

**Case Officer:** George Smith

**Recommendation:** Refuse

**Applicant:** Mr Roger Yates

**Proposal:** Change of use of existing farm buildings into a single residential dwelling (use class C3)

**Expiry Date:** 10 September 2020

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## **1. APPLICATION SITE AND LOCALITY**

- 1.1. The site is located to the north of the village of Great Bourton, at the outer limit of the village at the end of Manor Road. The site is currently occupied by a number of dilapidated farmyard buildings and barns. The buildings would previously have been used as part of a working farm in relation to Crockwell House to the east; however, the farm is no longer a working enterprise.
- 1.2. The site is located in close proximity to a Grade II Listed Building, Crockwell House. This building is of more modern construction, in corrugated sheeting and blockwork, whilst the former agricultural buildings further to the south are constructed in stone and brick.

## **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. The drawings are very limited, so it is not clear what the internal configuration of the dwelling would be, or what amendments are proposed to its structure or external appearance.

## **3. RELEVANT PLANNING HISTORY**

- 3.1. The following planning history is considered relevant to the current proposal:
- 3.2. **19/00250/OUT** - OUTLINE - Residential development of 3no dwellings (Re-submission of approved application 16/00609/OUT) – Application Permitted

## **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, by advertisement in the local newspaper, 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 **24 August 2020**, although comments received after this date and before finalising this report have also been taken into account.

5.2. No comments have been raised by third parties.

## 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. BOURTONS PARISH COUNCIL: **Object** – due to utilitarian appearance of current building, with the dilapidated buildings not appearing capable of conversion.

### STATUTORY CONSULTEES

6.3. OCC HIGHWAYS: **No objections**

### NON-STATUTORY CONSULTEES

6.4. ENVIRONMENTAL HEALTH: **No objections**

## 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. The ‘blue-line’ ownership area is contained around the application building and the site to the south which has been approved for residential development. There is no further information to suggest that the applicant has any associated agricultural land. No information has been submitted to demonstrate the extent of the ‘established

agricultural unit' and therefore an assessment under parts (b), (d) and (g) of Q.1 cannot be undertaken.

- 8.3. Upon my site visit (8<sup>th</sup> September 2020), at least part of the building within the application site was not being used for agricultural purposes, with a (non-agricultural) motor vehicle being stored within the barn. Other paraphernalia suggested that restoration works were taking place to this vehicle. The part of the building furthest north did appear to be used for storage of agricultural equipment, being a number of animal feeders. However, nothing suggested that these were being used elsewhere within the holding at any other time of the year (or, as discussed later, whether there is even a holding). I would question whether the storage of animal feeders alone would constitute an ongoing agricultural use. In any case, it was clear that the building as a whole did not constitute an ongoing agricultural use at this time.
- 8.4. There is a section of this barn building which is proposed to be demolished (also approved under application 19/00250/OUT, with the reserved matters application currently live; 20/01726/REM). Whilst the section of the barn considered under this Class Q application is outside of the live applications 'red-line' site area, they cannot be considered independent of one another because of their relationship and shared functionality and access. The Planning Statement of the live application has provided a description of the use of the buildings, stating, "*the current buildings are in an advanced state of decay and are never going to be used for agricultural purposes again*".
- 8.5. As noted above, in view of observations on site and information contained within previous application submissions and in the absence of any evidence to the contrary, Officers consider that the building was not used for agricultural purposes on 20<sup>th</sup> March 2013 and, together with the assessment made in para 8.2 of this report fails to meet criterion (a) of Q.1.
- 8.6. The dwelling's proposed floor space (in the region of 436 sq m) would define it as a larger dwellinghouse. Criterion (c.) is therefore not relevant in this instance.
- 8.7. 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.
- 8.8. Criterion (h) requires the decision maker to assess whether the works would extend beyond beyond the external dimensions of the existing building at any given point. As only a block plan has been submitted which details the location of the proposed building, this is not considered clear enough to be able to satisfy this criterion. The ambiguity of whether new materials proposed and/or how the open elevation would be treated leads officers to the view that this criterion is not satisfied
- 8.9. Criterion (i) requires the decision maker to assess on building operations, including whether works proposed are *reasonably necessary* for the building to function as a dwellinghouse. 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).*"

