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PLANNING STATEMENT IN SUPPORT OF PRIOR NOTIFICATION APPLICATION FOR THE CHANGE OF USE OF AN EXISTING AGRICULTURAL BUILDING INTO A SINGLE DWELLING

ADDRESS : HEATH HOUSE FARM COTTAGE, OSTLERS LANE, CHEDDLETON, STAFFORDSHIRE, ST13 7DQ

APPELLANT : MR J CARR

DATE : JANUARY 2020 JOB No. : 2018-2362

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1.0 INTRODUCTION

Sammons Architectural Ltd have been appointed by Mr J Carr to prepare and submit to Staffordshire Moorlands District Council a prior notification application submitted under Schedule 2, Part 3, Class Q (a) and (b) of the General Permitted Development Order 2015 (as amended 2018).

This resubmission follows a refusal reference DET/2018/0043 dated 28th January 2019. The reasons for refusal are listed below: -

1. The proposed change of use would amount to a "re-build" as opposed to a "conversion" within the context of the 'Hibbitt' High Court Judgement (2016) and as such does not constitute a form of permitted development under Schedule 2, Part 3, Class Q of the General Permitted Development Order 2015 (as amended 2018).

2. The application is not supported by any ecological survey and therefore the proposed change of use may result in significant harm to protected species, contrary to paragraph 175 of the NPPF; thereby resulting in an unsustainable form of development, contrary to paragraph 11 of the NPPF.

An appeal against this decision was determined on the 14th of August 2019. A copy of the appeal decision letter is attached to this submission. The appeal was dismissed. The principal issue raised in the appeal was the extent to which an existing agricultural building can be altered within the prior notification process. The Inspector agreed with the Council that the extent of the works proposed in the application was excessive and that the replacement of the existing roof and three of the sides of the building amounted more to replacement than conversion. This resubmission has taken full note of this decision and removes those elements of the development that took the proposal away from a “conversion” proposal.

The Inspector also noted in paragraph 12. Although the ecological concerns raised by the Council in Reason 2 was not a determinative matter within the remit of the appeal and noted that the “safeguarding of protected species and their habitats would be dealt with under other legislation where set procedures apply before commencement of any development” rather than within the remit of the application.

2.0 SITE DESCRIPTION

The application site comprises of part of an agricultural field which lies on the western side of Ostlers Lane, Cheddleton which contains a number of portal framed buildings. The application building comprises of a portal framed building which was approved as a replacement building by Staffordshire Moorlands District Council in 2002 under reference number SMD/2002/0041. It is constructed from a mix of concrete panels, facing brickwork, blockwork, Yorkshire boarding and steel profiled sheeting, and lies approximately 84m to the north of the existing arrangement of buildings, and is accessed via a narrow, unmade track.

3.0 THE PROPOSAL

It is proposed to convert the existing agricultural building into a single dwellinghouse under the Permitted Development rights afforded in Part 3 Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015. The scheme as submitted would provide a 4-bedroom dwelling with open plan living kitchen and dining arrangement with separate utility room and family bathroom. All of the accommodation would be contained on a single floor with the existing large door opening retained and fully glazed. The existing fibre cement corrugated sheeting and the

existing profiled side cladding would be retained, as would the existing concrete panels. Four new window openings would be created in the northern elevation of the building to provide natural light to the proposed bedrooms.
Externally the proposed domestic curtilage would be separated by a timber post and rail fence with a mixed native species hedgerow planted behind. A designated parking area for three cars and a bin storage area would also be provided. The proposal is shown on the submitted drawings and is accompanied by a structural survey which should be read in conjunction with this statement.

4.0 PLANNING POLICY

This is an application for a change of use of an agricultural building to a single dwellinghouse with details of associated operational development. The submission has been made in order to determine whether or not the prior approval of the Council is required before the development can proceed in accordance with the provisions of Part 3 Class Q of The Town & Country Planning (General Permitted Development) (England) Order 2015.

Class Q of Schedule 2 of the GPDO permits development consisting of the change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order (Class Q(a) development). Additionally, Class Q permits building operations reasonably necessary to convert the building to a use falling within Class C3 use (Class Q(b) development).

