



28th July 2021

Planning Inspectorate
Sent via Email

Regent House
65 Rodney Road
Cheltenham
GL50 1HX

01242 230066
www.ridge.co.uk

Dear Sirs,

Appeal Reference: APP/C3105/W/20/3264358 – Response to Cherwell District Council’s Statement of Case.

This letter has been prepared in response to the Council’s Statement of Case that was submitted to the Planning Inspectorate on 15th July 2021.

The Appellant does not intend to repeat or duplicate the arguments that are included within the Appellant’s Statement of Case or introduce new material or put forward arguments. Instead, this letter focusses on responding to and clarifying the key issues that arise from the Council’s Statement of Case.

Firstly, the Appellant is pleased to note the Council’s withdrawal of reason for refusal 3. It is therefore common ground that the application is only for Class Q (a) and criteria (h) and (i) would be subject of a separate application.

Secondly, the referred to Class Q Covering Letter¹ is dated 15th July 2020 and was submitted to the Council. The decision was issued on 10th September 2020, and it has become apparent and a concern for the appellant that evidence of agriculture use was not considered at the time of determining the application. Nevertheless, the Council remain defiant in that the application does not accord with the requirements set out in Class Q1 (a)(ii).

Within the Council’s Statement of Case, particularly at section 2, the Council suggest that certain information was not available to them at the time of determination, but do not elaborate or demonstrate how they have been considered now that they have seen them. Nevertheless, the Council maintain their position, so it is assumed that the evidence provided has been disregarded to a certain extent.

At Paragraph 2.3 the Council reiterates that the onus of proof is on the applicant to provide evidence. Evidence has been submitted to the Council and the Planning Inspectorate that clearly sets out the Appellant’s case relating to the use of the building.

Within Planning Decision APP/W1850/W/20/3254732² aerial shots were too used to provide evidence. Much like the evidence provided in this case, the evidence did not display the use ever changing from the agricultural use. The evidence provided clearly displays that there was no agricultural use on 20th March 2013, and the site was not brought into any other use, either lawfully or unlawfully, on or after 20th March 2013. The evidence provided does

¹ See Appendix 1

² See Appendix 2



show livestock in the fields in 2009 with no sign of any change associated to the barn and plot that would indicate that an alternative use has been established.

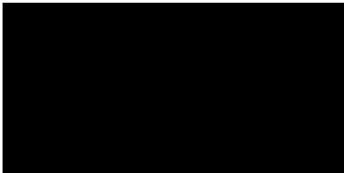
With the Council’s Statement of Case, the Council maintains the assumption that the motor vehicle changes the buildings use. However, the one-off storage of the motor vehicle does not constitute development or other activity on land and would not warrant a case of enforcement because the “activity” at the time of the case officer’s site visit would be considered to be so insignificant that it would be disregarded as de minimis (as per the definition of development in section 55(1) and (1A) of the 1990 Act). This would also not surmount the evidence that has been provided by the Appellant.

The reference towards the car being parked within the barn at the time of the site visit is undoubtedly true, however any assumption that the barn was used commercially or for any other use is entirely suggestive, unsupported by compelling evidence and strictly untrue. When considering Class Q (a) an Inspector (under Planning Decision APP/V2635/W/21/3269716³) asserted that the current use of a barn remained as an agricultural site, as no change of use permission has been granted. In this case there is no compelling evidence to suggest the use has changed from its original agricultural use post 20th March 2013.

The current and previous landowner have both confirmed the agricultural use. Affidavits can be provided.

Finally, the point raised by the Council regarding their concern of a fallback position is suggestive and redundant as it would be subject to a separate application that the Council would consider on its own merits.

Yours sincerely



Grant Baylis MSc (Hons)
Planner
For Ridge and Partners LLP

³ See Appendix 3

APPENDIX 1

COVER LETTER

15th July 2020

Planning Department
Cherwell District Council
Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

Regent House
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Dear Sirs

CROCKWELL FARM, GREAT BOURTON, OXFORDSHIRE

PRIOR APPROVAL APPLICATION FOR CHANGE OF USE FROM AGRICULTURAL TO RESIDENTIAL (C3)

CLASS Q, Town and Country Planning (General Permitted Development) Order 2015 (as amended)

On behalf of my client, Crockwell Farm LLP, please find enclosed a Prior Approval Application under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the 'GPDO'). This submission relates to the change of use of existing farm buildings into a single residential dwelling (use class C3).

This application is submitted in respect of the provision of **Class Q a) only**. As such this application seeks a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of that Schedule to the Use Classes Order.

The application is accompanied by the following documents:

- Duly completed application form
- Covering letter
- Location plan
- Site Plan
- Existing drawings
- Structural Survey

The application fee of £96 has been paid during the submission through Planning Portal.

CONTEXT AND BACKGROUND

The Site is found in the rural village of Great Bourton, Oxfordshire, which is identified as a 'Satellite Village' within the Cherwell District. Great Bourton is approximately 3.3 miles north of Banbury. The wider site comprises an area of approximately 3.4 hectares of land formally associated with Crockwell farm and is located to the north of the village, at the outer limit of the village at the end of Manor Road.

