

DELEGATED DECISION REPORT

APPLICATION NUMBER

174585

Lower Barns, Cinder Lane, Tenbury Wells, Herefordshire,

CASE OFFICER: Mr Alastair Wager
DATE OF SITE VISIT: 21st December 2017

Relevant Development

Plan Policies: **General Permitted Development Order 2015**

Relevant Site History: **173062** – Prior Approval for the conversion of barn and cart-shed to two dwellings. Prior Approval Required, Prior Approval Refused.

DCH790270 – erection of a new agricultural building to replace some existing buildings to be demolished – approved with conditions.

CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	X	X			
Transportation	X	X			
Environmental Health	X		X		
Neighbour letter/ Site Notice	X	X			
Local Member	X	X			

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

Lower Barns is situated in open countryside some 1.4 miles from the A4112 to the east of Leysters and southwest of St Michaels by approximately 1.5 miles. The site sits in around 30 hectares of land and is situated to the east side of the U94200 which runs from southwest to northeast. The old farmstead of Lower Barn faces north on the plot immediately adjacent to the road. To its north and northeast are two barns. Barn 1 (Cart Shed) is a dual pitch pole barn with gable ends facing south and north with the west and north elevations being predominantly open sided and part of south and east elevations benefitting from a stone plinth wall. The roof is metal sheeting. Barn 2 (The Barn) is directly next to the north gable end of the cart shed. It has a stone plinth wall to its east elevation and partly to its north

elevation with internal timber framing and a cat slide roof to the north. The south elevation is open and the gable ends face east and west.

The proposal is a prior approval application to convert the cart shed and Barn (described briefly above) into two dwellings under permitted development rights afforded by Class Q, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015. The proposed conversions would provide one two storey four bedroomed dwelling and one single storey two bedroomed dwelling.

Representations:

Cllr. Stone updated via email on 23rd January 2018.

Pre-application discussion:

None

Constraints:

NE Priority Habitat
MET Zone 3
MOD Yellow Zone

Appraisal:

Under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, development is permitted where it consists 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; and
- (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

In order to determine whether the barns satisfy the criteria to fall within permitted development there are a number of elements which need to be considered, these are set out under Q1(a)-(m):

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

- (a) the site was not used solely for an agricultural use as part of an established agricultural unit—
- (i) on 20th March 2013, or

[The barn was used solely for farm livestock and hay on 20th March 2013 and before this date.](#)

- (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or

[n/a](#)

(iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;

n/a

(b) the cumulative floor space of the existing building or buildings changing use under Class Q within an established agricultural unit exceeds 450 square metres; .

Approximately 176sqm

(c) the cumulative number of separate dwellinghouses developed under Class Q within an established agricultural unit exceeds 3; .

Two dwellings are proposed

(d) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; .

No

(e) less than 1 year before the date development begins— .

(i) an agricultural tenancy over the site has been terminated, and .

(ii) the termination was for the purpose of carrying out development under Class Q, .

unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use;

N/a

(f) 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) since 20th March 2013; or .

No

(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; .

n/a. There is no planning history on the site since DCH790270 other than a Pre-application advice request ref: 121927 which does not relate to this application.

(g) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point; .

Criterion (g) restricts development to the external dimensions of the existing building at any given point. The clarity offered both within the legislation itself and the supporting national guidance provides no scope to breach the existing building's envelope. The addition of a roof linking the existing cart-shed roof to that of the barn, will clearly increase the external dimensions of the building, and so fails to comply with the criteria of Class Q development.

Further the proposal indicates that the eaves height will increase by one metre at the southern end of the cart-shed, this is considered to result in the further increase of the external dimensions of the building.

(h) the development under Class Q (together with any previous development under Class Q) would result in a building or buildings having more than 450 square metres of floor space

having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; .

No, approx. 250 including first floor accommodation.

(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;

Under this paragraph and supported by subsection 105 of the NPPG, the agricultural building must be capable of functioning as a dwelling. The section states:

“It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes from the external works to provide for residential use that the building would be considered to have the permitted development right.”

In the case of *Hibbitt v Secretary of State for Communities and Local Government* [2016], the construction of walls to enclose a largely open sided building was considered to amount to a rebuild rather than conversion by virtue of the extent of the works required in order to enable the building to function as a dwelling house. Justice Green held that there is a conceptual difference between a “rebuild” and a “conversion” identifying that the concept of conversion is found in the overarching provisions of Class Q. The cart shed in particular is largely open sided to the west and north elevations and partially open sided to the east elevation. Applying the *Hibbitts* case to the building (specifically the pole barn), it would appear that substantial rebuilding of walls would be required, therefore the proposal fails at the first hurdle as it does not amount to a conversion and thus the building falls outside of the conditions set out under Class Q of Part 3 and requires planning permission.

