

**PLANNING COMMITTEE – 25 MAY 2017**

**PART 1**

Report of the Head of Planning

**PART 1**

Any other reports to be considered in the public session

<b>REFERENCE NO - 17/501704/PNQCLA</b>			
<b>APPLICATION PROPOSAL</b>			
Prior notification for the change of use of an agricultural building to a dwellinghouse (Use Class C3), and for associated operational development			
For its prior approval to:			
Transport and highways impacts of the development;			
Contamination risks on the site;			
Flooding risks on the site;			
Noise impacts of the development;			
Whether the location or siting of the building makes it otherwise impractical undesirable for the use of the building to change as proposed;			
Design and external appearance impacts on the building			
<b>ADDRESS</b> Agricultural Building North Of Brent Orchard, Halstow Lane, Upchurch, Kent ME9 7AB.			
<b>RECOMMENDATION</b> Prior Approval Not Required			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
The proposal satisfies the requirements of Class Q of the General Permitted Development Order 2015 (as amended).			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Cllr Wright (Ward Member) objection			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Upchurch	<b>APPLICANT</b> Mr M Dugdale <b>AGENT</b> Bloomfields	
<b>DECISION DUE DATE</b> 08/06/17	<b>PUBLICITY EXPIRY DATE</b> 12/05/17		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
15/508792/PNQCLA	Prior notification for the change of use of an agricultural building to a dwellinghouse. For its prior approval to Transport and highways impacts of the development Contamination risks on the site Flooding risks on the site Noise impacts of the development Whether the location or siting of the building makes it otherwise impractical undesirable for the use of the building to change as proposed	Prior Approval Not Required	08.12.2015

## **MAIN REPORT**

### **1.0 DESCRIPTION OF SITE**

- 1.01 The building in question is a detached single storey, four bay steel framed agricultural storage barn. It is clad with a mixture of profiled metal sheeting and weatherboarding with a blockwork lower section.
- 1.02 The building is set back from Twinney Lane by approximately 80m and accessed via an unmade track. The surrounding area is rural in character with two further agricultural buildings located 120m to the south.
- 1.03 The site is located within the countryside, a designated strategic gap, and is on a rural lane as defined by the adopted Swale Borough Local Plan 2008.

### **2.0 PROPOSAL**

- 2.01 Members should be aware that this is not a normal planning application as the principle of conversion of the barn to a residential dwelling is permitted development under Class Q of Schedule 2 to the General Permitted Development Order (England) 2015, which allows for agricultural buildings to be converted to dwellings without the need for planning permission.
- 2.02 Rather, this is a prior notification application submitted on the basis that the conversion of the barn to a Class C3 dwelling is, as stated above, permitted development and that this application is simply for approval of certain detailed matters as set out below.
- 2.03 The proposals would include the following, as set out in the Planning Statement:
- the replacement of the existing external metal cladding with timber weatherboarding, and the replacement of the existing metal roof covering with a clay tile finish;
  - An area around the building to be used as the dwelling's amenity area.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 The site is located in the countryside.

### **4.0 POLICY AND OTHER CONSIDERATIONS**

- 4.01 The conversion of agricultural buildings (other than in conservation areas, SSSIs, and Areas of Outstanding Natural Beauty) is now permitted development by virtue of Class Q of the Order, subject to certain limitations and to an application for prior approval in relation to matters of:
- Transport and Highways impacts of the development.
  - Contamination risks on the site.
  - Flooding risks on the site.
  - Noise impacts of the development.
  - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed.
  - Design and external appearance impacts on the building

- 4.02 The National Planning Practice Guidance (NPPG) provides commentary on the working of these relatively new provisions, and states the following (my emphasis in bold):

What are the residential uses?

**Subject to a number of conditions and restrictions, agricultural buildings and land within their curtilage may convert to a use falling within Class C3 of the Schedule to the Use Classes Order 1987 (dwelling houses).** These conditions and restrictions are set out in Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. The maximum floor space that may be converted under this permitted development right is 450 square metres of floor space of a building or buildings within a single established agricultural unit. The total number of new homes which may be developed under the right is 3. The right is extinguished once any of the conditions ie the 3 dwellings or 450 square metres threshold, is reached. The total number of new homes (3 dwelling houses) does not include existing residential properties within the established agricultural unit, unless they were created by the use of the permitted development right on a previous occasion, in which case they would be counted.

