



Appeal Decisions

Site visit made on 22 March 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th April 2022

Appeal A Ref: APP/Z1510/W/20/3260026

Butlers Farm, Colne Road, Bures CO8 5DN

- 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 Mr Paul Roberts against the decision of Braintree District Council.
 - The application Ref 20/01122/COUPA, dated 7 July 2020, was refused by notice dated 24 September 2020. The development proposed is conversion of existing timber framed barn to a four bedroom dwelling.
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Appeal B Ref: APP/Z1510/W/20/3260028

Butlers Farm, Colne Road, Bures CO8 5DN

- 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 Mr Paul Roberts against the decision of Braintree District Council.
 - The application Ref 20/01120/COUPA, dated 7 July 2020, was refused by notice dated 24 September 2020. The development proposed is conversion of existing timber framed barn to a four bedroom dwelling.
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Appeal C Ref: APP/Z1510/W/21/3268430

Butlers Farm, Colne Road, Bures CO8 5DN

- 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 Mr and Mrs Paul Roberts against the decision of Braintree District Council.
 - The application Ref 20/02006/COUPA, dated 28 November 2020, was refused by notice dated 4 February 2021. The development proposed is described as 'the operations necessary to convert the barns into dwellings with the insertion of windows and doors. Both dwellings will be single storey as the council considered the insertion of a mezzanine floor over development and refused the previous applications'.
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Appeal D Ref: APP/Z1510/X/20/3262845

Butlers Farm, Colne Road, Bures CO8 5DN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Paul Roberts against the decision of Braintree District Council.
 - The application ref 20/01433/ELD, dated 1 September 2020, was refused by notice dated 26 October 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is two dwellinghouses (Class C3).
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Appeal E Ref: APP/Z1510/W/21/3283082
Butlers Farm Colne Road, Bures CO8 5DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Paul Roberts against the decision of Braintree District Council.
 - The application Ref 20/02131/FUL, dated 14 December 2020, was refused by notice dated 18 August 2021.
 - The development proposed is described as 'retrospective planning permission for two dwellings. (Dwellings have been constructed over 25years)'.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.
3. Appeal C is allowed and 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 (GPDO) for change of use, and associated building works, of agricultural buildings to two dwellinghouses (Q(a) and Q(b)) at Butlers Farm, Colne Road, Bures CO8 5DN in accordance with the application Ref 20/02006/COUPA, dated 28 November 2020 and the details submitted with it pursuant to Schedule 2, Part 3, Class Q(b) of the GPDO. The approval is subject to the conditions 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 and must be carried out in accordance with the details approved and subject to the additional conditions which are set out in the attached schedule.
4. Appeal D is dismissed.
5. Appeal E is dismissed.

Applications for costs

6. An application for full costs has been made by the Council against the appellants in respect of Appeal D and Appeal E.

Preliminary Matters

7. In response to a request from the Planning Inspectorate, the parties have submitted an agreed location plan and description which identifies which appeal relates to which barn/s at Butlers Farm. For the purposes of the determination of the appeals the following information is agreed:

Appeal	Appeal Ref.		Council's Ref.
A	APP/Z1510/W/20/3260026	Barn 1/West Barn	20/01122/COUPA
B	APP/Z1510/W/20/3260028	Barn 2/Middle Barn	20/01120/COUPA
C	APP/Z1510/W/21/3268430	Barns 1 & 2	20/02006/COUPA
D	APP/Z1510/X/20/3262845	Barn 3/East Barn	20/01433/ELD
E	APP/Z1510/W/21/3283082	Barn 3	20/02131/FUL

Appeals A, B and C

8. Three applications have been submitted concerning two different buildings under Class Q of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) seeking approval for the change of use under Q(a) and the building operations reasonably necessary to convert the building under Q(b).
9. The application form which was submitted in respect of Barn 2 (Appeal B) refers to the proposed dwelling having 4 bedrooms. However, it is clear from the plans that the proposal is for Barn 2 to be converted into a 3 bedroom dwelling. I have considered Appeal B on the basis that a 3 bedroom dwelling is proposed.
10. The description of the proposal on the application form in respect of Appeal C has been simplified on the Council's Decision Notice to read:

Prior approval for the change of use of an agricultural building to a dwelling house and associated operational development. Change of use to 2 No. residential dwellings

Based on the evidence before me, this description more accurately reflects the proposed development. Furthermore, the appellants have used the Council's revised description in his Appeal Form. Save for the reference to buildings plural I have determined Appeal C on a similar basis using the following description:

'change of use, and associated building works, of agricultural buildings to two dwellinghouses (Q(a) and Q(b))'

This correction can be made without causing injustice to the appellants or the Council.

