

Council



St Edmundsbury
BOROUGH COUNCIL

Title of Report:	Delegation to Babergh District Council for the Determination of a Planning Application	
Report No:	COU/SE/18/019	
Report to and date:	Council	25 September 2018
Portfolio holder:	Susan Glossop Portfolio Holder for Planning and Growth Tel: 01284 728377 Email: susan.glossop@stedsbc.gov.uk	
Lead officer:	David Collinson Assistant Director (Planning and Regulatory) Tel: 01284 757306 Email: David.Collinson@westsuffolk.gov.uk	
Purpose of report:	The Council has received an application for a planning application that spans the border between St Edmundsbury Borough Council and Babergh District Council. It is common practice that such applications are determined by the application in which the majority of the application lies – in this case Babergh. This report seeks the approval of Council to delegate the determination of the application to Babergh District Council.	
Recommendation:	It is <u>RECOMMENDED</u> that Babergh District Council is given the delegated authority to determine Planning Application DC/18/0818/FUL, as set out in Section 1.1 of Report No: COU/SE/18/019.	
Key Decision: <i>(Check the appropriate box and delete all those that do not apply.)</i>	<i>Is this a Key Decision and, if so, under which definition?</i> Yes, it is a Key Decision - <input type="checkbox"/> No, it is not a Key Decision - <input checked="" type="checkbox"/>	
Consultation:	<ul style="list-style-type: none">This has been undertaken through the planning application process.	
Alternative option(s):	<ul style="list-style-type: none">SEBC to determine the application that relates to land in the Borough. The potential concerns with this approach are set out in the report.	

Implications:			
Are there any financial implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
Are there any staffing implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
Are there any ICT implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
Are there any legal and/or policy implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
Are there any equality implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
Risk/opportunity assessment: <i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>			
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
Babergh District Council determines the application contrary to the policies of St Edmundsbury Borough Council	Low	Babergh District Council will be provided a full copy of the submission included within this report establishing why officers are of the view that this application should be refused	Low
Ward(s) affected:		Cavendish Ward	
Background papers: <i>(all background papers are to be published on the website and a link included)</i>		None	
Documents attached:		Appendix A: Officer Delegation Report: DC/18/0818/FUL	

1. Key issues and reasons for recommendation(s)

1.1 Legal context

- 1.1.1 It can occasionally arise that a planning application straddles the border between one Council and another. Planning Fee regulations establish that in such cases, the planning fee is payable to the authority with the largest proportion of the development. However, there are no established, legal arrangements as to how local authorities should determine such applications.
- 1.1.2 In practice, both authorities could determine the application. However, this comes with some risk; the authorities could determine the application contrary to each other, or pose differing – or conflicting conditions on the application. This would clearly be unhelpful and confusing and as such, it is custom and practice that the authority in whose area the majority of the application is delegated to make the decision on behalf of both authorities.
- 1.1.3 Such delegations are made under s.101(1)(b) of the Local Government Act 1972. This section only allows the full Council to make a delegation to another authority – we cannot allow the Development Control Committee, or officers, to make such delegations to another Council.

1.2 Current situation

- 1.2.1 The Council has received an application on the boundary between St Edmundsbury and Babergh District Councils. The majority of the application lies within Babergh District, and as such it is recommended that the Council delegates Babergh District Council to make the determination on this application.
- 1.2.2 Officers have been in liaison with Babergh District Council whilst the application has progressed and they are aware of the concerns officers hold regarding the application, as set out in Appendix A to this report. This appendix has been provided to Members in order to give context on the application; the Assistant Director (Planning and Regulatory) has delegated authority within the Constitution to respond to applications in neighbouring authority areas.
- 1.2.3 It is recognised that there is a low risk that Babergh could determine the application contrary to the policies of St Edmundsbury Borough Council; however, it is considered this risk is lower than the risk outlined in 1.1.2 above that the two Councils could determine the applications with conflicting conditions on the recommendations.

