

DELEGATED DECISION REPORT

DET/2021/0023
Valid 08/06/2021

BIRCHENDALE FARM
HOLLINGTON FIELDS
HOLLINGTON

CHANGE OF USE FROM
AGRICULTURAL BUILDING TO
DWELLING

(NOTIFICATION - CHANGE OF
USE PRIOR APPROVAL)

MAIN ISSUES

- Whether or not the application and proposal details as submitted comply with GPDO (2015) in particular Schedule 2 Part 3 Class Q – permitted change of use
- transport and highways impacts of the development,
- noise impacts of the development;
- contamination risks on the site;
- flooding risks on the site;
- 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 (dwelling houses) of the Schedule to the Use Classes Order;
- the design or external appearance of the building;
- the provision of adequate natural light in all habitable rooms of the dwelling house;
- provisions of Part 3 paragraph W (procedure for applications under Part 3 prior approval) including “assessments of impacts or risks”.
- interpretation of Part 3 – paragraph X

DESCRIPTION OF SITE

The application site comprises an extended former Dutch Barn with steel frame, breeze block lower wall sections and metal sheet panel cladding above. The roof is of corrugated cement fibre boards.

The building is obviously dilapidated with some cracking evident in the block work. There are two generations of steel work – an obviously older Dutch barn frame to the taller section and more recent steel work to form what is effectively a lean-to along the long south side elevation.

The building stands 10m to the east of a previously extended onetime farm house with which it shares ownership. To the west of the house are two small stone outbuildings of obvious age and character. Beyond these there is evidence of floor and footings to further outbuildings now demolished. Land with the property overall extends in total to c.2.6ha or 6½ acres.

The original vehicular access came in along the north side of the buildings from the road to the east. This is now out of use and impassable to vehicular traffic.

A new drive to the property under a 2004 consent sweeps in on a curving route from the south east across the field at the front (south).

A public footpath follows the old access route and a second public footpath joins with this close to the east side of the application building and heads south west.

Internally the building does not appear to be in agricultural use. Although a small stash of baled straw was seen in the rear north east corner the predominant use at the time of the LPA visit was for miscellaneous storage, some of a domestic nature, and otherwise for workshop activities of a hobby nature. The LPA was informed that a 'mini-digger' seen outside is normally kept in the building. No items of agricultural use were apparent and it was openly stated that farming activity at the property had ceased some years ago when a small sheep flock had been kept as a hobby along with other livestock. It was said that lambing had taken place in one of the outbuildings now demolished at the west side of farmhouse.

PROPOSAL

To change the use of the building to residential accommodation. The application is accompanied by a structural survey and an ecology survey.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Local Plan (adopted 9th September 2020)

SS1 Development Principles
SS10 Other Rural Areas Area Strategy
DC1 Design Considerations
DC2 The Historic Environment
DC3 Landscape and Settlement Setting
H1 New Housing Development
NE1 Biodiversity and Geological Resources
NE2 Trees, Woodland and Hedgerows
T1 Development and Sustainable Transport

National Planning Policy Framework February 2019

Paragraph(s) 1 – 14;
Section(s) 4 – Decision making; 8 Promoting healthy and safe communities; 11 – Making effective use of land; 12 – Achieving well designed places; 15 – Conserving and enhancing the natural environment; 16 – Conserving and enhancing the historic environment.

Adopted Supplementary Planning Documents/Guidance (SPD/G):

- Space About Dwellings SPG
- Design Principles SPG
- Design Guide SPD adopted 21st February 2018

Local Plan Supporting Evidence Documents:

- Landscape and Settlement Character Assessment (2008)

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

None on record

CONSULTATIONS**Publicity**

Site Notice expiry date: not posted

Neighbour consultation period ends: 1st July 2021

Press Advert: N/A

Public Comments

None received

Town / Parish Comments

Checkley Parish Council – none received

Environmental Health

No objection but conditions recommended.

Staffordshire County Council Highways

No fundamental objection but requests a parking plan for two vehicles.

SMDC Conservation Officer

The building has no heritage value – no further comments unless requested.

Peak and Northern Footpaths Society and Ramblers' Association

Note the two PROW – advise and request that these must not be obstructed and to be kept accessible and available for use at all times. Concern expressed that whilst one is referred (east west along the track) the second path from the south west is not referenced in the application.

Severn Trent Water

Minimal impact on the public sewer system therefore no objections and no requirement for a drainage condition.

OFFICER COMMENTS**Principle of Development**

Subject to a series of detailed criteria set out under Part 3 of Schedule 2 to the General Permitted Development Order (2015) (as amended) Class Q, the conversion of a building “from a use as an agricultural building” and one that was part of an established agricultural unit on 20th March 2013, or when last in use prior to that, can be converted to a dwelling house (Class C3 use). Agricultural building is

specifically defined at paragraph X to part 3 as meaning a building **“used for agriculture and which is so used for the purposes of a trade or business”**.

The local planning authority may refuse an application where, in the opinion of the authority—

- (a) the proposed development does not comply with, or
- (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

The local planning authority must, when determining an application—

- (a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) [highways] or (6) [flooding] and any notice given under sub-paragraph (8) [public consultation];
- (b) have regard to the NPPF(2019) so far as relevant to the subject matter of the prior approval, as if the application were a planning application;

Several paragraphs of guidance specific to Class Q are provided by the Government in its National Planning Guidance on-line. This states that the right to make the change of use:

“...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, roofs, exterior walls, water, drainage, electricity, gas or other services 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 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.”

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.

It has not been established when the application building was erected. Air photos show that it was present in its current layout at least by 2003.