Are any building works allowed when changing to residential use?

**Building works are allowed under the change to residential use.** The permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However, it recognises that **for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted.** The right allows for the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.

Are there any limitations to the change to residential use?

There are some limitations to the change to residential use. The Class Q rights cannot be exercised where works for the building, extending or altering of a building, or the installation of additional or replacement plant or machinery for the purposes of agriculture under the existing agricultural permitted development, have been carried out on the established agricultural unit since 20 March 2013, or within 10 years before exercising the change to residential use, whichever is the lesser. The agricultural permitted development rights are set out in Class A (a) or Class B (a) of Part 6 of Schedule 2 to the General Permitted Development Order (agricultural buildings and operations).

In addition, the site must have been used solely for an agricultural use, as part of an established agricultural unit, on 20 March 2013, or if it was not in use on that date, when it was last in use. If the site was brought into use after 20 March 2013, then it must have been used solely for an agricultural use, as part of an established agricultural unit, for 10 years before the date the development begins. If there is an agricultural tenancy in place, there are separate arrangements set out in Class Q.

Are there any conditions attached to the change to residential use?

**There are some conditions attached to the change to residential use. Before beginning the development, an individual will need to apply to the local planning authority for a determination as to whether the prior approval of the local planning authority is necessary** for the change of use. This prior approval will be in respect of transport, highways and noise impacts of the development, and also as to the flooding and contamination risks on the site, and whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to dwelling house. In addition, applicants will need to check whether the prior approval of the authority will be required as to the design or external appearance of the building.

The procedure for prior approval is set out in the Town and Country Planning (General Permitted Development) (England) Order 2015. This procedure was amended in April 2014 to make clear **that the local planning authority must only consider the National Planning Policy Framework to the extent that it is relevant to the matter on which prior approval is sought, for example, transport, highways, noise etc.**

Is there a sustainability prior approval for the change to residential use?

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 use to a house.

What is meant by impractical or undesirable for the change to residential use?

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 it should not therefore be applying 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.*

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 Surrounding occupiers were sent a consultation letter and a site notice was displayed close to the site. No responses have been received as yet, however the closing dates for comments expires on the 12<sup>th</sup> May 2017. As a result I will update Members at the meeting as to whether any comments were received.

## **6.0 CONSULTATIONS**

- 6.01 **Cllr John Wright** commented – *“Wish to object to this application on all the grounds stated in the decision by officers and committee for the development at Kaine Farm Breach Lane Upchurch. In particular that it is in an unsustainable position and has landscape impacts.”*
- 6.02 **KCC Highways & Transportation** made no comments.
- 6.03 **The Environmental Health Manager** made no comments.

## **7.0 APPRAISAL**

- 7.01 It is important for Members to note at the outset that this is not a full application for planning permission; it is a request to determine only whether or not prior approval is required only in relation to:
- Transport and Highways impacts of the development.
  - Contamination risks on the site.
  - Flooding risks on the site.
  - Noise impacts of the development.
  - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed.
  - Design and external appearance impacts on the building
- 7.02 As a result, this is purely a technical assessment of the issues outlined in the GPDO (as at 4.02 above), which itself grants deemed planning permission for the development, and would normally be dealt with entirely under delegated powers. It has been referred to Members because the powers delegated to the Head of Planning require proposals which have a recommendation contrary to a view stated by an elected Member (in this case the Ward Councillor, Councillor Wright, as set out above) to be reported to Planning Committee.
- 7.03 I consider it vital to draw Members attention to the decision of the Council as set out under reference 15/508792/PNQCLA. This previous application related to the same building as now being considered and the Council determined that prior approval was not required. The only differences between the previous application and the one now being considered is that this proposal also seeks prior approval in relation to “Design and External Appearance Impacts on the Building,” and that the configuration of the amenity space has been altered.
- 7.04 I am of the opinion that the proposal now being considered wholly complies with the conditions as set out in Class Q of the GPDO 2015, and the advice of the NPPF (as at 4.02 above). The agent has set out in their Planning Statement how the proposal meets all of the requirements of Class Q and I concur with their views.

