

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case Officer recommendation:	MP	16/11/22
Planning Manager / Team Leader authorisation:	JJ	21/11/2022
Planning Technician final checks and despatch:	ER	24/11/2022

Application: 22/01499/COUNOT **Town / Parish:** Thorrington Parish Council

Applicant: Ms Karen Pawsey

Address: Apple Blossom Paddocks Brightlingsea Road Thorrington

Development: Prior Approval Application under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a proposed change of use of a building and land within its curtilage from use as an agricultural building to a residential dwelling and reasonably necessary building operations.

1. Town / Parish Council

Thorrington Parish Council No comments received.

2. Consultation Responses

Environmental Protection (15.11.2022) With reference to the above application, I can advise I have reviewed the proposal and associated documents and can confirm that should this application be approved, the EP Team are requesting the below are attached as conditions to any subsequent approval –

Contaminated Land: Given the sites historic use as a Nursery, its proximity (less than 250m) to a piece of registered historical contaminated land and the historic use of the surrounding agricultural land, the EP Team are requesting the submission of a Phase One risk assessment, in the form of a desktop study/site walkover report, prior to the commencement of the proposal. This will include a review of previous investigations; previous uses; potential sources of contamination; and potential pathways and receptors. If necessary, this shall be followed up by a 'phase two' risk assessment that shall incorporate a detailed intrusive investigation referring to the phase one study. Individual risk assessments shall be submitted to Environmental Protection Team for approval on completion.

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.

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

- 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

INFORMATIVE - Foul Drainage: The submitted application form and documents do not give confirmation on the drainage aspect of the development; should a Sewerage Treatment Plant will be utilised as a way of disposing of foul waste; we would request, should the application be approved, that the Applicant / Agent, 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.

REASON: to protect the health of residents and nearby residential premises

*INFORMATIVE

Asbestos: 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

Should you have any queries concerning this, please do not hesitate to contact me.

ECC Highways Dept
16.11.2022

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. The access to the site is via an existing vehicular access to the site which serves a number of other properties and no new or altered means of access is proposed as part of this application. It is noted that the site has been in active agricultural use (as a nursery) and has been utilised by large farm machinery. The supporting information states that the vegetation

in the vicinity of the access will continue to be managed and cut back to maintain visibility. The site will be provided with adequate parking and turning for the proposed dwelling and there are no material transport or highway impacts when compared with the current agricultural and other uses of the site, the level of activity will be on a par or possibly reduced, considering these factors:

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. Prior to occupation of the dwelling a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1.

3. The proposed dwelling shall not be occupied until such time as a domestic car parking for a minimum of two vehicles has been provided, in accordance with the Parking Standards, details to be agreed with the Local Planning Authority. The agreed car parking 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 and that appropriate parking is provided in accordance with Policy DM8.

4. 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: 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

2: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area, it covers, and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

3: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

4: Mitigating and adapting to a changing climate is a national and Essex County Council priority. The Climate Change Act 2008 (amended in 2019) commits the UK to achieving net-zero by 2050. In Essex, the Essex Climate Action Commission proposed 160+ recommendations for climate action. Essex County Council is working with partners to achieve specific goals by 2030, including net zero carbon development. All those active in the development sector should have regard to these goals and applicants are invited to sign up to the Essex Developers' Group Climate Charter [2022] and to view the advice contained in the Essex Design Guide. Climate Action Advice guides for residents, businesses and schools are also available.

3. Planning History

22/00171/FUL	Erection of a new timber framed dwelling following the demolition of existing agricultural barn.	Refused	11.05.2022
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4. Relevant Policies / Government Guidance

N/A

Status of the Local Plan

Planning law requires that decisions on 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 (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any

adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

5. Officer Appraisal

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 application submission makes no indication of when the agricultural building was constructed. There is no evidence before Officers to clarify that the building has been in situ for at least 10 years before the date development under Class Q would begin. Furthermore, aerial images demonstrate that the building was not in situ dated September 2020. Therefore, the proposal has failed to demonstrate that the building subject of the application has been constructed in excess of 10 years and thereby fails to accord with the above criterion.

(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 this case the proposal is for the conversion of one agricultural building measuring 322sqm. Therefore the conversion falls within the 'larger' dwellinghouse description. The cumulative number of separate larger dwellinghouses developed under Class Q within the established agricultural unit is one, and therefore does not exceed three. Furthermore, the cumulative floorspace is 322sqm and therefore does not exceed 465sqm. The proposal complies with this criterion.

(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;

In this case, the proposal is for the conversion of a barn measuring 322sqm which exceeds the definition of a 'smaller' dwellinghouse, and is therefore not applicable. Furthermore, the cumulative number of separate smaller dwellinghouses developed under Class Q within the established agricultural unit does not exceed 5. 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 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 and/or 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 one year before the date development begins an agricultural tenancy over the site has not been terminated and the termination was for the purpose of carrying out development under Class Q. 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 supporting statement and submitted drawings confirm that 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.

Transport and Highways Impacts of the Development:

The site will be accessed using an existing vehicular access via Brightlingsea Road to the west. The vehicular movements associated with one additional dwelling in this location will not result in increased conflict or danger to the highway network. In respect of car parking provision, Essex Parking Standards state a need for two spaces measuring 5.5m x 2.9m for dwellings with two bedrooms or more. The plans submitted demonstrate this can comfortably be achieved. Essex Highways 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. The proposal complies.

Contamination Risks on the Site:

The Council's Environmental Protection Team have been consulted, and have stated that given the sites historic use as a Nursery, its proximity (less than 250m) to a piece of registered historical contaminated land and the historic use of the surrounding agricultural land, there is a requirement for the submission of a Phase One Risk Assessment prior to the commencement of the proposal. Had the application been supported then this would have been included as a condition.

Flooding Risks on the Site:

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

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 occasion, the agricultural building subject of this application is located to the rear of 'Tullimaar' and 'Briar Patch' which are residential properties. This section of Brightlingsea Road is characterised by significant numbers of residential properties. 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.

The Design or External Appearance of the Building:

The design will see the conversion of one existing agricultural building. The proposed changes are relatively minor, with the inclusion of doors and windows. Such works would be expected in order to convert such a building, and 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 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 Number SK01A indicates that each habitable room will have adequate natural light.

6. Recommendation

Prior Approval Refused.

7. Reason for Refusal

- 1 The application submission makes no indication of when the agricultural building was constructed. There is no evidence before Officers to clarify that the building has been in situ for at least 10 years before the date development under Class Q of the above mentioned order, would begin. Furthermore, aerial images demonstrate that the building was not in situ dated September 2020. Therefore, the proposal has failed to demonstrate that the building subject of the application has been constructed and in situ for a period in excess of 10 years, and thereby fails to accord with Q.1 (a) (iii) of Class Q Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) England Order 2015 (as amended).

8. Informatives

Plans and Supporting Documents

The Local Planning Authority has resolved to refuse the application for the reason(s) set out above. For clarity, the refusal is based upon the consideration of the plans and supporting documents accompanying the application as follows, (including any updated or amended documents):

SK01A - Existing and Proposed Elevations and Floor Plans
Supporting Statement - Received 8th September 2022.