

APPLICATION REPORT – 18/00294/P3PAO

Validation Date: 29 March 2018

Ward: Eccleston And Mawdesley

Type of Application: Prior Approval from Agr to Residential

Proposal: Prior approval application under Part 3, Class Q (a and b) of The Town and Country Planning (General Permitted Development) (England) Order 2015 for proposed change of use of agricultural building to 2 no. dwelling houses.

Location: Orcheton House Farm Wood Lane Heskin Chorley PR7 5PA

Case Officer: Chris Smith

Applicant: Mr Richard Prideaux

Agent: The Susan Jones Consultancy

Consultation expiry: 3 May 2018

Decision due by: 23 May 2018

RECOMMENDATION

1. It is recommended that prior approval is required and is granted.

SITE DESCRIPTION

2. The application site is located in the Green Belt and lies approximately 90m to the east of Wood Lane, Heskin. It is accessed via an unadopted track located to the north and is occupied by a metal framed storage building which was erected under agricultural permitted development rights (05/00746/AGR). This building was a replacement for a fire damaged barn which stood on the same site. The application site itself is located within the north west corner of the wider planning unit. For the purposes of this part of the General Permitted Development Order "site" means the building and any land within its curtilage.
3. The building is located within a hybrid planning unit which also contains an established fishery. The unit is sub-divided into several distinct areas with the fishery located within the eastern most portion of the planning unit.

DESCRIPTION OF PROPOSED DEVELOPMENT

4. This application seeks prior approval under the provisions of Schedule 2, Part 3, Class Q (a) and (b) of The Town and Country (General Permitted Development) (England) Order 2015 (as amended) (GPDO) to convert an existing agricultural building into two dwellinghouses along with the building operations necessary to facilitate the conversion.
5. The main issues to consider are whether the proposed change of use of the building constitutes permitted development, having regard to whether the site was solely in agricultural use, as part of an established agricultural unit, within the applicable time frames and whether the development would constitute building operations other than those reasonably necessary for the building to function as a dwellinghouse.

6. It must be noted, that the Council is only to determine whether or not the proposed change of use would be permitted development which meets the requirements of Class Q of Schedule 2 of Part 3 of the GPDO, and as such any impact on the openness of the Green Belt cannot be assessed under the provisions of the GPDO.
7. For the purposes of this part of the General Permitted Development Order “agricultural building” means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse, and “agricultural use” refers to such uses.

REPRESENTATIONS

8. A total of 7no. representations have been received citing the following grounds of objection:
 - Site does not contain an agricultural building as the building has never been used for farming purposes. It has been used for storage of industrial equipment and vintage steam engines.
 - Building is used for general storage and for hobby purposes.
 - The farm is based on a leisure fishing development.
 - The farm itself advertises itself as a fishery, not a farm. There has been around a dozen sheep kept on the fields adjoining the footpath that runs through the premises on and off for several years. There has been no farming activity warranting the need of such a building for agricultural purposes since it was built.
 - The building is a steel framed, metal clad building, which appears to be standing on a shallow concrete slab with no footings around the edges and it is difficult see how a "change of use" other than by a complete reconstruction, needing proper footings, structural support for roofing, walls and floors could ever be allowed.
 - Access to the site is unsuitable. The single track unmade private driveway has no footpath for pedestrians using the defined path, making it too narrow to justify increased usage without considering the impact on traffic.
 - Proposed dwellings could be converted into flats and this would lead to the creation of a mini-estate which would not be in keeping with the character of the area.
 - The building can't be converted into two houses without the need for works that would amount to a re-build rather than a conversion
9. 1no. representation of support has been received claiming that the site has been used for agricultural activities

CONSULTATIONS

10. Lancashire Highway Services – Have confirmed that their response to prior approval application reference 16/00522/P3PAO is still relevant and should hold for this application, see main body of report.
11. Chorley Council's Waste & Contaminated Land Officer – Has stated that the site is unlikely to be determined as contaminated.
12. Eccleston Parish Council – Have stated that they strongly object to the application on the grounds of inappropriate development in the Green Belt and because the applicant has failed to demonstrate that the building has been used solely for agricultural purposes.
13. CIL Officers – Have stated that the development would be CIL liable if approved.
14. Heskin Parish Council – Have stated that they would like to strongly object to the proposed development as there is no evidence that the building has ever been used for agriculture and is another attempt by the applicant to build in the Green Belt.

