

Delegated Report

Planning Ref: 24/01048/P3CQ

Applicant: Mr Nicholas Hart (Nicholas Hart Agricultural Contractors)

Ward: Ratby, Bagworth and Thornton



Hinckley & Bosworth
Borough Council

Site: Land South of Retreat Farm, Whittington Lane, Thornton

Proposal: Notification to determine if Prior Approval is required for the change of use of an agricultural buildings to a dwellinghouses (Class C3)

1. Recommendations

- **Prior approval is required and granted.**

2. Planning application description

- 2.1. The application proposes the conversion of an agricultural building into one, three bed dwelling through the prior approval process.
- 2.2. The external elevations of the buildings would be retained during the conversion except where new windows and doors are proposed to be inserted. The existing roof would be replaced with a new standing seam roof. Internal alterations would occur including new internal walls and insulation to the walls, floor slab and roof. The proposed floor area would be 129.61m².
- 2.3. Two car parking spaces are proposed to the front of the building on an area of existing hardstanding. The dwelling would be served by the existing access and access track, albeit the point of access from Whittington Lane would be widened to accommodate highway requirements.
- 2.4. The application is accompanied by a Structural Inspection Report (PRP September 2024), existing and proposed plans, site plans and site access drawings. Amendments have been received particularly to the site access during the course of the application.

3. Description of the site and surrounding area

- 2.5. The building is located to the west of Whittington Lane, approximately 1km to the north east of Thornton and 350m to the west of Thornton reservoir.
- 2.6. The building is a single storey, steel portal framed building which is clad in steel profiled sheeting to the walls and with a fibre cement profile sheeting roof. There is a ground bearing concrete slab to the floor which extends to a small concrete apron to the front of the building. The building has been used for the storage of agricultural equipment.
- 2.7. The building is set back approximately 140m from Whittington Lane from which it is accessed via a field access with gravelled access track.
- 2.8. The extent of the agricultural unit is small and limited to the 4.75 acres field which surrounds the barn. The surrounding field is bounded by a mature but low hedgerow to the roadside boundary to the east as well as the southern boundary. The northern and western boundaries contain a number of trees which provide better screening from these views.

4. Relevant planning history

- **None relevant**

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. No representations have been received.

6. Consultation

- 6.1. No objections from:
- LCC Highways (subject to conditions)
 - LCC Drainage (no conditions)
 - HBBC Pollution (subject to conditions)
 - HBBC Drainage (notes to applicant)

7. National Planning Policy and Guidance

- The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- National Planning Policy Framework (NPPF) (2024)
- Planning Practice Guidance (PPG)

8. Appraisal

- 8.1. The PPG advises that the starting point for Class Q of the GPDO is that the permitted development rights grant planning permission, subject to the prior approval process. As such, it is necessary to firstly determine whether the proposal falls within permitted development under the criteria in Class Q, which relates to development consisting of a change of use of agricultural building(s) to a use falling within Class C3 (dwellinghouse).
- 8.2. Class Q rights were amended on May 21, 2024, and temporary transitional arrangements are in place which allow the use of the previous version of the GPDO. The applicant has indicated they wish for the development to be considered on this basis on the submitted application form, and the application has been assessed as such under the transitional arrangements.
- 8.3. The GPDO identifies Class Q 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;
 - (b) Together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses).
- 8.4. Development is not permitted by Class Q if—
- 8.5. (a) the site was not used solely for an agricultural use as part of an established agricultural unit—
- (i) on 20th March 2013, or

- (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 under Class Q begins;

The site is part of an agricultural unit and is used for this purpose.

- 8.6. (b) in the case of –
- (i) a larger dwellinghouse, within an established agricultural unit –
 - (aa) the cumulative number of separate larger dwellinghouse developed under Class Q exceeds 3; or
 - (bb) the cumulative floor space of the existing building or buildings changing use to a larger dwellinghouse or dwellinghouses under Class Q exceeds 465 square metres;

The development proposes one larger dwellinghouse with no other Class Q development having occurred within the established agricultural unit. The cumulative floor space is less than 465 square metres (approximately 130 sqm).

