

Delegated Report

Planning Ref: 24/00149/P3CQ
Applicant: Mr Christopher McManus
Ward: Hinckley Trinity



Hinckley & Bosworth
Borough Council

Site: Pond Barn Cold Comfort Farm Rogues Lane

Proposal: Change of use of agricultural steel framed barn into a single dwellinghouse (C3) (Revised Scheme of planning application 23/01012/P3CQ)

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 an existing steel framed agricultural building into a three-bedroom dwellinghouse at Pond Barn, Cold Comfort Farm, Rogues Lane, Hinckley.

2.2. The development is constructed with vertical black timber cladding on the ground floor, and aluminium standing seam cladding on the upper floor. The scheme also features a grey rendered chimney.

2.3. This is a resubmission of the refused prior approval application 23/01012/P3CQ. Within this new application, the proposal demolishes the existing 91.3sqm area of the structure that is currently used as a dog daycare. Following this, all external cladding is replaced to ensure adequate thermal performance and only the frame and floor slab are retained.

3. Description of the Site and the Surrounding Area

3.1. The application site is located to the north of, and outside of the identified settlement boundary of Hinckley within the open countryside. The site slopes from south to north and from west to east and features mature hedges along all boundaries of the site. Within the application site, the site features an existing agricultural structure, a pond, and two storage containers.

3.2. The building was approved via planning permission 10/00318/GDO, which was required for the storage of agricultural equipment (principally haymaking equipment) solely for use within this agricultural unit, which was originally distinct from Cold Comfort Farm, which consists of two fields with a total area of 5.8 hectares. The Applicant submitted a unilateral undertaking with the application to rescind the previous approval, 10/00055/GDO.

3.3. Part of the existing building was granted retrospective planning permission via 18/00353/FUL for a change of use into a dog day care centre, which was licensed to care for 30 dogs. The proposal included internal partitioning and an external fenced exercise area that enclosed the southwest of the existing building. Following a discussion with a member of the dog day care centre, Hinckley Pets in Home, on 02 November 2023, they confirmed that they had been served notice on the site and they were seeking planning permission for a facility in a new location via application 23/00455/FUL. That application was refused at Planning Committee on 09 November 2023.

- 3.4. The site is wholly rural in character and is surrounded by open agricultural fields. The application site is bordered by Rogues Lane to the north, and Middlefield Lane to the west. Beyond Rogues Lane is two further agricultural commercial properties, Westmoreland Farm and Valley Farm, whereas beyond Middlefield Lane is Five Acres, an established Gypsy and Traveller Site, and Hinckley Fields Farm.
- 3.5. Cold Comfort Farm is to the south of the site within a separate parcel of land, and beyond Cold Comfort Farm is several residential properties (The Barn, The Cow Shed, Bullrush Cottage, Willow Cottage, Lilly Cottage) and Lante Fields Farm that are independent to Cold Comfort Farm. Rogues Lane Nurseries is to the northeast of the site and there are two further agricultural buildings to the east of the site, I.C. Fields Farm, and Frith House Farm.
- 3.6. Rogues Lane is an adopted but unclassified road subject to the National Speed Limit. In 2016, despite the contentious background of Middlefield Lane, the Local Highway Authority confirmed that they consider the route to be a highway, however there is insufficient evidence to support the view that the highway is adopted.
- 3.7. It is noted that several applications have been submitted for the change of use of agricultural structures and ancillary buildings to residential properties within, or adjacent to, Cold Comfort Farm, including: 04/01361/CLU (Approved), 06/01100/FUL (Withdrawn), 07/01145/FUL (Approved), 10/00726/EXT (Withdrawn), 11/00505/FUL (Approved), 12/00275/FUL (Withdrawn), 12/00542/FUL (Approved), 14/00978/CMBGDO (Refused), 17/00261/CLUE (Approved), 17/00269/CQGDO (Withdrawn), 17/00662/CQGDO (Approved), 20/00485/FUL (Refused), 21/00201/FUL (Withdrawn), and 22/01009/FUL (Approved).

4. Relevant Planning History

4.1 23/01012/P3CQ

- Change of use of agricultural steel framed barn into a single dwellinghouse (C3)
- Prior Approval Refused.
- 13.12.2023

The development was refused because the proposal was not considered to consist of a change of use of a building and the land within its curtilage from an agricultural use, nor was it considered to be within an established agricultural unit. Therefore, the scheme was not considered to benefit from Permitted Development Rights.

