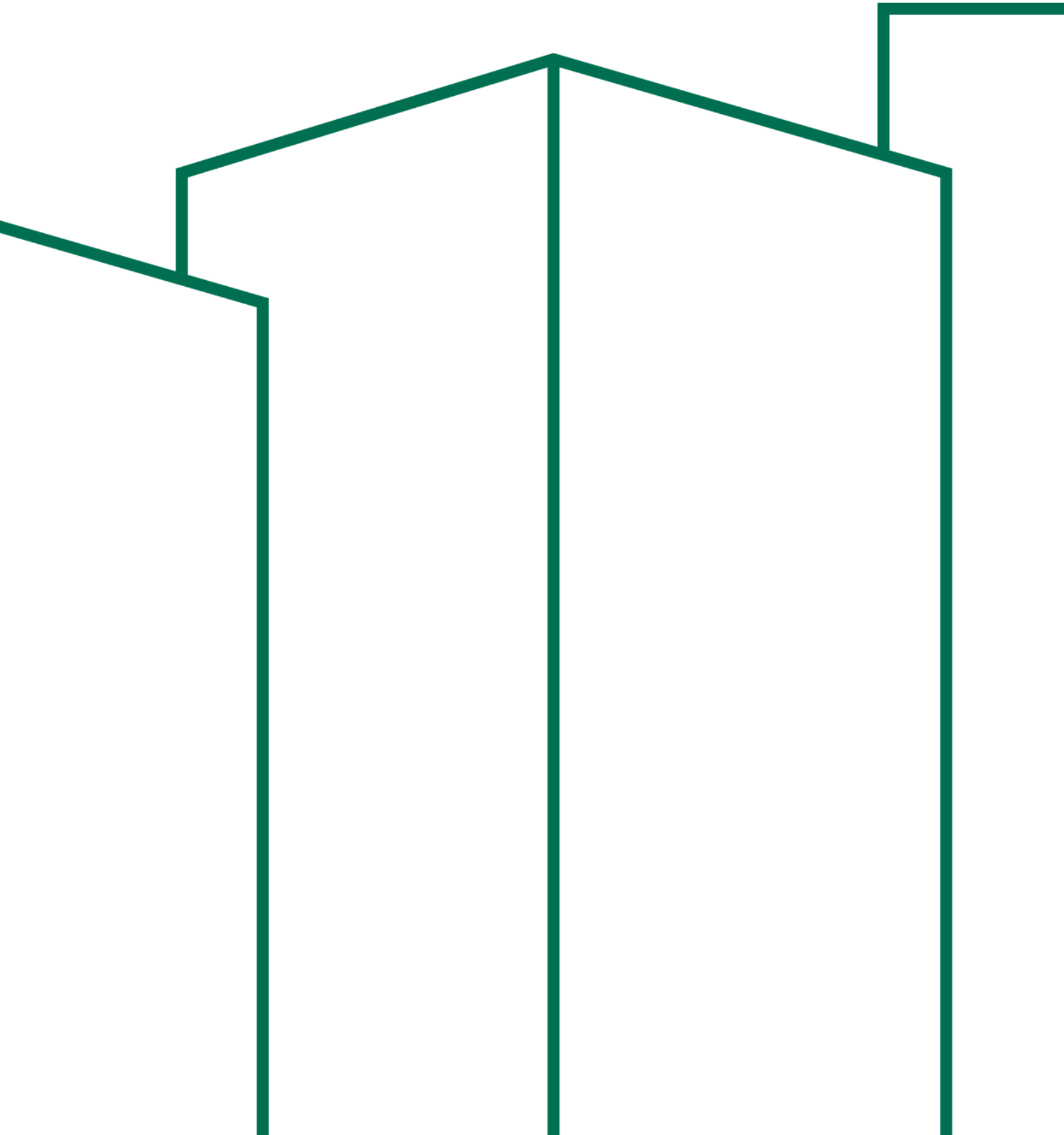




PLANNING STATEMENT

Southwood Barn
Canwell Drive
Canwell
Sutton Coldfield
B75 5SG



1.0 INTRODUCTION

1.1 This is a Planning Statement prepared to accompany a planning application submitted to Lichfield District Council on behalf of Smith Brothers Farms Ltd. The development proposed is for the change of use of a building to form 1 no dwellinghouse on land at Southwood Barn, Canwell Drive, Sutton Coldfield, B75 5SG.

Site History

1.2 The application site has been subject to three Prior Approval Applications, and an appeal to The Planning Inspectorate, which have all been refused or dismissed.

1.3 The first prior approval application (18/00095/PND) was submitted to seek a Determination as to whether or not a prior approval of the Local Planning Authority was required for the proposed change of use of an agricultural building to a dwellinghouse (Use Class C3). The application was refused on 29 March 2018, as the Council considered that insufficient information had been provided to demonstrate that the last use of the building was agricultural (Appendix 1 – 18/00095/PND Decision Notice).

1.4 A second application for Prior Notification (18/01836/PND) was itself a revised application that sought to overcome the issues raised by the previous refused Application 18/00095/PND. However, application 18/01836/PND was refused on the grounds that the location of the siting of the building makes it otherwise impractical or undesirable for the change of use. This was as the

application building has been identified as being used by bats and the building is immediately adjacent to trees which are protected by virtue of an Area Tree Preservation Order (Appendix 2 – 18/01836/PND Officer’s Report).

- 1.5 A third application was submitted in 2019 to Lichfield District Council (19/01489/PND). The application was refused as it was considered that the siting of the building is impractical and undesirable for the change of use due to the proximity of an Area Tree Preservation Order (Appendix 3 – 19/01489/PND Officer’s Report).
- 1.6 Following the third refused decision, the applicant submitted an appeal (Ref: APP/K3415/W/20/3247942 – Appendix 4 Appeal Decision). The appeal was dismissed on 24 June 2020. The Planning Inspectorate concluded (paragraph 12) that:-

“The barn was not in agricultural use on the relevant date and even if it had been unused for a period before then, there is nothing before me to support an argument that its last use was solely agricultural. Consequently, on these grounds alone I conclude that the proposals would not be permitted development under Schedule 2, Part 3, Class Q of the GDPO.”

The Application Site and Building

- 1.7 The application site is located to the south of Canwell Drive in Canwell. Canwell Drive is a private road east of London Road. The site is predominately

surrounded by open fields, with a cluster of dwellings to the northwest of the site.

1.8 The building is sited within a woodland which is subject to an Area Tree Preservation Order (1900/19119/TPO) and is located within the West Midlands Green Belt.

1.9 The application building is single storey with a dual pitched tile roof and walls of solid brickwork construction. The building measures 5.4m in width and 11.7m in depth. The eaves height measure 2.7m and the maximum height 4.5m.

1.10 The elevations show a vehicular access door on the northwest elevation, window and door openings on the southwest elevation and a door on the southeast elevation. There are no openings along the northeast elevation.

1.11 Internally the building is sub-divided by a full brick cross wall at mid length. The southeast half is further sub-divided by a longitudinal wall creating a small space on the southwest side.

Application Proposals

1.12 It is proposed to convert the existing building to deliver a one bed single storey dwelling. Windows and doors would be inserted as appropriate, utilising the existing openings. The proposed development will be undertaken without any requirement to extend the footprint of the building. The conversion of the

building to residential use can be undertaken without the need for the construction of any new structural elements to the building.

1.13 The internal layout comprises of an open plan living room/kitchen/diner, a bathroom, and one double bedroom.

1.14 The proposal includes the provision of private residential outdoor amenity space, associated landscaping and parking. It is intended that a high-quality conversion of the building will lead to an enhancement of the immediate setting and contribute to the identified need for homes within the rural areas of Lichfield.

