

Appeal against the refusal by Ribble Valley Borough Council for a prior notice application for the change of use of an agricultural building to two dwellings at Eastham House Farm, Mitton, Clitheroe, Lancashire, BB7 9PH

Mr S Ainsworth

Application no 3/2018/ 0218

Appeal Statement

The application was submitted on the 20th of March, 2018. It was submitted for prior approval for the change of use and associated operational development of an agricultural building to form 2 dwellings under the General Permitted Development Order Schedule 2, PART 3, Class Qa. and Qb

The application was refused dated the on the 9th of May, 2018 for the following reasons:-

1. The applicant has failed to provide sufficient details of the proposed building operations to take place under Q (b) - for example a detailed structural survey has not been provided sufficient information to enable the authority to establish whether the development complies with any conditions, limitations or restrictions applicable to the development in question for the purposes of subparagraphs (2) (a) and (b); and (3) (b); to , paragraph W of the Town and Country Planning (General Permitted Development) (England) Order.
2. The proposed development fails to accord with Schedule 2, Part 3, Class Q, paragraphs Q.2 (b) and (e) of the Town and Country Planning (General Permitted Development) Order 2015 in that the siting of the dwellings within close proximity to existing agricultural. buildings and activity is likely to be of significant detriment to the residential amenities of future occupiers by virtue of noise, odour and disturbance.
3. The design and external appearance of the building would facilitate the domestic use of land beyond the area shown as curtilage resulting in a curtilage area that exceeds the limits defined in Paragraph X of Schedule 2

Part 3 of the Town and Country Planning (General Permitted Development)
(England) Order 2015.

Matters not in dispute

The Refusal Notice and the accompanying officer report raise no objections relating to the sole use of the building on the 20th of March 2013 for agricultural purposes in association with an agricultural unit

It makes no objection with regard to the following as stated in the officer report:-

- a) "The application states that the agricultural building continues to be used for agricultural storage and was in use on 20th March 2013 solely for the purposes of agriculture. There is no evidence to contradict or disbelieve this and the requirements are therefore satisfied.*
- b) The floor space of the agricultural buildings is 302sqm. I am satisfied that the proposal does not fall outside of the permitted class for this reason.*
- c) It is proposed to convert the agricultural buildings to two dwellings. The planning history for the established agricultural unit has been checked and on the date of writing the LPA had no record of any other Class Q applications on the agricultural unit. As set out above, this application has been submitted alongside a separate planning application at the adjacent site for the conversion of an agricultural building to no.2 dwellings. Although this application is submitted by the same planning agent, the applicant (and landowner) is not the same and the buildings are not located within the same agricultural unit.*
- d) The application states that the building and the area surrounding it is owned by the applicant and are not subject to any tenancy agreement. There is no evidence to contradict or disbelieve this and the requirements are therefore satisfied.*
- e) A planning history search has been undertaken for all of the land within the established agricultural unit and it is apparent that no applications under Part*

6, Class A or B have been submitted to the LPA or approved by the LPA since the 20th March 2013.

- f) Whilst the installation or replacement of exterior walls is permitted by the order, where they extend beyond the external dimensions of the existing building they would not accord with Q.1 (g). The submitted plans show the external dimensions of the building would not extend beyond the existing dimensions*
- g) The application form states that the building has a floor space of 302sqm. The planning history for the established agricultural building has been checked and on the date of writing the LPA had no record of any other Class Q applications on the agricultural unit.*
- h) The agricultural building is located within an area of open countryside and is not included" within any proscribed area (such as an AOANB or other defined areas)*

In addition, the LPA raises no objections with regard to those issues listed under Class Qa of the GPDO: -

- (a) transport and highways impacts of the development,
- (c) contamination risks on the site,
- (d) flooding risks on the site,
- e) While the LPA raises an issue about the French windows (with regard to access onto land not within the proposed curtilage) it says in its officer report: -
The existing building has a simple and functional design and such agricultural buildings are part of the rural character of the area. The proposed alterations to the north and south elevations do not raise significant design concerns. The window and door openings would have stone head and sills and windows would be framed in timber. The materials proposed would be sympathetic and reflective of those used on other buildings in the locality

Objections of the LPA

The officer report indicates that the LPA raises the following objections:-

1. Operational development allowed under Class Qb

“Building works are allowed under the right permitting agricultural buildings to change to residential use: Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. However, 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 would otherwise require planning permission. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. 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.”

The applicant has not provided a structural appraisal and conversion method statement to demonstrate that the buildings are capable of conversion to a residential use without building operations that go beyond those reasonably necessary to convert the buildings. There would be a requirement for such an appraisal to be submitted to the Council to enable the authority to establish whether the proposed development complies with Q1(i).

