



COPELAND BOROUGH COUNCIL DELEGATED PLANNING DECISION

1.	Reference No:	4/22/2306/OF1
2.	Proposed Development:	PRIOR APPROVAL TO CONVERT AN AGRICULTURAL BUILDING INTO RESIDENTIAL ACCOMODATION
3.	Location:	WEDDICAR HALL, CLEATOR MOOR
4.	Parish:	Weddicar
5.	Constraints:	<p>ASC;Adverts - ASC;Adverts,</p> <p>Flood Area - Flood Zone 2, Flood Area - Flood Zone 3,</p> <p>Coal - Development Referral Area - Data Subject to Change,</p> <p>Coal - Standing Advice - Data Subject To Change,</p> <p>Key Species - Bounds of Sensitive Area for Hen Harriers,</p> <p>Preferred Route Corridor - Within Preferred Route Corridor</p>
6.	Publicity Representations &Policy	See Report.
7.	<p>Report:</p> <p>Site and Surroundings</p> <p>The Application Site comprises a building located on the site for the former Weddicar Hall, Cleator Moor.</p> <p>The building is of brick construction. Part of the west elevation appears to have collapsed/removed and there appears to have been some movement in the south elevation.</p> <p>Concrete stalls exist within the building.</p> <p>The roof covering of the building has previously been removed. The building has a metal framed roof structure, the western extent of which has fallen and appears to have been damaged when with west elevation has collapsed/removed.</p>	

An existing made track provides access to the public highway located to the southwest.

The Proposed Development

This is a notification for prior approval for the change of use of the agricultural building to a dwellinghouse (Use Classification C3) and for the associated operational development under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Architectural drawings have been prepared which detail the proposed operational development required to enable the change of use. This includes the reconstruction of the west elevation, the creation/installation of windows/doors and a replacement roof structure.

A range of internal works are detailed.

No plans of the proposed curtilage area have been provided.

No drainage details have been provided.

Planning Application History

Application Ref. 4/21/2374/0F1 – Prior approval to alter an agricultural building into a dwelling – Refused.

Reason 1

On the basis of the information provided, insufficient evidence has been provided to demonstrate on balance of probability that the building was solely in agricultural use as part of an established agricultural unit on the 20th March 2013 (or the last use before that date) as required by Q.1 of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2021 (as amended).

Reason 2

On the basis of the information provided, insufficient evidence has been provided to demonstrate that the building comprises part of an agricultural unit and that no other such development under Schedule 2, Part 3, Class Q and Schedule 2, Part 6 Class A(a) or Class B(a) of the Town and Country Planning (General Permitted Development) (England) Order 2021 (as amended) has been completed on the established agricultural holding since the 20th March 2013.

Reason 3

Insufficient information has been provided to demonstrate that the existing access serving the building could accommodate the development without unacceptable adverse impacts upon safe operation of the public highway.

Reason 4

The installation of the roof structure as proposed would result in the external dimensions of the completed building extending beyond the external dimensions of the existing building in conflict with the requirements of Q.1 (h) of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2021 (as amended).

Reason 5

No curtilage area is clearly defined; however, reference is made to space for turning and parking. It cannot therefore be determined if the curtilage of the development would need the definition as outlined in Part X of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2021 (as amended).

Consultation Responses

Arelcdon and Frizington Parish Council

No comments received.

David Bechelli - Flood and Coastal Defence Engineer

As there is no information on the proposed surface water and foul drainage disposal, I am raising an objection to the development.

Cumbria County Council – Highways

As this falls under our Service Level Agreement (SLA) with your Council, this application does not need to be submitted to the Local Highway Authority or Lead Local Flood Authority; subject to the highway and drainage aspects of such applications being considered in accordance with the Agreement.

The highway and drainage implications of this application would therefore have to be decided by the Local Planning Authority.

Neighbour Representations

The application has been advertised by way of a site notice.

Two representations have been received in objection.

The issues raised are outlined below:

The application claims to show a curtilage area but this is not clearly defined on the plans. I suggest this is important because of the need to ensure adequate vehicle access, parking, and a turning area.

Travel the road and have met the met the wagons travelling to there at some speed on what is a narrow road.

The wildlife has to move on to which is very disappointing.

Assessment

Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 permits:

Permitted development

Q. Development consisting of—

(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.

Paragraph Q.1 of Class Q outlines the circumstances when development is not permitted:

Q.1 Development is not permitted by Class Q if—

(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;

(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;

(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;
 (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;
 (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;
 (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;
 (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;
 (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);
 (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.

4.3 Paragraph Q2-(1) of Class Q outlines:

Q.2— *(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,
(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 (dwellinghouses) of the Schedule to the Use Classes Order, and
(f) the design or external appearance of the building, and
(g) the provision of adequate natural light in all habitable rooms of the dwellinghouses, and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.
(2) Where the development proposed is development under Class Q(a) only, 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 the items referred to in sub-paragraphs (1)(a) to (e) and (g), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.
(3) Development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date.