1.15 In terms of design, the overriding building style will be retained, respecting the traditional rural setting.

1.16 Parking is to be provided on hardstanding to the front of the property with provision to be delivered inline with policy. Vehicular access will be via the existing driveway off Canwell Drive.

1.17 Due to the orientation and separation distances between the proposed and adjacent properties, it is considered that the proposed dwelling does not overlook or overshadow the neighbouring properties.

1.18 The site is located directly adjacent to an Area Tree Preservation Order, no trees need to be removed to allow for the conversion scheme.

2.0 PLANNING POLICY

National Planning Policy Framework (The Framework)

- 2.1 The application site is located within the Green Belt. The Government's policies concerning the Green Belt are contained in the National Planning Policy Framework (the Framework). Within Green Belt it is stated (paragraph 137) that there is a general presumption against inappropriate development since inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- 2.2 The Framework identifies certain forms of development that are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These include **“the re-use of buildings provided that the buildings are of permanent and substantial construction”** (paragraph 150(d)) and **“the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building”** (paragraph 149(c)).
- 2.3 The application site is in a rural area outside of any recognised settlement. Local Planning Authorities are advised (paragraph 80) that they should avoid new isolated homes in the countryside unless there are special circumstances. One of the special circumstances identified is where **“the development would re-use redundant or disused buildings and enhance its immediate setting”** (paragraph 80(c)).

2.4 Paragraph 47 of the Framework reconfirms the requirement (Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70 of the Town and Country Planning Act 1990) that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 2 of the NPPF confirms that the Framework “**is a material consideration in planning decisions**”.

Development Plan

2.5 The Lichfield District Local Plan Strategy 2008 – 2029 was adopted on 17 February 2015. The Local Plan Allocations Document (LPAD) was adopted in 2019 and contains a small number of general policies and the Local Planning Authority’s housing allocations. There are no policies of the LPAD that are considered relevant to this planning application.

2.6 The following policies of the Local Plan Strategy are relevant to the determination of this application:-

- Policy NR1 : Countryside Management
- Policy NR2 : Development in the Green Belt
- Policy BE1 : High Quality Development
- Core Policy 1: The Spatial Strategy
- Core Policy 2: Sustainable Development
- Core Policy 3 : Delivering Sustainable Development
- Core Policy 6 : Housing Delivery
- Rural Policy 1: Rural Areas
- Rural Policy 2: Other Rural Settlements

2.7 The Local Plan is also supported by Supplementary Planning Documents (SPDs). Those of which are considered most relevant to the proposed development is the Rural Development SPD, which was adopted in December 2015. The SPD provides further detail on policies relating to development within rural areas of the Lichfield District.

Emerging Development Plan

2.8 The Council are reviewing the Local Plan. Once adopted it will replace the current Local Plan Strategy and the Local Plan Allocations Document. Until the time the new Local Plan is adopted the Council will continue to use the existing Local Plan when making planning decisions.

2.9 The pre-submission Plan has recently (July – 31 August 2021) undergone public consultation. It is anticipated that the Local Plan will be adopted in Autumn 2022.

2.10 The following policies of the emerging Local Plan are considered of relevance to the scheme:-

- SP1 : The Spatial Strategy
- LT1 : Parking Provision
- Strategic Policy 11 : Protecting Green Belt Land
- Strategic Policy 12 : Housing Provision
- H1 : Achieving a balance housing market and optimising housing density

3.0 PLANNING CONSIDERATIONS

3.1 The application raises the following issues:

- i) The principle of development and whether the development amounts to inappropriate development within Green Belt.
- ii) The effect of the development upon the openness of the Green Belt and the purposes of including land in it.
- iii) The effect of the proposal on the surrounding countryside
- iv) Other Material Considerations

Issue 1 : The principle of development and whether the development amounts to inappropriate development within Green Belt.

3.2 The application site is located within Green Belt. Local Plan Strategy Policy NR2, indicates that within Green Belt, the construction of new buildings is regarded as inappropriate unless it is for one of the exceptions listed in the Framework.

3.3 Paragraphs 147, 148 and 149 of the Framework are to be read together; the erection of buildings in Green Belt is inappropriate and only permissible under very special circumstances unless it falls within the list of exceptions set out in paragraphs 149 and 150 of the Framework. The Framework states (paragraph 150(d) that the reuse of buildings is not inappropriate development provided that the buildings are of permanent and substantial construction and provided that the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.

3.4 The application is accompanied by a Structural Appraisal prepared by Mark Dady Associates. This report demonstrates that the application building is of permanent and substantial construction and can accommodate the proposed use without the need for substantial alteration or rebuilding. In this respect the report concludes:

“The existing building was in sound structural condition, and free from any significant structural defect. Localised repair to the northeast wall was required, but this was not considered to constitute demolition and rebuilding.

The existing construction was of loadbearing masonry construction, and therefore the building was inherently suitable for conversion to residential accommodation.

Since very little structural alteration would be required to achieve a conversion, we consider that the existing building would be adequate for its proposed use.

In our opinion, therefore, the requirement that the existing building should be structurally strong enough to take the loading which comes with the external works, is satisfied.”

3.5 Paragraph 149(c) of the Framework sets out that the **“extension or alteration of a building”** is not inappropriate within Green Belt, **“provided that it does not result in disproportionate additions over and above the size of the original building”**.

- 3.6 No new windows or openings are proposed; the existing windows and openings have been utilised and retained. The proposed alterations to the application building do not result in any additions over and above the size of the original building. It is thus submitted that the proposed work required to convert the building to residential accommodation does not represent inappropriate development.
- 3.7 In terms of the location of the building, Core Policy 6 of the LPS, sets out that **“changes of use and conversion schemes”** will be permitted in the **“remaining rural areas”** i.e., outside Lichfield, Burntwood or the Key Rural Settlements.
- 3.8 The proposed works, and modest extension, as confirmed by the Structural Report, represent a change of use and a conversion scheme. The application building is not an isolated building being located adjacent to residential properties in the immediate vicinity, to the northwest of the application building.
- 3.9 Considering the above, the proposed development is considered to represent appropriate development in the Green Belt. It is also consistent with Core Policy 6 and Policy NR2 of the LPS and the Framework. The principle of development is thus considered acceptable.

Issue 2 : The effect of the development upon the openness of the Green Belt and the purposes of including land in it

- 3.10 The Framework identifies (paragraph 137) that the **“fundamental aim”** of Green Belt policy is to keep land permanently open; the essential

characteristics of Green Belt are stated (paragraph 137) to be their **“openness and their permanence”**.

3.11 The word **“openness”** is not defined in the Framework. The lack of definition allows some freedom of interpretation. Part of the fundamental aim of Green Belt policy is to prevent urban sprawl, with the intention of helping to protect the countryside. An assessment as to whether **“openness”** is to be served by the proposal in the Green Belt is a matter of judgement based on the merits of each case. It would be reasonable to conclude that **“openness”** is preserved if there is no significant harm caused to the status quo.

3.12 The application proposals involve the reuse of an existing building. The proposed use of the building does not require any increase in the footprint or scale of the building. The proposed use can be introduced without the need for extension or significant alteration. In these circumstances it is submitted that the application proposals would not have a greater impact upon the openness of the Green Belt than its present use.

3.13 Furthermore, the proposed development would not result in encroachment to the surrounding countryside resulting in urban sprawl. The proposed development would not result in neighbouring towns and villages merging into one another or make this more likely. The proposed development will not affect the setting or special character of a historic town. The proposed development will not therefore conflict with the five purposes of including land within the Green Belt as identified in paragraph 138 of the Framework.