The General Permitted Development Order also defines "development not permitted", and this states that: -

Development is not permitted by Class Q if -

Q1 (i) the development under Class Q(b) would consist of building operations other than -

(i) the installation or replacement of -

(aa) windows, doors, roofs or exterior walls, or

(bb) water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwellinghouse; and

(ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).

PLANNING PRACTICE GUIDANCE

The Planning Practice Guidance provides formal guidance on how to interpret the legislation. Paragraph: 105 Reference ID:13-105-20180222: Revision date 22.02.2018 states:-

Building works are allowed under the right permitting agricultural buildings to change to residential use: Class Q of Part 3 of Schedule 2 to the Town & Country Planning (General Permitted Development) (England) Order 2015, as amended. However, the right assumes that the agricultural building is capable of functioning as a dwelling. The right permits building operations which are “reasonably necessary” “to convert the building”, which may include those which would affect the external appearance of the building and would otherwise require planning permission. This includes the installation or replacement of windows, doors, roof, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary to carry out these building operations. It

is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.

For a discussion of the difference between conversions and rebuilding, see for instance the case of Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin).

Internal works are not generally development. For the *building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q.*

Paragraph: 109 Reference ID: 13-109-20150305 | Revision date: 05 03 2015 states;

When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval.

There may, however, be circumstances where the impact cannot be mitigated. Therefore, when looking at location, local planning authorities may, for example, consider that because an agricultural building on the top of a hill with no road access, power source or other services its conversion is impractical. Additionally, the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.

When a local authority considers location and siting it should not therefore be applying tests from the National Planning Policy Framework except to the extent these are relevant to the subject matter of the prior approval. So, for example, factors such as whether the property is for a rural worker, or whether the design is of exceptional quality or innovative, are unlikely to be relevant.

5.0 THE PLANNING CASE

The Guidance advises that the starting premise for Class Q is that the permitted development right grants planning permission subject to the prior approval requirements. The provisions of the GPDO require the local planning authority to assess the proposed development in respect of transport, highways and noise impacts of the development and also the flooding and contamination risks on the site, and whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwellinghouse. It is also necessary to assess whether prior approval would be required regarding the design or external appearance of the building.

In order to show that the above scheme complies with the permitted development requirements each criterion is assessed against the proposal below:-

Development is not permitted by Class Q where (a)

the site was not used solely for an agricultural use, as part of an established agricultural unit:

(i) on 20th March 2013;

(ii) in the case of a building which was in use before that date 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 of development under Class Q begins.

The applicant was born at Heath House Farm House on the opposite side of Ostlers Lane and resided there until he was married when he moved into the neighbouring property Heath House Farm Cottage. Following the death of the applicant's father the family farm was subdivided with the applicant retaining the farm cottage and 25 acres of land on the opposite side of Ostlers Lane. This has historically been farmed by the Carr family and forms part of a genuine established agricultural holding. In addition to the land owned, the applicant also rents a further 120 acres of pasture land at Ashcombe Park on a long term tenancy. The land is used to support the farming of approximately 120 beef cattle and is registered with DEFRA as an agricultural holding under the holding number of 37 065 0263.

The application building which was permitted on the basis that it was a replacement for a smaller building has been clearly built and intended for agricultural use and has been in use as such for all of its time. The building is currently used to store machinery and fodder including straw and hay. It was in use for those purposes when the Appeal Inspector visited the site. It is therefore clear from the above that the site is an established agricultural unit which has been occupied for the purposes of the agriculture and was in such use on the 20th March 2013. The application building forms part of the established agricultural holding of the farm and is being used for agricultural purposes and as such is considered to accord with criterion (a).

(d) the development under Class Q (together with any previous development under Class Q) within an established agricultural unit would result in either or both of the following: -

(i) a larger dwellinghouse or larger dwellinghouses having more than 465 sq metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;

(ii) the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeding 5;

The existing agricultural building has a footprint of 245 sq metres. The proposed conversion would have a floor area of 245 sq. metres at ground floor. This is clearly below the 450 sq. metre limit. This is the first dwelling to be provided under Class Q on the agricultural holding and as such the proposal is considered to accord with criterion (d).

