

# REPORT FOR NOTING

<b>DECISION OF:</b>	<b>PLANNING CONTROL COMMITTEE</b>
<b>DATE:</b>	<b>27 June 2023</b>
<b>SUBJECT:</b>	<b>PLANNING APPEALS</b>
<b>REPORT FROM:</b>	<b>HEAD OF DEVELOPMENT MANAGEMENT</b>
<b>CONTACT OFFICER:</b>	<b>DAVID MARNO</b>
<b>TYPE OF DECISION:</b>	<b>COUNCIL</b>
<b>FREEDOM OF INFORMATION/STATUS:</b>	This paper is within the public domain
<b>SUMMARY:</b>	<p>Planning Appeals:</p> <ul style="list-style-type: none"> <li>- Lodged</li> <li>- Determined</li> </ul> <p>Enforcement Appeals</p> <ul style="list-style-type: none"> <li>- Lodged</li> <li>- Determined</li> </ul>
<b>OPTIONS &amp; RECOMMENDED OPTION</b>	The Committee is recommended to the note the report and appendices
<b>IMPLICATIONS:</b>	
<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework? Yes
<b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b>	Executive Director of Resources to advise regarding risk management
<b>Statement by Executive Director of Resources:</b>	N/A
<b>Equality/Diversity implications:</b>	No
<b>Considered by Monitoring Officer:</b>	N/A

<b>Wards Affected:</b>	All listed
<b>Scrutiny Interest:</b>	N/A

**TRACKING/PROCESS**

**DIRECTOR:**

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

**1.0 BACKGROUND**

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

**2.0 CONCLUSION**

That the item be noted.

**List of Background Papers:-**

**Contact Details:-**

David Marno, Head of Development Management  
 Planning Services, Department for Resources and Regulation,  
 3 Knowsley Place ,Bury BL9 0EJ

**Tel: 0161 253 5291**

**Email: [d.marno@bury.gov.uk](mailto:d.marno@bury.gov.uk)**

**Planning Appeals Lodged  
between 22/05/2023 and 18/06/2023**



**Application No.:** 69310/FUL

**Appeal lodged:** 01/06/2023

**Decision level:** DEL

**Appeal Type:** Written Representations

**Recommended Decision:** Refuse

**Applicant:** Mr Ewan Perry

**Location** 7 Crosfield Avenue, Summerseat, Ramsbottom, Bury, BL9 5NX

**Proposal** Two storey side extension and external alterations including zinc cladding to first floor and roof, render to the ground floor and part of the existing front elevation

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**Application No.:** 69336/TEL

**Appeal lodged:** 25/05/2023

**Decision level:** DEL

**Appeal Type:**

**Recommended Decision:** Prior Approval Required

**Applicant:** CK Hutchison Networks (UK) Ltd

**Location** Pavement outside Radcliffe Hall C of E Methodist Primary School, Bury Street, Radcliffe, M26 2GB

**Proposal** Prior approval for proposed 5G telecoms installation: H3G 15m street pole and additional equipment cabinets

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**Total Number of Appeals Lodged: 2**

**Planning Appeals Decided  
between 22/05/2023 and 18/06/2023**



**Application No.:**

**Appeal Decision:** Dismissed

**Decision level:** DEL

**Date:** 31/05/2023

**Recommended Decision:** Prior Approval Required

**Appeal type:** Written Representations

**Applicant:** Mr Tony Rostron

**Location:** Tottington Manor Farm, Turton Road, Bury, BL8 3QQ

**Proposal:** Prior approval for the change of use from agricultural building to dwellinghouse

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## Appeal Decision

Site visit made on 12 April 2023

by **A Veevers BA(Hons) DipBCon MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31<sup>st</sup> May 2023

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**Appeal Ref: APP/T4210/W/22/3311835**

**Tottington Manor Farm, Turton Road, Bury BL8 3QQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Tony Rostron against the decision of Bury Council.
  - The application Ref 68245, dated 16 March 2022, was refused by notice dated 10 June 2022.
  - The development proposed is described as 'prior notice application for the change of use and associated operational development relating to an agricultural building to form 1 dwelling'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I have taken the post code in the address above from the Council's decision notice as it has not been provided in the relevant section of either the application form or the appeal form.
3. No description of development has been provided on the application form; however, reference is made in the relevant section, to the description provided in the appellant's planning statement. I have therefore taken the description from the statement, which is the same as that given in the appeal form.
4. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015<sup>1</sup> (GPDO) permits 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) or (b) development referred to in (a) together with building operations reasonably necessary to convert the building referred to in (a) to a Class C3 (dwellinghouse) use. The appeal relates to development under both Q(a) and Q(b), so that the proposal relates to the change of use to residential as well as associated facilitating works.
5. Paragraph Q.1 sets out specific limitations for Class Q with paragraph Q.1(g) specifying that development is not permitted by Class Q if certain works to the building were carried out after specific dates.
6. Paragraph Q.2(1) sets out that development is permitted under Class Q(a) and Q(b) subject to the condition that before beginning the development, the

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<sup>1</sup> SI 2015 No.596

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 considerations. One such consideration (a) relates to the transport and highway impacts of the development.

