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## Appeal Decision

Site visit made on 17 August 2021

**by Samuel Watson BA(Hons) MSc MRTPI**

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

**Decision date: 22 September 2021**

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**Appeal Ref: APP/L3245/W/21/3269754**

**Sutton Farm, Claverley, Wolverhampton WV5 7DD**

- 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 Mr & Mrs R & C Kempsey against the decision of Shropshire Council.
  - The application Ref 20/02945/PMBPA, dated 21 July 2020, was refused by notice dated 28 August 2020.
  - The development proposed is a Class Q application for the change of use of an agricultural building to five dwellinghouses.
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### Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of an agricultural building to five dwellinghouses, at Sutton Farm, Claverley, Wolverhampton WV5 7DD, in accordance with the terms of the application 20/02945/PMBPA, dated 21 July 2020. The application 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 GPDO.

### Application for costs

2. An application for costs was made by Mr & Mrs R & C Kempsey against Shropshire Council. This application is the subject of a separate decision.

### Background and Main Issues

3. Article 3(5) of the GPDO states, amongst other things, that the permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful. Whilst not in their reasons for refusal, the Council have expressed substantive concerns that the appeal building is not lawful as it has not been built in accordance with the approved plans.
4. Therefore, the main issues in this case are; whether the building is lawful, and if so;
  - whether the proposed development would fall within the definition of development permitted by Schedule 2, Part 3, Class Q of the GPDO with specific regard to the extent of the proposed building operations; and,

- whether the location of the building is impractical or undesirable for the proposed conversion.

## **Reasons**

### *Whether the building is lawful*

5. Although the appellant has not disputed that the poultry barn was not built according to the plans approved under permission BR/89/1039, there remains disagreement between the main parties as to whether the building is lawful and thus benefits from the prescribed rights under permitted development. From the evidence submitted I understand that the existing building is larger than that approved.
6. The aerial photography before me appears to show that the building has remained the same size and shape between 1999 and 2021. As such, the building would have either not been built in accordance with the approved plans, or altered to no longer be in accordance sometime prior to the aerial photography of 1999. Given the works requiring planning permission were more than likely substantially completed as of 1999, considerably more than a period of four years has elapsed, and as such, no enforcement action may be taken.
7. Section 191(2)(a) of the Town and Country Planning Act 1990 (The Act) states that operations are lawful if no enforcement action may be taken because the time for enforcement action has expired. This is notwithstanding the presence, or lack, of any lawful development certificate.
8. Therefore, and for the purposes of this appeal, I find that in all likelihood the appeal building is lawful and therefore benefits from the provisions of Class Q. In reaching this decision I have been mindful of the appeals brought to my attention by the Council.

### *Building Operations*

9. The appeal building is a simple structure formed of a timber framework with cladding forming the roof and walls. At the time of my visit the walls and roof seemed to be in a good condition and covered the entire building. The internal floor appeared to be made of concrete and was also in a good condition.
10. From the evidence before me, and my observations on site, I find that the building, and importantly, the framework are structurally sound. Moreover, the structural reports accompanying the proposal consider the building to not need further strengthening in order to accommodate the proposed works. Therefore, mindful of Paragraph 105 of the Planning Practice Guidance (PPG) and the above, I find that the building would be suitable for conversion to a residential use.
11. In this case I understand that the roofing materials would be replaced, and the walls would predominantly be replaced, although some new walls would also be erected. As part of such a conversion Class Q.1(i)(i)(aa) allows for the replacement or creation of external walls and roofs, where they are reasonably necessary for the building to function as a dwellinghouse. Therefore, whilst these works would be significant, as the building is suitable for conversion, I find that they would be reasonably necessary. In particular, Class Q allows for

the erection of new walls and so, while some of the proposed walls do not follow the existing, this is also within the scope of the Class.

12. Based on the evidence provided, I am satisfied that the structural integrity of the building is sound and would form an integral part of the new dwellings. The building operations, while significant, would be reasonably necessary in this instance and would not exceed the limitations set out in paragraph Q.1(i) of the GPDO.

#### *Practicality and Desirability of Location*

13. The appeal site is within open countryside and is surrounded by agricultural fields. Nearby there are also three intensive poultry barns, whilst I understand they are not currently used for this purpose they could be returned to this use. The track shared by, and immediately adjacent to, the appeal site is a public footpath and also provides access to the closest of these barns.
14. Given that the poultry barns could easily be returned to use, I have considered them as such for the purposes of this appeal. The barns are likely to generate noise and smells from the livestock and their waste, and vehicles servicing the barns are likely to further contribute to this. As Class Q allows for the conversion of agricultural buildings, which would inherently be within or near agricultural units, I find that some disturbance, including through noises and smells, would be expected.
15. Given the proximity of the closest barn there would likely be some livestock noises and smells which would reach the appeal site. However, I find that the distance from all three barns and the appeal site would be sufficient to limit any disturbance to an acceptable level considering its rural location.
16. Furthermore, as the track adjacent to the site serves only a small number of fields and one poultry barn, I find the number of vehicular movements likely to pass the appeal site to be low. Moreover, within a rural location agricultural vehicles such as tractors are to be expected to travel along roads and within fields. Mindful of this, and the limited number of movements likely, I find the vehicles would not be unduly disruptive or cause an unacceptable disturbance.
17. I therefore find that the impact of the agricultural unit surrounding the appeal site would not unacceptably affect the living conditions of the future occupiers, by way of smells or noises. The proposed development would not therefore be in an undesirable or impractical location.
18. The Council have raised concerns regarding complaints over flies and smells from the farm affecting nearby residents. However, no substantive evidence has been submitted and it has not been demonstrated that smells and flies came from the poultry barns. I have therefore given this matter limited weight.
19. The appellant has suggested that a condition or unilateral undertaking (UU) could be used in order to restrict the use of the surrounding poultry barns. A UU has been provided with the appeal. However, given my findings above I find that neither would be necessary in this instance.

#### **Conclusion**

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

*Samuel Watson*

INSPECTOR