

MID SUFFOLK DISTRICT COUNCIL
DEVELOPMENT CONTROL COMMITTEE - 30 September 2015

AGENDA ITEM NO	3
APPLICATION NO	2850/15
PROPOSAL	Prior Approval (Class R) of proposed change of use of Agricultural Building to a flexible use within Shops (Class A1), Financial and Professional services (Class A2), Restaurants and Cafes (Class A3), Business (Class B), Storage or Distribution (Class B8), Hotels (Class C1) or Assembly or Leisure (Class D2)
SITE LOCATION	Valley Farm, New Street, Stradbroke IP21 5JL
SITE AREA (Ha)	
APPLICANT	Mr S Gemmill
RECEIVED	August 5, 2015
EXPIRY DATE	October 9, 2015

REASONS FOR REFERENCE TO COMMITTEE

The application is referred to committee for the following reason :

The Head of Economy considers the application controversial mindful that the applicant is a former Member of the Council and in the interests of transparency.

PRE-APPLICATION ADVICE

1. No pre application advice was sought prior to the submission of this Prior Approval.

SITE AND SURROUNDINGS

2. The application site relates to a steel framed agricultural building situated on land forming part of Valley Farm, Stradbroke.

HISTORY

3. The planning history relevant to the application site is:

2852/15	Prior notification for passing place.	Prior Approval Not Required
2851/15	Prior Approval Class Q (a) and (b) of proposed change of use of Agricultural Building to a dwelling house (use class C3)	Pending decision (see agenda)

1097/15	Prior Approval (Class MB (A and B)) of Proposed Change of Use of Agricultural Building to a Dwelling house (Use Class C3) and for Associated Operational Development.	Refused 21/05/2015
1193/15	Prior Approval (Class R) of Proposed Change of Use of Agricultural Building to a flexible use within Shops (Class A1), Financial and Professional services (Class A2), Restaurants and Cafes (Class A3), Business (Class B) Storage or Distribution (Class B8), Hotels (Class C1) or Assembly or Leisure (Class D2).	Refused 21/05/2015
2103/12	Change of use of grain store to vintage car restoration unit (Use Class B2)	Granted 18/09/2012

PROPOSAL

4. This is a Prior Approval application submitted under Class R of The Town and Country Planning (General Permitted Development Order) 1995 (as amended) for the change of use of an agricultural building and land to a flexible use within Shops (Class A1), Financial and Professional services (Class A2), Restaurants and Cafes (Class A3), Business (Class B) Storage or Distribution (Class B8), Hotels (Class C1) or Assembly or Leisure (Class D2).

The application was accompanied by a Prior Notice Statement, Contamination Scoping Assessment and required fee.

The submitted documents identify that the building would be divided into four business units. The building is to use the existing access for Valley Farm and identifies 8 parking bays. The external appearance of the building will be altered to have a brick facade, over timber cladding under a clay pantile roof.

POLICY

5. **Planning Policy Guidance**

See Appendix below. Planning Practice Guidance on the CLG website also provides clarification as to policy regarding permitted rights.

CONSULTATIONS

- 6.
- **Highway Authority:** Recommends condition on parking and turning.
 - **Environment Agency:** The development proposal is considered to be low risk and we have no objection.
 - **MSDC Environmental Health:** I have reviewed the application and can confirm that I have no objection to raise with respect to land contamination as the previous uses of the site are unlike to impact significantly on such a low risk end use as retail and offices. I would only request that we are contacted in the event of unexpected ground conditions being encountered

during construction and that the developer is made aware that the responsibility for the safe development of the site lies with them.

LOCAL AND THIRD PARTY REPRESENTATIONS

7. None received.

ASSESSMENT

8. • Background:

At the outset it should be noted that by reason of the national permitted development right the principle of the development is not open to consideration. The principle of the use should be treated as being acceptable having regard to that right. What is for consideration is broadly matters of detail as described below.

A Prior Approval application for a similar scheme to that submitted was presented to Committee on the 29th April 2015 where it was delegated to the Corporate Manager to determine the application having regard to the timescale obliged for a decision by the Council.