4.2 18/00353/FUL

- Change of use to a dog day care centre (retrospective)
- Permitted
- 14.09.2018

4.3 10/00318/GDO

- Erection of agricultural building
- Permitted
- 25.05.2010

4.4 10/00055/GDO

- Erection of agricultural building
- Permitted
- 23.02.2010

This planning permission has since been rescinded via a unilateral undertaking that was submitted by the Applicant with the planning application, 10/00318/GDO.

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. No responses have been received.

6. Consultation

- 6.1. No objections have been received from the following:
 - Hinckley and Bosworth Borough Council (HBBC)'s Drainage Officer
 - HBBC's Environmental Services' Pollution Officer
 - Leicestershire County Council (LCC)'s Ecology Department (subject to conditions)
 - The Local Highway Authority (LHA) (subject to conditions)

Ecology

- 6.2. The County Council's Ecology Department confirmed that, in light of the Preliminary Ecological Appraisal (submitted: 15.02.2024), they had no objections to the development. Notwithstanding this, the County Council's Ecology Department recommended a planning condition regarding the provision of a biodiversity enhancement scheme to be secured via prior to the commencement of the development.
- 6.3. The Council's Waste Management Officer did not comment on the proposal.
- 6.4. No further comments have been received.

7. Policy

- 7.1. Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 3 Class Q
- 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 change of use of a building and any land within its curtilage from a use of an agricultural building to a use falling within Class C3 (dwellinghouses) of Part 3 of Schedule 2 of that Order.
- 8.2. For the purpose of Class Q, a, "*Larger dwellinghouse*," means a dwellinghouse developed under Class Q which has a floor space of more than 100 square metres and no more than 465 square metres having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order. On the other hand, a, "*Smaller dwellinghouse*," means a dwellinghouse developed under Class Q which has a floor space of no more than 100 square metres having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.

Q.1. – (1) Development is not permitted by Class Q if –

- (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 time 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**

Although planning application 18/00353/FUL granted planning permission for the partial use of the structure as a dog day care centre, which is not an agricultural use, this area of the building is demolished within this application to seek to ensure that the scheme complied with Paragraph Q.1(a) of Class Q of Part 3 of Schedule 2 of the GPDO.

Notwithstanding this, the structure proposed for conversion was granted prior approval by the Local Planning Authority via application 10/00318/GDO. Within the Delegated Officer Report for this application, the Case Officer noted that the site had been sold and was consequently independent from Cold Comfort Farm. The Case Officer also highlighted that the site did not appear to benefit from any existing farm business operating from the site at that time.

Since then, the Applicant claims within their Design and Access Statement that they have reclaimed the barn and the associated land for the storage and distribution of hay. In spite of this, no date, nor evidence, has been provided as to when the Applicant rebought the land and whether it has ever been utilised solely as an agricultural use as part of an established agricultural unit.

It was evident from the current Planning Officer's site visit that neither Cold Comfort Farm, nor the application site, featured any existing agricultural use. Whilst the structure featured a small tractor, this was not considered to support the suggestion that the building supported an existing agricultural use.

This is supported by the fact that the Applicant's Lawful Development Certificate application, 15/00116/CLUE, featured sworn statutory declarations that confirmed that Cold Comfort Farm had been utilised by a groundwork contracting business since the late 1960s and was taken over by the Applicant in 2006 for their fencing and groundwork contracting business, which is still in operation today.

In light of the above, it is not considered that the existing building, the application site, nor Cold Comfort Farm, are used solely for an agricultural use, nor utilised as part of an established agricultural unit. Therefore, the application site is contrary to, and in conflict with Paragraph Q.1(a) of Class Q of Part 3 of Schedule 2 of the GPDO and is not considered to benefit from Permitted Development Rights.

- (b) *In the case of –*
- (i) *A larger dwellinghouse, within an established agricultural unit*
 - (aa) *the cumulative number of separate larger dwellinghouses 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;*
 - (ba) *the floor space of any dwellinghouse developed under Class Q having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 465 square metres;*

Only one dwellinghouse is developed within this scheme with a footprint of 202.1sqm.

- (c) *In the case of –*
- (i) *A smaller dwellinghouse within an established agricultural unit –*
 - (aa) *the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; 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.*

Only one dwellinghouse is developed within this scheme with a footprint of 202.1sqm.

- (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 Classes Order exceeding 5;*

No previous development under Class Q is established within the site and the building subject to the Class Q development has a floorspace of 202.1sqm and only converts the structure into one dwellinghouse.

- (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.

- (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

An agricultural tenancy over the site has not been terminated less than 1 year before the date development begins.

- (g) *Development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) have 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 under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) have been carried out on the established unit since 20th March 2013.

- (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 scheme does not result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.

- (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

The scheme only consists of the building operations identified within Q.1(i).

- (ii) *Partial demolition to the extent reasonably necessary to carry out building operations allowed by Paragraph Q.1(i)(i);*

The proposal involves the demolition of 91.3sqm of the existing structure. Whilst this demolition work is required to ensure that the development complies with Paragraph Q.1(a) of Class Q of Part 3 of Schedule 2 of the GPDO, it is not considered that these works are required to the extent reasonably necessary to carry out building operations allowed by Paragraph Q.1(i) (i) of Class Q of Part 3 of Schedule 2 of the GPDO, nor to the extent reasonably necessary for the building to function as a dwellinghouse. The proposal is therefore considered to be in conflict with Paragraph Q.1(i) (ii) of Class Q of Part 3 of Schedule 2 of the GPDO.

- (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; or*
- (m) *The building is a listed building*

The application site is not on article 2(3) land, it does not form a site of special scientific interest, a safety hazard area or a military explosives storage area and the site does not contain a scheduled monument, nor is the building a Listed Building.

Conditions

Q.2. –(1) *Where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to—*

- (a) *transport and highways impact of the development,*

Based on available records to the Local Highway Authority, there have been no recorded Personal Injury Collisions on Rogues Lane within 500m either side of its junction with Middleton Lane.

No amendments are proposed to the existing site access via Middleton Lane and Rogues Lane, the Local Highway Authority are satisfied that the proposal is unlikely to result in a material increase or a material increase, or a material change in the character of traffic in the vicinity of the site or create any additional highway safety issues.

The scheme provides three off-street vehicle parking spaces, which is considered to be acceptable in accordance with Paragraph 3.151 of Part 3 of the Leicestershire Highway Design Guide (2022).

- (b) *noise impacts of the development,*

The proposal is for one three-bedroom dwelling and therefore it is not considered that the noise impacts of the development have a significant adverse impact on any neighbouring residential amenity. In addition, the loss of the commercial dog day care centre is likely to reduce any potential noise impacts to neighbouring properties.

- (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. The EA Surface Water mapping indicates that there is a medium risk of flooding from surface water to the northern extent of the site. In light of the above, the Council's Drainage Officer has no objections to the scheme.

- (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 an isolated location outside of any identified settlement boundary. Whilst this likely to make the site and the structure impractical or undesirable for a residential conversion it is noted that the application site is in close proximity to other residential properties such as Cold Comfort Farm and Lante Fields Farm. Therefore, the development is considered to be acceptable in these site-specific circumstances.

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

The design of the development features a rendered finished chimney, which is not considered to preserve the agricultural character of the surrounding area. This considered to result in harm to the character of the surrounding area. Notwithstanding this, 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*

There are windows to every habitable room, which are supported with rooflights on the first floor. It is considered that the application provides an adequate provision of natural light in all habitable room of the dwellinghouse.

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

The application accords with the provisions of Paragraph W (prior approval) of this Part.

- (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.*

Note to Applicant.

- (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.

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.

11. Recommendation

11.1 **Prior approval refused** subject to:

- Reasons outlined at the end of this report.

11.2 **Conditions and Reasons**

1. The development is not considered to consist of a change of use of a building and the land within its curtilage from an agricultural use, nor is it considered to be within an established agricultural unit. The proposed demolition works are also not considered to be reasonably necessary to carry out the building operations, as detailed within Paragraph Q.1(i) (i) of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), to the extent reasonably necessary for the building to function as a dwellinghouse. Therefore, the proposal is contrary to, and in conflict with, Paragraphs Q.1(a) and Q.1(i) (ii) 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.

a. **Notes to Applicant**

1. This application was assessed by the documents submitted by the Applicant that were received by the Local Planning Authority, as follows:
 - Application Form (submitted: 15.02.2024)
 - Covering Letter (submitted: 15.02.2024)
 - Design and Access Statement (submitted: 15.02.2024)
 - Existing Floor Plans and Elevations 8895-03 – 000 (submitted: 15.02.2024)
 - Preliminary Ecological Appraisal (submitted: 15.02.2024)
 - Proposed Demolition Plan 8895-03 – 000 (submitted: 15.02.2024)
 - Proposed Elevations 8895-03 – 0200(submitted: 15.02.2024)
 - Proposed First Floor Plan 8895-03 – 0101 (submitted: 15.02.2024)
 - Proposed Ground Floor Plan 8895-03 – 0100 (submitted: 15.02.2024)
 - Proposed Roof Plan 8895-03 – 0102 (submitted: 15.02.2024)
 - Proposed Site Layout 8895-03 – 0002 (submitted: 15.02.2024)
 - Site Location Plan 8895-03 – 0001 (submitted: 15.02.2024)