Officer Delegated Report - DC/18/0818/FUL

Glasshouse Barn (Adjacent To Willow Tree Farmhouse) Mill Road Brockley

Date Registered: 21.05.2018 **Expiry Date:** 16.07.2018

Case Officer: Charlotte Waugh **Recommendation:** Refuse

Parish: Brockley **Ward:** Cavendish

Proposal: Cross Boundary Planning Application - (i) 2no. outbuilding and (ii) conversion of existing store to residential annexe

Applicant: Mr & Mrs M Stone

Background: This application is a 'cross boundary application'; that is, it is a development proposal which due to its size, nature and geographical extent, crosses between more than one local council area. In this case the two Authorities involved are St. Edmundsbury Borough Council and Babergh District Council. In cases such as this it is common practice for the same application to be submitted to both Planning Authorities. Application DC/18/0818/FUL is presently with St. Edmundsbury for consideration while application DC/18/01893 is with Babergh. It is also common practice in cases such as this for the planning application fee to be paid to the Authority which contains the majority of the development proposed, in this case Babergh.

The Local Authorities shared legal team recommends that the most appropriate way for these applications to be determined is for one Authority, in this case St. Edmundsbury (given that we hold the smallest area and as such, did not receive an application fee) to devolve its decision making power to Babergh (in accordance with Section 101 of the Local Government Act 1990) to issue one decision for the whole site. This course of action has been agreed with both Case Officers. Babergh will therefore determine the application once St. Edmundsbury has devolved its decision making responsibility to them. Babergh will base its decision on the assessment of the proposal by St. Edmundsbury and its own Development Plan policies.

Proposal: The planning application seeks consent for the conversion of an existing timber barn to a 2 bedroom annexe, as well as a new building to accommodate 3 bays of garaging and a gym. Electric gates and a front boundary wall are also included in the application.

Site Details: The overall site accommodates a large barn (within Babergh) which has been given consent under Class Q to be converted to a dwelling, albeit this has not yet been implemented. A smaller timber barn forms the Eastern boundary.

Planning History:

Reference	Proposal	Status	Received Date	Decision Date
DC/18/0455/PMB PA (In relation to annexe building)	Prior Approval Application under Part 3 of the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015- (i) Change of use of agricultural building to dwellinghouse (Class C3) to create 1no. dwelling (ii) associated operational development	Prior Approval Required & Refused	28.02.2018	25.04.2018

Consultations:

Parish Council

No comments received

Public Health and Housing

Whilst Public Health and Housing would not wish to raise any objections to this application, it is recommended that a condition is included in any consent granted so as to ensure that the annexe is only occupied in conjunction with and for purposes ancillary to the residential use of the new dwelling house, as permitted by Babergh District Council's Prior under Approval B/16/01623/AGDW, and not occupied or let as a separate dwelling.

It is also recommended that the following conditions are included in any consent granted to minimise the impact of the development, during construction, on the existing residential occupiers in the vicinity of the application site.

- The hours of demolition, site preparation and construction activities, including deliveries to the site and the removal of excavated materials and waste from the site, shall be limited to 08:00 to 18:00 hours on Mondays to Fridays and 08:00 to 13:00 hours on Saturdays. No construction activities shall take place at the application site on Sundays, Bank or Public Holidays.

- Any waste material arising from the demolition, site preparation and construction works shall not be burnt on site but shall be kept securely in containers for removal to prevent escape into the environment.