Appeal E

11. The description of development which is set out in the planning application form refers to the plans submitted with the application. The plans refer to the development as being for 'Retrospective Planning Permission for two dwellings. Dwellings have been constructed for over 25 years' and this is the description set out in the appellants' Appeal Form.
12. The Council refers to the description of development as retention of 2 No. dwellings and this was the description used by the Council when it carried out neighbourhood consultation.
13. Neither 'retrospective' nor 'retention' are terms which amount to development, and it is unnecessary to include reference to when the buildings were constructed in the description. Therefore, I intend to determine Appeal E on the basis that it relates to planning permission for two dwellings.

Appeals A and B

Main Issue

14. The main issue in respect of Appeal A and Appeal B is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GDPO, with particular reference to the extent of the building operations.

Reasons

15. Both the Appeal A development (Scheme A) and the Appeal B development (Scheme B) include building works as part of the proposed development. Under paragraph Q.1 (i), development is not permitted by Class Q if development under Class Q(b) would consist of building operations other than those specified and partial demolition necessary to carry out those building operations.
16. The Planning Practice Guidance provides advice on the extent of building works which may be carried out in accordance with the permitted development right under Class Q. In this regard, it makes clear that the right assumes that the agricultural building is capable of functioning as a dwelling. The right permits building operations which are reasonably necessary to convert the building, which may include those which would affect the external appearance of the building, and which would otherwise require planning permission.
17. Scheme A concerns a substantial barn built off brick walls but mainly of timber construction (Barn 1). There are two projecting gable ended elements and between them lie lean-to structures of lower height. The building has a corrugated cement fibre roof. Scheme B relates to a barn of lower height attached to Barn 1. It is also of timber construction, but it has no projecting elements and has a pantile roof (Barn 2). Within Barn 1 there is a partial mezzanine floor and upper level walkway but no such structures in Barn 2.
18. To the frontage of Barn 1 openings are limited to the end gables of the projecting elements and the central lean to and comprise two windows and three doors. At the rear there are two tall openings with double doors which extend to the eaves of the building. On both roof slopes of Barn 1 there are glazed panels serving as roof lights. There are two windows and two doors on the frontage of Barn 2 but no openings at all to the rear and no rooflights.
19. The proposed works would involve insertion of windows and doors into existing and new openings and the installation of a mezzanine floor and internal walls in both Barn 1 and Barn 2. One of the two lean-to element on the frontage of Barn 1 is shown as removed.
20. The double height openings within Barn 1 would receive light through new windows installed in the projecting gables to the front and to the rear. There are already openings of this scale on the rear face of the building but not within the projecting gables on the front. There is reference on the plans to a structural glass wall within the building. In terms of additional openings five sets of windows are to be inserted including at eaves level on the frontage and nine sets of windows are to be inserted in the rear wall. The roof is shown as being either retained or replaced with a peg tile roof.

