

Target Decision Date: 24/12/2020

Expiry Date: 07/01/2021

## OFFICER'S REPORT AND RECOMMENDATION

CASE OFFICER: Katherine Hale

CASE REFERENCE: DC/20/05115

### The Openness of Local Government Bodies Regulations 2014

The new national regulations on openness and transparency in local government require the recording of certain decisions taken by officers acting under powers delegated to them by a council. The written record should include the following: The decision taken and the date the decision was taken; the reason/s for the decision; any alternative options considered and rejected; and any other background documents. This report and recommendation constitutes the written record for the purposes of the regulations and when read as a whole is the reason for the decision.

PROPOSAL: An application to determine if prior approval is required for a proposed: Change of Use of Agricultural Building to 1no. Dwellinghouse (Class C3), and for building operations reasonably necessary for the conversion. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) - Schedule 2, Part 3, Class Q

LOCATION: Ryes Farm, Pettaugh Lane, Gosbeck, Ipswich, Suffolk, IP6 9SF

PARISH: Gosbeck.

WARD: Claydon & Barham.

APPLICANT: Mr T Owens

SITE NOTICE DATE:

PRESS DATE: N/A

## BACKGROUND DOCUMENTS

This decision refers to drawing number RYS-001 received 12/11/2020 as the defined red line plan with the site shown edged red. Any other drawing showing land edged red whether as part of another document or as a separate plan/drawing has not been accepted or treated as the defined application site for the purposes of this decision.

The plans and documents recorded below are those upon which this decision has been reached:

Defined Red Line Plan RYS-001 - Received 12/11/2020

Land Contamination Assessment - Received 12/11/2020

Land Contamination Questionnaire - Received 12/11/2020

Ecological Survey/Report - Received 12/11/2020

Elevations - Proposed RYS-202 - Received 12/11/2020

Floor Plan - Proposed RYS-201 - Received 12/11/2020

Elevations - Existing RYS-004 - Received 12/11/2020

Floor Plan - Existing RYS-003 - Received 12/11/2020

Block Plan - Existing RYS-002 - Received 12/11/2020

The application, plans and documents submitted by the Applicant can be viewed online at [www.babergh.gov.uk](http://www.babergh.gov.uk) or [www.midsuffolk.gov.uk](http://www.midsuffolk.gov.uk).

## SUMMARY OF CONSULTATIONS AND REPRESENTATIONS

Gosbeck Parish Council Comments Received - 24/11/2020

No objections

Natural England Comments Received - 04/12/2020

No comments

Ecology - Place Services Comments Received - 02/12/2020

No objection subject to securing ecological mitigation and enhancement measures

Heritage Team Comments Received - 17/11/2020

Historic OS maps show an L-shaped building in the position of the existing building, but from the description and photographs in the bat survey it is clear that the existing building does not date from before 1948 and therefore cannot be considered to be 'curtilage listed'.

I do not wish to offer comment on behalf of Heritage team on other aspects of the proposal

SCC - Highways Comments Received - 02/12/2020

Recommend conditions

Environmental Health - Land Contamination Comments Received - 20/11/2020

No objection

Environmental Health - Noise/Odour/Light/Smoke Comments Received - 19/11/2020

Thank you for consulting me on this application for prior approval.

I am unable to establish whether the proposed development is on a working farm with current agricultural use. If this is the case then Environmental Protection shall require an Environmental noise assessment.

Reason: to protect the amenity of any future occupiers of the residential premises

Please can the applicant confirm this and re consult if necessary.

If this is not on current working farm land then I don't have any objections or recommendations to make.

Officer Note: The Council's Environmental Health Team queried whether the farm was still operational as this would result in noise disturbance however confirmation was received by the Agent that the farm has ceased to be operational and has not been for a number of years. Therefore addressing these concerns.

## PLANNING POLICIES

NPPF - National Planning Policy Framework

CS05 - Mid Suffolk's Environment

FC01\_1 - Mid Suffolk Approach To Delivering Sustainable Development

FC01\_1 - Mid Suffolk Approach To Delivering Sustainable Development

GP01 - Design and layout of development

H16 - Protecting existing residential amenity

## PLANNING HISTORY

REF: DC/20/05115 An application to determine if prior approval is required for a proposed: Change of Use of Agricultural Building to 1no. Dwellinghouse (Class C3), and for building operations reasonably

necessary for the conversion. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) - Schedule 2, Part 3, Class Q DECISION: PDE

## ASSESSMENT

From an assessment of relevant planning policy and guidance, representations received, the planning designations and other material issues the main planning considerations considered relevant to this case are set out including the reason/s for the decision, any alternative options considered and rejected. Where a decision is taken under a specific express authorisation, the names of any Member of the Council or local government body who has declared a conflict of interest are recorded.

### Legislative Background and Planning Guidance

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) is permitted development under Article 3, Schedule 2, Part 3 Class Q to The Town and Country (General Permitted Development) Order 2015, as amended by The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018. This allows development consisting of a) change of use from agricultural to residential and b) building operations reasonably necessary to convert the building. Further to this, an Amendment to this legislation was issued earlier this year (2018).