- 8.7. (ba) the floor space of any dwellinghouse developed under Class Q having a use within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 465 square metres;

The floor space of the dwellinghouse would not exceed 465 square metres.

- 8.8. (c) in the case of-
- (i) a smaller dwellinghouse within an established agricultural unit-
 - (aa) the cumulative number of smaller dwellings developed under Class Q would exceed five; or
 - (bb) the floor space of any one separate smaller dwellinghouse having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 100 square metres;

There would be one dwellinghouse and no smaller dwellinghouses are proposed or exist within the unit.

- 8.9. (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 square 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 Class Order exceeding 5;

The cumulative number of separate dwellinghouses having a use class falling within Class C3 (dwellinghouses) would not exceed 5 as one dwelling is being propose and as outlined above the floorspace would be 130sqm.

- 8.10. (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.

- 8.11. (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;

The applicants have indicated that the site has not been subject to an agricultural tenancy.

- 8.12. (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—
- (i) since 20th March 2013; or
 - (ii) 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 has been carried out under Part 6 within the last 10 years

- 8.13. (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 development would not extend beyond the existing external dimensions of the building.

- 8.14. (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)

Class Q.1 (i) details which building operations are permitted in order to carry out the conversion, as identified above, to the extent reasonably necessary for the building to function as a dwelling. In this respect regard must be had to Planning Practice Guidance (PPG), which states that it is not the intention of permitted development right to allow rebuilding work which would go beyond what is reasonable and necessary. 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 rights. Relevant case law Hibbitt & another v SSCLG & Rushcliffe Borough Council [2016] supports this, but that as a matter of fact and degree there is an element of judgement and subjectivity.

The building has a steel frame which would be entirely retained alongside the external elevations of the buildings except where new openings are proposed. The roof is proposed to be replaced.

The submitted Structural Report states that the building appears to be in good overall general condition with no obvious indications of structural distress. The structural report is limited in that it does note that there may be additional dead loads from thermal insulation which would need to be assessed further. However, the applicant has confirmed the above external elements of the building would be retained. Thermal upgrades would need to occur alongside internal walls, all of this

would not amount to development and case law has established that internal structural alterations are acceptable under Class Q.

Therefore whilst limited information has been provided in some areas, the building does appear to be in a good structural position and much of the existing envelope of the building is to be retained. The proposed scheme is therefore considered to consist only of the operations identified within Q.1(i) and is judged to meet the tests of a conversion as is intended by the legislation, it is acceptable in this regard.

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

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

- 8.16 (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;

The site does not form any of the above.

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

The site is not associated with a scheduled ancient monument.

- 8.18 (m) the building is a listed building

The building is not listed.

- 8.19 Permitted development rights have not been removed on an earlier planning permission.

- 8.20 Definition of curtilage: Paragraph X of part 3 of the GPDO defines curtilage as:

- (i) The piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or
- (ii) An area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building whichever is the lesser.

- 8.21 *Following amendments, in this case the area around the building associated with the application does not exceed the area occupied by the building.*

- 8.22 Paragraph Q.2-(1) requires that the applicant applies to the Local Planning Authority for a determination as to whether the prior approval of the authority is required as to:

- a) Transport and highways impacts of the development;
- b) Noise impacts of the development;
- c) Contamination risks on the site;
- d) Flooding risks on the site;
- 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 (dwellinghouse) of the Schedule to the Use Classes Order;
- f) The design or external appearance of the building; and
- g) The provision of adequate natural light in all habitable rooms of the dwellinghouse.

