

Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

5 AUGUST 2015

DEV/FH/15/028

Report of the Head of Planning and Growth

**PRIOR APPROVAL APPLICATION DC/15/1402/PMBPA – BELLE VUE,
NEWMARKET ROAD, BARTON MILLS**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT OFFICER

Case Officer: Kerri Cooper
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Committee Report

Date 9 July 2015 **Expiry Date:** 3 September 2015
Registered:

Case Officer: Kerri Cooper **Recommendation:** Approve

Parish: Barton Mills **Ward:** Manor

Proposal: Prior Approval Application DC/15/1402/PMBPA under Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015- (i) Change of use of agricultural building to dwellinghouse (Class C3) to create 1 no. dwelling (ii) associated operational development

Site: Belle Vue, Newmarket Road, Barton Mills

Applicant: Mr Jonathan Waters

Background:

This application is referred to the Development Control Committee as the applicant is related to an elected Member.

Proposal:

1. It is proposed to change the use of an existing agricultural barn to a dwelling house with associated alterations.
2. The application is a revised scheme to DC/15/0997/PMBPA. This application was withdrawn due to insufficient information and an additional agricultural building being included, which had been substantially demolished and therefore not capable of being converted to annex/dwelling. This element could not be considered under a Prior Approval Application.

Application Supporting Material:

3. Information submitted with the application as follows:
 - Design and Access Statement received 9th July 2015.
 - Site Location Plan, Proposed Site Plan, Existing Elevations, Existing Floor Plans, Existing Roof Plan, Proposed Elevations, Proposed Floor Plans and Proposed Roof Plan received 9th and 21st July 2015.

Site Details:

4. The application site comprises a timber weatherboarding and flint agricultural building situated within the countryside of Barton Mills. Residential properties are located to the front and side of the application site.

Planning History:

5. DC/15/0997/PMBPA - Prior Approval Application under Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 - (i) Change of use of agricultural buildings to dwellinghouse and Annex (Class C3) to create no. 2 dwellings (ii) associated operational development – Withdrawn 26th June 2015.

Consultations:

6. Highway Authority: No objection, subject to conditions.
7. Environmental Health – Land Contamination: No objection, subject to informative.

Representations:

8. No representations received at the time of writing the report. A verbal update will be given at Development Control Committee on Wednesday 5th August 2015.

Policy:

9. The relevant regulations require the local planning authority to have regard to the National Planning Policy Framework (NPPF) when determining applications for prior approval as if they were planning applications, where relevant to the subject matter of the prior approval.
10. Updated guidance has been included within the National Planning Policy Guidance (NPPG) March 2015 and this is material to the consideration and determination of this application.

Officer Comment:

Legislative Background

11. As of 6th April 2014 development consisting of a change of use of an agricultural building and any land within its curtilage to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order is permitted development under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) Order 2015.
12. Developers are required to apply to the Local Planning Authority for a determination as to whether their prior approval will be required as to:
 - Transport and highways impacts of the development;

- Noise impacts of the development;
- Contamination risks on the site;
- Flooding risks on the site; and
- Whether the location or siting of the building makes it otherwise impractical or undesirable for the change of use.

13. Developers are also required to apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to the design or external appearance of the building.

14. As part of their assessment the Local Planning Authority is required to determine whether the proposed development complies with any conditions, limitations or restrictions specified within the relevant regulations as being applicable to the development in question.

15. The Government revised the guidance supporting these regulations in 5th March 2015. The revised guidance states as follows:

16. The permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house.

17. Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgement. Impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable".

18. 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 rights grant planning permission, subject to the prior approval requirements. The fact 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.

19. 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 is located 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 is proposed to change to residential 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.

20. 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.

