
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: 17 September 2021

Appeal Ref: APP/C3105/W/21/3276611

Part of OS Parcel 5900, East of Broughton and North Newington, Banbury Road, North Newington/Banbury, Oxfordshire OX15 6AA

- 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 Dr Carl Evans against the decision of Cherwell District Council.
 - The application Ref 20/03175/Q56, dated 29 July 2020, was refused by notice dated 21 December 2020.
 - The development proposed is the conversion of an existing barn to a single large dwellinghouse under Class Q permitted development (re-submission of 20/02051/Q56).
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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 conversion of an existing barn to a single large dwellinghouse under Class Q permitted development (re-submission of 20/02051/Q56) at Part of OS Parcel 5900, East of Broughton and North Newington, Banbury Road, North Newington/Banbury, Oxfordshire OX15 6AA in accordance with the terms of the application Ref 20/03175/Q56, dated 29 July 2020.
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: Site Plan drawing No CE 2201-4, showing curtilage as black T-line; E & N Elevations, drawing number CE 2201-5c; W & S Elevations, drawing number CE 2201-6c; Floor Plan, drawing number CE 2201-7c and Location Plan, drawing number CE 2201-9.
 - 2) Prior to the first occupation of the dwelling, vision splays shall be provided at the access to give clear visibility over a distance of at least 215 metres to the north west and 215 metres to the south east (or distance to the priority junction with the B4035 Broughton Road) from a point at least 2.4 metres back from the centre line of the access, measured from and along the near edge of the carriageway, details of which shall previously have been submitted to and approved in writing by

the local planning authority. The vision splays shall be kept clear of all obstructions, levelled and maintained at a height not exceeding 0.6 metres above the adjacent carriageway level.

- 3) Prior to the first occupation of the dwelling, covered cycle parking facilities, car parking and manoeuvring areas shall be provided on the site in accordance with details previously submitted to and approved in writing by the local planning authority. The car parking shall include a system of electrical vehicle charging. The car parking and covered cycle parking facilities so provided shall thereafter be retained and maintained for those purposes in connection with the development.
- 4) 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. In my heading above I have taken the description of development from that used in the appeal form and decision notice as it is more succinct than that on the application form.
4. Since the Council made its determination, amendments¹ have been made to the Order. These include a requirement pertaining to the internal space of new dwellinghouses permitted under the Order. In effect, any such dwelling must comply with the nationally described space standard issued by the Department for Communities and Local Government. In addition, a further matter for prior approval was added to Schedule 2, Part 3, Class Q relating to the provision of adequate natural light in all habitable rooms of the dwellinghouse(s) permitted. However, having regard to the transitional arrangements for the introduction of these requirements, it is not shown that either amendment would take effect given the timing of the appeal before me. I have made my determination on this basis.

¹ The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020 Statutory Instrument No. 2020/1243 & The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020, Statutory Instrument No. 2020/632

5. The Government published its revised National Planning Policy Framework on 20 July 2021. The main parties have had the opportunity to make comments in relation to the revised Framework as part of the appeal process.

Main Issues

6. The main issues are whether the proposal would be permitted development by virtue of Schedule 2, Part 3, Class Q of the Order, having regard to the following matters:
- The proposed curtilage.
 - Whether the site was used solely for an agricultural use as part of an established agricultural unit that meets the requirements of paragraph Q.1(a) of the Order.
 - The extent of the proposed building operations and the requirements of Class Q(b) of the Order.

Reasons

Curtilage

7. Class Q of the Order permits 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. Accordingly, this limits the area of land across which there can be such a change of use. Paragraph X of the Order defines what the term 'curtilage' means in this context. It is '*(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*'.
8. Drawing number CE 2201-4 denotes the curtilage of the building with a black T-line which is stated to be an area² of 448m². It is located immediately beside or around the building. Whilst there is also a red line that includes more land on the same plan, the key provided is sufficiently clear such that the curtilage area can be identified. It is not shown that it is a requirement of prior approval to identify the curtilage by a red line, as long as the area is made clear as part of the application. Neither is it shown to be a requirement that it must relate to an existing physical delineation or enclosure on the ground.
9. Nevertheless, there is some ambiguity as to the land area occupied by the agricultural building. The appellant states³ that the supporting information gives the floor area as 450m². However, the Schedule: General Information ref CE2201/spec.c before me refers to a floor area for the proposed dwelling of 437.50m². Nevertheless, this is likely to refer to the internal floor space rather than the land area occupied by the agricultural building and so would exclude the external walls. This is reinforced by the appellant's reference⁴ to the external dimensions detailed in Appendix 1 of the Structural Appraisal Report provided. Those dimensions related to the outward face of the structure. On

² Paragraph 3.2, Appellant's Statement in Support prepared by Graham Gover Solicitor & Schedule: General Information ref: CE2201/spec.c, page 2

³ Paragraph 3.2, Appellant's Statement in Support prepared by Graham Gover Solicitor

⁴ Paragraph 2.3, Statement of the Appellant Carl Evans dated 7 June 2021

that basis, it would have a footprint of 450m². Moreover, the Council accepts⁵ that the building footprint is approximately 451m².

