



---

## Appeal Decision

Site visit made on 27 August 2019

**by Helen O'Connor LLB MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 August 2019**

---

**Appeal Ref: APP/J0405/W/19/3229503**

**Barn at Land off Winslow Road, Granborough, Buckinghamshire MK18 3NQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by J. B. Baylis & Partners against the decision of Aylesbury Vale District Council.
  - The application Ref 18/03454/COUAR, dated 28 September 2018, was refused by notice dated 25 January 2019.
  - The development proposed is described as the 'Change of Use of agricultural building to form 4 no. dwellings'.
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Notwithstanding that there are different descriptions of development used in the decision notice and appeal form, in my heading above, I have used the description given in the original application form.
3. Class Q(a) of the Town and Country Planning (General Permitted Development) (England) Order (as amended) 2015 (the Order) allows for the change of use of a building and any land within its curtilage from a use as an agricultural building to the use as a dwellinghouse. The term 'curtilage' is defined in paragraph X of Schedule 2, Part 3 of the Order as meaning '*(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.*'
4. Proposed site plan drawing number 01400/18/10A shows the site application area in red, excluding the existing access. The Council suggest that this equates to an area of around 920sqm and that as the footprint of the proposed dwellings would amount to 311sqm, the curtilage would exceed that permitted under Class Q. However, the existing agricultural building has a floor area of approximately 548sqm. Paragraph X expressly states that for the purposes of Class Q, curtilage includes the area of land "immediately beside or around the agricultural building" and that this should be no larger than the land occupied

by the “agricultural building”. On this basis, the proposal would not include such an area that would be larger than 548sqm.

5. I have not seen substantive evidence to support any alternative approach to calculating the curtilage area, notwithstanding the reservations of the Council. Accordingly, the evidence suggests that the area identified in drawing 01400/18/10A would accord with the definition of curtilage in Paragraph X and I have determined the appeal on this basis.

## **Main Issues**

6. The main issues are:

- Whether the proposal would be permitted development, with particular regard to whether the requirements of Class Q(b) of the Order would be met, and;
- Whether the requirements of paragraph Q.1(c)(i)(bb) of the Order would be met, and;
- If so, whether or not prior approval would be required in relation to the transportation and highways impact of the development in accordance with the condition set out in paragraph Q.2(1)(a) of the Order.

## **Reasons**

*Whether the proposal would be permitted development under Class Q(b)*

7. Class Q(b) of the Order permits building operations reasonably necessary to convert the relevant building to a use falling within Class C3 dwellinghouses. Paragraph Q.1(i) states that development under Class Q(b) is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs or exterior walls, or water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwellinghouse, and partial demolition to the extent reasonably necessary to carry out those building operations.
8. The agricultural building that is the subject of the appeal has a utilitarian appearance comprising a steel portal frame on a concrete floor slab, the lower portion of the walls comprises concrete bund walling with corrugated metal cladding making up the majority of the walls and roof.
9. There is limited information providing the details of the intended building operations. Nevertheless, the submitted plans show that parts of the existing building would be demolished, reducing its footprint on the eastern and western sides, such that the footprint of the proposed four dwellings would be contained within the envelope of the original building<sup>1</sup> but with the roof /canopy and eaves maintaining the original dimensions<sup>2</sup> supported by the retained steel frame<sup>3</sup>. The application details describe that the outer leaf of the new cavity walling would clad both the bund (where retained) and the steel frame, leaving exposed the main columns. The reduction in footprint would remove the existing eastern and western walls, with new external walls being built further into the building envelope. The walls would comprise coursed and

---

<sup>1</sup> Proposed Floor Plans Drawing No. 01400/18/01

<sup>2</sup> Proposed Elevations Drawing No. 01400/18/02

<sup>3</sup> Retained Structure Plan Drawing No.01400/18/100

cut natural stone utilising string courses and some rendered panels. The existing roof cladding would be removed and replaced using a combination of raised seam metal roofing and louvres.