3.14 It is submitted that the reuse of an existing building within the Green Belt will not prejudice its openness since the building is already there. In these circumstances the proposed development would not harm the openness of the Green Belt or conflict with any of the purposes of the Green Belt listed in paragraph 138 of the Framework. The proposals would not therefore represent inappropriate development in the Green Belt.

Issue 3 : The effect of the proposal on the surrounding countryside.

3.15 The rural SPD document refers specifically to the design of rural housing. The document advises that in terms of residential development, it is important that only **“appropriate and sympathetic housing is permitted, which helps maintain the vitality of rural areas”** (paragraph 2.1). **“The construction of isolated homes in the countryside should be avoided unless there are special circumstances, such as the need for a rural worker to live at their place of work, or where a redundant or disused building would be reused, leading to an enhancement of the immediate setting”** (paragraph 2.2).

3.16 Appendix B of the SPD document sets out specific guidance on the reuse of rural buildings. Whilst the reuse of existing buildings is generally supported, it is noted that **“not all rural buildings are suitable for conversion, with some requiring major or complete reconstruction or alteration. This would effectively represent the creation of a new building in the countryside which would in most circumstances, be contrary to policy** (paragraph 1.2). A structural assessment of the application building has been undertaken which concludes that the building is structurally sound and does not require major or complete reconstruction to meet the criteria for a residential conversion.

3.17 It is recognised in the SPD that successful conversion schemes should, take account of good design; minimise impacts on local ecology; not require extensive alteration or extension; be served by appropriate access such that the highway is not compromised; and there should be no adverse impact on residential amenity (paragraph 2.2). It is considered that the proposal meets the key tests for a residential conversion scheme.

3.18 Section 3 of Appendix B sets out some general design principles for the conversion of rural buildings, and states that **“it is essential that the established character of the building remains in keeping with its surroundings”**. **“Every effort should be made to retain the original simplicity of scale and form and to alter the building as little as possible.”** (paragraph 3.2). The proposal has been designed so that the original structure will be retained, and new materials will be introduced sympathetically to respect the rural character of the building and its surroundings.

3.19 Proposals should have regard to the degree of separation and the relative disposition of the proposed dwelling to the existing dwellings, with this in mind, the proposed dwelling has been designed so that it will not have an adverse impact upon the living conditions of the adjacent dwellings. It is submitted that the proposed development will procure benefits to the existing neighbours that are located close to the application site, as they will benefit from the improved outlook from the enhancements to the appearance of the application building.

3.20 The SPD also considers the potential impact upon ecology, recognising that rural buildings can provide important habitats. The submission is accompanied by a Bat and Bird Appraisal which does not raise any issues to the existing habitats on the sites and recommends improvements to increase the sites biodiversity value.

3.21 It is contended that the development proposed within this application complies with both the general and specific guidance expressed within the Rural Development SPD and the design policies set out in BE1.

Issue 4: Other Material Considerations

Bat and Bird

3.22 The preliminary Bat Roost Assessment and Bird Survey prepared by S. Christopher Smith in November 2021. The report concludes:

- **There is evidence of bats using the buildings as a place of shelter.**
- **There was no evidence of birds nesting in the building.**
- **There is a roosting opportunity against the ridge board.**
- **Emergence surveys have shown one brown long eared bat using the building as a Day roost. No other bats have been seen entering or leaving the building in 2018 or 2019.**
- **A replacement bat loft can be created on site if planning permission is granted in the existing brick built animal pen and house on the site and be dedicated as a bat loft.**
- **A brick built bat box can be installed in the gable apex of the converted building to be built on the site to provide new bat roosting**

opportunities as required by the National Planning Policy framework (2012).

- **A method of working must be put in place with contractors to ensure that in the event of bats being found they will not be injured.**

3.23 It is evident from the submitted Bat Survey that a new bat roost for the Brown Long Eared bat can be provided for within the existing brick-built animal pen immediately to the south of the application building. Furthermore, a brick-built bat box can be installed in the gable apex of the converted building. These measures can be secured as part of the Bat Licence Application that will be required and is dealt with under separate legislation.

3.24 The Council's Ecologist raised no objection to the most recent application (19/01489/PND), neither did The Planning Inspectorate raise any issues regarding ecology in the appeal decision. The Council's Ecologist commented that they are **"satisfied that appropriate replacement provision can be provided.....It is considered that if reuse of the building did not occur then, over time, the building would further degrade and result in the loss of bat roost."** (Appendix 3, Page 8)

Trees

3.25 The site is located within a protected woodland. The trees that are covered by Area Tree Preservation Order 1990/19119/TPO are principally located to the northeast and northwest of the application building.

3.26 A Tree Survey has been prepared by Bramley Tree Consultancy Ltd on 13 November 2021. The majority of the site is covered in trees and due to this the significant trees directly adjacent to the barn to be developed, the access into the site and the proposed new road access have been surveyed individually. The remaining trees have been grouped, as they created woodland areas. The Report concludes (page 6):

- **The majority of the trees cannot be seen from the road although the trees situated at the proposed new road access, T22 – G28, do provide a high level of amenity value to the area.**
- **T02 Ash, is situated to the south of the barn and has a limited life expectancy, the tree’s crown is slightly sparse, and there is an amount of dead wood present along with a number of lost limbs. T03, Sycamore is growing in close proximity to the Ash and has therefore resulted in a tree of suppressed form.**
- **T04 - Lime, is a large mature tree to the east of the barn. The tree becomes twin stemmed at approximately 4m, although the union appears to be in good condition.**
- **T05 – Beech, is a large beech tree situated to the east of the barn, there is an open cavity at approximately 6m high on the stem. The extent of the cavity should be assessed prior to development, this is to assess whether any mitigating works need to be undertaken to allow for retention.**
- **G06 – Mixed species, is a section of semi wooded area to the south east. This woodland extends outside of the development site and is**

made up of mainly Lime, Acer and Beech. The woodland would create a nice feature within the area if the barn is developed.

- **T07 – Sycamore, T09 - Birch T10 and T11 – Norway Maple, are situated to the north of the barn. These trees are in poor or fair quality and do not provide much value to the area.**
- **T08, T13 – Lime and T12 – Sycamore are large mature trees that are to the north and west of the barn. The trees are in good condition and due to their size they contribute highly to the area.**
- **T14 – Lime, is a large heavily leaning tree on the edge of G15. The tree appears to be in good condition although growing at a severe angle. Due to its size and lean it is very visible, although it does lean out over what would be the access drive to the development.**
- **G15 – Mixed species, is a woodland strip that runs down the west boundary of the site and made up of predominately Horse Chestnut, with some Lime, Beech and Pine. The area is mainly made up of mature trees although there are some semi mature trees dotted around. The majority of the Horse Chestnuts are displaying signs of bleeding canker with major dead wood also being present. The semi mature Horse Chestnuts appear to be displaying the worst symptoms of the disease. Due to the amount, condition and the age of the Horse Chestnuts it would be prudent to start a rejuvenation of this area.**
- **T18, T20 – Lime and T21 – Beech are large mature trees that are situated to the front of the site, the trees are in good condition and make stand out features as you access the area. T21 is situated within the driveway of the adjacent property. Between the trees is T19 – Sycamore which is heavily suppressed resulting in a tree of poor form.**

- **G16 – Yew, is a group of tall yew trees that are along the western boundary, due to previous running operations there is not much foliage to the lower section of the group. Although the group provides a good screening it does not provide much amenity to the area.**
- **T23 – Horse Chestnut, is situated adjacent to the road within the area of the proposed new road access. This is a large mature tree that is highly visible from Camwell Drive.**
- **T22 to T27 are also situated within the new road access point although they are not as impressive as T23. T22 – Oak, is adjacent to the road, although it is highly suppressed by T23 leading to an asymmetrical crown. T24 – Sycamore, is a tree of little amenity value and a scrappy appearance. T25 – Horse Chestnut, is in fair condition although it has historically lost its leader and T26 – Oak has a squat broad form, it does not have a main stem rather two large branches growing in a more horizontal fashion.**
- **G27 – Mixed species, which is situated in the adjacent property, runs along the site of the proposed new access road. It is made up of predominately Horse Chestnut and Oak.**

3.27 Vehicular access to the building is achieved by driving through the protected woodland; the residential use of the application building will thus use the existing vehicular access to the application building. In other words, the residential use of the application building would not give rise to any greater harm to the protected trees than the baseline uses in terms of the provision of access.