PLANNING CONSIDERATIONS

Procedure

15. The application is submitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) which came into force on 15 April 2015. More specifically the application is made under Class Q of the Regulations.
16. Class Q makes provision for:
 - (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.
17. This application seeks prior approval under Class Q(a) and Class Q(b) as detailed above.

Assessment

18. Under the provisions of the Regulations development under Class Q is not permitted where (assessment in bold):
 - (a) the site was not used solely for an agricultural use as part of an established agricultural unit—
 - (i) on 20th March 2013, or
 - (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
 - (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;

The regulations state that development is not permitted if the site was not used solely for an agricultural use as part of an established agriculture unit. The application site does form part of a planning unit which includes a recreational fishery; however, the building which is the subject of this application was erected under agricultural permitted development rights in August 2008 (05/00746/AGR) as a replacement for a barn. Representations of objection have been received which claim that the building has not been used solely for agricultural purposes. Comments draw attention to the application site being the registered address of GPS (North-West) Ltd and that the nature of this business includes marine aquaculture and the retail trade of motor vehicle parts and accessories. It is also noted that a previous prior approval application made under Part 3, Class Q (a and b) of the GPDO (ref 16/00522/P3PAO) for the proposed conversion of another building within the same site, was refused and an appeal subsequently dismissed. This was on the basis that the building was being used for the rearing of fish for recreational angling which does not constitute agriculture under Section 336 of the Town and Country Planning Act 1990 (The Act).

It is not disputed that the application site, which for the purposes of this part of the GPDO includes the subject building and its curtilage, does lie within a planning unit which contains a mix of uses. A determination, therefore, needs to be made as to whether or not the application site was used solely for agriculture as part of a wider agricultural unit within the applicable time frames, i.e. that on 20th March 2013 the building was used solely for agriculture

The applicant has provided a sworn affidavit to corroborate that the building which is the subject of this application, has been used solely for agricultural purposes within the required timeframes. This states that:

- **GPS (North-West) Ltd** of which the applicant is the sole director, owns the agricultural building and surrounding land edged red on the site plan.
- The site was solely used for agricultural purposes as part of an established agricultural unit on 20th March 2013 and has been used for such purposes since 2005.
- Since it was erected the replacement building has continued to accommodate agricultural equipment and produce in connection with the agricultural holding (holding number CPH/21/255/0074).

Other evidence submitted by the applicant includes:

- A letter from a chartered accountant confirming that for the financial year ending April 2013, a profit for the company GPS (North West) Ltd arose from the breeding of fish, pigs and sheep.
- Receipts from Hillcrest Animal Health Ltd have been submitted which confirm that animal inspections at the site were carried out in June and July 2013.
- Animal slaughter movement records and reports confirming the transfer of 2 pigs from the site on the 20th of March 2013.

In summary, the existing building within the site was approved under agricultural permitted development rights and based on the sworn affidavit and other evidence submitted by the applicant, it is considered that it has been used to support agricultural activities within the wider planning unit. Parties dispute whether the building has been used solely for agriculture, and whilst the building may have been used for other activities besides agriculture, it is only a requirement of Part 3, Class Q (a) that the building be used solely for agricultural activities on 20th March 2013 or on the date when it was last in use. In this regard, there is no clear evidence to contradict the applicant's claim that the building was used solely for an agricultural use on the 20th of March 2013.

