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## Appeal Decision

Site visit made on 1 September 2020

by **Helen O'Connor LLB MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 September 2020

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**Appeal Ref: APP/C3105/W/20/3250685**

**Barn at Folly Farm, Grange Lane, Sibford Ferris, Oxfordshire OX15 5EY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr K Bishop of St Nicholas Property Ltd against the decision of Cherwell District Council.
  - The application Ref 20/00174/Q56, dated 24 January 2020, was refused by notice dated 20 March 2020.
  - The development proposed is the 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).
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. In my heading above I have used the site address given on the appeal form as it is more succinct than that given on the application form.

### Main Issues

3. The main issues are:
  - Whether the proposal would be permitted development, with particular regard to whether the requirements of Class Q(b), Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) would be met, and;
  - Whether the requirements of Class Q(a) would be met having particular regard to the proposed curtilage of the dwellinghouse and the provisions of Paragraph X, Part 3, Schedule 2 of the Order.

### Reasons

*Whether the proposal would be permitted development under Class Q(b)*

4. Class Q(b) of the Order permits building operations reasonably necessary to convert the relevant building to a use falling within Class C3. It further states at paragraph Q.1(i) that development under Class Q(b) is not permitted if it would consist of building operations other than the installation or replacement

- of windows, doors, roofs or exterior walls, or water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwellinghouse.
5. The agricultural building in question is of a functional design with a steel portal frame. The roof has corrugated cladding with some translucent sheets and the north, south and west elevations are mostly clad with profile metal sheeting. The east elevation is primarily open sided with some limited sheeting.
  6. The structural report<sup>1</sup> states that the building is in fair condition and would be structurally suitable for conversion to residential use. I have no contrary evidence that the frame would not be able to take the loading associated with the external works proposed.
  7. Nevertheless, the submitted plan<sup>2</sup> is annotated to show that the proposed works include the replacement of the roofing material with insulated metal profile roofing sheets. Moreover, the existing wall cladding would be replaced with a combination of vertical timber rainscreen and smooth painted render on lightweight timber insulated panels. This would largely infill the open part of the eastern elevation. Additionally, there would be a considerable number of powder coated aluminium windows and doors across all four elevations and new rooflights. Cumulatively, these works amount to extensive building operations.
  8. Planning Practice Guidance (PPG)<sup>3</sup> advises that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling, clarifying that it is not the intention of the permitted development right in Class Q(b) to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. In this respect the PPG refers to relevant case law<sup>4</sup> to which I have had regard.
  9. The caselaw established that Class Q(b) only permits building operations necessary to convert the building, and therefore if a development does not amount to a conversion then it fails at the first hurdle, even though the building operations may fall within those listed in paragraph Q.1(i). Furthermore, whether a proposal constitutes a conversion or a rebuild is a matter of planning judgement and the nature and extent of the proposed building operations, even where they may concern non-structural elements, are a relevant consideration in making that assessment.
  10. In this case, from my own observations and the information in the structural report and plans, notwithstanding the retention of the steel portal frame and roof structure, the cumulative extent of the works proposed to facilitate a residential use would largely replace all the external facing materials. Moreover, the structural appraisal does not expressly refer to the adequacy of the foundations and therefore, I am not assured that further works would not be required. Based on the information before me the works would be of such a degree that they would go beyond what might reasonably be described as a conversion, as in practical terms, the proposed development would need to

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<sup>1</sup> Wellan Structural Appraisal, December 2019

<sup>2</sup> Proposed elevations, Drawing no PN-19-012 04

<sup>3</sup> Paragraph 105 Reference 13-105-20180615

<sup>4</sup> Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

start afresh with only a modest amount of help from the original agricultural building.

11. Therefore, it follows that on the evidence provided, the building would not benefit from the permitted development rights under Schedule 2, Part 3, Class Q(b) of the Order.

*Whether the proposal would be permitted development under Class Q(a)*

12. Class Q(a) refers to the permitted development concerning the change of use of a building and any land within its curtilage. Paragraph X of the Order provides a definition of the term 'curtilage' for the purposes of the permitted development under class Q of the Order. This states that 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 lesser'.
13. The proposed block plan<sup>5</sup> shows the proposed residential curtilage edged in red with annotations stating the footprint of the barn as 222.7sqm and a residential curtilage of 219.5sqm. However, the Council, using the scaled drawings have calculated the footprint of the building to be 222.3sqm and a curtilage of 236.3sqm<sup>6</sup>. Although the appellant states the footprint figure of 222.7sqm is deemed to be accurate, he does not categorically state this is also true of the curtilage figure as depicted on the submitted plan<sup>7</sup>. Accordingly, there does appear to be a discrepancy between the annotation figure and red line for the proposed residential curtilage.
14. The appellant refers to previous appeals involving the Council concerning the curtilage of proposals under Class Q not having been upheld. However, in the absence of any details, I am unable to make a meaningful comparison with the proposal before me. Even so, had there been no other substantive concerns with the proposal, the minor nature and scale of the discrepancy is a matter that might have been addressed by imposing a condition under paragraph W(13) of the Order to establish a reduced residential curtilage that met with the definition within paragraph X.
15. Nevertheless, based on the information provided, although the discrepancy may be small, the curtilage shown on the proposed plans exceeds the definition given in paragraph X of the Order. It follows that the proposal would therefore fall outside the extent of the permitted development described in Class Q(a) of the Order.

*Other matters*

16. Reference is made to paragraph 38 of the National Planning Policy Framework which states that local planning authorities should approach decisions on proposed development in a positive and creative way. The appellant considers that a more proactive approach by the Council may have resolved their concerns. However, my determination relates to those matters specified under the prior approval process. Accordingly, matters concerning the behaviour or

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<sup>5</sup> Drawing reference PN-19-012 05

<sup>6</sup> Paragraph 8.21 Council's Delegated Report

<sup>7</sup> Appellant's Final comments dated 18.8.20

approach of the Council lie outside the scope of this procedure. Therefore, it would not lead me to a different conclusion.

**Conclusion**

17. For the reasons given and based on the evidence presented, I conclude that the proposal is not permitted development within Schedule 2, Part 3, Class Q of the Order. The appeal, is therefore, dismissed.

*Helen O'Connor*

Inspector