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## Appeal Decision

Site visit made on 25 January 2021

**by Neil Pope BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

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**Appeal Ref: APP/Q3305/W/20/3259921**

**Norwood Cow Barn, Norwood Farm, Bath Road, Norton St. Philip, Somerset, BA2 7LP.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
  - The appeal is made by Beeswax Dyson Farming Ltd against the decision of Mendip District Council.
  - The application Ref. 2020/0384/PAA, dated 19 February 2020, was refused by notice dated 24 March 2020.
  - The development proposed is a change of use of barn to 5 dwellings.
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### Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use only to 2 small dwelling houses and 3 larger dwelling houses (Class C3) at Norwood Cow Barn, Norwood Farm, Bath Road, Norton St. Philip, Somerset, BA2 7LP. Approval is granted in accordance with the terms of the application Ref. 2020/0384/PAA, dated 19 February 2020, subject to the condition under paragraph Q.2(3) that the development must be completed within a period of three years from the date of this decision and the following other condition:

Should any land contamination be discovered during the construction phase, works shall cease and the Local Planning Authority (the LPA) shall be notified in writing. An investigation shall then be undertaken and a remediation report submitted to the LPA for approval. The development shall then proceed in accordance with the remediation details in the approved report.

### Preliminary Matters

2. Approval was sought under the provisions of Schedule 2, Part 3, Class Q(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) for the change of use only. Any building operations that may be required to facilitate the material change of use would fall outside the scope of this appeal and would require a separate application for prior approval under Class Q(a) and (b) of the Order.
3. Prior to the Council's determination of the application the description of the proposal was amended to the change of use to 2 small dwelling houses and 3 larger dwelling houses (Class C3). I have determined the appeal accordingly.

## **Main Issue**

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

## **Reasons**

5. The appeal building is a circa late 20<sup>th</sup> century portal-frame livestock shed with vertical hit-and-miss timber boards above concrete side wall panels. The gable ends are largely open and the roof is clad in fibre cement sheets. On behalf of the appellant, it has been calculated that the building is approximately 36 metres (long) x 21.7 m (wide) x 6.9 m (high). During my visit, cattle were being housed inside the building. I understand that a new purpose-built cattle shed has been built elsewhere on the holding and in the near future the appeal building will no longer be required for livestock purposes.
6. In essence, Part Q.2 of the Order provides that for development proposed under Class Q(a) only, development is permitted where a local planning authority determines that prior approval is not required as to the items referred to in sub-paragraphs 1(a) to (e) and (g) and where paragraph W applies.
7. The Council has informed me that the development would be served by a safe means of access and would have sufficient off-street parking and turning. It has also informed me that the noise impacts would be minimal and acceptable, a watching brief during the construction phase would address any potential contaminated land<sup>1</sup> and there are no flood risk issues. The Council also accepts that there is no evidence that the location or siting of the building would make it impractical or undesirable for the proposed change of use. I see no reason to disagree. There is also nothing before me to suggest that adequate natural light would not be available in all habitable rooms.
8. In addition to the above, there is no evidence to suggest that the use of the building has not been in sole agricultural use on and after 20<sup>th</sup> March 2013. The Council also accepts that the size of the proposed dwellings together with the proposed curtilage would be in accordance with the legislation. Furthermore, it has not argued that the number of proposed dwellings would exceed the cumulative number allowed for under the Order.
9. In refusing prior approval the Council expressed concerns that the proposal would require extensive building operations and has argued that there is insufficient information to conclude that the works could be undertaken in accordance with Class Q(b). However, this was an application under Class Q(a) only. In applications of this type, no building or other operations are proposed.
10. Paragraph W of the Order allows a local planning authority to refuse an application where a developer fails to provide sufficient information to establish whether a development complies with any specified conditions, limitations or restrictions. In this instance, no breach of the specified conditions, limitations or restrictions relating to a change of use only has been identified and the Council did not request any additional information. Instead, it has alleged conflict with Class Q(b), which includes building operations reasonably necessary to convert a building. This is not what had been applied for. As the provisions of Class Q(a) are satisfied prior approval should not be withheld.

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<sup>1</sup> A condition to this effect would be necessary to protect the health and safety of residents.

11. I note the judgement in Hibbitt<sup>2</sup> and the findings made by some other Inspectors in appeals elsewhere<sup>3</sup> that have been drawn to my attention. Each case must be determined on its own merits and no two sites or circumstances are exactly the same. These other cases are materially different to what is before me<sup>4</sup> and do not set a precedent that I must follow.
12. Given all of the above, the proposed change of use is permitted development under the Order. I therefore conclude that the appeal should succeed.

*Neil Pope*

Inspector

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<sup>2</sup> Hibbitt and Another v Secretary of State for Communities and Local Government [2016] EWHC 2853 (Amin).

<sup>3</sup> APP/U1105/W/19/3223541, APP/F2605/W/19/3240798 and APP/Q3305/W/19/3240203.

<sup>4</sup> Since Hibbitt, the Order has been amended, including changing “and” for “or” between Class Q(a) and Q(b).