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## Appeal Decision

Site visit made on 1 December 2020

**by I A Dyer BSc (Eng) FCIHT**

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

**Decision date: 14 December 2020**

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**Appeal Ref: APP/E3525/W/20/3248257**

**Nissen Grainstore, Ducks Hall, Ducks Hall Lane, Cavendish CO10 8AL**

- 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 (as amended).
  - The appeal is made by Mr & Mrs Willemsen against the decision of West Suffolk Council.
  - The application Ref DC/19/2318/P3QPA, dated 25 November 2019, was refused by notice dated 27 February 2020.
  - The development proposed is Prior Approval Application under Part 3 of the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015 - (i) Change of use of agricultural building to dwellinghouse (Class C3) to create 3no. dwellings (ii) associated operational development.
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### Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3, Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for Prior Approval Application under Part 3 of the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015 - (i) Change of use of agricultural building to dwellinghouse (Class C3) to create 3no. dwellings (ii) associated operational development. The external appearance will be unchanged other than the building operations necessary for conversion at land at Nissen Grainstore, Ducks Hall, Ducks Hall Lane, Cavendish CO10 8AL in accordance with the terms of the application Ref DC/19/2318/P3QPA, dated 25 November 2019 and the plans submitted with it and subject to the attached schedule of conditions.

### Procedural Matters

2. Schedule 2, Part 3, Section W of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), (the GDPO) sets out the prior approval process. It states that the local planning authority may refuse an application where, in its opinion, 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 restrictions specified as being applicable to the development in question. It was on this basis that the Council refused to grant prior approval for the proposal under Schedule 2, Part 3, Class Q of the GDPO which relates to change of use from an agricultural buildings to dwelling houses.

3. I have used the description of the proposal as it appears on the decision notice in the banner heading and decision as this provides a clearer description of the development.

### **Main Issue**

4. The main issue is whether the proposal would be permitted development, with particular regard to whether the requirements of Class Q of the GPDO would be met.

### **Reasons**

5. There has been a previous, similar, proposal to convert the appeal building to residential use<sup>1</sup>. This was refused by the Council and that decision was subsequently upheld at appeal<sup>2</sup>. The proposal differed from that which is before me in as much as it proposed the replacement of the existing cladding to the building.
6. There is no dispute between the main parties that the appeal site is occupied by an agricultural building and was solely in agricultural use as part of an established agricultural unit on, or before 20 March 2013, without any intervening non-agricultural uses having taken place in between.
7. Class Q 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 (dwellinghouses) of the Schedule to the Use Classes Order<sup>3</sup> and any building operations reasonably necessary to convert the building.
8. The Planning Policy Guidance (PPG) advises, within Paragraph 105, that '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'.
9. The PPG further advises 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.
10. The appeal relates to a Nissen hut type building used as a grainstore. The grainstore has a low wall around its perimeter with a semi-circular steel hooped structure above supporting steel purlins which run the length of the building. These support the asbestos/cement cladding which forms the roof and walls.
11. The appellants have submitted structural evidence, which has been prepared by a Chartered Structural Engineer and a Chartered Building Surveyor. Whilst this evidence contains some anomalies when compared to an earlier report, I have seen nothing in the Council's, or third party, evidence which leads me to question the reliability of the appellant's latest report concerning the overall structural integrity of the steel frame, and the conclusion that the steel frame

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<sup>1</sup> Council Ref: DC/19/0290/P3QPA

<sup>2</sup> PINS Ref: APP/F3545/W/19/3231678

<sup>3</sup> The Town and Country Planning (Use Classes) Order 1987 (As amended)