There are two main issues for the LPA specific to this application:

- a) this is not a building in agricultural use – paragraph X defines ‘agricultural building’ as **“a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business; and “agricultural use” refers to such uses”**;

- b) there must be significant doubt that this building is capable of conversion without significant re-building and the works are therefore beyond the scope of what is permitted by Class Q.

Building use status

There is no evidence that the building is used for agriculture and that it is so used for the purposes of a trade or business. Moreover, there is significant evidence to the contrary. Notwithstanding that at the time of the LPA site visit (2nd August 2021) a small quantity of baled straw was stored in one corner of the building occupying c. one 1/9 of the floor area or 13% and stacked to a height of just c. 2m the overriding use was part general domestic overspill storage and chiefly as a hobby workshop. These observations are further confirmed by photographs contained in the submitted ecology and structural survey reports.

C2C Consulting Engineers surveyed the building on 15th May 2020 and their report is dated 18th May 2020. Photographs at appendix A to their report show a ride-on lawn mower (p.17) and several motorbikes (pp.19, 20 and 23) at least four, including one mounted on a work bench.

Evolution Ecology Ltd surveyed the building on 16th March 2020. Photographs with the report at pages 28 and 29 reveal a similar scene and a vintage car, seen outside the building in the C2C report, is parked inside with boot and bonnet open.

The agent says in the planning statement:

“The applicant’s family bought the site in December of 1999. The barn was in situ in its present condition and appearance at that time and used for storing hay and farm vehicles, tools and implements. The barn is on a smallholding and has a limited use for hay storage.”

The building may have been in use for agriculture at some point in time past although the details of this use are not established in the application submission nor is it established that any such use if it took place was, “for the purposes of a trade or business”. The building is however found to have a current use which is not agricultural and the evidence in the application submissions is that this use was also prevailing in March 2020 with no indication or evidence of agricultural use at that time.

Paragraph Q.1 of Class Q rules out eligibility of a building not used solely for agriculture on 20th March 2013 or, if in use before that date but not on that date, when it was last in use. Whilst the March 2013 use has not been established in the application submission, further consideration is not necessary as the current (and recent past) use of the building is found not to be agricultural in any event. For this reason it is not a building to which Class Q can be applied.

Capacity for conversion – structural considerations

Although the report by C2C on the one hand concludes in, their terms, at 4.13 that:

“In summary the existing farm building would be suitable for conversion without any significant rebuild or replacement of the existing building structure”

this is preceded by a series of in effect caveats including:

- The original barn structure is constructed in very lightweight steel with unrestrained columns that are slender for their height
- Foundations were not inspected and therefore these would need to be exposed and confirmed adequate.
- The lean-to section is noted as “most likely” would be adequate for the proposed conversion
- It is recommended that the foundation is inspected to the right side wall and the steel rafter has a connection onto this wall. This is required for vertical support and also to restrain the top of the blockwork
- concrete projections around the base of the left side steel columns need to be considered within the design. Alternatively, if these need to be removed further investigation is required to determine if the steel columns extend below the slab level.

The PPG refers readers to the Hibbitt case (2016) heard by Mr Justice Green in the High Court and addressing to what extent re-building might be allowed for by Class Q. He noted that the concept of “conversion” was contained in the overarching provisions of class Q and therefore: “introduces a discrete threshold issue such that if a development does not amount to a “conversion” then it fails at the first hurdle”. The later provisions of Q.1 that allow “building operations” that may be “reasonably necessary” are subordinate to the primary threshold which is one of “conversion” [para.26 in the judgement].

The case followed a dismissed appeal in which the building had been held out as being structurally sufficient to take the loading of the of new walls and the Inspector had found no evidence to counter this and had been provided with structural calculations but found nonetheless the necessary building work in other respects to go well beyond conversion.

Mr Justice Green considered the matter as to what was conversion or re-build to be one of “legitimate planning judgment as to where the line is drawn”. He coined the term “fresh-build” to represent a situation where the structural frame would remain but the walls would in effect be built afresh commenting,

“In fact a more apt term than “rebuild”, which also encapsulates what the Inspector had in mind, might be “fresh build” since rebuild seems to assume that the existing building is being “re” built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building.”

From the site visit and examining the building as it stands and noting the architect’s drawings the LPA finds that the replacement exterior facing building work would

amount to building afresh and not simply a conversion of the existing building even if, notwithstanding the structure report and its caveats, the existing frame can be used.

Having found that the proposal does not comply with the opening provisions of Class Q, being neither an agricultural building (as defined) nor, due to the extent of fresh build involved, being one of 'conversion', it is not necessary for the LPA to consider the remaining matters.

This stance is supported by the judgement in *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250 which stated that 'on an application to an authority for a determination as to whether its "prior approval" is required, the authority is bound to consider and determine whether the development falls within the definitional scope of the particular class of development'. This judgement was applied in *R (oao Smolas) v Herefordshire Council* [2021] EWHC 1663 (Admin), here it was held that the LPA in that particular case did not act unlawfully in deciding that the proposed development would fall outside of the scope of Part 6, Class A and so prior approval should be refused for the proposed development.

Paragraph W (3) expressly provides for the LPA to refuse an application where "in the opinion of the authority the development does not comply.

CONCLUSION / PLANNING BALANCE

As discussed in the report the structure subject of this application does not qualify as an agricultural building under the terms of Class Q and secondly, the work involved would be of a scale and extent that it would amount to new build work exceeding what can reasonably be regarded as 'conversion'. There can be no doubt that a 'conversion' could not be achieved with any lesser amount of work and indeed there is every prospect that in fact the building, even so far as it is apparently proposed to be retained, may not be suitable once the further investigations shown to be necessary by the structural engineer's report are carried out.

OFFICER RECOMMENDATION : refuse

Case Officer: Arne Swithenbank

Recommendation Date: 3rd August 2021

X 

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council

