

# 66 Street End Lane, Sidlesham

Erection of 1no 1bed dwelling and 1no 2bed dwelling as alternative to Class Q approval  
SI/20/00046/PA3Q



## Planning, Design and Access Statement

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## 1.0 INTRODUCTION

- 1.1 Please find enclosed on behalf of my client, M Whittle, a full planning application for:

*"Erection of 1no 1bed dwelling and 1no 2bed dwelling - alternative to Class Q approval SI/20/00046/PA3Q"*

## 2.0 SITE CONTEXT

- 2.1 The application site comprises a former LSA small holding which was operated for horticultural purposes but ceased a while ago, since which the time the buildings have been unused.
- 2.2 On this basis the subject buildings have remained in agricultural use since they were first constructed in the mid 1930s.
- 2.3 Buildings A and B are both single storey structures of timber framed construction with corrugated asbestos sheeting (see appendix 2). Both buildings have a concrete slab. Building B has three courses of brick work upon the concrete slab floor. Nevertheless, during the case officer's site visit, it was clear that both buildings are not of substantial construction capable of conversion. Both buildings are light weight structures, featuring fireboard sheeting that is significantly damaged and rotten in part, with ivy growing up both northern elevations of the buildings and roof. The existing roof comprises asbestos sheeting which is not suitable for conversion. Building B features 2 no. wooden trusses in a reasonable state of repair, whilst building A features a number of smaller trusses that support the roof again in a reasonable state of repair. The existing lean-to to the eastern side of building A appears to feature significant rotting and ivy growth. Vehicular access is to the south of the buildings.
- 2.4 The subject buildings have a Class Q consent for change of use to 2no dwellings and comprise the original piggery and battery buildings for the former LSA smallholding and are located to the north of the former nursery house which is now in separate ownership and are located to the north of the retained original access to the holding.
- 2.5 Access to the building is provided by way of the existing access road that runs along the southern side of the redundant agricultural buildings and which separates the agricultural land from the garden to 66 Street End Lane.
- 2.6 The parking area for the new dwellings will seek to utilize, where possible, the existing concrete bases of the existing buildings and will be sited to the south west of dwelling 1 and east of dwelling 2.
- 2.7 The buildings replacement will retain their simple rectangular form and will be sited to ensure maximum solar gain for the proposed pv panels but will

be moved slightly to the west and east [retaining a substantial overlap with the existing building] in order to provide greater separation with the shared access drive and with each other.

- 2.8 Private amenity space will be provided to the rear and side of the new dwellings and will match the footprints of the buildings, complying with the areas permitted under the Class Q approval. Boundaries will be enclosed with simple posts with stock proof fencing in order to minimise visual impact.

### **3 PLANNING BACKGROUND**

- 3.1 The subject buildings have the benefit of Part 3, Class Q Prior Approval for their change of use from agriculture to residential under application reference: SI/20/00046/PA3Q which was allowed on appeal by way of a decision letter dated 10<sup>th</sup> February 2021.
- 3.2 As established in numerous other cases the applicant now wishes to erect new build dwellings as opposed to converting the existing buildings in order to achieve builds with higher levels of insulation, as well as moving the buildings back from the drive, in order to provide appropriate separation between the buildings on the site and to get it away from the shared access drive. Solar panels will be placed on a slated pitched roofs. Overall, there will be a considerable improvement to the visual appearance of the dwellings that will arise.
- 3.3 Whilst the units are proposed to be resited the buildings are only marginally further north than the red line of the permitted Class Q approval and considerable overlap with the existing structure will exist.
- 3.4 As with recent schemes permitted at Edna Rose Nursery, Sidlesham, 15 Chalk Lane, Sidlesham, 64 Street End Lane, Sidlesham and 11 Cow Lane, Sidlesham changes to the ridge heights have been kept to the minimum necessary to enable natural slate to be used and to provide a suitable pitch to maximum the efficiency of the proposed pv panels. The increase is within the recent more restrictive limits required by officers.

### **4 THE PROPOSAL**

- 4.1 The proposed dwellings, subject to this scheme, retain the same access and similar curtilage arrangement as permitted under the prior approval consent.
- 4.2 Rather than have the existing timber boarding the proposed dwellings will have stock brick and horizontal timber cladding. The new roof will be covered with slate, rather than the existing profiled fibre cement sheeting. New fenestration will be dark grey or black.
- 4.3 The parking area for the new dwellings will seek to utilize, where possible,

the existing concrete base of the existing buildings. The new dwellings will be resited to provide greater separation from the driveway and from each other.

