

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	BO'B	18.01.2022
Planning Development Manager authorisation:	JJ	19/01/2022
Admin checks / despatch completed	ER	19/01/2022
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	19.01.2022

**Application:** 21/02012/COUNOT                      **Town / Parish:** Great Oakley Parish Council

**Applicant:** P Thompson - George Thompson (Great Oakley) LTD

**Address:** Brook Farm Stones Green Road Great Oakley

**Development:** Application for Prior Approval for the conversion of part of an agricultural building into a Class E use under Class R of the GDPO.

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

Great Oakley Parish Council                      No response

### **2. Consultation Responses**

Environmental Protection 10.12.2021                      Construction Activities: In order to minimise potential nuisance caused by demolition/construction works, Environmental Protection recommend that the following below is conditioned to any subsequent approval;

- No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Mondays to Saturdays (finishing at 13:00 on Saturdays) with no working of any kind permitted on Sundays or any Public/Bank Holiday whilst construction works and alterations are being carried out.

- No materials produced as a result of the site development or clearance shall be burned on site.

Adherence to the above condition will significantly reduce the likelihood of public complaint and potential enforcement action by Pollution and Environmental Control. The condition gives the best practice for Demolition and Construction sites. Failure to follow them may result in enforcement action under nuisance legislation (Environmental Protection Act 1990), or the imposition of controls on working hours (Control of Pollution Act 1974).

REASON: to protect the amenity of nearby residential premises

### 3. Planning History

99/01808/AGRIC	General purpose agricultural building	Determination	16.12.1999
05/01779/FUL	Erection of steel framed extension for general agricultural use	Approved	05.12.2005
07/01729/FUL	Erection of 18m high wind turbine.	Approved	
08/00412/FUL	Erection of 15m high domestic wind turbine.	Withdrawn	11.11.2008
95/00003/AGRIC	General Agricultural Building	Determination	23.02.1995
92/00010/AGRIC		Determination	16.10.1992
13/00116/FUL	Installation and operation of a ground mounted solar PV system with a capacity of up to 50kw.	Approved	22.03.2013
21/02012/COUNO T	Application for Prior Approval for the conversion of part of an agricultural building into a Class E use under Class R of the GDPO.	Current	

### 4. Legislation

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

Town and Country Planning (Use Classes) Order 1987 (as amended).

The Town and Country Planning (Development Management Procedure) (England) Order 2015.

#### Status of the Local Plan

Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework 2021 (the Framework).

The 'development plan' for Tendring comprises, in part, the 'saved' policies of the 2007 Local Plan. Paragraph 219 of the Framework allows local planning authorities to give due weight to policies adopted prior to its publication according to their degree of consistency with the policies in the Framework. On the 26<sup>th</sup> January 2021 Section 1 of the 2013-2033 Local Plan was adopted and now also forms part of the 'development plan' for Tendring, superseding some of the more strategic policies in the 2007 Local Plan. Notably, the housing and employment targets were found sound and have been fixed, including the housing requirement of 550 dwellings per annum.

Paragraph 48 of the Framework 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 the policies of the Framework. On 24<sup>th</sup> November 2021, the Council received the Planning Inspectors' final report on the legal compliance and soundness of Section 2 of the emerging Local Plan. The report has confirmed, that with the inclusion of a number of 'Main Modifications' (which have already been the subject of formal public consultation), the Plan is legally compliant and sound and can now proceed to adoption. The report is due to be considered by the Planning Policy and Local Plan Committee on 11<sup>th</sup> January 2022 which is likely to recommend adoption of the Section 2 Local Plan to Full Council on 25<sup>th</sup> January 2022. On adoption, the new Section 2 Local Plan will join the new Section 1 Local Plan to form the 'development plan' for Tendring and the old 2007 Local Plan will be superseded in full.

Now that the Inspectors' final report is received, the Section 2 Local Plan has virtually reached the final stage of preparation, all objections have been resolved and the Inspector has confirmed that the Plan is sound and therefore in conformity with the Framework. For these reasons, Officers now advise that the emerging Plan should now carry 'almost full weight' in decision making.

Until the new Local Plan is adopted in January 2022, the 2007 adopted Local Plan, legally, will still form part of the 'development plan' and there will still be a requirement to refer to the 2007 Local Plan in decision making. However, the level of weight to be afforded to the policies in the 2007 Plan is reduced to very limited weight given that a more up to date Plan has progressed to such an advanced stage of the plan making process.

## **5. Officer Appraisal**

### Site Description

The application site relates to a building and land at Brook Farm, Stones Green Road. There are a number of agricultural buildings on site. The buildings are currently operational and used for agricultural purposes. The applicant also stated in their support statement that buildings were used for agricultural purposes prior to 3rd July 2012 and this has remained continuous until the present day.

