

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	JR	01.03.2022
Planning Development Manager authorisation:	JJ	01/03/2022
Admin checks / despatch completed	ER	02/03/2022
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	02.03.2022

Application: 22/00045/COUNOT **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr and Mrs G Boot

Address: Garfield Nurseries 18A Thorpe Road Kirby Cross

Development: Proposed conversion of an agricultural building into one dwellinghouse.

1. Town / Parish Council

Frinton & Walton Town Council No comments received

2. Consultation Responses

ECC Highways Dept
14.02.2022

Whilst the site is located in the countryside, it is not considered that the use of the building as a dwelling would give rise to a significant increase in vehicle movements to and from the site or result in a material change in the character of the traffic in the vicinity of the site.

Given the scale of the proposed development and the area to be available for parking within the site, which complies with Tendring District Councils adopted parking standards, the proposal is acceptable to the Highway Authority subject to the provision of a Residents Travel Pack.

Environmental Protection
04.02.2022

No objection subject to conditions regarding a Watching Brief in regard to Contaminated Land, Asbestos removal, Construction Activities and Foul drainage.

3. Planning History

17/00396/FUL Proposed detached dwelling,
garage and bin/bike store. Refused 12.06.2017

4. Relevant Policies / Government Guidance

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

Technical housing standards – nationally described space standard (2015)

5. Officer Appraisal

Site Description

The application site is located on the northern side of Thorpe Road (B1033), accessed via a long driveway between Nos 18 and 20 Thorpe Road. The site, whilst close to other residential properties is located outside of the defined settlement development boundary of Kirby Cross. In terms of the 'blue line' site location plan as submitted with the application, the applicant owns the access way from Thorpe Road and a large area of land around the building (some 4 acres), comprising of a number of stables, a manège and open land to the rear which it is stated is used

for the keeping of poultry and cropping of hay following the cessation of the nursery business which operated on the site. Further north is open agricultural land.

The building which is the subject of this application (and outlined in red on the site location plan) is located to the east of the stable buildings. To the south is a small wildlife sanctuary, attached to The Willows, grazing and stabling are present to the rear of No. 18 Thorpe Road, with a mix of residential properties to the south and east of the site.

The building is of a concrete pre-fab type construction with a steel framework and a profile metal sheet roof. The site is not located within a Conservation Area and is sited within Flood Zone 1 which has a low risk of flooding.

Agricultural building evidence

Paragraph X of Section 2 Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out Interpretation of Part 3 in terms of definitions etc. It states that for the purposes of Part 3:-

“agricultural building” means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business; and “agricultural use” refers to such uses;

“curtilage” means, for the purposes of Class Q, R or S only—

(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.

“established agricultural unit” means agricultural land occupied as a unit for the purposes of agriculture—

(a) for the purposes of Class R, on or before 3rd July 2012 or for 10 years before the date the development begins; or

(b) for the purposes of Class Q or S, on or before 20th March 2013 or for 10 years before the date the development begins;

The planning statement refers to ‘the agricultural building is used to store agricultural equipment and machinery in relation to the poultry kept at the site and the cropping of hay from the open grassland directly north of the site’. The inside of the building comprises of cages/pens, tools and equipment and a variety of miscellaneous items such as furniture etc.

In order to clarify the position the planning history of the site was investigated in detail. Whilst it has not been possible to ascertain from planning records or historic maps, exactly when the building was constructed, the land around the site is historically agricultural in nature. The site is known as ‘Garfield Nurseries’ and information from 1985, has been submitted with the application which outlines the early development of the nursery business on site. It is noted that the nursery business has ceased, however there is no evidence to show that the building has ceased to be used for agriculture and is not considered to be part of the equestrian use undertaken in the wider site. Furthermore the officer report of application 17/00396/FUL refers to the site as a small holding/nursery with stables and a manège.

In support of this is Appeal decision APP/X1545/W/18/3198348, regarding a Barn at Great Mountains Farm, Colchester Road, Great Totham, Essex, CM9 8ED maintains that whilst it was unlikely that the barn in question was in an active agricultural use for the purposes of Class Q on the 20 March 2013, this did not mean it had moved away from its historic and lawful agricultural use. Particularly as a planning permission to use the building for purposes unrelated to agriculture was never been granted.

Therefore the Inspector concluded that on the balance of probabilities, the building was probably last in an active agricultural use as part of an agricultural unit in 1988 and found that there were no lawful intervening uses, despite various uses of the building by the applicant. The Inspector concluded that the complex of barns, including the appeal building, appeared to have been used for non-agricultural purposes in 2004, 2006 and 2016. However it was unclear whether the non-agricultural uses were for unbroken periods of time, more than intermittent and consistently more than low key.

As such, the recorded use of the appeal building as a store and workshop was considered unlikely to be sufficient evidence to demonstrate that a material change of use of the barn from agriculture to some other use had occurred and the historic and long standing use as an agricultural building had endured. This would suggest that the barn has had a lawful dormant agricultural use since 1988.

Thus, on the balance of probabilities the building is used/was last used for agricultural purposes in connection with an agricultural holding, i.e. the nursey business. There is no evidence to the contrary to demonstrate that the building and associated land has ever been used for any other purpose, and therefore this is considered to be the authorised use of the building.

It is therefore considered, on the balance of probabilities that a similar use of the application building, as that described above, has occurred and as no formal change of use application has been received or approved it is considered that the building remains in an agricultural use and therefore falls to be considered against the criteria of Class Q as outlined below.

Assessment

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 of the Council is required for the change of use of the agricultural building into one dwelling. (Officer assessment shown in bold text):

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 (emphasis added) 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 is considered to have been used solely for an agricultural use as part of an established agricultural unit on 20th March 2013 and is still used as such presently. 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.

