

Case Officer: Nathanael Stock

Recommendation: Refuse

Applicant: Mr K Bishop

Proposal: Change of Use and conversion of 1no agricultural building into 1no self-contained dwellinghouse (Use Class C3) including associated operational development under Part 3 Class Q (a) and (b)

Expiry Date: 20 March 2020

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is within the open countryside, located approx. 250 metres from the edge of Sibford Ferris to the west, c. 500-600 metres from its centre, and 380m from the highway (Grange Lane). Swalcliffe is c.1.4km to the east. The application relates to a steel portal framed agricultural storage building, accessed from Grange Lane via a track to the south of the building, which also serves as a footpath and designated right of way.
- 1.2. The structure is of simple form, with an eaves height of c.3.5m, ridge height of 5.0m, footprint of c.12.35m by c.18m.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. The current application seeks permission under Part 3 (Class Q) of the GPDO 2015 (as amended) for (a) the Change of use from agricultural building to residential dwelling (Class C3) and (b) building operations reasonably necessary to convert the said building to the said use.
- 2.2. The submitted drawings show a proposal for one dwelling, with all accommodation at ground floor level. The proposals include an open plan living room, kitchen and dining area along with inner hallway, study, cloakroom, utility room, three bedrooms and bathroom. The drawings suggest a structure being built within the walls of the existing structure, along with large new openings in all four elevations, but especially the north elevation.
- 2.3. Documents submitted in support of this application: "LOCATION PLAN – not to scale" and dated Dec 2019, drawing "07" (existing floor plans and elevations), drawing "05" (Block plan @1:500), drawing "03" (Proposed floor plan), drawing "04" (Proposed elevations) and a Structural Appraisal by Wellan Ltd, dated December 2019.

3. RELEVANT PLANNING HISTORY

- 3.1. There is no planning history directly relevant to the proposal

4. PRE-APPLICATION DISCUSSIONS

- 4.1. No pre-application discussions have taken place with regard to this proposal

5. RESPONSE TO PUBLICITY

- 5.1. This application has been publicised by way of a site notice displayed near the site, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **19 March 2020**, although comments received after this date and before finalising this report have also been taken into account.
- 5.2. Four letters of objection received from two households. The comments raised by third parties are summarised as follows:

Impact on users of right of way, including walkers, dog walkers, cyclists, horse riders and school children

Impact on highway safety + increase in traffic

Planning history of the application building – planning permission was originally refused for landscape reasons [officer comment: application 99/00141/AGD was granted prior approval, but the Council required further details of its design and siting] but granted at appeal subject to conditions [no appeal found, but the conditions were attached to the planning permission granted by the Council]

Visual impact of proposed large glass windows, creating a lot of light at night

Structural repair of existing building – comprised of old corrugated iron and asbestos sheets; its steel supports are exposed; it has always been a three sided open barn; all three walls of the structure would need to be replaced and a new fourth wall created; the roof would need to be completely replaced; there are no foundations so new footings would be required

Inadequacies of the submitted structural appraisal

- 5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

6. RESPONSE TO CONSULTATION

- 6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 6.2. Sibford Ferris Parish Council – **Comments**

The Parish Council discussed the above proposed planning application at a meeting on 10/03/2020 and make the following comments: 1. Compliance to Class Q rules changing use from agricultural to domestic should be closely checked by Cherwell District Council (CDC). 2. The site is in a prominent position and should be screened to limit unwarranted and unnecessary landscape and light pollution impact arising from the proposed design. 3. Concerns raised by adjacent property - Folly Farm House - should be reviewed by Cherwell District Council as they express concerns related to change of use compliance and initial development activity pre-emptively taken by the land owner.

OTHER CONSULTEES

- 6.3. HIGHWAYS (OCC) – **No objection**

The addition of a single, three-bedroom dwelling using the existing access to the highway will have a negligible impact in transport terms. It is recommended that the applicant considers installing a passing bay mid-way along the access track

The proposals are unlikely to have any adverse impact upon the local highway network from a traffic and safety point of view, therefore I offer no objection.

6.4. ENVIRONMENTAL PROTECTION (CDC) – Comments

Noise: No comments

Contaminated Land: I recommend the full contaminated land conditions are applied as the site is potentially contaminative due to its previous use. I would like to see information provided which demonstrates land contamination has been adequately considered and the site is safe (or can be made so through remedial works) and assessments have been undertaken to adequately consider whether this development proposal will be affected land contamination. As such, I recommend applying conditions J12-16 requiring the phased assessment of land contamination in line with current best practise, initially starting with a desk study and site walkover undertaken to assess this risk.

Air Quality: Measures should be in place to encourage the uptake of low emission transport including the provision of Electric Vehicle (EV) charging infrastructure. Ideally we would like to see an EV charge point for the residential unit to allow for the future uptake of EV's by the residents to maximise opportunities for sustainable transport in accordance with Government guidance contained within the National Planning Policy Framework.

