

Case Officer: George Smith

Recommendation: Refuse

Applicant: Mr K Bishop

Proposal: 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)

Expiry Date: 11 August 2020

Extension of Time:

1. APPLICATION SITE AND LOCALITY

1.1. The application site is within the open countryside, located approx. 250 metres from the edge of Sibford Ferris to the west, c. 500-600 metres from its centre, and 380m from the highway (Grange Lane). Swalcliffe is c.1.4km to the east. The application relates to a steel portal framed agricultural storage building, accessed from Grange Lane via a track to the south of the building, which also serves as a footpath and designated right of way. There are 3 grain silos directly adjacent to this barn, with a separate open-sided barn located nearby to the west. A residential dwelling (Folly Farm) is unrelated to these barns but located c.50m to the east and accessed via the same track.

1.2. The barn has a ridge height of c.6m, eaves heights of c.4.75m and c.3m and a footprint of c.13.8m x c.17.2m. (235)

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, with all accommodation at ground floor level. The proposals include an open plan living room, kitchen and dining area along with entrance hallway, study area, utility, 3 bedrooms, two bathrooms and an inner hall.

3. RELEVANT PLANNING HISTORY

3.1. There is no planning history directly relevant to the proposal.

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 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 **27 July 2020**, although comments received after this date and before finalising this report have also been taken into account.

5.2. Representations received from five households (mixture of Swalcliffe and Sibford Ferris, the site being between the two villages). The comments raised by third parties are summarised as follows:

- Class Q criteria not complied with; a complete rebuild rather than being 'reasonably necessary', no water/drainage/electricity/gas or other services and not in proximity to any.
- Corrosion may be present in existing steel structure. If this were to transpire, it would result in essentially a new structure.
- Building would have adverse impact on aesthetics of area, eyesore in such a location. Impact on AONB. Impact on rural darkness.
- Increase in traffic would impact on users of the footpath, with sharp bends and would suffer from disrepair.
- Anomalies on cover letter relating to address.
- Roof survey was not undertaken.

5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

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. SIBFORD FERRIS PARISH COUNCIL: **Comments** – as below:

6.3. *The Parish Council discussed the above proposed planning application and make the following comments: 1. Compliance to Class Q rules changing use from agricultural to domestic should be closely checked by Cherwell District Council (CDC). 2. The site is in a prominent position and should be screened to limit unwarranted and unnecessary landscape and light pollution impact arising from the proposed design. 3. Concerns raised by the adjacent property (Folly Farm House) should be reviewed by CDC.*