- 4.4 Existing and new GIA remain the same but there is an increase in ridge heights to provide the minimum pitch needed to provide for pitched roofs with natural slate. This is considered to be a minimal increase which will not materially increase the bulk of the new dwellings, but at the same time substantially improve their visual appearance and contribution that they makes to the overall character and appearance of the local landscape.
- 4.5 It is considered that the proposed design and pallet of materials will result in buildings of quality, in keeping with the character of the area and an enhancement over that would arise from the extant changes of use.
- 4.6 Moreover, their design and materials closely reflect another of my permitted new build schemes at 64 Street End Lane, one of which is currently under construction.
- 4.7 The existing access from Street End Lane will be utilised, two parking spaces will be placed adjacent to the access, south west of new dwelling 1 and east of new dwelling 2, utilising part of the slab of the original buildings and/or access road. A level access will be provided to the front doors, on the south elevation, in order to facilitate disabled access into the dwellings.
- 4.8 The garden to new dwelling 1 will be sited to the north and east, and for new dwelling 2 to the north and west. The new dwellings will have the same GIA as that of the existing buildings and the garden areas match the existing buildings footprint – this approach corresponds with the requirements under the Class Q regulations.

## **5 PLANNING CONSIDERATIONS**

- 5.1 Having regard to the particular circumstances of this scheme I consider the main issues in the determination of this planning application to be:
- Planning Policy
  - Fall-back
  - Precedent

### ***Planning Policy***

- 5.2 The Chichester Local Plan: Key Policies 2014-2029, Policy 2 'Development Strategy and Settlement Hierarchy' states that development outside listed settlements is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with policies 45-46. Policy 45 provides for development in the countryside where it requires a countryside location and criteria 1 requires

any proposal to be well related to an existing farmstead or group of buildings, or close to an established settlement.

- 5.3 It is apparent that Policy 45 of the Local Plan has a dual purpose. As well as containing built development within existing settlements, it also seeks to protect the open countryside from development in order to safeguard its character and amenity, but will allow new countryside development which requires a countryside location where it is within a group of buildings. communities within it.
- 5.4 Policy 33 New Residential Development, allows for replacement dwellings providing the proposal meets a list of 7 criteria, which include meeting the highest standards of design and create a high-quality living environment in keeping with the character of the surrounding area and its setting in the landscape.
- 5.5 The Framework takes a positive approach, rather than a protective one, to appropriate development in rural areas. Furthermore, it is clear that Policy 45 seeks to control new building, whereas the Framework supports well designed new buildings to support sustainable growth and expansion of all types of business and enterprise in rural areas.
- 5.6 I have found no local plan policies that relate to the provision of custom/self-build homes. This is contrary to paragraph 61 of NPPF - "*...the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes)*". Since the Local Plan is silent on the issue of custom/self-build homes, I submit that paragraph 11 of the Framework is engaged, which states: "*... 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: - the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or, 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.* There are NO specific policies that indicate that permission should be restricted.

### **Fall-back**

- 5.7 As set out in section 3, Class Q prior approval for each building to change its use to a dwelling have been allowed on appeal. This prior approval permission is both a viable and realistic option for the applicant to pursue. Indeed, it is a matter of record that the applicant will implement that consent if these new builds are resisted by the LPA. It is therefore clear that 2no dwellings will be provided on this site.
- 5.8 There is now a large body of planning permissions for planning permissions for new build dwellings as an alternative to the implementation of the prior

approval that has been granted. In these cases – which are now widely known to officers and councillors alike - the critical issue raised by the Council has been *"whether there is a realistic prospect of the fall-back permission being implemented?"*

- 5.9 The principal issue that arose in those cases was whether the Prior Approvals / planning permissions could be implemented - namely, could they be converted / built within the terms of the relevant consent regime.
- 5.10 In this case there is an extant Class Q prior approval for the change of use of the existing buildings to 2no dwellings. The applicant has every intention of implementing this consent if this application is not permitted.
- 5.11 On this basis, the availability of such a fall-back option – using the Court of Appeal judgement in *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 - is clearly both achievable and realistic and must constitute a compelling factor in this case.
- 5.12 These factors are all significant material planning considerations which must outweigh any objection on the grounds of an unsustainable location for new housing development. They also indicate to me that the application should be determined otherwise than in accordance with Policies 2 and 45.
- 5.13 For these reasons I am therefore satisfied that the fall-back position has - as a minimum – a possibility of being implemented. It therefore follows that it must be afforded significant weight in the decision-making process. Failure to do so will lead to a costs application and any subsequent appeal.
- 5.14 As set out above, there is much case law on the matter of a "fallback position". This is quite succinctly set out at the beginning of the Encyclopedia of Planning Law in the General Statement on the Structure of the Planning System at paragraph 1.002.29 where it states as follows:

*"Sometimes an applicant can demonstrate that the grant of a permission will be less harmful than a use or development which has previously been permitted; this is known, unsurprisingly, as fall-back. It is established that the correct test to be applied in considering such an argument is whether there is a reasonable possibility that if planning permission were to be refused, a use or a development of the land which has previously been permitted would take place, and such use or development would be less desirable than that for which planning permission is currently sought. If this argument is not to prevail, reasons for rejecting it should be given: Coln Park LLP v Secretary of State for Communities and Local Government [2011] EWHC 2281 (Admin)."*

- 5.15 This judgement builds upon the principle judgement in *R v Secretary of State for the Environment ex p Ahern* [1998] where it was held that it is necessary to question whether the proposed development *"in its implications for impact on the environment, or other relevant planning factors, likely to have implications worse than, or broadly similar to, any*

*use to which the site would or might be put if the proposed development were refused?"*.

