

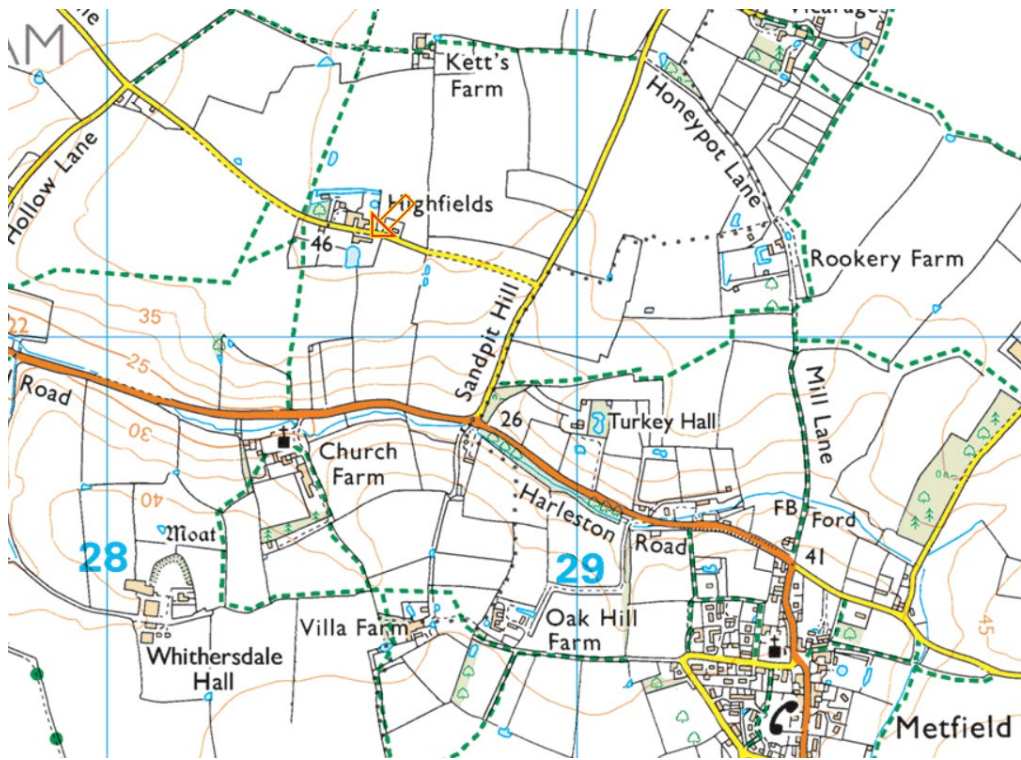
DESIGN & ACCESS STATEMENT

FOR

**Demolition of existing agricultural buildings and
erection of two new residential units in two
phases (as alternative to Prior Approval
DC/20/02792)**

AT

**Barn at Buena Vista, Foxes lane, Mendham, Suffolk
IP20 0PF**



Street Map



Aerial Photo

INTRODUCTION

This statement is prepared to accompany a planning application for the demolition of existing agricultural buildings and the erection of two new dwellings, with incorporated cart lodge garaging.

The proposal is an alternative to the existing Prior Approval for the conversion of two agricultural buildings to form two new dwellings, granted under Class Q of the *Town and Country Planning (General Permitted Development) (England) Order 2015*, granted in September 2020.

This statement is intended to be read in conjunction with the submitted plans and documents:-

- 22 28 - 01 Location Plan
- 22 28 - 02 Proposed Block Plan
- 22 28 - 03 Existing Plans & Elevations
- 22 28 - 04 Plot 1 Plans & Elevations
- 22 28 - 05 Plot 2 Plans & Elevations
- 22 28 - 06 Phasing Plan

Preliminary Ecological Appraisal

Phase I Land Contamination Assessment

SITE HISTORY AND CURRENT USE

The site was formerly part of a local farming business and the existing buildings have been used for the storage of agricultural machinery and produce such as grain, hay or straw.