21. The conversion of Barn 2 will be facilitated by the insertion of four rooflights on the rear roof slope and a door within a new opening in the rear wall.
22. The proposed works would involve the installation or replacement of windows and doors and, in the case of Barn 1 partial demolition, all of which fall within Class Q 1 (i) provided that they are reasonably necessary for the buildings to function as dwellings.
23. The PPG makes it clear that internal works are not generally development and that for the building to function as a dwelling it may be appropriate to undertake internal structural works. These include providing for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted and internal walls. Thus, such works are not prohibited under Class Q.
24. Turning first to the removal of the lean-to from Barn 1. The appellant says that this structure is in a poor condition but that it could be rebuilt and retained if required. Thus, it cannot be argued that the removal of the lean-to is necessary for the building to function as a dwelling.
25. With regard to openings in Barn 1 the appellant argues that the majority of the rooms in the proposed dwelling would only be served by one window which accords with the approach of such conversions which generally seeks to keep the number of windows to a minimum. Whilst that is the case, the number of rooms in the dwelling result in a significant number of new openings in Barn 1.
26. The alterations to Barn 2 are not as extensive as those to Barn 1. However, the introduction of an opening on what is currently a blank wall on the rear elevation of Barn 2 is a significant change as are the introduction of roof lights into the rear roof slope.
27. The additional openings in both barns are necessary as a result of the introduction of mezzanine floors and the formation of bedrooms at first floor level. The Council is concerned that the structural integrity of the buildings to accommodate new floors has not been demonstrated. The appellant states that this level of detail is not necessary at this stage of the conversion and that the new floor could be self-supporting. His agent relies on his expertise as a Chartered Structural Surveyor in this regard.
28. There is no evidence before me to contradict the views of the appellant regarding the approach to installing a mezzanine floor into both buildings. Nevertheless, it remains the case that this is part of my consideration as to whether such works and the consequent effects of the requirement for additional openings, are necessary for the barns to function as dwellings.
29. Both barns are of a size and scale that they could be converted to provide adequate space for a dwelling on the ground floor, albeit a modest one in respect of Barn 2. The appellant's submission of Appeal C, which relates to the conversion of Barn 1 and Barn 2 to dwellings without the insertion of a mezzanine floor demonstrates that it is possible to convert the buildings without the introduction of a mezzanine floor.
30. The appellant refers to other cases where mezzanine floors have been included in schemes which have been allowed under Part Q. The drawings which he has provided show buildings with mezzanine floors but there is no further

information regarding why in those cases the Councils found them to be acceptable. Consequently, there is no direct correlation between those cases and the appeal schemes and even if there were each case must be determined on its individual merits.

31. Drawing all of these points together, it has not been demonstrated that the proposed works to Barn 1 and Barn 2 are reasonably necessary for the buildings to function as dwellings.

Conclusion – Appeal A and Appeal B

32. I conclude that the proposals would not comply with the limitations and restrictions specified as being applicable to the proposed developments. As such, they could not benefit from deemed permission under Class Q.
33. For the reasons set out above Appeal A and Appeal B are dismissed.

Appeal C

Background

34. The appellants say that they submitted the application which is the subject of Appeal C after having received the refusals under Class Q which were issued by the Council. Those decisions are the subject of Appeals A and B. The second application which the appellants made related to both Barn 1 and Barn 2.
35. The appellants considered that they had addressed the concerns of the Council through the retention of the lean-to structure on Barn 1 and the removal of the mezzanine floors and a reduction in the level of glazing. The Council refused the application for similar reasons to the earlier applications but also because the development included replacement of the roof to Barn 1, bedroom 2 in Barn 2 would not receive adequate light, the curtilage of the dwellings, including access to them was too large and there would be alterations to ground levels.

Main Issue

36. The main issue in respect of Appeal C is whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GDPO, with particular reference to the extent of the building operations, including changes in ground level, provision of adequate natural light in habitable rooms and the extent of the curtilage.

Reasons

Building operations (excluding changes in ground level)

37. In common with Appeals A and B, development is not permitted under Class Q if the development under Class Q(b) would consist of building operations other than those specified and partial demolition necessary to carry out those building operations and it must be established that the building operations are reasonably necessary to convert the building to a dwelling.
38. The appellants say that the Council have interpreted the plans incorrectly because it has concluded that the lean-to on Barn 1 is to be demolished as was the case in the Appeal A Scheme. The plan shows the lean-to as retained in

plan form and although the elevation is not entirely correct in terms of the position of supporting timbers to the front and the roof, it is sufficient to demonstrate the appellants intention that the lean-to remains. Consequently, the plans do not show that any partial demolition is proposed.