The Prior Approval was subsequently refused on the 21st May 2015 for the following reasons:

"Based on the definition of curtilage (Paragraph X, Part 3 of the Town and Country Planning (General Permitted Development) Order 2015, and the site as drawn it is considered that permitted development rights do not apply.

In addition :

The proposed conversion of the agricultural building to a flexible use includes Use Classes that are likely to lead to the intensification of the use of the access from New Street by vehicles, including HGVs. The access road off New Street is single width with no passing places. There is insufficient width for an HGV or a number of smaller vehicles to wait at the access entrance whilst another vehicle exits without vehicles obstructing or reversing into the highway. The proposal therefore fails to demonstrate that the highway impacts of the development can be safely achieved and as such is contrary to the conditions of Part R of the GPDO and National Planning Policy Framework (Paragraph 32). "

- Assessment:

Assessment of Class R is restricted to the provisions of that Class and Part W of the Town and Country Planning (General Permitted Development) Order 2015.

R.2 (1) sets out that the developer shall apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to:-

- (i) transport and highways impacts of the development,

(ii) noise impacts of the development,
 (iii) contamination risks on the site, and
 (iv) flooding risks on the site, and
 the provisions of paragraph W (prior approval) of this Part shall apply in relation to that application.

The remit of the local planning authority in assessing the Prior Approval is set out in both Part R.2 (as above) and Part W (10) which states:

The local planning authority must, when determining an application -

(a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph 8);

(b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(a), so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and

(c) in relation to the contamination risks on the site -

(i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b) and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012 (c) and

(ii) if they determine that the site will be contaminated land, refuse to give prior approval.

This type of Prior Approval has a strict timetable, where the local planning authority **must** determine and inform the applicant within 56 days receipt of the Approval being received. If this timetable is not complied with then the Approval is granted by default. In this instance the expiry date is the 9th October 2015.

• Compliance with criteria for Prior Approval:

A proposal must comply with the criteria set out in Part 3, Class R and Interpretation Part 3, X where it states that the:

"curtilage" means, for the purposes of Class Q, R and S only -

(a) 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

(b) 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 previous Prior Approval (reference 1193/15) was partially refused on the basis that the curtilage defined exceeded the size permitted under Part 3, X. This Prior Approval has a different curtilage shown which is within the parameters set within the GPDO.

Since the decision was made on 1193/15 there have been appeal decisions reported which are material to this Prior Approval and which have allowed barns to be converted into dwellings under Part Q where the amenity land and access were excluded. It is considered that these findings whilst case specific are material to the planning issues here.

Given these appeal decisions no objection on the basis of the size of curtilage is raised. It is however important that a note is appended to the Approval that identifies the limitations of this Approval and that other permissions may be required for other change of use of land or engineering operations required to facilitate the proposed development. It is appropriate to deal with these points by informative note.

Part R.3 (4) does allow for associated operational development to the building and land which are reasonably necessary for the use of the building or the land. On this basis the alterations to the building are considered acceptable.

With the previous application 1193//15 there was an objection that the curtilage did not meet the criteria set out within the GPDO. The agent has submitted appeal decisions in an attempt to address the interpretation of curtilage and whether it should include land that needs to have a change of use.

- Agricultural Use:

For the proposed development to be able to sought under Part 3, Class R of the GPDO it must satisfy that the building is, or was last, in use solely for agricultural purposes, in accordance with the criteria set out in R (a).

From the officers site visit the building is a typical steel framed building with a design and height suitable to accommodate farm equipment. At the site visit the building was vacant. It is considered in this instance with the evidence to hand that the buildings last use was "on balance" as agriculture and there has been no intervening substantive use since that time.

- Transport and highways impacts of the development

One of the considerations for a proposal sought under Part 3, Class R is whether there would be an impact upon highway safety.

The Highway Authority on the previous approval application (1193/15) advised that the application would be likely to lead to an intensification of use of the access to Valley Farm. It was advised that whilst the visibility of the access road with New Street is satisfactory the access road narrows down to a single track with no passing bays. On this basis they advised that the access road had insufficient width for an HGV to wait at the entrance while another vehicle exits without affecting the highway. This potential for vehicles reversing into the public highway would have been prejudicial to highway safety.

