



Committee and date

South Planning Committee

1 December 2015

Development Management Report

Responsible Officer: Tim Rogers

email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

<u>Application Number:</u> 15/04792/PMBPA	<u>Parish:</u>	Bitterley
<u>Proposal:</u> Application for prior approval under Part 3, Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 for the change of use from agricultural to residential use		
<u>Site Address:</u> Agricultural Building At Mill Farm Bitterley Shropshire		
<u>Applicant:</u> Mr M Wiggin		
<u>Case Officer:</u> Helen Tipton		<u>email:</u> planningdmsw@shropshire.gov.uk

Grid Ref: 355941 - 277349



© Crown Copyright. All rights reserved. Shropshire Council 100049049. 2015 For reference purposes only. No further copies may be made.

Recommendation:- The conversion is permitted development in accordance with Part 3, Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015. Prior Approval is required in terms of flooding risk. Approval is recommended subject to submission of a satisfactory flood risk assessment, no objection from the Environment Agency, Shropshire Council Drainage and subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

- 1.1 The application seeks prior approval under Part 3, Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 for the conversion of an agricultural building to create a single dwelling.
- 1.2 The proposed development would see the removal of a lean-to type building, conversion of a steel, portal framed building and a single storey building converted to provide additional residential space, an attached garage and workshop.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 Mill Farm lies adjacent to the classified road which leads from the A4117, Ludlow Road, towards Bitterley village due west of the site.
The appearance of the site is that of a traditional smallholding although it is recognised that the surrounding farmland extends to some 105 acres.
A long, private access track is situated to the rear of the farm buildings and serves the property known as 'Lowbridge'.
The associated farmhouse lies on the north east side of the buildings proposed for development and is separated from them by two unmetalled access tracks, one leading to the buildings and one leading to the farmhouse.
Bitterley Brook also runs close by, to the north side of the buildings whilst pasture stretches to the west and a band of mature trees align the dismantled railway line to the south of the site.
- 2.2 The largest building proposed for development is steel framed with two open bays at the east elevation. The walls are made up of corrugated, metal sheeting over pre-formed concrete with a corrugated, fibre cement roof.
The second building sits at a much lower level than the first with the walls also created from metal sheeting and concrete, although the roof is clad with corrugated metal sheets.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Council's Constitution states that all planning matters are delegated with the exception of, amongst others, applications made, by or on behalf of, or relating to the property of Members.
A Member currently holds a farm tenancy to the site and Shropshire Council Legal Services have concluded that, as tenant, the Member has the right to use the premises as their own. The application, therefore, relates to the property of a member and there is no power for an Officer to determine this matter as there is no delegation to do so by operation of the Council's Constitution.

4.0 Community Representations

- 4.1 Consultee Comments

4.1.1 Shropshire Council Public Protection –

Have considered the location and can confirm that public protection hold no information to suggest there may be contamination on the site requiring investigation. As a result they have no objection to this development and no conditions to recommend.

4.1.2 Shropshire Council Highways –

The 21 day consultation period will not expire until 3 December 2015 and no formal response has yet been received.

4.1.3 Shropshire Council Drainage -

The south facade of the main dwelling slightly encroaches into Flood Zone 2 and the north facade of the annex slightly encroaches into Flood Zone 3 and 2.

As this is a change of use, a simple Flood Risk Assessment Statement should be completed and submitted for approval and include:

- i. What is the flood level, if known
- ii. The existing ground levels and the finished floor levels
- iii. Extents of flooding on the site, details of any flood defences protecting the site and to what level, contingency and evacuation procedures in the event of a flood.
- iv. Consider using Flood Resistance measures:

- Installation of specialist door mounted flood barriers or flood resistant external doors
- Use of non-return valves on all ground floor discharge points from toilets, sinks and white goods
- Sealing of all inlets, below the anticipated flood water level

v. Consider using Flood Resilience measures:

- Installation of solid flooring
- Installation of internal doors and windows manufactured from synthetic material.
- Installation of internal doors with specialist hinges that allow for the easy removal of doors
- Installation of skirting boards and utility units/cupboards made of flood resilient material
- Raising of electrical points above flood levels
- Installation of water resistant plaster board

Conditions recommended for surface water drainage and informative recommended regarding use of mitigation measures in the sustainable urban drainage scheme, (SUDs).

4.2 - Public Comments

- 4.2.1 One neighbouring property has been consulted on 11 November 2015. The expiry date for neighbour consultations is the 2 December and, as yet, no representations have been received.

5.0 THE MAIN ISSUES

Whether the proposal is classified as 'permitted development'.

Whether prior approval is required in respect of the following:-

- A) The transport and highways impacts of the development.
 - B) Noise impact of the development
 - C) Contamination of the site
 - D) Flooding of the site
 - E) Whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change use from agricultural use to a use falling within class C3 (dwellinghouses)
 - F) The design and external appearance of the building.
- Note: The provisions set out in paragraph W of the GPDO 2015 apply to this consideration.

