

Delegated Report

Planning Ref: 24/00887/P3CQ

Applicant: Mrs Vann

Ward: Twycross Sheepy & Witherley



Hinckley & Bosworth
Borough Council

Site: 39 Main Road, Ratcliffe Culey, Atherstone

Proposal: Notification to determine if Prior Approval is required for the change of use and conversion of four agricultural buildings to form six dwellinghouses (Class C3)

1. Recommendations

1.1. Refuse Prior Approval subject to:

- Planning reasons outlined at the end of this report.

2. Planning Application Description

2.1. This is an application for prior notification under Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the conversion of 3 existing steel framed agricultural buildings and one brick barn, into six dwellinghouses at 39 Main Road, Ratcliffe Culey.

2.2. The proposal was amended following Officer comments regarding the curtilage of H1, H5 and H6, as well as concerns over the residential amenity (overbearing/insufficient natural light) for H3 and H4. The curtilage of Building 1 (H1) was reduced significantly, and most of the private amenity space previously within the curtilage of this dwelling is now open space within the site. If the application was successful, it would be recommended that this land is removed from the red line plan for the avoidance of doubt and because its inclusion is not relevant to the provisions of Class Q which relate to the change of use of land and its curtilage only.

3. Description of the Site and the Surrounding Area

3.1. The site measures approximately 1.6 acres and is located on the northeastern edge of Ratcliffe Culey. The majority of the site as outlined by the submitted red line plan does not fall within the settlement boundary. Access to the site is available from Main Road. Several agricultural buildings are located to the north of the site, one of which ("Barn B" or H4) has recently had prior approval granted for conversion to a dwellinghouse (20/01292/P3CQ). The proposal before us is a materially different scheme, where 20/01292/P3CQ included the demolition of buildings 3 and 5 to facilitate the conversion. This consent has also lapsed.

3.2. There are a pair of semi-detached properties located to the southwest of the application site with a public house located opposite. There is a public footpath between the farmhouse and adjacent semi-detached properties. The original farmhouse dwelling adjacent to this site (within the Applicant's ownership) has been demolished and has extant outline consent for a replacement dwelling.

4. Relevant Planning History

15/00789/GDOD

- Demolition of dwelling
- PRIOR APPROVAL
- 12.08.2015

16/00795/OUT

- Replacement farmhouse (outline - all matters reserved)
- OUTLINE
- 29.11.2016

16/00796/FUL

- Temporary agricultural dwelling
- PERMIT
- 01.12.2016

20/00603/OUT

- Replacement farmhouse (outline - all matters reserved)
- PERMIT
- 13.08.2020

20/00774/P3CQ

- Prior notification for change of use of agricultural buildings to two larger dwellinghouses
- Prior Approval Refused
- 21.10.2020

20/01287/P3CQ

- Conversion of agricultural building in C3 larger dwellinghouse and associated building operations
- Prior Approval Refused
- 12.02.2021

20/01311/P3CQ

- Conversion of agricultural building in C3 larger dwellinghouse and associated building operations
- Prior Approval Refused
- 16.02.2021

20/01292/P3CQ

- Conversion of agricultural building in C3 larger dwellinghouse and associated building operations
- Prior Approval Granted
- 15.02.2021

23/00791/OUT

- Outline planning permission for replacement farmhouse (all matters reserved)
- Permission
- 15.02.2021

23/01080/P3CQ

- Change of use of agricultural building to single dwelling
- Prior approval refused.
- 24.01.2024

5. Publicity

5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site.

5.2. One objection has been received, making the following comments:

- Site is too small for 6 dwellings
- Development must allow for adequate gardens and parking

6. Consultation

6.1. No objections have been received from the following:

- The Local Highway Authority (LHA) (subject to conditions)

7. Policy

7.1. Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 3 Class Q (as amended).

7.2. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (December 2023)
- Planning Practice Guidance (PPG)

8. Appraisal

8.1. The main considerations in respect of this application are whether the proposed change of use meets the criteria for permitted development of Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), which relates to development consisting of:

(a) a change of use of—

(i) a building that is part of an established agricultural unit and any land within that building's curtilage, or

(ii) a former agricultural building that was (but is no longer) part of an established agricultural unit and any land within that building's curtilage, to a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order,

(b) development referred to in sub-paragraph (a) together with the extension of the building referred to in sub-paragraph (a), or

(c) development referred to in sub-paragraph (a) together with building operations reasonably necessary to convert the building referred to in sub-paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule or to extend that building.

8.2. Class Q of the GPDO was amended in May 2024, the applicant has indicated on the application form that they wish for the application to be determined under the revised provisions. The following section assesses the proposal against the criteria and conditions of Class Q. In accordance with Paragraph W(3) the LPA 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 except for Paragraph Q.2(1)(g), limitations or restrictions specified in Part 3 applicable to the development.