There is a number of dilapidated and disused buildings, all of which are directly associated with the formal agricultural use. The buildings would have previously been used as a part of a single agricultural unit, but the farm is no longer a working enterprise.

The original farmhouse - Crockwell House - is a Grade II listed building (Historic England Ref.: 1215873). The farmhouse and its associated gardens (located to the west of the House) do not form part of the application site. However, due to its proximity to the application site, the some of the farmyard buildings are considered to be curtilage listed by association. The application building, however, was built in 1990s and as such Section 1(5)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply to the application building, or any building on wider site which was erected after 1st July 1948. As such, the application building is not, and cannot be considered to be, a listed building (or a curtilage listed building by association).

The site does not form part of any statutory or non-statutory designated areas, and is not located within a Conservation Area. There are no Tree Preservation Orders ("TPOs") on site or in its vicinity.

Planning History

The wider site has the following planning history.

- LPA Ref.: 16/00609/OUT – proposed residential development of 3no. dwellings – Permitted by decision notice dated 11th July 2016; and
- LPA Ref.: 19/00250/OUT – Outline Residential development of 3no. dwellings (Re-submission of approved application 16/00609/OUT) - Permitted
- LPA Ref.: 20/01523/DISC – discharge of pre-commencement conditions no. 5 and 6 of an outline planning permission 19/00250/OUT – awaiting decision
- Reserved Matters Application (Phase 1) & Listed Building Consent – Conversion of a former agricultural barn - details reserved by condition 1 of the outline planning permission 19/00250/OUT-

APPLICATION SITE

The application site consists of a modern steel framed barn which is located on the edge of the Crockwell House Farm boundary. The historic maps indicate that this structure replaced two smaller barns in the same location and that this was done within the period of time between 1989 and 2003, as the maps from 2003 show the existing structure.

The building, which is subject to this application for a change of use from agricultural to residential use (Use Class C3), has a flat concrete floor, and lower portion of walls are made of concrete blockwork. The upper portion of the walls, and the roof covering are formed of cladding materials.

The application building is surrounded by an open agricultural field to the north and east. On the southern western side, the building forms part of the former farmyard. There is a lean-to structure attached to the application building, which is made of telegraph poles and corrugated steel sheeting. This structure will be demolished.

CLASS Q TESTS

Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order (2015) (GPDO) has two individual elements. The Class Q a) allows for the change of use of agricultural buildings to C3 (dwelling house), while Class Q b) allows for the building operations considered reasonably necessary for this change of use to be carried out.

This prior notification application is submitted in respect of the provision of Class Q a) only.

There are a number of criteria that must be satisfied for the permitted development rights to apply.

Paragraph Q.1 states that development is not permitted by Class Q if:

- a) *the site was not used solely for an agricultural use as part of an established agricultural unit:*
 - i) *on 20th March 2013, or*
 - 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 10 years before the date development under Class Q begins;*

The site has been in sole agricultural use before 20th March 2013. The aerial images below illustrate the gradual decay of the farm as the agricultural activity stopped.

Figure 1 demonstrates that the farm was still operational in 2006 as the majority of the buildings have roofs and evidence of agricultural activities is also visible.



Figure 1 – Aerial image from **December 2006** (Source: Google Earth Pro)



*Figure 2 – Aerial image from **June 2009** (Source: Google Earth Pro)*



*Figure 3 – Aerial image from **2017** (Source: Google Earth)*

Figures 2 and 3 illustrate the slow decline of agricultural activities on site, and rapid dereliction of some of the older buildings on wider site.

The site was last in use as an agricultural building before March 2013 as demonstrated on the images above.

- 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;*

The proposal seeks a change of use into a single large dwelling house. The cumulative floorspace of the existing building does not exceed 465 square metres. As indicated on the Proposed Site Plan drawing no. 20.08.03.20, the existing building, which is to change use to a larger dwelling house, has a footprint of 277 sqm. All remaining structures will be removed.

Once the mezzanine floor is inserted, the cumulative floorspace will be 436 sqm, which falls within the maximum threshold. As such, the proposal accords to the prescribed limitations.

- 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;*

No smaller dwellinghouses are proposed on site

- 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;*

The proposal would result in a single dwellinghouse falling within the threshold of a larger dwellinghouse.

- 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*

There are no agricultural tenancies associated with the site.

- 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*

No development under Class A(a) or Class B(a) of Part 6 of the Schedule was carried out since 20th March 2013.

- 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 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);*

The proposal is supported by Structural Survey which demonstrates that the application building is in serviceable condition with only some minor repairs required. The building is noted to be defect free, and no structural defects have been identified.

The Survey concludes that the building is capable of being a fully enclosed building with no need for any strengthening. The load path from roof to ground can be kept the same as in its current form. All of the structural fabric can be retained, and thus making this permanent and substantial agricultural structure suitable for conversion to an alternative use.

The existing asbestos sheeting and cladding are to be replaced throughout, and insulation will be inserted internally in both the roof and walls. This will assure that the development will not result in the external dimensions of the building to extend beyond the external dimensions of the existing building.