10. Planning Practice Guidance (PPG) advises that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling, clarifying that it is not the intention of the permitted development right in Class Q(b) to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. In this respect the PPG refers to relevant case law<sup>4</sup> to which I have had regard.
11. The caselaw established that Class Q(b) only permits building operations necessary to convert the building, and therefore if a development does not amount to a conversion then it fails at the first hurdle, even though the building operations may fall within those listed in paragraph Q.1(i). Furthermore, whether a proposal constitutes a conversion or a rebuild is a matter of planning judgement and the nature and extent of the proposed building operations are a relevant consideration in making that assessment.
12. In this case, from my own observations and the limited information in the retained structure plan and application details, the cumulative extent of the works proposed to facilitate a residential use would be extensive as they would result in the replacement of the roof covering, replacement of most of the northern and southern gable walls, and the rebuilding of the western and eastern walls in a different location. In my view, when these are taken together the works would be of such magnitude that they would go beyond what would be reasonably necessary for the conversion of the building to a residential use.
13. The appellants rely on the visible appearance of the building<sup>5</sup> and enclosure on all four sides in order to distinguish it from the circumstances of the building considered in the Hibbitt case. I accept that the existing building could not be described as skeletal and that the PPG does not prohibit internal structural works, which might allow for the insertion of upper floors similar to those proposed. However, it does not therefore follow, that the proposed development would constitute a conversion, as this is a matter of planning judgement depending on the nature and extent of the building operations proposed. I have already outlined the reasons why the development would go beyond what might reasonably be described as a conversion, and therefore, the existing appearance of the building would not lead me to a different judgement.
14. I am referred to a previous application<sup>6</sup> for prior approval under Class Q that established that it would be permitted development to change the use of the building into one dwelling under Class Q(a). However, based on the evidence provided, this application did not include the details of any building operations, for which it would have been necessary to apply under a separate application relating to Class Q(b) of the Order. Accordingly, it is of little weight in the consideration of the building operations proposed in this case.

---

<sup>4</sup> Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

<sup>5</sup> Paragraph 6.10 appellants' statement

<sup>6</sup> Reference 18/00089/COUAR dated 23 February 2018

15. Therefore, I find that on the evidence provided, the development proposed would go beyond building operations reasonably necessary to convert the building into a dwellinghouse and as such, would not benefit from the permitted development rights under Schedule 2, Part 3, Class Q(b) of the Order.

*Paragraph Q.1(c)(i)(bb) floor space of any one smaller dwelling house*

16. Paragraph Q.1(c)(i)(bb) of the Order prevents development under Class Q within an established agricultural unit if the floor space of any one separate smaller dwellinghouse exceeds 100 sqm. The appellants consider that the proposal comprises two smaller dwellinghouses and two larger dwellinghouses that fall within the respective definitions given in paragraph Q.3. The floor space of the gross internal area of the smaller dwellinghouses is given as 99sqm<sup>7</sup>, and I have not seen evidence that the submitted scaled plans do not accurately reflect this.
17. Floor space is defined within the Order<sup>8</sup> as meaning '*the total floor space in a building or buildings*'. On this basis, I consider that floor space should be measured to the internal face of the perimeter walls, so as to exclude the external but include internal walls, and which would equate with the established industry practice<sup>9</sup> that normally excludes canopies from such a measurement.
18. The Council refers to Circular 04/2008 Planning Related Fees which allowed for a wider interpretation of floor space in relation to the calculation of planning fees. However, given that the Circular is no longer current, and related to a different purpose, it is of limited weight.
19. In the absence of a roof plan, it is not particularly clear what the extent of the external areas beneath the roof/louvres would be for proposed units 2 & 3. However, from the information that is provided, I would not describe them as minimal, as is asserted by the appellants. Nevertheless, as I have not seen robust evidence that such areas should be included as part of the floor space measurement for the purposes of Class Q.1 (c)(i)(bb) of the Order, they would not count towards the floor space of proposed units 2 & 3 respectively. Therefore, as the floor space of Units 2 & 3 would not exceed the 100sqm floor space limitation, the requirements of Class Q.1(c)(i)(bb) would be met.

*Paragraph Q.2(1)(a) transport and highways impacts of the development*

20. Given my finding above that the appeal proposal would not be development permitted under Class Q(b) of the Order, there is no need for me to consider whether or not prior approval should be given for the transport and highways impacts of the development in accordance with the condition set out in paragraph Q.2(1)(a) of the Order. This condition would only apply in circumstances where the proposed development was considered to amount to permitted development within the terms and limitations of Class Q, and therefore, my consideration of it would not alter the outcome of the decision.

---

<sup>7</sup> Table 1 Proposed floorspace, appellants' statement

<sup>8</sup> Article 2(1)

<sup>9</sup> Royal Institute of Chartered Surveyors, Code of measuring practice, Gross Internal Area

## **Conclusion**

21. For the reasons given and based on the evidence presented, I conclude that the proposal is not permitted development within Schedule 2, Part 3, Class Q(b) of the Order. The appeal, is therefore, dismissed.

*Helen O'Connor*

Inspector