

Delegated Report

Planning Ref: 23/01080/P3CQ

Applicant: Mrs D Vann

Ward: Twycross Sheepy & Witherley



Hinckley & Bosworth
Borough Council

**Site: Red House Farm, 39 Main Road, Ratcliffe Culey, Atherstone,
Leicestershire, CV9 3NY**

Proposal: Change of use of agricultural building to single dwelling

1. Recommendations

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

2. Planning application description

- 2.1. This application gives prior notification to the Local Planning Authority for the change of use of one existing traditional brick agricultural building into a single larger dwellinghouse. The notification requires the local planning authority to assess whether prior approval is required for the development and if so, whether it is approved or refused under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

3. Description of the site and surrounding area

- 3.1. The application site consists of a two-storey brick-built barn approximately 15 metres in length and 5 metres in width, with a pitched tiled roof. The site is located on the northeastern boundary of Ratcliffe Culey, a small village approximately 1 mile northeast of Atherstone.
- 3.2. The wider site includes a derelict farmhouse with extant permission for a replacement (23/00791/OUT), along with other agricultural buildings which have been subject to separate prior approval applications as outlined below.

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
- 06.10.2023

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. Witherley Parish Council: No comment.
- 6.2. LCC Highways: No objection – LPA referred to standing advice.

7. National Planning Policy and Guidance

- The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- National Planning Policy Framework (NPPF) (2023)
- 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 this is not an application for planning permission the Development Plan is not a relevant consideration.

8.2. 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).

8.3. The GPDO identifies Class Q development as:

- (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 appears to be used partly for this purpose at present, there is no evidence to suggest the building was not in agricultural use on the qualifying date.

- 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;

There is one larger dwellinghouse proposed and consent for 1 other larger dwellinghouse within the unit. The number of dwellings developed under Class Q is less than 3 and with a cumulative floor space of less than 465 square metres.

- 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 proposed dwellinghouse would not exceed 465 square metres (approximately 150 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 total. No smaller dwellinghouses are proposed or approved/developed on 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;

The C3 larger dwellinghouse proposed in this notification under Class Q would not have a floor space exceeding 465 square metres. This is also the case for the C3 larger dwellinghouse approved via 20/01292/P3CQ. The cumulative floorspace would not exceed 465 square metres.

- 8.10. (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 the total would be 2.

- 8.11. (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.

- 8.12. (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 applicant has indicated that the site has not been subject to an agricultural tenancy.

- 8.13. (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.

- 8.14. (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 at any given point.

- 8.15. (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.

A structural survey has been submitted in support of the application (SLP Consultants, September 2023). The following observations of the building are taken from the structural survey (summarised):

“The following is a list of defects or other items I noted during my visual inspection of the barn...

I immediately noted that significant areas of the roof tiles were missing thus exposing the roof and 1st floor timbers to the weather. It appeared that the deterioration of the roof finishes had been occurring for a number of years.

Significant loss of cross section was also noted to some of the roof purlins most probably as a result of insect infestation.

The lack of adequate roof covering to the barn over an extended period of time has resulted in significant deterioration of the roof and floor timbers. This is to an extent where I believe that the majority of these members will need to be replaced.

The proposed refurbishment works should include careful taking down and rebuilding of the top 1.5m to 2.5m of the front and rear walls of the barn after removal of the roof structure. All frost damaged bricks should be turned or completely replaced. The crosswalls should then be rebuilt using blocks or non-matching bricks,

which will be hidden by the finishes. I also recommend that new ridge purlins should be installed under the full length of the roof. I recommend that all the timber rafters should be replaced with deeper section softwood timbers.

It is possible that the Building Inspector for the refurbishment will stipulate the need for underpinning to all the existing foundations. As a minimum, I would recommend underpinning of the two gable walls and the two internal crosswalls.

The north west gable wall has suffered significant frost damage. I recommend that a large area of this wall above 1st floor level should be carefully taken down and rebuilt.

I believe that the existing in situ concrete ground bearing slabs are unlikely to be fit for purpose due to a lack of a suitable damp-proof membrane and underfloor thermal insulation. Therefore, I recommend that they should be completely removed and replaced by new reinforced concrete ground bearing slabs."

The key defects and issues requiring attention include substantial works to the roof structure, the removal and replacement of the first-floor front and rear gable walls, underpinning to the foundations, and replacement of the existing ground bearing slabs.

Regard is given to Hibbitt v SSCLG [2016] EWHC 2853 (Admin) which explored the distinction between works required for the conversion of an existing agricultural structure or building to a dwelling/house, and works amounting to its rebuilding or, in effect, the creation of a fresh build. The extent of works required to the foundations, external elevations, and its roof to provide a building capable of habitation would go beyond what is reasonable and necessary as highlighted in paragraph 105 of the PPG. The permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling.

With the information available, it is considered that the building operations required to convert the building would go beyond the extent reasonably necessary to enable the building to function as a dwellinghouse. It is considered that the work required would be tantamount to a fresh build rather than a conversion, contrary to Q.1 (i) of Part 3, Schedule 2 of the GPDO (2015) (as amended).

- 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 ***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 building adjacent to other buildings, its shared access and the importance placed by the NPPF on ensuring good design, it is considered that if the prior approval process were appropriate, the prior approval of the LPA would be 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 site would be accessed off an existing track serving Red House Farm off Main Street. Visibility is acceptable and the Local Highway Authority have made no objections. Therefore, prior approval could be granted for permitted development under Class Q subject to these conditions in respect of the transport and highways impacts.

Noise impact of the development

- 8.25 The proposal is for a residential use, and it is not considered that noise impacts would not be unacceptable. Any noise during construction would not be significant to warrant refusal and would be temporary in any case. Prior approval could be granted unconditionally for permitted development under Class Q with regards to the noise impact of the development.

Contamination risks on the site

- 8.26 The EH officer has not been consulted, but it is considered that potential land contamination on the site could be addressed via conditions and remediation if necessary.

Flooding risks on the site

- 8.27 The site is in flood risk zone 1 (low risk), therefore there are no concerns in this regard.

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

- 8.28 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”.
- 8.29 In this instance the building is located within the settlement of Ratcliffe Culey and has vehicular access. There is no reason to believe the proposal is impractical or undesirable in terms of its location.

The design or external appearance of the building

- 8.30 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 traditional in its construction and design and is considered appropriate in its context. Prior approval could therefore be granted subject to a condition that the design and materials accord with the approved plans.

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

- 8.31 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. 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. Under Paragraph Q of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2020 as amended, the LPA may refuse an notification where, in its opinion—
- (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;
- 10.2. The proposed works required to make the building suitable for conversion are substantial and tantamount to a new build dwelling. It is concluded that the entirety of the works would go beyond what is reasonable and necessary to facilitate the conversion and would instead constitute a partial rebuild. The proposed development would therefore fail to meet the conditions set out under Paragraph (i) of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2020 as amended.

11. Recommendation

- 11.1 Prior Approval is required and refused for the following reason:

It is considered that the proposed works required to the building would amount to significant rebuilding and would therefore go beyond what is reasonable and necessary to facilitate the conversion as a use for Class C3 purposes. The required work would be tantamount to a new build rather than a conversion of an existing building.

Therefore, the proposal does not constitute development permitted under the provisions of Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Notes to applicant:

The plans and documents relating to this decision are:

Site Location Plan – 2305/24 – received 14/11/2023.

Proposed Elevations – 2305/23A - received 14/11/2023.

Proposed Floor Plans – 2305/22A – received 14/11/2023.

Structural Report – SLP Consultants – received 04/01/2024.

Structural Report Photographs – received 14/11/2023.