

Appeal against the refusal by Bury Metropolitan Borough Council of a Prior Approval application for the change of use and associated operational development of an agricultural building to form 1 dwelling at Tottington Manor Farm, Turton Road, Bury. (GR 375382;414655)

Application ref 68245

The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Appeal statement

- The appeal is made by Mr Tony Rostron against the decision of Bury Metropolitan Borough Council.
- The application Ref 68245, dated 16 March 2022, was refused by notice dated 10 June 2022.
- The proposed development is for the change of use and associated operational development of an agricultural building to form 1 dwelling.

Matters not in dispute

The local planning authority (LPA) does not raise any objections in principle regarding flood risk matters, noise or contamination, nor does it consider that the location or siting of the building makes it otherwise impractical or undesirable. It considers that *‘the design and external appearance would be acceptable as it would have the appearance of an agricultural building’* and that *‘all habitable rooms would have adequate natural light by virtue of the proposed window openings’*

The Main issues

The main issues are (i) whether recent work to the building means the change of use cannot benefit from permitted development rights under Part 3 of the General Permitted Development Order (GPDO); (ii) the amount of operational development; (iii) highway safety and (iv) parking, servicing and turning facilities.

Permitted rights under Part 3 of the GPDO

The Local planning authority (LPA), in its reason for refusal and in its officer report , does not dispute that the proposed development relates to a building being used exclusively for agricultural purposes in association with an agricultural unit on 20 March 2013, or that it remains in such a use.

Its officer report states ‘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.

Its contention is that the building has been extended since 20 March 2013 and that therefore ‘it 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’.

The 2018 version of the General Permitted Development Order (GPDO) certainly contains the above.

Class A(a) and Class B(a) of Part 6 of the GPDO permit works for the extension or alteration of a building, and as the LPA notes, if such works have taken place since 20 March 2013, permitted rights under Part 3 of the GPDO for the change of use of an agricultural building to a dwelling(s) do not apply.

But no such development has taken place since 20 March 2013 under Part 6 of the GPDO.

Part 6 Class A states that where ‘ *development consisting of—*

*(a) the erection, extension or alteration of a building is permitted by Class A
subject to the following conditions—*

(i) the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building, as the case may be’.

Part 6 Class B relating to development on less than 5 ha of land has a similar requirement.

No such applications under part 6 of the GPDO have been made to the LPA relating to the agricultural building or have been carried out under Part 6.

The LPA in its officer report accepts that no such application has been submitted since 20 March 2013.

It cannot be the case therefore, that the proposed development fails based on this criterion, and that it must follow that reason for refusal No 1 is factually incorrect .

It is true that the appellant has repaired and maintained his building by refitting the roller shutter door when it needed attention. However, this was not done under the terms of the GPDO. It was done under **S55(2) of the Town and Country Planning Act** (the Act) which allows the following : -

‘The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

the carrying out for the maintenance, improvement or other alteration of any building of works which—

affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building,

and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground’

But even if such work, carried out under S55(2) of the Act is disputed, it does not mean that it was carried out under Part 6 of the GPDO, therefore precluding the GPDO rights under Part 3.

It is not the case that the building has recently had a new concrete base fitted or internal steel erected (other than in association with the replacement roller shutter door), but even if they had been provided, they would be internal works, and which would not be classed as “development” under S55 of the Act

The LPA does not dispute that the building was used exclusively for agricultural purposes in association with an agricultural unit on 20 March 2013 (and where we have submitted evidence to that effect) nor that it is still in such a use. The restrictions relating to development under Part 6 of the GPDO clearly do not apply in this case.

Therefore, and for the above reasons the proposed development accords with the provisions of Part 3 of the GPDO 2018.

Reasonably necessary operational development

The LPA has refused the application because *‘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 (Permitted Development)(England)Order 2015 and would be contrary to the practice guidance laid out in paragraph 105 of the NPPG’*

Paragraph 105 of the Planning Practice Guidance (PPG) states as follows: -

‘What works are permitted under the Class Q permitted development right for change of use from an agricultural building to residential use?’

The right allows either the change of use (a), or the change of use together with reasonably necessary building operations (b). 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. 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.

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: 13-105-20180615'

The LPA does not state that the building is unsuitable for its conversion to a residential use. Its reason for refusal is that the '*The amount of operational development required to convert the building to a habitable use would go beyond what is reasonably necessary*'

However, the GPDO lists those things which are permissible for the associated change of use of an agricultural building and the proposed development does not exceed these items or indeed what is reasonably necessary.