3.28 Further, The Planning Inspectorate's appeal decision did not raise any objection or concerns regarding the impact of the change of use on the protected trees.

3.29 Furthermore, the future occupier of the application site would choose to live in the property having full regard to the fact that the woodland in the vicinity of the application building was covered by a Tree Protection Order; this is a matter that would be drawn to their attention during the local search procedure. Consequently, residents occupying that property would do so in full knowledge of its sylvan location; it is likely to be one of the reasons why they choose to live in that property. In such circumstances seasonal leaf picking and regular cleaning of gutters alone would not amount to special circumstance to warrant works or removal of the trees, particularly if they lie outside of the site boundary.

3.30 The proposed development does not require the felling of any tree. The car parking area and garden has an area of some 65 sq. m. It is respectfully submitted that a private garden area of such small dimensions would not result in a scale of domestic activity that would impact upon the very widely drawn Area Tree Preservation Order 1990/19119/TPO. In these circumstances it is respectfully submitted that it is both practical and desirable for the building to be used as a dwellinghouse.

4.0 CONCLUSIONS

4.1 The application relates to the reuse of an existing building in a rural area to form a single dwelling. The building is of a permanent and substantial construction and the proposed use can be introduced without major or complete reconstruction. The scheme for the conversion of the application building retains its traditional character, thus safeguarding the character and appearance of the building.

4.2 It is maintained that the proposed conversion is supported by national and local planning policy. The Framework supports the reuse of empty buildings for residential purposes, and the reuse of redundant or disused buildings which leads to an enhancement of the immediate setting. Similarly, the Lichfield District Local Plan states that the reuse of buildings will be encouraged as a sustainable option, and when considering residential development in rural areas in particular, change of use and conversion schemes will be supported by the Council.

4.3 The proposed reuse of the application building as a dwelling would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it. For this reason, the proposed development is not inappropriate development in the Green Belt and would therefore be entirely consistent with paragraphs 145 and 146 of the Framework, together with Local Plan Policy NR2.

4.4 No 'other harm' has been identified including in relation to protected species, access or neighbouring amenity.

4.5 In the light of the above circumstances, a planning permission should be granted.

LH/CMF/5685

3 December 2021

5.0 APPENDICES

- Appendix 1 : Decision Notice 18/00095/PND dated 29 March 2018

- Appendix 2 : Planning Officer's Delegated Report in respect of Application 18/01836/PND

- Appendix 3 : Planning Officer's Delegated Report in respect of Application 19/01489/PND

- Appendix 4 : The Planning Inspectorate Decision dated 24 June 2020 APP/K3415/W/20/3247942

LH/CMF/5685

3 December 2021

**Decision Notice 18/00095/PND
dated 29 March 2018**

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Your ref
Our ref 18/00095/PND
Ask for Vanessa Morgan
Email Vanessa.morgan@lichfielddc.gov.uk

Lichfield
district council
www.lichfielddc.gov.uk

District Council House, Frog Lane
Lichfield, Staffordshire WS13 6YX

CT Planning
Three Spires House
Station Road
Lichfield
Staffordshire
WS13 6HX

Direct Line 01543 308151
Customer Services 01543 308000

29th March 2018

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
CHANGE OF USE OF AGRICULTURAL BARN TO FORM 1NO DWELLINGHOUSE
SOUTHWOOD BARN, CANWELL DRIVE, CANWELL, B75 5SG

Further to your application for Prior Notification registered on the 17th January 2018, submitted in relation to the change of use of agricultural barn to form 1no dwellinghouse at the above site. I can confirm that following consideration of the details submitted, the Local Planning Authority has determined that prior notification be refused.

The Local Authority must assess this proposal against the qualifying criteria listed under paragraph Q.1 of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 hereafter referred to as the GPDO.

The abovementioned criteria also identifies that development will not be permitted by Class Q if the building, subject of the application, was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013, or if not in use on that date, when it was last in use. Insufficient information has been provided as part of this application to demonstrate that on the aforementioned date the building was in agricultural use. Insufficient information has also been provided to demonstrate that the last use of the building was agriculture as part of an established agricultural unit. Accordingly, in the absence of information to demonstrate otherwise, permitted development rights do not apply. The application therefore also fails under Part W(3)(b).

Accordingly, it is considered that the building does not meet the qualifying criteria of Class Q of the GPDO. Consequently, your application for prior notification is refused.

Yours Faithfully,

pp Planning Development Manager
Development Management



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MyStaffs App

**Planning Officer's Delegated Report
in respect of Application 18/01836/PND**

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Application No: 18/01836/PND

Description of Development: Change of use of agricultural barn to form 1no dwellinghouse and associated operational development

Site Address: Southwood Barn, Canwell Drive, Canwell, Sutton Coldfield

RECOMMENDATION: Prior approval refused

Schedule of Plans:

1508/01

1508/02

1508/03

Reason for Refusal:

The Local Authority must consider whether prior approval is required for this development against the conditions listed under Paragraph Q2 of the Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015. The conditions identify that development will not be permitted by Class Q if the location or siting of the building makes it otherwise impractical or undesirable for the change of use. The building subject to this application has been identified as being used by bats. The application fails to demonstrate that the proposal would not have a negative impact upon protected species or habitats.

Immediately adjacent to the site are trees which are protected by virtue of an Area Tree Preservation Order (1990/19119/TPO). By reason of the close proximity of these trees and the associated domestic activity which would arise, including the provision of parking and boundary treatments, the proposed change of use has the potential to directly and/or indirectly impact upon these protected trees or lead to future pressure for works to the trees. Therefore, the siting of the building is considered to be impractical and undesirable.

Accordingly, it is determined that the prior approval is refused.

PLANNING POLICY

General Permitted Development Order, Part 3, Class Q

National Planning Policy Framework

National Planning Practice Guidance

RELEVANT PLANNING HISTORY

18/00095/PND - Change of use of agricultural barn to form 1no dwellinghouse - Prior Notification Refused 29/03/2018

Temporary Stop Notice served on 16th October 2013 with regard to the erection of a building, siting of a caravan, use of the land for a tree surgery and pest control business.

CONSULTATIONS

Hints Parish Council – No objection to the change of use of the building itself, there are some concerns regarding the long and narrow access to the property which may make it “impractical or undesirable” for conversion to a dwelling with regard to item Q2(e) of the GPDO. (10.01.2019)

Ecology Team (LDC) - The bat scoping survey provided as part of this planning application has identified that bats are utilizing the property, as such it is a confirmed bat roost. The ecological survey states that emergence surveys should be undertaken to establish how bats are fully utilizing the site. Further emergence surveys must be completed and submitted to the LPA prior to the determination of the application. (25.01.2019)

Environmental Health Team (LDC) – No comments. (16.01.2019)

Tree Officer (LDC) - Comments were issued on the 18th of January 2018 relating to a previous application on the site (18/00095/PND). These comments appear to be germane to the current application and an objection to the development is maintained on this basis. (21.12.2018)

Comments to previous application, 18.01.2018: Object, the site is within a woodland protected by a TPO. Criteria E of Class Q of the GDPO is to determine whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change to C3 use. It is viewed that the siting would be both impractical and undesirable due to; shading leading to problems with daylighting and sunlight to habitable rooms, lack of meaningful amenity space, increased use of heating and lighting, overbearing and apprehension of danger from protected trees, potential for applications to do work to protected trees; further impacts to the protected woodland from the expansion of domestic activities beyond the curtilage.

