

CHERWELL DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990

Appeal by Mr Roger Yates (Crockwell Farm LLP) against Cherwell District Council's refusal to grant a prior notification for a change of use of existing farm buildings into a single residential dwelling (use class C3) relating to Barns at Crockwell House Farm, Manor Road, Great Bourton (Council's Ref. 20/01902/Q56) APP/C3105/W/20/3264358

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 focusses on responding to and clarifying the key issues that arise from the Appellant's Statement of Case.
- 1.3 This Statement of Case solely focusses on the reasons 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 within the delegated Officer's report.
- 1.4 However, as a preliminary matter, and having reviewed the Appellant's Case, the Council wishes, at this stage, to clarify an element of its decision.
- 1.5 The Council acknowledges that it determined the application as if the development was a request for prior notification under both Class Q (a) and Class Q (b) and, upon further review, it acknowledges that despite the planning application form referring to both parts of Class Q and the confirmation at Section 7 that associated building works or other operations are required to make this change, the applicant's intention had been to seek prior notification under Class Q (a) only. It is noted that this was set out in the application covering letter, which was not before the Case

Officer at the point of consideration and at the time that they made their recommendation. On review of the case file, the Council notes correspondence from the applicant, responding to the Parish Council's representations, which refers to the covering letter, but, notwithstanding, its existence would not have been obvious to the case officer at the point of consideration nor is it something of which the team leader would have been aware when signing out the decision.

- 1.6 In this context, the Council acknowledges that the application was not made on the basis of Q(b), that is, as a prior notification of intent relating to any building operations necessary to convert the building to a C3 use and that detailed information was not provided in this context.
- 1.7 At the time, as noted above, the Council considered that it must assess the application for prior approval against the full list of criteria ((a)-(m) inclusive as the GPDO does not suggest otherwise) of Class Q (Q.1) in order to assess whether the change of use proposed is permitted development such that it could issue a positive prior notification response. In that respect, and as recorded within the Officer report, the Council did not consider that sufficient information was provided to make a judgement relating to the criteria set out at (h) and (i) of Class Q. The Council therefore applied reason for refusal 3 as the developer provided insufficient information to enable the Authority to establish whether the proposed development could be considered 'permitted development' under Class Q and therefore it could not issue a positive prior notification response for this reason (as well as the reasons set out by refusal reasons 1 and 2).
- 1.8 However, following a review of the appeal decision included at Appendix 9 (APP/B3410/W/17/3170228), where the Inspector found that criterion (i) relates to development under Class Q(b) (as is the case now even after amendments to Class Q as it relates to building operations), the Council acknowledges the Appellant's position and does not wish to defend the elements of Reason for Refusal 3 that relate to criteria (h) and (i) and Class Q(B). This is on the basis that the Appellant seeks for the prior notification to relate to Class Q(a) change of use only. With respect to criteria (h), this too relates to building operations, but it is noted that the plans demonstrate that the building would not exceed the layout of the existing

building and that the Covering letter explains that insulation would be inserted internally (albeit if this appeal were allowed and a later prior approval submission were made relating to Class Q(b) that demonstrated this were not complied with, then this may be a reason to refuse prior approval *at that stage*).

- 1.9 Notwithstanding the above, the Council does wish to defend Reason for Refusal 3 insofar as it relates to whether the building is capable of being converted. The Council remains very firmly of the view that the appeal building does not benefit from the permitted development right, and that the building does not comply with the guidance set out in the Planning Practice Guidance as it does not consider the building capable of functioning as a dwelling without re-building works which would go beyond what is reasonably necessary for the conversion of the building to a residential use.

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

- 2.1 The Council has responded in the preceding section of this statement to the Appellant's allegation that the Case Officer's assessment was factually incorrect regarding for what the application sought prior approval.
- 2.2 The Council explains at paragraphs 8.2-8.5 of the delegated report its view that the Appellant has not demonstrated that the building was used for agricultural purposes on the 20th March 2013 (part (a) of Q.1 of Class Q) and the lack of information submitted relating to the 'established agricultural unit' so that it can assess the proposal against parts (b), (d) and (g) of Q.1 of Class Q. This was based upon the information submitted at the time (albeit the Covering Letter was not available to the Case Officer) and the Case Officer's site visit. The further information now provided in respect of the Sales Brochure and Figure 3 of the Appellant's Statement of Case demonstrating the Land in the Appellant's control (of which is a far smaller area than the wider holding) was not available to the Case Officer at the time.
- 2.3 The Appellant sets out that there is no requirement to demonstrate 'the extent of the agricultural unit' or how much agricultural land must form part of the agricultural unit to make it one. The Council strongly disagrees. The onus of proof must be on an