(e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained: -

The site is not occupied under an agricultural tenancy and as a consequence the proposal is considered to accord with criterion (e)

(f) less than one year before the date development begins -

(i) an agricultural tenancy over the site has been terminated, and

(ii) the termination was for the purpose of carrying out development under Class Q, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use,

The application site was not occupied under an agricultural tenancy in the period of 12 months leading up to the date of this submission and therefore criteria (d) and (e) are not considered applicable to this proposal.

(g) development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit since 20th March 2013, or where development under Class Q begins after 20th March 2023, during the period which is 10 years before the date development under Class Q begins.

No development under the provisions of Classes A (a) or B (a) has been carried out on the holding since 20th March 2013. Furthermore, there is no intention to carry out any such works in the foreseeable future. The proposal is therefore considered to accord with criterion (g).

(h) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

The proposed development will not result in the external dimensions of the building extending beyond the existing external dimensions of the building and the conversion shall be undertaken within the shell of the existing building. The proposal is therefore considered to accord with criterion (h).

Paragraph Q.1. (i) places restrictions on the building operations which can be undertaken. It states that development is not permitted if it would consist of building operations other that

(i) the installation or replacement of -

(aa) windows, doors, roofs or exterior walls or

(bb) water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwellinghouse; and

(ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i);

The submitted drawings illustrate the proposed layout and elevations of the proposed conversion. A comprehensive structural survey has been undertaken and in summary the only building operations proposed amount to the installation of windows and doors, creation of a new blockwork wall internally to create an insulated cavity. The external walls which are a mix of concrete panels, timber and cement fibre sheet will be retained. The existing roof will be retained. A new ceiling will be provided over the bedroom areas with the ceiling over the open plan living space retained at full height. The existing concrete ground floor slab is

to remain in situ with insulation laid over the concrete before applying a sand screed. As a consequence, the proposal is considered to accord with criterion (i).

(j) the site is on article 2(3) land;

(k) the site is or forms part of

(i) a site of special scientific interest;

(ii) a safety hazard area;

(iii) a military explosives storage area

(l) the site is, or contains, a scheduled monument;

(m) the building is a listed building.

Criteria j to m are not relevant to this application as none of these designations apply.

4.3 As a consequence of the above considerations it is submitted that the proposed development accords with all of the relevant provisions of Class Q. In accordance with the Order we request that a determination as to whether the prior approval of the Local Planning Authority is required for the Class Q(a) development in this instance in regard to:-

a) Transport and highway impacts of the development;

b) Noise impacts of the development;

c) Contamination risks on the site;

d) Flood risks on the site; or

e) Whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and

f) the design and external appearance of the building.

4.4 This prior approval submission has been made in response to the aforementioned requirements and this statement will now consider the proposal in the context of the above matters. In doing so consideration has been given to the provisions of the National Planning Policy Framework.

(a) Transport and highway impacts of the development

The proposed dwelling will be accessed via the existing track that serves the site off Ostlers Lane and adequate off-road parking is provided as part of the scheme. Taking into account the fact that this access is already used for agricultural purposes, it is considered that the proposed development will not give rise to any adverse highway safety impacts. As such the proposal is considered to be acceptable in the context of criterion Q.2(1)(a) above.

(b) noise impacts of the development

The proposed conversion of the agricultural building to a single dwelling will not derive any adverse noise impacts and there are no surrounding uses that would give rise to harm to future occupants of the building. The proposal is therefore considered to be acceptable in this regard.

(c) contamination

Historically and to date the site has only ever been used for agricultural purposes. It is proposed that the existing building foundations are utilised and there will be minimal ground disturbance or excavation. Previous excavations have not identified any ground contamination whatsoever at this site. All excavated material for service trenches will be retained on site. The existing building does not contain any harmful materials that would propose any contamination risk. In the unlikely event that any contaminants are identified safe disposal advice will be sought from the Environment Agency. The proposal is therefore considered to be acceptable in the context of criterion Q.2(1)(c).

(d) flooding risks on the site

A review of the Environment Agency's website reveals that no part of the site is in flood zone 2 or 3 nor is it at risk of potential flooding from surface waters. The proposal is therefore considered to be acceptable in the context of criterion Q.2.(1)(d) above.

(e) Impractical or undesirable

The Planning Practice Guidance (updated 5th March 2015) confirms that "the permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead the Local Planning Authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house".

The guidance goes on to state that when considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That an agricultural building, is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval.