Highways (SCC) – No objections. Canwell Drive is a private road, the level of development proposed would not have a severe impact on the current junction of Canwell Drive with London Road which is where Canwell Drive meets adopted highway. (04.01.2019)

Severn Trent Water – No objection and do not require a drainage condition to be applied, as the proposal will have a minimal impact upon the public sewerage system. (03.01.2019)

LETTERS OF REPRESENTATION

yes / no

Five comments received from neighbouring properties and the estate management company, comments summarised as follows;

- The access route is a private road, outside of the ownership of the applicant. The applicant can only use the road with prior consent of the owners.
- An assumed right of way does not exist.
- The access road is narrow, and shown incorrectly on the plan.
- Canwell Drive will have increased traffic, and not replace agricultural traffic.
- The proposal is contrary to policy QE3 as the proposal would impact the existing parking for the neighbouring properties.
- The proposal is contrary to policy QE7, as protected species may be harmed.
- The proposal is contrary to the guidance in PPS9.

- The wood is TPO'd, the introduction of a dwelling would need light.
- The proposal will damage the protected woodland.
- Trees have been cleared within the site.
- Unclear as to whether the development is residential or commercial.
- When including the access road the curtilage is 1200m².
- The drainage is provided by Canwell Estate Company Ltd not Severn Trent Water.

DESCRIPTION OF SITE & LOCATION:

The application site comprises a brick built building south of Canwell Drive in Canwell. Canwell Drive is a private road east of London Road. The site is predominately surrounded by open fields, with a cluster of dwellings to the north west of the site. The building is sited within a woodland which is subject to a Tree Protection Order. The site is located within the West Midlands Green Belt.

PROPOSALS

This application relates to the conversion of a single storey building to create 1 one bedroom dwelling and seeks a determination under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as to whether the prior approval of the local planning authority will be required.

The existing building is single storey with a dual pitched roof. The building measures 5.4m in width and 11.7m in depth. The eaves height measure 2.7m and the max height 4.5m. It is proposed to convert this building to a dwelling consisting of 1no bedroom, bathroom, lounge/kitchen and hall. The curtilage for dwelling measures approximately 78m². Access will be from Canwell Drive.

DETERMINATION

Permitted Development Criteria

The determination of this application should be assessed firstly as to whether the building to be converted to residential use (Class Use C3) meets the criteria as set out in Schedule 2, Part 3, Class Q of the General Permitted Development Order and does not fall within any of the exceptions criteria set out in paragraph Q.1 thereof.

(a) the site was not used solely for an agricultural use as part of an established agricultural unit—

(i) on 20th March 2013, or

(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

(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;

The previous application (18/00095/PND) was refused as a lack of information was available to the LPA to demonstrate that the last use of the building was agriculture. The current application has been submitted with a supporting statutory declaration which confirms that the building was in agricultural use on 20th March 2013. The LPA holds no counter evidence to this, as such it is considered that the building was in agricultural use on the specified date.

(b) in the case of—

(i) a larger dwellinghouse, within an established agricultural unit—

(aa) the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or

(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;

The proposal is not for the above.

(c) in the case of—

(i) a 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;

The proposal is for 1 no smaller dwellinghouse, with a floor space of 62m².

(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;

No development under Class Q has previously been carried out within this agricultural unit.

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

(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;

The site is not occupied by an agricultural tenant, and an agricultural tenancy has not been terminated in the last year.

(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:

No development under Class A or Class B of Part 6 have been carried out.

(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;

The proposal does not seek to extend the existing building.

(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);

The applicant has submitted a structural survey with this application, which advises that the building is structurally sound and suitable for renovation. It will need localised repairs to the north east wall, and the building is strong enough to facilitate the proposed fenestration. It is considered that the overall level of new works, which primarily involves the repair of existing sound walls and installation of windows and doors within existing openings are such to evidence that the building is capable of functioning as a dwelling, without significant building operations.

(j) the site is on article 2(3) land;

(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; or

(m) the building is a listed building.

The application site is none of the above.

OBSERVATIONS

The interpretation of Part 3 of the Order requires that the curtilage of any converted barn be *“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 an area immediately beside or around the agricultural building no larger than the land occupied by the agricultural building”*.

The proposal would have a curtilage of 124m² (including the building), this is equal to the land occupied by the building.

Given the above it is considered that the proposal meets the required criteria and can access this form of change of use through Permitted Development.

Prior approval

This application relates to the conversion of an agricultural building to create two dwellings and seeks a determination under Class Q of the Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as to whether the prior approval of the local planning authority will be required as to:

(a) transport and highways impacts of the development,

- (b) noise impacts of the development
- (c) contamination risks on the site
- (d) Flooding risks on the site
- (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 (dwellinghouse) of the Schedule to the Use Classes Order

Determining Issues under conditions Q2(1)

The GPDO states that prior to carrying out any Class Q 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 number of matters as listed, (a) to (e) in the proposals section above.

(a) transport and highways impacts of the development.

The site is access of a private road, SCC Highways have stated that the level of development proposed would not have a severe impact on the current junction of Canwell Drive with London Road which is where Canwell Drive meets adopted highway. As such it is considered that the proposal is acceptable on transport and highway grounds.

The neighbours comments regarding the ownership, use and blockage of the access drive are noted. However these are not considered to be material planning considerations within the remit of permitted development.

(b) noise impacts of the development.

The Council's Environmental Health Officer has raised no objections to the scheme. On the basis of the information to hand, it is considered that due to the location of the building some 145m from the neighbouring properties there would not be any unacceptable noise impacts of the development. It is also considered that the on-going agricultural operation of the surrounding land would not result in unacceptable noise or odour nuisance to future occupiers of the dwelling to be created.

(c) contamination risks on the site.

The use of the building for general agricultural purposes would not have given rise to contamination concerns and as such there are no concerns regarding this matter.

(d) flooding risks on the site.

The site does not fall within a flood risk area as defined by the Environment Agency flood maps. On this basis I am satisfied that there would be no flood risk.

(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.

Ecology:

The GPDO makes no specific reference to ecology as a consideration when determining the acceptability of residential barn conversions. This matter has been addressed by a number of appeal decisions however, where conflicting viewpoints have been supplied by the Planning Inspectorate. For instance, an appeal decision at 66 Linley Brook, Shropshire advised that European Protected Species should be taken into account when determining suitability. Whereas an appeal decision for Barton Grange, Bridgewater advised that protected species are not material to this application type, given that they are covered by other legislation.

The Council's Ecologist advises that in the act of determination the Council must discharge its responsibilities under Part 3, Section 40 of the Natural Environment and Rural Communities Act 2006, whereupon regard must be had to protected species and their habitats. In addition Class Q requires Planning Authorities to have regard to the requirements of the NPPF, which advises in relation to ecology that European and UK protected species and sites, priority species and habitats and the conserving of biodiversity are material planning considerations. The NPPF also requires under Paragraph 2 that regard is had to European Legislation. The EU biodiversity Strategy 2020 requires net gain to biodiversity as a result of development. Thus, it is argued that it is reasonable and in accordance with the NPPF to secure surveys and ecological betterment if required.