39. To the rear of Barn 1 the introduction of glazing to the existing full height openings has been halved and there are no new openings at first floor level, reducing the number of new windows from nine to five in comparison with the Appeal A Scheme. The first floor windows have also been removed from the front elevation of Barn 1 as a consequence of the omission of the mezzanine floor. Thus, the number of new windows has been reduced from five to two on this elevation and the extent of glazing to the projecting gables would now retain the solid upper element of this feature.
40. In respect of Barn 2, and in common with the Appeal B Scheme, a new door is shown in the rear wall. A further window to serve bedroom 2 has also been introduced into the rear wall. Notwithstanding the appellants' comments, the plans do not show any proposed rooflights.
41. In common with Appeal A, the roof of Barn 1 is shown as being either retained or replaced with a peg tile roof. The appellants consider that the building is capable of supporting a new roof and that this would accord with the conditions in Part Q1(i)(i) which refer to the replacement of a roof. The Council considers that the replacement of the roof is unnecessary for this building to function as a dwelling. The Council also regards the appellants' reason for doing so to be related to the building's aesthetic which is not a matter for consideration in a Class Q Prior Approval application.
42. Bearing in mind that the replacement of the roof sheeting is shown as an option on the plans, whilst peg tiles might improve the appearance of the building, it appears to me that the replacement with peg tiles is not required for Barn 1 to function as a dwelling. To that extent the option involving retention of the roof sheeting can be adopted.
43. The number and impact of changes to the barns are significantly reduced in comparison with the previous schemes for the two buildings. However, this is not the test against which the conformity with Class Q needs to be judged. Nevertheless, I conclude that the changes to the barns are reasonably necessary to convert the buildings to dwellings.
44. Whilst changes are made to the currently blank rear wall of Barn 2, considering the building operations as a whole, the restriction of the introduction of new features to one door and one small window is reasonably necessary to allow the conversion of Barn 2 under Class Q.

Access, curtilage, and changes in ground level

45. The composite layout plan, includes the access and land which is identified as curtilage on the block plan, comprising parking spaces and amenity space. The appellants have not included the access within the space marked as curtilage. However, the Council argues that if this is included it would result in the curtilage size exceeding that defined in the GDPO for the purposes of Part 3 Class Q which is as follows:

(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

46. The curtilage land identified by the appellants lies adjacent to both sides of the barn buildings and there is no dispute that it equates to the land area occupied by the agricultural building.
47. The access which is included in the application site is formed off a spur to the driveway which serves Butlers Farmhouse. There is a well-worn track adjacent to the existing driveway, but this does not form a complete route to the parking spaces shown on the plan. Therefore, further works will be needed to provide access.
48. Any area of land to be included in a proposed access, or any part of an existing access intended to serve the proposed dwellings, which does not fall within the curtilage, will remain in its existing lawful use. A change of use of the land to use for residential purposes may require a separate grant of planning permission.
49. Schedule 2, Part 2, Class B permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or classified road. This permitted development right would apply in situations where such an access is required to serve a dwellinghouse permitted under Part 3 of the GDPO, such as would be the case if Appeal C were allowed. The access would need to be 'required' to serve the dwelling but would not be restricted in terms of length.
50. The access is not immediately beside or around the barns and is separated from them by the parking spaces. As such I do not find that the access falls to be considered as part of the curtilage for the purposes of Part 3 Class Q. Consequently, the size of the curtilages is not larger than the areas occupied by the barns to which they are related.
51. The Council says that the ground level adjacent to the barns would need to be lowered to facilitate the rear doors, parking, and gardens. Such works are not evident from the submissions by the appellants. The photographs submitted by the Council show undulations in the land immediately beyond the barns however it has not been demonstrated that works amounting to engineering works would be needed to provide access and egress to the dwellings.
52. During the site visit I observed that the land to the rear of the barns slopes up and away from the buildings. However, the land immediately adjacent to the buildings is on roughly the same level as the base of the barns. The curtilages are restricted in depth as a result of the definition of curtilage set out in the GDPO and it appears to me that garden and parking space can be provided on the land beyond the edge of the barn without significant regrading works.
53. My observations accord with the confirmation by the appellants that no ground works are to be undertaken to reduce levels. Consequently, there is no evidence of changes in ground level being proposed or necessary which would fall outside Class Q.

Natural light in habitable rooms

54. For any prior approval application made on or after 1 August 2020, as is the case here, the prior approval matters for Class Q include the provision of adequate natural light in all habitable rooms of the dwellinghouse. The Council considers that bedroom 2 in Barn 2 would not receive adequate light.
55. The appellants say that bedroom 2 is served by a window in the rear wall of the barn and a rooflight and that it would receive light if the internal wall acted as a light well. There are no rooflights shown on the plans or information to indicate how much light would be received internally. However, the window serving bedroom 2 is not noticeably smaller than the window serving bedroom 1, albeit that its orientation is north rather than south. Bedroom 2 is a small room and there is no evidence to substantiate the Council's view that the window serving it is too small to provide adequate natural light.
56. On that basis the development accords with Class Q in relation to the provision of adequate light to habitable rooms.

