



Appeal Decision

Site visit made on 21 January 2025

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 April 2025

Appeal Ref: APP/F2415/W/24/3350651

Home Farm, East Norton Road, Horninghold, Leicestershire LE16 8DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Brudenell Estates against the decision of Harborough District Council.
 - The application Ref is 24/00015/PDN.
 - The development proposed is Prior Approval for the conversion of two agricultural barns to five residential dwellinghouses (Class C3) consisting of one larger dwellinghouse and four smaller dwellinghouses.
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Decision

1. The appeal is allowed and planning permission is granted for Prior Approval for the conversion of two agricultural barns to five residential dwellinghouses (Class C3) consisting of one larger dwellinghouse and four smaller dwellinghouses at Home Farm, Horninghold, Leicestershire LE16 8DQ in accordance with the terms of the application, Ref 24/00015/PDN, and the details submitted with it including plan no's 4696-BE-18-001 P02; 4696-BE-18-013 P08; 4696-BE-18-018 P04; 4696-BE-18-019 P03; 4696-BE-18-015 P03; 4696-BE-18-016 P02; F21172/CB1; and F21172/CB2 Rev A, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q, Paragraph Q.2(3) and subject to the conditions set out in the attached schedule.

Preliminary and Procedural Matters

2. On 21 May 2024, Statutory Instrument 2024 No 579 (SI) came into force amending Article 3(1), Schedule 2, Part 3, Class Q of the GPDO. Transitional arrangements apply to applications submitted under previous iterations of the Order which was the case in this instance, and this allows for cases to be considered under the previous version and this is the approach I have taken in this decision. Therefore, the changes do not affect my consideration of the appeal. Consequently, I have not invited further comments from the main parties. All references to the GPDO in this decision therefore relate to the version that was in force prior to these amendments.
3. Class Q(a) of the GPDO permits development consisting of a 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), and under Class Q(b), building operations reasonably necessary to convert the building for that purpose. This is subject to certain criteria, and circumstances where development is not permitted which are listed under Paragraph Q.1.

4. The description of the proposed development on the application form, stated 'Please refer to the Cover Letter' which is wholly unclear. As such, I have used the description of development taken from the Decision Notice which was replicated on the appeal form in the banner header and my formal decision.

Main Issues

5. The main issues relevant to this appeal are:
- whether the proposal would constitute permitted development as defined under Schedule 2, Part 3, Class Q of the GPDO; and
 - if the proposal is found to constitute permitted development, whether it would accord with the conditions of Schedule 2, Part 3, Class Q of the GPDO with respect to the transport and highways impacts of the development.

Reasons

Whether Permitted Development

6. The appeal includes two separate buildings that are surrounded by other agricultural buildings. Building A is the smaller of the two barns and is a steel portal framed building with low level concrete walls below fibre cement sheeted walls and a corrugated fibre cement sheet roof. Building B is a large concrete and steel portal framed building that has low level solid brickwork walls with fibre cement sheeting above and cladding on the roof.
7. The proposal intends, amongst other matters, to replace the fibre cement sheet walls and roof on both buildings and the Council considers that these operations go beyond the extent reasonably necessary for the buildings to function as dwellinghouses.
8. Paragraph Q.1(i) of the GPDO permits the installation or replacement of windows, doors, roofs or exterior walls to the extent reasonably necessary for the building to function as a dwellinghouse and partial demolition to the extent reasonably necessary to carry out such works. The Planning Practice Guidance (PPG) provides additional guidance on this matter, establishing that it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right. As identified by the parties, the Hibbitt case¹ clarified that a conversion of an agricultural building can constitute permitted development, but a rebuild cannot. Where the proposal constitutes a conversion or rebuild is a matter of planning judgement.
9. A structural assessment was submitted with the application, and this concluded that the existing structures are sufficient to accommodate the conversion into residential units. The existing portal frames and concrete bases would be retained, and the plans also show the low-level concrete and brick walls would generally be retained with additional courses added, except where openings are required. The existing fibre cement sheet roof and walls would be removed as some of them

¹ Hibbitt v Secretary of State for Communities and Local Government [2016] EWHC 2853 (Admin)

contain asbestos and this can have harmful health and safety implications for those undertaking works to the buildings as well as occupiers. The replacement cladding is shown to be similar in appearance to that which would be replaced, and the structural assessment sets out that the new roof and wall cladding would not be dissimilar in weight to the existing and so there would be a negligible effect on the existing foundations.

