



RIDGE

APPEAL STATEMENT

**MODERN BARNs
CROCKWELL HOUSE FARM
GREAT BOURTON**

APPEAL STATEMENT MODERN BARNs, CROCKWELL HOUSE FARM, MANOR ROAD, GREAT BOURTON

November 2020

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[2016] EWHC 2853 (Admin)**

1. INTRODUCTION

- 1.1. The appeal is submitted on behalf of Mr Roger Yates and Crockwell Farm LLP (“the Appellant”) against the decision of Cherwell District Council to refuse a prior notification LPA Ref.: 20/01902/Q56 for a change of use of existing farm building into a single residential dwelling (use class C3)
- 1.2. The decision notice sets out three reasons for refusal:
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 and Country Planning (General Permitted Development) (England) Order 2015 (as amended).*
 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) fo Class Q.1 of the Town and 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 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).*
- 1.3. The application was validated on 16th July 2020 and was determined on 10th September 2020
- 1.4. A separate application for costs will be submitted with this appeal.
- 1.5. The prior notification application was submitted for Class Q (a) only. This was made clear at the point of submission and through the determination period.
- 1.6. The Appellant maintains that the proposed development fully accords with the limitations and conditions of Schedule 2, Part 3, Class Q (a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 1.7. Oxfordshire County Council Highways commented on the scheme in the letter dated 13th August 2020 and did not object to the appeal proposal.
- 1.8. No objections or comments on the application were received from local residents.

- 1.9. Great Bourton Parish Council responded to the application on 22nd August 2020 and raised its concern about the lack of details relating to the final design of the scheme. However, the Parish Council expressed their tentative support for development of the appeal buildings if the resultant scheme is in keeping with the historic vernacular and enhancing the area, supporting the farmhouse and farm building conversion. The full wording of Parish Council's letter is included in **Appendix 1**.
- 1.10. During the determination period, the Appellant responded to the Parish Council's concerns. This correspondence is included with the Appeal documents, and is also appended to this statement (**Appendix 2**).

Preliminary matters & corrections

- 1.11. The applicant would like to acknowledge that in August 2020 the amendment to the GPDO introduced additional sub-paragraph Q.2 (1)(g) which requires the developer to seek prior approval in respect of adequate daylight provision to all habitable rooms of the dwelling house.
- 1.12. The decision notice refers to the proposal as "*Change of use of existing farm buildings into a single residential dwelling (use class C3).*"
- 1.13. Paragraph 2.1¹ of the Officer's report incorrectly states that "*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.*" This is factually incorrect as the applicant made it clear in the accompanying covering letter that the submitted application is for the change of use under the provision of Class Q (a) only.

¹ **Appendix 3**

2. SITE AND SURROUNDING AREA

Location

- 2.1. The appeal site is located at the northern edge of Great Bourton, and forms part of a former Crockwell House Farm.
- 2.2. Great Bourton is identified as a 'Satellite Village' where minor development within built-up limits will, in principle be supported according to the adopted Local Plan.
- 2.3. The wider site is occupied by a number of dilapidated farm buildings and barns, and some of which are curtilage listed by association with a grade II listed Crockwell House (List entry number 1215873)
- 2.4. All buildings on site were previously used as part of a working farm. This was illustrated in the covering letter through a series of aerial photographs which showed the site in its agricultural use in 2006, and further illustrated the slow deterioration of the site as whole when the agricultural use ceased.
- 2.5. The site does not form part of any statutory or non-statutory designated area. It is not located within a Conservation Area. There are no Tree Preservation Orders ("TPOs") on site or within its vicinity.
- 2.6. The site is located in Flood Zone 1 – an area with low probability of fluvial, pluvial and surface water flooding.
- 2.7. The site is accessed through a single access point from Manor Road.