Prior approval

57. For permitted development under Class Q, paragraph Q.2(1) of the GPDO requires prior approval of the following matters (the prior approval matters):
- (a) the transport and highway impacts of the development
 - (b) noise impacts of the development
 - (c) contamination risks on the site
 - (d) flooding risks on the site
 - (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses)
 - (f) the design or external appearance of the building
 - (g) the provision of adequate natural light in all habitable rooms of the dwellinghouses
- The Council considered these matters when it determined the application for Prior Approval.
58. With the exception of the provision of natural light which I have addressed above and a concern about unexpected contamination the Council does not have any concerns in relation to the prior approval matters. It considers that a condition to deal with the risk of unexpected contamination would be required. Such a condition would be reasonably related to the subject matter of the prior approval.
59. The appellants have submitted information regarding contaminated land however I am not persuaded that this addresses the matter of how unexpected contamination would be dealt with. In those circumstances it is reasonable and necessary for me to impose a condition as referred to by the Council.

Other Matter

60. The Council included a reason for refusal relating to the impact of the development on the Blackwater Estuary Special Protection Area (SPA) and Ramsar site and the Essex Estuaries Special Area of Conservation (SAC).
61. The grant of planning permission under Article 3(1) of the GPDO is subject to the provisions of the GPDO for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Effectively, Article 3(1) provides a pre-commencement condition which must be met, where the development would affect a European protected habitat, such as a SPA or a SAC, before the works can be undertaken as permitted development. This includes a separate application to the Local Planning Authority under regulation 77 of the Habitats Regulations to allow the Local Planning Authority to undertake an appropriate assessment and, depending on the outcome, this would determine whether, in terms of that matter, the scheme could be undertaken as permitted development under the GPDO.
62. The Council has confirmed that an application to the Local Planning Authority under regulation 77 has not been made. However, as the regulation 77 application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issues that I have examined and, therefore, I do not need to consider this matter further as part of this appeal.

Conditions

63. The Council has provided a list of conditions which it recommends should be attached to any permission.
64. Any planning permission granted under Article 3(1) and Schedule 2, Part 3, Class Q is subject to the condition that it must be completed within a period of 3 years starting with the prior approval date. It is therefore not necessary for me to attach a time limit condition. As there is no ambiguity in terms of the plans which are before me a condition requiring compliance with the approved plans is also unnecessary.
65. I shall attach a condition relating to unexpected contamination because this is referred to in the Council's report and such a condition is reasonable and necessary for the reasons set out above. I have amended the wording of the condition to ensure that it is precise and enforceable. (Condition 1).
66. The appellants have referred to the presence of bats in the barns in the Ecology Report and acknowledge that a European Protected Species (EPS) licence will be required for works to the buildings. A consultation response provided to the Council during its consideration of the application also references the presence of bats and the need for a wildlife lighting scheme and a biodiversity enhancement layout and recommends the implementation of mitigation measures for bats and other species as set out in the applicants' Ecology Report.
67. Decisions about whether a licence can be granted are the responsibility of Natural England (NE) and case law has established that permission should be refused only if NE were unlikely to grant a licence. There is no suggestion that

this would be the case in relation to the works to the barns. Therefore, the requirement for an EPS licence to have been obtained before works commence can reasonably be secured by condition. (Condition 2)

68. It is necessary for Condition 2 to be a pre-commencement condition to ensure that the licence or alternative provisions are made for the protection of bats in advance of any works on site which may affect these creatures. In accordance with Regulation 2(4) of The Town and Country Planning (Pre-commencement Conditions) Regulations 2018 I have consulted the appellants and they have confirmed that they have no objection to this pre-commencement condition.
69. Similarly, the mitigation measures set out in the Ecology report and the detail of a wildlife lighting scheme, and a biodiversity enhancement layout are necessary and can be secured by planning condition. I have also amended the wording of the conditions to ensure that they are precise and enforceable. (Conditions 3, 4 and 5).
70. The Council has suggested a condition to secure details of all hard and soft landscaping and means of enclosure. The reason for this is given as to ensure amenity and privacy. Given that Barns 1 and 2 are screened from the footpath providing public views of the site and that the only other dwelling is the appellants' farm house, I do not consider that such a condition is necessary. Similarly given that no other residential properties are nearby conditions relating to the burning of refuse materials and to control the hours of construction/demolition are not necessary in this case.