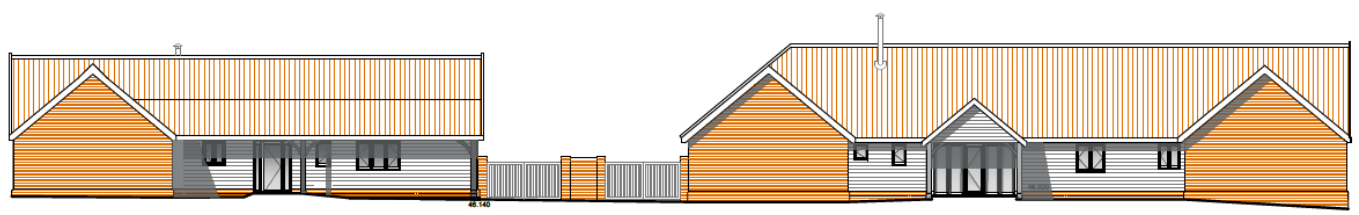
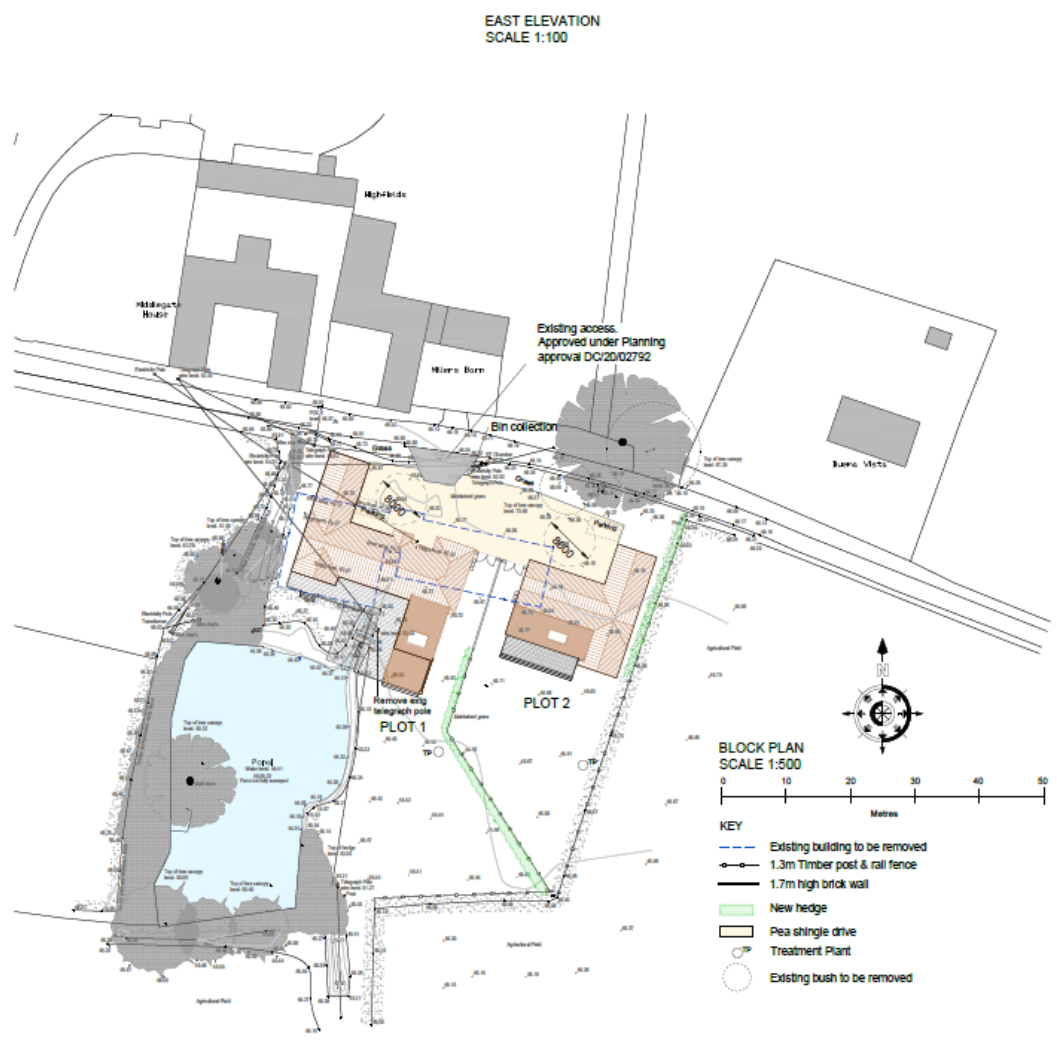
In September 2020 under ***Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015***, Prior Approval was given for the change of use and conversion of the existing agricultural buildings to provide two residential units (Ref: DC/20/02792). A copy of the permission is attached as Appendix A.