Q.1. – Development is not permitted by Class Q if—

(a) in the case of a site that is part of an established agricultural unit, the site was not part of the established agricultural unit—

(i) on 24th July 2023, or

(ii) where the site became part of the established agricultural unit after 24th July 2023, for a period of at least 10 years before the date development under Class Q begins,

(b) in the case of a site that was (but is no longer) part of an established agricultural unit—

(i) the site was part of an established agricultural unit on 24th July 2023,

(ii) where the site ceased to be part of an established agricultural unit after 24th July 2023, the site has not been part of the established agricultural unit for a period of at least 10 years before the date development under Class Q begins, or

(iii) since ceasing to be part of an established agricultural unit, the site has been used for any non-agricultural purpose,

The application form states that the site is not currently part of an agricultural unit, and that it was not part of an agricultural unit on 24 July 2023. The proposal therefore fails under this criterion.

(c) the floor space of any dwellinghouse developed under Class Q having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeds 150 square metres,

None of the proposed dwellinghouses exceed a floorspace of 150sqm.

H1 (Building 1) – 149.6 sqm

H2 (Building 3) – 147.2 sqm

H3 (Building 3) – 147.2 sqm

H4 (Building 4) – 149.0 sqm

H5 (Building 5) – 103.7 sqm

H6 (Building 5) – 103.7 sqm

(d) the development under Class Q, together with any previous development under Class Q, within the original limits of an established agricultural unit (see paragraph Q.3(2) of this Part) would result in—

(i) the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeding 10, or

(ii) the cumulative floor space of dwellinghouses having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeding 1,000 square metres,

The cumulative number of separate dwellinghouses proposed under this application would be 6. The cumulative floor space is stated to be 800.4 sqm. Permission 20/01292/P3CQ lapsed on 18.02.2024.

However, as above insufficient evidence as to the extent of the established agricultural unit has been provided to determine compliance with this criteria

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

The agent had confirmed that the site is not under an agricultural tenancy.

(f)less than 1 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,

As above the site is not under an agricultural tenancy and one has not been terminated in the last year.

(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 during the period which is 10 years before the date development under Class Q begins,

Insufficient evidence has been provided to demonstrate that no development under Class A(a) or Class B(b) of Part 6 has been carried out. There is also insufficient evidence to confirm the extent of the established agricultural unit.

(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, other than—

(i)extension of the building allowed by paragraph Q.1(i);

(ii)protrusions of up to 0.2 metres to accommodate building operations allowed by paragraph Q.1(j)(i),

The development would not result in the external dimensions of any of the buildings extending beyond the external dimensions of the existing buildings.

(i)the development under Class Q(b) would result in an extension that—

(i)has more than one storey,

(ii)is sited anywhere other than to the rear of the existing building,

(iii)extends beyond the rear wall of the existing building by more than 4 metres,

(iv)has eaves the height of which exceed the height of the eaves of the existing building,

(v)is higher than whichever is the lower of—

(aa)the highest part of the roof of the existing building, or

(bb)a height of 4 metres above the ground,

(vi)extends beyond a wall that forms a side or principal elevation of the existing building, or

(vii) would be sited on land that, before the development under Class Q(b), is not covered by a hard surface that was provided on the land by virtue of any development, and—

(aa) the hard surface was not provided on the land on or before 24th July 2023, or

(bb) where the hard surface was provided on the land after 24th July 2023, the hard surface has not been situated on the land for a period of at least 10 years before the date development under Class Q(b) begins,

The development would not result in an extension on any of the buildings. The hard surfacing within the site has been situated on the land for at least 10 years.

(j) the development under Class Q(c) 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(j)(i),

Both the Planning Practice Guidance and relevant case law have established that whilst the above building operations are permitted under Class Q 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. 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. The PPG refers to the Hibbitt case for a discussion of the difference between conversions and rebuilding. Structural surveys have been submitted for all buildings subject to this application (Diamond Wood & Shaw Ltd, September 2024).

Building 1 is a pre-cast portal frame building, with concrete blockwork to the lower level of the walls, and corrugated fibre cement cladding above. The southern side elevation is mostly open, and the corrugated sheeting is damaged on other parts of the building. Whilst the report states that no new structural elements are required to convert the building to a dwelling, the report confirms that a new roof and wall cladding is required. The structural report also recommends that closer inspection is required of the concrete purlins to ensure that there is no damage to the reduced section at the bearings on the portal frames. Furthermore, the spalled concrete to the base of the two columns requires repair for permanent conversion.

Therefore, the proposed works required to Building 1 would go beyond what is reasonable and necessary to facilitate the conversion to a dwelling and would constitute a partial rebuild. The combination of a replacement roof, replacement cladding on the walls and rebuilding of

most of the south elevation amounts to a partial rebuild, not a conversion.

There are similarities to the Hibbitt case in that regard. Whilst it is accepted that new walls and roofs are permitted by Q.1, the LPA are not satisfied that the totality of the works that would be necessary to allow the building to be used as a dwelling would not amount to substantial re-building, as currently proposed.

Building 3 is a steel portal frame, formed of 6 bays, one of which is proposed to be removed in an attempt to improve the amenity impact on building 4. All walls are pre-cast concrete panels, with timber cladding to eaves level. The south west elevation is open. No structural elements are required for conversion, however the roof is to be replaced with a similar lightweight sheeting. The walls would be clad with brick slips. Overall, it is considered that the building operations associated with the proposed conversion are reasonably necessary to convert the building to a dwelling.

Building 4 is a two-storey brick barn with a dual pitched concrete tile roof. A single storey extension is situated on the western end of the building. There is a single large opening to both side elevations. The building is in generally good conditions, with no structural damage, and no damage to the roof. The roof tiles would require removal for a waterproof membrane, before being replaced. The main walls would remain, with some re-pointing to the brickwork required. A new inner leaf would be required to the single storey gable wall. Overall, it is considered that the building operations associated with the proposed conversion are reasonably necessary to convert the building to a dwelling.

Building 5 is a steel portal frame, formed of 4 bays, one of which is proposed to be removed in an attempt to improve the amenity impact on building 4. The walls are made of concrete blockwork with vertical timber cladding and corrugated fibre cement. No structural elements are required for conversion, however the roof is to be replaced with a similar lightweight sheeting. The walls would be clad with brick slips. Overall, it is considered that the building operations associated with the proposed conversion are reasonably necessary to convert the building to a dwelling.

Consequently, there is insufficient evidence to demonstrate that the proposed development would not require building operations that would go beyond what would be reasonably necessary for the Building 1 to function as a dwellinghouse. It follows that, based on the evidence before me, the development would not be permitted under Schedule 2, Part 3, Class Q of the GPDO.

(k) the site is on article 2(3) land,

The site is not on article 2(3) land.

(l) 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,

The site does not form part of any of the areas above.

(m) the site is, or contains, a scheduled monument,

The site is not and does not contain a scheduled monument.

(n) the building is a listed building,

None of the buildings within the site are listed.

(o) the existing building, excluding any proposed extension under Class Q(b) but including any proposed building operations under Class Q(c), would not be capable of complying with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015 as read with the notes dated 19th May 2016 which apply to it, or

The buildings would be capable of complying with the national described space standard.

(p) the building does not have suitable existing access to a public highway.

The buildings have suitable access on to a public highway.

Conditions

Q.2. – (1) *Where the development proposed is development under Class Q(a) together with development under Class Q(c), 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 and highways impact of the development,

The LHA has no objection subject to conditions, and advise that it considers it would be difficult to demonstrate the proposals would represent a severe highway safety issue, given that the proposals would remove some demand for large, slow moving farm vehicles to access the site. In addition, based on records available to the LHA, there have been no recorded Personal Injury Collisions at the site access within the last five years.

The LHA are aware of a wall to the west of the site access which restricts vehicular visibility at the junction of the site access with Main Road. Details of the available visibility splays at the access have not been provided, or a speed survey demonstrating the available visibility would be in line with 85th percentile speed of passing traffic at the site access. Nevertheless, it is noted that the wall falls within the Applicants blue line boundary and as part of application reference 23/00791/OUT for a replacement farmhouse, the LHA suggested when access is applied for, the Applicant

removes the wall as part of those proposals. Furthermore, application 20/01292/P3CQ also included proposals to remove the wall. The LHA would therefore strongly encourage the Applicant to remove the wall as part of these proposals in order to improve visibility at the access.

The scheme provides adequate parking spaces for the proposed number and scale of dwellings proposed.

The LHA note that Public Footpath T12 runs through the proposed development. The applicant should note that a scheme for the treatment of the Public Right of Way should be submitted to and approved in writing by the Local Planning Authority. Such a scheme should include provision for the management of Public Footpath T12 during construction, surfacing, width, structures, signing, and landscaping in accordance with the principles set out in the Leicestershire County Council's Guidance Notes for Developers. If north of the proposed properties, the grassland is to be enclosed by fencing, at the crossing point of the public right of way, the LHA would request the developer provides a new metal kissing gate similar to the gate at the northern edge of the site.

(b) noise impacts of the development,

It is not considered that the noise impacts of the development have a significant adverse impact on any neighbouring or prospective occupier residential amenity.

(c) contamination risks on the site,

No contamination risks have been identified on the site and the Council's Pollution Officer has no objections to the scheme.

(d) flooding risks on the site,

According to the Environment Agency (EA) website, the application site is located within Flood Zone 1, designated as low probability of flooding from rivers and sea, and the principle of residential development in low flood risk areas is acceptable.

(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,

This application site is adjacent to the settlement boundary of Ratcliffe Culey, which is defined as a rural hamlet in the Development Plan. Whilst Ratcliffe Culey has limited services, it is not considered that it would be impractical or undesirable for the buildings to change from agricultural to

C3 use. Therefore, the development is considered to be acceptable in these site-specific circumstances.

- (f) *the design or external appearance of the building, and*

The overall design of the scheme is not considered to result in any significant harm to the character of the surrounding area.

- (g) *the provisions of adequate natural light in all habitable rooms of the dwellinghouses*

Due to the layout of the site, there are significant issues regarding the provision of adequate natural light to buildings 3 and 4. As part of the amendments to the scheme, it has been proposed to partially demolish sections of buildings 3 and 5 to reduce the overbearing impacts upon building 4.

However, it is considered that due to the relationship between building 4 and buildings 3 and 5, the rear elevation would experience unacceptable overbearing and loss of light impacts, and under a traditional planning application would fail the widely used and recognised 45 degree rule.

Furthermore, House 3 (Building 3) would rely solely on windows on the front and rear elevations of the dwelling, as well as roof lights on the first floor. This is considered to provide an insufficient level of natural light.

It is therefore considered that the application fails to provide adequate natural light in all habitable rooms of the dwellinghouses.

and the provisions of Paragraph W (prior approval) of this Part apply in relation to that application.

- (2) *Where the development proposed is development under Class Q(a) only, 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 the items referred to in subparagraphs (1)(a) to (e) and (g), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.*

That is the purpose of this application

- (3) *Development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date.*

Note to applicant

Q3.— (1) *For the purposes of Class Q, “curtilage” means the lesser of—*

(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the building on an established agricultural unit or former agricultural building (as the case may be), closely associated with and serving the purposes of that building, and

(b) an area of land immediately beside or around the building on an established agricultural unit or former agricultural building (as the case may be) no larger than the land area occupied by that building.

The curtilage of Houses 4, 5, and 6 would amount to an area larger than the land occupied by those buildings, when the necessary aspects of the domestic curtilage (private amenity space and parking areas) are considered. The proposal would therefore not be permitted development.

(2) For the purposes of Class Q.1(d), “the original limits of an established agricultural unit” means—

(a) in the case of an established agricultural unit which ceased to exist prior to 24th July 2023, all the land which comprised the established agricultural unit at the time it came into existence;

(b) in the case of an established agricultural unit which exists on 24th July 2023, all the land which comprised the established agricultural unit at the time it came into existence;

(c) in any other case, all the land which comprises the established agricultural unit at the time it comes into existence.

The original limits of the agricultural unit include all the land the which comprised the established agricultural unit at the time it came into existence.

9. Equality implications

9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states: -

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

9.3 There are no known equality implications arising directly from this development.

9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1. The application is not considered to meet the conditions of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and is therefore not considered to benefit from Permitted Development Rights. Furthermore, were the proposal to comply with the relevant conditions of Class Q, prior approval is refused as the development fails to provide adequate levels of natural light in all habitable rooms.

11. Recommendation

11.1 Prior approval refused subject to:

- Reasons outlined at the end of this report.

(d) the development under Class Q, together with any previous development under Class Q, within the original limits of an established agricultural unit (see paragraph Q.3(2) of this Part) would result in—

(i) the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeding 10, or

(ii) the cumulative floor space of dwellinghouses having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeding 1,000 square metres,

11.2 Reasons

1. The application submission confirms that the site was not used solely for an agricultural use as part of an established agricultural unit on the relevant dates. Therefore, insufficient information has been provided demonstrating that the development would comply with criteria Q.1 (a) of Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
2. There is also insufficient evidence to confirm the extent of the established agricultural unit. Therefore insufficient information has been provided to demonstrate the cumulative number of separate dwellinghouses or the cumulative floor space of dwellinghouses developed under Class Q . Therefore, it cannot be confirmed that the development would comply with criteria Q.1 (d) or (g) of Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
3. The proposed works to Building 1 are not considered to be reasonably necessary to carry out the building operations, as detailed within Paragraph Q1.(j) (i) and (ii) of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
4. Buildings 3 and 4 would not be provided with adequate levels of natural light in all habitable rooms, due to the layout of the site and the internal floor plans of the dwellinghouses. This is contrary to Paragraph Q2. (g), of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

5. The curtilage for houses 4, 5, and 6 would exceed the area of land occupied by the respective buildings. This is contrary to Paragraph Q3. (1) (b) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Therefore, the proposal is contrary to Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and is therefore not considered to benefit from Permitted Development Rights.