The guidance goes on to state that there may, however, be circumstances where the impact cannot be mitigated. Therefore, when looking at location, local planning authorities may, for example, consider that because an agricultural building on the top of a hill with no road access, power source or other services its conversion is impractical. Additionally, the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.

The guidance furthermore confirms that when a local planning authority considers location and siting it should not be applying tests from the National Planning Policy Framework except to the extent that these are relevant to the subject matter of the prior approval. So, for

example, factors such as whether the property is for a rural worker or whether the design is of exceptional quality or innovative are unlikely to be relevant. Recent appeal decisions have corroborated this advice confirming that prior notifications cannot be refused on the basis of not constituting sustainable development, as to reach such a conclusion it is necessary to consider the NPPF as a whole, whereas for the purposes of the prior notification only the tests of the NPPF relevant to the subject matter of the prior approval can be considered.

To compare with the examples cited in the Planning Practice Guidance the application building is structurally sound and easily capable of conversion. It lies within close proximity to other residential dwellings and as such its conversion would not result in an isolated dwelling in the countryside. It benefits from existing vehicular access and off-road parking and garden areas can easily be accommodated. Furthermore, there are no surrounding land uses that would result in detrimental harm to the amenity of future occupiers. It is therefore considered that the proposal is acceptable in the context of criterion Q.2.(1)(e) above.

(f) Design & External Appearance

The resultant building will retain the form and appearance of the original building. The conversion will be carried out within the shell of the existing building and existing door and window openings will be re-used where possible with new openings kept to a minimum. The design and external appearance of the proposal is therefore considered to be acceptable in the context of criterion Q.2.(1)(f) above.

4.5 The appeal application was accompanied by a detailed structural report which assessed whether the building was suitable for conversion without the introduction of new structural elements. The Inspector report concluded that the building was in a good condition, structurally sound with no evidence of subsidence, bulging, leaning or other movement. On the basis of the visual inspection it was considered that the building did not appear to be outside of the potential for redevelopment and that it was capable of conversion. The structural survey has been undertaken by a suitably qualified person and the building as a whole was assessed for its suitably for conversion to domestic use and found to be structurally sound and capable of conversion without the need for new structural elements.

The planning statement which accompanied the application confirmed the extent of building operations proposed amount to the installation of windows and doors, creation of a new blockwork leaf internally around the perimeter of the building to create a cavity which will be insulated. Where concrete panels are present these shall be replaced with brickwork to match the front gable. The existing roof will be replaced and the existing vertical steel cladding will be removed and replaced with timber boarding. A new ceiling will be provided over the bedroom areas with the ceiling over the open plan living space retained at full height. The existing concrete ground floor slab is to remain in situ with insulation laid over the concrete before applying a sand screed. These proposed building operations would be an integral part of the proposed conversion rather than a measure designed to address any existing structural inadequacies or to replace the existing form of the building. The building is structurally sound and capable of conversion to a dwelling without additional structural elements which is confirmed in the accompanying survey which was submitted as part of the application.

The proposed development utilises existing openings for windows and doors where possible. However in order for the building to satisfactorily function as a residential dwelling additional openings are required. The decision notice that is the subject of this appeal does not make it clear what new structural elements are considered to be necessary to facilitate the conversion nor has the Council provided any supporting evidence to show that new structural elements are required or provided its own structural assessment of the application building.

In the refusal notice the Local Planning Authority refer to the application as a rebuild rather than a conversion and make reference to the Hibbit case. It is considered that this comparison is significantly flawed and that the application building is materially different to the building referred to in the appeal case. The structure considered in the "Hibbit" case (with reference to the appeal decision APP/P3040/W/16/3142052) is significantly and materially different to the appeal building in a number of ways. In that case the Inspector describes the building as "an open sided steel framed structure with a monopitched roof.... It is open on two sides with a single skin steel panel to the rear and along part of one further side. This sits above concrete panel to around a metre in height. The concrete panel does not appear to be attached to the floor slab". In the Hibbit case, the Inspector describes the works proposed to include "structural infill panels would be used to construct walls and ceiling within the existing frame. Steel box profile cladding, some of which is currently in place and would be reused, would be used to clad the front and sides. In this case, the building before me would not be capable of functioning as a dwelling without the building works outlined above which include the construction of all four exterior walls. This goes well beyond what could reasonably be described as conversion".