Conclusion – Appeal C

71. For the reasons set out above Appeal C is allowed and prior approval is granted subject to conditions.

Appeal D

Background

72. Appeal D is an appeal against the Council's decision to refuse to grant a certificate of lawful use for two dwellinghouses. The appeal relates to the use of a two storey building (Barn 3) which is adjacent and perpendicular to Barn 1 and Barn 2. Contrary to the location plan Barn 3 is not joined to Barn 2.
73. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus is on the appellant to make out his case to the standard of the balance of probabilities.

Main Issue

74. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

Reasons

75. The appellant has set out in his application form that he is seeking a certificate for an existing use of a building for two dwellings. He says that the new building was designed as two dwellings and that it was completed to first fix stage in 1996.
76. If, as appears to be the case here, the building was erected unlawfully and alleged to have been used as two dwellings from the outset, no change of use has occurred. The time limit for enforcement action against the use of the building in those circumstances is ten years.
77. The appellant has submitted plans which he says demonstrate that the architect designed the building as two dwellings and that it was constructed as two dwellings. From my observations on site a building of similar scale and height to that which is shown on the plans has been constructed and internal walls and staircases have been installed. However, the walls have not been plastered, bathrooms and kitchens have not been installed and there were no light fittings.
78. The submitted plans do not show the complete layout of fenestration on the elevations of the building. However, the ground floor of the building currently contains a number of double doors which facilitate the storage of cars. Both floors appear to be in use for storage of domestic items and one of the rooms contained two beds with duvets but no other bedding.
79. Drawing these points together, the building does not currently exhibit the characteristics of a dwellinghouse in terms of its ability to afford to those who use it the facilities required for day-to-day private domestic existence.
80. The appellant states that a dwelling has been used as a temporary dwelling but not for a continuous period of over four years. Based on my observations this temporary use amounted to 'camping out' in one part of the building and does not amount to use as a dwelling, even on a temporary basis
81. The appellant provides copies of correspondence with a bank and a building society which are addressed to 'The Barn'. There are other barns on the holding to which this address could relate and there is no information to link the addressee to his occupation of Barn 3 even on a temporary basis. These documents do not substantiate that the building which is the subject of the appeal was being occupied as two dwellings.
82. The appellant refers to other documents which he says he submitted with his planning application in the form of letters and invoices. These documents are not before me but from their descriptions they relate to the construction of the building the timing of which is not in dispute and not to its use as two dwellings.
83. The appellant acknowledges that the building has not been used for a continuous period of over four years as a dwelling. He also states that it has never been used as a domestic residence apart from by a farm worker undertaking summer work. These statements contradict the position which the appellant needs to demonstrate in order to obtain a certificate, which is to show that the building has been used as two dwellings for ten years continuously.

Conclusion – Appeal D

84. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of two dwellings was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal E

Background

85. Appeal E relates to an application for planning permission which was submitted by the appellants following the Council's refusal to issue a certificate for the use of Barn 3 for use as two dwellings.

Main Issues

86. The main issues are

- whether residential use is an appropriate use of the building
- whether the site is a suitable location for two dwellings, having regard to local policy for future development in accessible locations
- the effect of the development on the character and appearance of the surrounding area
- whether the development provides suitable living conditions for future occupiers with particular reference to overlooking and privacy
- the effect of the use of the proposed access on the safety and convenience of pedestrians, cyclists and drivers using the access to the site and a public right of way (PROW).

The Development Plan

87. The Council has confirmed that its Development Plan consists of the Braintree District Local Plan Review (2005) (the Local Plan), the policies of the Core Strategy (2011) (the Core Strategy) which are not superseded, the Shared Strategic Section 1 Local Plan (2021) (the Section 1 Plan), and any Adopted Neighbourhood Plan.

88. The Council also confirmed that Policies CS1, CS4, CS9 and CS11 of the Core Strategy have been superseded following the adoption of the Section 1 Plan. It says that it referred to these policies in the determination of the application. However, I note that none of these policies are specifically referred to in the Council's Decision Notice.

89. There is no Neighbourhood Plan before me, therefore it is reasonable for me to assume that such a document does not form part of the Development Plan for the appeal site.