Given the Prior Approval is for a flexible use the nature of those that can be permitted would give rise to the potential for HGVs to need to access the site. The proposed development has showed parking spaces for cars but no parking spaces for HGVs or a turning space for said vehicles.

The agent has tried to address this matter by submitting a Prior Notification for a passing place related to agriculture. On the balance of probabilities the planning authority should give the applicant the benefit of the doubt in relation to that requirement in the absence of substantive evidence to the contrary. It should be noted that this does not have to be commenced until 5 years from the date of approval and thus is not currently functionally available for use nor might it be unless it can be secured by condition.

Part 3, W(13) of the GPDO 201 does allow for conditions reasonably related to the subject of the prior approval to be appended to the grant of a prior approval. In order for parking and turning facilities for vehicles that would be associated with the flexible use to comply with the adopted Suffolk County Council parking standards 2014 and given the Highway Authority's previous concern a condition to secure a scheme for the passing place, parking and turning areas and for the building to not be first brought into use until the approved scheme is functionally available for use would be imposed upon any grant of approval.

- Noise impacts of the development

Part 3 (W) (10) (b) states that regard must be given to the NPPF insofar as it is relevant to the subject of the prior approval.

There is a car restoration company operating from a former grain store to the northwest of the application site which was granted permission on the 18th September 2012 by permission 2103/12. Given Valley Farm is also within close proximity to that existing use it is not deemed that there would be significant noise impacts to the occupants of the proposed dwelling.

This flexible use has the ability to be occupied by users that have the potential for adverse impacts upon residential amenities, in particular the Use Class B8 (storage and distribution) and D2 (Leisure and Assembly). Paragraph 17 of the NPPF seeks to ensure that there is a "good standard of amenity for all existing and future occupants of land and buildings".

Officers are mindful that a Prior Approval has also been submitted under reference 2851/15 for the change of use of three buildings to three dwellings (also on this committee agenda). These buildings would share the same access arrangements and would be within close proximity of each other. However even if the Prior Approval were granted it does not mean that they would be implemented.

Advice is being sought from the Council's Environmental Health department on whether there are any conditions that would be advised to be appended to any Approval to safeguard the amenities of potential residential neighbours given the uses that could be introduced within the building. A verbal update will be given.

Having regard to the fact that the closest existing residential property is Valley Farm, its ownership and separation distance and the ability for noise abatement notices to cover any potential noise issue in the future it is not considered that harm to residential amenities could be substantiated subject to the foregoing advice.

- Contamination risks on the site

The application has been accompanied by a Contamination Scoping Report. This has identified that the risk to human health is low but advised that if any contaminant is found during construction work then that should cease and further investigation be undertaken.

The Council's Environmental Health department were consulted on the application and has raised no objection to the proposal.

- Flooding risks on the site

The site is not within Flood zone 2 or 3 and is not considered to have flood risk issues significant to warrant prior approval or refusal. The Environment Agency has confirmed the application is not a risk for flooding.

- Consideration of representations

There have been no letters of representation received in relation to the Prior Approval submission.

- Conclusion

Mindful that the principle of development is not open to scrutiny under this permitted development right it is considered that the proposal is acceptable within the criteria set out in the Order. It is appropriate to impose conditions to address relevant planning issues within the scope of the permitted right and in particular to ensure that highway aspects of access are secured.

RECOMMENDATION

That the prior approval to the flexible use application be granted subject to the following conditions:

- Time limit
- Approved plans
- Scheme of passing place, turning and manoeuvring areas, including evidence of adequate control or ownership to secure these to be agreed by the planning authority and functionally available prior to the building being first brought into use.

Informative note:-

This Prior Approval does not grant permission for the change of use of land outside the curtilage as shown or permit engineering operations to facilitate the approved development.

Philip Isbell
Corporate Manager - Development Management

Lisa Evans
Planning Officer

APPENDIX A - PLANNING POLICIES

1. Planning Policy Statements, Circulars & Other policy

NPPF - National Planning Policy Framework

APPENDIX B - NEIGHBOUR REPRESENTATIONS

No Letters of representation have been received.