

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H23-0345-22	Applicant:	Mr & Mrs D Ford
Proposal:	Change of Use of Barn into Residential Dwelling		
Location:	Carters Farm Oxcroft Bank Shepeau Stow		
Terminal Date:	25th May 2022		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

Planning Practice Guidance

Paragraph 105

T & CP (GPD) Order 2015

Class Q

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	1	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

The application is for a change of use of existing agricultural buildings to a dwelling under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Site Description

The buildings are part of a farmyard located on the eastern side of Oxcroft Bank to the south of Shepeau Stow village. They are timber framed with an external skin of timber cladding, tin and asbestos sheeting.

Nods Nook Barn is located to the north and associated equestrian facilities to the north-east. Nook House is situated to the south-west fronting Oxcroft Bank. Open land is located to the south and opposite to the west.

Planning History

No recent history.

Consultation Responses

Whaplode Parish Council

Supported.

LCC Highways/SUDs

Does not wish to restrict the grant of permission

Environmental Protection

Contamination - Request screening assessment or contaminated land condition.

Public

Objection received (summarised):

- Proposal does not comply with criteria within Class Q and should be refused;
- Class Q also requires consideration of flood risk by the decision maker in considering the application- it is noted that the site is in in flood zone 2-3 area of high risk;
- Whilst not technically a consideration for Class Q it is understood that the barn is used by Barn Owls for roosting and as they are a protected species this is a material consideration under the wildlife and countryside Act

Planning Considerations

Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 indicates that the following is permitted development:

- a) a change of use of a building and any land within its curtilage from a use as an agricultural building to 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.

Paragraph Q.1 sets out the circumstances where development is not permitted. The information provided by the applicant appears to satisfactorily demonstrate that the provisions of criteria (a) - (h) and (j) to (m) have been met.

Development is not permitted if the development under Class Q(b) would consist of building operations other than i) the installation or replacement of windows, doors, roofs, or exterior walls, or

water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house; and ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).

Planning Practice Guidance (PPG) provides advice on the interpretation of Class Q(b). Paragraph 105 indicates that "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".

The guidance of the PPG is therefore clear and accords with the High Court judgement *Hibbitt v Secretary of State for Communities and Local Government*, and *Rushcliffe Borough Council*. The latter concludes that Part 3 Class Q of the GPDO allows a "conversion" but does not allow a "re-build" or "fresh build".

In this case it is noted that the existing framework is timber. The structural report accompanying the application indicates that the existing timber frame is inadequate for the proposed loads. The building is not considered to be capable of being converted to residential use without building operations that would be so extensive as to go well beyond the scope of the operations permitted by Class Q, and would amount either to substantial rebuilding of the pre-existing structure or, in effect, the creation of a new building.

Moreover, the extent of works exceed that which is permissible under class Q which only permits minor works reasonably necessary to convert the building, and in particular the need to install a floor into the open element of the barns is not permitted under class Q. Neither is the complete creation of sides on a previous open barn - which go beyond the extent of class Q works.

As such, it is considered that the proposed works fail to satisfy the requirements of paragraph Q.1(i) and PPG. Consequently, the proposal is not permitted development under Class Q(b) of the GPDO.

Paragraph Q.2 indicates that where a proposal is permitted development, it is 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;
- (b) Noise impacts;
- (c) Contamination risks;
- (d) Flood risks on the site;
- (e) Location and siting;
- (f) Design/external appearance.

Paragraph W(3) of the GPDO states that an application for prior approval may be refused where it does not comply with any conditions or limitations applicable to Class Q or where there is insufficient information to establish such compliance.

Addressing the above;

Transport/Highways - The proposal would have 4 bedrooms. Three Parking spaces are available on site, plus turning facilities. An existing access road would be utilised which has junction visibility appropriate for the type and classification of road. LCC Highways do not wish to restrict the grant of permission on highway safety grounds.

Noise Impacts - Although the buildings are part of a farmyard only a building along the frontage and a building further to the rear would remain in agricultural use. Boundary screening could also be erected to alleviate any noise issues that may. It is considered that future occupiers would have an acceptable level of amenity.

Nods Nook Barn is located to the north and associated equestrian facilities to the north-east. Nook House is situated to the south-west fronting Oxcroft Bank. Open land is located to the south and opposite to the west. It is considered that the amenity of occupiers of these properties would not be materially harmed taking into consideration the present use of the buildings.

Contamination - Due to the former agricultural use of the land and buildings Environmental Protection have requested a contaminated land condition in this case.

Flood Risk - The site to which the application relates is partly within Flood Zone 2 and partly Flood Zone 3. However, it is within an area of "no hazard" within the South East Lincolnshire Strategic Flood Risk Assessment. Moreover, the proposal is a conversion so, in accordance with Paragraph 167 of the National Planning Policy Framework, 2021, the proposal should not be subject to the sequential or exception tests. However, it should still meet the requirements for a site-specific flood risk assessment.

The proposal is a "more vulnerable development". Consequently, the Flood Risk Assessment recommends that finished floor levels be 300mm above existing ground level and that floor resistant/resilient construction be incorporated. This is considered acceptable.

Location and Siting - The site is relatively isolated. However, it has previously been established that applications such as this cannot be resisted on these grounds.

The site has a satisfactory relationship with neighbouring dwellings/development.

Design/external appearance - The proposed external works are considered acceptable in terms of design/appearance.

Ecology - Whilst not technically a consideration for Class Q it is understood that the barn has been used by Barn Owls for roosting. As they are a protected species this is a material consideration under the Wildlife and Countryside Act, 1981.

Given the above, any approval would need to be subject to an ecological survey, including mitigation measures if appropriate. This could be addressed by means of a condition.

Conclusion

The building is not considered to be capable of being converted to residential use without building operations that would be so extensive as to go well beyond the scope of the operations permitted by Class Q and would amount either to substantial rebuilding of the pre-existing structure or, in effect, the creation of a new building.

Moreover, the extent of works exceed that which is permissible under class Q which only permits minor works reasonably necessary to convert the building. The installation of a floor into the open element of the barns and the creation of sides on a previous open barn go beyond the extent of Class Q.

As such, it is considered that the proposed works fail to satisfy the requirements of paragraph Q.1(i) and Paragraph 105 of Planning Practice Guidance. This accords with the High Court judgement *Hibbitt v Secretary of State for Communities and Local Government*, and *Rushcliffe Borough Council*. The latter concludes that Part 3 Class Q of the GPDO allows a "conversion" but does not allow a "re-build" or "fresh build". Consequently, the proposal is not permitted development under Class Q(b) of the GPDO.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.