Use of the building

90. The Council refers to Policy RLP38 of the Local Plan which relates to the conversion of rural buildings and establishes criteria against which conversion to residential use must be determined. The text in the Local Plan which

precedes Policy RLP38 refers to the Council being supportive of farm diversification through re-use of existing buildings. Therefore, a reasonable interpretation of Policy RLP38 is that it is only relevant if the development relates to the conversion of an existing building.

91. The Council has referred to the fact that the Framework does not require the marketing of rural buildings prior to their re-use. The Council refers to another appeal decision in the district in which the Inspector reached the opinion that the marketing requirement is not inconsistent with the Framework. I do not have full details of the appeal decision before me, and it appears to date from 2017. As the Framework has taken a consistent approach to its support for enabling the development of rural businesses since that time, there is no reason for me to deviate from the previous Inspector's decision and accord Policy RLP38 significant weight.
92. The appellants say that the building on the site replaced a barn which was removed as part of the development. The new building was designed and built to accommodate two dwellings, for which planning permission is now sought. They have provided photographs which, although undated, demonstrate that the building and cart lodge which occupied the site were entirely demolished.
93. The appellants consider that Policy RLP38 is not relevant to the determination of the appeal because the building was constructed as a dwelling and not an agricultural building. Furthermore, they argue that the development is not the conversion of a farm building into a dwelling, but the completion of dwellings constructed over 25 years ago.
94. Policy RLP38 does not refer to farm buildings but relates to any rural building. To that extent the appeal building is an existing rural building. I have already addressed the description of development in terms of reference to 'retrospective' or 'retention' and similarly 'completion' is not a form of development. I have also established that the building is not in lawful use as two dwellings, but it was not necessary for me to determine what the lawful use of the building is. However, for the purposes of Policy RLP38, the lawful use of the building is irrelevant unless it is already in employment or community use, which does not appear to be the case here. Policy RLP38 establishes that a conversion to residential will only be acceptable where every effort has been made to secure alternative employment or community use of the rural building.
95. In this case the appellants have not submitted evidence of any efforts which have been made to secure an employment or community use. Therefore, I conclude that it has not been shown that residential use is an appropriate use of the building and on that basis the development is contrary to Policy RLP38 of the Local Plan.

Site location

96. There is no dispute between the parties that the site is in the countryside, outside any settlement boundary, and that Policy CS7 of the Core Strategy, which promotes accessibility and the location of future development in accessible locations, is relevant. Policies SP1 and SP3 of the Section 1 plan provide the strategic level background for this approach.

97. The appellants argue that there are very good facilities in local villages and that a railway station in Bures is within cycling distance. They also consider that a consequence of the Covid 19 pandemic more people work from home and cars are not needed on a day to day basis.
98. I observed during my site visit that the building lies within the countryside and that there are no local facilities nearby. Access through the area is via narrow, winding country lanes which do not have pavements or street lighting. These routes would not be attractive or convenient for walkers or cyclists during inclement weather or in the winter months and would not be suitable for children walking or cycling to school. The Council says that the nearest bus stop is 1.7km from the site.
99. These conditions are likely to result in the residents of the dwellings being reliant on private cars even for short trips to local facilities. In response to the appellants arguments there is no guarantee that the residents will work from home and in any event, they would need to be able to access local facilities for reasons unrelated to employment.
100. For the reasons set out above, I conclude that the site is not a suitable location for two dwellings, having regard to local policy for future development in accessible locations and that the development is contrary to Policy CS7 of the Core Strategy.

Character and appearance

101. On the basis of the evidence the existing building has been in situ for about 25 years and it has become established as part of the character and appearance of the area. Whilst it is not readily visible from the road there is a public footpath running through the appeal site from which the building is visible. The wider area is characterised by sporadic development in the form of agricultural buildings of various scales and isolated dwellings.
102. The existing building is finished in dark stained timber boarding and its size and shape are compatible with the adjacent barns. Vegetation which grows up the face of the building obscures openings on the first floor and the double doors on the ground floor are of an appearance generally associated with outbuildings and traditional farm buildings. However, the exposed chimney stack at the gable end of the building is not consistent with this overall character.
103. The changes to the building as it faces the footpath, which are shown on the plans include installation of windows at ground and first floor levels, alteration of the double doors to provide three entrance doors to the dwellings and an additional chimney. The resulting building would have a much more domestic appearance than the existing building. This would be out of character with the otherwise traditional barns adjacent to the building and the countryside surrounding the site.
104. The proposed layout of car parking, cycle and bin storage and the inevitable introduction of domestic paraphernalia within the curtilage of the dwellings would exacerbate the harmful effect which the appearance of the houses would have on the character of the wider area. These elements of the development

would be readily visible from the footpath and would contribute to the general urbanisation of the site.

