

DELEGATED REPORT

Report by Mark Kilby	Date of report: 10/06/2022	Ref: 68245/PMBPA
Registration: 23/03/2022	LDFC: 21/04/2022	Expiry Date: 18/05/2022
Site Visit: 07/05/2022	Site Notice: N/A	Press Date: N/A
Objections: 1	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Prior approval for the change of use from agricultural building to dwellinghouse

Location: Tottington Manor Farm, Turton Road, Bury, BL8 3QQ

Description

An application under Schedule 2, Part 3, Class Q(a) and Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended for the change of use of an agricultural building to a one bedroom dwelling (Q(a)) and building operations (Q(b)) reasonably necessary to convert the building to a use falling within Class C3.

The building is rectangular in planform with a mono-pitched roof oriented north west to south east approximately 10 m x 3.8 m with a roof height of 3.4 m. It is of a timber frame construction externally clad with corrugated fibre cement panels. The roof is constructed from the same materials. The building is sited approximately 3 metres parallel from the back of the highway on the north eastern side of Turton Road. The site is accessed via a gated gap in the hedgerow along Turton Road adjacent to the south east elevation of the building.

The building has recently had internal steel erected, a new concrete slab and a new roller shutter door to the south west elevation adjacent to the site entrance as evidenced by the site visit photographs can be seen to be new and clean and also photographic evidence submitted by the objector dated October 2021 showing steel being hoisted into place.

Operational development would comprise of additional door and window openings and the habitable rooms created would have adequate natural light. The submitted plans indicate that the existing roof is to remain. Internal insulation would be bonded to the external panels and internally faced with smooth steel. The proposed external finish would be externally faced with plastic coated steel panels.

A small curtilage is indicated which would not be more than the area of the building itself that includes access to it.

Relevant Planning History

None.

Publicity

Letter dated 30/3/22 to nearby addresses. Objection from one property within the vicinity of the application site.

Claimed the building has never been used as an agricultural building and has been extended. Fifty yards down the road is a blind bend and it is a serious traffic hazard. Traffic speeds up this road between 70 & 80 mph.

Statutory/Non-Statutory Consultations

Traffic Section - Objections as follows:

1. The proposal would result in the intensification of daily use of an access onto a high speed classified road that is sub-standard in terms of visibility and arrangements at the junction with Turton Road, which would be detrimental to highway safety.
2. The application and submitted plans contain insufficient information to enable the proposed parking, servicing and turning facilities within the site to be properly assessed.

Environmental Health - Contaminated Land - No Objection. No Preliminary Risk Assessment required.

Building Control commented as follows on the works that would be required to make the building habitable:

- Provide evidence that existing foundations and floor slab are suitable to support the necessary upgrade works required to the walls and roof. They could be evidence exposing the foundation construction at two trial hole sites and following this the provision report from a suitable qualified Structural Engineer.
- Provide further evidence that the existing roof structure will remain stable following the conversion works and indicate the proposed method of upgrading this element to comply with the Building Regulations.
- Provide construction details for the proposed wall upgrade with a details showing compliance with the Building Regulations.

Pre-start Conditions - Not applicable.

Unitary Development Plan and Policies

NPPF National Planning Policy Framework
NPPG National Planning Policy Guide

Issues and Analysis

The following report includes analysis of the merits of the application against the relevant policies of both the National Planning Policy Framework (NPPF) and the adopted Bury Unitary Development Plan (UDP) together with other relevant material planning considerations. The policies of the UDP that have been used to assess this application are considered to be in accordance with the NPPF and as such are material planning considerations. For simplicity, just the UDP Policy will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

The elimination of discrimination, harassment and victimisation;

The advancement of equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

The fostering of good relations between persons who share a relevant protected characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Class Q – Agricultural Buildings to Dwellinghouses

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; and 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.

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

(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;

(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;

(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;

(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;

(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;

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

(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;

(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;

(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;

(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);

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

(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.

Analysis -

The objection received calls into question the use of the building as an agricultural building with regard to Q.1 (a) that the building has never been used as an agricultural building and that the building has been extended. The applicant has provided two Affidavits, one from the applicant that the building has been in agricultural use from when the building was purchased in 2012 and a second from a farmer who used the building for the storage of hay crop from mid 2012 onwards with the applicants' permission. The Council is not aware of any contradictory evidence and as such does not dispute that the building is an agricultural building on an agricultural unit.

With the exception of Q.1(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) since 20th March 2013

The building has been altered and possibly extended in October 2021 as evidenced by photographs provided by the objector. The photographs show steel being hoisted into position to facilitate the installation of a new roller shutter door. This would constitute development within the terms of Part 6, Class B of the General Permitted Development Order -

B. The carrying out on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area, of development consisting of—

(a) the extension or alteration of an agricultural building

There has been no application for prior approval or prior approval granted to extend or alter the building and as such is unauthorised work. In any event the development carried out means the building does not benefit from the permitted development right by virtue of its exclusion under paragraph Q.1(g)(i) of Part 3, Class Q of the general permitted development order.

