

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	11 th Nov 2018
Planning Development Manager authorisation:	AN	11/11/18
Admin checks / despatch completed	CE	11/11/18
Technician Final Checks/ Scanned / LC Notified / UU Emails:		

Application: 19/01254/COUNOT **Town / Parish:** Ardleigh Parish Council

Applicant: Mr M Burt

Address: Morrow Lane Nurseries Morrow Lane Ardleigh

Development: Change of use of former agricultural barn, cold store and boiler house into 3no. dwellings.

1. Town / Parish Council

No comments received

2. Consultation Responses

No comments received

3. Planning History

13/00332/FUL	Change of use of redundant buildings for B1 and B8 commercial purposes.	Approved	29.05.2013
19/01254/COUNO T	Change of use of former agricultural barn, cold store and boiler house into 3no. dwellings.	Current	

4. Relevant Policies / Government Guidance

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

5. Officer Appraisal (including Site Description and Proposal)

Class Q – agricultural buildings to dwellinghouses

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.

For the avoidance of doubt; Building A (agricultural store) is single storey and has a footprint of 93.8sqm. Building B (nurse cold store) is two storey and has a cumulative footprint of 98sqm. Building C (boiler house/cold store) is single storey and has a footprint of 129.1sqm.

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;

Drawing number 3050/002 shows indicates Buildings A B and C outlined in red; this is considered to indicate 'the site'. The site was used solely for an agricultural use as part of an established agricultural unit on 20th March 2013. **The proposal complies.**

- (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;

In the case of a larger dwellinghouse, within an established agricultural unit the cumulative number of separate larger dwellinghouses developed under Class Q does not exceed 3; nor does the cumulative floor space of the existing building or buildings changing use to a larger dwellinghouse or dwellinghouses under Class Q exceed 465 square metres. **The proposal complies.**

- (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;

Not applicable.

- (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 development under Class Q (together with any previous development under Class Q) within an established agricultural unit would not result in either or both a larger dwellinghouse

or larger dwellinghouses having more than 465 square metres of floor space 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 proposal complies.**

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

The site is not occupied under an agricultural tenancy. **The proposal complies.**

- (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;

Less than 1 year before the date development begins an agricultural tenancy over the site has not been terminated. **The proposal complies.**

- (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(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit since 20th March 2013 or 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. **The proposal complies.**

- (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 would not result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. **The proposal complies.**

- (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 development under Class Q(b) would not 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 allowed by paragraph Q.1(i)(i). **The proposal complies.**

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

The site is not on article 2(3) land. **The proposal complies.**

- (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 nor forms part of a site of special scientific interest, a safety hazard area or a military explosives storage area. **The proposal complies.**

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

The site is not nor contains, a scheduled monument. **The proposal complies.**

- (m) the building is a listed building.

The building is not a listed building. **The proposal complies.**

Conditions

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 the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

Transport and Highways Impacts of the Development

The existing private vehicle access comes out onto Morrow Lane. The plot retains adequate room and provision for off street parking and turning for the proposed dwellings. There are no other material transport or highways impacts. Furthermore, Essex County Council Highway Authority raise no objection to the development subject to conditions.

Noise Impacts of the Development

The proposal would not result in any material noise impacts.

Contamination Risks on the Site

The site is not located near to any land designated as contaminated land.

Flooding Risks on the Site

The site is located outside of an area of recognised flood risk.

Whether the Location or Siting of the Building is Impractical or Undesirable for the Building to Change

Paragraph 109 of 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.

The Design or External Appearance of the Building

The design will see a conversion of the existing structures. However, the proposed changes involved are all minor works, with replacement and re-use of some materials and additional doors and windows. These would all be expected from such a proposal. Therefore 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.

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 the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

The development proposed is not development under Class Q(a) only. **The proposal complies.**

(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.

Interpretation of Class Q

Q.3. For the purposes of Class Q -

'larger dwellinghouse' means a dwellinghouse developed under Class Q which has a floor space of more than 100 square metres and no more than 465 square metres having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;

'smaller dwellinghouse' means a dwellinghouse developed under Class Q which has a floor space of no more than 100 square metres having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.

Procedure for applications for prior approval under Part 3

- (1) The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.
- (2) The application must be accompanied by –
 - (a) a written description of the proposed development, which, in relation to development proposed under Class C, M, N or Q of this Part, must include any building or other operations;
 - (b) a plan indicating the site and showing the proposed development;
 - (c) the developer's contact address;
 - (d) the developer's email address if the developer is content to receive communications electronically; and
 - (e) where sub-paragraph (6) requires the Environment Agency(a) to be consulted, a site-specific flood risk assessment, together with any fee required to be paid

Covering letter, reference 19.023, received on 20th August 2019 confirms that development under Class Q is being sought, it describes the number of dwellings and their cumulative footprint and includes reference to building or other operations. A plan indicating the site and showing the proposed development was received on 20th August 2019. The developer's contact address is given in response to Question 2 on the application form. The developer's email address if (the developer is content to receive communications electronically) is given in response to question 9 on the application form. Sub-paragraph (6) does not require the Environment Agency(a) to be consulted. The fee required was paid on 20.08.2019. Procedure W.2, paragraphs (a) to (e) have been met.

- (3) The local planning authority may refuse an application where, in the opinion of the authority –
 - (a) the proposed development does not comply with, or
 - (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

The local planning authority are not refusing the application. Procedure W.3 (a) or (b) are not applicable.

- (4) Sub-paragraphs (5) to (8) and (10) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval

The local planning authority are not refusing the application. Procedure W.4 is not applicable.