Appeal site and buildings

- 2.8. The appeal relates to the modern steel structure at the northern boundary of the site. This building is a typical modular steel framed farm building with corrugated sheeting, blockwork and with a solid concrete floor. Over the years a number of lean-tos were added in a haphazard fashion. A timber framed shed was also added to maximise the storage area. The paraphernalia within the building indicates that it was used for livestock accommodation and for storage of forage.
- 2.1. The appeal building has a solid concrete floor and secure footings. The barn is partially enclosed on three sides as seen in figures 1 and 2 below. Figure 1 also clearly shows that some walls are made of concrete blockwork.
- 2.2. The roof consists of corrugated sheeting. The side walls are clad in corrugated sheeting to various degrees of coverage.



Figure 1 – internal view into the appeal building



Figure 2 – timber lean-to which will be demolished

- 2.3. The barn remains open to the west as this is where a makeshift timber structure was erected to maximise the size of the accommodation. The timber structure does not form part of the appeal building and will be demolished.
- 2.4. Photos attached, and supporting technical reports, show that the farmyard as a whole has suffered from a lack of maintenance in recent years. However, the Structural Survey submitted alongside the prior notification application demonstrated that:
- Floor and steel frame are free from structural defect; and
 - The roof covering is free from defect; and
 - Some corrugated sheeting is loose or missing, but majority is present and defect free; and
 - Floors have been constructed with appropriate movement joints and are structurally sound; and
 - Steel frame has a light corrosion only and is free from structural defect.
- 2.5. The Structural report confirmed that the building is capable of being fully enclosed with no need of further strengthening.

Development context and planning history

- 2.6. According to aerial images, the Crockwell House Farm was in full agricultural operation in 2006. The images clearly show that the dirt track connecting the farm with nearby fields has been used. Livestock is also clearly present on images from 2005 to 2007.



Figure 3 – Aerial Image of the Crockwell House Farm dated 2005 (source Google Earth Pro)

Land in Appellant's control

Appeal building

Land subject to an outline
planning permission LPA Ref.:
19/00250/OUT



Figure 4 - Aerial Image of the Crockwell House Farm dated 2006 (source Google Earth Pro)



Figure 5 - Aerial Image of the Crockwell House Farm dated 2007 (source Google Earth Pro)



Figure 6 - Aerial Image of the Crockwell House Farm dated 2009 (source Google Earth Pro)



Figure 7 - Aerial Image of the Crockwell House Farm dated 2017 (source Google Earth Pro)

- 2.7. There is no planning history available in the public domain pre-dating March 2013.
- 2.8. In July 2016, an outline planning permission was granted for residential development of 3no. dwellings (LPA Ref.: 16/00609/OUT). This outline permission included conversion of a curtilage listed

barn located at the southern boundary of the wider site, and 2no. new build dwellings at the centre of the site. We enclose the details of this planning permission in **Appendix 4**. This application was not implemented.

- 2.9. In April 2019, a re-submission application for residential development of 3no. dwellings (LPA Ref.: 19/00250/OUT)² was granted planning permission.
- 2.10. Both of the above outline applications related to agricultural buildings only and did not include the Crockwell House farmhouse and its gardens.
- 2.11. In 2019, the site as a whole was marketed for sale through an open tender. The sales brochure (**Appendix 6**) shows that a significant amount of agricultural land initially formed part of the site. However, a separate buyer was found for the agricultural fields. The remaining part, including all of the former farmyard buildings, was purchased by the Appellant.
- 2.12. The Appellant is a SME developer who is keen to deliver the best possible layout on the site as a whole.
- 2.13. Pre-commencement conditions 5 and 6 of outline planning permission 19/00250/OUT were discharged on 12th June 2020 under application reference 20/01523/DICS. This application related to approval of details for the means of access from Manor Road, and for a Construction Traffic Management Plan.³
- 2.14. The implementation of the outline permission for 3no. residential dwellings has been divided into two independent phases. The first phase related to the submission of detailed designs for the conversion of the curtilage listed barn at the southern part of the wider site into a single dwelling. The Reserved Matters Application LPA Ref.: 20/01726/REM, and a listed building consent LPA Ref.: 20/01730/LB for this first phase were approved on 21st October 2020 (**Appendix 8**).
- 2.15. The second phase will be a reserved matters application to deal with the detailed design and development of the 2no. new build dwellings. These dwellings are to be positioned in the centre of the former farmyard. Spatially, these dwellings will be located between the historic barn and the modern steel framed barn, which is the subject of the appeal.
- 2.16. It is the Appellant's consideration that the spatial and functional relationship between all of the above buildings, and the appeal building is of key importance to ensuring a sensitively designed scheme which responds to character of the site, its setting within the edge of the village, and its immediate relationship to heritage assets.
- 2.17. For this reason, the Appellant submitted prior notification under the provisions of Class Q(a) only, to firstly establish the principle of residential use. It is the Appellant's intention to then subsequently submit a further detailed application to address the detailed of the 2no. new build dwellings that already have outline permission, as well as the details relating to the design and appearance of the appeal building.