In respect of the provisions of Q.1 of Class Q:

- (a) the applicant states that the use of the site on 20th March 2013 (or the last use before that date) was solely for an agricultural use as part of an established agricultural unit.

Photographs held by Copeland Borough Council in relation to Application Ref. 4/10/2066/0F1 show the building being in a structurally complete condition in 2010 with the walls and roof intact. The images show the east door blocked off and the west door open. There is no evidence of agricultural activity at that time.

There is an extensive planning application history relating to the land and buildings for leisure development dating back to 1995.

In 1995 land is identified as being under the ownership and control of British Coal.

The Applicant has provided an undated aerial image showing the building comprising part of a developed farmstead and references images showing the current layout of the building, which

includes the presence of stalls.

Reference is also made to the building being referenced as an 'old dairy building' in a planning application for which no reference/date is provided and it is confirmed that an unreferenced/dates planning panel report refers to the land being returned to field and grazing land post use for open cast mining.

No definitive evidence has been provided demonstrating that the building was solely in agricultural use on 20th March 2013.

It appears from the information provided that the building has previously been in agricultural use; however, given the intervening uses on the wider site, it is unclear if the agricultural use comprised the last use of the building as part of an established agricultural unit i.e. agricultural land occupied as a unit for the purposes of agriculture.

- (b) A single dwellinghouse is proposed. The cumulative floor space of the existing building changing use under Class Q extends to c.180 square metres only.
- (c) No smaller dwellings are proposed.
- (d) The Applicant states that no other such development has occurred on the agricultural unit post 20th March 2013.

No evidence or information is provided demonstrating the site has or does comprise part of an agricultural unit i.e. agricultural land occupied as a unit for the purposes of agriculture for the purposes of Class Q to enable an assessment of this requirement.

- (e) The Applicant confirms that the site is not the subject of an agricultural tenancy.
- (f) The Applicant confirms that the site has not been the subject of a termination of an agricultural tenancy within one year of the date of this application.
- (g) The Applicant confirms that no development under Class A(a) or Class B(a) of Part 6 of the GPDO 2015 or GPDO 1995 (as amended) has been completed on the established agricultural holding since the 20th March 2013.

No evidence or information is provided demonstrating the site has or does comprise part of an agricultural unit i.e. agricultural land occupied as a unit for the purposes of agriculture for the purposes of Class Q to enable an assessment of this requirement.

- (h) The proposed development shows the creation of an extended eaves area to the gable elevation and would therefore result in the external dimensions of the building extending

beyond the external dimension of the existing building.

- (i) The existing building is of brick construction. Part of the west elevation appears to have collapsed/removed and there appears to have been some movement in the south elevation.

The roof covering of the building has previously been removed. The building has a metal framed roof structure, the western extent of which has fallen and appears to have been damaged when with west elevation has collapsed or been removed.

The proposed works would require the reconstruction of the main of the east elevation and part of the south elevation and the part replacement of the roof structure. This is not expressly prevented under (i) which permits the installation or replacement of roofs and exterior walls.

The remainder of the works relating to the installation of windows and doors etc. fall within the remit of (i).

It is necessary to consider if the proposed comprises a conversion or rebuilding for the purposes of Class Q in the context of [Hibbitt and another v Secretary of State for Communities and Local Government \(1\) and Rushcliffe Borough Council \(2\) \[2016\] EWHC 2853 \(Admin\)](#).

Whilst the proposed would involve the replacement/reconstruction of the main of the east elevation and part of the south elevation and the part or full replacement of the roof structure, the development would retain and reuse c.85+% of the existing built structure .

The proposed would not reasonably comprise a 'fresh build' as far as the development would not relate to skeletal or minimalist elements of a building only and relates principally to a substantive building of brick construction, the main of which remains intact.

It must be accepted that it is not uncommon for proposals of conversion to require and permit the reconstruction of an element of an existing building providing that the building is inherently structurally capable of conversion without extensive reconstruction works. The scale of the works required falls within what would reasonably be permitted as conversion in planning terms.

- (j) The site is not located on Article 2(3) land.
- (k) The site does not form part of a site of special scientific interest; a safety hazard area; or, a military explosives storage area.
- (l) The site is not and does not contain a scheduled monument.
- (m) The building is not listed.

4.5 In respect of the provisions of Q.2-(1):

(a) transport and highways impacts –

Access is proposed via the existing access connecting to the U4022.

There is also an access approved under planning application ref. 4/13/2148/0F1 for which a lawful commencement has been confirmed. The development is currently under construction.

An access appraisal has been prepared by Tetra Tech.

The U4022 is a narrow, rural road. It is unlit and mostly subject to the national speed limit. Between the B5295 and Mill Street, it is signed as being unsuitable for HGVs. The access road joins onto the U4022 in a simple priority arrangement, located between two bridges. The bridges are narrow (3m and 3.8m) and humpbacked; drivers use their horns to alert oncoming traffic of their presence. Although the U4022 is mostly subject to the national speed limit, some 40m to the west of the access, a 30mph limit is in force at the western bridge which is associated with the UU pipeline temporary works access. At the access, the carriageway is 4.8m in width with grass verges.

