of buildings in leisure us.

The Government's decision to expand permitted development rights to provide for the conversion of buildings in use for a number of leisure uses (including casinos, amusement arcades and betting shops) to residential dwellings has no doubt created development opportunities previously stymied by restrictive development plan policies.
To take advantage of these new opportunities, however, one must tread very carefully. What exactly does "converting" a building mean? How significant can redevelopment works be before the project is no longer a "conversion" of an existing building, but the construction of a new one (so requiring a full application for planning permission)?

The permitted development rights
Class M, N and Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 all provide for the change in use of buildings to residential purposes without the need for planning permission. Class M makes provision in relation to buildings in use for A1 (retail), A2 (financial and professional services), betting shops, pay day loan shops and launderettes (including where the building already has a partial residential use). Class N makes provision for amusement arcades and casinos. Class Q makes provision for Agricultural Buildings.
In addition to the conditions and restrictions imposed on these classes of permitted development, common to all of them is a grant of permission for the building operations which are "reasonably necessary to convert the building" to a dwellinghouse.

Conversion vs rebuild
Although the fundamental question as to what "conversion" means lies at the heart of these important rights, it has only recently been the subject of authoritative guidance in the case of Hibbitt v SSCLG [2016] EWHC 2853 (Admin).
The Applicant in Hibbitt sought to convert a steel-framed agricultural barn which was largely open on three sides to residential use.
The Applicant had demonstrated that the barn was structurally strong enough to support the loading which would come from the external works necessary to provide for residential use (and thus complied with the relevant NPPG guidance on this point - see Reference ID: 13-105-20150305).
However, the Court upheld the Inspector's view that, notwithstanding compliance with the NPPG guidance, the proposed redevelopment works (including in particular the construction of 4 external walls) were "so extensive as to comprise rebuilding" so as not to be works of "conversion" and thus fall outside the permitted development right.
While it is likely that casinos, amusement arcades and betting shops etc are unlikely to require works in respect of the fabric of the building that are extensive as might be required in respect of agricultural buildings, the court's judgment in Hibbitt is nonetheless important insofar as it makes clear that the (a) the dividing line between a "conversion" and a "re-build" (or "fresh build" as the Inspector thought more appropriate) is ultimately a matter of planning judgment; and (b) that dividing line will not always be clear cut.
Careful thought will therefore need to be given in every case as to whether any works to the fabric of the building are such as to go beyond the scope of "conversion"

Internal works

The judgment in Hibbitt also raises an interesting issue in relation to internal works.

Of course, works affecting the interior of the building are excluded from the definition of "development" by s.55(2)(a) of the Town and Country Planning Act 1990 so that no planning permission is required for them. At the same time, however, the internal works necessary to convert, for example, an amusement arcade, may well be very extensive and may well include significant structural alterations. The distinction between "conversion" and "re-building" in Hibbitt did not refer to any distinction between external and internal works and so the question arises whether the extent of internal works might be so great that the development could no longer be described as the "conversion" of a building so as to benefit from the permitted development right. This question remains unanswered by Hibbitt.

Furthermore, the recent decision of the Court in Eatherley v Camden LB [2016] EWHC 3108 (Admin) reaffirms the principle that there may be works which are part and parcel of the development permitted by the GPDO 2015 but which, by reason of their planning impacts, are a "separate activity of substance" not covered by the permitted development regime. Eatherley concerned the excavation of a basement at a residential dwelling and the Court held that it would be a matter of judgment as to whether the necessary engineering operations were a "separate activity of substance" for which planning permission was required. Wherever considerable structural works are required, it will always be necessary to consider whether they amount to a "separate activity of substance", thus falling outside the permitted development regime and requiring a full application for planning permission to be made.

The future

One thing is clear. While the expansion of the permitted development regime in respect of the conversion of buildings for leisure, agricultural and retail purposes has given rise to development opportunities, it has also given rise to questions and issues that remain to be resolved. Careful consideration will need to be given in every case to the scope of the development permitted under the Order and whether separate planning applications may need to be made in respect of the operational development necessary to facilitate the change in use.

Jack Parker is a barrister at Cornerstone Barristers specialising in planning. He is on the Attorney-General's Panel of Counsel.

Jack Parker

Cornerstone Barristers

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