OTHER CONSULTEES

6.4. OCC HIGHWAYS: **No objections**

6.5. CDC ENVIRONMENTAL HEALTH: **No objections** – subject to contaminated land and EV charging conditions.

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. In view of the building type, size and location, and observations on site I have no reason to doubt that the use of the building was in use for agricultural purposes on 20th March 2013.
- 8.3. The applicant states that the agricultural land associated with this barn totals c.56 acres (c.22 hectares) with additional land within the village (assumed Sibford Ferris).
- 8.4. The proposal accords with criteria (a), (b) and (d).
- 8.5. The dwelling’s proposed floor space (in the region of 234.6 sq m) would define it as a larger dwellinghouse. Criterion (c.) is therefore not relevant in this instance.
- 8.6. 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.
- 8.7. There is no evidence to suggest that criterion (g) is not satisfied and the proposal thus accords in this regard.
- 8.8. A comparison of the existing and proposed floor plans indicates that the building would be sited so as not to exceed the perimeter of the steel supports. There is no evidence before me that would suggest otherwise. Therefore, criterion (h) is 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.
- 8.11. Officers do not contest that the existing internal structural frame is sound for the purposes of the existing agricultural use. Upon the officer site visit, it is clearly capable of supporting the existing corrugated metal sheeting, albeit that this sheeting consists of one-layer, certainly not a heavy load to bare. It is rational to conclude
- 8.12. In the case of Class Q, the assessment must fall on whether the works proposed go beyond what is reasonable for the *conversion* of the building to residential use i.e. where the development would constitute a rebuild. A rebuild would not necessarily follow total demolition, instead being a test of substance and planning judgement.
- 8.13. Under this proposal, all of the existing metal sheeting would be removed, leaving the skeleton structure of the building. Following this, the floor plans show a degree of insulation/structure (at least 40mm) in order for the proposed timber cladding to be supported. It is not clear from the plans of what this new internal support would consist. Furthermore, the roof would be removed and replaced.
- 8.14. The assessment of criterion (i) rests on whether the agricultural building is 'convertible', or whether it would constitute a rebuild, with a practical limit to the amount of work that can be carried. This assessment rests on the decision maker based on the evidence provided. Based on observations on site, Officers are not satisfied that the existing agricultural building is capable of functioning as a residential dwelling without extensive works being carried out, which would amount to a rebuild and would well exceed that which constitutes a conversion. It is therefore considered that the existing structure is not be suitable for retention for a C3 use under Class Q. The proposal is therefore in conflict with criterion (i)(ii)
- 8.15. The windows and doors proposed are not necessarily excessive for a residential use and would, at least in terms of the larger openings, utilise the positioning of the existing barn doors.
- 8.16. However, it is not clear how existing services would be connected to the building for it to function as a dwellinghouse. The proposal is therefore in conflict with criterion (i)(i)(bb).
- 8.17. Overall, criterion (i) is therefore considered **not** to be satisfied.
- 8.18. 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;

- 8.19. Criterion (c.) is not relevant in this instance; criteria (e.) and (f) are taken to be satisfied though no evidence submitted. Criteria (a), (b), (d), (g) and (h) are satisfied. However, the existing structure is not capable of functioning as a dwelling and the works proposed are *considerable* and, for the reasons set out above, criterion (i) is 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

- 8.20. The local highway authority has no objections to the proposals on highway safety grounds. Subject to conditions where necessary to secure parking and turning provisions, the proposals are considered acceptable in this regard.

Noise impacts, Flooding risks & Contamination risks

- 8.21. 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 the previous comments should be followed, although this relates to a previous Class Q application on a separate barn, where it was stated that the standard contaminated land conditions should be included. It is considered that contamination risks may be addressed by appropriately worded conditions.

8.22. Curtilage

- 8.23. 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”.

- 8.24. 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

- 8.25. 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.

- 8.26. The PPG guides that Local Planning Authorities (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 Local Planning Authority would not normally grant planning permission for a new dwelling is not sufficient reason for refusing prior approval.

- 8.27. 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.

- 8.28. The building shares an access track with the adjacent dwelling, Folly Farm. Although the track is also utilised as a footpath, there is nothing to suggest that this track would be unusable for a domestic vehicle. Indeed, and although somewhat bumpy, I was able to access the site via the track by car.
- 8.29. Having regard to the location and context of the building, adjacent to a highway and with no other farm buildings close at hand, it is considered that the proposal satisfies this criterion.

Design and external appearance

- 8.30. The design of the building, i.e. insertion of windows and timber cladding would detract from its agricultural character but would not fundamentally change the form of the building. Significant alteration of the building is proposed by its very nature, but it is not considered that part Q.2 (f) is not necessarily offended by this, rather that it is relevant under Q.1 (i).

9. PLANNING BALANCE AND CONCLUSION

- 9.1. The proposed development accords or is likely to accord with criteria Q.1 (a), (b), (c.), (d), (e.), (f), (g) and (h). It also accords with criteria (j) – (m). However, the submitted drawings indicate a substantial rebuilding of the structure, including new walls, an internal insulation/wall support and new roof, and works that are considered not “reasonably necessary for the building to function as a dwellinghouse”. The proposal therefore does not comply with criterion (i).
- 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 reason:

1. Insufficient information has been submitted to demonstrate that the existing building is capable of being converted in accordance with criterion (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 paragraph Q.1 (i) of Class Q, Part 3, and that the works required to facilitate the building’s use as a dwelling are so extensive as to constitute a rebuilding of the existing building, not permitted under Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Case Officer: George Smith

DATE: 7th August 2020

Checked By: Nathanael Stock

DATE: 10.08.2020