105. For the reasons set out above, I conclude that the development would have a harmful effect on the character and appearance of the surrounding area. The development is therefore contrary to Policies RLP38 and RLP90 of the Local Plan and Policy CS5 of the Core Strategy which require that the design of buildings is in harmony with the character and appearance of the surrounding area and that new development protects and enhances the amenity of the countryside.

Living conditions

106. The Council confirms in its report that it is concerned about overlooking of the residents of the dwellings by people using adjacent land and the lack of capacity for boundary or landscape treatment to denote the residential curtilage along the western boundary.
107. The building is very close to the boundary of the site where it abuts the neighbouring barns. The proposed elevations show the introduction of windows and doors on the elevation facing the gable end of the barn. Some of these new openings, in the absence of space for screening would facilitate views into living space directly from the land surrounding the barns. This impact would be exacerbated if the appellants decided to convert the barns to dwellings.
108. For these reasons I conclude that the development fails to provide suitable living conditions for future occupiers with particular reference to overlooking and privacy. Therefore, the development is contrary to Policy RL90 of the Local Plan and Policy SP7 of the Section 1 Plan which require that new development is of a high standard of design and layout and that the amenity of future occupiers is protected in relation to overlooking.

Access and parking

109. In its report the Council highlights its concerns about the number and layout of parking spaces, access for the Fire and Rescue Service and waste collection vehicles and the potential for obstruction of the PROW. The dwellings would be accessed via a long driveway from Colne Road and the Council has not shown how the aspects of the site layout and access for vehicles would have a harmful impact on the safety of the users of Colne Road.
110. With regard to the access for fire engines and other large service vehicles, from the contents of the Council's report, were I to allow the appeal these are matters which appear to be capable of being dealt with through the submission of information as part of the discharge of planning conditions.
111. The Council has provided a plan demonstrating the relationship between the route of the PROW and Barn 3. The route runs through the appeal site and any enclosure of amenity space or parking of cars would prevent its use.
112. The appellants refer to walkers, in practice, using the driveway which they say is 24 metres from the building. The Council also acknowledge that this is the case. However, I have not been advised of any formal deviation of the PROW from its current route. Consequently, the introduction of cars on the route of the PROW would be harmful to users of it.

113. For the reasons set out above I conclude that whilst the development would not have an adverse impact on access from the public highway it would be harmful to the safety and convenience of users of the PROW. Therefore, the development would be contrary to Policy SP7 of the Section 1 Plan which seeks to create well-connected places and Policy CS7 of the Core Strategy which promotes access for all.

Planning balance

114. The appellants say that they disagree with the conclusion on the planning balance which the Council has reached but they do not elaborate on their reasons for doing so. On this basis there is no evidence before me to contradict the thorough planning balance which the Council has undertaken.

115. I have reached the same conclusion as the Council that the development is contrary to the Development Plan. The benefits of the development which would arise from the provision of homes which meet the general need for housing in the district, together with the economic benefits accruing from the construction works and the activities of future occupants, are limited by the scale of the proposed development. As such the benefits of the development do not outweigh the harm which I have identified.

Conclusion

116. For the reasons set out above Appeal E is dismissed.

Sarah Dyer

Inspector

Appeal C Ref: APP/Z1510/W/21/3268430 Butlers Farm, Colne Road, Bures CO8 5DN

Schedule of additional conditions

Condition 1

Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.

Condition 2

Prior to the commencement of development, the local planning authority shall be provided with either:

- a) a copy of a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 authorizing the specified activity/development to go ahead; or
- b) a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.

Condition 3

All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Bright Green Environmental, July 2020). This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Condition 4

Prior to the installation of any external lighting and the occupation of the development hereby approved, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme.

Condition 5

Prior to occupation of the development hereby approved a Biodiversity Enhancement Layout, providing the finalised details and locations of the

enhancement measures contained within the Preliminary Ecological Appraisal (Bright Green Environmental, July 2020), shall be submitted to and approved in writing by the local planning authority. The enhancement measures shall be implemented in accordance with the approved details.