Odour: No comments

Light: No comments

If you wish to deviate from the suggested conditions then this should be discussed with the officer making these comments to ensure the meaning of the condition remains and that the condition is enforceable and reasonable.

7. RELEVANT PLANNING POLICY AND GUIDANCE

As this is a Prior Notification application (as per above), the provisions of Part 3 of Schedule 2 of the General Permitted Development Order 2018 ("GPDO") are considered most relevant.

Under Part 3 Class Q of the GPDO, development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, does not require Prior Approval, provided that (1) it meets the tests of Class Q,

(a) The site was used solely for an agricultural use, as part of an established agricultural unit—

(i) on 20th March 2013;

(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 ten years before the date the development under Class Q begins;

(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;
- (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;
 - (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;
 - (e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;
 - (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;
 - (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;
 - (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;”
 - (i) The development under Class Q(b) would not consist of any 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);
 - (j) The site is not on article 2(3) land;
 - (k) The site is not or does not form part of
 - (i) a site of special scientific interest;
 - (ii) a safety hazard area;
 - (iii) a military explosives storage area;
 - (l) The site is not, or does not contain, a scheduled monument;
 - (m) The building is not a listed building.

And (2), 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;
- (b) noise impacts of the development;

- (c) contamination risks on the site;
- (d) flooding risks on the site, or
- (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, and
- (f) the design or external appearance of the building

and the provisions of paragraph W shall apply in relation to any such application.

And (3), 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 sub-paragraphs (1)(a) to (e.) and the provisions of paragraph W of this Part shall apply in relation to that application.

And (4) the development shall begin within a period of three years beginning with the date on which—

- (a) any prior approval is granted for that development, or
- (b) the period of days referred to in paragraph W(11)
- (c) of this Part expires without the local planning authority notifying the developer as to whether prior approval for that development is given or refused, whichever is the earlier.

Under paragraph W.(3) the local planning authority may refuse an application where, in the opinion of the authority—

- (a) the proposed development does not comply with, or
- (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

Section W(9)(as amended) of Schedule 2 Part 3 to the GPDO states that, *“the local planning authority [LPA] may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include—*

- (a) *assessments of impacts or risks;*
- (b) *statements setting out how impacts or risks are to be mitigated; or*
- (c) *details of proposed building or other operations;”*

Section W(10)(as amended) of the same Regulations states that, *“the local planning authority [LPA] must, when determining an application—*

- (a) *take into account any representations made to them as a result of any consultation under paragraphs (5) or (6) and any notice given under sub-paragraph (8);*
- (b) *have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012, so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and*
- (c) *in relation to the contamination risks on the site—*
 - (i) *determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(a), and in doing so have regard to the Contaminated Land Statutory Guidance issued by Secretary of State for the Environment, Food and Rural Affairs in April 2012, and*
 - (ii) *if they determine that the site will be contaminated land, refuse to give prior approval.”*

8. APPRAISAL

- 8.1. The key issue for consideration in this application is whether or not the Class Q criteria are satisfied.
- 8.2. In view of the building type, size and location, and observations on site I have no reason to doubt that the use of the building was for agricultural purposes on 20th March 2013.
- 8.3. The submitted location plan identifies the extent of the agricultural unit, and this land totals c. 6.1 hectares in area.
- 8.4. The proposal accords with criteria (a), (b) and (d).
- 8.5. The dwelling's proposed floor space (in the region of 147 sq m) would define it as a larger dwellinghouse. Criterion (c.) is therefore not relevant in this instance.
- 8.6. The application form states that the site is not under an agricultural tenancy agreement and nor had one been terminated in that last year. There is no evidence to suggest that this is not the case and therefore criteria (e) and (f) are taken to be satisfied.
- 8.7. There is no evidence to suggest that criterion (g) is not satisfied.
- 8.8. When measuring from drawing "07" (Existing floor plans and elevations) and drawings "03" and "04" (Proposed floor plans and elevations), it is not clear that the development would not result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. However, a comparison of the position of the steel supports on the two drawings would suggest the proposed building to be sited within the steel supports. Therefore, on balance, criterion (h) is satisfied.
- 8.9. However, proposed building operations include internal and external walls, installation of windows and doors and a new roof structure. The question is whether the proposed alterations are reasonably necessary to function as a dwellinghouse.
- 8.10. Officers have reviewed the Structural Assessment by Wellan submitted with the application. The report states that there would be "no alteration to the existing steel portal frame or the roof structure" – although the submitted plans would not bear this out, and at the time of the officer's site visit it seemed clear that the roof would need to be replaced.
- 8.11. It is noted that the Structural Assessment did not include any review of the foundations to the barn; it mentions that the barn is clad on all four faces, whereas one side is open, and the building dates to between 30-50 years whereas it was approved in 1999/2000.
- 8.12. Based on the observations of the Structural Assessment, review of the plans submitted with the application and observations made at the officer's site visit, it is considered that the existing structure is not capable of being converted. The proposals show a structure to be built within the existing structure, and in reality this is what would be required for there to be a dwelling here.
- 8.13. Government guidance on the matter states:

"...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.***

For a discussion of the difference between conversions and rebuilding, see for instance the case of [Hibbitt and another v Secretary of State for Communities and Local Government \(1\) and Rushcliffe Borough Council \(2\) \[2016\] EWHC 2853 \(Admin\)](#).

