

PLANNING APPLICATION REPORT

Case Officer: Amy Sanders **Parish:** Blackawton **Ward:** Blackawton and Stoke Fleming

Application No: 2331/22/PDM

Agent:

Mrs Amanda Burden
Luscombe Maye
59 Fore Street
Totnes
Devon
TQ9 5NJ

Applicant:

Mr & Mrs S Hubbard
Higher Pasture Farm
East Allington
Totnes
TQ9 7QA

Site Address: Higher Pasture Farm, East Allington, TQ9 7QA

Development: Application to determine if prior approval is required for proposed change of use of agricultural buildings to 5No. dwellinghouses (Class C3) and for associated operational development (Class Q (a+b))

Recommendation:

Prior Approval Refused

Reason/s for refusal:

The proposed development would contravene with condition 10 of planning reference 06/0934/07/F, which prevents the use of one of the buildings subject to this application, for any purposes other than those associated with agriculture or horticulture, and therefore the provisions of Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) do not apply by virtue of Article 3 (4) of the Order.

Key issues for consideration:

Whether the proposal accords with the provisions of Schedule 2, Part 3, Class Q (a&b) of The Town and Country Planning (General Permitted Development) (England) Order, 2015, (as amended).

Site Description:

The application site is located within a rural open countryside location. Higher Pasture Farm is a working farm, primarily of a sheep and cattle business.

At the site is the main farmstead and associated agricultural buildings.

To the north, east, south and west of the site is open countryside. The highway is located to the west of the site.

In regards to constraints at the site, the site falls within the Greater Horseshoe Bat SAC.

The Proposal:

The application seeks a determination as to whether prior approval is required for the proposed change of use of agricultural buildings to provide five dwelling houses (Use Class C3) together with the associated operational development. It is considered under Schedule 2, Part 3, Class Q of the Town and Country Planning) General Permitted Development Order 2015.

Consultations:

- County Highways Authority: No objection subject to a condition requiring a construction management plan to be submitted prior to works
- Ecologist DCC: No objection.

Representations:

Representations from Residents

2 letters of objection have been received and cover the following points:

- reference to earlier site planning history and the certificate of lawfulness
- one of the barns obstructs a PROW
- has PD rights been removed on the barn/s?
- misleading structural surveys

4 letters of support have been received and cover the following points:

- buildings are in an unobtrusive position
- can help with housing crisis
- good access
- buildings are in good condition

Relevant Planning History

Planning Application Ref: 06/1085/97/3

Description: Erection of farm building for cattle/sheep, implements and farm produce,

Address: Field O.S. 0075 Pasture Farm Blackawton

Decision Date: 04 August 1997

Conditional Approval

Planning Application Ref: 06/1613/97/3

Description: Formation of access drive off public highway to service new farm buildings,

Decision Date: 11 November 1997

Conditional Approval

Planning Application Ref: 06/0934/07/F

Description: Erection of livestock building and agricultural storage building

Decision Date: 19 June 2007

Conditional Approval

Planning Application Ref: 06/2142/09/AG

Description: Agricultural determination for prior notification of extension of agricultural building

Decision Date: 08 January 2010

Ag Determination details not required

Planning Application Ref: 3583/21/CLE

Description: Certificate of Lawfulness for existing use and erection of two agricultural barns without planning consent

Decision Date: 16 November 2021

Cert of Lawfulness (Existing) Certified

ANALYSIS

Planning permission reference 06/0934/07/F allowed for the erection of 2 agricultural buildings at the site. Condition 10 of the permission reads:

'10. The development hereby permitted shall be used solely for the purposes of agricultural or horticulture as defined under Section 336 of the Town and Country Planning Act 1990.

Reason: To ensure that the development hereby permitted is used solely for the purposes of agriculture and horticulture.'

This condition restricts the use of two of the buildings and thus effectively removes permitted development rights for changes of use. Article 3(4) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as amended states that:

'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order'.

Officers note that a certificate of lawfulness was granted at the site, which sought lawfulness for the existing erection of two agricultural barns without planning consent. This certificate was not sought in relation to the condition 10, and there has been no apparent breach of this condition 10 to suggest that it was no longer enforceable. As per the paragraph 011, reference ID: 17c-011-20140306, in government guidance, under the section titled 'How does a lawful development certificate relate to conditions on an existing planning permission?' it is written that:

'A lawful development certificate may be granted on the basis that there is an extant planning permission for the development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate'.

Therefore, it is assessed by Officers that condition 10 of the planning permission restricting the use of the building for agricultural purposes still applies.

There have been a number of recent appeal decisions relating to this issue.

In the case of APP/K1128/W/17/3177062, referring to previous court judgements, the inspector considers the planning condition which required the building to be used 'solely' for horticultural and agricultural purposes was 'clear and precise', defining the 'ambit' of the permission and expressly ruling out any use beyond it.

The case is summarised in paragraph 12 *'Planning permission was granted and the condition was imposed prior to the enactment of the permitted development rights in Class MB (now*

Class Q). Indeed the appellant points out that the grant of permission was before the relevant discussion in Parliament took place. However, the intent of the condition was to clearly exclude all other uses which would include those proscribed in the GPDO. There is nothing to suggest that the provisions of Article 3. (4) do not come into force simply because the relevant condition was imposed before a particular permitted development right was granted. When the condition was imposed, a change of use to a dwelling would have required an application for planning permission and the condition, and the reason for it, addressed that.'

Similarly in the case of APP/J1860/W/19/3223284, referring the Article 3(4) of the GPDO, the inspector makes it clear that *'the effect of this national restriction is that it does not therefore require an explicit reference in the decision itself.'* Reference is made in this appeal to previous court judgements and the case is summarised in paragraph 12. *'In order to benefit from any planning permission granted by Article 3 of the GPDO 2015, the development must not be contrary to any condition on an existing planning permission; Article 3(4). Here, condition X attached to planning permission XXXXX restricts such development by only allowing the use of the barn for the storage of animal feedstuff and equipment, and agricultural machinery. Having considered the case law and appeal decisions the proposed dwelling is not permitted by the GPDO 2015. It is therefore development for which express planning permission is required, and that could only be granted on an application made to the local planning authority in the first instance.'*

Also, whether a planning condition removes permitted development rights has been considered by the Courts. In *Dunnett Investments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 192, the Court of Appeal considered a case concerning a Planning Inspector's refusal to grant a certificate of lawfulness for the change of use of an office building to residential use under the GPDO because a planning condition on a previous planning permission stated:

'The use of this building shall be for the purposes falling within Class B1 (Business) as defined in the Town and Country Planning (Use Classes) Order 1987, and for no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained.'

The Court found that the wording *'and for no other purpose whatsoever'* controlled the use of the property and provided a clear and specific exclusion of GPDO rights. The wording *'without express planning consent'* was held to make it more abundantly clear that GPDO rights were excluded, by requiring a planning application if such uses were to be pursued".

Therefore, by virtue of Condition 10 attached to the original consent for the buildings (06/0934/07/F), which restricts the use of the building to solely agriculture and horticulture, the LPA does not consider the proposed change of use would be permitted development under Class Q of the GDPO. On this basis it is not considered necessary to look at whether the proposal would accord with the conditions/limitations set out in Order.

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

The above report has been checked and the plan numbers are correct in APP and the officers report. As Determining Officer I hereby clear this report and the decision can now be issued.

Name and signature:

Amy Sanders

A.Sanders

Date:

08-09-2022