7. Where an application is made as to whether prior approval is required for development under Class Q, paragraph W(3) of Part 3 of the GPDO states that the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified as being applicable to the development in question.
8. The Council have refused the application for the reasons that the proposal would not comply with paragraph Q.1(g)(i) or the requirements of Class Q(b) of the GPDO and have then proceeded to determine that the details submitted in respect of Q.2(1)(a) relating to highway safety, parking and servicing are unacceptable.

### **Main Issues**

9. The main issues are:

- Whether the proposal would be permitted development under Schedule 2, Part 3, Class Q of the GPDO with regard to paragraphs Q.1(g)(i) and Q(b); and,
- If so, whether the prior approval details relating to the highway impacts of the proposed development, including vehicle parking and manouevring, would be acceptable.

### **Reasons**

*Permitted development under paragraph Q.1(g)(i) - works since 2013*

10. The building to be converted comprises a barn which is used for agricultural storage and is accessed from Turton Road via a short access track which leads to several fields. The building has asbestos cladding to 3 sides, an asbestos and metal clad flat roof, and metal roller door with substantial metal supporting posts to one side facing the access track. It is supported by steel and timber beams, which are set into a concrete slab base. Aside from the roller shutter door, there is one small door and no window openings.
11. Paragraph Q.1(g) states that development is not permitted by Class Q if development under Class A(a) or Class B(a) of Part 6 of Schedule 2 (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.
12. Development under Class A(a) relates to agricultural development on agricultural units of 5 hectares or more and development under Class B(a) relates to agricultural units less than 5 hectares. The appellant's supporting statement submitted with the planning application states that the agricultural unit is 6.6 hectares. However, while the Council's officer report does not mention a specific size, reference is made to development under Class B(a).

Notwithstanding this, Class A(a) comprises '*works for the erection, extension or alteration of a building*' and Class B(a) comprises '*the extension or alteration of an agricultural building*'. As such, both criteria of section (g) of Q.1 would include alterations to the building.

13. I note the concerns of a third party who suggests that the building and land upon which it sits has never been used for agriculture and several photographs have been provided dating from April 2017. The photographs demonstrate the building in situ but do not conclusively indicate that the land was not in use for agriculture. Furthermore, two sworn statements have been provided, one confirming the land and building was purchased by the appellant in 2012 and used exclusively for agricultural purposes since that time, and one from an occupier who used the land in relation to taking a hay crop which was stored in the building from mid-2012 and on 20 March 2013. The Council have not disputed that the building is an agricultural building on an agricultural unit. Based on the evidence before me, I see no reason to disagree.
14. Nonetheless, it has been put to me that the building was altered and extended in October 2021 and therefore comprises an extension or alteration of the building since 20 March 2013. Although photographs show a large metal roller door was fitted in October 2021, other photographs indicate a roller door was in situ in 2017. While it is unclear when that roller door was inserted, I consider the recently fitted door to be a replacement which would not constitute development under the Act<sup>2</sup>.
15. Similarly, the appellant submits that the recently inserted steel beams were erected to support the roller door and, as they comprise internal works, constitute repair and maintenance under the Act rather than works carried out under Part 6 of the GPDO. From my observations on site, the steel frame has been attached to the existing concrete floor by steel plates and I have been presented with no evidence to suggest additional footings have been incorporated. However, I have no doubt that the insertion of the four bays of steel connected by a horizontal beam provides additional support to the timber beams, not only for the roller door, but to the whole building.
16. Consequently, substantive evidence indicates that the works that have taken place on the agricultural building in October 2021 constitute alterations and strengthening of the structure of the barn. As such, these are works of the type described in criterion (g) of Class Q.1.
17. I acknowledge that, at my site visit, I observed no extension to the building, which appears to be the same size as indicated on the photograph from 2017 and the aerial photographs submitted by the appellant. While there are other structures on the land, these do not form part of the proposal before me.
18. Nonetheless, for the above reasons and on the evidence before me, I conclude that development under Class A(a) of Part 6 of Schedule 2 (agricultural buildings and operations) has been carried out on the agricultural unit since 20th March 2013. Therefore, the proposal would not satisfy the requirement of Schedule 2, Part 3, paragraph Q.1(g)(i) and accordingly, is not development permitted by it.