Assessment Against the Limitations of Class Q

21. There are a number of criteria which have to be applied under the regulations in order for the development to benefit from the permitted development legislation and these are considered in turn below.
22. The supporting design and access statement received 9th July 2015 states that the agricultural building is a storage barn. There have been no applications relating to the application building and it currently remains in use for storage of hay and other agricultural items. On the basis of the information available and provided it is considered that the building was last used for agricultural purposes.
23. The floor space of the building subject to the proposed change of use is 124.3m² and therefore below the threshold set out within Class Q.
24. The proposal would not result in the development of more than three dwellings within the agricultural unit.
25. The application form states that the site is not occupied under an agricultural tenancy.
26. The planning history of the site indicates that no agricultural development has been carried out on the agricultural unit under Part 6 Class A (a) or Class B (a) since 20th March 2013.
27. The proposed floor plans received 9th July 2015 accompanying the application and the application form states that the building is to be converted to form a three bedroom dwelling. The building operations necessary to convert it to a dwelling will not be significant. In addition, it is stated that the conversion will not extend the mass or the silhouette of the barn. It is not therefore anticipated that the development would result in an increase in the external dimensions of the building.
28. There has been one application submitted for prior approval under Class Q within the agricultural unit. This application was withdrawn due to insufficient information and an additional agricultural building being included, which had been substantially demolished and therefore not capable of being converted to annex/dwelling. This element could not be considered under a Prior Approval Application.
29. It is anticipated that the building operations necessary for conversion would be limited to the installation of replacement of windows, doors, roofs and exterior walls and water, drainage, electricity gas and other services in accordance with Class Q.
30. The site is not on article 2(3) land (this includes conservation areas, areas of outstanding natural beauty, some areas specified under the Wildlife and

Countryside Act, the Broads, National parks and World Heritage Sites); in addition it does not form part of a site of special scientific interest; a safety hazard area or a military explosives storage area; does not comprise or contain a scheduled monument and the building is not a listed building.

31. Having regard to the above it is considered that the proposal is permitted development under Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) Order 2015.

Transport and Highway Impact

32. The site is accessed via an established vehicular access off Church Lane. No objections have been received from the County Highway Authority regarding the proposed change of use, subject to conditions. The conditions recommended are both reasonable and appropriate to impose on the permission.

Contamination Risk

33. The application provides information regarding land contamination and a full Phase 1 Contaminated Land Assessment carried out by Geosphere Environmental Limited. The desktop study comprises a detailed search of available historical and current records and maps to identify potential onsite and off-site sources, pathways and receptors of contamination, with the site walkover survey to confirm the information gathered for the desktop study and to reveal any features such as structures, tanks or pipe work which may suggest possible sources of contamination. The preliminary risk assessment has been carried out using the information from the desktop study and site walkover to identify possible pollutant linkages and a conceptual model of the site has been developed.
34. This is in accordance with the National Planning Policy Framework (NPPF) which states that to prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner (paragraph 120).
35. The information submitted with the application does not indicate the likelihood of the presence of any contamination. Therefore, by adopting a precautionary approach, an informative is recommended.

Flooding Risk

36. The site is not located in an area at risk of flooding and there are not therefore any adverse issues in this respect.

Noise Impact

37. Given the relationship between the building and the nearby residential properties, the noise impacts associated with the proposal are not considered to be significant as to cause harm.

Design and External Appearance of the Building

38. The application building has an attractive rural appearance.
39. The regulations require the Authority to assess, as part of the Prior Notification procedure, whether prior approval will be required for the design and external appearance of the building, and that the provisions of Part W of the regulations shall apply. There is no specific guidance in relation to the assessment of this point, so under normal practice, when assessing the design and external appearance of any proposal, discretion is available for the Authority to refuse such prior approval if sound planning reasons exist. However it must be borne in mind that the replacement of the walls, roof, windows, doors (plus the provision of new windows and doors), where it is reasonably necessary to allow the conversion, are permitted development in accordance with these regulations and control cannot be exercised. This factor is considered to severely limit the extent to which any concern can be articulated in relation to design and external appearance, to the extent that it largely makes such an assessment redundant. This of course assumes that it is accepted that the extent of physical adaptation to the building is reasonably necessary to effect the conversion.
40. In this regard the proposed changes, whilst having a considerable impact upon the appearance of the dwelling, would only involve the insertion of the windows and doors, and provision of external cladding, as is permitted by the regulations, and at a level accepted by Officers as being 'reasonably necessary'. Within this context it can be concluded that they physical changes are acceptable.

Location or Siting

41. In addition to the consideration of the above, it is also necessary to assess whether the location or siting of the building makes it otherwise impractical or undesirable for the change of use to take place.
42. The site is within the rural area where new isolated dwellings would not ordinarily be supported in accordance with para. 55 of the NPPF. The Framework sets out a presumption in favour of sustainable development, but it also advises Local Planning Authorities to avoid allowing new isolated homes in the countryside unless there are special circumstances. These include where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.
43. The Government has amended the on-line Planning Practice Guidance to address, in particular, the issue as to whether the 'sustainability' of the proposed development is intended to be a material consideration in

assessing this type of proposal. The revised ministerial guidance makes it clear that the permitted development right does not apply a test in relation to sustainability of location. This is deliberate, as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a dwelling.