2. Curtilage

The officer report states: -

“Paragraph X

The requirements of Class Q(a) refer to the change of use of a building and any land within its curtilage to a dwellinghouse. Under Paragraph X for the purposes of Part 3 curtilage means the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of it, or an area of land immediately beside or around the agricultural building no larger than the land area occupied by it, whichever is the lesser. In this instance the curtilage of the building is identified as being 184sqm on the application form. This excludes parking for 4no vehicles although it is unlikely that their inclusion within the curtilage area would exceed the limits set by para. X. It is noted however that the design of the building would facilitate the use of land which is not shown to be within the defined curtilage of the property and for this reason the proposals would fail to satisfy Paragraph X of Schedule 2 Part 3"

3. Noise and residential amenity

"noise impacts of the development

With regards to noise impacts, residential use is essentially a quite one. However, there is no indication within the application that the applicant intends to cease agricultural activities at the site and therefore the dwellings will be located at the heart of an active farm. The proposed dwelling (unit 1) would adjoin an existing workshop building and the farm's vehicular access passes close to the buildings on the south side. I note reference on the submitted plans to double and triple glazing, passive ventilation measures and wall specifications. However, no information has been submitted with the application to assess the impact of noise on the residential amenities of future occupants of the proposed dwellings and as such the LPA is unable to assess whether the residential amenities of the future occupants of the building would be adversely affected. It is considered likely however that there would be significant disturbance resulting in an unacceptable standard of living accommodation.

Agricultural vehicles will be required to pass close to the proposed dwellings and during the summer months vehicles movements are likely to take place during long

daylight hours. This would cause disturbance to future occupants who are likely to want to open windows during the summer despite passive ventilation measures being installed”.

Appellant comments on the Reasons for refusal

Reason no 1

“The applicant has failed to provide sufficient details of the proposed building operations to take place under Q (b) - for example a detailed structural survey has not been provided sufficient information to enable the authority to establish whether the development complies with any conditions, limitations or restrictions applicable to the development in question for the purposes of subparagraphs (2) (a) and (b); and (3) (b); to paragraph W of the Town and Country Planning (General Permitted Development) (England) Order”.

Appellant comments

1. The sections of paragraph W of the GPDO referred to in the reason for refusal state: -

“W.—(1) The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.

(2) The application must be accompanied by—

(a) a written description of the proposed development, which, in relation to development proposed under Class C, M, N or Q of this Part, must include any building or other operations;

(b) a plan indicating the site and showing the proposed development

(3) The local planning authority may refuse an application where, in the opinion of the authority—

(b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question”.

The appeal application is accompanied by plans to indicate exactly what is proposed and a Planning statement to highlight the proposed development.

2. The only reason which may be ascertained for this reason for refusal is contained in the accompanying officer report when it states that :-

“The applicant has not provided a structural appraisal and conversion method statement to demonstrate that the buildings are capable of conversion to a residential use without building operations that go beyond those reasonably necessary to convert the buildings. There would be a requirement for such an appraisal to be submitted to the Council to enable the authority to establish whether the proposed development complies with Q1(i)”.

But there can be no reasonable grounds for questioning the structural ability of the building to be suitable for the proposed change of use and associated operational development: -

- a. The agricultural buildings are relatively newly built (They include a date stone of 2010) and incorporate walls of natural stone.
- b. There is no apparent deflection to the walls and no cracks
- c. The agricultural buildings are single storey and the proposed dwellings will be the same. There are no plans for the insertion of a second floor and which just might impact on the existing structure of the building
- d. Windows and doors are kept to a minimum and they will not impact on the structural integrity of the existing building

- e. Internal walls and other alterations are not “development” as described in S55 of the Town and Country Planning Act and they will not impact on the existing structure of the building. S55 states: -

Meaning of “development” and “new development”

1. Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

2. The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

I. affect only the interior of the building, or

II. do not materially affect the external appearance of the building

- f. As a Chartered Surveyor I had and have no concerns about the structural ability of the building to accommodate the change of use and the associated operational development.
- g. At no time during the consideration of the application has the LPA asked for further information on this point - as the GPDO clearly states it may so do.

Reason no 2

“The proposed development fails to accord with Schedule 2, Part 3, Class Q, paragraphs Q.2 (b) and (e) of the Town and Country Planning (General Permitted Development) Order 2015 in that the siting of the dwellings within close proximity to existing agricultural . buildings and activity is likely to be of significant detriment to the residential amenities of future occupiers by virtue of noise, odour and disturbance”.

Appellant comments

1. It is clearly the case that most applications for the change of use of agricultural buildings will be close to other agricultural buildings. If such changes of use were not to be allowed in such circumstances it would defeat the very provisions of the GPDO in this regard(In fact the PPG notes that there may be a case for refusing such changes of use if an agricultural building is isolated on the top of a hill and with no road leading to it)

2. PPG makes it clear that prior notice applications should only be refused where adjoining buildings create exceptional objections such as *intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals*. Those conditions do not apply in this case. Any farm vehicle in use is no more dangerous than a car. Speeds will be necessarily low past the proposed dwellings

3. It is not clear why the LPA should be so concerned about possible odour. The appellant's adjoining buildings are not used for housing farm animals. It is true that there is currently an adjoining cow barn (on a separate agricultural unit). But the cow barn is not used for housing animals and the owner has also applied for prior notice approval to convert it into 2 dwellings (also refused by the LPA and subject to an appeal APP/T2350/W/18/3202920). Even if the latter is dismissed and the adjoining cow barn remains there is a solid wall and a gap separating the two.

