

PLANNING STATEMENT

AMENDMENTS TO APPLICATION
UTT/22/2490/PAQ3 -
DEMOLITION OF REDUNDANT
AGRICULTURAL BUILDING AND
ERECTION OF TWO DWELLINGS AND
ASSOCIATED WORK

FARROWBY BARN
LOWER GREEN
LOWER GREEN LANE
WIMBISH
CB10 2XH

OCTOBER 2023

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1.0 INTRODUCTION

- 1.1 The application site is located in Wimbish, outside of the development boundary and within the countryside. The building subject to this application comprises a former RAF building, originally constructed and used during the war, many of the original features remain. The front part of the building was added later, this was also an RAF building that was moved to the site after the war and adjoin to the existing rear building. The building is of solid construction with all original timbers intact. Since the late 1980, the building has been used for agricultural purposes. Apart from some very low key storage of agricultural implements, some occasional hay storage, and a small number of livestock, the building is now under utilised.
- 1.2 In the 1980's the building was used as part of a mushroom farm business. The applicants purchased the building in 2009 and have used the building for livestock (including sheep, cows and goats) as well as agricultural machinery storage, mostly in connection with the land to the rear.

2.0 BACKGROUND

- 2.1 This application follows an earlier prior approval application at the site (UTT/22/2490/PAQ3) for the conversion of the agricultural building into two residential dwellings. This permission is extant and will be implemented and completed if this planning application is refused and dismissed on appeal.
- 2.2 The approved Class Q application would see the creation of two no. three bedroom dwellings, over a footprint of 435 square metres. It is now proposed to demolish the existing building and replace it with two smaller barn style buildings, providing enhanced accommodation on a lesser footprint and volume to the previously approved Prior Notification plans, thus reducing the overall impact upon the countryside. The proposals will remain in keeping with the surrounding area and will provide improved appearance, design, materials and end product, whilst also making the best of the site.

3.0 APPLICATION PROPOSALS

- 3.1 The application proposes the demolition of the existing agricultural building and the erection of a barn like pair of structures which will provide two detached residential dwellings. The application would see the removal of the existing large redundant agricultural building, replacing it with a more appropriate and aesthetically pleasing, pair of purpose built residential dwellings.
- 3.2 The proposals would reduce the footprint of the building from 435 square metres to 150.3 square metres (per dwelling), a considerable reduction. Therefore, there will be a considerable reduction in footprint, albeit that the height increases from 5.95 to 6.4 metres. The volume of the existing building is also reduced from 1650 cubic metres to 782 cubic metres (per dwelling) an overall total of 1564 cubic metres. The reduction in both footprint and volume, coupled with the improved design and appearance and sustainability credentials, with improved thermal efficiency and more appropriate position on the site, result is a lessened impact and improved openness of the countryside – an improved development as a whole.
- 3.3 This is a total reduction of 86 cubic metres from the existing agricultural building to the proposed new dwellings along with a footprint reduction of 134.4 square metres. It would see the use of high quality materials, including weatherboard over a brick plinth and plain tiles to the roof.

4.0 NATIONAL POLICY

- 4.1 The NPPF sets out Government planning policy and so is therefore a material consideration in determining planning applications. Also, the NPPF is now supplemented by the National Planning Practice Guidance (NPPG), which was published on 6th March 2014.
- 4.2 Development plan policies are material to an application for planning permission and the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the Town and

Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004.

- 4.3 Paragraph 218 and 219 of the NPPF outlines that; the policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this replacement Framework has made. This should be progressed as quickly as possible, either through a partial revision or by preparing a new plan. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- 4.4 Paragraph 11 of the NPPF advises, amongst other things, that “plans and decisions should apply a presumption in favour of sustainable development.
For decision-taking this means:
- c) approving development proposals that accord with an up-to-date development plan without delay; or
 - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”
- 4.5 Paragraph 80 of the NPPF states that “Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

- a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential dwelling; or
- e) the design is of exceptional quality, in that it:
 - is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
 - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.”