*Permitted development under paragraph Q(b) - reasonably necessary*

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<sup>2</sup> s.55 Town and Country Planning Act 1990

19. The GPDO states at paragraph Q.1(i) that development under Class Q(b) is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and partial demolition to the extent reasonably necessary to carry out building operations as listed above.
20. Paragraph 105 of the Planning Practice Guidance (PPG) advises that the right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However, the PPG is clear that it is not the intention of the permitted development right to allow rebuilding work that would go beyond what is reasonably necessary for the conversion of the building to a residential use. Accordingly, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to benefit from the permitted development rights. The PPG also acknowledges that internal works are generally not development and that for the building to function as a dwelling it may be appropriate to carry out internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floorspace permitted, or internal walls, which are not prohibited by Class Q.
21. Neither the GPDO nor the PPG define the term 'reasonably necessary'. Consequently, this is a matter of planning judgement based on fact and degree of an individual case. The Council have drawn my attention to the *Hibbitt Judgement*<sup>3</sup> which is also referred to in paragraph 105 of the PPG. *Hibbitt* related to the conversion of an agricultural building that was open to all four sides. The Judgement considered whether the works required to bring about the change of use amounted to a re-build or 'fresh' build as opposed to a conversion. Although the *Hibbit* case is not directly comparable to that before me, the principles established within the Judgement are relevant.
22. The appellant's submission is clear that the steel frame, roof and concrete floor of the existing building would be retained. The asbestos wall cladding would be replaced, and composite panels externally faced with plastic coated steel bonded to Kingspan insulation panels would be used to construct walls within the existing frame. The roller shutter door would be replaced with a window and 4 other windows would be inserted in the structure.
23. In respect of the structural integrity of the building, the appeal documentation includes a 'Structural Calculations for Roof Steel at Tottington Manor Farm, Turton Road, Tottington' (Michael Pooler Associates, 22 November 2022) (Structural Calcs). The Structural Calcs summary confirms that there would be no increase in stresses or bearing pressures on the existing foundations or sub-strata, concluding that the proposal would have no adverse effect on the structural capability of the building.
24. While void of photographs and detailed written analysis, the structural information in the document indicates that the barn's existing steel framework can support the required additional loads for the proposed conversion. Furthermore, the appeal scheme would not require new foundations or additional structural work to take place. No robust evidence has been provided by the Council that challenges the appellant's structural findings. Indeed, the

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<sup>3</sup> *Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2)* [2016] EWHC 2853 (Admin).



Council agree that the 'installation of the steel has made the building structurally capable of conversion'. The Council attest that the recent installation of the steel made the building structurally sound before the application was made.

25. Nevertheless, even if the recently installed steel frame would be capable of taking the load bearing capacity of the conversion, given the fact that all the external walls would be replaced, the proposal would essentially re-build a substantial portion of the building. The question of whether a proposal would be a conversion or re-build is central to whether the barn is capable of conversion. A re-build would not necessarily follow total demolition. *Hibbitt* reinforces that it is a matter of planning judgement as to whether the level of works involved would constitute a conversion.
26. Although I accept that substantial works could fall under the scope of class Q and be dealt with under Building Regulations, they nonetheless presuppose that the works comprise 'conversion'. In this case, the building before me would not be capable of functioning as a dwelling without the building works outlined above which include the construction of all four exterior walls. Having regard to the *Hibbitt* case, this goes well beyond what could reasonably be described as conversion. Notwithstanding the re-use of the 4 steel uprights as the main structural element for the building and the retention of the roof, the works described would be so extensive as to comprise a fresh build.
27. Consequently, based on the evidence before me and my own observations of the existing building, it has not been demonstrated that the required works would be limited to building operations reasonably necessary to convert the building, so as to be permitted development under Class Q(b).
28. The Council does not indicate conflict with any other part of paragraph Q.1 and I see no reason to find to the contrary. However, given my findings above, it does not alter my view that proposed use of the building would not satisfy the requirements of Schedule 2, Part 3, Class Q of the GPDO, having regard to the associated guidance within the PPG, and therefore is not development permitted by it.

#### *Prior approval matters*

29. Given my conclusion that the proposal would not be development permitted under Class Q of the GPDO, there is no need for me to consider whether or not prior approval would be required, as it would not alter the outcome of the appeal.

#### **Other Matters**

30. The proposed development would result in an additional dwelling to the housing supply of the borough which would also provide economic and social benefits. However, the consequent benefits have already effectively been recognised by the grant of permission under Article 3(1) of the GPDO. These matters are therefore not relevant considerations to my assessment pursuant to the GPDO.

31. I note the appeal decision<sup>4</sup> provided by the appellant in relation to a Class Q appeal and the Inspectors findings. However, I have dismissed this appeal for other reasons and have not considered this matter further.

**Conclusion**

32. For the reasons given above, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO and the appeal is therefore dismissed.

*A Veivers*

INSPECTOR

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<sup>4</sup> Ref: APP/B2355/W/21/3284053