6.0 OFFICER APPRAISAL

6.1 Whether the proposal is classified as 'permitted development'.

- 6.1.1 The Order specifies permitted development for Part 3, Class Q as being development consisting of:

- (a) a change of use of a building and any land within its curtilage from 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.

- 6.1.2 Development is not permitted under Class Q where:

- (a) the site was not used solely for an agricultural use, as part of an established agricultural unit—
 - (i) on 20th March 2013;
 - (ii) if the site was not in use on that date, when it was last in use; or
 - (iii) if the site was brought into use after that date, for ten years before the date the development begins;
- (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;
- (c) the cumulative number of separate dwellinghouses developed within an established agricultural unit exceeds three;

- (d) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;
- (e) less than one 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;
- (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 since 20th March 2013, or within 10 years before the date development under Class Q begins, whichever is the lesser;
- (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;
- (h) the development (together with any previous development under Class Q / Class MB) would result in more than 450 square metres of floor space of building or buildings within an established agricultural unit;
- (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
 - (ab) 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, (conservation areas, Areas of Outstanding Natural Beauty, National Parks, the Broads, World Heritage Sites);
- (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;
- (m) the building is a listed building.

6.1.3 The proposal is to convert a building previously used for agriculture into a single dwelling unit with ancillary accommodation and garage / workshop in close proximity to the larger building. The external dimensions of the building would not extend beyond the external dimensions of the existing buildings.

Policy guidance confirms that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. Whilst it recognises that, for the building to function as a dwelling, some building operations affecting 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.

- 6.1.4 It is not the intention, however, of the permitted development right to include new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the load which comes with the external works to provide for residential use that the building would be considered to have the permitted development right. At the time of writing this report, a structural report was being prepared by the applicants agent to confirm that the works required to implement the conversion would not involve additional structural elements which could undermine the existing fabric of the building or be considered as building operations outside of permitted development. It is hoped that this structural report will be received prior to the planning committees consideration of this application.
- 6.1.5 In this case and from the evidence put forward, it would appear that, whilst the proposed openings are considered extensive, these works would fall within the range of operations set out in paragraph Q.1.(i).
- 6.1.6 The combined floor space of the buildings is 262 square metres with the area within the proposed curtilage being 205 square metres. There are no other dwellings which have been developed previously under Class Q, (or previous Class MB). The site does not form part of a Site of Special Scientific Interest, (SSSI), neither is it listed or curtilage listed.
- 6.1.7 Having assessed the application it is found to meet all of the above criteria and therefore is deemed to be 'Permitted Development'.
- 6.1.8 Having established that the conversion appears to satisfy the permitted development criteria, subject to a satisfactory structural report, it is now necessary to assess whether prior approval is required in respect to the points A to F referred to in the main issues at section 5 of this report. Should prior approval be required it is also necessary to consider whether the prior approval is granted or refused.
- 6.2 Transport and highways impacts of the development**
- 6.2.1 A separate access already exists which provides passage from the classified road to the buildings proposed for conversion. Comments from the Council's Highways Development Control team are awaited, however, the following can be noted. This lies immediately adjacent and parallel with the access to the associated farmhouse, divided only by post and rail fencing. There is sufficient space for vehicles to park without causing any highway safety issues on the public highway and the site is likely to generate less traffic to and from the highway as a result in the change of use from agricultural to residential.
- 6.3 Noise impact of the development**
- 6.3.1 The buildings sit opposite the unmetalled access to Mill Farmhouse and to a smaller outbuilding, which lies immediately south of the farmhouse. The proposal will lead to the largest group of buildings being taken out of agricultural production and so there will be no noise impact to future occupants of the buildings as a result of the proposals.

6.3.2 The buildings are sufficiently separated from the farmhouse and are a good distance away from the village, ensuring there will be no affect on neighbouring properties. The change of use would bring about a quieter environment without heavy vehicular traffic accessing the site.

6.4 **Contamination of the site**

6.4.1 The site is not located on any known historic landfill site, nor is it a known contamination site and consequently the Council's Public Protection Specialist is content that the site is unlikely to be contaminated.

6.5 **Flooding of the site**

6.5.1 The site lies close to Bitterley Brook and the fringes of the buildings subject to this application are within Flood zones 2 and 3, as defined by the Environment Agency. Shropshire Council Drainage has, therefore been consulted on the proposals as has the Environment Agency, whose response is awaited.

6.5.2 The Council's Drainage team have advised that, due to the partial siting within Flood Zones 2 and 3, a simple Flood Risk Assessment is required to establish that the development can be protected and would not exacerbate the risk of flooding. Prior approval is, therefore, required to obtain this additional information.

