

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 John Warbrick

Application no 3/2018/ 0217

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 building operations proposed as part of the development would go beyond what is 'reasonably necessary' to change the use of the building contrary to criteria Q.1 (i) of Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted , Development) (England) Order 2015.

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 proposed development fails to provide sufficient vehicular manoeuvring facilities and refuse storage within the residential curtilage of the dwelling houses. The domestic use of land beyond the area shown as curtilage would be essential and unavoidable and the proposal could not be implemented without it. This may result 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.

4. The proposals would transform the buildings existing appearance to one which would be incompatible with and unsympathetic to its rural surroundings in conflict with Q.2 (f) 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: -

1. The application states that the agricultural building has been used as cow barn 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

2. The floor space of the agricultural building is 414sqm. However, the application only seeks to convert part of the building to residential use totalling a floor space of 184sqm. The relevant permitted development rights apply only to “a building”, whereas this proposal applies only to part of a building. However, the Order, at Article 2(1), specifically defines “a building” as including “any part of a building” and therefore I am satisfied that the proposal does not fall outside of the permitted class for this reason

3. It is proposed to convert the agricultural building 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.

4. 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.

5. *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.*

6. *The application form states that the building has a floor space of 168sqm, however; taking into account the dimensions shown on submitted plans the floor space of the dwellings would be 184sqm. 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.*

7. *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,

Objections of the LPA

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

1. Proposed alterations allegedly go beyond the existing footprint of the agricultural building

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 extend beyond the existing dimensions.

2. The applicant allegedly does not intend to convert the existing building but to construct two dwellings within it

It does not appear to be the applicant's intention to convert the existing building in this case; rather, it is stated on the submitted drawings that 'the new configuration shows two cottage style properties constructed within the footprint of part of the existing lambing barn. The rest of the building will be retained for agricultural use'. It is apparent therefore that the proposals do not comply with Q1(i) of Class Q insofar that the development would result in the creation of a 2no. dwellinghouses within the envelope of the existing agricultural building rather than its conversion and the dwellings would be structurally independent from the existing building. This view is supported by the invoice from D+D Wallbank Contractor Ltd which details costs for new steel work, footings and a new concrete floor all of which go beyond works considered to be reasonably necessary.

3. Operational works allegedly go beyond what is reasonably necessary

For the avoidance of doubt, even in the case that the proposal was to convert the barn rather than build within it, its conversion to residential use would require significant works that would likely go beyond those intended by Class Q.

4. Inadequate curtilage

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 73sqm on the application form. This would include parking for 4no vehicles on the area onto which the existing building fronts. Whilst this would fall within the limits set by para. X it is likely that an additional area would need to be hard surfaced to provide an appropriate turning facility for vehicles within the site.

5. Noise

noise impacts of the development

With regards to noise impacts, residential use is essentially a quite one. However, the proposed dwellings would adjoin the remainder of the existing building which will continue to be used for agriculture. Whilst the submitted drawings denote this to be retained as a hay barn there would be nothing to prevent the building from being put to some other agricultural use including the housing of livestock or storage and maintenance of farm machinery. Such use would likely give rise to undue noise and disturbance for the occupiers which would be detrimental to their living conditions

6. Residential amenities

In terms of its location and siting, Planning Practice Guidance states that the permitted development right does not apply a test in relation to sustainability of location. However, for the reason stated above under (b) it is considered that the location of the building at the heart of a working agricultural enterprise would result in a poor standard of accommodation

The proposed dwellings would not be physically separated from adjoining agricultural buildings and it would not be possible to properly protect future occupants of the dwelling from potential harm. As such, the proposed change of use of part of the building to a dwelling would be undesirable. The potential for residential amenity to be unacceptably affected by noise and/or odours thus exists. That makes it undesirable, in the terms of paragraph Q.2(1)(e) of the GDPO, for the building to be converted from agricultural use to a dwelling.

7. Design

The agricultural building in question forms part of a group and is not particularly prominent from any public view. Nonetheless, there remains a requirement for any alterations to the building to be sympathetic to its character and to the setting and character of the surrounding area.

The existing building has a simple and functional design and such agricultural buildings are part of the rural character of the area. The buildings 'conversion' would require significant building works that would completely change the character of the building and would result in a visual impact akin to the erection of a new dwelling. Whilst the dwellings would be constructed using traditional materials this would not be sufficient to overcome the harm arising from the significant change in the buildings appearance.

Appellant comments on the Reasons for refusal

Reason no 1

1. The building operations proposed as part of the development would go beyond what is 'reasonably necessary' to change the use of the building contrary to criteria Q.1 (i) of Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted , Development) (England) Order 2015.