- 5.16 As set out above the second consideration in the issue of fall-back is whether the fall-back position would be less desirable than that for which planning permission is currently sought.
- 5.17 Whilst the scale of the dwellings proposed would be slightly different from the permitted Class Q scheme, but as set out above this is necessary in order to secure a high quality design – ie the provision of a pitched slate roof to replace the existing profiles sheeting roof and the existing flat roofs. The extent of garden area would also be identical in size to that in the prior approval appeal permission, and the proposed siting would just be slightly set back from that of the existing buildings but would nevertheless remain in a similar location.
- 5.18 Even though the scale would be slightly different the proposal seeks to reflect the characteristics of rural outbuildings associated with LSA properties – being low in scale - and it is considered that it would be a considerable improvement to the previously approved conversions. Having regard to *R v Secretary of State for the Environment ex p Ahern* [1998], the proposal would not represent a worse situation than the fallback position. It would, in fact, be a noticeable improvement in terms of design, appearance and character.

### ***Precedent***

- 5.19 There are now a large number of precedents wherein the LPA has permitted new builds as an alternative to implementing either a Prior Approval scheme or a subsequent planning permission for change of use along with external changes. This makes sense since if the applicant were to convert the buildings and live in them for a period of time they would then be likely to be granted planning permission for a replacement dwelling. It seems a nonsense to make them implement the permission first. Indeed, such an approach would not constitute sustainable development.
- 5.20 Officers and the Parish Council will now be well aware that I have obtained planning for new build dwellings as an alternative to a prior Approval Change of Use [or subsequent planning permission for the same] at numerous sites within the District, including at very nearby at 63 and 64 Street End Lane, Sidlesham; along with: 11 Cow Lane; 15 Chalk Lane, Sidlesham; 79, 85, 88 and 89 Fletchers Lane, Sidlesham; 101 First Avenue, Batchmere; 111 Second Avenue, Almodington; 136 and 137 Almodington Lane, Almodington; The Birches, Selsey Road, Sidlesham; Wits End, Almodington; two schemes at Chalk Lane Nursery, Sidlesham; and, Southgate Farm, North Mundham.
- 5.21 I no longer consider it necessary to go into detail in these cases. The simple fact exists that clear and substantial precedents have now been



established and this current proposal for 2no new build fits well within the parameters established under those consents and echoes closely the recent permission at 64 Street End Lane – SI/21/01831/FUL refers.

## **6 PLANNING BALANCE AND OVERALL CONCLUSIONS**

- 6.1 It is stated Government policy that LPAs should take a pro-active approach to such applications in order to foster economic growth and to meet the needs of an acute national housing shortage.
- 6.2 I have found that the development plan is silent and absent in respect of the provision of custom/self-build housing. Given these factors, having regard to Paragraph 11 of The Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework taken as a whole.
- 6.3 Having regard to the Framework, and the fact that 2 dwellings have been permitted on this site, then there cannot be an 'in principle' objection to the proposed new build dwellings.
- 6.4 Accordingly, the main policy issue is visual impact and, in this regard, it is necessary to assess any proposed development in terms of its impact on the character and appearance of the countryside, when considering whether or not it would be appropriate for the development proposed.
- 6.5 I have found that the proposal would represent a sustainable form of development and that weight should be afforded to the positive landscape changes that would result from the proposed development arising from its improved visual appearance.
- 6.6 I have considered all the other matters pertaining to new residential development in the countryside along with, the current positive approach of the government to provide further housing in rural areas; the fall-back position of the Class Q prior approval permission for change of use to residential; the more sustainable new build and identical traffic generation that would arise compared to the fall-back position; along with the positive improvement to the character and appearance of this part of the countryside that would result from the scheme.
- 6.7 Given that the proposal would represent a sustainable form of development, along with the need to provide for custom/self-build housing in particular, I do not consider that there is any harm and indeed there is certainly no harm that would significantly and demonstrably outweigh the benefits, when assessed against the applicants' realistic fall-back position and policies in the Framework taken as a whole.
- 6.8 It is clear that the correct, legal, test for the fall-back position is whether it is a **possibility**. The evidence provided demonstrates that the fall-back

position in this case is more than a possibility – the extant prior approval /FUL for the change of use of the existing buildings to 2 dwellings is wholly capable of implementation.

- 6.9 This new planning application for demolition and new build will clearly represent an improvement in the overall design and appearance of the permitted Class Q conversions, in full accordance with the aims of LP Policy 33. The proposal is therefore Development Plan compliant.
- 6.10 For the above reasons, I conclude that planning permission should be granted for this new build scheme.