10. Paragraph Q.1(i)(i) of the GPDO allows for the installation of windows, doors, roof or exterior walls, as well as replacement. Paragraph Q.1(i)(ii) allows for partial demolition to the extent necessary to carry out building operations allowed by paragraph Q.1(i)(i).
11. Whilst the works would be relatively extensive, given the materials the walls and roofs are currently built from, it is reasonably necessary that they are replaced in the interest of the health and safety of the occupiers. Furthermore, the extent of these works, including the insertion of doors, windows and other openings and replacement exterior walls and roofs would not be excessive or go beyond the extent reasonably necessary for the buildings to function as dwellinghouses.
12. The internal works, such as new walls would not be reliant on the existing frames for structural support using a separate framework however, the external walls would be. Whilst parts of the building would be demolished as well as walls and roofs removed, the proposed dwellinghouses would be formed using the existing structure and foundations of the agricultural buildings and the scheme would consequently fall within the remit of a conversion and not a rebuild. Whilst temporary bracing works may be required during works to convert the buildings, this would fall within the necessary building operations allowed by Paragraph Q.1(i)(ii).
13. The Council were satisfied that the proposal would comply with the other restrictions and limitations specified in Paragraph Q.1 and based on the evidence before me I find no reason to conclude otherwise.
14. Therefore, I conclude that the proposed conversion of the agricultural buildings into five dwellinghouses would not conflict with Paragraph Q.1(i) of the GPDO and would constitute permitted development as set out under Schedule 2, Part 3, Class Q of the GPDO.

Transport and Highways Impacts of the Development

15. Paragraph Q.2(1) of the GPDO requires the local planning authority to consider whether its prior approval will be required as to a number of matters including the transport and highways impacts of the development.
16. The Council consider that insufficient information has been submitted to establish whether the transport and highways impacts would be acceptable, in particular whether a safe access suitable for residential use can be provided to the public highway.
17. The submitted plans show that the two barns are accessed via an unmetalled part of the public highway that passes through Home Farm's wider site and into the open countryside beyond. There is a sign near to this part of the road which states that the road is not suitable for motors but the Local Highway Authority consultation response notes that this is not a restriction and is advisory only. The

courtyard between all of the buildings around the wider site is a hard surfaced area which connects with the public highway. Given the condition of the access road certain vehicles and pedestrians may find it difficult to access the proposed dwellinghouses.

18. However, the appellant has provided a scaled plan showing works that could be done within land owned by the appellant and in the public highway in accordance with Table DG1 of Part 3 of the Leicestershire Highway Design Guide (LHDG). The LHDG requires the carriageway to have a width of 4.8 metres(m) for developments up to 50 dwellings. This can be achieved along most of this road leading to the buildings, and then it would reduce to 4.4m although this would be next to the hard surfaced courtyard between the buildings. As this would be located next to the hard surfaced courtyard and because the length of the section of the carriageway that would be reduced in width would be limited, the design of the proposed changes to the access road would not have an unacceptable impact on highway safety.
19. Given that the public highway leads to the open countryside and the road becomes unsurfaced beyond the wider Home Farm site, I concur with the appellant that the typical movements would be more typically associated with a cul-de-sac layout and that a design speed of 20 miles per hour would be more appropriate in this instance. The submitted highway plans also identify that visibility splays to the junction with the public highway for the dwellings within Building B can be achieved in accordance with Tables DG4 and DG17 of the LHDG. The scheme would reuse the existing hard surfaced courtyard as a shared surface area and this would provide space for pedestrians to access the proposed dwellings, as well as a nearby Public Right of Way.
20. Given the limited scale of the development proposed and taking into consideration the evidence submitted within the Appeal Statement (Highways) looking at trip generation, I conclude that the number of trips from this scheme would be limited and would not have an unacceptable impact on highway safety.
21. The procedural requirements for prior approval schemes are different to a planning application. Whilst the land outside of the red line boundary for this scheme may be used for the proposed highways works, this would not make the proposal wholly impractical as there is no requirement in the GPDO for the entirety of the access to be provided fully within the curtilage of the dwellinghouses. Taking into consideration the above proposals, a safe access to the dwellinghouses suitable for residential use can be secured and the scheme would not have an unacceptable impact on highway safety.
22. Paragraph W.(13) of the GPDO identifies that conditions can be imposed so long as they are reasonably related to the subject matter of the prior approval. In this instance, conditions requiring the highways works are carried out in accordance with the submitted plans is necessary in the interest of ensuring the transport and highways impacts of the development would be acceptable for which prior approval is required. Based on the evidence before me express planning permission would not be required for the works. Given that the land required is generally within the appellant's ownership and the public highway there is nothing before me to indicate that there would not be a prospect of the action being performed within the time-limit imposed by condition.