The lean-to structure that is made of telegraph poles and haphazard sheeting will be demolished.

- i) *the site is on article 2(3) land;*

The site is not located on article 2(3) land.

- j) the site is, or forms part of—
 - i) a site of special scientific interest;
 - ii) a safety hazard area;
 - iii) a military explosives storage area;
- k) the site is, or contains, a scheduled monument; or
- l) the building is a listed building

The site is not, or forms a part of, any of the above.

For avoidance of doubt, the following figures 4 to 7 indicate the evolution of the application site. It is evident that the application building was not in situ before 1948 and as such the building is not a listed building and would not qualify to be a 'curtilage listed building by association'.

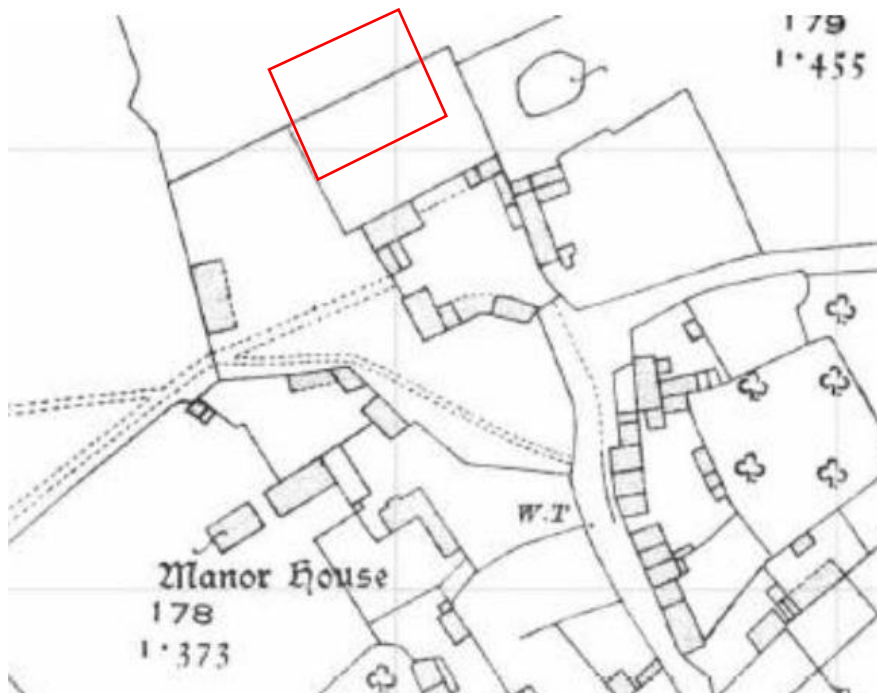


Figure 4 – extract from OS 1922 1:2500 map (current application site indicated in red)

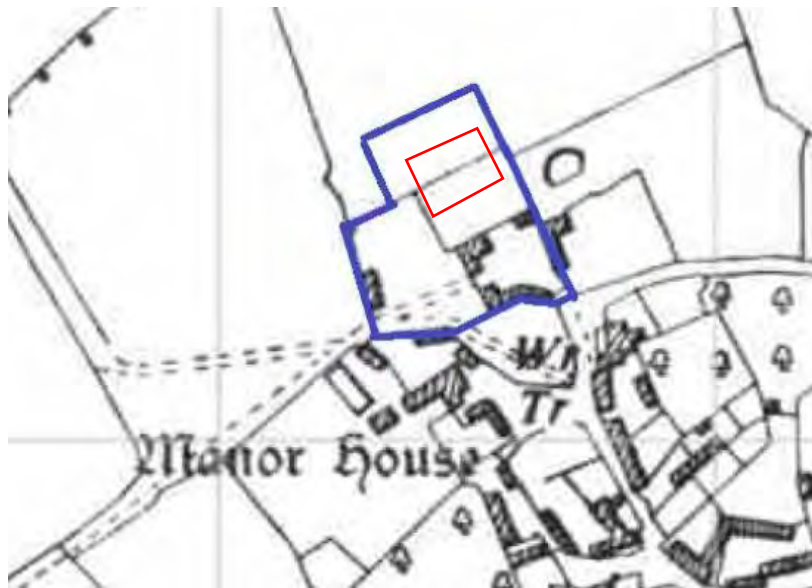


Figure 5 – extract from the **1955** 1:10560 OS edition (current application site indicated in red)