- structure would be sufficiently robust to support the existing cladding, as proposed, to create new dwellings.
12. The proposal to convert the building would involve the introduction of window and door openings to both of the side elevations of the building. This would necessitate the removal of several of the purlins.
  13. Paragraph Q.1(i) allows building operations associated with the installation of windows and doors "to the extent reasonably necessary for the building to function as a dwellinghouse" and I am satisfied that the proposals do not go beyond that which is reasonably necessary.
  14. The proposal which is before me retains the existing cladding to the building. It is proposed that internal works are carried out to make the building habitable, including the installation of insulation and finishes. The proposal states that these will be self-supporting.
  15. I am mindful of the advice within the PPG that for the building to function as a dwelling it may be appropriate to undertake internal structural work. The PPG provides a list of examples of such works, but there is no indication that that list is to be regarded as a closed list. The proposed internal works would not, to my mind, exceed those which are necessary to make the building habitable.
  16. Concerns have been raised about the strength of the existing floor to the building and its western wall, which is retained by steel props. However, the proposal does not seek to remove or replace these existing elements, which, based upon the evidence before me within the latest structural assessment, have been subject to loading in association with the agricultural use of the building in excess of that which the conversion to residential use will impose. I therefore see no reason why they would not continue to function satisfactorily in the future.
  17. Further concerns have been raised regarding the use of the existing cladding, which contains asbestos, for a residential use. I have no substantive evidence before me to demonstrate that, subject to suitable treatment in accordance with current building practice and legislation governing contaminants, the continued use of the existing cladding would be unacceptable.
  18. Bringing these matters together, I am satisfied that the proposed works retain the fundamental structure of the building and are necessary and reasonable to convert the building within the requirements of the GPDO for Class Q and in the context of a court judgment<sup>4</sup>, and go no further so as to constitute rebuilding.
  19. There is no dispute between the main parties that the scheme would meet the requirements of Part 3, Class Q.1 (b)-(h) and (j)-(m) and, on the evidence before me, I have no basis on which to reach a contrary view.
  20. Regarding the conditions within Q.2 of the GPDO, the site would use an existing access. Whilst Ducks Hall Lane is narrow and unlit, traffic flows are low and speeds are constrained by the layout of the road and, for the additional low number of domestic vehicles using the lane I have little substantive evidence before me to demonstrate that highway safety would be prejudiced.

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<sup>4</sup> See *Hibbitt vs Secretary of State for Communities and Local Government* [2016] EWHC 2853 (Admin)

21. The site has had a previous use that is associated with a risk of contamination. However, there is no evidence before me to suggest that, subject to the imposition of suitable planning conditions, the proposal would result in harm and I note that the Council's Environmental Team are satisfied that such an approach would be acceptable.
22. The site occupies an elevated position and is not at risk of flooding. Whilst concerns have been raised with regard to existing flooding risks, the proposal would not demonstrably increase the impermeable area within the site and, in any case the GPDO restricts consideration of such matters to flooding risks on the site.
23. Whilst there are existing dwellings in the area the main parties agree that no adverse impact upon residential amenity due to noise impact would result, subject to imposition of a suitable planning condition, and I see no reason to disagree with this view.
24. Whilst concerns have been raised that there will be no adequate water supply for the new dwellings, there is little substantive evidence to support this view and I have attached little weight to this matter. There is no substantive evidence before me to demonstrate that the scheme would harm biodiversity.
25. Whilst the previous Inspector considered that the proposal failed to accord with the requirements of the GPDO in regard to Class Q, his concerns related to the replacement of the cladding of the building in its entirety, this constituting works beyond those reasonably necessary to convert the building in accordance with paragraph Q.1(i). The proposal before me retains the existing cladding and, in that sense, the two proposals are not directly comparable.
26. For these reasons, I conclude that the proposal would constitute permitted development having regard to Schedule 2, Part 3, Class Q(a) and Q(b) of the GPDO.

### **Other Matters**

27. There is an extant prior approval (Council Ref: DC/18/0483/PMBA) nearby for two dwellings. This approval carries with it a condition that residential use of either of the dwellings approved shall not commence until the building that is the subject of this appeal has been removed. This is a matter for the Council if and when DC/18/0483/PMBA is implemented and has no bearing on the determination of this appeal.
28. A previous proposal<sup>5</sup> that was determined in 2003 and which was dismissed at appeal, which it is suggested is similar to the proposal before me, has been brought to my attention. I have limited information regarding this proposal. However, that decision was some time ago and national planning policy has changed in the interim. I have, in any case, determined this appeal on its merits and with regard to current planning policy and practice.

### **Conditions**

29. In accordance with Condition Q.2(3) of the GPDO, the approval is subject to the condition that development must be completed within a period of 3 years

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<sup>5</sup> PINS REF: APP/E3525/A/03/1111876

- from the date of this decision. Paragraph W(12) of the GPDO requires the development to be carried out in accordance with the approved details.
30. In addition the Council has suggested fourteen conditions, including conditions requested by the Local Highway Authority (LHA). The appellant has had the opportunity to comment on the suggested conditions.
31. A condition is necessary to control the provision of parking, including bicycles, and ensure that vehicles entering the site are able to turn and leave in forward gear so as to protect residential amenity and safeguard users of Duck Hall Lane. A condition is also necessary to control the collection of waste to protect the amenity of future occupiers and neighbours and ensure that operations are safe. As the layout of these works has potential to affect the overall design of the scheme these details are required prior to the commencement of any works on site.
32. The proposal is close to existing dwellings and conditions governing the hours of operation of construction works, restrict the installation of external lighting and attenuate noise are necessary to protect the amenity of nearby residents in accordance with the development plan and national planning policy.
33. The site has had uses in the past associated with a risk of contamination and so conditions are necessary to ensure that the site would not result in environmental damage through the release of contaminants. As any works on site have the potential to release contaminants, these details are required prior to the commencement of any works on site.
34. Conditions are necessary to control the amount of water usage and provide charging points for electric vehicles in order that the proposal meets the requirements of sustainability in accordance with the development plan and national planning policy.
35. A condition requiring the submission of details of boundary treatments and landscaping is necessary to ensure the amenity of neighbours and safeguard the character and appearance of the area.
36. The LHA have requested conditions requiring details of proposed access and means to prevent the discharge of surface water from the development onto the highway. The proposal uses an existing access and does not alter levels or layout of this nor does it increase impermeable surface area for runoff. The proposed conditions are therefore neither reasonable nor necessary to address the impact of the development.
37. I have amended some of the suggested wording of the Council's conditions for clarity.