This consent has yet to be implemented and the buildings remained in agricultural use, until the site was purchased by the applicant.

The total site application area equates to 0.44 Ha.

PROPOSAL

This application seeks to demolish the two existing agricultural units and erect two new single-storey dwellings.



STREET SCENE

As detailed in the table below, the new units will comprise a total gross internal area of 468 square metres.

Description	No of Units	Total SQM
Existing Class Q Conversion	2	446
TOTAL		446
New dwelling - Plot 1 (exc Garage)	1	278
New dwelling - Plot 2 (exc Garage)	1	190
TOTAL		468

As highlighted in the table above, the existing Class Q prior approval conversion provides two dwellings with a GIA of 446 square metres.

Therefore, the proposed scheme provides a very similar gross internal floor area to the fall-back position which could be achieved under the Class Q Prior Approval consent.

LAYOUT

The site is accessed via Foxes Lane and there is sufficient parking and manoeuvring area to the front of the proposed dwellings.

The replacement scheme provides a traditional ‘barn’ style layout to create a courtyard feel with cross wings comprising open cartlodes, positioned adjacent to the highway. The courtyard feature is influenced by the layout of the converted barns opposite and is in-keeping with the rural nature of the general setting.

The larger plot, Plot 1, will have the existing pond within its ownership. This allows the pond to become a feature in the overall design. The rear (southern) elevation takes advantage of the pond view and includes a full-length terrace along the rear. The rear wall is positioned

further away from the pond than the original building, but partially turned around eastwards to create a private area on the terrace.

Plot 2 - is the smaller of the plots, positioned to the eastern side of the site.

Separation and degree of privacy is achieved through both dwellings being single storey and the inclusion of a boundary brick wall between the two plots.

The plots will be partially joined by provision of timber gates, which provide access to the rear gardens.

SCALE

Both proposed dwellings are single storey only, designed to reflect the style of typical converted outbuildings, familiar in the rural landscape.

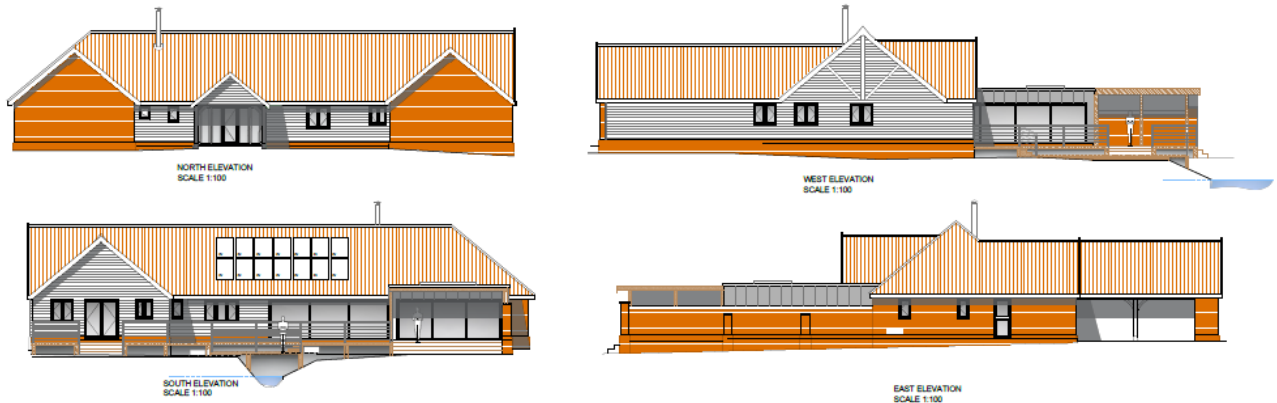
The proposed ridge heights extend to a maximum of 6.2m and are therefore similar in scale to the existing agricultural buildings.

DESIGN

The front and side elevations are designed in a traditional form with finishing materials reflective of typical barn conversions. These include a red facing brick, red clay pantile hipped roofs and some elements of black weather boarding.

Although the rear elements of the new dwellings introduce some more modern materials, including a flat roof with Zinc cladding - On approach from Foxes lane the dwellings will retain a traditional appearance.