6.5.3 The information has been requested and it is hoped the detail will be submitted before this planning committee.

6.6 **Whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change use from agricultural use to a use falling within class C3 (dwellinghouses).**

6.6.1 As previously discussed in section 6.3, the buildings proposed for development are separated from the farmhouse and make up the largest part of the farm complex. The removal of these buildings from agricultural production will reduce any intensive commercial use at the site which could otherwise be of detriment to future occupiers. In addition, the usual permitted development rights for new agricultural buildings, (Part 6, Class A), are removed for a period of 10 years following a change of use under Class Q . Thus planning permission would be required for any new farm buildings, allowing the Council to retain control over the location and ensure protection of residential amenity. The location and siting of the building for residential use is, therefore, considered acceptable.

6.7 **The design and external appearance of the building**

6.7.1 The plans provided with the application indicate a single storey, 3 bedroomed dwellinghouse and a single storey garage and workshop, ancillary to the main house. The buildings are not a heritage asset and the structure proposed for conversion to the dwelling is a simple portal framed building. There are no features which require protection. The works proposed would result in a residential conversion of an unconventional appearance with a large, glazed area to the south east elevation. However, accommodation is proposed only to the ground floor

where any overlooking from the road is minimal. Although it is considered that the resultant scheme would not be unduly harmful to the visual amenity of the wider area, in any event, it is not deemed that prior approval is specifically required in respect of its design. Under Class Q it is necessary to retain the basic form and proportions of the building in order to meet the permitted development criteria and it is considered this scheme achieves this.

7.0 CONCLUSION

7.1.1 Based on the information provided with the application, it is considered the conversion of the building to residential use is permitted development in accordance with Class Q, subject to the Council being satisfied that no new structural elements are required to enable the conversion.

7.1.2 Prior approval is not considered necessary to adequately assess transport and highways, noise impacts, contamination risks, establishing whether the scheme is unpractical or undesirable or for the design or external appearance. However, prior approval is required to establish whether the scheme can be implemented without exacerbating flooding risks. Approval is recommended subject to submission of a satisfactory flood risk assessment, no objection from the Environment Agency, Shropshire Council Drainage and subject to the conditions set out in Appendix 1.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance:

Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015;

National Planning Practice Guidance;

National Planning Policy Framework

RELEVANT PLANNING HISTORY:

None

11. Additional Information

View details online:

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=NXCL95TD07V00>

List of Background Papers
Cabinet Member (Portfolio Holder) Cllr M. Price
Local Member Cllr Richard Huffer
Appendices APPENDIX 1 – Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The development must be completed within a period of three years starting with the approval date.

Reason : In order to ensure the application complies with the criteria of Class Q Permitted Development of the Town and Country Planning (general permitted development) Order 2015.

2. The development shall be carried out in accordance with the details submitted with the notification.

Reason: To comply with the provisions of Paragraph W of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

3. Prior to commencement of development, details of the surface water drainage including calculations, dimensions and location plan of the percolation tests and the proposed soakaways should be submitted for approval in writing by the Local Planning Authority.

Surface water should pass through a silt trap or catchpit prior to entering the soakaway to reduce sediment build up within the soakaway.

Reason: To ensure that soakaways, for the disposal of surface water drainage, are suitable for the development site and to ensure their design is to a robust standard to minimise the risk of surface water flooding. This is required prior to commencement of the works in general since it relates to matters which need to be confirmed before subsequent phases proceed in order to ensure a sustainable development.

Informatives

1. All species of bats found in the UK are European Protected Species under the Habitats Directive 1992, the Conservation of Species and Habitats Regulations 2010 and the Wildlife & Countryside Act 1981 (as amended). If a live bat should be discovered on site at any point during the development then work must halt and Natural England should be contacted for advice.
2. The active nests of all wild birds are protected under the Wildlife & Countryside Act 1981 (As amended). An active nest is one being built, containing eggs or chicks, or on which fledged chicks are still dependent. All clearance, conversion and demolition work in association with the approved scheme shall be carried out outside of the bird nesting season which runs from March to September inclusive.

Note: If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If vegetation cannot be clearly seen to be clear of birds nests then an experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

3. Barn Owls are protected under the Wildlife & Countryside Act 1981 (as amended). It is an offence to disturb the active nests of Barn Owls, this includes when they are making a nest, occupying a nest or have chicks still dependent on the nest for survival. Barn Owls can breed at any time of the year in the UK. Any offence under the Wildlife & Countryside Act 1981 (as amended) is punishable by up to a £5000 fine per individual animal impacted and up to 6 months in prison.
4. Where possible trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a closefitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.
5. On the site to which this consent applies the storage of all building materials, rubble, bricks and soil must either be on pallets or in skips or other suitable containers to prevent their use as refuges by wildlife.
6. As part of the SuDS, the applicant should consider employing measures such as the following:

Water Butts

Rainwater harvesting system

Permeable surfacing on any new access, driveway, parking/paved area

Attenuation

Greywater recycling system

Reason: To ensure that, for the disposal of surface water drainage, the development is undertaken in a sustainable manner.