- (5) Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult –
 - (a) where the increase or change relates to traffic entering or leaving a trunk road, the highway authority for the trunk road;
 - (b) the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority; and
 - (c) the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway.

The Highways Authority were consulted on 25.10.2019. Procedure W.5 has been met.

- (6) Where the application relates to prior approval as to the flooding risks on the site, on receipt of the application, the local planning authority must consult the Environment Agency(b) where the development is -
- (a) in an area within Flood Zone 2 or Flood Zone 3; or
 - (b) in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.

The application does not relate to prior approval as to the flooding risks on the site. Procedure W.6 has been met.

- (7) The local planning authority must notify the consultees referred to in sub-paragraphs (5) and (6) specifying the date by which they must respond (being not less than 21 days from the date the notice is given)

The local planning authority notified the consultees referred to in sub-paragraph (5) specifying that they must respond by 4th November. Procedure W.7 has been met.

- (8) The local planning authority must give notice of the proposed development –
- (a) by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which
 - (i) describes the proposed development;
 - (ii) provides the address of the proposed development;
 - (iii) specifies the date by which representations are to be received by the local planning authority; or

(b) by serving a notice in that form on any adjoining owner or occupier

The local planning authority gave notice on 11th October 2019 of the proposed development by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which described the proposed development, provided the address of the proposed development and specified the date by which representations are to be received by the local planning authority. Procedure W.8 has been met.

- (9) The local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include –
- (a) assessments of impacts or risks;
 - (b) statements setting out how impacts or risks are to be mitigated; or
 - (c) details of proposed building or other operations

The local planning authority did not require the developer to submit such information in order to determine the application. Procedure W.9 has been met.

- (10) The local planning authority must, when determining an application –
- (a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8);
 - (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(a), so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and
 - (c) in relation to the contamination risks on the site
 - (i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b), and in doing so have regard to the

- Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(c), and
- (ii) if they determine that the site will be contaminated land, refuse to give prior approval.

When determining the application the local planning authority is taking in to consideration the representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8). The two representations received from the adjacent property are summarised as:-

The site was NOT used solely for agricultural use on 20th March 2013.	See Q.1(a) in the main body of the report.
The buildings were not used for agricultural use since at least 2009. This site is currently being used as an industrial unit for the applicants business.	During the determination of the Prior Approval, written confirmation was received confirming that the existing use remains as agricultural.
The building classed as 'building A' had a new roof fitted approx. 7 years ago, however the rest of the building has fallen into disrepair.	Noted.
A change of usage therefore is not appropriate as the existing building will need to be demolished and a completely new building constructed	See Q.1 (i) (ii) in the main body of the report.
Building A is next to our boundary; currently hidden and screened by an existing treeline. If this development is allowed, this treeline will need to be taken out, thereby impacting our privacy from this direction.	Building A is single storey in nature; separation distances are in excess of 25m (views from a public vantage point on Morrow Lane are at a significantly lesser distance), there is no evidence contained within the application that suggests the unprotected trees would need to be removed.
Building B is a double storey building that without this treeline will look directly into our property therefore we will have a loss of privacy.	Building B, whilst being two-storey in nature has separation distances in the region of 50m; there is no evidence contained within the application that suggests the unprotected trees would need to be removed.
Currently building B utilises our septic tank for its waste, as does the caravan within the plot of building A. This is an impact on our current amenity as there would be an increase flow into a limited size tank. This tank sits within the applicants land and access must be maintained at all times.	Noted.
Building C is shown larger than the current building, as a temporary wooden structure (as shown on north and south elevations) that was added for animal shelter is being used to increase the actual dimensions of the permanent building. Therefore the proposed external dimension is an increase on the current dimensions of the building and hence breaches Class Q.	Noted. The combined concrete building and its attached timber 'store' are subject to the Prior Approval.

The local planning authority did, when determining an application, take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8), had regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(a), so far as relevant to the subject matter of the prior approval, as if the application

were a planning application; and, in relation to the contamination risks on the site, determined whether the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(c). Procedure W.10 has been met.

- (11) The development must not begin before the occurrence of one of the following –
- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;
 - (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or
 - (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.

Procedure W.11 must be met by the developer.

- (12) The development must be carried out -
- (a) where prior approval is required, in accordance with the details approved by the local planning authority;
 - (b) where prior approval is not required, or where sub-paragraph (11)(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1), unless the local planning authority and the developer agree otherwise in writing

Procedure W.12 must be met by the developer

- (13) The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

The local planning authority is granting prior approval subject to conditions reasonably related to the subject matter of the prior approval. Procedure W.13 has been met.

6. Recommendation

Determination prior approval not reqred

7. Conditions / Reasons for Refusal

- 1 The development must be completed within a period of 3 years starting with the prior approval date.
- 2 There shall be no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided prior to the completion of the new dwelling(s) and retained free of any obstruction at all times.

Reason - To provide adequate inter-visibility between users of the access and the public highway in the interests of highway safety.

- 3 No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

Reason - To avoid displacement of loose material onto the highway in the interests of highway safety

8. Informatives

In the interest of highway safety the Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to first occupation and retained at all times.

To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Steps should be taken to ensure that the Developer provides sufficient turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.

Any work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at: development.management@essexhighways.org or by post to:

SMO1 Essex Highways
Colchester Highways Depot,
653 The Crescent,
Colchester.
CO4 9YQ.

Are there any letters to be sent to applicant / agent with the decision?		NO
Are there any third parties to be informed of the decision?		NO