In this case, a bat scoping survey has been submitted with the application which has identified that the building is being utilised as a bat roost. The survey states that further emergence surveys are required to establish how bats are fully utilising the site. The Council's Ecologist concurs with the submitted survey and has advised that the further surveys are required prior to determination, however these surveys cannot be carried out until May. In the absence of this additional information it is not possible to conclude that the proposal will not cause an offence under the Conservation of Habitats and Species Regulations (2010). Therefore in the interests of securing compliance with the Directives, prior approval is required and refused under Q.2(e).

Protected woodland:

The site is located within a protected woodland. The Arboricultural Officer has objected to the proposal on a number of grounds related to the impact upon the protected trees. With regard to shading, it is considered that due to the orientation of the windows and the existing trees there will not be unacceptable levels of shading to the dwelling. The Arboricultural Officer has also raised a number of other concerns which would arise as a result of the close proximity of these trees to the proposed change of use. It is considered that domestic activity within this site, including the parking provision and boundary treatments, has the potential to impact upon the trees. Therefore it is considered that the siting of the building within the protected woodland does make it an undesirable and impractical location for a dwelling, and as such prior approval is required and refused under Q.2(e). It is noted that the proposal does not include the provision of hard surfacing. However, given that there is no existing hard surfacing within the site it is reasonable to assume that in the future there would be a need for additional hard surfacing, which would have a further impact upon the protected trees.

(f) The design or external appearance of the building.

The proposed design and external appearance of the building is considered acceptable.

Human Rights

The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with neighbours' rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report and on balance is justified and proportionate in relation to the provisions of the policies of the Development Plan and National Policy in the NPPF.

CONCLUSION

The proposal is considered to comply with the requirements of Part 3 Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). However the prior notification is refused with regards to criteria Q2(1)(e), the location of siting of the building makes it otherwise impractical or undesirable for the change of use, due to the known presence of bats within the building. The application fails to demonstrate that the proposal would not have a negative impact upon protected species or habitats.

**Planning Officer's Delegated Report
in respect of Application 19/01489/PND**

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Application No: 19/01489/PND

Description of Development: Change of use of agricultural barn to form 1no dwellinghouse and associated operational development

Site Address: Southwood Barn, Canwell Drive, Canwell, Sutton Coldfield

RECOMMENDATION: Prior Approval Refused

REASON FOR REFUSAL:

The Local Authority must consider whether prior approval is required for this development against the conditions listed under Paragraph Q2 of the Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015. The conditions identify that development will not be permitted by Class Q if the location or siting of the building makes it otherwise impractical or undesirable for the change of use. Immediately adjacent to the site are trees which are protected by virtue of an Area Tree Preservation Order (1990/19119/TPO). By reason of the close proximity of these trees and the impact such will have upon the future amenity of residents, it is considered that the siting of the building is impractical and undesirable.

Accordingly, it is determined that the prior approval is refused.

Refused plans:

1508/01

1508/02

1508/03

PLANNING POLICY

General Permitted Development Order, Part 3, Class Q

National Planning Policy Framework

National Planning Practice Guidance

RELEVANT PLANNING HISTORY

18/00095/PND	Change of use of agricultural barn to form 1no dwellinghouse	Prior notification refused	29/03/2018
18/01836/PND	Change of use of agricultural barn to form 1no dwellinghouse and associated operational development	Prior approval refused	13/02/2019

CONSULTATIONS

Hints Parish Council – No objection to the change of use itself, but there are concerns regarding the long and narrow access to the property which may make it 'impractical or undesirable' for conversion to a dwelling with regard to item Q2(e) of the General Permitted Development Order 2015. (14/11/2019)

Ecology Team (LDC) – The Ecology Team are satisfied with the submitted Preliminary Bat Roost Assessment and Bird Survey and concur with the conclusions. Recommend that adherence to the survey is secured via condition. In accordance with Policy NR3 recommend that a bird box or hedgehog house is included in the scheme. (22/10/2019)

Environmental Health Team (LDC) – No comments. (21/11/2019)

Tree Officer (LDC) – Object. It would be impractical and undesirable for the building to be converted to a dwelling, due to the protected trees within the site causing shading of both habitable rooms and garden space, apprehension regarding proximity, which will lead to future pressure to fell and a lack of meaningful amenity space, due to the shading issue. Raises further concerns regarding the need use higher than usual levels of heating and lighting, due to the solar shading along with potential future requests to expand the curtilage into the surrounding woodland and knock on effects of such (11/12/2019).

Staffordshire County Council (Highways) – No objection, subject to conditions to ensure that car and cycle parking and turning areas are provided prior to first occupation. The proposed development would not result in an unacceptable impact on highway safety and the residual cumulative impacts on the road network would not be severe. (26/11/2019)

Severn Trent Water - South Staffs – No objections and do not require a drainage condition as the proposal has a minimal impact upon the public sewerage system. (23/10/2019)

LETTERS OF REPRESENTATION

yes no

Site Notice Displayed: **30 October 2019**

Four representations received, comments made are summarised below;

- No objection to the principle.
- Concern about the increased traffic. It will not replace agricultural traffic, as there is none.
- Object to the proposed access, this is owned by the existing residents. There is an assumed right of way.
- Will the developer pay for the upkeep of the access?
- The proposed access wasn't previously used to access this land.
- Drawing 1508/03 is incorrect and shows the access width incorrectly.
- The proposed access increases the curtilage by 8-10 times the proposed development footprint.
- Proposal will damage the landscape/environment, protected TPO woodland.
- Continuing decimation of a previously beautiful, unspoilt Bluebell wood.
- The sewage system can't cope with more houses. It is not maintained by Severn Trent Water.
- The roads and sewers are managed by Canwell Estate Company Ltd, who object.
- The applicant hasn't approach Canwell Estate Company Ltd regarding a new sewer connection.
- What has happened to badger set in the woodland?
- What is being done about the Japanese knot weed?
- The developer hasn't engaged with the existing residents.
- What restrictions have been sought or discussed by the council/developer?
- The situation hasn't changed since the previous refusal.

DESCRIPTION OF SITE & LOCATION:

The application site comprises a brick built building south of Canwell Drive in Canwell. Canwell Drive is a private road east of London Road. The site is predominately surrounded by open fields, with a cluster of dwellings to the north west of the site. The building is sited within a woodland which is subject to a Tree Protection Order. The site is located within the West Midlands Green Belt.

PROPOSALS

This application relates to the conversion of a single storey building to create 1 one bedroom dwelling and seeks a determination under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as to whether the prior approval of the local planning authority will be required.

The existing building is single storey with a dual pitched roof. The building measures 5.4m in width and 11.7m in depth. The eaves height measure 2.7m and the max height 4.5m. It is proposed to convert this building to a dwelling consisting of 1no bedroom, bathroom, lounge/kitchen and hall. The curtilage for dwelling measures approximately 78m². Access will be from Canwell Drive.

BACKGROUND:

Two previous applications for the conversion of the building from agricultural use to residential use under Class Q have been refused.

The first application (18/00095/PND) was refused as a lack of information was available to the LPA to demonstrate that the last use of the building was agriculture, and as such the building did not meet the qualifying criteria of Class Q. The prior notification was refused.

The second application (18/01836/PND) overcame the previous reason for refusal, as such the proposal met the qualifying criteria of Class Q. However the prior approval was refused on the basis that the location or siting of the building makes it otherwise impractical or undesirable for the change of use. The reason for refusal was twofold. Firstly, because the building had been identified as being used by bats and the application failed to demonstrate that the proposal would not have a negative impact upon protected species or habitats. Secondly, because immediately adjacent to the site are trees which are protected by virtue of an Area Tree Preservation Order. By reason of the close proximity of these trees and the associated domestic activity which would arise, including the provision of parking and boundary treatments, the proposed change of use has the potential to directly and/or indirectly impact upon these protected trees or lead to future pressure for works to the trees.