² The decision notice alongside with the Officer's report are enclosed as an **Appendix 5**

³ The decision notice is enclosed as an **Appendix 7**

- 2.18. The intention to submit a further application for determination of detailed designs was made clear in both the covering letter, and in the response to Parish Council's comments on application (Appendix 2)

3. SUMMARY OF THE APPEAL PROPOSAL

- 3.1. The appeal scheme proposes a change of use of a modern barn from agricultural to residential under the provision of Schedule 2, Part 3, **Class Q (a)** of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
- 3.2. The existing building is a modular steel framed building which formed part of a single established agricultural unit prior to the farmer's retirement. The agricultural use ceased before March 2013 and this has been demonstrated through submission of aerial images (Covering letter figures 1, 2 and 3, and figures 3 – 7 in section above).
- 3.3. The appellant sought a prior approval under the provisions of Class Q(a) only to establish the principle of residential use before undertaking a full design exercise, as the Appellant's aim is to deliver a holistic development of the wider site.
- 3.4. The Appellant maintains that the prior notification should have been granted as the proposal fully complies with the relevant limitations and conditions of Schedule 2, Part 3, Class Q(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments ("the GPDO")
- 3.5. There were no objections to the scheme from statutory consultees or neighbours.
- 3.6. The Parish Council objected on the principle of conversion of the building due to the lack of design drawings, however, general support was expressed for development on site (Appendix 1)
- 3.7. The Council refused the prior approval application for the reasons specified in paragraph 1.2 above.

4. PLANNING LEGISLATION

- 4.1. The appeal relates to the proposal which was considered under the provisions of Schedule 2, Part 3, Class Q(a) of the Town and Country Planning (General Permitted Development)(England) Order 2015 and its subsequent amendments (“the GPDO”).
- 4.2. For clarity, the full provision of Class Q are included, with the text below reflecting all amendments since its original adoption in 2015.

Permitted development

Q. Development consisting of—

(a) 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 the Schedule to the Use Classes Order;

or

(b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule. (our emphasis)

Development not permitted

Q.1 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;

(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;

(ba) the floor space of any dwellinghouse developed under Class Q having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order 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 consist of 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 on article 2(3) land;

(k) 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;

(l) the site is, or contains, a scheduled monument; or

(m) the building is a listed building.

Conditions

Q.2— (1) 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,
 - (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,
 - (f) the design or external appearance of the building, and
 - (g) the provision of adequate natural light in all habitable rooms of the dwellinghouses,
- and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

(2) 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 (g), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application

(3) Development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date.

Interpretation of Class Q

Q.3. For the purposes of Class Q—

“larger dwellinghouse” means a dwellinghouse developed under Class Q which has a floor space of more than 100 square metres and no more than 465 square metres having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;

“smaller dwellinghouse” means a dwellinghouse developed under Class Q which has a floor space of no more than 100 square metres having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.

