

AGENDA ITEM NO: 8/3(g)

Parish:	Walpole Cross Keys	
Proposal:	Change of use of agricultural land to residential garden and proposed new access to agricultural land	
Location:	Old Farm Market Lane Walpole St Andrew Norfolk	
Applicant:	Mr Ben Human	
Case No:	18/01876/F (Full Application)	
Case Officer:	Mr K Wilkinson	Date for Determination: 8 January 2019 Extension of Time Expiry Date: 8 February 2019

Reason for Referral to Planning Committee – At the request of the Sifting Panel given the planning history relating to this site/proposal.

Neighbourhood Plan: Yes

Case Summary

The application site is located on the northern side of Market Lane, in the Parish of Walpole Cross Keys, between the A17 and Walpole St Andrew. It lies approx. 70m west of 'Samuel's Farm Shop'. It involves a parcel of land to the immediate west of the extended barn conversion known as 'Old Farm' and up to the bungalow 'Milagrita' further west. The land is bounded by a row of Poplar trees and hedgerow to the south adjoining a wide grassed verge to Market Lane.

The application site is located on land designated as countryside by the Site Allocations and Development Management Policies Plan (SADMPP) (2016) and also in the Walpole Cross Keys Neighbourhood Plan (October 2017).

The application seeks the continued use of a 7m wide strip of land to the west of 'Old Farm' as extended garden, plus the creation of a new vehicular access to serve the remainder of the land which is now laid to an orchard.

Members may be aware that this land has been the subject of previous enforcement and planning appeals which have been dismissed – copies of the Planning Inspector's decisions are attached as appendices to this report for reference.

Key Issues

Policy context and planning history;
Effect of the proposal on the character and appearance of the countryside;
Loss of Grade 1 agricultural land;
Highway implications; and
Other material considerations

Recommendation

REFUSE

THE APPLICATION

The application site is located on the northern side of Market Lane, in the Parish of Walpole Cross Keys, between the A17 and Walpole St Andrew. It lies approx. 70m west of 'Samuel's Farm Shop'. It involves a parcel of land to the immediate west of the extended barn conversion known as 'Old Farm' and up to the bungalow 'Milagrita' further west. The land is bounded by a row of Poplar trees and hedgerow to the south adjoining a wide grassed verge to Market Lane.

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SUPPORTING CASE

The applicant has submitted the following statement in support of this application:

"The area I have applied for is very small compared to all the other applications we have submitted in the past. This area will only benefit my young family and the well-being of our family pets. This will be the only parcel of garden that is adjoined to Old Farm. Surely a 5-bed family home would benefit with a small area of grass for our family to enjoy.

My children have already seen the area they used to play in reduced, orchard trees planted, the removal of the children playhouse and swings. The land has been entered into a stewardship scheme, so all grass areas have been left for over a year. It has all been stock fenced and secured off.

There is no means of access to the field as I do not own any of the land surrounding it.

I have worked closely and tirelessly with planning officers, enforcement officers and all relevant bodies concerned to reach a conclusion to this very expensive and worrying ordeal. When this matter went to court, the courts asked for this matter to be resolved by working together with all parties concerned which I strongly believe I have.

All I ask is you give this application some serious thought. I have tried to use common sense, a realist view of what I would like to achieve. I have already taken work into hand and sawn down the shrub areas in the land I have applied for so hopefully if approved, the new hedge can be planted in January."

PLANNING HISTORY

04/02098/CU: Application Permitted: 08/02/05 - Conversion and extension of buildings to create dwelling

07/02021/F: Application Withdrawn: 30/10/07 - Erection of detached garage, alteration to highway access

07/02550/CU: Application Permitted: 04/02/08 - Change of use of strip of land to form amenity space for dwelling

08/00294/F: Application Refused: 10/04/08 - Erection of garage in curtilage of dwelling

09/00868/F: Application Permitted: 07/09/09 - Construction of detached garage and log store

10/02079/F: Application Permitted: 09/06/11 - Completion and retention of extension incorporating covered walkway, chimney and greenhouse/conservatory

12/00119/F: Application Permitted: 22/05/12 - A proposed entrance lobby to the front of Old Farm. A sun lounge and wooden garden shed on the east side of Old Farm