Further, paragraph Q.1(i) places restrictions on the building operations which can be undertaken as part of any conversion. It states that development is not permitted if it 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.

Paragraph 105 of the Planning Practice Guidance (PPG) provides further clarification. The guidance states that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.

Based upon the Structural Report produced by Bob Johnson Constructing Structural Engineers (May 2017), I consider the structures of both the buildings (barn and cart shed) to be insufficiently robust to withstand the building operations required for conversion without significant structural replacements, additions and repairs including, but not limited to: (i) the

replacement of side purlins; (ii) rebuilding of stone plinths; (iii) installation of foundation base and casting of concrete slab. Consequently, as both the buildings require structural works for their conversion in order to take the load which comes with the external works to provide for residential use the scheme does not qualify under Class Q development.

(ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i); .

(j) the site is on article 2(3) land; .

n/a

(k) the site is, or forms part of— .

(i) a site of special scientific interest; .

n/a

(ii) a safety hazard area;

n/a

(iii) a military explosives storage area;

n/a

(l) the site is, or contains, a scheduled monument; or

n/a

(m) the building is a listed building.

n/a

Does the proposal comply with the definition of 'curtilage' (Interpretation of Part 3) as follows:

(i) The piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or

(ii) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser;"

Yes it is considered that the proposal complies with the definition of curtilage.

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—

(a) transport and highways impacts of the development,
the adjacent road is unclassified however no highways safety concerns were raised by the increased use resulting from the proposed two additional dwellings

(b) noise impacts of the development,

n/a

(c) contamination risks on the site,

n/a

(d) flooding risks on the site,

n/a

(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, and

n/a

- (f) the design or external appearance of the building,

The design and appearance of the conversions do not reflect or uphold the inherently agricultural and rural character of the buildings and their setting. The external appearance of the building would be noticeably different to the current state of the building, with the proposal to remove a number of stone walls.

and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

Conclusion:

In light of the preceding appraisal, it is considered that the proposal fails to qualify as permitted development under Part 3 Class Q of the General Permitted Development Order 2015 (GPDO). The building proposed for conversion does not therefore benefit from the necessary permitted development right. Planning permission is required.

RECOMMENDATION: PRIOR APPROVAL REQUIRED

PRIOR APPROVAL REFUSED

REASONS FOR REFUSAL:

1. By virtue of its minimalist structure and form, the cartshed building would require a significant amount of new building work in order to function as a residential dwelling. These works would in all practical terms amount to a fresh build, with only a minimal amount of help being provided by the existing agricultural building. As this scope of required works would therefore go far beyond what may be reasonably described as a 'conversion', which in itself is an overarching provision of Class Q, the agricultural building would not benefit from the permitted development rights afforded under Part 3 Class Q of the General Permitted Development Order (having regard to *Hibbitt v Secretary of State for Communities and Local Government* [2016]).
2. The application includes extending beyond the existing envelope of the building in multiple places, including the addition of an area of roof linking the cartshed to the barn and the increase in eaves height to the southern end of the cartshed. The proposal would therefore fail to meet the criteria of Part 3 Class Q (g) of the General Permitted Development Order 2015.
3. The application has also not demonstrated beyond reasonable doubt that the agricultural building is capable of functioning as a dwelling without new structural elements being required as indicated in the preliminary structural appraisal and as the building requires (i) the replacement of side purlins; (ii) rebuilding of stone plinths; (iii) installation of foundation base and casting of concrete slab it is assumed these works would need to be installed as part of any change of use. The proposal would therefore go beyond the scope of works deemed to be 'reasonably necessary' under Part 3 Class Q (b) and Q1. (i) of the General Permitted Development Order 2015..

The proposed scheme does not comply with the criteria set out under Class Q, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. In particular the proposal fails to amount to a conversion as it does not satisfy the structural requirements necessary for conversion, as the substantial rebuilding of walls would be required; the proposal extends beyond the existing building envelope in multiple places.

Informatives

PP5



Signed: Dated: 23rd January 2018

TEAM LEADER'S COMMENTS:

DECISION:

PERMIT

☐

REFUSE

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Signed:



..... Dated: 24/1/18