5. ASSESSMENT OF REASONS FOR REFUSAL

- 5.1. Section 4 of this Statement provides a comprehensive overview of the current wording of Class Q of the GPDO (including the 2020 amendment). This section looks at the context of Class Q (a), and whether prior approval should be granted for change of use only, even where operational development is needed to facilitate the new use.
- 5.2. It is of note that the application was submitted in July 2020, before the introduction of Q.2 (1)(g) which requires prior notification regarding the provision of adequate natural light in all habitable rooms.
- 5.3. The prior approval notification was refused by decision notice dated 10th September 2020 with three reasons for refusal. This section of the Statement therefore provides an assessment of the individual reasons for refusal with references to relevant planning legislation.

Reason for Refusal 1

- 5.4. It is alleged that insufficient information has been submitted to demonstrate that the building relates to an agricultural holding, thus not complying with criteria (a), (b), (d) and (g) of Class Q.1 of the GPDO.
- 5.5. Criterion a) refers to the use of the site. It requires the site to be solely used 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.*
- 5.6. The application was submitted with a number of aerial images clearly showing the decay of the farm over the years. Figure 1 of the Covering Letter shows the farm in a working order with animals scattered in the neighbouring fields. The track along the eastern elevation of the barn was clearly in use and provided access to arable fields to the north of the site. Images from later dates no longer show animals in fields. Furthermore, the structural decay and greening of the site as whole in later images shows that the agricultural use has likely ceased before 2009.
- 5.7. 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.
- 5.8. However, the Appellant maintains that the site complies with criterion (ii) in so far, that the site formed part of an established agricultural unit, and that the appeal building was used solely for agricultural use at the time when it formed part of an established agricultural unit.

5.9. It appears that the Council has dismissed the application based on criterion (i) only. The Officer's report, namely para 8.5, states that:

"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 20th March 2013 and, together with the assessment made in para 8.2 of this report fails to meet criterion (a) of Q.1."

5.10. However, no assessment of use is made by the Council in respect of the criterion (ii) of Q.1 (a).

5.11. This is despite the fact that the Case Officer refers to the planning history of the site, and to (now decided) reserved matters application (LPA Ref.: 20/01726/REM) and its supporting planning statement. Indeed, in deciding the outline planning application previously granted on the wider site (LPA Refs.: 16/00609/OUT) the Officer's report acknowledged at para 1.1⁴ - that:

"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".

5.12. The Appellant therefore suggests that the Council is inconsistent in its assessment of the site and its use. It cannot acknowledge that the buildings on site were part of a working farm in relation to Crockwell House in 2016, and then refuse the application on the principle that the building does not relate to an agricultural holding in 2020. There is a clear spatial and functional relationship between all existing buildings on site, and this strongly implies its former agricultural use.

5.13. Part 3 Paragraph X of the GPDO defines an 'established agricultural unit' as agricultural land occupied as a unit for the purposes of agriculture – for purposes of Class Q or S, on or before 20th March 2013 or for 10 years before the date the development begins. There is, however, no requirement to demonstrate 'the extent of agricultural unit' or how much agricultural land must form part of the agricultural unit to make it one.

5.14. The fact that the site as a whole, and the appeal building itself, were not used for agricultural use on the 20th March 2013, does not mean that the historical and lawful agricultural use can be ignored. No planning permission has been granted in respect of the appeal building to suggest a change of use has occurred.

5.15. As such, the Appellant maintains that the appeal building fully complies with criterion Q.1 (a) (ii) in so far that the last known lawful use of the building was agricultural, and that this was related to an established agricultural unit which was in a last known use in 2006.