44. Therefore, as clarified above, a test of locational sustainability is not within the scope of the Authority's discretion in relation to this matter, as now clarified in the March 2015 guidance.
45. However, the criteria to be considered by the Authority when determining an application for prior approval of proposed development under Class Q is whether the location or siting of the building makes it impractical or undesirable for the building to change from agricultural use to use as a residential use. The location of the building and its generally isolated nature cannot be taken into account unless the location and siting would "not be sensible or realistic", or otherwise "undesirable" reflecting that it would be "harmful or objectionable".
46. The revised practice guidance then goes on to explain what is meant by "impractical or undesirable" for the change to residential use. Impractical or undesirable are not defined in the Order, and Authorities should apply a reasonable ordinary dictionary meaning in making any judgement. "Impractical" reflects that the location and siting would "not be sensible or realistic", and "undesirable" reflects that it would be "harmful or objectionable".
47. The agricultural character of its surroundings means that consideration of whether the proposal would be "harmful or objectionable" is the crux of the assessment before us. If it is concluded that the proposal will lead to a development which is not 'insensible or unrealistic', then it can be considered, in principle, to be NPPF compliant. If it is considered that it would be "harmful or objectionable" for any reason then it would be possible to conclude that the scheme is not NPPF compliant and prior approval could be refused. As set out above, it is expected that the ordinary dictionary definition of these terms should be applied. In this regard Officers consider that whilst an 'in principle' objection based on sustainability grounds cannot be brought, it would seem logical to conclude that where a proposal is considered to be 'harmful' or 'objectionable' for any sound planning reason (for example, amenity impact arising from overlooking, or impact upon nearby protected trees, or based on the inappropriate siting of a dwelling within the middle of a field, for example) then it might be reasonable to subsequently conclude that the location or siting would be impractical or undesirable.
48. In carefully considering and balancing these points Officers are of the opinion that the fact that the building is located in relatively close proximity to existing residential property, but with a sufficient degree of separation means that locationally, it can be concluded as not being

harmful or objectionable to the level of residential amenity which could reasonably be expected for any future or existing occupants. Furthermore, Officers are also of the opinion that there are no other reasons, when assessing whether the location or siting of the building makes it otherwise impractical or undesirable for the change of use to take place, which would otherwise preclude development. This judgement must be made in light of the permissive intent within the permitted development regulations.

49. The buildings are considered to be of sufficient distance away from nearby dwellings and uses so as not to result in any overshadowing or overlooking or being overbearing in appearance. It is not therefore considered that the location or siting of the building makes it impractical or undesirable for the proposed change of use to a dwelling.

Conclusion:

50. In conclusion, the principle and detail of the development is considered to be acceptable and in compliance with relevant guidance in the National Planning Practice Guidance and the National Planning Policy Framework.

Recommendation:

51. It is recommended that prior approval is **GRANTED** subject to the following conditions:

1. No other part of the development hereby permitted shall be commenced until the existing vehicular access has been improved, laid out and completed in all respects in accordance with DM02; and with an entrance width of 3 metres. Thereafter the access shall be retained in the specified form.
2. Prior to the development hereby permitted being first occupied, the improved access onto the highway shall be properly surfaced with a bound material for a minimum distance of 5 metres from the edge of the metalled carriageway, in accordance with details previously submitted to and approved in writing by the local planning authority.
3. Before the development is commenced details of the areas to be provided for storage of Refuse/Recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for no other purpose.
4. Before the development is commenced details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained thereafter in its approved form.
5. Gates shall be set back a minimum distance of 5 metres from the edge of the carriageway and shall open only into the site and not over any area of the highway.
6. Before the development is commenced details of the areas to be provided for the loading, unloading, manoeuvring and parking of

vehicles including secure cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter and used for no other purpose.

7. Before the access is first used clear visibility at a height of 0.6 metres above the carriageway level shall be provided and thereafter permanently maintained in that area between the nearside edge of the metalled carriageway and a line 90 metres from the nearside edge of the metalled carriageway at the centre line of the access point (X dimension) to the east, and a distance of to the west, to the junction with Newmarket Road metres in along the edge of the metalled carriageway from the centre of the access (Y dimension). Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

Informative: If during development, contamination is encountered which has not previously been identified then it would be in the best interest of the developer to contact the Local Planning Authority as soon as possible, as they should be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer. Failure to do so may result in the Local Authority taking appropriate action under its obligations of Part 2A of the Environmental Protection Act 1990.

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=NR9L8GPD05L00>