

DELEGATED DECISION REPORT

SMD/2018/0277
Valid 24/05/2018

WYLDE GOOSE FARM
ASHBOURNE ROAD
BRADNOP

CONVERSION OF EXISTING
REDUNDANT BRICK BARN TO
SINGLE DWELLING HOUSE
INCLUDING ASSOCIATED
ACCESS, PARKING AND
GARDEN AREA.

(CERTIFICATE OF
LAWFULNESS - PROPOSED)

MAIN ISSUES

- Whether or not the proposed works are permitted development.

DESCRIPTION OF SITE

The application site is Wylde Goose Farm, Ashbourne Road, Bradnop. The site is accessed directly off Ashbourne Road via a lengthy access track which is shared with the main farmhouse. The building which is the subject of this application is a red brick and tile detached building of rectangular shaped proportions with wide gable ends and a range of decorative window and door openings of various shapes and sizes. Located to the south of the main house, the application building sits upon relatively level land at roughly right angles with the main house. Internally the building is quite open and the roof structure including the rafters and structural beams can clearly be seen.

The application site is located within the open countryside however the land does not have a Green Belt designation.

PROPOSAL

The application is for a Lawful Development Certificate for a proposed use or development. The scheme relates to the residential conversion of a detached brick building described by the applicant as an agricultural building. The application is accompanied by a series of plans illustrating the proposed elevations as well as the internal floor space arrangement of the intended living accommodation. It is noted that some of the submitted plans are contradictory. Two different internal accommodation layout plans have been submitted, they are labelled as Scheme 3 and Scheme 4. The layout of the ground floor accommodation is different but the most notable difference between the two schemes is that of the inclusion of a third bedroom (with ensuite) and a store room at first floor level. The Site Plan shows the intended parking area layout and garden area.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

SM92-0143	Conversion of redundant farm building to form two dwellings. Approved.
04/00670/FUL	Conversion of a barn to single dwelling (alteration to planning permission SM92-0143). Refused.
05/00502/FUL	Reinstatement and conversion of a redundant agricultural building to form 2 dwellings with associated residential curtilage, installation of package treatment plant and demolition of a redundant utilitarian cubicle building. Refused.
APP/B3438/A/06/2005483/NWF	Appeal against refusal of 05/00502/FUL. Dismissed.
06/00476/CL_PRO	Certificate of lawfulness for the conversion of farm buildings to living accommodation. Not PD.
DET/2017/0041	Change of use of agricultural building to a dwelling house. Refused.

CONSULTATIONS

Publicity

Site Notice expiry date: 27th June 2018.

Public Comments: None

OFFICER COMMENTS

This application has been submitted following on from refusal of application reference DET/2017/0041, a Prior Notification application for the change of use of an agricultural building to a dwelling house. The application was rejected for the following three reasons;

1. Insufficient information has been submitted to demonstrate that the site was solely used for an agricultural use as part of an established agricultural unit on (i) 20th March 2013, (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use or (iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development would begin. (Part X (Interpretation of Part 3) states that for the purposes of Part 3 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture and 'agricultural building' means a building (excluding dwelling

house) used for agriculture and which is so used for the purposes of a trade or business; 'agricultural use' refers to such uses. The proposal therefore fails to satisfy to Class Q1(a) of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

2. Class Q1(i) of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 allows only for building operations to the extent reasonably necessary for the building to function as a dwelling house and partial demolition to the extent reasonably necessary to carry out the building operations allowed by paragraph Q1(i)(i). Insufficient information has been submitted to demonstrate that the building is capable of functioning as a residential conversion with only works carried out within the limits of Class Q1(i).
3. Class Q(a) allows for a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order. The proposed external amenity space conflicts with the interpretation of 'curtilage' (for the purposes of Part 3) by reason of being larger than the area of land occupied by the agricultural building.

Class Q (Agricultural Buildings to Dwelling houses), Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 permits development consisting of;

- a) A change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and
- b) Building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

The provisions of Class Q should be read alongside paragraph W, (also within Part 3) which outlines the procedure in which to determine Prior approval applications under Part 3 and paragraph X (interpretation of Part 3).

The rejected DET/2017/0041 application was determined on 22nd February 2018. Unfortunately soon after the decision was issued it became apparent that (due to an error at registration stage) it had been done so after the expiry of 56 days following the date on which the application was received by the Local Planning Authority.

The Lawful Development Certificate application has now been submitted to secure formal confirmation from the Local Planning Authority that the development is permitted development and therefore lawful as a result of the prior notification application not being determined within the required 56 days. No additional information concerning the above three reasons for refusal has been submitted. Applicants must demonstrate that the development would be lawful.