14/00800/F: Application Withdrawn: 24/07/14 - Proposed front walling and gates - Old Farm House

14/01488/F: Application Permitted: 03/12/14 - Altered vehicle access and proposed front fence, walling and gates

15/00164/UNAUTU: Enforcement notice issued 06/07/15 – Material change of use of agricultural land to use as garden land, including stationing of residential paraphernalia and the construction of a child's climbing frame: Appeal dismissed 19/04/16

16/02013/CU: Application Refused: 29/06/17 - Change of use of the land for garden to improve existing residential amenity - Appeal Dismissed 22/01/18

18/01555/F: Refused to Determine: 05/09/18 - Change of use of agricultural land to residential garden and proposed new access to agricultural land

RESPONSE TO CONSULTATION

Parish Council: OBJECT to the application as the land is agricultural and should remain as such along with concerns about road safety on Market Lane for the proposed additional access.

Highways Authority: NO OBJECTION subject to condition, and informative notes relating to details of the proposed new field access.

REPRESENTATIONS None received

LDF CORE STRATEGY POLICIES

CS01 - Spatial Strategy

CS06 - Development in Rural Areas

CS08 - Sustainable Development

CS11 - Transport

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016

DM1 – Presumption in Favour of Sustainable Development

DM2 – Development Boundaries

DM15 – Environment, Design and Amenity

NEIGHBOURHOOD PLAN POLICIES

Policy 10 - Transport and Access

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

National Planning Policy Framework – sets out the Government’s planning policies for England and how these are expected to be applied.

PLANNING CONSIDERATIONS

The key issues identified in the consideration of this application are as follows:

- Policy context and planning history;
- Effect of the proposal on the character and appearance of the countryside;
- Loss of Grade 1 agricultural land;
- Highway implications; and
- Other material considerations

Policy context and planning history

Paragraph 170 of the relatively recent NPPF (July 2018) states inter alia:

“Planning policies and decisions should contribute to and enhance the natural and local environment by:

...b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland...”

Core Strategy policy CS06 states that beyond the villages and in the countryside the strategy will be to protect the countryside for its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife and its natural resources to be enjoyed by all. The change of use from agricultural land to garden land conflicts with Policy CS06 of the Council’s Core Strategy. Policy CS06 aims to control development in the countryside and limits the development of greenfield sites unless it is essential for agricultural or forestry purposes, which is not the case here.

Policy DM2 of the Site Allocations and Development Management Policies Plan (SADMPP) states that the areas outside development boundaries will be treated as countryside, where

new development will be more restricted and will be limited to that identified as suitable in rural areas by other policies of the local plan (including farm diversification, small scale employment, tourism facilities, community facilities, renewable energy generation, rural workers' housing or affordable housing). The proposed change of use of the land for garden to improve the existing residential amenity does not comply with the requirements of Policy DM2.

Planning Enforcement Appeal, reference number APP/V2635/C/15/3132796, was dismissed by The Planning Inspectorate on 19/04/16 and upheld the enforcement notice which was served on the applicant in relation to retaining the whole of the parcel of land between Old Farm and Milagrita as garden land to Old Farm.

It will be noted in the appended decision notice that the Inspector concluded that the lawful use of the site is agriculture. The change of use to garden land conflicted with policy CS06 of the Council's Core Strategy. The Inspector noted that the change of use of this land to garden land had given this block of land a domestic, residential character. It further consolidated the development of this area which resulted in material harm to the open, rural character of the area.

The applicant then submitted application ref: 16/02013/CU, which proposed to reduce the size of the area to be retained as garden land to just less than half of the total area of land earlier sought for garden land. This was refused and appealed (PINS ref: APP/V2635/W/17/3185584). The Planning Inspector's decision appended dismissed the appeal. It identified at Paragraph 7 that there was a principle point in that it was less about the enclosure of the land, but more how it was used.

The applicant appeared at the Magistrates Court on 25 July 2018 and was found guilty of failure to comply with the Enforcement Notice. He was given a conditional discharge for 12 months in order to seek to resolve the matter of a reduced garden area and pursue a further planning application (i.e. this proposal).

This current proposal will therefore be assessed in conjunction with the planning policies identified above, and the findings of the planning appeals.