4.6 Paragraph 130 of the NPPF promotes better design. It states, amongst other things that; Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

4.7 The NPPG provides guidance on design and states that:

“Good design should ‘enhance the quality buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on well-being.’ and “address the need for different uses sympathetically”.

4.8 It goes on to state that *“Good quality design is an integral part of sustainable development. The National Planning Policy Framework recognises that design quality matters and that planning should drive up standards across all forms of development. As a core planning principle, plan-makers and decision takers should always seek to secure high quality design.”*

5.0 LOCAL POLICY

5.1 Local Policy comprises the Local Plan 2005. The draft Local Plan was withdrawn early in 2021, subsequently the Council are now working on a new Local Plan, which at this moment in time has not been published. The most relevant policies are mentioned below, whilst others may be pertinent to the application, they are covered in section 6 of this report.

5.2 Local Plan policy S7 is concerned with protecting the countryside, it is a restrictive policy

whereas the NPPF takes a more positive approach. It states;

The countryside to which this policy applies is defined as all those parts of the Plan area beyond the Green Belt that are not within the settlement or other site boundaries. In the countryside, which will be protected for its own sake, planning permission will only be given for development that needs to take place there, or is appropriate to a rural area. This will include infilling in accordance with paragraph 6.13 of the Housing Chapter of the Plan.

There will be strict control on new building. Development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.

5.3 In this instance the policies in connection with barn conversions are not strictly relevant, as although the barn has permission via Class Q to convert to residential, this proposal will see the replacement of the barn with a purpose built pair of dwellings.

6.0 CONSIDERATIONS

- 6.1 Turning firstly to the appropriateness of the proposed development within the countryside, the re-use of the redundant building has been considered as appropriate development in the countryside (UTT/22/2490//PAQ3).
- 6.2 This must be recognised as a fallback position in the determination of this proposal which will see the demolition of the existing building and the erection of two dwellings of a smaller footprint and volume in its place. It is a material consideration of considerable weight, as is recognised in the list of appeal decision appended to this statement.
- 6.3 The fallback position of the refurbishment and change of use of the building, although a viable alternative, is not as cost effective or as simple to undertake as new build dwelling(s). The obvious benefits of a new building are, the enhancements to the design of the dwelling which is no longer restricted to that of the existing building, which was constructed for agricultural purposes and is of no architectural merit. That said, the proposal will maintain of an agricultural appearance in order to remain in keeping with its rural surroundings. There can be little doubt that the proposals would have an enhanced appearance when compared to the conversion of the existing building.
- 6.4 The erection of two new dwellings is subsequently favourable for a number of reasons. Firstly, as previously mentioned, the replacement will improve the overall design and appearance of the dwelling. It will also see the use of more appropriate materials and detailing to the dwelling resulting in a more in keeping development compared to converting the former RAF building. The erection of new build dwellings will also make the overall built form less intrusive into the countryside and will be on a far smaller footprint and volume than the existing agricultural building. Amending the scheme to two small dwellings will also add to the District's 5 year supply housing target more promptly without adding additional built form into the rural area. On the

contrary, it reduces built form and subsequently improves the openness of the countryside.

