

Planning Statement

CLASS Q – GPDO 2015 (AS AMENDED)

Site Address: The Dipping Barn
High Ash Farm
Bullsland Lane
Chorleywood
WD3 5BG

Our Ref: 19-157

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1. INTRODUCTION

- 1.1. MSC Planning Consultants Ltd is instructed to apply for prior notification under Schedule 2, Part 3, “Class Q of the General Permitted Development Order (England) 2015 (as amended) for the conversion of an existing agricultural building to residential (Class Q of the GPDO”).
- 1.2. The application is accompanied by the following information:
 - Revised structural survey to include details of construction
 - Revised curtilage that accords with Class X
 - A legal opinion of Paul Stinchcum QC on matters of law relating to the previous refusal
 - Plans to show internal elements
- 1.3. The purpose of this statement is to set out the details of the proposal and the evidence that underpins this application. The statement must be read in conjunction with all supplementary information, plans, technical reports and other documentation as submitted.
- 1.4. This application is now the third application for the site following the withdrawal of the same application under plan ref: 20/1984/PDA on 13.11.2020, and a revised application which was refused under Ref: 20/2584/PDA.
- 1.5. The latter was refused for the following points:
 - I. “In accordance with Paragraph W3(b)(ii) the Local Planning Authority consider that insufficient evidence has been submitted in support of the application demonstrating the extent of works would represent a conversion rather than a rebuild of the existing structure. As such, insufficient evidence has been submitted clearly demonstrating that the works required to 'convert' the existing structure into a two-storey dwelling house would fall within the limitations or restrictions under Schedule 2, Part 3, Class Q (b) and Q.1 (i)(i).
 - II. The red line indicating the application site does not include any access or curtilage proposed to serve the development. Insufficient evidence has been submitted demonstrating that the proposed extent of curtilage serving the proposed dwellinghouse would meet the requirements of Q (a)”.
- 1.6. As per the other two applications, this proposal seeks prior approval for the following:
 - The conversion of the existing building to provide a 1 x 2 bedroom dwellinghouse comprising a larger dwelling unit of approx. 195sqm. The total figure of floorspace no larger than = 459sqm.

- Carrying out of reasonably necessary building operations, i.e. installing internal partitions, and external windows/doors and other paraphernalia as may be appropriate to convert the building to dwellinghouses.

2. SITE & SURROUNDINGS

- 2.1. The Dipping Barn is located in a separate agricultural unit on the far southeastern side of the historical farm complex at Bullsland Farm, a complex which is curtilage listed, containing two listed buildings (the Farmhouse and the Threshing Barn) with a shared entrance, a hayloft, and other agricultural buildings.
- 2.2. Several of these buildings on the farm complex have planning permission to be converted to dwellinghouses (6 in total).
- 2.3. The building, known as the Dipping Barn, the subject of this application rests at the end of Bullsland Lane in an open field to the southeast of Bullsland Farm and is associated with High Ash Farm. High Ash Farm is a different land title and agricultural holding from Bullsland farm
- 2.4. The barn is accessed along Bullsland Lane.
- 2.5. The building is not located in any statutorily designated area or flood zone

3. PLANNING HISTORY & BACKGROUND

- 3.1. The table below provides a full list in summary form of the relevant history for the site.

Ref No	Development	Decision
20/2584/PDA	Prior Notification: Change of use of agricultural building to a single dwelling with operational works to building and associated curtilage	REFUSED
20/1984/PDA	Prior Notification: Change of use of agricultural building to a single dwelling with operational works to building and associated curtilage	WITHDRAWN
20/0789/PDA	Prior notification (class Q) for the conversion of agricultural building to residential (C3) forming 3 larger dwellinghouses	REFUSED Currently at APPEAL
19/2308/PDA	Prior notification (class Q) for the conversion of agricultural building to residential (C3) forming 3 larger dwellinghouses	REFUSED No APPEAL
19/0638/PDA	Prior notification (class Q) for the conversion of agricultural building to residential (C3) forming 3 small and 1 larger dwellinghouse	APPROVED
20/2584/PDA	Prior Notification: Change of use of agricultural building to a single dwelling with operational works to building and associated curtilage	REFUSED

4. LEGAL FRAMEWORK

- 4.1. An application for prior notification is NOT a test of planning policy. It is a legal application of the conditions, limitations and wording as outlined in Class Q, as required in Class W (Procedure for applications for prior approval under Part 3) and Class X (Interpretation of Part 3).
- 4.2. The application rests purely on matters of law.

