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## Appeal Decision

Site visit made on 7 September 2021

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

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

**Decision date: 08 September 2021**

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**Appeal Ref: APP/C3105/W/21/3276772**

**Little Haven, Barford Road, South Newington, Banbury OX15 4LN**

- 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 Paul Stead and Mrs Valerie Tew against the decision of Cherwell District Council.
  - The application Ref 21/00182/Q56, dated 18 January 2021, was refused by notice dated 18 March 2021.
  - The development proposed is the change of use of part of an agricultural building and curtilage to one residential dwelling.
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### Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1), Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) for the change of use of part of an agricultural building and curtilage to one residential dwelling at land at Little Haven, Barford Road, South Newington, Banbury OX15 4LN in accordance with the terms of the application Ref 21/00182/Q56, dated 18 January 2021.
2. The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with paragraph Q.2(3) of the Order and the following additional conditions.
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location and Site Plan, Drawing No.220166-DWG-001; Proposed Floor Plan and Elevations, Drawing No. 220166-DWG-003 Revision C and Proposed Day Lighting Floor Plan and Elevations, Drawing No.220166-DWG-004.
  - 2) Prior to the first occupation of the dwelling, a system to facilitate electrical vehicle charging shall be installed. Thereafter, it shall be retained and maintained for those purposes in connection with the development.
  - 3) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in

writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed, and thereafter approved in writing by the local planning authority.

### **Procedural Matters**

3. For brevity, in my heading above I have taken the description of development from that stated on the appeal form and decision notice rather than the application form.
4. The appellants submitted a revised proposed floor plan and elevation drawing as part of the appeal (drawing number 220166-DWG-003 Revision C). This corrects the discrepancy in drawing number 220166-DWG-003 Revision B between the sizes of two proposed windows serving a ground floor bedroom on the rear elevation and the openings shown on the ground floor plan. It is also consistent with the details of the proposed day lighting floor plan and elevations<sup>1</sup>. The alterations assist clarity and are of a minor nature. As such, I am satisfied that no one would be prejudiced by my determining the appeal with reference to the revised drawing.
5. Since the Council made its determination the Order has been amended<sup>2</sup> to require minimum space requirements for new dwellinghouses created under the Order. However, this does not take effect for applications for prior approval made before 6 April 2021. As such, it would not take effect in relation to the appeal proposal and I have made my determination on this basis.
6. The Government published its revised National Planning Policy Framework on 20 July 2021. The main parties have had the opportunity to comment on the revised Framework as part of the appeal process.

### **Background and Main Issue**

7. Schedule 2, Part 3, Class Q of the Order permits (a) the 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.

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<sup>1</sup> Drawing Number 220166-DWG-004

<sup>2</sup> The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020, Statutory Instrument No. 2020/1243

8. In this case, both change of use and building operations to convert the building are proposed. The Council refused the proposal as it was not convinced that the existing building was capable of being converted in accordance with criterion (i) of Class Q.1 of the Order and that the proposed building operations went beyond those reasonably necessary to convert the building permitted by Class Q(b).
9. The Council does not otherwise dispute that the proposal is acceptable in respect of the other matters required to be satisfied by Class Q in paragraphs Q.1.(a) to (h) and (j) to (m), nor those requiring a determination as to whether prior approval will be required listed in paragraph Q.2(1).
10. Therefore, the main issue is whether the proposal would be permitted development meeting the requirements of Schedule 2, Part 3, Class Q(b) of the Order, having regard to whether it would comprise building operations reasonably necessary for the building to function as a dwellinghouse.

## Reasons

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

11. Class Q(b) of the Order permits building operations reasonably necessary to convert the relevant building to a use falling within Class C3. It further states at paragraph Q.1(i) 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.
12. The proposal concerns 3 bays of a 4 bay agricultural building of relatively recent construction<sup>3</sup>. The building has a galvanised steel portal frame and concrete slab floor. The lower section of the two existing external walls<sup>4</sup> that relate to the proposal are constructed from blockwork with vertical timber boarding to the upper part. Save for where plywood has been applied to the internal face, the timber boarding has gaps providing ventilation. The side and rear elevation do not provide any openings, but the front elevation of the three bays is open. The pitched roof is covered with corrugated cementitious sheets with some translucent panels spanning between timber purlins. My observations were that the building was generally in a good state of repair.
13. In addition to the proposed plans, the appellants have provided information as to the extent of the works proposed in their Statement of Case and Structural Reports<sup>5</sup>. The development proposes to retain the steel frame. Furthermore, the existing blockwork walls and timber boarding would be retained as the external fabric<sup>6</sup>. The concrete floor slab would also remain in place but would require a damp proof membrane and screed on top. It is confirmed that the roofing does not contain asbestos, and therefore, the existing roof will be retained<sup>7</sup>. The appellants contend that the external parts of the development

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<sup>3</sup> Paragraph 2.3 Appellants' Statement of case – erected in 2008

<sup>4</sup> Side northern elevation and rear eastern elevation

<sup>5</sup> Visual Structural Inspection and Subsequent Assessment for Planning Purposes (dated December 2020) and Addendum (dated April 2021) prepared by David Smith Associates

<sup>6</sup> Paragraph 6.9 Appellants' Statement of case

<sup>7</sup> Paragraph 6.18 Appellants' Statement of case

would possess approximately 88% of existing external fabric<sup>8</sup>, and I have not seen detailed evidence that undermines that estimate.