DETERMINATION

Permitted Development Criteria

The determination of this application should be assessed firstly as to whether the building to be converted to residential use (Class Use C3) meets the criteria as set out in Schedule 2, Part 3, Class Q of the General Permitted Development Order and does not fall within any of the exceptions criteria set out in paragraph Q.1 thereof.

(a) the site was not used solely for an agricultural use as part of an established agricultural unit—

- (i) on 20th March 2013, or*
- (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*
- (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;*

The previous application (18/01836/PND) submission included a supporting statutory declaration which confirmed that the building was in agricultural use on 20th March 2013. The LPA holds no counter evidence to this, as such it is considered that the building was in agricultural use on the specified date.

(b) in the case of—

- (i) a larger dwellinghouse, within an established agricultural unit—*
 - (aa) the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or*
 - (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;*

The proposal is not for the above.

(c) in the case of—

- (i) a 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;*

The proposal is for 1no smaller dwellinghouse, with a floor space of 62m².

(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;*

No development under Class Q has previously been carried out within this agricultural unit.

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

(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;*

The site is not occupied by an agricultural tenant, and an agricultural tenancy has not been terminated in the last year.

(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:*

No development under Class A or Class B of Part 6 have been carried out.

(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;

The proposal does not seek to extend the existing building.

(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);

The applicant has submitted a structural survey with this application, which advises that the building is structurally sound and suitable for renovation. It will need localised repairs to the north east wall, and the building is strong enough to facilitate the proposed fenestration. It is considered that the overall level of new works, which primarily involves the repair of existing sound walls and installation of windows and doors within existing openings are such to evidence that the building is capable of functioning as a dwelling, without significant building operations.

(j) the site is on article 2(3) land;

(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; or

(m) the building is a listed building.

The application site is none of the above.

OBSERVATIONS

The interpretation of Part 3 of the Order requires that the curtilage of any converted barn be “*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 an area immediately beside or around the agricultural building no larger than the land occupied by the agricultural building*”.

The proposal would have a curtilage of 124m² (including the building), this is equal to the land occupied by the building. The access track is not included within the curtilage assessment.

Given the above it is considered that the proposal meets the required criteria and can access this form of change of use through Permitted Development.

Prior approval

This application relates to the conversion of an agricultural building to create one dwellings and seeks a determination under Class Q of the Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as to whether the prior approval of the local planning authority will be required as to:

- (a) transport and highways impacts of the development,
- (b) noise impacts of the development
- (c) contamination risks on the site
- (d) Flooding risks on the site
- (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 (dwellinghouse) of the Schedule to the Use Classes Order

Determining Issues under conditions Q2(1)

The GPDO states that prior to carrying out any Class Q 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 number of matters as listed, (a) to (e) in the proposals section above.

(a) transport and highways impacts of the development.

The site is access of a private road. SCC Highways have stated that the level of development proposed would not have a severe impact on the current junction of Canwell Drive with London Road, which is where Canwell Drive meets adopted highway. As such it is considered that the proposal is acceptable on transport and highway grounds.

(b) noise impacts of the development.

The Council's Environmental Health Officer has raised no objections to the scheme. On the basis of the information to hand, it is considered that due to the location of the building some 145m from the neighbouring properties there would not be any unacceptable noise impacts of the development. It is also considered that the on-going agricultural operation of the surrounding land would not result in unacceptable noise or odour nuisance to future occupiers of the dwelling to be created.

(c) contamination risks on the site.

The use of the building for general agricultural purposes would not have given rise to contamination concerns and as such there are no concerns regarding this matter.

(d) flooding risks on the site.

The site does not fall within a flood risk area as defined by the Environment Agency flood maps. On this basis I am satisfied that there would be no flood risk.

(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.*

The submitted planning statement argues that matters relating to ecology and trees do not form part of Class Q considerations and therefore the failure of the previous application, to address such, does not make it either impractical or undesirable, as such is covered by other legislation. This matter is considered in Paragraph 109 of the NPPG, which states that *“Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would “not be sensible or realistic”, and undesirable reflects that it would be “harmful or objectionable”*”. The paragraph continues to state that *“When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval.*

There may, however, be circumstances where the impact cannot be mitigated. Therefore, when looking at location, local planning authorities may, for example, consider that because an agricultural building on the top of a hill with no road access, power source or other services its conversion is impractical. Additionally the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.

When a local authority considers location and siting in this context it will not therefore be appropriate to apply tests from the National Planning Policy Framework except to the extent these are relevant to the subject matter of the prior approval (my emphasis). So, for example, factors such as whether the property is for a rural worker, or whether the design is of exceptional quality or innovative, are unlikely to be relevant”.

The pertinent phrase in the consideration of the applicant’s argument is underlined above. The primary consideration therefore is whether ecology and arboricultural matters are relevant to the subject matter of the prior approval. This matter should be considered in light of the judgement reached in East Hertfordshire DC v Secretary of State for Communities and Local Government. Whilst this case relates to the suitability of considering the acceptability of a vehicular access to serve a Class Q dwelling, there are parallels in whether there should be wider regard to the NPPF. The judgement advises that *“the meaning of the term “undesirable” in this context... calls for an exercise of planning judgment”*. Further informed opinion is provided, which states that the *“assessment of location, as distinct perhaps from other aspects of the desirability of location, such as the impact of odour or dust from adjacent developments, has to be examined through the prism of the purpose of the legislation. To apply in the planning judgment, for instance, the policies of the Framework with the same rigour in respect of accessibility of residential development to the Class Q prior approval process as would be applied to an application for planning permission for residential use would have the potential to frustrate the purpose of the introduction of the class, namely to increase the supply of housing through the conversion of agricultural buildings which by definition will very frequently be in the open countryside. Thus... the bar in relation to the test of unacceptable inaccessibility will necessarily be set significantly higher than it would in the context of an application for planning permission”*.

The above therefore identifies that in this instance regard can be had to both ecology and arboricultural considerations, as a matter of planning judgement, but frustration of the prior approval process, namely the refusal of the application, should only occur where any identified harm is significant, more so than would be the case than with a standard planning application. When considering these matters however, in light of the guidance of the NPPG, emphasis should be placed on what impact the surrounding area would have on the new dwelling, rather than the impact that the new dwelling would have on the surrounding area.

Paragraph 170 of the NPPF states that decisions should contribute to and enhance the natural and local environment by minimising impacts on biodiversity, whilst also recognising the intrinsic character and value of trees and woodland.

Ecology:

The Council's Ecologist advises that in the act of determination the Council must discharge its responsibilities under Part 3, Section 40 of the Natural Environment and Rural Communities Act 2006, whereupon regard must be had to protected species and their habitats. In addition Class Q requires Planning Authorities to have regard to the requirements of the NPPF, which advises in relation to ecology that European and UK protected species and sites, priority species and habitats and the conserving of biodiversity are material planning considerations. The NPPF also requires under Paragraph 2 that regard is had to European Legislation. The EU biodiversity Strategy 2020 requires net gain to biodiversity as a result of development. Thus, it is argued that it is reasonable and in accordance with the NPPF to secure surveys and ecological betterment if required.

This application has been submitted with a Preliminary Bat Roost Assessment and Bird Survey. The survey has identified that there is no evidence of birds nesting in the building, although there is nesting opportunities. However has identified that the building is utilised by Brown Long Eared bats as a day and hibernation roost. A Natural England license would therefore be necessary, while it is also necessary to ensure that appropriate replacement roosting provision and compensation is provided. A number of replacement provision options have been provided within the submitted ecological survey.

