

Application No: 24/0086C

Location: FARRIERS COTTAGE, MOSS END LANE, SMALLWOOD, CHESHIRE, CW11 2XQ

Proposal: Prior Approval to convert existing barn into dwelling.

Applicant: J & E Wray

Expiry Date: 10-May-2024

SUMMARY

The building is not considered to be in agricultural use, and as such, the proposed development does not satisfy the criteria for Permitted Development as set out in Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and, therefore, should be refused.

SUMMARY RECOMMENDATION

Refuse

REASON FOR REFERRAL

The application has been submitted by a Cheshire East Councillor, and under the terms of the Constitution a committee decision is required.

DESCRIPTION OF SITE AND CONTEXT

The application site relates to an approx. 18.5m by 9m footprint building constructed with a concrete base, steel frame with a mixture of blockwork and brickwork facing materials and brown painted corrugated sheeting above with a small area of land surrounding the building. The building is an isolated location north of Moss End Lane in the parish of Smallwood, within the designated Open Countryside as defined in the Local Plan Policies Map.

DETAILS OF PROPOSAL

This application is for prior approval of change of use from a described agricultural building to Class C3 (1no. dwellinghouse). The application is assessed against Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).

The application pertains to the material change of use with only associated small-scale operational development, namely the creation of new window openings to allow natural light to

the proposed bedrooms and the replacement of some of the roof cladding. The building in question was approved by planning permission 24138/3 dated 31st July 1995.

RELEVANT HISTORY

32159/6 - Renewal of Planning Permission 25602/3 For Stables For Private Use - Not decided 24/JUL/2000

24138/3 - Erection of Agricultural Building For The Housing Of Tractor And Agricultural Implements, Fodder Storage And Part For The Stabling Of Horses For Domestic, Leisure And Pleasure Purposes Only For The Inhabitants Of Farriers Cottage. The Change Of Use And Stone Paving Of The Remainder Of The Site For The Working Of Horses - Approved with conditions 31/JUL/1995

25602/2 - Stables for Private Use - Not decided 31/JUL/1995

25587/3 - Garages For Private Use - Refused 28/SEP/1993

9958/3 Application For Removal of Condition 2 Of The Planning Permission 6044/3 - Refused 23/OCT/1979

9547/3 - Change of Use - Disused Bungalow To Clipping Room, Birds, Cattery And Dog Boarding Accommodation - Withdrawn 16/AUG/1979

60443/3 - Erection of Bungalow - Approved with conditions 06/DEC/1977

CONSULTATIONS (External to Planning)

CEC Highways: No objection.

CEC Environmental Protection: Request contaminated land conditions

Smallwood Parish Council: Support

Jodrell Bank: No consultation response

OTHER REPRESENTATIONS

None received.

OFFICER APPRAISAL

This is not a planning application but a prior notification of a proposed change of use of a described agricultural building to a dwellinghouse which will be assessed against the relevant criteria contained within the GPDO as amended.

Class Q of the GPDO confirms that the conversion of an agricultural building is permitted development where it is 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; 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.

Whether an agricultural building?

The building was approved for an agricultural purpose as part of application 24138/3. Within this application there was also a non-commercial equestrian use approved on site, as evidenced by the paddock to the east of the building. It is reached by a track from the unclassified public highway.

The supporting information in planning application 24138/3 stated that the building would be used for agricultural purposes with roughly 1/3 of the building given over to temporary domestic equestrian use until such time as stables accommodation could be arranged. In this written statement from the applicant on 28th January 1992 it was stated that the remaining 2/3 of the building would be given over to the storage of fodder and agricultural plant and equipment “totally commensurate with agriculture”. Further detail again indicates that 2/3 of the building would be given over to the management of the holding.

Further submitted statements by the applicant with planning application 24138/3 state that “the proposal is not for a riding school or livery or for [sic] any other commercial or profitable gain. The purpose is to purely meet domestic requirements of a family interested in horses and animals **and for no other purpose**” (case officer's emphasis). Despite the description of development referencing storage of fodder and agricultural equipment, this points to a domestic use.

Paragraph X of the GPDO identifies that;
‘agricultural building’ means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business.

At the time of the case officer's site visit in connection with the current application, the building was in use for storage of domestic paraphernalia as well as 2no. classic cars. This is not an agricultural use. There was no evidence of fodder or agricultural equipment being stored there. It was clear that the building was divided into three pens as indicated by the supporting statement by the agent which support the statement of the applicants in the original planning application.

The agent for the applicant has provided a compliance statement which states that the building was in use as agricultural on 20th March 2013 as per the GPDO requirement. The site is within a stated agricultural holding of 2.8 hectares and a Department of the Environment, Food and Rural Affairs (DEFRA) agricultural holding number has been provided to the LPA. The case officer has reviewed records and identified a former Ministry of Agriculture, Fisheries and Food (MAFF) reference number allocated to the land on 8th November 1991.

The building is of typical agricultural appearance but site imagery from 2010 indicates that the building was in situ and that the field to the east had been used as a paddock. Aerial imagery

from 2016 continues to show the fields as being used in a domestic equestrian use with horses present to the east of the building. At the time of the case officer's visit the fields about the site edged red did not appear to have been recently grazed by livestock however in any case the building was not in obvious current agricultural working condition. On the balance of probability, it is reasonable to assume the test of the building being agricultural has not been met.