- 8.10. The structural survey states that the existing building is in fair condition and is structurally suitable for conversion to residential use without any strengthening of the building envelope. However, what the structural survey fails to account for is the fundamental change to the structure of building that would occur through the partial demolition. This, and what appear to be widescale changes that are required to make the building suitable and habitable for residential use is not detailed anywhere within this prior approval application. There is also no detail provided for the number or location of windows that would be required and how these may alter the structure. The applicant's agent has suggested that a further application would come forward to detail changes, i.e. design, internal configuration and materials, should this prior approval be granted. This suggests that the existing materials are to be replaced. In any case, this information is absent. This information is considered fundamental to the consideration of this application before the LPA. Officers therefore consider that the proposal is in conflict with criterion (i).
- 8.11. 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;**

- 8.12. Criterion (c) is not relevant in this instance; criteria (e) and (f) are taken to be satisfied. Criteria (j) – (m) are satisfied. Due to a lack of information on the agricultural holding, Criteria (b), (d), (g) are considered not satisfied. Due to the lack of information relating to the agricultural holding and observations on site, criterion (a) is not satisfied. Due to the lack of information relating to structural and design alterations, Criteria (h) and (i) are considered 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**

- 8.13. The local highway authority has no objections to the proposals on highway safety grounds. The proposals are considered acceptable in this regard.

#### **Noise impacts, Flooding risks & Contamination risks**

- 8.14. There are no particular noise concerns in relation to this application, and in relation to flooding, it is not situated in a Flood Zones 2 or 3. The Environmental Health Officer has commented on this Class Q application, stating that conditions can be attached relating to noise insulation. This condition is considered reasonable and can be attached to any consent given.

## **Curtilage**

- 8.15. 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”.
- 8.16. The red line area submitted with the application relates to land that is immediately beside the agricultural building, is closely associated with the building and serves the purpose of the agricultural building and the development would therefore comply in this regard.

## **Location and siting**

- 8.17. 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.
- 8.18. The PPG guides that LPAs 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 LPA would not normally grant planning permission for a new dwelling is not sufficient reason for refusing prior approval.
- 8.19. 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.
- 8.20. The building would be accessed from the south. It is proposed to be accessed via a track that would be created under a separate consent (relating to the residential dwellings approved at outline stage).
- 8.21. Having regard to the location and context of the building, adjacent to a highway and with no other buildings close at hand, it is considered that the proposal satisfies this criterion.

## **Design and external appearance**

- 8.22. No information has been submitted in relation to the design and external appearance of the building. Therefore, the proposal would fail to satisfy part Q.2 (f) as the LPA is unable to make an assessment in this regard.

## **9. PLANNING BALANCE AND CONCLUSION**

- 9.1. The proposed development accords or is likely to accord with criteria Q.1 (e), (f) and (j)-(m). Criterion (c) is not relevant. However, criteria Q.1 (a), (b), (d), (h), (g), (i) and Q.2 (f) are considered not satisfied.
- 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 reasons:

1. Insufficient information has been submitted to demonstrate that the building relates to an agricultural holding, thus not in compliance with criteria (a), (b), (d) and (g) of Class Q.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
2. Evidence available to the Local Planning Authority shows that the site was in all likelihood being used for purposes other than agricultural on the 20th March 2013 and therefore the building has not been used solely for agricultural purposes for the period required under part Q.1(a) of Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015.
3. Insufficient information has been submitted to demonstrate that the existing building is capable of being converted or that the works to convert the building would not exceed the existing building envelope, against criteria (h) and (i) of Class Q.1 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended). The application is therefore refused in accordance with paragraph W. (3) (b). On the basis of the information submitted, the Council concludes that the existing building structure is incapable of conversion in accordance with criterion Q.1 (i) of Class Q, Part 3, and that a lack of information has been submitted to demonstrate that the works required to facilitate the building's use as a dwelling are not so extensive as to constitute a rebuilding of the existing building, thus not permitted under Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Case Officer: George Smith

DATE: 10<sup>th</sup> September 2020

Checked By: Paul Ihringer

DATE: 10/9/20

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