Appellant comments

Criteria Q.1 (i) of Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted , Development) (England) Order 2015 states: -

Development not permitted

Q.1 Development is not permitted by Class Q if—

(i) the development under Class Q(b) would consist of building operations other than—

(i) the installation or replacement of—

(aa) windows, doors, roofs, or exterior walls, or

(bb) water, drainage, electricity, gas or other services,

*to the extent reasonably necessary for the building to function as a dwellinghouse;
and
(ii) partial demolition to the extent reasonably necessary to carry out building operations
allowed by paragraph Q.1(i)(i);*

The proposed operations do not go beyond the items in the list - though S55 of the Town and Country Planning Act makes it clear that Internal walls and other alterations are not “development” :-

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

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.”

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”

The LPA gives no reason – either in its officer report or in its Refusal Notice – to substantiate its conclusion that the proposed work goes beyond what is reasonable when the above contents of the Act, the GPDO and the PPG are taken into account

Reason no 2

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. Schedule 2, Part 3, Class Q, paragraphs Q.2 (b) and (e) of the GPDO states

Conditions

***Q.2—(1)** Where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—*

(b) noise impacts of the development

(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) of the Schedule to the Use Classes Order

2. 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)

3. 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.

4. It is not clear why the LPA should be so concerned about possible odour. The appellant's abutting building is not used for housing farm animals but for storing hay.

5. In addition there is a solid wall separating the remaining agricultural building and which, under Building Regulations, will be required to be of sufficient construction to prevent any adverse noise penetration.

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

7. The appeal is accompanied by details of a prior notice application allowed on appeal in an adjoining Authority and at Lighthouse Barn. 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

8. 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 dwellings

Reason no 3

3. The proposed development fails to provide sufficient vehicular manoeuvring facilities and I refuse storage within the residential curtilage of the dwelling houses. The domestic use of land beyond the area shown as. curtilage would be essential and unavoidable and the I proposal could not be implemented without it. This may result 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: -

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 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.
4. There is ample space for car parking outside the area shown as curtilage land

Reason no 4

The proposals would transform the buildings existing appearance to one which would be incompatible with and unsympathetic to its rural surroundings in conflict with Q.2 (f) of the Town and Country Planning (General Permitted Development) (England) Order 2015.

1. PPG reminds us that *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. Natural stone is to be used and the windows are to have natural stone cills and headers. Windows and doors are to be stained wood and the whole design is kept very simple. How can this be described as "incompatible and unsympathetic"?

Other comments

1. While the LPA refers to the GPDO of 2015 it has, of course, been amended by the GPDO of 2018.

2. It was, of course, open to the LPA to approve the application under Qa while refusing it under Qb (ie a split decision). While we consider that the proposed development is acceptable under both Qa and Qb it does not appear that the application has been considered by the LPA on this basis

3. In its officer report the LPA states that the terms of the GPDO are not met because the proposals go beyond the footprint of the existing building to be converted. We have sought clarification from our architect on this matter who says "I can't see anywhere where I have shown the external dimensions extending beyond the existing".

It is noteworthy that the LPA does not translate its assertion in its officer report into a reason for refusal in the Decision Notice.

4. The officer report also states that the terms of the GPDO are not met for the following reason: -

It does not appear to be the applicant's intention to convert the existing building in this case; rather, it is stated on the submitted drawings that 'the new configuration shows two cottage style properties constructed within the footprint of part of the existing lambing barn. The rest of the building will be retained for agricultural use'. It is apparent therefore that the proposals do not comply with Q1(i) of Class Q insofar that the development would result in the creation of a 2no. dwellinghouses within the envelope of the existing agricultural building rather than its conversion and the dwellings would be structurally independent from the existing building. This view is supported by the invoice from D+D Wallbank Contractor Ltd which details costs for new steel work, footings and a new concrete floor all of which go beyond works considered to be reasonably necessary

The invoice from D+D Wallbank simply to show that the agricultural building was constructed on the 20th of March 2013 in accordance with the terms of the GPDO. The invoice refers to work carried out for its construction in 2009 and not for any proposed work now!

So far as the LPA 's suggestion that the intention to construct 2 dwellings within the footprint of the existing building means that they will somehow be independent of the existing building and will somehow not lead to its change of use is frankly bizarre.

It is noteworthy that the LPA does not translate its assertion in its officer report into a reason for refusal in the Decision Notice

Summary

1. PPG stresses that the starting point 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