Other Matters

23. The site is located near to but outside of the Horinghold Conservation Area (CA). Whilst the site is located outside of the CA, the Framework requires an assessment of a proposals effect upon the significance of a heritage asset and the significance derives not only from its physical presence but also from its setting.
24. The CA Record Details identifies that the significance of the CA comes from the detailed and picturesque design of the houses that were generally designed by J & H L Goddard which was a prominent local architecture practice. The dwellings are well spaced and sit in their own grounds and the associated trees and gardens are a special characteristic of the village. The shared setting of these buildings as well as the open countryside beyond the CA positively contributes towards the setting of it. Given that the CA is located in a rural area, the agricultural appearance of the buildings as well as the open space between them positively contributes towards the rural setting of the CA and the contribution this makes towards its significance.
25. Taking into consideration the design of the scheme and because the glazing and others openings proposed would not be excessive, the proposed development would generally retain the agricultural character of the existing buildings as well as the open spaces between them. As these buildings already form part of the character and appearance of the area, the agricultural character that would be retained by the proposal would be appropriate within the setting of the CA. Consequently, the proposal would not harm a feature that positively contributes towards the heritage asset's significance. I note that the Council did not refuse the application regarding the design or external appearance of the proposals and for the reasons given above I find no reason to conclude otherwise.
26. Comments were received from interested parties regarding flood risk but a Flood Risk Assessment (FRA) and an addendum to it was submitted with the appeal which identified that the dwellinghouses would be in Flood Zone 1 whilst a small section of the red line boundary would be within Flood Zone 2. Based on the information before me the buildings subject to the change of use, the access and escape route, land-raising or other vulnerable elements would not be located on the part of the site that is within Flood Zone 2. A plan provided by the Council purported to show that the site was subject to flash floods, but it could not confirm where the plan originated and what it represented. The Senior Technician (Flood Risk Management) at Leicestershire County Council also indicated that there are no records of flooding in this location.
27. Based on the evidence before me the risk of flooding to the built development is identified as being low from all sources, with fluvial and surface water flood extents not shown to have a significant impact in the areas proposed for the development. The surface water flooding relates to an existing ditch network near the site and the topographical survey identifies that Building A which is located closest to the ditch network has a floor level around 1.5 metres above it. The addendum to the FRA identifies that the converted buildings would be located in areas of low flood risk from all sources of flooding. The highway works discussed earlier in this decision would also assist in ensuring the site should be accessible to refuse vehicles.
28. Accordingly, while the proposal would be for a more vulnerable use, it would be located away from current and future areas at medium or high flood risk as per the

guidance in the PPG. The original FRA recommended a minimum threshold level of 300millimetres (mm) above existing ground levels, but the addendum has provided detail that this would not be necessary and a minimum threshold of 150mm above existing ground levels would be appropriate in this instance to make the development safe throughout its lifetime. This would be secured at the Building Regulations stage. The Council did not refuse the application regarding the flooding risks on the site and for the reasons given above I find no reason to conclude otherwise

29. Given the distance between the appeal site and the other buildings on site, I am satisfied that if those buildings were retained for agricultural use that this would not harm the living conditions of the occupiers of the proposed dwellings. Those buildings are also located a modest distance from the proposed dwellinghouses, and this, alongside the proposed internal layout would ensure they would not affect natural light reaching the proposed habitable rooms. The Council did not refuse the application concerning the provision of adequate natural light in all habitable rooms of the dwellinghouses and for the reasons given above I find no reason to come to a different conclusion.
30. Whether there is a need for residential dwellings in the area or if the agricultural buildings should be retained are matters outside of the remit of this appeal. Similarly, If the buildings were extended or the floor areas increased at a later date, this would also be outside of the remit of this appeal.
31. A previous prior approval application was refused for a similar scheme². Whilst I do not have a copy of the relevant decision, based on the information before me the previous scheme included the removal of the existing principal structural elements and included a mezzanine floor which differs from the scheme before me. The proposed scheme would reuse the existing principal structure and for the reasons given earlier in this decision, the scheme would amount to a conversion in accordance with Class Q. These differences have led me to come to a different conclusion in this instance.
32. I have also been referred to an application that was refused and then subsequently dismissed at appeal for a dwelling near to the appeal site³. Whilst I do not have the relevant decisions, based on the information before me that scheme related to a new dwelling, rather than a conversion. Furthermore, the appeal was dismissed given that the dwelling was in the open countryside and because there was no need for the proposal, and these are not matters for consideration in this appeal. These differences have led me to come to a different conclusion in this instance.
33. Concerning the appeal decision made at Heath House Farm Cottage⁴, the proposed works involved replacing elements of the building to improve the external appearance of the building and it was determined that this was not reasonably necessary for the building to function as a dwelling. The appeal decision at Burmans Fields Farm⁵ concluded that the works to replace the walls and roof would be of such a magnitude as to amount to a fresh build. In this instance the replacement of parts of the walls and roofs is reasonably necessary due to the materials used in their construction and the overall extent of works would not be