Reason for Refusal 2

⁴ See Officer's report in Appendix 4

- 5.16. The second reason for refusal relates to the use of the building itself. It is alleged that the building was used for purposes other than agricultural on the 20th March 2013, thus not being used solely for agricultural purposes as required under part Q.1(a).
- 5.17. The allegation of 'other' use is made on the basis of the Case Officer's site visit. In paragraph 8.3 of his report he states that:
- “Upon my site visit (8th September 2020), at least part of the building within the application site was not being used for agricultural purposes, with a (nonagricultural) 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.” (our underlining)*
- 5.18. As discussed above, the last known agricultural use of the building was in 2006 when animals were housed in this building. Furthermore, there is no requirement within the GPDO for the agricultural use to be ongoing at the time of the application for the permitted development right to exist.
- 5.19. The case officer refers to a single motor vehicle being stored within the barn. It was also suggested that other paraphernalia suggested that this vehicle was being restored.
- 5.20. Whilst this vehicle was parked in the barn on the day of the site visit, it is not considered that a parked vehicle then results in a material change of use of the entire building. The Appellant would like to reiterate that no commercial activity relating to a repair of motor vehicle ever took place on site. In fact, no other vehicles are stored or parked within the site on a regular basis.
- 5.21. While it is appreciated that this will be matter for the Inspector to determine as a matter of fact and degree, it cannot be so, that parking and some one-off maintenance to a single vehicle would be of real significance in planning terms to amount to a material change of use of the entire building.
- 5.22. As such, the Appellant maintains that the disqualification in paragraph Q.1 is not engaged in respect of the use of the building as any non-agricultural use was, as a matter of fact and degree, de minimis.

Reason for Refusal 3

- 5.23. The third reason for refusal alleges that 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

- 5.24. The question therefore arises whether the Q.1 (h) and Q.1 (i), both of which deal with operational development, are relevant to the appeal scheme in so far that it has been made clear that the Appellant is not seeking prior notification in respect of operational development.
- 5.25. Consequently, the question arises whether the Appellant has submitted sufficient information to enable the Local Planning Authority to establish whether the proposed development complies with any conditions, limitations or restrictions in this Part as being applicable to the development in question in line with paragraph W.(3)(b) of Part 3 of the GPDO.
- 5.26. As highlighted throughout this Statement, the Appellant submitted a prior notification application of under the provisions of Class Q(a) only. For understanding of the legislative context, it is important to highlight that at the time of adoption of the GPDO in 2015 , Class Q read as follows:
- 5.27. Permitted development
- Q. Development consisting of—
- a) 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 the Schedule to the Use Classes Order; **and***
- b) Building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of the Schedule. (our emphasis)*
- 5.28. Paragraph Q.1 sets out limitations specifying under which circumstances the development is not permitted.
- 5.29. Paragraph Q.2 sets out conditions that before the development, the developer has to seek prior approval in respect of number of considerations.
- 5.30. When the GPDO came to force in 2015, the overarching provision of Class Q referred to both a change of use AND building operations. However, two appeal decisions (July 2016⁵ and July 2017⁶) have been determined on the principle acknowledging that the wording of Class Q also permits applications to be submitted under the provisions of Class Q (a) only.
- 5.31. In East Staffordshire (PINS Ref.: APP/B3410/W/17/3170228) (attached as an **Appendix 9**), the Inspector dealt with the change of use of a steel portal framed agricultural building to one dwelling.
- 5.32. The building was within a farmyard with other agricultural building and a farmhouse. In the officer's report (forms part of Appendix 9), the case officer describes the building as "*open on three sides, albeit on the one side it's enclosed by a lean to shed which is to be removed a part of the proposal*". It was clear to the Inspector, that the condition of the building would have required a further application to facilitate the residential use.
- 5.33. In paragraph 7, the Inspector stated:

⁵ **North Devon PINS Ref.: APP/X1118/W/16/3146607** - Barns at Leigh Farm, Leigh Road, Chulmleigh, Devon

⁶ **East Staffordshire PINS Ref.: APP/B3410/W/17/3170228** - Agricultural Building at Popinjay Farm, Stafford Road, Uttoxeter, Staffordshire ST14 8QA

"It is evident from the current condition of the building that a further application would be required. However, the GPDO does not state that where building operations are clearly intended or required that a Class Q(a) only application cannot be made. The approach of applying for Class Q(a) only is permissible under the regulations of the GPDO and the appellant can seek approval for the change of use without dealing with building operations. I have therefore considered the appeal on this basis." (our underlining)

