

## Delegated Report

**Planning Ref: 24/00884/P3CQ**

**Applicant: Mr John Knott**

**Ward: Cadeby Carlton M Bosworth & Shackerstone**



Hinckley & Bosworth  
Borough Council

**Site: Land South Of, Bosworth Road, Bull In The Oak, Cadeby**

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

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### **1. Recommendations**

- 1.1. **Prior approval refused** for the 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 agricultural building into a two-bedroom dwellinghouse (Use Class C3) at the Land south of Bosworth Road, Bull In The Oak, Cadeby.
- 2.2. The structure externally measures 9.353m in width x 9.35m in depth, which results in a total footprint of 87.45sqm. The building has a roof height of 5.107m.

### **3. Description of the site and surrounding area**

- 3.1. The application site is located to the North of Bosworth Caravan Site and to the South of Bosworth Road. The site consists of a number of agricultural buildings, plots for caravans to the south. The site is not highly visible from Bosworth Road and benefits from vegetation and trees which screen its visibility.

### **4. Relevant planning history**

- 4.1 None

### **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 & Bosworth Borough Council (HBBC)'s Drainage Officer (subject to notes to applicant)
  - HBBC's Environmental Services' Pollution Officer (subject to conditions)
  - HBBC Waste Management Officer (subject to notes to applicant)
  - LCC's Highways Officer
  - HBBC's Conservation Officer: No objections
- 6.2. The Council's Pollution Officer has no objection to the principle of the development. However, if soft landscaping is proposed than the Pollution Officer recommends a land contamination planning condition and a land contamination found later planning condition.
- 6.3. 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 (as amended)

7.2. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (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 (as amended). Class Q rights were amended on May 21 2024, 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.

8.2. Class Q allows for:

*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; and or*

*(b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.*

8.3 In order to be Permitted Development, development must meet the criteria and conditions outlined within that Class. This is assessed below:

**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 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;*

**No information has been provided with regards to the use of the site or the extent of the agricultural unit. The structural report states that the building was used as a vehicle and animal store but does not specify if this was an agricultural use, or a use as part of an agricultural unit, nor when this use occurred.**

**Furthermore the planning history for the site includes application 19/00106/COU for the ‘Change of use of land and sables to equestrian use for a horse therapy centre’. As part of this application the building and site in question is included within the red line. Photos were provided to the LPA annotating the building as a barn, also included was an adjacent stable building and the parking area included in this application. The application was submitted by ‘The Way of the Horse Therapy Centre’ the supporting statement submitted outlined:**

***“The Way of the Horse is a not for profit organisation which supports the community and schools within Leicestershire. In collaboration with Horse watch the centre uses rescued and abandoned ponies and gives them a home and rehabilitation whilst being used as an aid to help vulnerable and disadvantaged children who are struggling in main stream education. We have successfully helped young people including those attend Hinckley & Bosworth schools to be able to identify stress through self-awareness and manage it before it becomes unbearable and manage emotions through self-regulation. We currently stable our horses and are tenants on the site that is named in the planning application. The application will allow us to use the site as a centre where we can carry out this valuable and much needed work. There is no proposed building, boundary or access changes, we merely wish to operate with the appropriate permissions so that we can continue this valuable work”.***

The submission therefore states that in 2019 the site was used for equestrian purposes. It is acknowledged that this is after the 2013 date, however, earlier site history includes applications for the ménage, stable and tack room.

The site history therefore raises doubt as to whether the site was used solely for an agricultural use as part of an established agricultural unit.

The developer has therefore provided insufficient information as to whether the proposed development complies with the above criteria.

(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;

(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.

The extent of the established agricultural unit has not been provided and is not clear from the site's planning history or submission. As such whilst only one dwellinghouse is proposed as part of this application the cumulative number of dwellinghouses or floorspace cannot be established.

(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;*

**The extent of the established agricultural unit has not been provided and is not clear from the site's planning history or submission. As such whilst only one dwellinghouse is proposed as part of this application the cumulative number or floorspace cannot be established.**

**The developer has therefore provided insufficient information as to whether the proposed development complies with the above criteria (b), (ba), (c) and (d).**

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

**According to the application form the site is not occupied under an agricultural tenancy. The LPA have no information contrary to this.**

(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*

**According to the application form 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 20<sup>th</sup> March 2013; or*
- (ii) *Where development under Class Q begins after 20<sup>th</sup> March 2023, during the period which is 10 years before the date development under Class Q begins*

**The extent of the established agricultural unit has not been provided and is not clear from the site's planning history or submission. As such it cannot be established whether 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**

**The developer has therefore provided insufficient information as to whether the proposed development complies with the above criteria (g).**

