

DELEGATED DECISION REPORT

APPLICATION NUMBER

213674

Beauchamp House, Church House Lane, Acton Beauchamp, Herefordshire, WR6 5AQ

CASE OFFICER: Mr Josh Bailey
DATE OF SITE VISIT: 7 October 2021

Relevant Development

Plan Policies: Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (August 2021)

Relevant Site History: None

CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	X	X			
Transportation	X		X		
Environmental Health (noise/smell)	X		X		
Environmental Health (contamination)	X	X			
Site Notice	X	X			
Local Member	X*(updated)	X			

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

The building is situated south-west of Beauchamp House, Acton Beauchamp and relates to a smallholding of approximately a little under 5.5 hectares. Accessed from a spur on the drive to Beauchamp House, the building is of portal frame construction with a sheeted roof and partial sides supported by steel beams and a concrete floor. The north-east elevation is clad as well as approximately 2/3rds of the north-west elevation. Two bays of the north-west elevation, the south-west elevation and 2 bays of the south-east elevation are open sided. The remaining four bays of the south-east elevation are bay doors. The application is made under Class Q (Part 3, Schedule 2 of the GPDO 2015, as amended) and prior approval is sought for the change of use of 1 no. agricultural barn to one smaller dwellinghouse (use class C3), and for building operations reasonably necessary for the conversion. Photographs of the status of the building, at the time of my visit is shown below.



Given the plans submitted, it appears to be an error on the agent's part given the figures they have quoted in their design and access statement, I have amended the proposal description so that it is considered as '1 larger dwellinghouse' rather than '1 smaller dwellinghouse' as was originally validated.

Representations:

Parish Council – No response

Transportation – No objections

Environmental Health (Noise/Smell) – No objections

Environmental Health (Contamination) – No response

Site Notice – No response

Local Member – Ward Cllr Chowns was updated by email on 8 November 2021 (16:40).

Pre-application discussion:

None

Constraints:

N/A

Appraisal:

Permitted development

Q. Development consisting of—

(a) 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) of the Schedule to the Use Classes Order; or

(b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

It is a pre-requisite that the building in question must be an agricultural building (a) and also that any building operations which are proposed are “reasonably necessary to convert the building” (b). Effectively, the proposals must amount to a conversion and would not consist of either significant new or ‘fresh’ build.

Many will be aware of the ‘Hibbitt’ case, which concerned itself primarily with this very issue of whether Q(b) required an initial assessment of whether the scheme was to ‘convert’, or whether that was implying a test that did not exist and the extent of the works only had to be appraised under Q.1 – the criteria where development is not permitted. In summary the judgment considered that ‘the question boiled down to:

(i) whether inherent in the concept of “conversion” in Class Q is a limit introduced by the concept of “rebuild”; and

(ii) whether even if there is that limit it is already incorporated into Class Q by virtue of the other limitations in the Order

It was held that there was an elementary requirement for the development to amount to an automatically permitted ‘conversion’ that the nature and extent of the works entailed had to fall short of that constituting a ‘rebuild’. It is clear from that judgment that in assessing whether the scheme entails a conversion does not require the decision maker to simply ensure compliance with Q1(i).

The High Court upheld the Inspector’s decision and appraisal that in her opinion ‘*the simple fact that the existing barn was sufficient to bear the load of the proposed development was not, in and of itself, sufficient to meet the requirements of part Q.*’ Continuing in her appraisal after accepting that no new structural elements were needed in that specific case, the Inspector stated that ‘*Although I accept that substantial works could fall under the scope of class Q they nonetheless presuppose that the works comprise ‘conversion’. In this case, the building before me would not be capable of functioning as a dwelling without the building works outlined above which includes the construction of all four exterior walls. This goes well beyond what could reasonably be described as conversion, and notwithstanding the re-use of the 6 steel uprights as*

the main structural element for the building and the retention of the fibre roof, the works described would be so extensive as to comprise rebuilding. I must therefore conclude that the works necessary to create a dwelling from the structure onsite would not fall within the scope of that permissible under part Q'.

Again, the High Court agreed with this approach and stated that the concept of “conversion” is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a “conversion” then it fails at the first hurdle and there is no need to explore the exceptions in Q.1. It is thus a freestanding requirement that must be met irrespective of the other provisions of Class Q.

In assessing what constitutes a conversion, the judgment concurred with the inspector that the building of the majority of the external elevations to infill the predominantly open sided structure was works that ‘went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building’. The Judge suggested that rather than describing the works as a rebuild, as that posed some confusion and suggested an element of demolition, the work could be classed as a ‘fresh build’.