- 6.5 In terms of the impact upon the countryside, for the purposes of this application, the impact will be negligible, as it will see the replacement of a building rather than any isolated new dwelling. Given the removal of the large existing building, the impact will actually be a positive one. The location of the existing building is sited adjacent existing dwellings, it is not in an 'isolated' location.
- 6.6 The design and appearance of the building is currently poor and this application gives the best opportunity to replace poor design with better design, in accordance with section 12 of the NPPF and will add to the Council's 5 year land supply promptly. The replacements will be in keeping with the surrounding dwellings and enhancing the overall appearance.
- 6.7 The plans submitted show a pair of dwellings in comparison to the existing building. The buildings are identical (mirrored) and have been designed with neighbouring amenity in mind, resulting in no adverse impacts upon neighbouring amenity. Although over two floors, the overall height is less than the average dwelling and is essentially one and a half storey, resulting in only a small increase in the overall height. This proposal will see a complete change in design from the existing poor quality utilitarian farm building to a far more modest and attractively designed pair of dwellings. Overall, this design is considered to be an improvement to that of the conversion scheme previously approved, and therefore in accordance with section 12 of the NPPF.
- 6.8 The character of the locality and surrounding area will also be safeguarded and indeed enhanced by the proposed development. Simple design and traditional choice of materials characterise the building and from beyond the site boundaries it will appear as a traditional converted barn, remaining in keeping with the surrounding dwellings adjacent and the proposals will not look incongruous in their context. The size and scale of the new dwellings is considered to be appropriate, in terms of design, than that previously approved Prior Notification approval.

- 6.9 In terms of sustainability, the NPPF is clear that there are three dimensions to sustainable development; economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles: an economic role, a social role and an environmental role. The NPPF goes on to state “these roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environment standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.
- 6.10 Importantly in this instance, the applicant has the ability to convert the existing poor quality building into two residential dwellings, and therefore the principle of two additional dwellings in this location has been agreed. This is a material consideration of considerable weight and if the LPA decided that the site is away from shops and services resulting in the occupants of the new dwellings relying on a private motor vehicle, the fallback position must be borne in mind.
- 6.11 It is our view that the proposal should be regarded as an appropriate form of development in the countryside given the support at paragraph 28 of the NPPF. It is also not an isolated dwelling (See Braintree District Council v Secretary of State for Communities and Local Government & 218052.) However, if it is considered to be inappropriate development then there are indeed very special circumstances to justify approval in this instance – the fallback position of the Class Q and overall improvement to the site.
- 6.12 The applicant has the option of converting the buildings into two separate residential dwellings using the permitted development rights. This has been confirmed through the grant of a positive prior approval application in November 2022. If a pair of new

dwellings are deemed inappropriate here in planning policy terms, consideration must be given to the fallback position.

- 6.13 The Encyclopedia of Planning Law, paragraph 70.30 of the commentary to Section 70 of the Town and Country Planning Act 1990 states that *“The planning authority are entitled, and indeed obliged, to have regard to the ‘fallback’ position i.e. what the applicant could do without any fresh planning permission.”*
- 6.14 Planning permission or development rights related to land may be viewed as material considerations which have an important input into decision making. Failure to take account of the ‘fallback position’, which could take place even if the current planning application were to be refused or an appeal dismissed, has been the matter upon which the courts have ruled on several occasions. The weight attributed to the fallback position depends upon the likelihood of any fallback actually being exercised in the event of a refusal.
- 6.15 It is therefore important to consider what alternative options the applicant would have for developing this site should planning permission be refused. This includes the use of permitted development rights. The permitted Prior Approval application should therefore be considered alongside this planning application if it is considered that the proposal would be inappropriate development.
- 6.16 It is clearly in the applicant’s interest to sell or construct the permitted development scheme if he was unsuccessful in obtaining planning permission for the proposed new dwelling. It is a realistic and viable alternative to the application proposed and he has confirmed that this would be the case should this application be refused. There is no doubt that if the application were to be refused, the fallback option would be implemented, as opposed to the barn remaining in agricultural use, which has essentially ceased with the sale of the converted barn. Although the prior approval consent is perhaps not quite as financially valuable as a planning permission would be, it is still of a value considerably higher than its use as agricultural storage buildings.