It is acknowledged that the decision was issued outside of the 56 day timescale but it is clear from the decision notice (reasons outlined above) that the application failed

to comply with several parts of section Q.1 and therefore does not qualify as Permitted Development. Section Q.2 (Conditions) states that where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to a) transport/highways impacts; b) noise impacts; c) site contamination risks; d) flooding risks; e) whether location or siting of the building makes it otherwise impractical or undesirable for the building to change from an agricultural use to a C3 use; f) design/external appearance of the building. The paragraph clearly states that the provisions of paragraph W of this Part (3) also apply.

The council contends that as the rejected application (DET/2017/0041 – prior notification) did not comply with a number of the Q.1 criteria, the Q.2 conditions are not relevant/triggered and nor is the procedure outlined within paragraph W. In order for the applicant to have benefitted from the council not meeting the 56 day deadline the scheme must have been permitted development in the first place, as it was not permitted development the applicant would not have benefitted from deemed consent and as such this application for a lawful development certificate should be refused. This reasoning has previously been considered and accepted by appeal decisions.

APP/J0405/X/16/3150189 dismissed an appeal against non-determination for a Lawful Development Certificate for the conversion of an agricultural building to 3 residential dwellings. A prior notification (Class Q) application had previously been refused; the appellants relied upon paragraph W(11) and the fact that Aylesbury Vale District Council refused the prior notification application outside of the 56 day timescale. The Inspector determined that irrespective of the council not meeting the timescale the development was not lawful as it did not comply with the limitations in Q.1. The Inspector stated that ‘if the restrictions in Q.1 are not met then a proposal cannot be permitted development whether or not the council has responded and, if implemented, the development will be liable to be enforced against.’

An appeal (APP/K1128/W/15/3003172 (South Hams District Council) relating to the conversion of an agricultural building to a dwelling was dismissed. The Inspector found that the application was not permitted development as it failed to meet paragraph Q.1(i). The appellant also questioned whether the council had met the 56 day determination period however the Inspector found that as the application was not permitted development the question of timescales and deemed consent was not relevant.

APP/Z3825/X/17/3170049 dismissed an appeal for a lawful development certificate. Horsham District Council refused a prior approval Class Q application outside of the statutory determination period, the Inspector concluded that the conversion did not benefit from deemed consent as the scheme did not meet all of the tests within Q.1 and that the council’s refusal to grant a lawful development certificate was well-founded.

APP/C1625/W/15/3033325 – (Stroud District Council). Dismissed appeal where the Inspector found that notwithstanding the fact that the Council issued a decision

outside of the 56 day timeframe, the proposed works were not Permitted Development in accordance with Q.1 The Inspector stated that 'regardless as to whether or not such a determination was made within that timeframe, in order for the permission to be deemed to have been granted, it must firstly be established as to whether the proposal would be within the scope of permitted development. Consideration in relation to prior approval is a follow on condition stage under paragraph Q.2 which can therefore only apply if the development is otherwise permitted development.'

It is noted that this application draws parallels to the cases above (there are many more similar cases; these are just quoted as examples). Whilst not all of the appeal decisions relate to the issuing of a lawful development certificate all of them clarify the point that if the proposal is not Permitted development in the first place (Q.1 compliant) then the provisions within the Q.2 conditions are not triggered and the timeframe for issuing a decision is irrelevant. For these reasons it is recommended that the certificate of lawfulness application is refused.

Finally it is noted that the applicant has submitted a copy of an email sent by the Operations Manager for Development Services advising that the works appear to be Permitted Development on the basis that the 56 days had been missed. The email goes on to state that the client may wish to consider submitting a proposed lawful development certificate to confirm the position. Whilst advice is given in good faith, such emails are the informal opinion of a planning officer based on the information available at that time. They are not a formal determination under the Planning Acts. The only way to secure a formal determination is by the submission of an LDC application to allow for the details of the case to be considered in depth. In this instance a significant amount of time has been spent in searching for relevant appeal decisions/case law to be considered as part of the determination of this application. This information was not available to the Operations Manager at the time at which the informal opinion was given by email. On further consideration, the case law conclusions are very clear that irrespective of whether or not an LPA issues a decision within the statutory timeframe the proposal is not permitted development if it does not comply with paragraph Q.1 of Class Q. Under these circumstances the LPA has no option but to conclude that a LDC should be refused.

OFFICER RECOMMENDATION : Refuse.

Case Officer: Lisa Jackson

Recommendation Date: 19/07/2018.

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council