- 5.34. In allowing the appeal, the Inspector noted (in para 9) that although the Council did not express this directly in their report, the limitation in dispute was related mainly to Q.1(i)(i). However, as this relates to development under Class Q(b), this was considered irrelevant to the appeal.
- 5.35. The Appellant considers the East Staffordshire case to be materially similar to the appeal case, and therefore directly relevant to considerations within.
- 5.36. In North Devon (PINS Ref.: APP/X1118/W/16/3146607) (attached as an **Appendix 10**) a similar stance was adopted by the Inspector in approving a Class Q(a) only proposal. In paragraph 8, it was stated that:

"Class Q.2 of the GPDO sets out that an application can only be made for: both the change of use and the conversion works; or the change of use only. The application that constitutes this appeal was made for the latter and I am to deal with the appeal on this basis as the GPDO does not state that where building operations are clearly intended that a Class Q(a) only application cannot be made. Therefore, applicants can seek prior approval for the change of use in advance of dealing with the building operations." (our underlining)

- 5.37. Furthermore, the Inspector clarifies in paragraph 13 what conditions need to be approved where proposal is for development under Class Q(a) only:

"Paragraph Q.2(2) of the GPDO explains that where the proposal 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 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." (our underlining)

- 5.38. The Appellant considers the North Devon case to also be materially relevant to the appeal proposals. In that case, the change of use was approved by the Inspector despite some of the buildings being dilapidated and with no roof (see officer's report forming part of Appendix 10)
- 5.39. The 2018, GPDO amendment to Class Q is significant. It replaced the word "and" at the end of paragraph Q(a) with a word "**or**", thus altering the necessity to submit an application which would encompass both paragraphs (a) and (b).
- 5.40. Instead, paragraph Q(a) is, in effect, a standalone provision separated from provision (b). As such, it is the Appellant's consideration, in line with the referenced appeal decisions, that an applicant has an option to either apply for a change of use only **or** to make an application for both the change of use and the operational development.

- 5.41. This reasoning is supported by wording of paragraph Q.2 (2) which states that: *“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 (prior approval) of this Part apply in relation to that application.”*
- 5.42. The Appellant therefore maintains that the Council should have only considered the proposal as a standalone change of use prior notification. Therefore, only the provisions relevant to the change of use should have been assessed in relation to the proposal. As such, it is the Appellant’s consideration that reason for refusal 3 is unfounded.
- 5.43. During the application process, it was made clear on numerous occasions that the Appellant intended to establish the principle of residential development only, and that a future planning application would deal with the details of design (both external and internal).
- 5.44. This approach to development of a former agricultural building is consistent with other provisions of the GPDO which deal with changes of use into habitable accommodation such as Class O, Class PA, and Class R (in respect of a change of use into Use Class C1 – hotels).
- 5.45. This is evident from the paragraph 3 of the Treravel Farm appeal decision (PINS Ref.: APP/D0840/W/20/3254577) (attached as an **Appendix 11**), where the Inspector acknowledged that under Class R, the development is restricted to the change of use of the building and does not grant any physical conversion works. Any associated operational development that would be reasonably necessary to use the building or land for the proposed use under Class R is required to be the subject of a separate planning permission.
- 5.46. This would also be the case where the change of use is sought under the provisions of Class Q (a) and where no prior approval is sought in respect of operational development.
- 5.47. In assessing the appeal scheme against the criterion (i) the Council refers to the NPPG⁷ highlighting that 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.
- 5.48. The appeal scheme was supported by Structural Survey which highlighted that all structural elements, including the steel frame, the concrete floor, and footings were in good condition and without structural defects. The report further highlighted that the appeal building is a purpose fabricated building of a permanent and substantial structure. Overall, the structural report concluded that the building is suitable for conversion and that the building is capable of being fully enclosed without a need of any strengthening. The Appellant therefore maintains that it has been demonstrated that the building, and its individual structural elements are suitable for conversion.

