

## DELEGATED DECISION OFFICER REPORT

| AUTHORISATION   | INITIALS | DATE       |
|---|----------|------------|
| File completed and officer recommendation:                  | NH       | 08/04/2021 |
| Planning Development Manager authorisation:                 | TF       | 08/04/2021 |
| Admin checks / despatch completed                           | DB       | 08.04.2021 |
| Technician Final Checks/ Scanned / LC Notified / UU Emails: | CC       | 08.04.2021 |

**Application:** 21/00236/COUNOT                      **Town / Parish:** Tendring Parish Council

**Applicant:** Maviton Ltd

**Address:** Pestle Hall Farm Crow Lane Tendring

**Development:** Proposed conversion of agricultural building into a self- contained dwellinghouse

### **1. Town / Parish Council**

Tendring Parish Council  
26.03.2021

Tendring Parish Council object to this application for the following reason:

The barn would not be a conversion but a rebuild. Class Q requires that, in order to qualify, the work required in the conversion be limited to certain things.

Guidance associated with the regulations, and previous case law, has shown that where structural work is required (either to the existing main structure, or by provision of additional structural elements) then Class Q does not apply.

In the case of this barn, the planning statement says the current steel frame is sufficient - but it is not. Both the frame and the concrete floor are not of a standard that could support a 4 bed, two storey house to meet modern building regulations.

### **2. Consultation Responses**

ECC Highways Dept  
29.03.2021

The information that was submitted in association with the application has been fully considered by the Highway Authority. No site visit was undertaken in conjunction with this planning application. The information submitted with the application has been assessed and conclusions have been drawn from a desktop study with the observations below based on submitted material, google earth image dated April 2010. The proposed dwelling will utilise established vehicular access which currently serves one other dwelling. When compared with the former agricultural use, the level of activity will be on a par or possibly reduced. It appears that the proposed dwelling will retain adequate off-street parking and turning, therefore:

From a highway and transportation perspective the impact of the proposal is acceptable to Highway Authority subject to the following mitigation and conditions:

1. Areas within the curtilage of the site for the purpose of loading / unloading / reception and storage of building materials and manoeuvring of all vehicles, including construction traffic shall be

provided clear of the highway.

Reason: To ensure that appropriate loading / unloading facilities are available to ensure that the highway is not obstructed during the construction period in the interest of highway safety in accordance with policy DM1.

2. The proposed development shall not be occupied until such time as details of the domestic car parking and turning area, in accordance with the parking standards has been provided, and details agreed in writing with the Local Planning Authority. The car parking and turning area shall be retained at all times for such purpose.

Reason: To ensure that on street parking of vehicles in the adjoining streets/roads does not occur, that appropriate parking is provided in accordance with Policy DM8 and to ensure that vehicles can enter and leave the highway in a forward gear all in the interest of highway safety in accordance with policy DM1.

3. Prior to occupation of the development the width of the existing access at its junction with the Crow Lane shall not be less than 5.5 metres, for at least the first 6 metres from the back of Carriageway / Footway / Highway Boundary.

Reason: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway, in the interests of highway safety in accordance with policy DM1.

4. 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 in accordance with policy DM1

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

Reason: To ensure appropriate cycle parking is provided in the interest of highway safety and amenity in accordance with Policy DM8.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Informative:

1: As access to the proposed dwelling will be via a private track, the applicant should therefore be requested to demonstrate that rights of pass and repass to the proposed development site exist in perpetuity and that the applicant also has the necessary permissions to make a vehicular connection via this track.

2: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall 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](mailto:development.management@essexhighways.org) or by post to:

SMO1 - Essex Highways

Colchester Highways Depot,  
653 The Crescent,  
Colchester  
CO4 9YQ

3: The (rural/remote) location of the site is such that access to key facilities, public transport, employment, and leisure opportunities is limited and for the vast majority of journeys the only practical option would be the car. This should be taken into consideration by the Planning Authority when assessing the overall sustainability and acceptability of the site.

### **3. Planning History**

|                     |  |          |            |
|---------------------|--|----------|------------|
| 95/00619/FUL        | Extension and alterations  | Approved | 14.06.1995 |
| 96/00770/FUL        | Extension/alterations (revision to scheme approved underTEN/95/0619)             | Approved | 15.07.1996 |
| 21/00236/COUNO<br>T | Proposed conversion of agricultural building into a self-contained dwellinghouse | Current  |            |

### **4. Relevant Policies / Government Guidance**

Not Applicable

#### **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. In this latter regard, as of 26<sup>th</sup> January 2021, 'Section 1' of the emerging Local Plan for Tendring (Tendring District Local Plan 2013-2033 and Beyond Publication Draft) has been adopted and forms part of the 'development plan' for Tendring.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) has been examined by an Independent Planning Inspector who issued his final report and recommended 'main modifications' on 10<sup>th</sup> December 2020. The Inspector's report confirms that, subject to making his recommended main modifications (including the removal from the plan of two of the three 'Garden Communities' proposed along the A120 i.e. those to the West of Braintree and on the Colchester/Braintree Border), the plan is legally compliant and sound and can proceed to adoption. Notably, the housing and employment targets in the plan have been confirmed as sound, including the housing requirement of 550 dwellings per annum in Tendring.

The Council has now formally adopt Section 1 of the Local Plan, in its modified state, at the meeting of Full Council on 26<sup>th</sup> January 2021, at which point it became part of the development plan and carries full weight in the determination of planning applications – superseding, in part, some of the more strategic policies in the 2007 adopted plan.