applicant to demonstrate the agricultural unit such that an assessment against criteria (b and ba), (d) and (g) of Class Q.1 can be made. In the absence of information which defines the extent of the established agricultural unit, it is not possible for the decision maker to conclude on the number of other separate dwelling houses that might have been developed under Class Q, the size of any such dwellings or whether any development had taken place under Class A(a) or Class B(a) of Part 6 of the GPDO. This is notwithstanding that it could review its planning records, but in order to do so, it would need to refer to what is the agricultural unit.

- 2.4 The Council notes at paragraph 2.8 (page 5) of his statement the Appellant records various alterations and additions. The Council is not aware as to when these alterations were carried out, i.e. whether any were carried out since 20th March 2013.
- 2.5 The Appellant contends that the Council has not assessed the proposal against criterion (ii) of Q.1(a) (i.e. whether the site was used solely for an agricultural use as part of an established agricultural unit or not 'in the case of a site which was in use before that date [20th March 2013] but was not in use on that date, when it was last in use') and that it has been inconsistent in how it has assessed the site taking into account how it described the site granted outline permission (to the south).
- 2.6 The Council submits delegated report does demonstrate assessment against criterion (a)(ii). Upon the officer's site visit, he observed evidence of either current or recent activity. This is described at paragraph 8.3 of the delegated report.
- 2.7 With regard to the allegation of inconsistency, the Council would point out that this appeal relates to a prior notification under Class Q which requires assessment against specific criteria, whereas planning applications (which in any case related to a different or larger site) are assessed and determined against planning policies and applying a range of material considerations. That is, the two application procedures are quite different, and it is not reasonable to compare them in the way the Appellant seeks to in this regard.

- 2.8 The Council notes the Appellant's response to reason for refusal 2. The Council had reasonable doubt, at the time of the Case Officer's site visit based upon what it viewed (i.e. a non-agricultural vehicle parked in the building with evidence of restoration works taking place), that the building was not in an agricultural use on or before the 20th March 2013. Again, the onus of proof is on the Appellant to demonstrate to the Local Planning Authority that the building was in an agricultural use at the appropriate time (i.e. on the 20th March 2013 or, its last use before that date).
- 2.9 The Appellant at paragraph 2.17 suggests that they have sought to establish the principle of residential use by applying for prior notification under Class Q(a) with their intention to then undertake a full design exercise to deliver a holistic development of the wider site. It is indicated at paragraph 6.9 that a full planning application will be submitted to deal with any operational development in the future. The PPG is clear that the permitted development right applies **where the existing building is already suitable for conversion to residential use**. Notwithstanding that the Council has indicated it will not pursue reason for refusal 3, the Council is concerned that the proposal is being used to create a 'fallback' position whereby the appellant will apply for a large new dwelling on the land in the place of the barn. The permitted development right is available to allow for the conversion of suitable buildings to a residential use only.
- 2.10 The above paragraph (2.9) does not form part of the Council's case but the Council submits it is a point reasonably made and to which the Inspector may wish to have regard. The Council also acknowledges that it could refuse to grant a later planning application or prior approval application.

3. CONCLUSION

- 3.1 For the reasons set out in the delegated Officer's report and in this statement, the Council submits that the proposal does not comply with the provisions of Class Q.1 criteria (a), (b), (d) and (g) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and therefore would require planning permission. The Inspector is respectfully requested to dismiss the appeal.

3.2 Should the Inspector be minded the grant prior approval, the Council would request conditions be imposed to cover the following matters:

1. To require the change of use to be implemented within a period of 3 years starting with the prior approval date
2. To require a full contaminated land assessment to identify any risks that might exist and where risks are identified the requirement for mitigation works to remediate the site to make it safe for occupation. This is due to the previous use of the land and the sensitive nature of the development.
3. To require a noise report to be submitted to show that all habitable rooms within the dwelling will achieve the noise levels specified in BS8233:2014 (Guidance on sound insulation and noise reduction for buildings) for indoor and external noise levels (if required then the methods for rating the noise in BS4142:2014 should be used, such as for noise from industrial sources). The development should the be carried out in accordance with the approved details prior to occupation.
4. To require the provision of electric vehicle charging infrastructure to encourage the uptake of low emission transport options and to maximise opportunities for sustainable transport.