(b) in the case of—

- (i) a larger dwellinghouse, within an established agricultural unit—
 - (aa) the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or
 - (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;

The submitted planning statement confirms that the gross floor space of the existing building amounts to 226.8 square metres and this is below the 465 square metres threshold and the proposal would only involve the creation of 2no. dwellings.

(c) in the case of—

- (i) a smaller dwellinghouse, within an established agricultural unit—
 - (aa) the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or
 - (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;

The proposal only involves the creation of 2no. dwellinghouses with no other buildings within the application site converted for residential use.

(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—

- (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;

(ii) the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeding 5;

The proposal would not result in there being a larger dwellinghouse having more than 465 square metres of floor space and the cumulative number of separate dwellinghouses would only be two.

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

The building is not subject to an agricultural tenancy agreement.

(f) 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 see above

(g) 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

(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;

The planning history for the site does not indicate that any development under the above classes has been carried out.

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

The proposed development would not result in the external dimensions of the building extending beyond the external dimensions of the existing building.

(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);

It is considered that the proposed development would comply with these criteria.

Paragraph 105 of the National Planning Practice Guidance states that:

'Building works are allowed under the change to residential use. The permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However, it recognises that for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted. The right allows for 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 the partial demolition of the extent reasonably necessary to carry out these building operations. 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'

It is noted that representations from interested parties have been submitted, which claim that the building operations required to allow the building to function as two dwellinghouses would go beyond what could be considered as reasonably necessary under class Q (b) as new foundation works would be required and the works would amount to a rebuild rather than a conversion. These assertions are not, however, based on any structural survey.

The judgement made between Hibbitt and Another and the SSCLG and Rushcliffe Borough Council (dated 09/11/2016) provides useful guidance on the difference between a 'rebuild' and a 'conversion'. In this case, where the barn to be converted was completely open side with a corrugated mono-pitched fibre sheet roof, it was concluded that the starting point (the agricultural building) was so **skeletal and minimalist** that the works needed to alter it would be of such a magnitude that in practical reality what was undertaken was a rebuild. Mr Justice Green stated that a more apt term than rebuild might be fresh build as the development was in all practical terms starting afresh with only a modest amount of help from the agricultural building.

The key consideration, therefore, is whether or not the existing building has sufficient load bearing capacity to support the proposed building operations in order to facilitate a conversion rather than a rebuild or new development starting from fresh with no support from the existing building. In this case the application relates to a steel portal framed building which supports a single skin metal clad frame and has a ground bearing slab. Conversion of the building would involve the retention of the existing envelope of the structure and the erection of an internal timber frame to accommodate the proposed dwellings and facilitate the provision of a first floor.

The applicant has submitted a structural assessment report and addendum which conclude that following observations of the building, no dilapidation or structural issues were recorded and the existing structure was considered to be in good condition throughout. The report also states that at the time of the survey the ground bearing slab was observed to be heavily loaded with heavy agricultural equipment which would be significantly in excess of future loading which would arise as a result of the conversion. The existing structure is considered suitable for conversion and would retain all existing structural elements.

Proposed plans show that external building operations would involve the insertion of new doors and windows including the replacement of existing roller shutter doors with glazing. It is considered that the existing building would have sufficient load bearing capacity to support these works. It is, therefore, concluded that the extent of the proposed structural works to the building do not go beyond those permitted under Class Q, are reasonably necessary to allow the building to function as two dwellinghouses and would not be so great so as to constitute a rebuild or 'fresh' build.

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

The site is not in a Conservation Area.

- (k) the site is, or forms part of—
- (i) a site of special scientific interest;
 - (ii) a safety hazard area;
 - (iii) a military explosives storage area;
- (l) the site is, or contains, a scheduled monument; or
- (m) the building is a listed building.

None of the above considerations apply.

19. In accordance with Class Q 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 the items referred to in sub-paragraphs (1)(a) to (f) which are as follows:

- (a) transport and highways impacts of the development,
- (b) noise impacts of the development,
- (c) contamination risks on the site,
- (d) flooding risks on the site,
- (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,
- (f) the design or external appearance of the building.