14. However, the three open bays in the front elevation would be infilled with extensive glazing and what appears to be timber boarding<sup>9</sup>. New windows and doors would be inserted into the side and rear external elevations. Internal alterations would cumulatively be appreciable as they would entail internal insulation and boarding to the walls and roof, a mezzanine first floor, a dividing wall to separate the proposed dwelling from the fourth bay and partition walling to create internal rooms.
15. The structural reports conclude that the building is more than capable of supporting the proposed change of use to residential accommodation without the modification or enhancement of the existing structural format of the property, or its foundation and ground slab. The evidence before me expressly states that a new floor slab will not be required. Consequently, the measures outlined to meet Building Regulations for the floor would not amount to significant adaptations. Moreover, whilst it is stated that additional roof purlins would be required to support the insulation, services and plasterboard ceilings associated with a residential use<sup>10</sup>, this would be supplementary to the existing purlins rather than signifying a structural concern. On this basis, the evidence indicates that the building would be structurally capable of functioning as a dwelling and I have seen little substantive evidence to show otherwise.
16. Planning Practice Guidance (PPG)<sup>11</sup> 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>12</sup> to which both parties also refer, and I have had regard.
17. 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.
18. PPG further advises that internal works are not generally development and that 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. It follows that the insertion of internal insulation and partitions are not prohibited under Class Q.

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<sup>8</sup> Paragraph 6.10, Appellants' Statement of Case

<sup>9</sup> Drawing number 220166-DWG-003 Revision C

<sup>10</sup> Paragraphs 2.7-2.8 Visual Structural Inspection and Subsequent Assessment for Planning Purposes (dated December 2020) and paragraph 2.3 Addendum (dated April 2021) prepared by David Smith Associates

<sup>11</sup> Paragraph 105 Reference ID: 13-105-20180615 revision date 15.06.2018

<sup>12</sup> Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

19. Therefore, based on the information presented, although the cumulative extent of the works proposed to facilitate a residential use would be considerable, I am satisfied that it would not be to a degree that would amount to a fresh build of the structure, nor involve building operations that fall outside of those described in Class Q.1(i) of the Order. In addition, the building operations would be to an extent reasonably necessary to make the building weatherproof, warm and suitable for human habitation.
20. I note that my approach is generally consistent with those Inspectors in appeal decisions concerning Class Q(b) of the Order, as highlighted by the appellants<sup>13</sup>. Nevertheless, I have determined the scheme before me on the specific circumstances of the building in question, which will inevitably differ from the agricultural buildings in those cases. As such, they have had only a limited bearing on my determination.
21. Therefore, the proposal might reasonably be described as a conversion covering those works reasonably necessary for the building to function as a dwellinghouse. It follows that on the evidence provided, the proposal would fall within the requirements of Class Q(b) of the Order such that the building would benefit from the permitted development rights under Schedule 2, Part 3, Class Q of the Order subject to the conditions set out in paragraph Q.2 of the Order.

### **Other Matters**

22. The Council does not suggest that the proposal fails to comply with the other restrictions and limitations specified in paragraph Q.1 of the Order. Furthermore, subject to conditions, no objections are raised in relation to those matters requiring a determination as to whether prior approval will be required listed in paragraph Q.2(1) of the Order. I have nothing before me that would lead me to take a different view.

### **Conditions**

23. Paragraph Q.2(3) of the Order requires the development to be completed within a period of 3 years from the date that prior approval is given and in order to highlight this, I have referred to it in my decision. In addition, to ensure certainty, I have imposed a condition setting out the approved plans which includes the revised plan.
24. Paragraph W(13) of the Order provides that a grant of prior approval can be made unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. As part of the consultation responses, conditions were suggested by the Council's Environmental Protection Officer, firstly, to require provision to be made for electric vehicle charging and secondly, measures to be taken to assess and if necessary, address land contamination. The former would make reasonable preparation for a foreseeable transition to electric vehicles and is related to the highway and transport impacts of the development.
25. Contamination risks on the site are also a matter for prior approval listed in paragraph Q.2(1)(c). Given that the building has accommodated lambs and alpacas, it is possible that agricultural medicines or other substances injurious to human health may have been present. Therefore, it would be appropriate to

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<sup>13</sup> Appendix 5, Appellants' Statement of Case

impose a condition to undertake reasonable investigation and necessary mitigation to ensure that the site would be safe for human habitation.

**Conclusion**

26. For the above reasons, I conclude that the appeal should be allowed, and prior approval is deemed to be granted.

*Helen O'Connor*

Inspector