Plot 1



Plot 2



LANDSCAPING

The plots will be divided by a new hedge (comprising native species planting) and a timber post and rail fence, as shown on, ***Drg. No. 22 28 - 02 Proposed Block Plan.***

An additional section of hedging will be planted along top section of the southwest boundary of Plot 2 to provide some additional screening, viewed when travelling towards the development, along Foxes Lane.

ACCESS AND PARKING

The existing access from Foxes Lane will remain and the site will have a single point of access as previously approved under application ref. no. DC/20/02792.

Three parking spaces will be provided for both units, two internally within the cartlodge garages and one externally, as shown on ***Drg. No. 22 28 - 02 Proposed Block Plan.***

An electronic vehicle charging point will be provided in each garage as well as secure space for cycle storage.

PRE-APPLICATION ADVICE

Following a site meeting with Planning Officer, Jamie Martin-Edwards, formal written pre-application advice was issued in May 2022 (ref: DC/22/01372) which concluded that, *'The principle of development is supported by way of a legitimate fallback position. Without the fallback position, it is considered that development would be resisted. The key question that will be raised by the application is whether the proposed development represents an improvement over that which could be built under the prior approval'*.

PLANNING JUSTIFICATION

The current Prior Approval 'consent' allows for the existing agricultural buildings to be converted into two dwellings and establishes the principle of residential development on the site.

Although the existing buildings are being converted to provide residential accommodation, the limitations of Class Q are such that the finished units will have a somewhat awkward appearance that could be greatly improved with a more flexible approach.

On 8 September 2017 the Court of Appeal upheld a High Court decision (*Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314*) that a fallback position in the form of Class Q permitted development rights (PDRs) was a relevant material consideration in the approval of a planning application for an alternative residential development - where there is a 'real prospect' of a fallback development being implemented.

It is worth noting that in this Court of Appeal case no Class Q permission existed, ***merely the prospect of it***, yet that was considered realistic enough to be worthy of material consideration.

When considering the concept of a 'real prospect', it was established under judgement EWCA Civ 333, Paragraph 21 "*...for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice*", therefore under *Mansell v TMBC* the judge ruled that as the owners had strongly indicated they wanted to redevelop to provide residential accommodation then it "*...was entirely reasonable to assume that any relevant permitted development rights by which the.....(owner) could achieve residential development value...would ultimately be relied upon if an application for the construction of new dwellings were refused.*"

Fundamentally as confirmed by Lindblom L. J. for the 'fallback' position to be a material consideration in a planning determination, the proposal must be comparable.

For this application site, under the existing prior approval a development of two converted dwellings is possible and likely, whilst the alternative full planning application seeks the same number of dwellings, with a comparable floor area, via a scheme benefitting from a greatly improved design and layout.

The fallback position has been integral to several recent appeal decisions where the replacement dwellings have been allowed as an alternative to approved (or possible) Class Q schemes.

For example, in August 2020 an appeal was allowed for **'Replacement of agricultural buildings and erection of 2 no. dwellings with associated works (following previous prior approval under Class Q - Ref 36/18/0008/CQ)'** - Appeal Ref: APP/W3330/W/20/3248009

The inspector concluded that:

28. *I have found that the appeal proposal would enhance the appearance of the site and would not harm the character of the area or designated heritage assets. It would also comply with other development plan policies in relation to parking, highway safety and the living conditions of neighbours. It would not however be an appropriate location for housing given the limited access to services and facilities. As such, the proposal would conflict with the development plan taken as a whole.*

29. *However, there is a realistic fallback position which would result in the same amount of housing being delivered in the same location, and in these circumstances I afford the conflict with the development plan moderate weight. The appeal proposal would however deliver significant benefits to the appearance of the site compared to that fallback position, and this carries significant weight in favour of the appeal proposal.*

30. *Overall, taking account of the Framework and the above considerations, I find that the benefits of the proposed development compared to the identified fallback position are a material consideration which outweighs the conflict with the development plan and justifies granting planning permission for the proposal. Consequently, I conclude that the appeal should be allowed.*

Through this and other appeal decisions it is clear there is a general acceptance that in the right circumstances the Class Q fallback position is a material consideration that outweighs conflict with existing Local Plan Policies.

There have been a number of applications within the MSDC area where a replacement scheme based on an existing Class Q approval has been acceptable, establishing a clear precedent for support. This includes but is not limited to the examples shown in the table below.