Legal Principle: New Build / Conversion - Planning Guidance

- 4.3. Permitted Development in Class Q is restricted to such building operations as are “reasonably necessary to convert” the relevant agricultural building into a Class C3 dwellinghouse, and development is not permitted by Class Q if the development would consist of:

“... building operations other than ... 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 ... partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(1)(i)...”

- 4.4. Article 2 of the GPDO sets out various definitions, but there is no definition of the word "convert". There is, however, formal guidance on the issue in the Planning Practice Guidance (“the PPG” at Paragraph: 105 Reference Id: 13-105-20180615:]).

- 4.5. The PPG as amended on 15th June 2018 states as follows

“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.

*For a discussion of the difference between conversions and rebuilding, see for instance the case of *Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2)* [2016] EWHC 2853 (Admin).*

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.”

- 4.6. The following points should be noted

- I. The previous iteration of the PPG is not longer relevant i.e. that the words “*Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works ...*” and “*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*” have been **deleted** from the PPG.
- II. These words have been replaced by “*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*”.
- III. The PPG expressly confirms that: “**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.*”
- IV. The wording of the PPG relates directly to the reasoning of Green J in the *Hibbitt* case and the application must be read with that in mind.

Legal Principle: New Build / Conversion - Hibbit case (Hibbitt v. SSCLG [2016] EWHC 2853 (Admin))

- 4.7. Mr Justice Green held inter alia as follows in *Hibbitt* (noting that [31] of the judgment is included below for completeness only given that it contains reasoning related to the words which have now been deleted from the PPG):

“23...The essence of the dispute concerns whether the proposed “conversion” amounts to a “rebuild” and, if it does, whether that is relevant.

24. The question boils down to (i) whether inherent in the concept of “conversion” in Class Q is a limit introduced by the concept of a “rebuild”; and (ii) whether even if there is that limit it is already incorporated into Class Q by virtue of the other limitations in the Order.

25. ... It seems to me that to resolve this issue it is important to stand back and analyse the issue from first principles of construction. On this basis, on balance, I prefer the submissions of the Secretary of State who endorses the logic and rationale of the Inspector. This is for the following reasons.

26. First, the concept of “conversion” is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a “conversion” then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1. It is thus a freestanding requirement that must be met irrespective of anything in Q.1...

27. Second, a conversion is conceptually different to a “rebuild” with (at the risk of being over-simplistic) the latter starting where the former finishes. ... In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view, it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. ... There will be numerous instances where the starting point (the “agricultural building”) might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what

is being undertaken is a rebuild. In fact, a more apt term than "rebuild", which also encapsulates what the Inspector had in mind, might be "fresh build" since rebuild seems to assume that the existing building is being "re" built in some way. In any event, the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building. ...

28. Third, in relation to the argument that the conversion/rebuild distinctions is flawed because it is not defined and, in any event, interpreted in its normal dictionary sense covers the works in issue, there is in my judgment no need for the concept formally to be defined and the lack of a definition is not an indication that the concept lacks substantive meaning or content. The Order is directed towards a professional audience and the persons who have to make an assessment of whether works amounted to a conversion are experts, such as Inspectors, who are well able to understand what the term means in a planning context ... It is not a term that can be plucked without more directly from a dictionary. ...

29. Fourth, I also accept the broader policy argument advanced by Mr Westmoreland Smith as providing at least some modest support for the conclusion reached above. Class Q as a category of permitted development defines cases where permission is automatically granted without there being any assessment or appraisal of the merits or otherwise of the proposed development against the guidance set out in the NPPF...

[31. Fifth, the distinction between a conversion and a rebuild is implicit in paragraph 105 NPPG which states in relation to Class Q that it is not the "... intention of the permitted development right to include the construction of new structural elements for a building". It can be said that one reason for this conclusion is that a development that includes "new structural elements" is one that involves a degree of rebuild and is not a conversion.]

32. Sixth, ... an "agricultural building" can, at one end of the extreme, be a very minimalist or skeletal structure indeed. To convert such a building into a dwelling might involve a very great deal of fundamental work which in terms of its nature and extent is much closer to a rebuild than a more traditional conversion. Unless it can be said that there is some compelling policy reason why permission should be accorded automatically to such skeletal structures (and none has been advanced) then a purposive construction would tend to stray away from using the concept of an "agricultural building" as an outer marker for conversion and as a proxy for the divide between a conversion and a rebuild."