The property of Brooks Farmhouse is approximately 100m from the application building. Brooks Farmhouse is a Grade II Listed Building within its own defined residential curtilage and is a separate plot from the application site. The farm building subject of this application is a modern building and is not considered to be curtilage listed.

There is a vehicular access route from the main highway, a local road, through the wider farm complex to the application building.

### Proposal

This application is submitted under Class R, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to determine whether prior approval will be required for the change of use of part of an agricultural building to a use falling within Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended).

### **Assessment**

Schedule 2, Part 3, Class R 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 (officer assessment shown in bold text):

#### **Class R – agricultural buildings to a flexible commercial use Permitted development**

R. Development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within one of the following provisions of the Use Classes Order—

- (a) Class B8 (storage or distribution) of Schedule 1;
- (b) Class C1 (hotels) of Schedule 1;
- or (c) Class E (commercial, business or service) of Schedule 2.

**The proposal fails to meet the requirements of item R.**

**Firstly, Class R allows the change of use a building and any land within its curtilage. The definition of 'curtilage' for the purposes of Class R, as stated in paragraph X of Schedule 2, Part 3, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) is:**

- (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or*
- (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser;*

**The proposed site plan shows a red-line boundary which contains the application building and external curtilage land that is approximately twice the size of the part of the building that is proposed to change its use. Therefore, the proposed development does not meet the requirements of item R as the area of land immediately beside or around the agricultural building is clearly larger than the land area occupied by the agricultural building.**

**Secondly, the proposal fails wherein an agricultural building may change its use to a flexible use falling within only one of the provisions (a-c) above. The application is for the change of use of a building to Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). However, the applicant clearly states that building would be used for storage, packing and distribution, a use which is considered to fall within the remit of Class B8 of The Town and Country Planning (Use Classes) Order 1987.**

**It is noted here that Condition R.3 of Class R of Schedule 2, Part 3, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), requires that (R.3- (1)) before any subsequent change of use to another use falling within one of the use classes comprising the flexible use, the developer must, where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit exceeds 150 square metres, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to-**

- (i) transport and highways impacts of the development;**
  - (ii) noise impacts of the development;**
  - (iii) contamination risks on the site; and**
  - (iv) flooding risks on the site,**
- and the provisions of paragraph W (prior approval) shall apply in relation to that application.**

**As such, given that the size of the application site is in excess of the size that is allowed by way of item R, and there is a discrepancy between the proposed use class (Class E) and the description of the actual operations of the business (as provided by the applicant via the agent), a description which is considered to fall within Class B8, the proposal does not comply with item R.**

### **Development not permitted**

**R.1 Development is not permitted by Class R if—**

- (a) the building was not used solely for an agricultural use as part of an established agricultural unit—**

- (i) on 3rd July 2012;**
- (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 building which was brought into use after 3rd July 2012, for a period of at least 10 years before the date development under Class R begins;
- (b) the cumulative floor space of buildings which have changed use under Class R within an established agricultural unit exceeds 500 square metres;
- (c) the site is, or forms part of, a military explosives storage area;
- (d) the site is, or forms part of, a safety hazard area;
- or (e) the building is a listed building or a scheduled monument.

**The proposal complies with items R.1. (a-e).**

### **Conditions**

R.2 Development is permitted by Class R subject to the following conditions—

- (a) a site which has changed use under Class R may, subject to paragraph R.3, subsequently change use to another use falling within one of the use classes comprising the flexible use;

**N/A**

- (b) for the purposes of the Use Classes Order and this Order, after a site has changed use under Class R the site is to be treated as having a sui generis use;

**N/A**

- (c) after a site has changed use under Class R, the planning permissions granted by Class G Class E of Part 7 of this Schedule apply to the building, subject to the following modifications—

- (i) “curtilage” has the meaning given in paragraph X (interpretation) of this Part;
- (ii) any reference to “office building” is to be read as a reference to the building which has changed use under Class R.

**N/A**

R.3—(1) Before changing the use of the site under Class R, and before any subsequent change of use to another use falling within one of the use classes comprising the flexible use, the developer must—

- (a) where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit does not exceed 150 square metres, provide the following information to the local planning authority—

- (i) the date the site will begin to be used for any of the flexible uses;
- (ii) the nature of the use or uses; and
- (iii) a plan indicating the site and which buildings have changed use;

**N/A, the cumulative floor space of the building is more than 150 m2.**

- (b) where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit exceeds 150 square metres, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (i) transport and highways impacts of the development;
- (ii) noise impacts of the development;
- (iii) contamination risks on the site; and
- (iv) flooding risks on the site,

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

**N/A. whilst the cumulative floor space of the building exceeds 150 m2, there is a conflict between the proposed and described uses as detailed above under item R.**

- (2) Subject to sub-paragraph (3), development under Class R of the type described in paragraph R.3 (1) (b) must begin within a period of 3 years starting with the prior approval date.