The examination of Section 2 of the Local Plan (which contains more specific policies and proposals for Tendring) will proceed in early 2021 and two Inspectors have been appointed by the Secretary of State to undertake the examination, with the Council preparing and updating its documents ready for the examination. In time, the Section 2 Local Plan (once examined and

adopted in its own right) will join the Section 1 Plan as part of the development plan, superseding in full the 2007 adopted plan.

Where emerging policies are particularly relevant to a planning application and can be given 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.

## **5. Officer Appraisal (including Site Description and Proposal)**

### Site Description

The application site relates to an agricultural building at Pestle Hall Farm.

### Proposal

This application is submitted under Class Q, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to determine whether prior approval will be required for the change of use of one agricultural building to one self-contained dwelling house.

### Assessment

Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out permitted development the criteria under which development is not permitted as follows:

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.

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;

*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;

Interpretation: "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.

- (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;

Interpretation: "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

*The proposed development comprises of one larger dwelling house,*

*Ground floor = 216 square metres*

*First floor = 135 square metres*

*= approximately 351 square metres which is under the 465 metre threshold.*

*The proposal complies with (b) (i) (aa) and (bb).*

- (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);

*Paragraph 13-105-20180615 of the Planning Practice Guidance (the PPG) explains that Class Q assumes that the agricultural building is capable of functioning as a dwelling. It is not the intention to allow rebuilding work which would go beyond what is reasonably necessary to allow for conversion to residential use. Therefore it is only where the existing building is structurally strong enough to take the loading which comes from the external works to provide for residential use that the building would be considered to have the permitted development right.*

*The existing agricultural building consists of three open sides. To undertake the conversion, the works would involve the construction of three walls and it is therefore considered that the works go beyond what could reasonably be described as a conversion without a substantial rebuild. The proposal therefore does not comply.*

- (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.
- (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.

- (a) Transport and Highways Impacts of the Development

*The site is served by an existing vehicular access from Crow Lane which is also shared by the occupants of Pestles Hall. The site would allow for two spaces to the side of the dwelling with associated turning heads to allow for sufficient manoeuvring on site.*

*Essex County Council Highway Authority raise no objection to the development subject to conditions, which will be imposed where necessary.*

*The proposal complies.*

- (b) Noise Impacts of the Development

*The proposal would not result in any material noise impacts and is situated a sufficient distance from any noise sensitive premises in the locality. Therefore, this criterion is met. The proposal complies.*

- (c) Contamination Risks on the Site

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

- (d) Flooding Risks on the Site

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

- (e) 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 proposal complies.*

(f) The Design or External Appearance of the Building

*The existing agricultural building consists of three open sides. To undertake the conversion, the works would involve the construction of three walls and it is therefore considered that the works go beyond what could be reasonably described as a conversion without a substantial rebuild. The proposal therefore does not comply.*

(g) The Provision of Adequate Natural Light in all Habitable Rooms of the Dwellinghouses

*Habitable Rooms are defined as "any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms". Drawing No. PPH-01 indicates that each habitable room will have adequate natural light.*

*The proposal complies.*

Other considerations

Tendring Parish Council objects to this application as the barn would not be a conversion it would be a rebuild. Class Q requires that, in order to qualify, the work required in the conversion be limited to certain things. Guidance associated with the regulations, and previous case law, has shown that where structural work is required (either to the existing main structure, or by provision of additional structural elements) then Class Q does not apply. In the case of this barn, the planning statement says the current steel frame is sufficient - but it is not. Both the frame and the concrete floor are not of a standard that could support a 4 bed, two storey house to meet modern building regulations.

8 letters of objection have been received raising the following concerns:

- Inappropriate access with poor visibility

*ECC Highways have been consulted on this application and do not object.*

- Poor local facilities for another residential unit

*This application is to establish whether prior approval is required based on the criteria as set out within the report above only.*



- Already one large residential house in Crow Lane that is unused

*This application is to establish whether prior approval is required based on the criteria as set out within the report above only.*

- Previous applications for change of use to residential within Crow Lane have recently been refused

*This application is to establish whether prior approval is required based on the criteria as set out within the report above only.*

- Concerns over the condition of the existing building and it being used for a conversion.

*This concern has been addressed within the report.*

## 6. Recommendation

Prior Approval Refused

## 7. Reasons for Refusal

- 1 Paragraph 13-105-20180615 of the Planning Practice Guidance (the PPG) explains that Class Q assumes that the agricultural building is capable of functioning as a dwelling. It is not the intention to allow rebuilding work which would go beyond what is reasonably necessary for the conversion to residential use. Therefore it is only where the existing building is structurally strong enough to take the loading which comes from the external works to provide for residential use that the building would be considered to have the permitted development right.

The existing agricultural building consists of three open sides. To undertake the conversion, the works would involve the construction of three walls and it is therefore considered that the works would go beyond what could be reasonably be described as a conversion without a substantial rebuild.

The proposal therefore does not comply with criteria h (ii) and criteria f of Class Q, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) England Order 2015.

## 8. Informatives

Not applicable

|  |            |           |
|--|------------|-----------|
| <p><b>Are there any letters to be sent to applicant / agent with the decision?<br/>If so please specify:</b></p> | <p>YES</p> | <p>NO</p> |
| <p><b>Are there any third parties to be informed of the decision?<br/>If so, please specify:</b></p>             | <p>YES</p> | <p>NO</p> |