- 8.23 Given the location of the site with access taken of a 50mph road and the visibility of the building from the surrounding area, prior approval has been required. An assessment is set out below to establish whether prior approval would be granted. The GPDO states that regard should be had to the NPPF when assessing the proposal where relevant to the above matters. The LPA may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

Transport and highways impacts

- 8.24 The proposed site access will be onto the western extent of Whittington Lane near to the village of Thornton. At the point of the access, Whittington Lane is a classified C road with a 50-mph speed limit and no weight restriction. The existing access is an unsurfaced dirt track with a pair of wooden gates.
- 8.25 Various consultations have occurred with the Local Highway Authority which has resulted in several amendments to the site access. Amendments include to the surfacing, width and geometry of the access.
- 8.26 Following amendments to the scheme the LHA have confirmed that, in its view, the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road network would not be severe.
- 8.27 The Applicant has demonstrated that they intend to provide two parking spaces as part of the proposed development. This is in accordance with paragraph 3.151 of the Leicestershire Highway Design Guide (LHDG).
- 8.28 The Applicant has submitted a scaled vehicle tracking drawing titled 'Proposed Site Access Plans,' drawing number 9205-03-04, demonstrating a car within the proposed access, whilst a tractor and trailer attempts to access the site in an opposing direction, in addition to a tractor and trailer within the access whilst a car attempts to enter the access, in an opposing direction. Therefore, the LHA is satisfied that vehicles will be able to enter and exit from the proposed access whilst standing clear of the public highway.
- 8.29 The Applicant has demonstrated on the submitted drawing that they intend to remove the existing gates and have not demonstrated any new gates on their submitted drawing. The LHA is satisfied that the removal of the existing gates can be secured by condition and therefore has no further comments to make on this issue.
- 8.30 The Applicant has demonstrated surfacing with a hard bound material for a distance of 15 metres behind the highway boundary and across the entire access width. This is considered acceptable to the LHA and can be secured by condition.
- 8.31 Whilst the Applicant has not demonstrated any achievable vehicular visibility splays on a scaled drawing, the LHA is satisfied that the Applicant will be able to achieve suitable vehicular visibility splays in both directions from the proposed access.

Therefore, prior approval could be granted for permitted development under Class Q subject to conditions in respect of the transport and highways impacts.

Noise impact of the development

- 8.32 The proposal is for a residential use, and it is considered that noise impacts would not be unacceptable due to the remoteness of the site. Given the location of the site future residents are also unlikely to be adversely impacted by noise.

Contamination risks on the site

- 8.33 A Phase 1 contamination report has been submitted with the application, this recommends that a Phase 2 report is undertaken prior to development. The Environmental Health officer agreed with this and conditions have been imposed to address this.

Flooding risks on the site

- 8.34 The site is in flood risk zone 1 (low risk). The Drainage officer has indicated that the surface water drainage system for the proposed development should incorporate sustainable drainage principles (SuDS) to mitigate the risk of flooding on the site and ensure that surface water runoff does not increase flood risk elsewhere. The proposals should also include measures to address issues of water quality in accordance with current SuDS guidance. The proposed outfall for the discharge of surface water runoff from the development should be in accordance with the hierarchical approach outlined in Building Regulations Part H. This has been added as an informative.

Whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change use

- 8.35 The PPG has clarified that sustainability is not a factor in this assessment. Impractical or undesirable are not defined in the regulations and the LPA should apply a reasonable meaning in making any judgement. Impractical reflects that the location and siting would “not be sensible or realistic” and undesirable reflects that it would be “harmful or objectionable”.
- 8.36 In this instance the building is within the countryside but not so remote as to be impractical or undesirable for the building to change use. The building is served by an existing access and services are located in surrounding villages.

The design or external appearance of the building

- 8.37 The NPPF states that planning decisions should aim to ensure that developments add to the overall quality of the area, respond to local character and history and reflect the identity of local surroundings and materials. The building is a modern portal framed agricultural building. The proposal retains the existing external materials with the exception of the new standing seam roof. The proposed roofing material is in keeping with the existing building. There are a number of large openings, however, overall the design respects the existing building and its agricultural nature and therefore the development would not harm the surrounding context. Prior approval can therefore be granted in this regard.

The provision of adequate natural light in all habitable rooms of the dwellinghouse

- 8.38 The GPDO states that ‘habitable rooms’ means any room used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms. All of the proposed habitable room have access to adequate natural

light. Therefore, prior approval could be granted in respect of the provision of adequate natural light in all habitable rooms.