App Ref	Description	Location	Date
DC/18/03598	Demolition of an agricultural building and erection of a new dwelling and cart lodge garage as an alternative proposal to granted approval DC/18/00598	Crowfield	Oct-18
DC/19/03339	Conversion/replacement of agricultural buildings to form 5 no. dwellings including alterations to existing vehicular accesses and erection of associated garages	Hoxne	Nov-19
DC/20/03940	Planning Application - Erection of 1no. dwelling (following demolition of agricultural building)	Redlingfield	Sep-20
DC/20/04166	Conversion of agricultural building to form 2no. residential dwellings with associated curtilages and creation of two vehicular accesses (as an alternative proposal to existing Grant of Prior Approval Ref. DC/20/00218)	Weybread	Nov-20
DC/20/04497	Erection of 3 No single storey dwellings, garages, parking turning and landscaping (following demolition of agricultural buildings)(amended scheme to DC/19/03659)	Brundish	Dec-20

In terms of providing an answer to the question *‘whether the proposed development represents an improvement over that which could be built under the prior approval’* as discussed in the pre-application advice response, we comment as follows.

- The existing conversion proposal is visually unappealing and there is clearly an opportunity to create a more attractive dwelling with a replacement scheme of the right style that contributes positively to the character of the surrounding area.
- The proposed units will occupy a similar footprint to the existing agricultural buildings and therefore the built form will not negatively impact the surrounding countryside.
- A conversion project has less onerous building regulation requirements in terms of insulation requirements etc and a new build project can be constructed to a much

higher standard of thermal efficiency and therefore represents an opportunity to promote a greater level of sustainable development.

- To add to the point above it will also be possible to introduce renewable technologies into a new build scheme that would not be possible under a Class Q conversion. For example, incorporating PV roof panels which under Class Q can be considered unworkable as they are outside of the volume of the existing building - this would further enhance the sustainable development credentials

CONCLUSION

The proposed residential units would replace permitted dwellings allowed under Class Q of the GPDO.

The High Court Decision of Mansell v Tonbridge deals with the fallback position whereby it was accepted that the council was entitled to conclude that there was a “realistic” fallback and that it was clear that the owners were intending to develop the site. This position has been backed up with subsequent appeals.

The use of a fall position has been generally acceptable in other applications throughout the district and overrides any conflict with general housing policies laid out within the current Local Plan.

The replacement scheme will provide a more attractive development, which as a new build will benefit from a far more sustainable construction methodology.

APPENDIX A

Philip Isbell – Chief Planning Officer
Sustainable Communities

Mid Suffolk District Council
Endeavour House, 8 Russell Road, Ipswich IP1 2BX

Website: www.midsuffolk.gov.uk



Stone Planning Consultants
4 Redisham Close
Lowestoft
NR32 4SS

Please ask for: Mahsa Kavyani
Your reference:
Our reference: DC/20/02792
E-mail: planningyellow@babberghmidsuffolk.gov.uk
Date: 8th September 2020

Dear Mr Stone

PRIOR APPROVAL - AGRICULTURAL TO DWELLING - DC/20/02792

Notification under Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015

Proposal: Application to determine if Prior Approval is required for a proposed Change of Use of Agricultural Buildings to 2no Dwellinghouses (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: Barn At Buena Vista, Foxes Lane, Mendham, Suffolk

Section A – Plans & Documents:

This decision refers to drawing no./entitled 19/181/02B received 07/07/2020 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 19/181/02B - Received 07/07/2020
Block Plan - Proposed 19/181/02B - Received 07/07/2020
Proposed Plans and Elevations 19/181/02B - Received 07/07/2020
Existing Plans and Elevations 19/181/01 - Received 07/07/2020

Section B:

The **Mid Suffolk District Council** hereby give notice in pursuance of the above legislation:

- 1) That prior approval to the development is required
- 2) Prior approval has been **GIVEN** subject to the following conditions:

1. APPROVED PLANS & DOCUMENTS

The development hereby permitted shall be carried out in accordance with the drawings/documents listed under Section A above and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard. Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved under Section A, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition.

Reason - For the avoidance of doubt and in the interests of proper phased planning of the development.