4. Submitted with the appeal is a letter from surveying consultants, Campagna, who amongst other things, specialise in Building control matters. The letter outlines the requirements of the Building Regulations to ensure that there will be no unsatisfactory noise or odour within the proposed dwelling

5. Any prospective occupier of the proposed dwellings will be aware of the conditions often associated with living on a farm

6. So far as any noise is concerned the agricultural unit extends to some 6 acres – hardly so large as to generate a high volume of agricultural traffic and activity so as to become an unreasonable nuisance to the occupants of the proposed dwellings.

7. Such existing agricultural traffic currently passes both Eastham House Farmhouse and also a separate dwelling on the same access. The latter is not occupied by the appellant. No objections with regard to noise or nuisance is caused or has ever been raised by the long-time residents.

8. The planning application was accompanied by details of a prior notice application allowed on appeal in an adjoining Authority and at Lighthouse Barn. Details are included with the appeal. In that case one bay of a steel portal frame building was permitted for its use as a dwelling and with the rest of the building continuing in use as a cow barn. The appeal approval is now in the course of construction.

It is accepted that every case must be judged on its individual merits but the quoted appeal case does provide a precedent

Reason no 3

“The design and external appearance of the building would facilitate the domestic use of land beyond the area shown as curtilage resulting in a curtilage area that exceeds the limits defined in Paragraph X of Schedule 2 Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015”.

Appellant comments

1. The GPDO defines the limit for the associated curtilage of the proposed dwellings as being no larger than the footprint of the agricultural area to be converted or the existing, associated curtilage whichever is the smaller.
The proposed curtilage(s) is drawn to meet the requirements and it does not exceed the limits.
2. It is evident that access land does not need to form part of the curtilage.

Schedule 2, Part 2, Class B of the Order states as follows: -

*TOWN AND COUNTRY PLANNING, ENGLAND
The Town and Country Planning (General Permitted
Development) (England) Order 2015*

*SCHEDULE 2
Permitted development rights
Class B – means of access to a highway*

Permitted development

B. The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).

3. The LPA's concern is that the proposed French windows open onto land not in the appellant's ownership and where this *"would facilitate the domestic use of land beyond the area shown as curtilage resulting in a curtilage area that exceeds the limits defined in Paragraph X"*.

But actually the French windows do open onto land in the ownership of the appellant. That is not to say, however, that their inclusion will lead to an extension of the proposed curtilage. What they will do is allow light into the proposed dwelling. In the unlikely event that extra land was incorporated into the curtilage without planning permission (in whichever direction) then the LPA has enforcement powers. The LPA's objection could apply to any such prior notice proposal where the defined curtilage is necessarily limited and if applied consistently would thus impede national policy.

Other comments

1. While the LPA refers to the GPDO of 2015 it has, of course, been amended by the GPDO of 2018.
2. The LPA refers in its officer report to those aspects of operational development given as examples in the GPDO of what might be included:-

"The PPG provides guidance on the building works that are allowed under the change to residential use. It states at paragraph: 105 Reference ID: 13-105-20180222:-

"Building works are allowed under the right permitting agricultural buildings to change to residential use: Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. However, 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 would otherwise require planning permission. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. 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."

But PPG as updated in february 2018 includes the following to the above: -

"Internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q.

Paragraph: 105 Reference ID: 13-105-20180222"

4.

5. It was, of course, open to the LPA to approve the application under Qa while refusing nit under Qb (ie a split decision). While we consider that the proposed development is acceptable under both Qa and Qb it does nto appear that the application has been considered by the LPA on this basis

Summary

1. PPG stresses that the starting pint is that permitted development rights are granted : -

What is meant by impractical or undesirable for the change to residential use?

When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements.

Paragraph: 109 Reference ID: 13-109-20150305

Revision date: 05 03 2015

2. In this case there are no reasonable grounds for arguing that insufficient information has been submitted to show why a single storey, modern agricultural building with stone walls cannot be easily used for residential purposes without going further than those alterations specified in the GPDO
3. Equally there is no good reason why proximity to other agricultural buildings should prevent the proposed residential use and for the reasons stated
4. Similarly, the LPA argument that the design might lead to the unauthorised extension of the proposed curtilage - when it has enforcement powers available to it and when such an argument can apply to all such prior notice proposals -is unreasonable

Steven Hartley MRTPI,MRICS

May 2018