² Reference: 22/00263/DEM

³ Reference: 92/00336/30 & 92/00336/APPEAL

⁴ Reference: APP/B3438/W/19/3230017

⁵ Reference: APP/P1805/W/21/3272499

excessive or go beyond the extent reasonably necessary for the buildings to function as dwellinghouses. These matters have led me to come to a different conclusion in this instance.

34. Subject to certain conditions which I shall address later in this decision, the Council does not raise objections in relation to the other provisions set out in Paragraph Q.2(1) in relation to the design or external appearance of the building, noise impacts of the development, contamination risks on the site, flood risk on the site, whether its location or siting of the buildings makes them otherwise impractical or undesirable for the buildings to change from agricultural use to dwellings and the provision of adequate natural light. Based on the evidence before me, the reasons given above and my observations on site, I find no reason to conclude otherwise.

Conditions

35. Paragraph W.(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. I have had regard to the conditions put forward by the Council and have amended the wording where necessary in the interest of clarity. I have also had regard to the tests in the National Planning Policy Framework and relevant elements of the PPG. The additional conditions are set out in the schedule at the end of this decision.
36. No conditions have been suggested by the Council; however conditions were recommended by statutory consultees, and there are those that I have deemed necessary to include.
37. Paragraph Q.2(3) of the GPDO stipulates that development under Class Q is permitted subject to the condition that development must be completed within a period of 3 years starting with the prior approval date.
38. A condition requiring that an assessment of the risks posed by any contamination is carried out is necessary considering the previous use of the buildings and wider site in the interest of the health and safety of the occupiers of the proposed dwellings.
39. I have imposed a condition requiring details of the windows, doors and external materials as these are relevant to the design and external appearance of the building and are also specifically referenced in paragraph Q.1 (i)(i) of the GPDO. This condition is necessary in the interest of preserving the setting of the CA for the reasons given earlier in this decision.
40. For the reasons discussed earlier a condition requiring the development is carried out in accordance with the submitted highways plans is necessary in the interest of highway safety. Another condition ensuring the visibility splays are kept free of obstruction is necessary for similar reasons.

Conclusion

41. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted subject to conditions.

G Sibley

INSPECTOR

Schedule of Conditions

- 1) No development shall take place 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, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
 - i. i. a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
 - ii. ii. the site has been remediated in accordance with the approved measures and timescale; and
 - iii. iii. a verification report has been 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 until:

- iv. i. additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
 - v. ii. a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.
- 2) Prior to installation, the following details shall be submitted to and approved in writing by the local planning authority:
 - i. details of the roof and wall cladding;
 - ii. details of all window and door frames, to include their materials and colour and cross section details (at a scale of 1:5) detailing their proposed positioning in the openings; and
 - iii. details of all doors to include their materials and colour.

The conversion shall be carried out in accordance with the approved details.

- 3) Prior to the first occupation of the development hereby approved the highway works set out in drawing nos F21172/CB1 and F21172/CB2 Rev A shall be provided in accordance with the approved plans. The junction with the public highway shall be surfaced with tarmacadam, concrete or similar hard bound material for a distance of at least five metres behind the highway. Thereafter, during the lifetime of the development, the parking areas provided as shown on the approved plans shall be retained for the parking of vehicles only.
- 4) The 2.4 metre by 27 metre visibility splays shown on drawing no F21172/CB1 shall be free of any obstruction exceeding 0.6m in height and shall be retained as such thereafter.