10. These circumstances differ from the appeal highlighted by the Council⁶ as in that case although there were some discrepancies identified, the proposed curtilage was larger than the building footprint.
11. Based on the evidence before me, I am satisfied that the proposed curtilage on the submitted plan shows an area no larger than the land area occupied by the agricultural building. It follows that it would adhere to the definition of curtilage in paragraph X of the Order.

Agricultural Use

12. Paragraph Q.1(a) of the Order stipulates that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or 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 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. Although there is no disagreement that the appeal building was associated with an established agricultural unit, the Council considers that it was in mixed equine and agricultural use on 20 March 2013.
13. This appears to be largely predicated on the planning permission obtained for the building in 2002⁷ which permitted the erection of an agricultural building for equine and agricultural use. However, it does not necessarily follow that the site was in a mixed use on the requisite date if there is evidence to show otherwise.
14. Firstly, it is necessary to consider the definition of the relevant terms in paragraph Q.1(a) and thereafter, apply those to the evidence concerning the use of the site. Paragraph X of the Order states that for the purposes of Part 3, 'site' means '*the building and any land within its curtilage.*' As will be seen in relation to the first main issue, the term curtilage is also defined in the Order and I have found that the proposal would meet the requirements of that definition. It follows that for the purposes of paragraph Q.1(a), it is the building and the proposed curtilage which would need to be solely in an agricultural use on 20 March 2013.
15. There is no definition of agriculture in the Order but section s336(1) of the Town and Country Planning Act 1990 lists examples of agricultural activities. Although not exhaustive, it includes the breeding and keeping of livestock and the use of land as grazing land. The latter may include the use of land for grazing horses but the keeping of horses would not normally fall within the remit of agricultural use where it involves activities other than putting them out to graze.
16. The appellant has provided a detailed description⁸ of his activities relating to his agricultural holding and the appeal building, which is supplemented in some areas by photographic and documentary evidence. The presence of four horses

⁵ Paragraph 8.20 Council Planning Report

⁶ Appeal reference APP/C3105/W/20/3250685

⁷ Reference 02/02032/F

⁸ Statement of the Appellant Carl Evans dated 7 June 2021

at the holding on 20 March 2013⁹ is not denied. Nevertheless, based on the information before me, they were all retired due to age and/or ill health on that date. As such, they were not present for recreational or other activity but rather by virtue of mixed grazing that assisted in keeping the sheep.

17. Moreover, there is little evidence to show that the horses were housed in the appeal building or on its proposed curtilage. The appellant states that the horses were kept outside¹⁰, and I have not seen evidence to demonstrate otherwise. He further states that the building was used to house pigs, poultry, and lambs, as well as to store equipment used to transport sheep and pigs.
18. The balance of evidence provided indicates that the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. Accordingly, I find the appeal proposal would comply with the limitation under paragraph Q.1(a) of the Order.

Extent of building operations

19. 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.
20. The agricultural building in question is a modern steel portal framed building constructed in approximately 2002. Aside from large doors in the north, east and southern elevations, the structure is enclosed with walls comprising approximately 2m high blockwork at the lower level with hit and miss vertical timber boarding above. In addition, there is corrugated cement sheeting to the pitched roof together with some rooflights. The submitted structural appraisal report¹¹ states that there are mass concrete pad foundations supporting the steel portal frames and trench fill foundations between, supporting the blockwork walls. Furthermore, the existing ground floor comprises a 150mm thick concrete slab.
21. The appraisal concludes that the barn has been constructed to a high standard and that the barn structure, including roof, walls, ground floor and foundations do not need any significant remedial works. Therefore, the structural information prepared by a qualified engineer shows that the building is suitable for conversion without significant structural interventions.
22. Whilst the appraisal does not go into great detail regarding the entirety of the building operations proposed, it is stated that the conversion works would include the insertion of new doors/windows, internal finishes to roof and walls and ground floor partition walls. Further details are confirmed by the appellant who states¹² that the only external changes to the building would be building up the existing block walls to eaves height, replacing the existing roof covering

⁹ Paragraph 3.12, Statement of the Appellant Carl Evans dated 7 June 2021

¹⁰ Paragraphs 3.1, 3.8, 3.9 and 3.21 Statement of the Appellant Carl Evans dated 7 June 2021

¹¹ Solid Structures Ltd dated 30 July 2020

¹² Paragraph 2.10, Statement of the Appellant Carl Evans dated 7 June 2021

to match the current roof profiling and number of roof lights, and additional openings for windows.