2. Standard Contaminated Land Condition (CL01)

No development shall take place until:

1. A strategy for investigating any contamination present on site (including ground gases, where appropriate) has been submitted for approval by the Local Planning Authority.
2. Following approval of the strategy, an investigation shall be carried out in accordance with the strategy.
3. A written report shall be submitted detailing the findings of the investigation referred to in (2) above, and an assessment of the risk posed to receptors by the contamination (including ground gases, where appropriate) for approval by the Local Planning Authority. Subject to the risk assessment, the report shall include a Remediation Scheme as required.
4. Any remediation work shall be carried out in accordance with the approved Remediation Scheme.
5. Following remediation, evidence shall be provided to the Local Planning Authority verifying that remediation has been carried out in accordance with the approved Remediation Scheme.

Reason: To identify the extent and mitigate risk to the public, the wider environment and buildings arising from land contamination.

3. HIGHWAYS CONDITION : PROVISION OF ACCESS

The vehicular access shall be laid out and completed in all respects in accordance with Drawing No. DM01 and with an entrance width of 4.5m and made available for use prior to occupation. Thereafter the access shall be retained in the specified form.

Reason: To ensure that the access is designed and constructed to an appropriate specification and made available for use at an appropriate time in the interests of highway safety.

4. PRIOR TO OCCUPATION CONDITION

Prior to the dwellings hereby permitted being first occupied, the vehicular 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.

Reason: To secure appropriate improvements to the vehicular access in the interests of highway safety.

5. PRIOR TO FIRST USE CONDITION : MANOEUVRING AND PARKING

The use shall not commence until the area(s) within the site shown on Drawing No. 19/181/02 Rev. B for the purposes of manoeuvring and parking of vehicles has been provided and thereafter that area(s) shall be retained and used for no other purposes.

Reason: To ensure that sufficient space for the on-site parking of vehicles is provided and maintained in order to ensure the provision of adequate on-site space for the parking and manoeuvring of vehicles where on-street parking and manoeuvring would be detrimental to highway safety to users of the highway.

6. PRIOR TO OCCUPATION CONDITION : REFUSE/RECYCLING BINS ON SITE

Before the development is occupied details of the areas to be provided for storage and presentation 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.

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

7. REMOVAL OF PD RIGHTS

Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) any means of frontage enclosure shall be set back 2.4 metres from the edge of the carriageway of the adjacent highway.

Reason: In the interests of highway safety, to avoid obstruction of the highway and provide a refuge for pedestrians.

8. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

All mitigation measures and/or works shall be carried out in accordance with the details contained Preliminary Ecological Appraisal (Eco Check Consultancy Ltd, November 2019) 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 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).

9. PRIOR TO COMMENCEMENT: BIODIVERSITY ENHANCEMENT STRATEGY

A Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority, following the details contained within the Preliminary Ecological Appraisal (Eco Check Consultancy Ltd, November 2019).

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare, long-term maintenance and monitoring.

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

Reasons: In order to enhance Protected and Priority Species and allow the LPA to discharge its duties under the NPPF and s40 of the NERC Act 2006 (Priority habitats & species).

10. 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 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species).

NOTES:

The applicant is reminded that this approval is subject to the development being:-

In accordance with Class Q Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended);

1. If you have applied for a change of use only (class Q (a) only) before you begin development you must apply to the local planning authority to determine whether the prior approval of the authority will be required in relation to:
 - a) Highways impacts
 - b) Noise impacts

- c) Contamination risks
- d) Flooding risk
- e) Whether the location and siting of the building makes it impractical or undesirable.

The development under class Q (a) and (b) must be completed within a period of 3 years starting with the prior approval date.

Informative Notes:

1. It is important that the following advisory comments are included in any notes accompanying the Decision Notice:

"There is a suspicion that the site may be contaminated or affected by ground gases. You should be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer.

Unless agreed with the Local Planning Authority, you must not carry out any development work (including demolition or site preparation) until the requirements of the condition have been met, or without the prior approval of the Local Planning Authority.

The developer shall ensure that any reports relating to site investigations and subsequent remediation strategies shall be forwarded for comment to the following bodies:

- o Local Planning Authority
- o Environmental Services
- o Building Inspector
- o Environment Agency

Any site investigations and remediation strategies in respect of site contamination (including ground gases, where appropriate) shall be carried out in accordance with current approved standards and codes of practice.

The applicant/developer is advised, in connection with the above condition(s) requiring the submission of a strategy to establish the presence of land contaminants and any necessary investigation and remediation measures, to contact the Council's Environmental Protection Team."

2. It is an OFFENCE to carry out works within the public highway, which includes a Public Right of Way, without the permission of the Highway Authority.

