

Delegated Report

Planning Ref: 23/00657/P3CQ
Applicant: Mr and Mrs Batchelor
Ward: Ambien



Hinckley & Bosworth
Borough Council

Site: Bridge Farm, Twycross Road, Sibson

Proposal: Change of use of agricultural building to dwelling

1. Recommendations

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

2. Planning application description

- 2.1. The application proposes the conversion of an agricultural building into one dwelling through the prior approval process. The building is a portal framed barn with metal sheet walling/cladding and a corrugated roof. Some of the walls are open and a steel frame lean-to at the side would be removed.

3. Description of the site and surrounding area

- 3.1. The application site consists of a portal framed agricultural building finished in corrugated sheet cladding. The site lies on the southern edge of the rural settlement of Sibson, which is located approximately ten kilometres north-east of Hinckley.
- 3.2. Neighbouring uses include a nursery and a bungalow associated with the holding. The building is largely enclosed by cladding on three of its four sides and was erected prior to 20th March 2013. The building and associated land are used in part for the storage of agricultural machinery, hay, and straw in association with the applicant's business.
- 3.3. The site is accessed from the A444 Atherstone Road/Twycross Road via a surfaced driveway shared with the bungalow.

4. Relevant planning history

No relevant planning history.

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. Sheepy Parish Council: Object –

Our understanding is that the proposed development is in Flood Risk Zone 2 and thereby requires a site specific flood risk assessment (as per Environment Agency guidance -'You need to do a flood risk assessment for most developments within one of the flood zones. This includes developments: -in flood zone 2 or 3 including minor development and change of use').

Without this assessment and, as necessary, suitable risk mitigation measures being proposed, it is unclear whether the proposed development complies with Policy S6 – Water Management of Neighbourhood Plan. The information provided by the

applicant (from the Environment Agency) does not constitute a risk assessment and Sheepy Parish Council request that Hinckley & Bosworth Borough Council gives full consideration to the application to ensure that it complies with policy S6.

Sheepy Parish Council also questions the lack of information supplied by the applicant, namely a Structural Report and an Existing Plan Drawing, which HBBC may wish to request before making a decision. Further, Sheepy Parish Council request that Hinckley & Bosworth Borough Council gives consideration to ensure the application complies with the Neighbourhood Plan made May 2022, Policy S8 - Design regarding any impact on neighbouring properties (S8-F) together with the design guidance in the Design Guide (Appendix 5).

6.2. No objections subject to conditions from:

- LCC Highways
- HBBC Pollution

6.3. No objections from:

- HBBC Drainage
- LCC Ecology
- Environment Agency

6.4. No comment received from HBBC Waste Services.

7. National Planning Policy and Guidance

- The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- National Planning Policy Framework (NPPF) (2021)
- 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.

- 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 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 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 total.

- 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;

There would be one separate dwellinghouses developed within this agricultural unit.

- 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 one dwelling is being proposed.

- 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 applicants have 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 extend beyond the existing external dimensions of the building. The side elevation adjoining the existing brick and tile barn (indicated as 'garden room' is proposed to be extended upwards and would therefore exceed the existing external dimensions. Therefore, is considered that the works would not be permitted under Class Q(b).

- 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.

The building has a steel frame and would be infilled with new corrugated sheet cladding and recessed infill panels. No Building Condition Survey or Structural Survey has been submitted to conclude that the portal frame building has a structure which is in a condition which would allow conversion to a residential use. The supporting statement makes no mention of the suitability of the existing foundations or whether they are capable of withstanding additional loads associated with the additional development required to convert the building into a dwelling.

Notwithstanding this, the LPA consider that the only remaining structural portion of the original building would be the steel frame and roof, with significant works required to all external elevations and flooring to provide a building capable of habitation. The necessity of these works and the lack of other structural components to the building highlights that the proposal would go beyond what might sensibly or reasonably be described as a 'conversion' and would instead comprise a 'rebuild' of the existing building in order to provide the residential accommodation proposed as set out in paragraph 105 of the PPG and supported by Hibbitt. Accordingly, it is considered that the works would not be permitted under Class Q(b).

- 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 Bridge Farm off Twycross Road/A444. Visibility is acceptable and the Local Highway Authority have made no objections, subject to a condition requiring the provision of access and parking to the units prior to occupation. 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 due to the remoteness of the site. 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 indicated that land contamination on the site could be addressed via conditions and remediation where necessary and has no further concerns as agricultural activities have ceased.

Flooding risks on the site

- 8.27 The site is in flood risk zone 2/3 (medium to high risk). The Drainage officer has indicated that a Flood Risk Assessment would be required in support of a planning application and would be requested via condition. The Environment Agency have stated:

The development falls within flood zone 2 and therefore the LPA should apply national flood risk standing advice (FRSA) in this instance.

There are no other environmental constraints associated with the application site which fall within the remit of the Environment Agency. If, however, the proposal

subsequently changes such that you feel that it may pose a significant environmental risk then please do not hesitate to contact us and we will be pleased to review our response.

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 400m south of Sibson 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. Whilst the building is not traditional in its construction or design, the cladding and use of natural materials 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;

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. Furthermore, the proposal would result in the external dimensions of the building extending beyond that of the existing external dimensions on the west (side) elevation, thus failing criterion (h) of the legislation. The proposed development would therefore fail to meet the conditions set out under Paragraph (h) and (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 go beyond what is reasonable and necessary to facilitate the conversion as a use for Class C3 purposes. The operational development would be tantamount to the construction of a new building rather than a conversion of an existing building.

Furthermore, the proposal would result in the external dimensions of the building extending beyond that of the existing external dimensions on the west (side) elevation, thus failing criterion (h) of the legislation.

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:

Drawing 02 'Planning Drawing' – Project 1185-AB – received 04/07/2023.

Supporting statement – JMI Planning – received 04/07/2023.