**N/A**

- (3) Where, in relation to a particular development under Class R of the type described in paragraph R.3 (1) (b), planning permission is granted on an application in respect of associated operational development before the end of the period referred to in sub-paragraph (2), then development under Class R must begin within the period of 3 years starting with the date that planning permission is granted.

**N/A**

(4) For the purposes of sub-paragraph (3), “associated operational development” means building or other operations in relation to the same building or land which are reasonably necessary to use the building or land for the use proposed under Class R.

**N/A**

### **Interpretation of Class R**

R.4 For the purposes of Class R, “flexible use” means use of any building or land for a use falling within the list of uses set out in Class R and change of use (in accordance with Class R) between any use in that list.

### **Paragraph W**

#### **Procedure for applications for prior approval under Part 3 W. —**

(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 M, N or Q of this Part, must in the same application include any building or other operations;

**The proposal complies.**

b) a plan indicating the site and showing the proposed development;

**The proposal complies.**

(ba) in relation to development proposed under Classes G, M, MA, N, O, P, PA and Q of this Part, a statement specifying the net increase in dwellings proposed by the development (for the purposes of this sub-paragraph, “net increase in dwellings” is the number of dwellings proposed by the development that is additional to the number of dwellings on the site immediately prior to the development);

**N/A**

(bb) in relation to development proposed under Class Q of this Part, a statement specifying—

(i) the number of smaller dwellings proposed;

(ii) the number of larger dwellings proposed;

(iii) whether previous development has taken place under Class Q within the established agricultural unit and, if so, the number of smaller and larger dwellings developed under Class Q;

**N/A**

(bc) in relation to development proposed under Class G, M, MA, N, O, PA or Q of this Part, a floor plan indicating the total floor space in square metres of each dwelling, the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellings;

**N/A**

(c) the developer’s contact address;

**The proposal complies.**

(d) the developer’s email address if the developer is content to receive communications electronically; and

**The proposal complies.**

(e) where sub-paragraph (6) requires the Environment Agency to be consulted, a site-specific flood risk assessment,

**N/A**

together with any fee required to be paid.

**Fees were paid on 30.11.2021.**

(2A) Where the application relates to prior approval as to adequate natural light, the local planning authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses.

**N/A**

(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 except for conditions in paragraph G.1(d)(iv), paragraph M.2(1)(f), paragraph MA.2(2)(f), paragraph N.2(1)(e), paragraph O.2(1)(e), paragraph PA.2(1)(v), or paragraph Q.2(1)(g), limitations or restrictions specified in this Part as being applicable to the development in question.

**N/A**

(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.

**N/A**

(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 proposed development is on a farm that is reached by way of access from a local road. Therefore, the Highways Authority were not consulted.**

(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 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 site is in Flood Zone 1 and has not been identified as prone to critical drainage problems.**

(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).

**N/A**

(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

**A site notice was posted on 03.12.2021.**

b) by serving a notice in that form—

(i) on any adjoining owner or occupier; and (ii) where the proposed development relates to part of a building, on any owner or occupier of the other part or parts of the building.

**N/A**

(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 applicant has submitted sufficient information for the application to be assessed.**

(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 Ministry of Housing, Communities and Local Government in July 2021, 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, 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, and
- (ii) if they determine that the site will be contaminated land, refuse to give prior approval.

**Environmental Protection were consulted on the application and have not raised any issues regarding contaminated land. 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.

**The local planning authority is refusing the application within 56 days. Procedure W.13 is met.**

(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.

**The local planning authority is refusing the application. Procedure W.12 is not applicable.**

(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 refusing the application. Procedure W.13 is not applicable.**



(14) When computing the number of days in sub-paragraph (8)(a), any day which is a public holiday must be disregarded.

**When computing the number of days in sub-paragraph (8) (a), any day which is a public holiday was disregarded. Procedure W.14 has been met.**

**6. Recommendation**

Prior approval required - deemed application refused

**7. Reasons for Refusal**

1. The proposed site plan shows a red-line boundary which contains the application building and curtilage land that is approximately twice the size of the part of the building that is proposed to change its use. Therefore, the proposed development does not meet the requirements of item R of Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as the area of land proposed to change use is larger than the land area occupied by the agricultural building.
2. Under the criteria of Schedule 2, Part 3, Class R, an agricultural building may change its use to a flexible use falling within only one of the provisions of item R (a-c). The application is for the change of use of a building to Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). However, the applicant states that building would be used for storage, packing and distribution, a use which is considered to fall within the remit of Class B8 of The Town and Country Planning (Use Classes) Order 1987. Therefore, the proposal fails to comply with Schedule 2, Part 3, Class R, item R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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