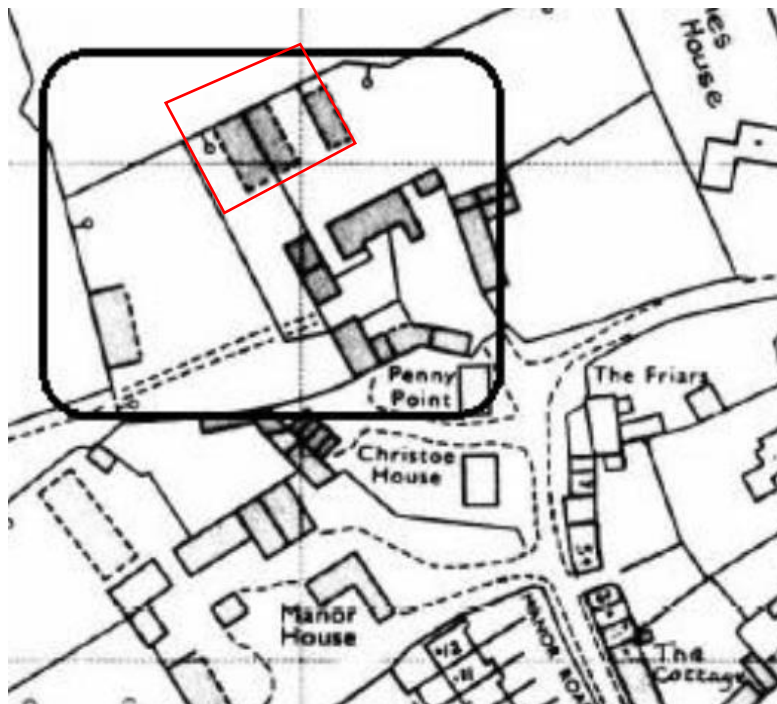


Figure 6 – extract from the OS **1989** 1:2500 map (current application site indicated in red)



Figure 7 – extract from the OS **2003** 1:1250 map (cluster of existing buildings indicated in red)

Paragraph Q.2 places conditions upon such permitted development namely that before development commences, the developer shall apply to the LPA for determination as to whether the prior approval of the LPA 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;*
- 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.*

These are addressed separately in the section below.

Paragraph W highlights that for the purposes of Class Q, '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,

The curtilage of the individual buildings in no larger than the land area occupied by the agricultural building.

Planning Practice Guidance

Paragraph 05 Reference ID: 13-105-20180615 of the Planning Practice Guidance is concerned with the extent of works permitted under the Class Q. It states:

“The right allows either the change of use (a), or the change of use together with reasonably necessary building operations (b). Building works are allowed under the right permitting agricultural buildings to change to residential use: Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. However, 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.”

It is further states that *“Internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q.”*

For avoidance of doubt, this application is submitted in respect of the provision of Class Q a) only. As such this application seeks a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of that Schedule to the Use Classes Order. As such, the detailed drawings dealing with the operational development will be submitted once the principle of residential use is formally established.

CLASS Q CONSIDERATIONS

As noted above, Paragraph Q.2 requires the developer to apply to the LPA for determination as to whether the prior approval of the LPA will be required. Each of the individual considerations is addressed in turn.

a) Transport and Highways

The site is accessed through an existing access point from Manor Road. This access also serves development permitted by an outline planning permission LPA Ref.: 19/00250/OUT. Condition 5 attached to this outline planning permission demands full details of improvements to the means of access between the land and the highway (including position, layout, construction, drainage and visions splays) to be submitted to, and approved in writing by the Local Planning Authority. The relevant details were submitted for consideration and approval by the Council in June 2020 and are currently under consideration (LPA Ref.: 20/01523/DISC)

The future dwellinghouse will benefit from the above access improvements.

The application site is located within Great Bourton settlement and as such, the proposed change of use into a single dwelling will not result in a material increase in traffic, or in a material change in the character of traffic in the vicinity of the site.

The proposal will provide appropriate parking provision. It is envisaged that the parking for at least two vehicles will be integrated within the building in form of an internal garage.

The proposal therefore does not conflict with the criterion a) of class Q of the GPDO (2015) in terms of transport and highways impacts.

b) Noise impacts

Application building is detached from its immediate neighbour property – the Crockwell Farmhouse, a grade II listed building.

The outline planning permission LPA Ref: 19/00250/OUT establishes a principle of residential development for 3no dwellings on land which sits between the steel framed barn, and Manor Road. As such, the proposed change of use from agricultural to residential use will not have significant harmful impact on the existing residents of Crockwell Farmhouse, or the future occupiers of the development in respect of noise.

The proposal therefore does not conflict with criterion b) of Class Q of the GPDO (2015) in terms of potential noise impact on future occupants.

c) Contamination

Both the steel framed barn, and its lean-to additions are clad in sheeting, some of which may contain asbestos. All existing roof and wall cladding sheeting will be safely removed and replaced by other more suitable materials. The removal of this highly polluting material from the site is one of the major benefits of this application.

No other sources of contamination have been identified on site within the application site. This is due to the fact that the barn has a solid concrete floor slab which is free from significant defects according to the Structural Survey. As such, the risk of contamination on site from the previous agricultural activities is negligible.

The proposal therefore does not conflict with criterion c) of class Q of the GPDO (2015) in terms of potential contamination risks on the site.

d) Flooding

According to Environmental Agency flood maps, the site is located in Flood Zone 1 – an area with low probability of fluvial, pluvial and surface water flooding.