Class Q as a category of permitted development defines cases where permission is automatically granted without there being any assessment or appraisal of the merits or otherwise of the proposed development against the guidance set out in the NPPF. It was argued that for this reason the permitted development should be construed conservatively and narrowly so as to ensure that it struck an appropriate balance between the advantages of automatic approval and the more onerous process of substantive appraisal and did not do damage to wider policies’.

This case established that there is a clear distinction between conversion and rebuilding and in applying the principles of this judgment, the Council’s Technical Guidance to Class Q states that proposals involving significant new building works will be considered to fall outside the scope of Class Q. It specifically states that the construction of walls to enclose a largely open sided building (e.g. a Dutch or pole barn) will not be considered to fall within the scope of Class Q.

Assessment

In this case before me, the building in question, at the time of visiting on 7 October 2021, had two of the six bays being open-sided, namely the two south-west bays. Further to this a considerable amount of the south-east elevation is half clad, namely as bay doors. Appeal decisions are a material consideration, particularly in this application. Tidnor Cross (P/W1850/W/18/3203745) is a relatively recent appeal decision in which the Inspector viewed that a building which was clad in hit and miss timber to both its side and rear elevations with horizontal boarding to the lower sections and an entirely open front elevation was capable of conversion. The inspector also found that the proposal which only proposed the reuse of the existing frame, roof, electricity supply and the lower, horizontally clad part of the external walls was a conversion.

As such, this recent appeal decision has resulted in understanding that what would constitute 'extensive works' can still be considered a conversion. In this case, works included the installation of an entire new wall, half walls to an additional three sides, full recladding of the walls, new openings, a new water supply and new foul drainage.

In this case before me, I consider that what is before me has less structural elements than Tidnor Cross and would hence fall outside the realm of a conversion. Quite clearly, a considerable number of new elements are going to be required. Indeed, the bay doors, once removed, would mean that around two and a half full elevations will require the installation of entirely new walls.

The scale of works required to the walls for the building to be capable of conversion is substantial, including not inconsequential structural works to support the additional mass. The consideration is therefore around the principle of the works and whether it constitutes a conversion or a rebuild on the existing frame – or a fresh build. I am inclined to the latter, as in this way, the works to enable the building to function as habitable accommodation goes well beyond the scope of what would represent a conversion of the existing building. Moreover, 'rebuild' infers there was once something equivalent to that now being proposed – this is simply not the case here.

Whilst I note the Planning Practice Guidance states that internal walls and internal structural work are generally not development, the proposal must fundamentally form a conversion for these elements to be considered under the criteria of the class of permitted development rights.

In practical terms it would merely provide the skeletal framework upon which the works needed to adequately enclose it to provide the dwelling would be constructed and what would be undertaken would amount to a rebuild, or perhaps as better described by the Judge a 'fresh build' to avoid the argument that it is not a 're'–build as there has been no removal of structural parts of the building. In light of the Hibbett case, the recent appeal decision in the County and the updated NPPG the scheme, the proposed building is not suitable, nor capable of conversion, with the proposal amounting to a fresh build with the existing structure contributing minimally to the resultant building.

In addition to this, the mobile home within the building would appear to store domestic paraphernalia including chairs and tables, which would appear to indicate that there is insufficient evidence to indicate a clear agricultural use of this building, contrary to Q.(a). This is visual evidence provided by the Local Planning Authority which shows there is insufficient confidence, on part of the applicant, to demonstrate a clear agricultural use of the building.

Nevertheless, the criteria of Class Q, shall be assessed, as per the below:

<p>(a) <i>Was the site used solely for an agricultural use, as part of an established agricultural unit:</i></p> <p><input type="checkbox"/> on 20th March 2013, or;</p> <p><input type="checkbox"/> if the site was not in use on that date, when it was last in use; or</p> <p><input type="checkbox"/> if the site was brought into use after that date, for ten years before the date the development begins?</p> <p><i>If NO planning permission is required.</i></p>	<p>The information supplied by the agent states that the building in question was used as an agricultural building, namely horticulture on 20th March 2013. In the view of the Council, there is insufficient evidence to conclude this view given the mobile home present within the building, concealed from the public domain.</p>
<p>(b) in the case of –</p> <p>(i) a larger dwellinghouse, within an established agricultural unit,</p> <p>(aa) the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or</p> <p>(bb) the cumulative floor space of the existing building or buildings changing use to a larger dwellinghouse or dwellinghouses under Class Q exceeds 465 square metres;</p> <p>(ba) the floor space of any dwellinghouse developed under Class Q having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 465 square metres;</p> <p><i>If NO planning permission is required.</i></p>	<p>1 larger dwellinghouse proposed. The habitable residential floor space for the change of use is calculated at 444.2 square metres.</p>
<p>(c) in the case of—i) a smaller dwellinghouse, within an established agricultural unit—</p> <p>(aa) the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or</p> <p>(bb) the floor space of any one separate smaller dwellinghouse having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 100 square metres;</p>	<p>N/A – no smaller dwellinghouses proposed</p>
<p>(d) the development under Class Q (together with any previous development under Class Q) within an established agricultural unit would result in either or both of the following—</p> <p>(i) a larger dwellinghouse or larger dwellinghouses having more than 465 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;</p> <p>(ii) the cumulative number of separate dwellinghouses having a use falling within Class C (dwellinghouses) of the Schedule to the Use Classes Order exceeding 5;</p>	<p>1 larger dwellinghouse is proposed to which was a floorspace less than 465 square metres.</p>

<p>(e) <i>the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained</i> <i>If NO planning permission is required.</i></p>	<p>The site is not operated under an agricultural tenancy.</p>
<p>(f) <i>If less than one year before the date development begins,</i> <i>(i) an agricultural tenancy over the site has been terminated; and</i> <i>(ii) the termination was for the purpose of carrying out development under Class Q,</i> <i>unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use;</i> <i>If NO planning permission is required.</i></p>	<p>The site is not occupied under an agricultural tenancy.</p>
<p>(g) <i>development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit—</i> <i>(i) since 20th March 2013; or</i> <i>(ii) where development under Class Q begins after 20th March 2023, during the period which is 10 years before the date development under Class Q begins;</i></p>	<p>No development under Class A (a) or Class B (b) of Part 6 of the agricultural buildings and operations Schedule has been carried out on the established agricultural unit since 20 March 2013. The building itself does not look like works have been undertaken to it in the intervening period.</p>
<p>(h) <i>the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point; If YES planning permission is required</i></p>	<p>This would not be the case.</p>
<p>(i) <i>Would development under Class Q(b) consist of building operations other than:</i> <i>1. the installation or replacement of -</i> <i>• windows, doors, roofs, or exterior walls, or</i> <i>• water, drainage, electricity, gas or other services where such works are restricted to those reasonably necessary for the building to function as a dwelling; and</i> <i>2. partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1.1(i)(i)?</i> <i>If YES planning permission is required.</i></p>	<p>The overlap with the pre-requisite requirement of Class Q for building works is limited to those which are reasonably necessary to facilitate the change of use and for the development to truly be a conversion. This has been discussed above to express that the building operations would be necessary in addition to the installation or replacement of - • windows, doors, roofs, or exterior walls, or • water, drainage, electricity, gas or other services where such works are restricted to those reasonably necessary for the building to function as a dwelling</p>
<p>(j) <i>Is the site on article 2(3) land?</i> <i>If YES planning permission is required.</i></p>	<p>No.</p>

<p>(k) Is the site or does the site form part of—</p> <ul style="list-style-type: none"> • a site of special scientific interest; • a safety hazard area; or • a military explosives storage area? <p>If YES planning permission is required.</p>	No.
<p>(l) Is the site or does the site contain a scheduled ancient monument?</p> <p>If YES planning permission is required.</p>	No.
<p>(m) Is the building a listed building?</p> <p>If YES planning permission is required.</p>	No.

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—

(a) transport and highways impacts of the development,

There is already an existing hard surface access serving the building and site. A curtilage edged in red covers the building, given the store and garage which will be formed within the building, and thus measures less in area than the building itself. It is considered that the transport and highways impacts are acceptable, noting the negligible difference between the pre-existing agricultural movements and proposed residential use movements.

(b) noise impacts of the development,

The site/locality is in a rural area characterised by farmland/buildings and noting that there are only one or two dwelling places in the vicinity and a local place of worship. The conversion will clearly not affect the amenities of any other dwellings. It is submitted also that the occupiers of the converted building would enjoy a reasonable level of amenity in the form of tranquillity. This is not a highly active working farm. It is approximately 5.5 hectares. It is not an arable farm with a number of agricultural machines/vehicles; but would appear to simply be ‘a sheep and cattle’ grazing farm, predominately in the spring and summer seasons with no ‘over wintering’ in any of the buildings. As such, in also noting the Council’s environmental health officer raises no objections, the noise impact of the development are viewed to be negligible.