On the basis of the above it is considered that the building does not meet the definition of an 'agricultural building' contained within the GPDO.

Whether a conversion?

The High Court judgement, *Hibbitt and Another vs SOS and Rushcliffe BC* (25/10/16), provides greater clarification on developments proposed under Class Q, particularly with respect of whether a development under this Class represents a "conversion" in the first instance. The decision states that if the development does not amount to a "conversion" then it fails at the first hurdle, which is a freestanding requirement which must be met irrespective of anything in Q.1. There is no definitive point of what constitutes a conversion, and this is therefore a matter of planning judgement.

The NPPG (para 105 – ID 13-105-20180615) states that

“The right allows either the change of use (a), or the change of use together with reasonably necessary building operations (b). Building works are allowed under the right permitting agricultural buildings to change to residential use: Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. However, 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, which may include those which would affect the external appearance of the building and would otherwise require planning permission. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. 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.”

A recent addition to paragraph 105 now states that,

“Internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q”.

The application building is constructed with a concrete base, steel frame, with corrugated cladding to the walls and roof. There are no openings on the elevations of the building other than the large doors to the west facing elevation.

The application is accompanied by a Structural Report. The supporting statement is brief but states that the proposed roof construction will lead to a small increase in loads on the frames

and purlins. The author of the report believes that the sections of the portal frames are likely to be adequate without enhancement. If the steel portals do require assistance in carrying the additional loads, then the layouts seem to be suitable locations for internal structure to assist. The existing timber purlins may require some enhancement by flitch plating, or they can be supplemented by additional purlins. There should be no need to remove any of the existing roof structure of either steel portal frames or purlins. Any enhancement can probably be carried out in situ.

The works proposed would not exceed what could reasonably be described as a "conversion". This is inherently down to the nature of the building itself and its suitability for conversion. As the development proposals are considered to be within what can reasonably and sensibly be considered to be a "conversion" the threshold of Class Q(b) would be met.

Limitations and conditions of GPDO

While it has been found that the works would not benefit from Class Q Permitted Development rights in the first instance, an assessment has been carried out on whether the development would satisfy the limitations and conditions of the GPDO:

Paragraph Q.1 sets out where development is not permitted by Class Q:

(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 application history and a site assessment indicates that on the 20th March 2013, the building was not used solely for an agricultural use as part of an established agricultural unit. Even were this criterion evidenced to be satisfied; the proposal is not currently in use as agricultural so the test overall would still be failed.

(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;**

Proposal would not exceed 465m², would be approx. 225m².

(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;

The proposal is for 1 dwelling and will not exceed 465sqm.

(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 proposal is for larger dwellinghouse.

(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 proposal is for 1 larger dwellinghouse under 465 sqm.

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

The Planning Statement states that 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;

N/A

(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 agricultural development under Part 6 has taken place.

(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 proposal does not exceed the external dimensions of the existing buildings.

(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);**

As noted above the building will require the insertion of a number of new openings and the construction of new wall materials and a roof. However, the works proposed are considered not to exceed what could reasonably be described as a "conversion". This is inherently down to the nature of the building itself and its suitability for conversion. As the development proposals are considered to be within what can reasonably and sensibly be considered to be a "conversion" the threshold of Class Q(b) would be met.

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

The site is not 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;**

The site does not form part of any of these designations.

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

The site is not and does not contain a scheduled monument.

(m) the building is a listed building.

The building is not a Listed Building.

Determination to whether Prior Approval is required

Paragraph Q.2 notes that, 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 impacts of the development –

The Highways Officer has considered the application and has no objection

There is sufficient space for parking provision.

(b) noise impacts of the development

The Environmental Health Officer has been consulted and has raised no objection in terms of the noise implications of the development.

(c) contamination risks on the site

The Environmental Health officer has reviewed the proposal and has no objection subject to standard conditions regarding contaminated land.

(d) flooding risks on the site

Site is not within a flood risk zone.

(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

The location and siting of the building is not impractical or undesirable.

Para 109 of the NPPG states that, 'Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable".'

It goes on to note that LPAs should not refuse applications just because the location is not one which would usually permit residential development but if there are practical locational issues e.g. 'additionally the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals'. In this instance the siting is not considered impractical or undesirable.

(f) the design or external appearance of the building

The design and appearance are considered acceptable.

Additionally, Jodrell Bank Observatory (JBO) have not objected to the application.

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

The plans show windows/doors to all habitable and non-habitable rooms of the proposed dwelling house.

Other Matters

Space Standards

Paragraph 3(9A) of the GPDO states that permission is not granted for any development for any new dwellinghouse;

(a) where the gross internal floor area is less than 37 square metres in size; or

(b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.

The proposed development complies with this requirement.

CONCLUSION

In terms of Q(b) the scope of the proposed building operations proposed is considered to be reasonable to facilitate the conversion of the building into a dwellinghouse.

However, the building is not considered to be in agricultural use, and is considered to be in ancillary domestic workshop/storage use, so Q(a) would not be complied with.

As such, the proposed development does not satisfy the criteria for Permitted Development as set out in Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and, therefore, should be refused.

Recommendation

Refuse for the following reason:

- 1. The building is not an agricultural building (as defined in the GPDO) and as such, the proposed development does not satisfy the criteria for Permitted Development as set out in Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).**