Due to the nature and alignment of the road, the narrow bridges, it is very unlikely traffic will reach high speeds here; the proximity of the temporary 30mph zone makes little difference as traffic must slow and come almost to a stop before proceeding over the bridges.

In order to determine the appropriate visibility splays at the access and therefore assess the suitability of the existing provision, a traffic survey was undertaken on the U4022 by Traffic Sense Ltd. An Automatic Traffic Counter (ATC) was installed at the access and recorded a full week of data between 26th April and 2nd May 2022.

From the ATC the average 24-hour 85th percentile speeds have been calculated as:

- 29.8mph eastbound
- 29.8mph westbound

As the 85th percentile speeds are below 37mph, Manual for Streets (MfS) has been used to determine the appropriate visibility splays. From a 2.4m set-back distance, the MfS recommended visibility splays are:

- 40m to the left
- 40m to the right

The available visibility from the access is in excess of the MfS recommendation, indeed both bridges are visible from the access, with some 70m to the left and 40m to the right available.

Traffic volumes as recorded in the survey are low. In the weekday AM peak hour there was an average of 38 vehicles eastbound (towards Frizington) and 60 vehicles westbound (towards

Whitehaven). In the PM peak hour, there was an average of 57 vehicles eastbound and 58 westbound. The development on site of a single dwelling could be expected on average to contribute 1 vehicle in each peak hour. This is an immaterial increase that can be readily accommodated on the local road network.

From a review of the Crashmap database, the area local to the site access has a very good safety record. There have been no personal injury accidents reported at the access in the most recent 3-year period available, as shown in Extract 2 below. There has been one accident reported in the area; approx. 60m from the access, this incident occurred east of the bridge, was slight in nature and involved 2 vehicles.

(b) noise impacts –

There are no other agricultural or other business buildings located within close proximity to the building.

An extant planning permission exists under planning application ref. 4/13/2148/0F1 for a holiday accommodation development on and within close proximity of the site. The development is currently under construction.

In the context of the above, the proposed would not be exposed to excessive noise and would provide acceptable living conditions for future residential occupiers.

(c) contamination risks –

The Applicant confirms that no works have taken place that would result in contamination.

The construction of the building does not appear to contain materials hazardous to human health.

It is considered that the risk to construction workers; future occupants; and, the wider environment are low.

(d) flood risk –

The building is located within Flood Map for Planning Flood Zone 1.

No surface water drainage issues are known to exist at the site.

No alterations are detailed in respect of the existing surface water drainage arrangements. No additional surface water flows will result from the proposed development; therefore, additional flood risk will not result.

(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 -

Paragraph 108 of the Planning Practice Guidance states: *"The permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change the use to residential".*

Paragraph 109 states: *"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".*

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. 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 site is located in an isolated location in an area of open countryside.

The site is located in an area contained in wider landscape terms by existing landform and landscaping.

It is unclear if existing services exist on the site.

An extant planning permission exists under planning application ref. 4/13/2148/OF1 for a holiday accommodation development on and within close proximity of the site, which is currently under construction.

In the context of the above, it considered unreasonable to conclude that the location is otherwise impractical or undesirable.

(f) the design or external appearance of the building

The external appearance of the building as proposed retains the main of the fabric of the existing building. The proposed re-uses the existing openings and introduces openings in locations that are not considered in appropriate to and in the context of the character and form of the building.

Details of the proposed external finished are not detailed but could be secured via planning condition.

The proposed retains the form and character of the building, maintaining its albeit contribution to the character of the local landscape.

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

Adequate natural light is available to all habitable rooms.

Other Matters

Part X states: “curtilage” means, for the purposes of 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.

No curtilage is defined.

Conclusion

It is considered that the proposals do not achieve the requirements of Schedule 2, Part 3, Class Q of the GPDO.

Prior approval is required and the application should be refused

8.	Recommendation: Refuse	
9.	Reasons: Reason 1 On the basis of the information provided, insufficient evidence has been provided to demonstrate on balance of probability that the building was solely in agricultural use as part of an established agricultural unit on the 20 th March 2013 (or the last use before that date) as required by Q.1 of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2021 (as amended). Reason 2 On the basis of the information provided, insufficient evidence has been provided to demonstrate that the building comprises part of an agricultural unit and that no other such development under Schedule 2, Part 3, Class Q and Schedule 2, Part 6 Class A(a) or Class B(a) of the Town and Country Planning (General Permitted Development) (England) Order 2021 (as amended) has been completed on the established agricultural holding since the 20 th March 2013. Reason 3 The installation of the roof structure as proposed would result in the external dimensions of the completed building extending beyond the external dimensions of the existing building in conflict with the requirements of Q.1 (h) of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2021 (as amended). Reason 4 No curtilage area is clearly defined. It cannot therefore be determined if the curtilage of the development would meet the definition as outlined in Part X of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2021 (as amended).	
Case Officer: Chris Harrison		Date : 31.08.2022
Authorising Officer: N.J. Hayhurst		Date : 05.09.2022
Dedicated responses to:- N/A		