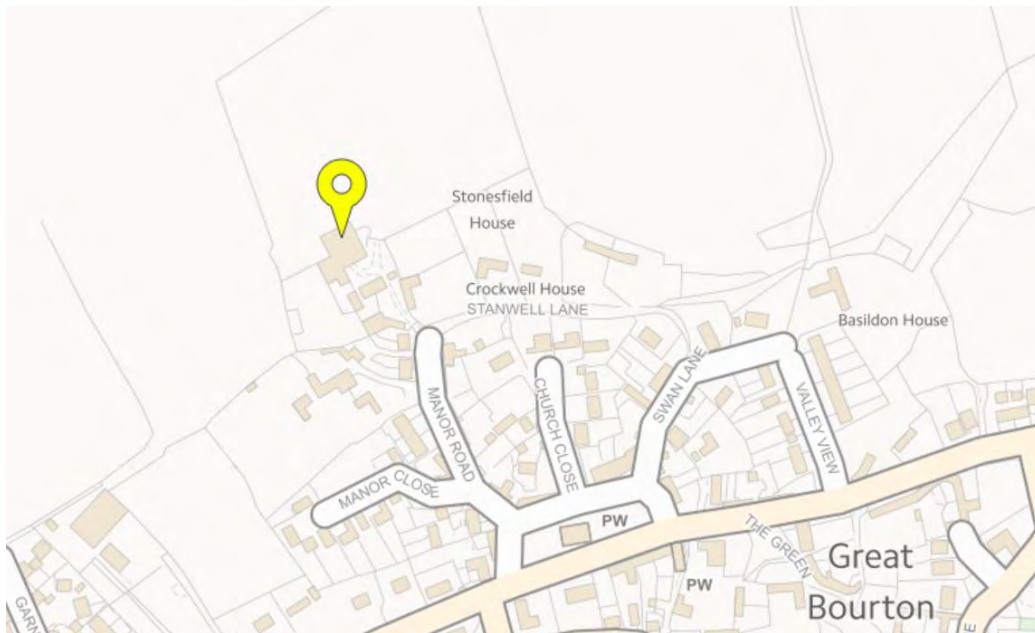


Figure 8 – Extract from Environmental Agency flood maps

As such we do not consider flooding to be an issue for the proposed development. Consequently, the scheme does not conflict with Class Q of the GPDO (2015) in terms of flooding risks on site.

e) Comparability Considerations

Criterion e) of paragraph Q.2 requires Local Planning Authorities to consider whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural to residential use.

The terms 'impractical' or 'undesirable' are not defined in the regulations, yet Local Planning Authorities should apply a reasonable ordinary dictionary meaning in making any judgement. Planning Practice Guidance makes it clear that the location of the agricultural building in a location, where the LPA would not normally grant planning permission for a new dwelling, is not a sufficient reason for refusing prior approval.

As previously noted, the wider site benefits from an outline planning permission for 3no dwellings. As such, the existing steel framed barn will be surrounded by residential dwellings and their gardens. It cannot therefore be said that the proposed use would be 'incompatible' in this location. The conversion of the steel framed barn into residential accommodation will not have a negative impact on either existing or future neighbouring uses. Consequently, the future occupiers won't be negatively affected by surrounding land uses.

In this context, the building is suitable for the change of use proposed, and its siting and location do not make it otherwise impractical or undesirable to be changed into a residential dwelling.

f) The design and external appearance

Where the development proposed is development under Class Q (a) only, development is permitted subject to the condition that before beginning other 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 subparagraphs (1)(a) to (e) and the provisions of paragraph W (prior approval) of the Part apply in relation to that application.

As previously noted, this prior notification only relates to the provision of Class Q (a) only, and as such the details of the design and external appearance of the building are not submitted for consideration. Once the principle of the residential use is firmly established, the developer will seek a further approval of the external appearance of the building.

Summary

The information set out above, and in the accompanying documents and plans, demonstrates that the proposed change of use accords with the requirements of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Conclusion

As set out in Class Q (a) of the GDPO, a change of use from agricultural to residential (C3) use can be granted subject to the acceptability of the number of criteria, including transport and highways, contamination, noise and flooding risks on site, and general compatibility of uses. It has been demonstrated throughout how the proposal addresses all of the relevant criteria.

Number of technical drawings and a structural survey accompany this application. These documents demonstrate that the building is suitable and capable of residential conversion without the need for substantial re-building or additions.

In accordance with the provisions set out in Class Q (a) necessary to grant Prior Approval, the property is not located on Article 2(3) land. The application does not relate to a Scheduled Monument and does not form any part of safety hazard area.

It is therefore respectfully requested that the Prior Approval is granted.

Yours sincerely



**Alena Dollimore BA (Hons) MSc MRTPI
Planner
For Ridge and Partners LLP**

APPENDIX 2

APPEAL APP/V2635/W/21/3269716



Appeal Decision

Site visit made on 8 June 2021

by C Beeby BA (Hons) MI PROW

an Inspector appointed by the Secretary of State

Decision date: 5th July 2021

Appeal Ref: APP/V2635/W/21/3269716

Stow Road Farm, Outwell Road, Stow Bridge PE34 3NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 Doubleday against the decision of King's Lynn and West Norfolk Borough Council.**
 - The application Ref 20/02025/PACU3, dated 3 December 2020, was refused by notice dated 27 January 2021.
 - The development proposed is described in the officer report and decision notice as the "change of use of agricultural buildings to 5 residential dwellings (1 large and 4 small)".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for change of use of an agricultural building to a dwellinghouse subject to limitations and conditions.
3. 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 in respect of various matters. One of these is whether the location or siting of the building makes it impractical or undesirable for the building to change from agricultural use to a dwellinghouse.