- (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;*

**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.**

**In this case a structural survey has been submitted. The barn is timber clad to all 4 elevations, although this is only partial cladding to three of the elevations. The structural survey outlines that “The roof covering is cementitious corrugated sheeting overlaying timber purlins supported on the top flange of the steel rafters. The portal framed is formed in a traditional style from 203x102x23 UB rafter sections and 203x133x25 UB column sections. The frames are overlain with timber purlins at 1.5m centres supporting the corrugated cementitious roof covering over. 2.6. The steel frame, roof and walls were judged to be in good condition for a building of this age and type. The columns and rafters displayed very little signs of surface corrosion and are in generally excellent condition”. A structural analysis is included which demonstrates that the steel frame is suitable for supporting the new loads.**

**However, the structural survey outlines that a new foundation will be required to provide support for the new external walls required around the building. The structural report states that all cladding on the external elevations would need to be replaced to create a watertight envelope. In addition the ground floor is currently compacted stone and that a concrete slab will need to be installed as part of the works. In addition the roof will need to be re-covered in a lightweight covering. The reality being that all that would be retained of the existing building in any new dwelling is the steel frame and timber supports. 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 a dwelling would not amount to substantial re-building, as currently proposed.

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 buildings 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.

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

**The proposal does not involve any demolition of the existing building.**

- (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,*

**The Local Highway Authority provided standing advice in response to the development and it is considered that the change to residential would not cause detrimental impacts on transport and highways networks.**

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

**Whilst equine or agricultural operations would still occur in close proximity to the development this is unlikely to generate adverse noise impacts.**

(c) *contamination risks on the site,*

**No contamination risks have been identified on the site.**

(d) *flooding risks on the site,*

**The application site is within Flood Zone 1 and is not considered at risk of flooding.**

(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,*

**Although the application site is outside of defined settlement boundaries, the application site is adjacent to Market Bosworth Caravan park and the application is not considered to be in a wholly impractical or undesirable location for the building to change from an agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Class Order.**

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

**The design and external appearance of the building does not have a significant adverse impact on the character of the building or the surrounding area. The incorporation of windows and doors are the only alteration to the building.**

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

**There are windows to every habitable room. 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.*

**Not applicable**

(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.**

**Curtilage**

Class Q permits the change of use of a building and any land within its curtilage *(for emphasis)* from a use as an agricultural building to a use falling within Class C3.

For the purposes of Class Q the “curtilage” means

*(a) 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*

*(b) 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 less*

In this case an area far in excess of the land area occupied by the building is included within the red line and block plans. The proposal would therefore not meet the definition of curtilage and would not be permitted development in that regard.

**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 fails to comply with 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).

- 10.2. Specifically insufficient information has been provided demonstrating that the site was used solely for an agricultural use as part of an established agricultural unit on the relevant dates.
- 10.3. Insufficient information has been submitted demonstrating the established agricultural unit and in turn insufficient information has been provided to establish the cumulative number of dwellinghouses developed under Class Q nor the total floorspace of dwellinghouses developed under Class Q within the established agricultural unit. Nor cannot it be established whether 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.
- 10.4. 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 buildings to function as a dwellinghouse. It follows that, based on the evidence submitted, the development would not be permitted under Schedule 2, Part 3, Class Q of the GPDO.
- 10.5. The curtilage of the development exceeds the requirements of paragraph X 'Interpretation of Part 3' of Schedule 2, Part 3 of the GPDO.
- 10.6. Consequently, it considered that prior approval is refused as the development would not be permitted under Schedule 2, Part 3, Class Q of the GPDO.

## **11. Recommendation**

### **11.1 Prior approval refused for the following reasons:**

- Conditions outlined at the end of this report.
  1. Insufficient information has been provided demonstrating that the site was 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. Insufficient information has been submitted demonstrating the established agricultural unit. Consequently insufficient information has been provided to establish the cumulative number of dwellinghouses developed under Class Q or the total floorspace of dwellinghouses developed under Class Q within the established agricultural unit. Nor cannot it be established whether 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. Therefore insufficient information has been provided demonstrating that the development would comply with criteria Q.1 (b), (ba), (c), (d) and (g) of Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  3. Insufficient evidence has been provided to demonstrate that the proposed development would not require building operations that would go beyond what would be reasonably necessary for the buildings to function as a dwellinghouse. Therefore insufficient information has been provided demonstrating that the development would comply with criteria Q.1 (i), of Schedule 2, Part

3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

4. The curtilage of the development exceeds the requirements of paragraph X 'Interpretation of Part 3' of Schedule 2, Part 3 of the GPDO. It follows that, based on the evidence submitted, the development would not be permitted under Schedule 2, Part 3, Class Q of the GPDO.