⁷ Paragraph 05 Reference ID 13-105-20180615

- 5.49. The Council refers to the case of Hibbitt⁸ which is seen as pivotal in determination as to what constitutes 'conversion' and 're-build' in context of interpretation of Class Q. The case was determined by Mr Justice Green in November 2016. However, the assessment has to be read and considered in the context of the overall wording of the Class Q definition at the time of his decision in 2016, when the permitted development consisted of both the change of use AND building operations reasonably necessary to convert the building.
- 5.50. It is not the Appellants intention to dismiss Mr Justice Green's conclusions in regards to "conversion" and "re-build" in the case of Hibbitt, it is, however, important to note that those conclusions were reached prior to the 2018 changes in Class Q, specifically the exchange of the word "and" to the word "or" between paragraphs a) and b).
- 5.51. The Class Q contains two individual concepts within it, and this is discussed in some detail in paras 5.30 to 5.41 above. On the basis that the appeal scheme only consists of prior approval application in respect of a change of use, the Appellant suggests that conclusions from the Hibbitt case are not applicable to the appeal scheme.
- 5.52. In the light of the above, the Appellant therefore maintains that the Council should have considered the application in the context of provisions of Class Q (a) only. It is clear from the decision notice and its contents, that this was not a case, and that the refusal has encompassed issues which were not relevant to the submitted application. Therefore, it is respectfully suggested that reason for refusal 3 is unfounded.

⁸ Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin) – **Appendix 12**

6. ASSESSMENT AGAINST APPLICABLE CRITERIA OF CLASS Q(A)

6.1. In accordance with paragraph W.(3) (b), Local Authority may only refuse a prior notification application made under Part 3 where, in the opinion of the authority the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restriction specified in this Part as being applicable to the development in question.

6.2. The Appellant maintains that only the following conditions, limitations and restrictions are applicable to the appeal proposal:

- Q.1 (a), (b), (ba), (d), (e), (f), (g), (j), (k), (l) and (m); and
- Q.2 (1) (a) to (e) and (g)⁹ as per wording in Q.2 (2); and
- Q.3

6.3. For clarity, the above paragraphs will be discussed individually in separate sections:

Limitations set out in Q.1

6.4. The Appellant maintains that the appeal scheme complies with Q.1 (a) as the appeal building was not used on 20th March 2013, but when it was last in use before this date, the last lawful use was agricultural as part of an established agricultural unit.

6.5. Consequently, the appeal proposal complies with provisions Q.1 (b), (ba), and (d) as no concern was raised in respect of the size or the number of resulting new dwellings.

6.6. According to the paragraph 8.7 of the Officer's report, criteria (e) and (f) have been satisfied.

6.7. No development under the provisions of Class A(a) or Class B(a) of Schedule 2, Part 6 of the GPDO has been carried out on the established agricultural unit. There is no evidence that any works comprising the erection, extension, or alteration of a building took place on site. In fact, the aerial images submitted clearly demonstrate that the site, and all its buildings, have been slowly deteriorating since 2009. This is also evident from photos available in the Structural Survey accompanying the application. On this basis, the Appellant maintains that the appeal scheme complies with criterion (g) of Q.1.

6.8. Criteria (h) and (i) relate to operational development. As clearly stated in the application and its supporting material, the appeal proposal seeks development permitted by Class Q (a) only.

6.9. Criterion (h) specifically refers to the external dimensions of the building and the fact that these must not be exceeded. In the context of the appeal site, and with the view that a full planning application would be submitted to deal with any operational development in the future, the compliance with provision of this criterion could be secured by an appropriately worded condition.

⁹ From August 2020 following the 2020 amendment of the GPDO

- 6.10. Criterion (i) clearly applies to development under the provision of Class Q (b). As such, the Appellant maintains that this criterion is not relevant to the appeal scheme and should not have been included within the Council's assessment. In this respect, the Appellant also suggests that the Council behaved unreasonably in refusing the appeal scheme on the basis of a criterion which is not directly relevant to the development proposal.
- 6.11. The Appellant agrees with the Council¹⁰, that criteria (j) – (m) were satisfied.
- 6.12. The Appellant maintains that sufficient information was submitted in relation to limitations outlined in Q.1 (a), (b), (ba), (d), (e), (f), (g), (j), (k), (l) and (m) – all of which are applicable to the appeal proposal. There is no need to submit information in respect of Q.1 (c), (h) and (i) as these are not applicable to the appeal proposal.