Main Issue

4. The main issue is consequently whether the proposed development would provide acceptable living conditions for future occupiers with regard to noise, odour and insect levels.

Reasons

5. The appeal site lies adjacent to an area of current and former buildings associated with Mortons Farm. This was previously used as a small cattle farm but has recently been sold. Nevertheless, its current use remains as an agricultural site, as no change of use permission has been granted.

6. Some former barns at the site have been demolished, however a number of brick outbuildings and part of a metal roofed structure remain. As a result, the area still contains buildings which could be put to an agricultural use.
7. Whilst the surrounding area is agricultural and there is potential for other livestock farming in the vicinity, there is minimal indication that this is likely to occur. However, the Mortons Farm unit has been in relatively recent use for cattle rearing and a number of outbuildings remain. In the absence of substantive contradictory evidence, there is consequently moderate potential for livestock farming at the site to resume.
8. The farming of cattle at Mortons Farm would inevitably be a source of associated noise and odour, with the potential for insects to be attracted to the site, notwithstanding the inherently limited scale of the operation. These issues would carry the potential to cause unacceptable harm to the living conditions of the occupiers of the proposed development due to its close proximity to the farm site. Whilst some existing dwellings lie in the vicinity, the property which lies in similar proximity to the farm buildings as the proposed development is associated with Mortons Farm, and hence the occupiers are likely to have a different perception of the effects of any agricultural use at the adjacent site. As a result, the situation is not comparable.
9. Thus, the proposed development would not provide acceptable living conditions for future occupiers with regard to noise, odour and insect levels. The location of the buildings therefore makes it undesirable for them to change from agricultural use to dwellinghouses, and prior approval is consequently refused.
10. In reaching my conclusions I have taken into account development plan and National Planning Policy Framework (2019) (the Framework) policies insofar as they are relevant to the planning judgment to be made. The harm which would arise from the **dwellings' locations** consequently conflicts with Policy DM15 of the SADMPP, which requires proposals to be assessed against a number of factors including noise and odour. Additional conflict exists with the design, natural environment and pollution provisions of the Framework.

Other Matters

11. The appellant has raised concerns regarding the availability of comments on the application. The comments in question are referred to and summarised in **the Council's officer report, and** the concerns raised reflect those within the reason for refusal of prior approval. **They are also extracted in the Council's** statement of case. The appellant has consequently had the opportunity to respond to the issue and therefore it is not necessary for me to pursue the matter further.

Conclusion

12. For the reasons given above, I conclude that the appeal should be dismissed.

C Beeby

INSPECTOR

APPENDIX 3

APPEAL APP/W1850/W/20/3266056



Appeal Decision

Site visit made on 27 April 2020

an Inspector appointed by the Secretary of State

Decision date: 20 May 2021

Appeal Ref: APP/W1850/W/20/3266056

Crookshill Farm, Acton Beauchamp, Worcester WR6 5AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Barry Kearley against the decision of Herefordshire Council.
 - The application Ref 202496, dated 28 July 2020, was refused by notice dated 13 October 2020. The development proposed is change of use of agricultural buildings to 2 no. dwelling houses, including any building operations reasonably necessary for the conversion.
-

Decision

1. The appeal is allowed and prior approval is granted under the provision of Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) for change of use of an agricultural building to 2 no. dwelling houses, including any building operations reasonably necessary for the conversion. The approval is subject to the condition that development must be completed within a period of 3 years from the date of this decision in accordance with Paragraph Q.2(3) of the Order.

Applications for costs

2. An application for costs was made by Mr Barry Kearley against Herefordshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal has been accompanied by amended drawings that were not before the Council when it determined the application, nor were these drawings consulted on. Nevertheless, the Council have had sight of the changes, which involve the insertion of a door and window in the north elevation of the western most dwelling house.
4. This represents new information, and the appeals procedural guide makes it **clear that 'the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'**¹.
5. Having regard to the Wheatcroft Principles², it is my view, that the additional information does not fundamentally alter the scheme in terms of its design, while the details submitted seek to allow more natural light into the dwelling, **thus addressing the Council's concerns**. Furthermore, given the proximity of

¹ Annex M, M.2.1, The Planning Inspectorate Procedural Guide, Planning Appeals – England, August 2019

² Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]. This decision has since been confirmed in Wessex Regional Health Authority v SSE [1984] and Wadehurst Properties v SSE & Wychavon DC [1990] and Breckland DC v SSE and T. Hill [1992].

neighbouring dwellings, I do not consider that nearby occupiers would be prejudiced in my accepting of the information. I have therefore assessed the appeal on the basis of the additional information.