The proposed development is not considered to be a larger dwellinghouse. 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;

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 1 single storey smaller dwelling house with an open plan living and kitchen area, 1 bedroom and a bathroom with a proposed floor area of approximately 39 square metres. The proposal complies.

(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 proposed 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;

An agricultural tenancy has over the site has not been terminated within 1 year of this application. 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.
- (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 utilises an existing access from Thorpe Road and given the small scale nature of the dwelling, 1 bed 1 person, the site can accommodate the one parking space which is required in line with the Essex Parking Standards. The proposal complies.

(b) Noise Impacts of the Development

The proposal would not result in any material noise impacts. The building is located relatively close to the stables, however these are of a small scale nature, within the ownership of the applicant and therefore are not considered to result in undue noise and disturbance to any future occupier of the dwelling. Therefore, this criterion is met. The proposal complies.

(c) Contamination Risks on the Site

Given the site and surrounding areas historical use for agriculture and associated activities, it is necessary to add a condition to any grant of Prior Approval that a Watching Brief is adhered to throughout the construction phase of the dwelling. Therefore subject to this condition and one also requiring the safe disposal of any asbestos found on site the proposal complies.

(d) Flooding Risks on the Site

The site is located within Flood Zone 1, which has a low risk of flooding. 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."

Whilst the building is sited in the countryside, close to the existing stables, it is of a small scale, providing a one bedroom one person single storey dwelling which utilises an existing access and is close to the station and other facilities of Kirby Cross. 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 works involved in the change of use would be limited and are sought to preserve the existing character and appearance of the building, being limited to mainly windows and doors. The resulting building would therefore have an acceptable visual impact on the character and appearance of the surroundings. 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. The proposal complies.

(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. BGN-01 indicates that each habitable room will have adequate natural light.

Nationally described space standards deals with internal space within new dwellings and is suitable for application across all tenures. It sets out requirements for the gross internal floor area of new dwellings at a defined level of occupancy as well as floor areas and dimensions for key parts of the home and, in accordance with the NPPF, seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

The proposed dwelling has a gross internal area of approximately 39sqm which meets the required size for a 1 bed 1 person dwelling as per the guidance. The bedroom also meets the requirements of the space standards. The proposal complies.

6. Recommendation

Prior Approval Not Required

7. Conditions imposed by Class Q

1. 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.

Reason - In order to comply Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

2. The development must be carried out (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.

Reason - In order to comply Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Other Conditions:

3. Reporting of Unexpected Contamination - In the event that contamination is encountered during construction it shall be reported in writing immediately to the Local Planning Authority and the following minimum requirements adhered to:
 1. All site works at the position of the suspected contamination will stop and the Local Planning Authority and Environmental Health Department will be notified as a matter of urgency.
 2. A suitably trained geo-environmental engineer should assess the visual and olfactory observations of the ground and the extent of contamination and the Client and the Local Authority should be informed of the discovery.
 3. The suspected contaminated material will be investigated and tested appropriately in accordance with assessed risks. The investigation works will be carried out in the presence of a suitably qualified geo-environmental engineer. The investigation works will involve the collection of solid samples for testing and, using visual and olfactory observations of the ground, delineate the area over which contaminated materials are present.
 4. The unexpected contaminated material will either be left in situ or be stockpiled (except if suspected to be asbestos) whilst testing is carried out and suitable assessments completed to determine whether the material can be re-used on site or requires disposal as appropriate.
 5. The testing suite will be determined by the independent geo-environmental specialist based on visual and olfactory observations.
 6. Test results will be compared against current assessment criteria suitable for the future use of the area of the site affected.
 7. Where the material is left in situ awaiting results, it will either be reburied or covered with plastic sheeting.
 8. Where the potentially contaminated material is to be temporarily stockpiled, it will be placed either on a prepared surface of clay, or on 2000-gauge Visqueen sheeting (or other impermeable surface) and covered to prevent dust and odour emissions.
 9. Any areas where unexpected visual or olfactory ground contamination is identified will be surveyed and testing results incorporated into a Verification Report.
 10. A photographic record will be made of relevant observations.
 11. The results of the investigation and testing of any suspect unexpected contamination will be used to determine the relevant actions. After consultation with the Local Authority, materials should either be:
 - i) re-used in areas where test results indicate that it meets compliance targets so it can be re-used without treatment; or
 - ii) treatment of material on site to meet compliance targets so it can be re-used;
 - iii) or removal from site to a suitably licensed landfill or permitted treatment facility.
 12. A Verification Report will be produced for the work.

Reason: To ensure that any risks (to future users of the land and neighbouring land and to controlled waters, property and ecological systems) arising from any land contamination are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

4. Should any asbestos containing materials be present on the development site, or used within the original construction of the building in question, it must be safely removed by a

qualified contractor, with relevant transfer notes being obtained to confirm safe and responsible removal and disposal.

Reason: to protect the health of site workers and end users

5. 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.

Reason: In the interests of residential amenity

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

Reason: In the interests of residential amenity

8. Informatives

Highways

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

Foul Drainage

The submitted application form advises a Sewerage Treatment Plant will be utilised as a way of disposing of foul waste; the Applicant/Agent must ensure the installation is fully compliant with the Environment Agency's Binding Rules and any other relevant Government guidance and British standards, in respect of these systems. Information on this can be found at: Septic tanks and treatment plants: permits and general binding rules: The general binding rules - GOV.UK (www.gov.uk). It is strongly recommended these rules are complied with, as they will minimise any potential nuisance to nearby residential dwellings, assist in preventing a potential Public Health nuisance, and minimise the potential for adverse incidents, of which may result in formal enforcement action.

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