- 6.17 In considering weight to be attached to the fallback option, an appeal has been appended for a very similar proposal for the conversion of barns which already benefitted from Class Q prior approval. The inspector noted;
- Whilst the proposed development would not wholly comply with all of the criteria within Policies S7, H6 and GEN2, I have had regard to the 'fall-back' position resulting from the extant approval. The previous consent would result in both barns being converted with their designs, scales and level of works proposed to be the same as this current appeal proposal. Therefore, whilst applications must be determined in accordance with the Development Plan, unless material considerations indicate otherwise, I have given the fall-back position significant weight, given that the resulting development would be the same as what has been approved. As such, the proposed development would not be significantly more harmful than the approved scheme. Furthermore, there is no evidence that the fall-back position could not be implemented and I am confident that should this appeal fail it would be likely that the works would be carried out under the extant consent. (See appendix 1).*
- 6.18 The inspector was clear that significant weight should be attributed to the fallback position, as regardless of the outcome of the appeal the development would take place. The circumstances are very similar to those in this case and therefore it would be incorrect for the LPA to come to a different conclusion to the Inspector. The Inspector also refers to there not being “*significantly more harmful*”, whereas, in the applicants opinion, this proposal will represent an improvement, and certainly could not be accurately described as significantly more harmful than the Class Q consent.
- 6.19 In respect of the case *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 the Court of Appeal upheld a judgment of the High Court that Permitted Development rights can properly be taken into account as a fallback position where some alternative form of development is then proposed. As part of the judgement, it was in the Judge’s view that it is wholly unrealistic to imagine that were proposals to be turned down by the Council, the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible. It was

not a precondition to the Council's consideration of the fallback option that the owner had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect. The Officer was entitled to have regard to the planning history which was within his knowledge, and the obvious preference of the owners to make the most valuable use it could of the site.

6.20 Five further appeal cases are appended to this statement (Appendix 2, 3, 4, 5 & 6 APP/D3830/W/16/3156030, APP/H0520/W/17/317904, APP/Z1510/W/17/3189624 and APP/Y3940/W/18/3200095, APP/W3330/W/20/3248009) where Inspectors accepted dwellings approved via the Prior Approval route as fallback positions in relation to the suitability of location. Therefore, it is our view that the fallback position should therefore be given significant weight when determining this application.

6.21 Importantly, paragraph 29 of appeal decision APP/W3330/W/20/3248009 (appendix 6) states; *"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."* Given this clear appeal precedent, the applicant is therefore firmly of the opinion that this proposal should be supported.

6.22 There is an existing access into the site from the highway with a hardstanding area which allows for sufficient parking for three vehicles per dwelling. It is not considered that the access is inappropriate for two new dwellings (particularly given the fallback position), the new parking area is located where the building currently stands.

6.23 The site includes ample amenity space to both the front and rear. The private amenity space to the rear exceeds the 100 square metres which is recommended in the Essex Design Guide.

- 6.24 The new dwellings will not have any increase in impact upon the neighbouring residential amenity. The work will cause negligible impacts, none more than the permitted Prior Approval application.
- 6.25 Ecology surveys have taken place in order to assess the level of protected species at the site. Overall, the development proposals will not have any impact upon any ecological features due to the nature of the proposals and mitigation measures will ensure that no impacts occur, as was the case with the Prior Approval application. A Preliminary Ecological Appraisal can be found at appendix 7 to this report.

7.0 CONCLUSION

- 7.1 It is not considered that the proposal represents inappropriate development within the countryside. The re-use of the rural building for residential purposes has been previously approved, a material consideration of considerable weight (as demonstrated by the appended appeal decisions). Subsequently, there will be no demonstrable harm resulting from its replacement with two detached dwellings on a smaller footprint and volume. The design and visual improvements will enhance the area as well as remaining in keeping with it. The proposals subsequently replace poor design with better design in accordance with the NPPF. The proposals are considered to be a sustainable form of development in accordance with the three dimensions contained within the NPPF. In addition, there will be minimal impact upon neighbouring amenity and no impact upon protected species.
- 7.2 Accordingly, in light of all of the above material considerations, which firmly weigh in favour of the proposal, and in accordance with both national and local planning policy, the Local Planning Authority is hereby respectfully requested to grant this application.

L. JENKINS 04/10/2023