The external support to the building's walls and the roof would be retained. It has a concrete floor. The PPG makes it clear that internal works do not constitute 'development'.

New openings for windows and doors are permitted under the terms of the GPDO and those provided are no more than are reasonably needed.

Similarly, the GPDO permits the building to be re roofed – though in this case the existing external roofing would be retained, with insulation underneath it on the inside of the building.

The LPA's officer report clarifies why it considers that the proposed operational development is not reasonably necessary It states: -

'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 dwelling house. Without such evidence and taken in conjunction with the comments from Bury 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'

The comments of Building Control referred to above are as follows: -

'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’.*

These are matters which would be dealt with under the Building Regulations.

Nevertheless, the appeal is accompanied by an independent structural report from Michael Pooler Associates, Chartered Civil and Structural Engineers, which concludes that ***‘calculations on the overall load bearing capacity of the steel framework confirm no increase in stresses or bearing pressures on the existing foundations or sub strata ad the proposed changes have no adverse effect on the structural capability of the building’***

Therefore, in the light of the above, the amount of operational development reasonably necessary to convert the building for habitable use, and to which the LPA objects for the reasons stated above, do not go beyond those matters stated in both the GPDO and the NPPG

Highway Safety

Part W of the GPDO states as follows: -

“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—

(a) where the increase or change relates to traffic entering or leaving a trunk road, the highway authority for the trunk road;

(b) 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;

There is existing access to the building from Tottington Road.

The use of the building for a one-bed dwelling of some 37m² is unlikely to '*result in a material increase or a material change in the character of traffic in the vicinity of the site or to an increase or change relating to traffic entering or leaving a classified road or proposed highway.*'

Even If there are any such changes, they are likely to be beneficial to highway safety. Vehicular movements are most likely to involve cars whereas visits to the present agricultural use of the building are more likely to include vehicles with trailers which will be slower moving and lengthier.

As it is, the access gate is set back from the highway by some 8 metres which allows vehicles to pull off the highway when turning into the site.

Turton Road has a 50 mile speed limit. Manual for Streets 2010 (MFS) recommends a visibility spay when set back by 2.4 metres from the highway of some 54 metres (See graph in MFS section 10. 'Visibility')



The visibility looking West is some 170 metres and over 220 metres when looking East.

Looking West: -



Looking East: -



In addition, the GPDO allows conditions to be included if they relate to those specific matters (which therefore include highway matters) which can be considered in the determination of Part 3 applications.

If necessary, we would accept a condition that details of hedge trimming to improve visibility at the junction shall be submitted to and agreed in writing by the LPA prior to the commencement of development.

For the above reasons the proposed development would not conflict with paragraph 111 of the Framework which states that *'development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'*.

Parking, servicing and turning facilities

The LPA considers that *‘the application and submitted plans contain insufficient information to enable the proposed parking, servicing and turning facilities within the site to be properly assessed’*

However, such facilities already exist in relation to the use of the building for agricultural purposes: -



While the LPA is not saying that these should have been included within the red edge of the application plan, it is the case that associated amenity land must be very limited under the terms of the GPDO to no more than the size of the floor area of the building to be converted or to the existing curtilage, whichever is the lesser. In fact, it is not necessary to show amenity space at all.

This matter arose regarding an appeal in the adjoining Borough of Rossendale at Reddish Hill Farm, Shawforth, Whitworth. (APP/B2355/W/21/3284053). When allowing the appeal, in his decision letter of the 22 March 2022 the Inspector concluded as follows: -

'18. Nevertheless, there is no requirement in the GPDO for the curtilage of a proposed conversion to include dedicated parking provision. Moreover it appears to me that there is sufficient space at or near the building to enable the parking of vehicles, which is to some extent a private agreement. There is no indication, nor would it be rational for, individuals to park further afield obstructing the highway.

19. Moreover, access and curtilage are separate concepts within the GPDO (noting the provisions of Schedule 2, Part 2, Class B). And it would be open to the appellant to formalise any associated parking arrangements via securing planning permission as the case may be. As such, although I appreciate the Council's positions, within the terms of the GPDO and with reference to the nature of the site and its surroundings, I am not of the view that the proposal would be unacceptable in terms of parking or transport and highways impacts within the terms of the GPDO'.

Conclusions

For the above reasons we ask that the appeal is allowed.

Steven Hartley BA (Hons) Dist. TP (Manc) DMS MRTPI, MRICS.

November 2022