

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case officer recommendation:	MP	20/12/23
Planning Manager / Team Leader authorisation:	ML	20/12/2023
Planning Technician final checks and despatch:	ER	21/12/2023

Application: 23/01593/COUNOT **Town / Parish:** Thorpe Le Soken Parish Council

Applicant: Alex and Holly Phillips

Address: Birch Hall Farm Dale Hill Kirby Le Soken

Development: Prior Approval Application under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for proposed conversion of an agricultural building into a dwelling.

1. Town / Parish Council

Thorpe-le-Soken Parish Council No comments received.

2. Consultation Responses

Environmental Protection 27.11.2023 With reference to the above application; please see below for comments from the EP Team:

Construction Activities: In order to minimise potential nuisance caused by demolition/construction works, Environmental Protection recommend that the following hours and actions be adhered to, should the application be approved;

- o 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.

- o 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

Contaminated Land: Given the sites proximity to historical agricultural land, we are requesting a Watching Brief be conditioned (on any subsequent approval) and adhered to throughout the demolition and construction phase. We request that the LPA are contacted in the

event of unexpected ground conditions being encountered during construction and that the below minimum precautions are undertaken until such time as the LPA responds to the notification. I would also advise that the developer is made aware that the responsibility for the safe development of the site lies with them.

Minimum requirements for dealing with unexpected ground conditions being encountered during construction.

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: o re-used in areas where test results indicate that it meets compliance targets so it can be re-used without treatment; or o treatment of material on site to meet compliance targets so it can be re-used; or o removal from site to a suitably licensed landfill or permitted treatment facility.
12. A Verification Report will be produced for the work.

REASON: It is the responsibility of the developer to ensure the safe development of the site and to carry out any appropriate land contamination investigation and remediation works. The condition is to ensure the risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

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 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.

ECC Highways Dept
21.11.2023

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.

The documents accompanying the planning application have been duly considered. 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 following requirements;

1. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack per dwelling, for sustainable transport, approved by Essex County Council.

Reason: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011

Informative:

i. 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

ii. 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.

iii. 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.

3. Planning History

N/A

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), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) 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

Site Description

The application site is Birch Hall Farm, which is located to the north of Walton Road, within the parish of Kirby-le-Soken. The site includes a variety of agricultural related buildings, with the building subject of this application being located on the eastern section of the site.

Description of Proposal

This application seeks consent for the conversion of one agricultural building into a single residential unit served by five bedrooms, which is located to the eastern section of the site.

Assessment

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 form confirms that the site was used solely for an agricultural use as part of an established agricultural unit on 20th March 2013. The proposal complies.

(b) in the case of -

(i) a larger dwellinghouse, within an established agricultural unit -

(aa) the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or

(bb) the cumulative floor space of the existing building or buildings changing use to a larger dwellinghouse or dwellinghouses under Class Q exceeds 465 square metres;

In this case the proposal is for the conversion of one agricultural building with a proposed floorspace of 274sqm. This meets the definition of a larger dwelling, but the floorspace will not exceed 465sqm. In addition, the cumulative number of separate larger dwellinghouses developed under Class Q within the established agricultural unit does not exceed 3. This criterion is therefore met.

(c) in the case of -

(i) a smaller dwellinghouse, within an established agricultural unit -

(aa) the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or

(bb) the floor space of any one separate smaller dwellinghouse having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 100 square metres;

Not applicable.

(d) the development under Class Q (together with any previous development under Class Q) within an established agricultural unit would result in either or both of the following -

(i) a larger dwellinghouse or larger dwellinghouses having more than 465 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;

(ii) the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeding 5;

The development under Class Q (together with any previous development under Class Q) within an established agricultural unit would not result in either or both a larger dwellinghouse or larger dwellinghouses having more than 465 square metres of floor space, and/or the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order does not exceed 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 proposed drawings show the inclusion of a gable to the eastern elevation that measures approximately 6.5 metres in height, which extends higher than the existing structure which measures approximately 6.2 metres in height. The proposal therefore does extend beyond the external dimensions of the existing building and does not comply with this criterion.

Officers additionally note that the submission is not accompanied by full existing elevation drawings, and the proposed north and south elevations do not appear to include the proposed gable, which adds further weight to confirming the submission has failed to demonstrate the proposal would not extend beyond the existing elevations.

(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) will see significant alterations to the existing building, including the removal of part of the building, the inclusion of a new gable, the inclusion of doors and windows, as well as new wall and roof materials, and the creation of a first floor. The combination of all of the above are considered to go beyond the scope of the above requirements and this criterion is therefore not met.

(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 Dale Lane to the south-west. The vehicular movements associated with one 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 is 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 due to the previous use of the site for agricultural uses, a condition should be included for a Watching Brief. Subject to the inclusion of this condition the proposal complies.

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 eastern side of Birch Hall Farm, set amongst a series of other agricultural building as well as residential properties following previous planning permissions. 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 considered to be significant, with the inclusion of a gable, doors and windows, and new wall and roof materials.

The development under Class Q(b) will see significant alterations to the building. The combination of all of the above, as well as the removal of part of the building, go beyond the scope of the above requirements and this criterion is therefore failed. Such works go beyond the scope of what would be expected to convert such a building, and the Local Planning Authority consider that these works instead represent a new dwelling that is not in-keeping with the surrounding built form and overall rural character of the area.

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 2312-IDA-XX-PL-A-0203 indicates that each habitable room will have adequate natural light.

6. **Recommendation**

Prior Approval required.

7. **Reasons for Refusal**

- 1 The development under Class Q(b) will see significant alterations to the building, with the inclusion of a new gable, the inclusion of doors and windows, as well as new wall and roof materials, and the creation of a first floor. The combination of all of the above, as well as the removal of part of the building, go beyond the scope of the above requirements and this criterion is therefore failed.

The proposal is therefore contrary to item Q.1. (I) (i) and (ii), and Q.2 (1) (f) of The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class Q.

- 2 The development under Class Q(b) will see the introduction of a gable to the eastern elevation that measures approximately 6.5 metres in height, which extends higher than the existing structure which measures approximately 6.2 metres in height. The proposal is therefore contrary to item Q.1 (h) of The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class Q.

8. **Informatives**

N/A

9. **Equality Impact Assessment**

In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include A) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; B. Advance equality of opportunity between people who share a protected characteristic* (See Table) and those who do not; C. Foster good relations between people who share a protected characteristic* and those who do not, including tackling prejudice and promoting understanding.

It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.

In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics *	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral