

## CHERWELL DISTRICT COUNCIL

### TOWN AND COUNTRY PLANNING ACT 1990

Appeal by Mr K Bishop or St Nicholas Property Ltd against the decision by Cherwell District Council to refuse the prior notification application in relation to the proposed 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)at land west of Grange Lane Sibford Ferris.

Appellant : Mr K Bishop  
Appeal Site : Barn Folly Farm Grange Lane Sibford  
Ferris Oxfordshire OX15 5EY

LPA Reference : 20/00174/Q56  
Planning Inspectorate Reference : APP/C3105/W/19/3250685

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## 1 THE COUNCIL'S CASE

- 1.1 The Council's case in this appeal is principally as set out within the officer's delegated report for the planning application, a copy of which was sent to the Inspectorate with the appeal questionnaire.
- 1.2 This Statement of Case does not intend to repeat or duplicate the arguments set out in that report, but instead focuses on responding to and clarifying the key issues that arise from the Appellant's Statement of Case.
- 1.3 This Statement of Case solely focuses on the reason for refusal and does not cover the aspects of the development which the Council considers to be acceptable as these matters are common ground between the parties and are assessed in the delegated officer's report.

## 2 COMMENTS IN RESPONSE TO THE APPELLANT'S STATEMENT OF CASE

- 2.1 The Appellant contends at para 2.4 of his statement that “the Council has failed to consider and comply with paragraph 38 of the [NPPF]” and makes a similar suggestion at para 4.16 of his statement. The Council submits that its assessment must be made against Class Q of the General Permitted Development rather than local or national planning policy. Prior notification applications are time limited and decisions should be made within 56 days. Recent high court decisions seem to have clarified that extensions of time can be agreed in the case of part 3 applications, but (i) this has only emerged through a second high court case, a first case having concluded that extensions of time could not be used, the position on the matter therefore not being ever so clear and (ii) the Council’s view is that such tools should only be used where an application is capable of being approved i.e. not unacceptable in principle. Notwithstanding the above,
- 2.2 The Council would make two further points in this regard. Firstly, that simply to refuse an application does not demonstrate the Council has not approached decision making in a positive way, and secondly the Council submits that the proposal does not amount to sustainable development.
- 2.3 The Appellant mentions at para 3.2 of his statement that the site subject of the appeal extends to 22.7 ha and not 6.1 ha. This may be an error on the Council’s part but the Council submits that whether the wider site is 6.1 ha or 22.7 ha had no material bearing on its assessment or determination of the application (since either way the plans show an established agricultural unit exceeding 5 ha in area) neither does it have any bearing on this appeal..
- 2.4 The Appellant contends at para 4.4ff of his statement that the Council’s reference to a new roof structure is incorrect. The Council notes that the structural survey submitted with the application indicated a new roof was not necessary, but the Council submits that a comparison of the building subject of this appeal with what is shown in the plans submitted with the appeal bears out that a new roof is proposed.
- 2.5 The Appellant contends at para 4.8 of his statement that “the council has confused the proposed replacement cladding for a structural alteration”. The Council submits that the officer’s report does **not** suggest the proposed replacement cladding is a structural alteration. The Council submits that a comparison needs to be made by the decision maker between the building that exists on site now (that is, by way of a site visit) and the proposals shown on the plans submitted with the appeal.

- 2.6 The Appellant suggests at para 4.9 of his statement that the officer's report does not detail those elements of the proposal that are deemed to be beyond what is reasonably necessary for the building to function as a dwellinghouse. Whereas, the Council submits that this is set out at paragraphs 8.9 to 8.12 of the officer's report.
- 2.7 The proposed floor plan subject of this appeal shows ten steel supports in the positions of the ten steel supports to the existing building. These are shown partly within and partly outside a new perimeter wall to the building. The question that must be asked by the decision maker is whether the proposals subject of this appeal are a conversion of the existing building or whether they show a new building inside the existing steel frame and not reliant on that steel frame.
- 2.8 As has been rehearsed on numerous occasions at appeals in relation to proposals under Class Q, and in the case of [\*Hibbitt and another v Secretary of State for Communities and Local Government \(1\) and Rushcliffe Borough Council \(2\) \[2016\] EWHC 2853 \(Admin\)\*](#), and as set out in the Government guidance on such proposals, the permitted development assumes that the agricultural building is capable of functioning as a dwelling. And that, "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".
- 2.9 The Council submits that if all that is left of the existing building is the steel frame, which, at best, is the case here, then the proposals do not amount to a conversion of the existing building. The Council submits that it has not been demonstrated that the state of repair of the building, e.g. the lack of foundations, would not necessitate the dismantling and replacement of the steel portal frame.
- 2.10 Based on its reading of the Structural Assessment, a review of the plans subject of this appeal and observations made at the officer's site visit, the Council submits that the existing structure is not capable of being converted and the building does not have the permitted development right.
- 2.11 The Council respectfully submits that, if this appeal were to be allowed, the development that would take place would exceed what could reasonably be described as a conversion of the existing structure and would entail the erection of a new building.
- 2.12 The Appellant refers at para 4.10 of his statement to para 9.1 of the officer's report. The Council notes what is said here regarding no specific mention of new openings. However, the Council submits that para 8.14 of the officer's report refers to the works that would exceed that which constitutes a conversion, which encompasses those works mentioned in

para 8.9 of the report. Furthermore, and as mentioned earlier in this statement of case, part 3 applications are time limited applications and that it is not appropriate to negotiate on such matters where a proposal is not acceptable in principle and therefore not capable of being approved.

2.13 The Appellant refers at para 4.11 of his statement to the Council's remarks at para 8.27 of the officer's report regarding the external appearance of the building. The Council submits that the assessment of the external appearance of the building under Q.2(f) and a consideration under Q.(a) as to whether building operations are reasonably necessary are two different things and should not be confused or conflated.

2.14 In relation to the second reason for refusal, and paragraphs 4.12 – 4.15 of the Appellant's statement, the Council would reiterate the key points from the officer's report and invite the Inspector to determine whether or not the proposals can be made, through imposition of conditions, to accord with the requirements of Part 3 and Class Q:

(1) The land identified as curtilage around the building exceeds the footprint of the building.

(2) One could not access the parking spaces without crossing land not in the red line.

(3) This matter should be a legitimate concern for the decision maker.

The Council submits that the requirement in relation to curtilage is stipulated in the regulations for a legitimate reason and in this case the proposal would result in a significantly greater area being used for residential purposes.

2.15 The Appellant contends that the Council's conclusion that the submitted drawings indicate a substantial rebuilding of the structure is an "assertion". The Council submits that it is the result of a considered and careful assessment, which any responsible decision must make based on the circumstances of the case, the plans submitted and a visual inspection of the subject building. The Council submits that the appeal building is not already suitable for conversion, that the works required to enable the structure to be used for a dwelling would exceed that which can reasonably be described as a conversion and that in reality the building does not have the permitted development right.

### **3 CONCLUSION**

3.1 For the reasons set out in the delegated officer's report and in this statement, the Council submits that the alterations proposed 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", that the existing building is not capable of functioning as a dwelling and does not benefit from the permitted development right and that the curtilage indicated on the submitted plans exceeds the land area occupied by the agricultural building.

- 3.2 The proposals therefore do not comply with the provisions of Class Q.1 (i) or Paragraph X of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and therefore would require planning permission, and the Inspector is respectfully requested to dismiss the appeal.