Environment Team

We note that the application is supported by a completed copy of the West Suffolk contaminated land questionnaire and a simple screening report. As noted in our response to application DC/18/0455/PMBPA these are not a suitable assessment for farmyard sites. We do note, however, that a Phase I Geo-Environmental Desk Study has been submitted as part of the submission to Babergh District Council under their application reference DC/18/01893 which is the other part of this cross boundary application. The Phase I Geo-Environmental Desk Study reference UK18.4010, dated 23rd May 2018 undertaken by eps Ltd provides a summary of the history and environmental setting of the site and surrounding area and recommends intrusive works are undertaken due to the presence of potential pollutant linkages. Previous desk studies covering the site (Phase 1 - Desk Study and Preliminary Risk Assessment undertaken by Geosphere Environmental Ltd, reference 1491,EC,DS/JD,TP/23-11-15/V2, dated 25th November 2015 submitted under St Edmundsbury planning reference DC/15/2584/FUL) identifies an unbunded above ground fuel tank on the current application site which showed signs of leakage. This tank does not appear to have been detailed in the more recent eps study and may have been removed in the time between the two reports. The Geosphere report also recommends intrusive investigations.

Given the recommendations of the eps Study and the Geosphere Report, we consider that intrusive works are required and the standard land contamination condition be attached, should planning be granted.

1. No development approved by this planning permission shall commence until the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:
 - i) A site investigation scheme (based on the approved Preliminary Risk Assessment (PRA) within the approved Desk Study), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - ii) The results of a site investigation based on i) and a detailed risk assessment, including a revised Conceptual Site Model (CSM).
 - iii) Based on the risk assessment in ii), an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. The strategy shall include a plan providing details of how the remediation works shall be judged to be complete and arrangements for contingency actions. The plan shall also detail a long term monitoring and maintenance plan as necessary.
2. No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the remediation strategy in iii) is submitted and approved, in writing, by the Local Planning Authority. The long term monitoring and maintenance plan in iii) shall be updated and be implemented as approved.
3. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this

Paragraph 124 of the NPPF indicates that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and paragraph 127 seeks to ensure a good standard of amenity for existing and future users. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. DM24 requires proposals to respect the character of the local area, not overdevelop the curtilage of a dwelling and not adversely affect the residential amenity of occupants of nearby properties. In this regard therefore it is considered that there is a high degree of alignment between the DM24 and the provisions of the NPPF, such that full weight can be given to DM24.

Core Strategy Policy CS3 requires proposals for new development to create and contribute to a high quality, safe and sustainable environment. It is considered that this Policy aligns sufficiently closely with the provisions of paragraph 124 of the NPPF regarding good design being a key aspect of sustainable development in making development acceptable to communities, such that weight can be attached to CS3, notwithstanding its age.

In this case, the application seeks consent for a residential annexe, which is to be converted from an existing barn. The annexe would comprise two bedrooms, a bathroom, kitchen and living room. It would be self-contained and independent from the main dwelling located 17 metres from its Eastern side. Annexes in general should be well related to the host dwelling especially when located within the countryside where development is more restricted. Policy DM24 states that:

Proposals for self contained residential annexes in the countryside will be permitted only where:

- the design and siting of the annexe is such that it is capable of being reasonably integrated into the use of the original dwelling once the need for it has ceased;
- the size of the annexe is the minimum necessary to meet the purpose; and
- the size, scale, location and design relates satisfactorily to the existing dwelling and its curtilage, and to the wider surrounding area.

Given the size, position within the plot and self-contained nature of the annexe it appears contrary to the above policy provisions. It is not considered to be the minimal size necessary as it contains two bedrooms and it is positioned away from the main barn with a driveway separating the plot. In addition, the host dwelling does not yet exist as implementation of the barn conversion is yet to take place. On this basis, should permission be granted the site would accommodate an ancillary building which may or not have a host. Without a host dwelling the annexe would not be ancillary and the Local Authority could end up with a two bedroom dwelling in the countryside which is contrary to policy DM5.

Conclusion: The annexe conflicts with the provisions of policy DM27 and should be recommended for refusal.

Recommendation: That St. Edmundsbury devolves its authority to Babergh District Council to issue the decision for the wider site.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P804LNPDFXV00>

Case Officer:	Charlotte Waugh	Date:	5.9.18
Development Control Manager:		Date:	