6. In my assessment of this appeal I have had regard to the extensive planning history at the site, including the previous appeal decision³ relating to the conversion of the building to a dwelling house.
7. The Council has withdrawn its concerns relating to parts (a) and (e) of Class Q.2 (1) of the Order, following the issuing of the previous appeal decision (i.e. highways, and location and siting). As a consequence, I consider that these matters have been addressed.

Main Issue

8. The main issue is whether the proposed change of use is permitted development under the Order.

Reasons

9. Schedule 2, Part 3, Class Q (a) and (b) of the GPDO permits 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 of the Use Classes Order (UCO); and building operations reasonably necessary to convert the building to a use falling within Class C3 of the UCO.
10. Class Q.1 states amongst other things that development is not permitted if (g) development under Class A(a) of Class B(b) of Part 6 of the Order (agricultural buildings and operations) (Part 6) has been carried out on the established agricultural unit – (i) since 20th March 2013. **In Part 6, "agricultural unit" is defined in paragraph D.1 as " agricultural land** which is occupied as a unit for the purposes of agriculture, including – (a) any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit.
11. The appeal site comprises a series of structures that adjoin one another to form an agricultural shed at Crookshill Farm. There is no dispute between the parties that the shed has been in use for agricultural purposes since the relevant date prescribed in the Order. **The building's use** was evident during my site visit, where I noted poultry production and the storage of farm machinery.
12. The shed is flush with other additions that include a timber and corrugated metal structure to the north and the small, partially open store that emanates from the south western corner. However, those additions fall outside of the appeal site as outlined in red on the location plan, and therefore do not form part of the appeal building as submitted for assessment. Moreover, the submitted block and roof plan show that those additions would be removed.
13. In refusing the application, the Council has relied, in part, upon satellite imagery of the appeal building between 2005 and 2020, as well as site photographs taken by its officers in May 2018. From these images they deduce that alterations amounting to development under Class A(a) and Class B(b) of Part 6 of the Order have been carried out since 20th March 2013.

³ APP/W1850/W/20/3254732 – Appeal dismissed on 23rd October 2020

14. I note that the satellite images have been taken at different grid coordinates and times of the day, which has led to the appearance of the appeal building being altered by shadowing and light. Therefore, I have exercised caution in my analysis of these images and have also had regard to the **appeal building's** angular form and fragmented roof profile.
15. The appellant has confirmed that only repair works to the roof of the appeal building have taken place during the period referred to by the Council, while no works required by Part 6 of the Order have been applied for or constructed since 20th March 2013. Furthermore, from my inspection of the satellite images **I noted that the shape and alignment of the appeal building's footprint and the** outline of its roof, as it relates to the proposed dwellings, has not fundamentally changed since the situation shown on the 2009 satellite image. Moreover, there were no obvious increases in the appeal **building's overall** shape, length or width, from that date, that would suggest that developments under Class A(a) and B(b) of Part 6 had been carried out.
16. In providing specific information as to what those alterations have entailed, the Council refers to works to the roof as detailed in the **case officer's site** photographs taken in 2018. These focus on the store enclosure that adjoins the south west corner of the appeal building, and show it only partially covered by a wooden frame. However, this does not form part of the appeal building, as the store occupies a more advanced position that aligns with the flank wall of the timber and corrugated steel addition to the north; the appeal building in contrast is recessed and set back from the **northern addition's flank wall. As a** consequence, the work to the roof of the store, referred to by the Council, does not relate, in my view, to the appeal building.
17. Therefore, the Council has not provided any substantive evidence to persuade me that the appeal building has been altered since 20th March 2013 to the extent that the provisions of Class Q.1 (g) are in breach.
18. I note from the previous appeal decision, that the Inspector came to a different finding and **found that the construction and form of the appeal building's roof** profile had altered since the trigger date in the Order. However, I cannot be sure whether the satellite imagery he relied upon is the same as that submitted with this appeal, nor have I had any details of the specific nature of the changes he found to the roof profile.
19. Additionally, it is not known whether **the case officer's photographs taken in** 2018 were submitted as evidence with that appeal. The proposal before me also differs in that it relates to two dwelling houses rather than the single unit considered previously. Given these differences and the uncertainties relating to the previous evidence, I have been unable to draw any comparison between the previous appeal decision and the case currently before me.
20. The Council also refused the application on the grounds that the proposal would result in inadequate natural light in all the habitable rooms of the dwelling houses, and would fail to comply with Class Q.2 (1) (g) of the Order. Yet, the amended drawings have addressed this concern by providing a glazed door and window to serve the dining room. Consequently, all the habitable rooms relating to the proposed dwellings would be served by windows. These are of an acceptable size, while their position and orientation would allow adequate levels of natural light to enter the building, ensuring that the living conditions

of future occupiers would be unharmed, and in so doing would meet the requirements of the Order.

21. No further areas of dispute have been raised by the parties in respect of the remaining qualifying criteria under, Class Q (b), Class Q.1 and Q.2. From what I have seen, and the evidence before me I find no reason to reach an alternative conclusion.

Other Matters

22. The site is within the influence of a Site of Special Scientific Interest (SSSI) (European Site). The Council considers that the proposal would have a likely significant effect on this designation.
23. However, Article 3(1) of the Order grants planning permission for the classes of development described as Permitted Development in Schedule 2 subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017. This effectively imposes a condition on any permission granted by the Order that is likely to have a significant effect on a European Site that development must not commence until a developer has received written notification of the approval of the Local Planning Authority under Regulation 77. The Regulation 77 application may be submitted and approved after prior approval is given. I have not therefore considered this matter further.
24. To the south west of the appeal building and separated by the farm's access and yard is the Grade II listed Crookshill Farmhouse. The significance of this 17th Century timber frame cottage is derived from its agrarian appearance and its pastoral setting. Given the limited extent of the alterations proposed, the design and appearance of the appeal building would not appear visually obtrusive within the setting of the listed building such that its significance would be harmed.

Conditions and Conclusion

25. Section W (13) of the Order states that Local Planning Authorities may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. In this case, I have added reference to the standard condition set out in paragraph Q.2(3) relating to timescales.
26. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be allowed.

R.E Jones

INSPECTOR



Costs Decision

Site visit made on 27 April 2021

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2021

Costs application in relation to Appeal Ref: APP/W1850/W/20/3266056
Crookshill Farm, Acton Beauchamp, Worcester WR6 5AB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Barry Kearley for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of the Council to grant approval required under a development order for a proposed change of use of an agricultural building to 2 no. dwelling houses, including any building operations reasonably necessary for the conversion.
-

Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appellant contends that, the Council failed to correctly assess the proposal in relation to Part 6 Class A of the General Permitted Development Order (the Order) and Section 55 of the Town and Country Planning Act 1990 (as amended) (the Act) as to whether or not the works carried out were permitted development.
4. The Council considers that work has taken place to the appeal building, beyond the trigger date in the Order, which amounts to development under Part 6 (A) (a) of the Order. In reaching that view, the Council has referred to the available evidence, which includes various images of the appeal building over time, local knowledge, and the planning history of the site. However, they have not specifically indicated what development under Part 6 (A) (a) has been carried out in terms of its location, scale and appearance.
5. I acknowledge that the Council has referred to works to the roof of the store addition, **as depicted in the case officer's 2018 site photographs**, yet, that structure does not form part of the appeal building as outlined in red on the site location plan and referred to in my decision. Moreover, the appellant has confirmed that only repair works to the roof of the appeal building have taken

place between late 2012 and mid 2013, while no application for prior approval under Part 6 has been submitted since the trigger date in the Order.

6. I therefore accept that the applicant might reasonably have expected the Council to undertake a more detailed assessment of what it considered to be the works that amount to development under Part 6 Class (A) of the Order. Furthermore, I note that unsuccessful attempts were made by the applicant, following the refusal of the application, to seek clarification from the Council on what it considered amounted to development in respect of the agricultural building.
7. This amounts to a failure to produce evidence to substantiate a reason for refusal, and despite the arguments advanced by the Council, I consider that it acted unreasonably in failing to do so. In these circumstances, whilst I consider that the applicant may not have been put to large amounts of additional **expense in countering the Council's position, extra costs were incurred and an award in these specific respects is justified.**
8. The Council's second refusal reason refers to the **development's** impractical and undesirable location for a dwelling house. This reason refers to policies in their Core Strategy that relate to site sustainability and the strategic and spatial requirements for new housing.
9. The Planning Practice Guidance¹ (PPG) states that the permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change the use to residential. Furthermore, even if an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling, this is not a sufficient reason for refusing prior approval.
10. In view of the above, the Council has incorrectly applied the policies of the development plan and whilst this is an error of interpretation on their part, they have subsequently withdrawn this reason for refusal. Moreover, I do not consider that the applicant has incurred considerable time or unnecessary expense in addressing this matter in its appeal submission, such that it would amount to unreasonable behaviour on the part of the Council.
11. **In terms of the Council's assessment of** Highways and Transport impacts, their concerns relate to the visibility at the site access with the B road and the intensification that would result from the proposed development. Although they have since withdrawn that concern, their judgement was informed by the site circumstances and the nature of the case. Accordingly, the Council did not act unreasonably in issuing that refusal reason.
12. Furthermore, I consider that the Council were reasonable to refuse the application on the grounds of inadequate provision of natural light in all habitable rooms of the dwelling houses. On the original plan submitted and assessed by the Council, the dining room in the western most dwelling was not

¹ Planning Practice Guidance - Paragraphs: 108 Reference ID: 13-108-20150305 and 109 Reference ID: 13-109-20150305

served directly by a window. Although I note the open plan nature of that dwelling and the presence of windows in the south elevation, the Council has applied its own judgement on the layout and has come to a view that the proposal would not satisfy Class Q.2 (1) (g) of the Order.

13. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the **Council's** first reason for refusal, is justified.

COSTS ORDER

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Herefordshire Council shall pay to Mr Barry Kearley, the costs of the appeal proceedings described in the heading of this decision limited to those costs **incurred in arguing against the Council's** first refusal reason that the proposal is contrary to Schedule 2 Part 3 Class Q1. (g) of the Order.
15. The applicant is now invited to submit to the Herefordshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

R. E. Jones

INSPECTOR



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