It is considered the proposed change of use would not be contrary to the other exclusions referred to above and as such the proposal will be assessed against the 7 specified matters under Q.2 - (1), (a) to (g).

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

(2) Where the development proposed is development under Class Q(a) only, 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 the items referred to in sub-paragraphs (1)(a) to (e) and (g), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

(3) Development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date.

With the exception of Q.2(1)(a) above Prior Approval of the local planning authority is not required for the following:

(b) Noise impacts of the development - There would be no noise impact from the proposed development.

(c) Contamination risks on the site - The Council's Environmental Health section reported that there is no contaminated land risk at the site and Preliminary Risk Assessment was not required.

(d) Flooding risks on the site - The application site is not in a flood risk zone.

(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 - By virtue of the siting and location of the building there are no issues such as the storage or movement of agricultural plant or middens that would make it impractical or undesirable for the building to change from an agricultural use to a use falling within Class C3.

(f) The design or external appearance of the building - The design and external appearance would be acceptable as it would have the appearance of an agricultural building.

(g) The provision of adequate natural light in all habitable rooms of the

dwellinghouses - All habitable rooms would have adequate natural light by virtue of the proposed window openings

The process for Prior Approval under paragraph W of Part 3 -

Paragraph W.2A(5)(b) states:

Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult—

the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority.

The Local Highways Authority have objected to the transport and highways impacts of the development:

1. The proposal would result in the intensification of daily use of an access onto a high speed classified road that is sub-standard in terms of visibility and arrangements at the junction with Turton Road, which would be detrimental to highway safety.
2. The application and submitted plans contain insufficient information to enable the proposed parking, servicing and turning facilities within the site to be properly assessed.

As such the prior approval of the local planning authority as to the transport and highways impacts of the development is required and refused.

With regard to Q(b) - building operations reasonably necessary to convert the building -

In order to benefit from the permitted development rights under Schedule 2, Part 3, Class Q of the GPDO, the proposal must involve only building operations reasonably necessary to convert the building in accordance with the definition at Class Q(b) and paragraph Q.1(i).

Paragraph 105 of What are Permitted Development Rights of the National Planning Practice Guidance (NPPG) states -

Building works are allowed under the change to residential use. The permitted development right 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 partial demolition to 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 with the external works to provide for residential use that the building would be considered to have the permitted development right.

Whilst the NPPG is guidance and not policy it is a material consideration.

Reasonable necessity can constitute any number of building operations. Given the context of Q(b), the extent of any demolition and therefore the reasonableness of any proposed

works, should be viewed with regard to what would be required to meet the minimum building standards required to convert an agricultural building to a habitable use.

The evidence submitted does not demonstrate that the building is suitable for conversion or that the required works would be limited to building operations reasonably necessary to convert, so as to be permitted development under Class Q. In reaching this conclusion, regard has been had to the High Court Judgement in the case of *Hibbitt v SSCLG* [2016] EWHC 2853 (Admin).

The timber frame could be included within the new structure but it is likely that the increased loads from the new insulation and internal steel sheets will result in significant remedial / strengthening work to be undertaken. Notwithstanding the addition of new steel within the building the applicant has not submitted a structural survey or condition report as to the capability of the building to be converted. The onus is on the applicant to show that the building is capable of facilitating the additional loading that might be required in order to allow the building to function as a dwellinghouse. Without such evidence and taken in conjunction with the comments from Bury Council Building Control the amount of operational development required to comply with building regulations would go beyond what is reasonably required for a conversion and would amount to a rebuild or fresh build.

As such it is considered the amount of operational development required to convert the building to a habitable use would go beyond what is reasonably necessary and as such it would not comply with the requirements of Q(b) and would be contrary to the practice guidance laid out in paragraph 105 of the NPPG. And the current vehicular access arrangements would impact on highway safety.

As such the proposed operational development would not be permitted development.

Recommendation: Prior Approval Required and Refused

Conditions and Reasons:

- 1 The agricultural building has been extended or altered since the 20th March 2013 and as such by virtue of the development carried out the building does not benefit from the permitted development right by virtue of its exclusion under paragraph Q.1(g)(i) of Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Development is not permitted by Class Q if - (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.
- 2 The amount of operational development required to convert the building to a habitable use would go beyond what is reasonably necessary and as such it would not comply with the requirements of Class Q(b) of Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 and would be contrary to the practice guidance laid out in paragraph 105 of the NPPG
- 3 The proposal would result in the intensification of daily use of an access onto a high speed classified road that is sub-standard in terms of visibility and arrangements at the junction with Turton Road, which would be detrimental to highway safety.
- 4 The application and submitted plans contain insufficient information to enable the proposed parking, servicing and turning facilities within the site to be properly assessed.

DELEGATED REPORT

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
Mark Kilby	10/6/22		