23. On this basis, the proposal would retain the steel portal frame and concrete floor as well as the existing blockwork walls. The existing large door openings would be retained but would provide fenestration. New windows and doors would be inserted into all four elevations, but these would be relatively modest openings. There is some ambiguity regarding the retention or otherwise of the existing hit and miss timber boarding on the upper walls of the building. The application form suggests it would be replaced with vertical close boarding in a dark finish¹³. However, the submitted plans state that the original external walls would be retained¹⁴. In addition, the elevations are annotated using 'spaced boarding' and the appellant did not include the replacement in his exhaustive list of external changes to the building¹⁵. Taking these factors together, I have understood this to mean that the existing timber boarding will be retained with the blockwork walls increased in height to eaves level behind.
24. Planning Practice Guidance (PPG)¹⁶ 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 law¹⁷ to which I have had regard.
25. 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.
26. From the information in the structural report, plans and appellant's appeal statement, the cumulative extent of the works proposed to facilitate a residential use would be considerable, but given the retention of original fabric in this case, not to such a degree that it would amount to a fresh build of the structure. Moreover, the proposed external changes would fall within the building operations listed in paragraph Q.1(i) of the Order.
27. In addition, the provision of internal walls and insulation would be generally required to meet regulatory standards necessary to make the building warm, dry and suitable for human habitation. PPG advises that internal works are not generally development. Therefore overall, the proposal would constitute a conversion covering those works reasonably necessary for the building to function as a dwellinghouse.
28. The detailed circumstances in relation to the proposal before me differ from those of the building considered in the Hibbitt case, in that the building in that

¹³ Section 7, Application form

¹⁴ Drawings numbered CE 2201-5c and CE 2201-6c

¹⁵ Paragraph 2.10, Statement of the Appellant Carl Evans dated 7 June 2021

¹⁶ Paragraph 105 Reference ID: 13-105-20180615 revision date 15.06.2018

¹⁷ Hibbitt and another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

case was largely open sided and involved the construction of four exterior walls. In contrast the proposal before me would retain a significantly greater degree of original building fabric. In any event, I am required to reach my own judgement based on the proposal, my own observations and the evidence before me.

29. 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(b) of the Order subject to the conditions set out in paragraph Q.2 of the Order.

Other matters

30. The Council does not suggest that the proposal would fail to comply with any of the other restrictions and limitations specified in paragraph Q.1¹⁸ of the Order, and I have no reason to take a different view. Furthermore, no fundamental objection is raised in relation to the matters for which a developer must apply to the local planning authority for a determination as to whether prior approval will be required in paragraph Q.2(1). I have nothing before me that would provide a reason to oppose the development in relation to these matters. However, I have further considered those matters where consultation responses received during the application suggest conditions would be required.
31. Paragraph Q.2(1)(a) refers to the transport and highways impacts of the development. The proposal would use the existing agricultural access onto Banbury Road. The Highway Authority have identified that visibility to the right is substandard, and I observed that the road alignment and hedgerow restricted the view when exiting the site. Moreover, it would be more difficult for approaching drivers to register the presence of smaller domestic vehicles exiting the site than larger agricultural vehicles. The appellant owns the adjacent field and as such visibility could be improved. Otherwise, sufficient room exists to provide manoeuvring space such that vehicles could access and exit the site in forward gear, as well as provide off-street parking. Conditions could secure the specific details of these arrangements. On that basis, the transport and highway impacts of the development would be acceptable.
32. Paragraph Q.2(1)(b) refers to noise. The site is adjacent to a sports ground and the Council's Environmental Protection Officer suggests a condition to specify noise levels is required. My observations were that the land included a grassed unlit cricket pitch. The associated buildings and parking area were a considerable distance from the appeal building. The use appeared generally low key, and the absence of lighting and significant spectator facilities would mean the use of the land would tend to generate a limited amount of noise. Moreover, this would tend to avoid later evening times. As such, the noise impacts of the development would be acceptable, and I am not persuaded that a condition would be a proportionate response in these circumstances.
33. The contamination risks on the site are listed in paragraph Q.2(1)(c). Given that the building has accommodated livestock, it is possible that agricultural medicines or other substances injurious to human health may have been present. Therefore, it would be appropriate to undertake further investigations

¹⁸ Paragraph 9.1, Council's Planning Report

and necessary mitigation to ensure that the site would be safe for human habitation. This is a matter that can be secured by condition.

Conditions

34. 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, notwithstanding the requirements of Paragraph W(12) of the Order to carry out the proposal in accordance with the approved details, I have highlighted some discrepancies in the information provided. Therefore, to ensure certainty, I have imposed a condition setting out the approved plans, with particular reference to the curtilage denoted.
35. 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. It will be seen from my reasoning above, that a condition to ensure the provision of visibility splays, manoeuvring and parking is reasonable. Moreover, cognisant of the wider environmental benefits, provision should be made for electric vehicle charging and cycle parking as part of the parking arrangements to be secured. Finally, a condition relating to land contamination would be appropriate.

Conclusion

36. For the reasons given above, I conclude that the proposal would be permitted development by virtue of Schedule 2, Part 3, Class Q of the Order. Consequently, the appeal is allowed.

Helen O'Connor

Inspector