- 4.8. The following points are to be derived, reading *Hibbitt* in the light of the revisions thereafter made to the PPG.
- I. A distinction is to be drawn between "new build" (or "fresh build") and "conversion" for the purposes of Class Q of the GPDO – see *Hibbitt* [at 27].
 - II. The deletion from the PPG of the words "*Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works ...*" must

mean that the **structural strength** of the original building is **no longer** a determinative factor in this regard (although it would be relevant to the issues identified immediately below).

- III. The question as to whether the works amount to “fresh build” is one of substance, looking at the nature of the original agricultural building (whether it is skeletal/minimalist etc.); and whether the extent of works needed to alter the use of that building to a dwelling would be of such magnitude that, in practical reality, what is proposed to be undertaken is a rebuild – see *Hibbitt* [at 27 and 32].

4.9. Each case must be assessed on the facts of the case.

Definitions as applicable to Class Q

“**agricultural building**” means a building (excluding a dwellinghouse) used for agriculture and which is so used for a trade or business; and “agricultural use” refers to such uses; agricultural tenancy” means a tenancy under—

- (a) the Agricultural Holdings Act 198663; or
- (b) the Agricultural Tenancies Act 199564;

“**curtilage**” means, for Class Q, R or S only—

- (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or
- (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building,

whichever is the lesser;

“**established agricultural unit**” means agricultural land occupied as a unit for agriculture—

- (a) for Class R, on or before 3rd July 2012 or for 10 years before the date the development begins; or
- (b) for Class Q or S, on or before 20th March 2013 or for 10 years before the date the development begins;

“**floorspace**” - means the total floor space in a building or buildings (generally denoted as being an internal measurement)

“**habitable rooms**” means any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms

“**Large dwellinghouse**” - “larger dwellinghouse” means a dwellinghouse developed under Class Q which has a floor space of more than 100 square metres and no more than 465 square metres having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;

“**Smaller dwellinghouse**” means a dwellinghouse developed under Class Q which has a floor space of no more than 100 square metres having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order

5. PERMITTED DEVELOPMENT UNDER CLASS Q

The development must consist of—

Q.1 - (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; 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.”

The limitations on the above permitted development include as follows so far as floor space is concerned:

Q.1 Development is not permitted by Class Q if
<p><i>a) the site was not used solely for an agricultural use as part of an established agricultural unit—</i></p> <ul style="list-style-type: none"><i>I. on 20th March 2013, or</i><i>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</i><i>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;</i>
Complies - the building was last in use as an agricultural building.
<p><i>b) in the case of—</i></p> <ul style="list-style-type: none"><i>I. a larger dwellinghouse, within an established agricultural unit—</i> <p><i>(aa) the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or</i></p> <p><i>(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;</i></p>
Complies
<p><i>(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;</i></p>
Complies – The building is <465sqm

c) *in the case of—*

I. 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;

Complies – N/A

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;

Complies – the site to which the Dipping Barn relates is not associated with any land of Bullsland Barn.

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

Complies – the tenancy is in the ownership of the applicant.

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;

Complies – as above

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;

Complies – all works are within the fabric of the existing building – See additional drawings.

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);

See Hibbit Principles above.

- These elements can be seen and understood in the submitted plans and particulars.
- Far from being skeletal and/or minimalist, the existing building of the Dipping Barn is large and substantial. Furthermore, the application was accompanied by a Structural Report that showed that the operations would be wholly within the fabric of the existing building, which is structurally sound and capable of conversion.
- Although there will be some elements that will need to be removed, the substantial concrete frame and fabric will be retained and the new elevations (brought inwards so that the residential floor space falls beneath 465 sqm) would be structurally dependent on that frame.
- The existing floor and base would also be retained and the conversion structurally dependent on these elements also.
- Contrary to the last application we have submitted an additional plan to show the elements that are reasonably necessary proposals (in compliance with Class X).