Mr Justice Green who judged the Hibbit Case at the High Court carefully considered the distinction between conversion and rebuild and in doing so reference paragraph 105 to the NPPF which states that "Building works are allowed under the change to residential use. The permitted development right under class Q assumes that the agricultural building is capable of functioning as a dwelling ....The right allows for the installation of or replacement of windows, doors, roofs, exterior walls...to the extent necessary for the building to function as a dwellinghouse...It is not the intention of the permitted development right to include the construction of new structural elements for the building". Mr Justice Green foes on to state in paragraph 35 of his decision "a development which includes "new structural elements is one that involves a degree of rebuild and is not a conversion".

Turning to the appeal building as existing it is clear that it already comprises all the structural elements required to function as a dwelling. The appeal structure as existing comprises of a fully enclosed agricultural building with a steel portal frame and concrete floor. All four elevations are extant and substantial as shown on the submitted drawings. The steel portal frame which will be retained is adequate for the load bearing and will provide the structure of the proposed dwelling. All four elevations are existing and the solid concrete floor is to be retained. Whilst it is accepted that the scheme as submitted proposes to remove the existing concrete panels and replace with brick infills to match that on the existing eastern gable this has been done to improve the external appearance of the building. Similarly the replacement of the roof covering with a similar material and the removal of the vertical cladding and its replacement with horizontal boarding is also an improvement visually. The partial replacement of the external cladding material with a different material has also been held not to be outside the scope of Class Q to replace elements of existing cladding with new material as concluded by the Inspector in the appeal at Adeney House Farm (APP/C3240/W/17/3181573 - see Appendix 1).

In addition to the above it is considered that a recent appeal decision relating to Hayes Gate Farm, Star Bank, Oakamoor, Staffordshire (APP/B3438/W/18/3202031 - see Appendix 2) is a material and

significant consideration. In this case Staffordshire Moorlands District Council refused prior notification of the conversion of a redundant agricultural building to form a single new dwelling. The form and structure of the building considered in this appeal is very similar to the appeal building at Heath House Farm Cottage. The issue of whether the agricultural building was capable of conversion was carefully considered by the Planning Inspector , who also considered the Hibbit precedent in his decision to grant the prior approval in his decision.

It is therefore respectfully submitted that, as a function of the many similarities between the buildings in the current and determined appeal the Planning Inspector's decision to grant approval under Schedule 2, Part 3, Class Q for the conversion of the building to form a dwelling contained in APP/B3438/W/18/3202301 is a strong determinative in the consideration of this case.

IMPACT ON BIODIVERISTY

The second reason for refusal relates to the impact of the proposal on biodiversity. Whilst no ecological survey was submitted with the application it is considered that the appeal building has little if any potential for use by bats. The form, design and materials of the building are not conducive to bat habitat and no cracks or crevices that could be used by crevice dwelling bats for roosting purposes appear to be present externally. Furthermore, there would not appear to be any evidence of bat presence internally and its use for animal housing and storage means that the additional disturbance through its use and smells would also render the building unsuitable for bats to roost. No evidence of nesting birds or bat presence was identified either externally or internally. Due to the amount of potential ingress/egress points and suitable roosting features, the buildings were deemed as having 'negligible' potential for bats to roost and 'low' potential for birds to nest. On this basis it is not considered that an ecological survey is necessary however should the Inspector require one then the appellant would be amenable to undertaking such a survey as a condition of any permission granted.

6.0 CONCLUSION

Prior approval is sought for the conversion of an agricultural building at Heath House Farm Cottage, Cheddleton in accordance with the terms of the Town & Country Planning (General Permitted Development) (England) Order Schedule 2, Part 3, Class Q.

The application DET/2018/0043 was refused on two grounds relating to the suitability of the building for conversion and the absence of any ecological survey.

It is contented, for the reasons set out above, that the building is clearly suitable for conversion and does not require re-building, and as such is in conformity with Class Q1 (i) of Part 3 of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015.

It is also contended that the appeal building offers little if any potential for either bats or birds and that the proposal would not be detrimental to biodiversity or the established ecological interests of the site.

It is therefore respectfully requested that the appeal is allowed and that prior approval is granted for the appeal proposal as set out in application DET/2018/0043.