### **Conclusion**

38. For the reasons given above, I conclude that the appeal should be allowed, and prior approval granted.

*I Dyer*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision in accordance with Paragraph Q.2(3) of the GPDO.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents:

### Title

Location for the Conversion of an Agricultural Building to Dwellings at Ducks Hall CO108AL

Block Plan for the Conversion of an Agricultural Building to Dwellings at Ducks Hall CO108AL

Existing and Proposed Elevations and Floor Plans for the Conversion of an Agricultural Building to Dwellings at Ducks Hall CO108AL

### Environmental Site Assessment

- 3) Before the development is commenced details of the areas to be provided for storage and presentation of Refuse/Recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for no other purpose.
- 4) Before the development is commenced details of the areas to be provided for the manoeuvring and parking of vehicles including secure cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter and used for no other purpose.
- 5) The site clearance, preparation and construction works shall be carried out between the hours of 08:00 to 18:00 Mondays to Fridays and between the hours of 08:00 to 13:30 Saturdays and at no time on Sundays, Bank or Public Holidays without the prior written consent of the Local Planning Authority.
- 6) No security lights or floodlights shall be erected on the application site without the submission of details to, and written approval from, the Local Planning Authority to ensure a lighting environment of low district brightness at residential properties.
- 7) The building envelope and the glazing elements of each dwelling shall be constructed such that sufficient sound attenuation is achieved to ensure

noise levels, with windows closed, do not exceed an LAeq (16hrs) of 35dB(A) within bedrooms and living rooms between the hours of 07:00 to 23:00, and an LAeq (8hrs) of 30dB(A) within bedrooms between the hours of 23:00 to 07:00.

- 8) No development approved by this planning permission shall commence until the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:
- i) A site investigation scheme (based on the approved Preliminary Risk Assessment (PRA) within the approved Desk Study), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - ii) The results of a site investigation based on i) and a detailed risk assessment, including a revised Conceptual Site Model (CSM).
  - iii) Based on the risk assessment in ii), an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. The strategy shall include a plan providing details of how the remediation works shall be judged to be complete and arrangements for contingency actions. The plan shall also detail a long term monitoring and maintenance plan as necessary.
- 9) No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the remediation strategy in iii) is submitted and approved, in writing, by the Local Planning Authority. The long term monitoring and maintenance plan in iii) shall be updated and be implemented as approved.
- 10) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall be implemented as approved.
- 11) The dwellings hereby approved shall not be occupied until the optional requirement for water consumption (110 litres use per person per day) in part G of the Building Regulations has been complied with and evidence of compliance has been obtained.
- 12) Prior to first occupation, all dwellings with off street parking shall be provided with an operational electric vehicle charge point at reasonably and practicably accessible locations, with an electric supply to the charge point capable of providing a 7kW charge.
- 13) No development above ground level shall take place until details of the treatment of the boundaries of the site have been submitted to and approved in writing by the Local Planning Authority. The details shall specify the siting, design, height and materials of the screen walls/fences to be constructed or erected and/or the species, spacing and height of hedging to be retained and / or planted together with a programme of implementation. Any planting removed, dying, being severely damaged or becoming seriously

diseased within five years of planting shall be replaced by soft landscaping of similar size and species to those originally required to be planted. The works shall be completed prior to first use/occupation in accordance with the approved details.

- 14) No development above ground level shall take place until a scheme of soft landscaping for the site drawn to a scale of not less than 1:200 has been submitted to and approved in writing by the Local Planning Authority. The soft landscaping details shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant sizes and proposed numbers/ densities. The approved scheme of soft landscaping works shall be implemented not later than the first planting season following commencement of the development (or within such extended period as may first be agreed in writing with the Local Planning Authority). Any planting removed, dying or becoming seriously damaged or diseased within five years of planting shall be replaced within the first available planting season thereafter with planting of similar size and species unless the Local Planning Authority gives written consent for any variation.

END OF CONDITIONS