Conditions set out in Q.2 and Q.3

- 6.13. Conditions of Class Q are contained in paragraph Q.2 which itself has three independent conditions.
- 6.14. The first condition, known as Q.2 (1), specifically refers to development proposed under Class Q(a) together with development under Class Q(b), and outlines condition that before beginning the development, the developer must apply to the LPA 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,*
 - 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*
 - g) *The provision of adequate natural light in all habitable rooms of the dwellinghouses,*
- And the provisions of paragraph W (prior approval) of this Part apply in relation to that application.*
- 6.15. The second condition, known as Q.2(2), refers to development under the Class Q(a) only. The appellant maintains that it is this condition, which should have been applied to this appeal proposal.
- 6.16. Under the provision paragraph Q.2(2), only sub-paragraphs (1)(a) to (e) and (g) apply and this is clear from its full wording:

(2) 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

¹⁰ See paragraph 8.11. of the Case Officer's report

of the authority will be required as to the items referred to in sub-paragraphs (1)(a) to (e) and (g), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application

- 6.17. In this respect, the paragraph 8.13 of the Officer' report notes that the proposal was considered acceptable in regard to sub-paragraph (a).
- 6.18. No concerns were raised in respect of sub-paragraphs (b), (c) or (d), and this is evident from paragraph 8.14 of the Officer's report.
- 6.19. Location and siting of the building were discussed in paragraphs 8.17 – 8.20 of the Officer's report. Paragraph 8.21 clearly states that conditions of sub-paragraph (e) were satisfied.
- 6.20. Sub-paragraph (g) came into force in August 2020, after the application was submitted to the Council for consideration. However, the location, positioning and the character of the building indicates that on the balance of all probabilities, all habitable rooms will be provided with adequate natural light. The future compliance with this condition could also be secured through an appropriately worded condition.
- 6.21. The Appellant maintains that it in accordance with paragraph W. (3)(b), it was not necessary to submit information in relation to the design and external appearance of the building as this was not applicable to the development in question, and was not required by paragraph Q.2(2). As such, the Council erred in law by considering this condition to be unsatisfactory.
- 6.22. The third, and last, of the conditions is paragraph Q.3 which notes that the development under Class Q is permitted subject to the condition that development under Class Q(a) (and under Class Q(b)) if any, must be completed within a period of 3 years starting with the prior approval date. The compliance with the condition can be secured through an appropriately worded condition.
- 6.23. The Appellant maintains that the appeal scheme fully complies with the relevant limitations, conditions and restriction of Class Q(a) and as such the prior approval notification for a change of use from agricultural to residential should have been granted by the Cherwell District Council.

7. CONCLUSIONS

- 7.1. This appeal is made against the decision of the Cherwell District Council to refuse a prior notification application LPA Ref.: 20/01902/Q56 for change of use of existing farm building into a single residential dwelling (use class C3) under the provision of Schedule 2, Part 3, Class Q (a) only of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
- 7.2. The application was accompanied by relevant documents required by provisions of paragraph W (prior approval) of Schedule 2, Part 3 of the GPDO in so far that these documents were applicable to the change of use of the appeal building from agricultural to residential use.
- 7.3. The Appellant has demonstrated that the appeal scheme complies with the relevant limitations, conditions and restrictions specified in provision of Class Q (a).
- 7.4. The Appellant has demonstrated that the last lawful use of the site was agricultural, and that no material change of use has occurred in respect of the use of the appeal building, which was used solely in agricultural use as a part of an established agricultural unit.
- 7.5. The Appellant maintains that there was no need to submit information detailing the design and external appearance of the building as this is not required by the provision relevant to Class Q (a). Furthermore, the Appellant suggests that the prior approval should not have been assessed against criteria Q.1 (h) and (i) which both relate to an operational development and are therefore not relevant to this appeal proposal.
- 7.6. In light of the above, we respectfully ask that this appeal is allowed, and prior notification is issued without further delay.