Any conditions which involve work within the limits of the public highway do not give the applicant permission to carry them out. Unless otherwise agreed in writing all works within the public highway shall be carried out by the County Council or its agents at the applicant's expense.

The County Council's Central Area Manager must be contacted on Telephone: 0345 6066171. Further information go to: <https://www.suffolk.gov.uk/roads-and-transport/parking/apply-for-a-dropped-kerb/>

A fee is payable to the Highway Authority for the assessment and inspection of both new vehicular crossing access works and improvements deemed necessary to existing vehicular crossings due to proposed development.

Babergh and Mid Suffolk District Councils have adopted Community Infrastructure Levy (CIL) charging which affects planning permissions granted on or after 11th April 2016 and permitted development commenced on or after 11th April 2016. If your development is for the erection of a new building, annex or extension or the change of use of a building over 100sqm in internal area or the creation of a new dwelling or holiday let of any size your development may be liable to pay CIL and you must submit relevant documents to our Infrastructure Team telling us more about your development, who will pay CIL and when the development will start. You will receive advice on the amount you have to pay and what you have to do and you can find more information about CIL on our websites here: CIL in Babergh and CIL in Mid Suffolk or by contacting the Infrastructure Team on: infrastructure@baberghmidsuffolk.gov.uk

Yours sincerely

Philip Isbell

Chief Planning Officer – Sustainable Communities

Important Notes to be read in conjunction with your Decision Notice

Please read carefully

This decision notice refers only to the decision made by the Local Planning Authority under the Town and Country Planning Acts and DOES NOT include any other consent or approval required under enactment, bylaw, order or regulation.

Please note: depending upon what conditions have been attached to the decision, action may be required on your part before you can begin your development. Planning conditions usually require that you write to the Local Planning Authority and obtain confirmation that you have discharged your obligations. You should read your decision notice in detail and make a note of the requirements placed on you by any conditions. **If you proceed with your development without complying with these conditions you may invalidate your permission and put your development at risk.**

Discharging your obligations under a condition:

You should formally apply to discharge your conditions and the relevant application forms are available on the Council's website. The Local Planning Authority has 8 weeks to write to you after you submit the details to discharge your conditions. You should always account for this time in your schedule as the Local Planning Authority cannot guarantee that conditions can be discharged quicker than this. A fee is applicable for the discharge of planning conditions.

Building Control:

You are reminded that the carrying out of building works requires approval under the Building Regulations in many cases as well as a grant of planning permission. If you are in doubt as to whether or not the work, the subject of this planning permission, requires such approval, then you are invited to contact the Building Control Section of Babergh and Mid Suffolk District Councils.

Appeals to the Secretary of State

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or consent, or to grant permission or consent subject to condition, they may appeal to the Secretary of State for Communities and Local Government. The applicant's right of appeal is in accordance with the appropriate statutory provisions which follow:

Planning Applications: Section 78 Town and Country Planning Act 1990

Listed Building Applications: Section 20 Planning (Listed Buildings and Conservation Areas) Act 1990

Advertisement Applications: Section 78 Town and Country Planning Act 1990
Regulation 15

Town and Country Planning (Control of Advertisements) Regulations 2007

Notice of appeal in the case of applications for advertisement consent must be served within eight weeks of receipt of this notice. Notice of Householder and Minor Commercial Appeals must be served within 12 weeks, in all other cases, notice of appeal must be served within six months of this notice. If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: 28 days of the date of service of the enforcement notice, or within six months of the date of this notice, whichever period expires earlier. Appeals must be made on a form which is obtainable from The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or online at <https://www.gov.uk/government/publications/modelnotification-notice-to-be-sent-to-an-applicant-when-permission-is-refused>

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he/she will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him/her that permission for the proposed development could not have been granted by the Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by it, having regard to the statutory requirements*, to the provisions of the Development Order, and to any directions given under the Order. The Secretary of State does not in practise refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him/her.

2. If permission or consent to develop land or carry out works is refused or granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State and the owner of the land claims that the land has become incapable of reasonable beneficial use by the carrying out of any development or works which has been or would be permitted they may serve on the Council of the district in which the land is situated, a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Section 137 of the Town and Country Planning Act 1990 or Section 32 Planning (Listed Buildings and Conservation Areas) Act 1990.

*The statutory requirements are those set out in Section 79(6) of the Town and Country Planning Act 1990, namely Sections 70 and 72(1) of the Act.