

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	ML	22/07/2019
Planning Development Manager authorisation:	TF	23/07/2019
Admin checks / despatch completed	AP	23/7/19

ER

Application: 19/00841/COUNOT **Town / Parish:** Brightlingsea Town Council

Applicant: C/o Agent

Address: Folkards Barn Folkards Lane Brightlingsea

Development: Proposed change of use of an agricultural building to one dwelling.

1. Town / Parish Council

Brightlingsea Town Council No comments received

2. Consultation Responses

Environmental Protection Due to the site's proximity to a Boarding Kennels & Cattery, prior to commencement of the development a full Noise Assessment should be submitted to the Local planning authority showing the proposed residential units (with the windows closed) meet the following internal noise levels shall be achieved; 35dB(A) Leq 16 hours 07.00hrs - 23.00hrs in Living rooms, while 30dB(A) Leq 8 hours in Bedrooms and no individual noise event to exceed 45dB(A) max (measured with F time weighting) 23.00hrs - 07.00hrs. External noise affecting gardens, balconies or amenity spaces shall not exceed 55dB(A)eq. (BS8233:2014).

3. Planning History

No relevant planning history

4. Relevant Policies / Government Guidance

n/a

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term

sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

5. Officer Appraisal (including Site Description and Proposal)

Proposal

This is a "prior notification" under Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015. The applicant is seeking the Council's determination as to whether its "prior approval" is required for the conversion of the building to create a 2 bedroom dwelling (Class C3) under the new relaxed permitted development allowances as set out in Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Assessment

Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that permitted development is 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.

Development shall not be permitted where:

(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;

- In this instance, the building does not appear to have been used solely for an agricultural use as part of an established agricultural unit, instead an equestrian use forming stables and a storage barn. The land surrounding the building appears to be used for the grazing of horses only. The information provided by the applicant supports this view by stating that the use in recent years has been equestrian only as there has been no requirement for the land for sheep grazing. Consequently, there is insufficient evidence to show that the building is or was in an agricultural use thereby failing the criteria listed above.

(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

(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; 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 consists of the conversion of a timber framed barn amounting to approximately 74 square metres. There are no other buildings sited on the land in question.

This criteria is therefore met.

This criterion is met.

(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 converted floorspace is 74 square metres. No other buildings are present on the land. This criterion is therefore met.

(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;

- The floorspace is under 100 square metres and no other buildings are present on the land. This criterion is therefore met.

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

- It is not occupied under an agricultural tenancy. Therefore this criterion is met.

- (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;

- No such agricultural tenancy has been terminated. Therefore this criterion is met.

- (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 such development has 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 development does not extend beyond the existing building envelope and therefore this criterion is met.

- (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 proposed development would consist of a change of use, with external works consisting of the insertion/removal of doors, windows and the addition of a brick plinth and weatherboarding. The internal works include dividing walls into the required rooms. Such works are covered by the allowances above. Therefore this criterion is met.

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

- The site is not on article 2(3) land. Therefore this criterion is met.

(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;

- The site is not, or does not form part of any of these interests or such areas. Therefore this criterion is met.

(l) the site is, or contains, a scheduled monument; or

- The site does not include a schedule monument. Therefore this criterion is met.

(m) the building is a listed building.

- The building is not listed. Therefore this criterion is met.

Conditions

In addition to the above requirements, condition Q.2.(1) requires the Local Planning Authority to consider as to whether the following issues would require prior approval (accompanied by officer comments in italics):

(a) transport and highways impacts of the development,

- The plans show an existing access to the lane and the site itself together with a good sized area for parking/turning purposes. There are no other material transport or highways impacts. Therefore, this criterion is met.

(b) noise impacts of the development,

- The Council's Environmental Protection Team have provided the following comments;

Due to the site's proximity to a Boarding Kennels & Cattery, prior to commencement of the development a full Noise Assessment should be submitted to the Local planning authority showing the proposed residential units (with the windows closed) meet the following internal noise levels shall be achieved; 35dB(A) Leq 16 hours 07.00hrs -23.00hrs in Living rooms, while 30dB(A) Leq 8 hours in Bedrooms and no individual noise event to exceed 45dB(A) max (measured with F time weighting) 23.00hrs - 07.00hrs. External noise affecting gardens, balconies or amenity spaces shall not exceed 55dBLAeqt. (BS8233:2014).

In the absence of a full noise assessment it cannot be adequately demonstrated that future residents would not be subjected to adverse levels of noise from the existing commercial kennels and cattery located in close proximity to the south. As a result it cannot be proven that future residents will have a sufficient level of residential amenity or that the existing business will be compromised through the potential for noise complaints.

(c) contamination risks on the site,

- The site is not located near to any land designated as contaminated land. Therefore, this criterion is met.

(d) flooding risks on the site,

- The building is not within designated Flood Risk Zone. Therefore, this criterion is met.

(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

- The National Planning Practice Guidance states:

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.

On this basis, the Local Planning Authority does not consider that the location or siting of the building would make it impractical or undesirable for the proposed change of use.

(f) the design or external appearance of the building,

- The external alterations are minimal and would result in an overall enhancement to the appearance of the building. It is considered that due to the proposal being well set back and using materials that assist in retaining the rural appearance of the building, the Local Planning Authority does not consider that the proposed development will have any significant impact on the design or external appearance of the building.

Representations

1 letter of objection has been received from the owners of the commercial kennels and cattery to the south. The letter outlines the owner's concerns in respect of noise generated by their business and the potential for future noise complaints that could compromise the business.

6. Recommendation

Prior Notification - Refused

7. Reasons for Refusal

1 Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 states, under Q.1 (a), that works are not permitted by Class Q if;

- the site was not used solely for an agricultural use as part of an established agricultural unit;

(i) 20th May 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; and

In this instance, the building does not appear to have been used solely for an agricultural use as part of an established agricultural unit, instead an equestrian use forming stables and a storage barn. The land surrounding the building appears to be used for the grazing of horses only. The information provided by the applicant supports this view by stating that the use in recent years has been equestrian only as there has been no requirement for the land for sheep grazing. Consequently, there is insufficient evidence to show that the building is or was in an agricultural use thereby failing the criteria listed above.

The proposal is therefore considered to fail sections Q.1 (a) of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.

2 Paragraph 180 of the National Planning Policy Framework (2019) states that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Policy QL11 of the Saved Plan states that amongst other criteria, development will only be permitted if the scale and nature of the development is appropriate to the locality and the health, safety or amenity of any occupants or users of the proposed development will not be materially harmed by any pollution from an existing or committed use. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

In the absence of a full noise assessment it cannot be adequately demonstrated that future residents would not be subjected to adverse levels of noise from the existing commercial

kennels and cattery located in close proximity to the south. As a result it cannot be proven that future residents will have a sufficient level of residential amenity or that the existing business will be compromised through the potential for noise complaints. The development therefore fails to comply with the above mentioned national and local planning policies.

8. Informatives

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	<input checked="" type="radio"/> NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	<input checked="" type="radio"/> NO