(c) contamination risks on the site,

The site is not identified to be land which is previously contaminated. A condition is recommended so that any contamination found during works not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, an amendment to the Method Statement detailing how this unsuspected contamination shall be dealt with.

(d) flooding risks on the site,

The proposed change of use involves an increase in the vulnerability of the land use to flooding from Less Vulnerable to More Vulnerable. The Planning Practice Guidance notes that More Vulnerable uses are appropriate for inclusion in Flood Zones 1 and 2. The Environment Agency Flood maps indicate the agricultural building and proposed curtilage are entirely within Flood Zone 1. As such, a submission of a site-specific flood risk assessment is not applicable in this case and I conclude that there is no reason to refuse prior approval on such grounds.

(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,

The location and siting of the building is in a relatively secluded position. There is sufficient space around the building for the provision of a useable curtilage. As such, I conclude that there is no reason to refuse prior approval on such grounds.

(f) the design or external appearance of the building

The proposals retain the shape, form and character of the existing building and there are examples in Herefordshire where similar approaches have been supported. As such, I conclude that there is no reason to refuse prior approval on such grounds.

(g) the provision of adequate natural light in all habitable rooms of the dwellinghouses, and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

Habitable rooms are defined in paragraph X of Part 3 as any room used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms. In terms of the current proposals, the habitable rooms are the bedrooms as well as the living/dining areas. The provision and dimensions of windows, doors and walls in each of these habitable rooms are shown, given the intended open-plan nature of the site, and as such, I conclude that there is no reason to refuse prior approval on such grounds.

From 31st April 2021, S.I. 2020/1243 issued in November 2020 requires all Class Q developments to comply with the nationally described space standard issued by the DCLG on 27th March 2015 (the Technical housing standards – nationally described space standard). The minimum gross internal floor area for a 5-bedroom, 8-person, 2-storey dwelling is 128 sq m. With a floor space of some 444.2 sq m for the larger dwellinghouse, the proposals clearly exceed the minimum standards.

Accordingly, based on the above, the proposed change of use and associated operational development is not permitted development in accordance with the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As such, planning permission should be required for this proposal. The local member has been updated.


RECOMMENDATION: PLANNING PERMISSION IS REQUIRED**CONDITIONS AND REASONS:**

By virtue of failing to meet the parameters of development deemed permitted by Schedule 2 Part 3 Class Q of the General Permitted Development Order (as amended), for the below reasons, the proposal requires planning permission and cannot be dealt with way of a prior approval application:

1. The applicant has failed to demonstrate with sufficient confidence, that the site, as defined by 'paragraph X' of Part 3 of the GPDO, was used solely for an agricultural use as part of an established agricultural unit on 20th March 2013. The proposed development is therefore contrary to Q.(a) and Q.1 (a).
2. Class Q.(b) and Q.1(i) only allows for building works that are reasonably necessary to facilitate the conversion of the building. The nature of the works proposed, given the limited structural elements currently present and that would be retained, is considered to be so extensive that it would result in a new build rather than conversion and so does not constitute permitted development.

Informatives

1. The application has been assessed in accordance with the information submitted, which accompanied the application, which was validated on 30 September 2021. The Local Planning Authority has therefore assessed the application in relation to The Town and Country Planning (General Permitted Development) (England) Order 2015, as most recently amended and which came into effect on 1 August 2021 and any correspondence submitted by the applicant up until the date of this decision being issued.
2. The applicant's attention is directed to the fact that the site lies within the River Lugg catchment of the River Wye Special Area of Conservation (SAC) and therefore the Conservation of Habitats and Species Regulations 2017 are applicable. The applicant is advised that it in accordance with Regulation 75 of the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, it is a condition of any permission granted by a General Development Order that is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), that works should not commence until the developer has received written notification of the approval from the local planning authority under Regulation 77. The applicant should therefore be satisfied before commencing works that the development will not have any likely effect on any European Site. In addition, applicants are advised that they can, if they choose to, apply to Natural England as the appropriate Nature Conservation body, under Regulation 76 of Regulations (as amended) prior to making any necessary application to the Local Planning Authority under Regulation 75.

Signed:  Dated: 8/11/2021

TEAM LEADER'S COMMENTS:

Planning permission required

DECISION:**PERMIT**☐**REFUSE**☒

Signed:  Dated: 9/11/21

Is any redaction required before publication? No