<ul style="list-style-type: none"> Furthermore, additional operational elements such as mezzanines or additional floors are not prohibited under Class Q, as made expressly clear on the PPG. Moreover, such new elements are wholly within the fabric of the existing building and, of themselves, would not even amount to operational development as defined under section 55(2) of the TCPA. However, they are all necessary (and reasonable) to enable the conversion, supported by the substantial framework of the existing building. Simply because the external fabric (metal sheeting) may be removed, does not result in the building constituting a new build. 	
<i>j) the site is on article 2(3) land;</i>	N/A
<i>k) the site is, or forms part of—</i> <ul style="list-style-type: none"> <i>i. a site of special scientific interest;</i> <i>ii. a safety hazard area;</i> <i>iii. a military explosives storage area;</i> 	N/A
<i>l) the site is, or contains a scheduled monument; or</i>	N/A
<i>m) the building is a listed building.</i>	N/A

Q.2— Conditions

(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

The location of the site is toward the southern end of an established farm complex which is located approx. a mile from Chorleywood town centre. The site is to use the Bullsland Lane to the west of the building that currently services the barn. There will be no marked increase in the number of vehicle movements to and from the site.

Given previous evidence submitted by the Highways Authority on other applications for the wider site, Bullsland Lane can support additional traffic along this route without compromising highway safety. It is possible to provide passing bays along the access road (some already exist) within our client's land ownership if this is considered necessary/appropriate. All works that may be required are within the

applicant's ownership and we would invite a condition requiring works to be undertaken, before the first occupation of the barn.

Car parking and space to manoeuvre, so that vehicles enter and exit in a forward gear, is provided easily on-site as can be seen from the block plan.

b) Noise impacts of the development

The application site is in the countryside away from the main farm complex and any other buildings/uses that would give rise to potential adverse noise impacts. In any event, the windows to be installed will be supplied in accord with appropriate Building Regulation standards for sound insulation both internally and external cladding to reduce any impact to noise as may occur.

c) Contamination risks on the site

The building is not known to have been used for the storage, housing or other use of any animal (livestock). Together with the EA mapping data, it is confirmed that the site is not in or near to a landfill site or subject to pollution, that contamination is not an issue for this site and is purely aggregation in nature.

d) Flooding risks on the site

The site is in Flood Zone 1 according to Environmental Agency Flood map.

The site itself is in a relatively elevated position within the wider landscape as the ground level falls downwards toward the south. Given the existing nature of the site and wider surroundings, there is minimal risk of flooding in this location. Although it is intended to retain the existing hard surfacing with existing drainage mechanisms this could be replaced and/or enhanced with permeable paving to reduce the risk further.

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

f) The design or external appearance of the building and

No planning merit is to be considered as part of this application. The purpose of part f is to assess whether the external appearance is acceptable.

The appearance can be found in the submitted plans. No new structural elements are required.

The existing building has been described as above. The design has regard to Local and National Design policies.

All internal works do not form part of the application for prior approval because, under section 55(2)(a), they do not constitute development and do not, therefore, require prior approval under Part 3.

The conversion of the barn seeks to use the existing structural elements within the existing building fabric. The roof, flooring and concrete structure remain in situ (see structural plan).

The GPDO **does not** guide the decision-maker towards a specific architecture or how the converted building should appear. The permitted development right equally **does not** suggest what the building in question should or must resemble, or whether it should or must resemble the existing building, albeit with new and altered openings. Neither does it make any suggestion that the resulting building should look like an agricultural building in whatever guise that may take. The decision-maker cannot assume that the resulting building should be so.

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

As outlined in the associated plans all habitable rooms are provided with adequate natural lighting.

and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

The Red edge line – Curtilage.

- 5.3. The previous application was refused on the basis that there was no access to the building. The original curtilage plan was made smaller (around the building) at the LPAs request.
- 5.4. On a proper interpretation of the definition of curtilage as outlined in Class W (as reiterated above in S4 of this report) it clear that buildings must have an area of land around them to allow them to operate as per their original intention or use. This means that any associated land outside the boundaries of the existing building needs to be considered. However, Class W further refines curtilage as being an area of land that is immediately adjacent to and no larger than the original building. The correct interpretation of this means that an additional portion of land, other than the building itself is allowed (whichever is the lesser of a and b of Class W).
- 5.5. For a legal interpretation, I refer the LPA to the opinion of P. Stinchcum QC supplied with this application.

- 5.6. The red edge, therefore, includes an area relative to the curtilage of the existing building and an area for which it would allow the building to operate as such in its newly converted form, which is not greater than the land adjunct equivalent to the building itself.
- 5.7. As such, the new curtilage includes all those elements that the existing barn would have used for it to operate for its original and its intended uses.

6. CONCLUSION

- 6.1. For the reasons outlined above, the proposal conforms with the requirements of Class Q and the Inspector is respectfully requested to uphold the appeal and grant permission for the prior notification under Class Q, applying such planning conditions as are deemed necessary and appropriate.