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 meets the conditions of Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It is considered that the application is acceptable and is in accordance with the conditions and the provision of Paragraph W of the General Permitted Development Order (2015) (as amended). Prior approval is required and granted for the reasons outlined above.

11. Recommendation

11.1 Prior Approval is required and granted subject to:

The conditions outlined at the end of this report.

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:

- Location Plan 9205-01-01
- Proposed Site Plan 9205-03-01
- Proposed Floor Plan 9205-03-02
- Proposed Elevations 9205-03-03

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

2. No development approved by this permission shall be commenced until a Phase II ground investigation has been carried out and the results of this have been submitted in writing to and agreed in writing by the Local Planning Authority. The Phase II ground investigation should accord with the recommendations of the Phase I Desk Study by GRM submitted with this application. The approved scheme shall be implemented in accordance with the agreed details and any remediation works so approved shall be carried out prior to the site first being occupied.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policy DM7 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

3. If during development, contamination not previously identified is found to be present at the site, no further development shall take place until an addendum to the scheme for the investigation of all potential land contamination is submitted in writing to and approved in writing by the Local Planning Authority which shall include details of how the unsuspected contamination shall be dealt with. Any remediation works so approved shall be carried out prior to the first dwelling being occupied.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policy DM7 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. Upon completion of the remediation works a verification report shall be submitted to and approved by the Local Planning Authority. The verification report shall include details of the proposed remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the verification report together with the necessary documentation detailing what waste materials have been removed from the site.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policy DM7 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

5. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on drawing titled 'Proposed Site Access Plans,' drawing number 9205- 03-04, have been implemented in full.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in the interests of general highway safety and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016 and the National Planning Policy Framework (2024).

6. The development hereby permitted shall not be occupied until such time as the existing gates to the vehicular access have been permanently removed. Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected within a distance of 15 metres of the highway boundary.

Reason: To enable a vehicle to stand clear of the highway in order to protect the free and safe passage of traffic including pedestrians in the public highway in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016 and the National Planning Policy Framework (2024).

7. The development hereby permitted shall not be occupied until such time as the access drive (and any turning space) has been surfaced with tarmacadam, or similar hard bound material (not loose aggregate) for a distance of at least 15 metres behind the highway boundary and, once provided, shall be so maintained in perpetuity.

Reason: To reduce the possibility of deleterious material being deposited in the highway (loose stones etc.) in the interests of highway safety and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016 and the National Planning Policy Framework (2024).

Informatives:

1. Planning Permission does not give you approval to work on the public highway. Therefore, prior to carrying out any works on the public highway you must ensure all necessary licences/permits/agreements are in place. For further information, please telephone 0116 305 0001. It is an offence under Section 148 and Section 151 of the Highways Act 1980 to deposit mud on the public highway and therefore you should take every effort to prevent this occurring.
2. The surface water drainage system for the proposed development should incorporate sustainable drainage principles (SuDS) to mitigate the risk of flooding on the site, and ensure that surface water runoff does not increase flood risk elsewhere. The proposals should also include measures to address issues of water quality in accordance with current SuDS guidance. The proposed outfall for the discharge of surface water runoff from the development should be in accordance with the hierarchical approach outlined in Building Regulations Part H. The use of infiltration drainage is preferred, subject to the site being free from a contaminated ground legacy. The suitability of the ground strata for soakaway drainage should be ascertained by means of the test described in BRE Digest 365, and the results approved by the Building Control Surveyor before development is commenced. 2 If the ground strata are insufficiently permeable to avoid discharging some surface water off-site, flow attenuation methods should be employed, either alone or in combination with infiltration systems and/or rainwater harvesting systems.
3. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at building.control@blaby.gov.uk or call 0116 272 7533.

4. The collection point for domestic refuse and recycling waste is from the adopted highway boundary.

HBBC cannot travel along or collect from private driveways using our RCV, therefore it would be advisable to include an area next to the adopted highway for safe placement of the various containers on collection day.