A twostep assessment requires the Local Planning Authority to determine firstly; whether the proposed development complies with the criteria of limitations specified, in order to benefit from Permitted Development Rights; and secondly, if so; whether any conditions under specified matters are required for Prior Approval. The Local Planning Authority has no control over the principle of the development and cannot consider other issues and impacts outside the scope of the legislation. As such, this report will consider those matters specified by the legislation in turn for ease of assessment:

### Site and Surroundings

The application site is situated off Pettaugh Lane. The application site relates to an existing agricultural outbuilding within the ownership of Ryes Farm. Ryes Farm is a Grade II listed building however the agricultural outbuilding to which this application relates is not considered to be listed nor curtilage listed.

### Agricultural Use

For the proposed development to be able to be sought under Part 3, Class Q of the GPDO it must satisfy that it is or was last in use solely for agricultural purposes, in accordance with the criteria set out in Q (a). The agent has stated on the application form that the building was last used for agricultural purposes and from visiting the site the agricultural use of the building appears now redundant.

### Limitations of Class Q (Q1.)

The Local Planning Authority is satisfied that the site was in use as part of an agricultural unit in accordance with the relevant date criteria.

The cumulative floor space of buildings changing use under Class Q within the established agricultural unit does not exceed 465 square metres.

The proposal is for a smaller dwelling house as defined in the regulations and would not exceed 100 square metres.

The proposal is not for a larger dwelling house as defined in the regulations

The site is not occupied under agricultural tenancy nor has been for the relevant date criteria.

No development under class A(a) or B(a) of Part 6 of the Schedule has been carried out in the relevant date criteria.

The development would not result in the external dimensions of the existing building at any given point.

The development under Class Q(b) would consist of building operations other than the installation or replacement of windows, doors, roofs, exterior walls, or water, drainage, electricity, gas, or other services, or partial demolition reasonably necessary for conversion to residential.

The site is not on Article 2(3) land, nor does it form part of an SSSI, safety hazard area, military explosives storage area, contain a Scheduled Ancient Monument, nor is a Listed Building.

The "curtilage", for the purposes of Class Q as set out by section X of the GDPO—

- (i) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or
- (ii) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser.

The requirements of GPDO Part W 2(b) requires "a plan indicating the site and showing the proposed development". The red line shown on the location plan indicates the building and an area immediately around the agricultural building. The application therefore meets the criteria in section X.

Where the development proposed accords with the above permitted development rights, a prior approval procedure still needs to be followed whereby the developer must apply, either separately or simultaneously, to the local planning authority for their prior approval of the development addressing the following:

a) Transport and highways impacts of the development

The proposed access has been identified by a plan and it is not considered that the proposed dwelling would materially increase the number and nature of the use of the access that would result in development which would be prejudicial to highway safety. Suffolk County Council Highways Team have been consulted and recommend conditions are applied.

b) Noise impacts of the development

There are no uses within close proximity which would give rise to the potential noise disturbance to the occupants of the proposed dwelling, therefore a condition and approval is not required.

c) Contamination risks on the site

The National Planning Policy Framework (NPPF) 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). The NPPF states that planning policies and decisions should ensure that the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation. After remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990. Planning policies and decisions should also

ensure that adequate site investigation information, prepared by a competent person, is presented (paragraph 121).

The Council's Environmental Health Land Contamination Team are satisfied with the information provided on the potential for land contamination and potential risks for the proposed end users. On this basis refusal on land contamination grounds would not be justified.

d) Flooding risks on the site

The site is not within an area at risk of flooding and therefore this is not a matter requiring further consideration.

e) Whether the locational siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to use as a dwelling house

Firstly, consideration must be given to the National Planning Policy Guidance which was updated in March 2015 in regards to the issue as to whether the locational 'sustainability' of the proposed development is intended to be a material consideration in determining an application for the prior approval for a change to residential use. This clarification arises from a number of Authorities as well as the Planning Inspectorate, interpreting that such a test was within the provisions of the regulations. The revised ministerial guidance makes it clear that the permitted development right does not apply a test in relation to sustainability of location.

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

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.

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".

The Council's Environmental Health Team queried whether the farm was still operational as this would result in noise disturbance however confirmation was received by the Agent that the farm has ceased to be operational and has not been for a number of years. Therefore addressing the concerns.

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.

The building is situated outside any settlement boundary and as such is defined as "countryside" by the Council where new housing development would not be regarded as sustainable development. However, in light of the above and its close proximity to the main road, it is not considered that there are site constraints that would make the development impracticable or unreasonable.

#### Other Matters

Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (Implemented 30th November 2017) provides that all "competent authorities" (public bodies) to "have regard to the Habitats Directive in the exercise of its functions." It has been considered that no criminal offence under the 2017 Regulations against any European Protected Species is likely to be committed. There are no recordings of protected species or their habitats within the site or likely to be affected in the immediate area. It is highly unlikely that any protected species would be found within this site and as such this proposal is not considered to be harmful in terms of biodiversity issues.