The Councils Ecologist is satisfied that appropriate replacement provision can be provided, nonetheless it is necessary, as competent authority, to ensure that three tests are satisfied a) that there is no satisfactory alternative; b) the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range; and, c) the action authorised preserved public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.

It is considered that if reuse of the building did not occur then, over time, the building would further degrade and result in the potential loss of the bat roost. With appropriate compensation as proposed, it is not considered that the development would undermine the favourable conservation status of the Brown Long Eared bat populations. Finally, it is considered that there are overriding social benefits of the delivery of an additional dwelling. The LPA are therefore of the view that the tests have been satisfied.

The Council's Ecologist recommends adherence by the applicant to all recommendations for mitigation, which also includes the requirement for a licence. Should the application be approved, this will be applied as a condition.

Protected woodland:

The site is located within a protected woodland. The Arboricultural Officer has objected to the proposal on a number of grounds related to the impact of the scheme upon the protected trees. Concerns arise as a result of the proximity of the trees to the barn, where, It is considered that domestic activity within this site, including the parking provision and boundary treatments, has the potential to impact upon the trees. As noted above, this impact, whilst regrettable, would be a consequence of the development occurring and therefore not inappropriate in these terms. However, the Arboricultural Officer has also raised further concerns regarding shading of habitable rooms and private amenity space, which would make future living conditions unacceptable, the harm derived from which, as defined by the NPPG, should be a matter of planning judgement. Whilst no tree survey accompanies the application, it is apparent from visiting the site that trees surround the building to the north, east and west. The principal living rooms windows within the building and proposed to the north west and southern elevations, whilst garden area is proposed to the south west of the building. All but the French doors to the living space are likely to experience significant solar shading as a consequence of the juxtaposition of the building and trees, whilst the garden area will be in shade for the majoring of the day. Given this circumstance and the protection afforded to the tree, it is considered that even with the higher bar of harm required to warrant the refusal of a scheme, due to failure to comply with the NPPF, the siting of the building within the protected woodland does make it an undesirable and impractical location for a dwelling, and as such, prior approval is required and refused under Q.2(e).

It is noted that the proposal does not include the provision of hard surfacing. However, given that there is no existing hard surfacing within the site it is reasonable to assume that in the future there would be a need for additional hard surfacing, which would have a further impact upon the protected trees. As dwellings approved under Class Q do not have permitted development rights any future addition of hard surfacing would require a further planning application, during which the impact of the hard standing on trees would be fully assessed.

(f) The design or external appearance of the building.

The proposed design and external appearance of the building is considered acceptable.

Human Rights

The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. Article 1 of the first protocol may be of relevance as it provides for every natural and legal person to be entitled to the peaceful enjoyment of their possessions. However it is specifically stated that this right shall not impair the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The interference likely to occur here has been fully assessed in this report. It is considered that any interference can be justified in the general interest, as defined by the policies of the Local Plan, and is proportionate. The applicant has a right of appeal in accordance with Article 6.

CONCLUSION

The proposal is considered to comply with the requirements of Part 3 Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). However the prior notification is refused

with regards to criteria Q2(1)(e), the location of siting of the building makes it otherwise impractical or undesirable for the change of use, due to the siting within a protected woodland and the impact this would have upon the amenity of future residents.

Recommendation made by: VM

**The Planning Inspectorate Decision dated 24 June 2020
APP/K3415/W/20/3247942**

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Appeal Decision

Site visit made on 16 June 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2020

Appeal Ref: APP/K3415/W/20/3247942

Southwood Barn, Canwell Drive, Sutton Coldfield B75 5SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Arthur Roger Smith against the decision of Lichfield District Council.
 - The application Ref 19/01489/PND, dated 4 October 2019, was refused by notice dated 12 December 2019.
 - The development proposed is change of use of agricultural barn to form 1 no dwelling house and associated operational development.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the Council accepts that the building meets the criteria set out in the Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GDPO) for permitted development under Class Q, I am required to satisfy myself that this is the case. As such, I have included this as a main issue.
3. The evidence regarding the previous use of the barn was based on evidence which was not submitted at appeal. During the appeal I requested those documents and as I am satisfied that both parties have viewed them, I have taken them into account in my reasoning.

Main Issues

4. The main issues are:
 - Whether the change of use would represent permitted development under Schedule 2, Part 3, Class Q of the GDPO.
 - If the development would represent permitted development, whether the change of use would be impractical and undesirable.

Reasons

Permitted development

5. The agricultural barn is a period brick structure with ornamentation at eaves level, situated within a protected woodland. It has a chimney, and some of the window and door openings are of a scale, design and layout consistent with

domestic architecture of that period. It is approached from a narrow gravel track that runs alongside The Quadrangle, and thence along a grassed but mown track through the wood.

6. Development is not permitted by Class Q of the GDPO *if the site was not used solely for agricultural use as part of an established agricultural unit on 20 March 2013, or in the case of a building which was in use before that date but which was not in use on that date, when it was last in use.*
7. The appellant states that a tenant occupied the barn on 20 March 2013 and this assertion appears to have been accepted by the Council. This is disputed by interested parties who live alongside the gravel track, who state that there has been no agricultural access or indeed any other vehicular access for at least 20 years. Moreover, having requested that evidence¹ it appears that the barn was used for storage for a pest control and tree surgery business between 25 June and November 2013 only. In addition, the Council reference² highlighted by the appellant as supporting evidence goes on to state that the presence of an individual with a pest control and tree surgery business on the site in 2013, does not constitute agricultural use, as it is forestry.
8. As such, I conclude that the barn was not occupied for agricultural purposes on the relevant date. I appreciate that the Council came to a different conclusion for this application, but this does not alter my reasoning.
9. I turn now to whether there is evidence that the barn was used solely for agriculture when it was last used.
10. The scale and detailing of the building, as well as the chimney and what appears to be a fireplace on the existing plan, suggest to me that at least part of the building was used as habitable space when it was built. Moreover, the internal brick partitions and eaves height would normally limit its use for animal husbandry, or materials or machinery storage. Furthermore, it is difficult to see to what agricultural enterprise the building relates. The track appeared to have no sub-base or formation layer, and to have been recently mown through otherwise unmanaged grass within the woodland.
11. The immediate area of woodland itself appears to have been unmanaged for some considerable time. Although the appellant has submitted a felling licence which indicates that permission has been given for thinning a nearby parcel of woodland, this reinforces my reasoning that the barn was associated with use of the woodland and forestry, rather than storage for an established agricultural unit. Moreover, although the grass track is probably usable in the summer, it seems highly unlikely that it has been used by agricultural vehicles with any regularity in the past. I appreciate that the definition of agriculture in the Town and Country Planning Act 1990 states that *the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes* can be included in the term agriculture. However, there is nothing before me to indicate how the woodland in the vicinity of the barn is ancillary to other agricultural units, or where that unit might be.
12. For these reasons I conclude that the barn was not in agricultural use on the relevant date and even if it had been unused for a period before then, there is

¹ Statutory declaration from Timothy Worship

² Officer report 19/00095/PND

nothing before me to support an argument that its last use was solely agricultural.

13. Consequently, on these grounds alone I conclude that the proposals would not be permitted development under Schedule 2, Part 3, Class Q of the GDPO. Having reached this conclusion there is no need for me to consider any other criteria for permitted development, or the other main issue. I conclude that the appeal should be dismissed.

A Blīcq

INSPECTOR



PLANNING STATEMENT
Southwood Barn, Canwell Drive,
Canwell, Sutton Coldfield B75 5SG

Our Reference: LH/CMF/5685
Date: 3 December 2021

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