20. Considering each of the above in turn:

a) Transport and Highways

Lancashire Highways Services confirmed that their response to prior approval application reference 16/00522/P3PAO is still relevant. This stated that the creation of 2no. dwellinghouses should not materially impact the highway network in terms of traffic generation and there would be no concerns for use of the existing access to access the proposed dwellings. It is therefore considered that the proposed development would be acceptable from a highways point of view.

b) Noise

It is not considered that the proposed development would result in unacceptable noise impacts. There is sufficient separation between the building and the nearest residential properties at 1, 3 and 3A Wood Lane all being over 30m away. High Heys Farm and Sierra Villa are also more than 30m away.

c) Contamination

The Council's Contaminated Land Officer has no concerns over ground contamination in relation to this site. This site has not been determined as Contaminated Land, and is unlikely to be determined as Contaminated Land. As such the site is unlikely to be contaminated land as described in Part 2A of the Environmental Act 1990.

d) Flooding

In terms of the flooding risks on the site, in accordance with criteria (6) of Paragraph W of Part 3 the site is not in Flood Zone 2 or 3. Although it is in Flood Zone 1 it is not in an area which has been notified to the authority by the Environment Agency to have critical drainage problems. The dwellings would not, therefore, be at risk of flooding.

e) Location and siting

This is assessed in more detail below.

f) Design/External appearance

This is assessed in more detail below.

Assessment of Criterion 'e'

21. Central Government have updated the Planning Practice Guidance (5 March 2015) in respect of this type of prior approval application. The updated guidance states:

Is there a sustainability prior approval for the change to residential use?

The permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house.

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

Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would “not be sensible or realistic”, and undesirable reflects that it would be “harmful or objectionable”.

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. That an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval.

There may, however, be circumstances where the impact cannot be mitigated. Therefore, when looking at location, local planning authorities may, for example, consider that because an agricultural building on the top of a hill with no road access, power source or other services its conversion is impractical. Additionally the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.

When a local authority considers location and siting it should not therefore be applying tests from the National Planning Policy Framework except to the extent these are relevant to the subject matter of the prior approval. So, for example, factors such as whether the property is for a rural worker, or whether the design is of exceptional quality or innovative, are unlikely to be relevant.

22. The building has road access which although not up to adoptable standards, is sufficient for vehicles and as such is sufficient for two additional dwellinghouses. It is not considered there are factors in this case that would make the change of use undesirable taking into account the advice in the NPPG.

Assessment of criterion ‘f’ –the design or external appearance of the building

23. **Apart from the insertion of new fenestration, the building would remain largely as it currently exists externally and the design and external appearance is considered acceptable and in keeping with the wider locality. In addition to this, the building only takes up a modest footprint within the wider planning unit and intervisibility between the building and neighbouring dwellings to the west is mitigated by the presence of several mature trees which are located around the site and along the western site boundary.**

CONCLUSION

24. It is recommended that prior approval is required and is granted. The conditions required by the GPDO are recommended.

Suggested conditions

1. The development under Class Q (a) and Class Q (b) must be completed within a period of 3 years starting with the prior approval date.

Reason: Required by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

2. The development hereby permitted shall be carried out in accordance with the approved plans below:

Title	Plan Ref	Received On
Location Plan	N/A	21 March 2018
Proposed Elevations	GL163F/71	21 March 2018
Proposed Plans	GL163G/61	21 March 2018
Proposed Sections	GL163F/81	21 March 2018
Proposed Site Plan	GL163F/01	21 March 2018
Plot 1 Type A Detailed Plan	GL163F/64	21 March 2018
Plot 2 Type B Detailed Plan	GL163F/66	21 March 2018
Plot 1 Type A Detailed Plan	GL163F/63	21 March 2018
Plot 2 Type B Detailed Plan	GL163F/65	21 March 2018

Reason: Required by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).