#### CONCLUSION

When considering whether it is appropriate for the change of use to take place in relation to Class Q, the Local Planning Authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements.

The proposed development is considered to comply with the conditions of Class Q and Part W of The Town and Country Planning (GPDO) Order 2015. The recommendation is to grant permission.

#### RECOMMENDATION

I have considered Human Rights Act 1998 issues raised in relation to this proposal including matters under Article 8 and the First Protocol. I consider that a proper decision in this case may interfere with human rights under Article 8 and/or the First Protocol. I have taken account of exceptions to Article 8 regarding National Security, Public Safety, Economic and wellbeing of the Country, preventing Crime and Disorder, protection of Health and Morals, protecting the Rights and Freedoms of others. I confirm that the decision taken is necessary, not discriminatory and proportionate in all the circumstances of the case.

RECOMMENDED DECISION: Formal Approval IS required - Approved

#### SUGGESTED CONDITIONS OR REASONS

##### 1. ACTION REQUIRED IN ACCORDANCE WITH A SPECIFIC TIMETABLE: COMPLETION TIME LIMIT

The development hereby permitted shall be completed not later than the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

##### 2. SPECIFIC RESTRICTION ON DEVELOPMENT: REMOVAL OF PERMITTED DEVELOPMENT RIGHTS

Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and the provisions of Article 3, Schedule 2 Part 1 Classes A to E and H and Part 2 Class A of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking and re-enacting that Order with or without modification):- - no enlargement, improvement, insertion of new openings or

other alteration of the dwelling house(s) shall be carried out, - no garage, car port, fence, gate, wall or any other means of enclosure, building or structure shall be erected, except pursuant to the grant of planning permission on an application made in that regard.

Reason - To enable the Local Planning Authority to retain control over the development in the interests of the amenity of the locality and to safeguard local distinctiveness.

### 3. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

All mitigation and enhancement measures and/or works shall be carried out in accordance with the Bat Survey Report (Abrehart Ecology, October 2020) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason - To conserve and enhance Protected and Priority species and allow the LPA to discharge its duties under the UK Habitats Regulations, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

### 4. PRIOR TO COMMENCEMENT: SUBMISSION OF THE METHOD STATEMENT RELATING TO A REGISTERED SITE UNDER A LOW IMPACT CLASS LICENCE FOR BATS

The following works shall not in in any circumstances commence unless the local planning authority has been provided with either:

- a) a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified activity/development to go ahead; or
- b) a method statement supplied by an individual registered to use a Low Impact Class Licence for Bats; or
- c) a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.

Reason - To conserve Protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 and s17 Crime & Disorder Act 1998.

### 5. PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

Reason - To allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

6. ACTION REQUIRED PRIOR TO USE/OCCUPATION - HIGHWAYS: PROVISION OF PARKING.

The use/building/s shall not be occupied/commenced until the area within the site shown on Drawings listed under Section A for the purposes of loading, unloading, manoeuvring and parking (including garage spaces as applicable) of vehicles has been provided and made functionally available. Thereafter that area/s shall be retained and remain free of obstruction except for the purpose of manoeuvring and parking of vehicles.

Reason - To ensure the provision of adequate on-site space for the parking and manoeuvring of vehicles where on-street parking and manoeuvring would otherwise be detrimental to highway safety.

7. ACTION REQUIRED PRIOR TO FIRST OCCUPATION OF DEVELOPMENT: REFUSE BINS AND COLLECTION AREAS

Prior to the first occupation of the development details of the areas to be provided for storage of Refuse/Recycling bins and any associated collection areas shall be submitted to and approved, in writing, by the Local Planning Authority. The approved areas shall be provided in their entirety before the development is first occupied and shall be retained thereafter for no other purpose.

Reason: To ensure that refuse recycling bins are not stored on the highway causing obstruction and dangers for other users.

8. ACTION REQUIRED PRIOR TO FIRST USE OF ACCESS: HIGHWAYS - PROVISION OF VISIBILITY SPLAYS

Before the access is first used visibility splays shall be provided as shown on approved drawings under Section A and thereafter retained and maintained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development)(England) Order 2015 (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.

Reason - To ensure vehicles exiting the drive would have sufficient visibility to enter the public highway safely and vehicles on the public highway would have sufficient warning of a vehicle emerging in order to take avoiding action.

NOTES

1. Statement of positive and proactive working in line with the National Planning Policy Framework (NPPF)

The proposal has been assessed with regard to adopted development plan policies, the National Planning Policy Framework and all other material considerations. The NPPF encourages a positive and proactive approach to decision taking, delivery of sustainable development, achievement of high quality development and working proactively to secure developments that improve the economic, social and environmental conditions of the area. While the applicant did not take advantage of the service, the Council provides a pre-application advice service prior to the submission of any application. The opportunity to discuss a proposal prior to making an application allows potential issues to be raised and addressed pro-actively at an early stage, potentially allowing the Council to make a favourable determination for a greater proportion of applications than if no such service was available.



Case Officer Signature: Katherine Hale  
Date: 7 January 2021