- 7.05 I consider below the issues specified in Class Q in accordance with the provisions of paragraph W of the GPDO.

Transport and Highways Impacts of the development

- 7.06 I give significant weight to the decision made by the Council under application reference 15/508792/PNQCLA to which KCC Highways & Transportation made no comment (as is the case with this current proposal). Vehicle parking can be accommodated within the defined curtilage of the dwelling. As a result of the above I believe that prior approval is not required for the transport and highway impacts of the development.

Noise impacts of the development

- 7.07 I again give significant weight to the decision made under 15/508792/PNQCLA which determined that the noise impacts of the development would be minimal. I consider that the conversion of the building to a dwellinghouse would not give rise to a significant noise impact and as a result I believe that prior approval is not required in relation to the noise impacts.

Contamination risks on the site

- 7.08 I note and give significant weight to the decision made under 15/508792/PNQCLA which did not require prior approval in relation to contamination risks. I see no reason why I should come to a different conclusion in this regard, and I note that the Environmental Health Manager raises no objections to this current proposal..

Flooding risks on the site

- 7.09 The site is not in a flood zone and as such the threshold for consulting the Environment Agency set out in paragraph W has not been met. I consider that prior approval is not required for the flood risks on the site.

Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed.

- 7.10 I note the objection that has been received on the grounds that the location of the building is unsustainable and has landscape impacts. In this case it is important to note that **the NPPG guidance, as set out in full above, makes it very clear that LPAs can not apply a test of sustainability to such change of use applications in recognition of the rural location of the majority of agricultural buildings.** The tests applied in relation to the sustainable location of the development are not the same as would be applied to a planning application, and in relation to this the NPPG states 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.”*
- 7.11 I also give very significant weight to appeal decisions at Scotts Hill, Hartlip (APP/V2255/W/15/3003010); Norwood Farm, Bobbing (APP/V2255/W/15/3005182) and very recently at Wrens Hill Farm, Wrens Hill, Norton (APP/V2255/W/16/3161427). The Inspector’s decisions for these appeals give very clear indication that the Council should not be refusing such applications on sustainability grounds unless the property is truly inaccessible (at the top of a mountain, for example).

- 7.12 I also give significant weight to the decision issued by the Council under 15/508792/PNQCLA, which considered that the site lies on level ground relatively close to the villages of Upchurch and Lower Halstow.
- 7.13 The host building is accessed by a track, approximately 80m in length. However, I give significant weight to the comments of the Inspector on the Wrens Hill Farm appeal (as above) where it was stated that *“unmade farm tracks of this nature are not unusual as a means of residential access particularly in rural areas”*. I am therefore clear that prior approval is not required in this regard, and would again reiterate that applications for prior notification schemes are (perhaps unfortunately) not subject to the same vigorous policy considerations that apply to applications for planning permission.

#### Design and external appearance impacts on the building

- 7.14 The objection received also relates to the landscape impacts of the development. The requirements under Class Q do not specifically require the landscape impacts to be assessed. However the design and external appearance impacts on the building are to be considered. In relation to this, it is important to note that Class Q of GDPO does not allow for the dimensions of the building to be increased. As a result, the existing building which is in situ will only be altered by virtue of the the replacement of the existing external metal cladding with timber weatherboarding, the replacement of the existing metal roof covering with a clay tile finish and the insertion of windows and doors.
- 7.15 The NPPG states *“it recognises that for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted. The right allows for the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house.”*
- 7.16 As such, I am of the view that the proposed appearance of the building, by virtue of the materials chosen and the pattern of fenestration, will be acceptable and that prior approval is not required in this regard.

## **8.0 CONCLUSION**

- 8.01 This application seeks to determine whether the Council's prior approval is required in relation to certain specified criteria in relation to conversion of a barn to a dwelling under Class Q of the GPDO (England) 2015. It is not an application for planning permission to which the Council can apply its usual policy considerations, but is instead a technical assessment of the facts provided.
- 8.02 I note the objection from the Ward Councillor, but the issues raised amount to policy considerations which, as above, do not apply to applications for prior approval.
- 8.03 I consider that prior approval is not required for the proposed development.

## **9.0 RECOMMENDATION – Prior Approval Not Required**

- NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.