Since the previous application was determined and appealed the Walpole Cross Keys Neighbourhood Plan has been adopted (October 2017), but there are no significant policy implications arising from this plan.

Effect of the proposal on the character and appearance of the countryside

The site is located within countryside and is Grade 1 agricultural land. It will be noted from the History section above that the application for the dwelling Old Farm was approved in 2005 (application ref: 04/02098/CU), and then the curtilage was increased in 2008 (application ref: 07/02550/CU). That garden extension was built upon with the erection of a garage and log store approved under ref: 09/00868/F in 2009 which is now part of the accommodation. So the original curtilage for the dwelling has been progressively increased in size and indeed developed upon, hence reducing the effective open space.

Sporadic residential development and other development along Market Lane characterises the area. As a result of this pattern of development there are areas where agricultural land of open character borders Market Lane.

The current strip of land is presently manicured grass bounded by a fence line to the west. Former flower beds have been removed to allow a hedge to be planted on the eastern side of the aforementioned fence. The playhouse and part of climbing frame has been retained

and modified into a chicken shed with attached run, and the sunken trampoline is to be removed to accommodate an extension to the fence line and hedge.

At Paragraph 9 of the planning appeal decision the Inspector states that permitted development allowances could be removed for further development in any enlarged garden. Indeed this would reduce harm but in actual fact only really where new buildings are concerned. The land would still relate to a domestic use and there are many structures and equipment (e.g. swings, slides, garden furniture, chimineas) that would not be development on which the removal of rights under permitted development would not have an effect. The introduction of domestic garden planting could also contribute to the visual impact and character of this land. In essence, the annexing of the land to what appears to be the lawful residential curtilage would have a harmful effect on the character and appearance of the area. This remains the case even on a reduced site area.

On this basis the proposed formal change of use would alter the character of the land and undermine the rural character of the area. The proposal therefore is still considered to conflict with planning policies aimed at protecting the countryside (Policy CS06 of the Core Strategy & Paragraph 170 of the NPPF).

Loss of Grade 1 agricultural land

Whilst the land is classified as Grade 1 agricultural and the Parish Council raise objection to its loss, the last Inspector's decision (paragraph 12) concluded that: "the amount lost... would not be significant and consequentially affect overall provision greatly."

This cannot therefore be justified as a reason for refusal on a lesser site area.

Highway implications

A new vehicular access is proposed to serve the remainder of the overall site which is now laid to orchard. Whilst the Parish Council raise concerns regarding road safety on Market Lane, the Local Highway Authority opines that there would be acceptable visibility splays to accord with adopted standards and raise no objections. A condition is suggested to define the details of the construction of the access and its drainage.

This part of the proposed development is considered to be acceptable, however the decision must be made on the whole of the development proposed.

Other material considerations

The site is located on land designated as Flood Zone 2 and 3 of the Council's adopted Strategic Flood Risk Assessment.

There are no crime and disorder concerns raised by this proposal.

CONCLUSION

The proposal relates to the continued change of use of agricultural land to form domestic garden to improve residential amenity. National and Local policies seek to protect the 'Countryside' for the sake of its intrinsic character and beauty, and to preserve its character and appearance.

The previous assessment and decisions of Planning Inspectors continue to apply in that the domestication of this land (albeit reduced in size) would constitute an inappropriate incursion

into countryside, which would also alter the character of this undeveloped/open landscape setting. There is therefore a clear objection to this proposal.

In the light of the above, it is the view of officers that planning permission should be refused for the reason set out below.

RECOMMENDATION:

REFUSE for the following reason(s):

- 1 The NPPF and Policy CS06 of the Core Strategy (2011) protect the 'Countryside' for the sake of its intrinsic character and beauty and, in order to preserve its character and appearance, seek to prevent development that damages the distinctive character and appearance of the landscape and locality.

This proposal relates to the change of use of agricultural land to form an extension to a residential garden. The proposal would represent an unacceptable level of domestication of the landscape, which would have an adverse visual impact on the character and appearance of the countryside. There are no material considerations that would outweigh this policy objection. The proposal is therefore contrary to the provisions of Paragraph 170 of the NPPF and Policy CS06 of the Core Strategy (2011).