- 8.14. As noted above a considerable amount of work would need to be carried out to facilitate the proposed development in this instance. It is considered this work would exceed that which constitutes a conversion. It is therefore considered that criterion (i) is not satisfied.
- 8.15. The site is not on article 2(3) land, is not or does not form part of a SSSI, safety hazard area or military explosives storage area, is not or does not contain a scheduled monument, and the building is not listed, and therefore criteria (j) – (m) are satisfied.

In summary;

- 8.16. Criterion (c.) is not relevant in this instance; criteria (e.) and (f) are taken to be satisfied though no evidence submitted. Criteria (a), (b), (d) and (g) are satisfied and, on balance, so is criterion (h). However, the existing structure is not capable of functioning as a dwelling and the works proposed are *considerable* and, for the reasons set out above, criterion (i) is not satisfied. To cite the words of the planning practice guidance, the building subject of this application is considered not to “have the permitted development right”.

Transport and Highway impacts

- 8.17. The local highway authority has no objections to the proposals on highway safety grounds. Subject to conditions where necessary to secure parking and turning provisions, the proposals are considered acceptable in this regard.

Noise impacts, Flooding risks & Contamination risks

- 8.18. No response has been received in relation to noise or flooding. It is considered that contamination risks may be addressed by appropriately worded conditions.

Curtilage

- 8.19. Paragraph X of the GPDO defines the permitted curtilage as “(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 lesser”.

- 8.20. It is noted that, where this Council has refused applications on this basis, Inspectors have not upheld such concerns.
- 8.21. However, it is noted in this instance that the submitted plans show an area of curtilage of 25.5m by 18.0m, equating to an area of 459 sq m. The application building has an external footprint of 12.35m by c.18m = 222.3 sq m (the submitted plan says 222.7 sq m). $459 - 222.7 = 236.3$ sq m. The land identified as curtilage around the building therefore exceeds the footprint of the building. Also, it is noted that one could not access the parking spaces without crossing land not in the red line.
- 8.22. So, the area proposed as curtilage exceeds the land area occupied by the agricultural building. This must be a legitimate concern for the decision maker. The proposal would not accord with the definition of curtilage set out at paragraph X of the GPDO.

Location and siting

- 8.23. The test in this criterion is 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.
- 8.24. The PPG guides that Local Planning Authorities (LPA) should start from the premise that the permitted development right grants planning permission, subject to prior approval requirements. Moreover, the PPG guides that a proposal for a change of use in a location where the Local Planning Authority would not normally grant planning permission for a new dwelling is not sufficient reason for refusing prior approval.
- 8.25. Impractical or undesirable are not defined in the regulations, and the LPA 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”. 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.
- 8.26. Having regard to the location and context of the building, adjacent to a highway and with no other farm buildings close at hand, it is considered that the proposal satisfies this criterion.

Design and external appearance

- 8.27. The design of the building would detract from its agricultural character but would not fundamentally change the form of the building. Significant alteration of the building is proposed, but it is not considered that part Q.2 (f) is not necessarily offended by this, rather that it is relevant under Q.1 (i).

9. PLANNING BALANCE AND CONCLUSION

- 9.1. The proposed development accords or is likely to accord with criteria Q.1 (a), (b), (c.), (d), (e.), (f), (g) and, on balance, (h). It also accords with criteria (j) – (m). However, the submitted drawings indicate a substantial rebuilding of the structure, including new walls and new roof, and works that are considered not “reasonably necessary for the building to function as a dwellinghouse” including a significant number of new openings, some exceeding a size that would be reasonably necessary. The proposal therefore does not comply with criterion (i). In addition, the

area proposed as curtilage exceeds the land area occupied by the agricultural building, and a building is proposed to serve the dwelling for ancillary purposes that lies outside of the curtilage. The proposal would therefore not accord with the definition of curtilage set out at paragraph X of the GPDO.

9.2. Therefore, on the basis of the information submitted, it is not reasonable for the LPA to give prior approval.

10. RECOMMENDATION

That permission is refused, for the following reason(s):

1. Alterations are proposed that would go beyond the building operations permissible under Class Q and which are considered not "reasonably necessary for the building to function as a dwellinghouse" and the existing building is not capable of functioning as a dwelling. The proposed development would therefore not comply with the provisions of Class Q.1 (i) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and therefore would require planning permission.
2. The curtilage indicated on the submitted plans exceeds the land area occupied by the agricultural building, and therefore the proposal does not comply with the provisions of Class Q and Paragraph X of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Case Officer: Nathanael Stock

DATE: 20.03.2020

Checked By: Paul Ihringer

DATE: 20/3/20
