

<b>Parish:</b>	<b>Pentney</b>	
<b>Proposal:</b>	<b>Demolition of agricultural building and replacement with two dwellings</b>	
<b>Location:</b>	<b>Charolais Low Road Pentney King's Lynn</b>	
<b>Applicant:</b>	<b>Mr &amp; Mrs S Voutt</b>	
<b>Case No:</b>	<b>19/01920/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Clare Harpham</b>	<b>Date for Determination:</b> <b>9 January 2020</b> <b>Extension of Time Expiry Date:</b> <b>10 February 2020</b>

**Reason for Referral to Planning Committee** – The Parish Council object to the proposal which is contrary to the Officer Recommendation

**Neighbourhood Plan:** No

### **Case Summary**

The application site is located within the countryside and to the rear of the existing residential development along Low Road. The application is for the demolition of the existing agricultural building and construction of two dwellings. There is extant prior approval permission for the conversion of the existing agricultural building (formerly used for rabbit meat production) into two dwellings and this fall-back position is a material consideration of considerable weight.

### **Key Issues**

Planning History  
 Principle of Development  
 Design and Scale  
 Neighbour Amenity  
 Highways Issues  
 Flood Risk  
 Crime and Disorder  
 Other material considerations

### **Recommendation**

**APPROVE**

## THE APPLICATION

The application site is located on the northern side of Low Road, Pentney and to the rear of the dwelling known as Charolais, which is in the ownership of the applicant. It is accessed from the existing point of access, which also serves the existing dwelling, along the western boundary. Currently on site is a large single storey agricultural building which has wooden clad walls and a profiled fibre cement roof. The application site is screened to the south and the dwelling of Charolais by a large conifer/leylandii hedge.

This application relates to the demolition of the former agricultural building sited to the north of Charolois, and its replacement with two 'barn style' semi-detached dwellings.

## SUPPORTING CASE

The application seeks to replace the existing approval under Permitted Development rights for 2 No. 4 bedroom dwellings with full planning permission for 2 No. 3 bedroom dwellings.

The applicants purchased Charolais as a family home some 5 years ago without knowing the planning status of the rear part of the site which contains a vacant agricultural building. Having become aware of their rights under the Town and Country (General Permitted Development)

(England) Order 2015 they sought and obtained prior approval for conversion of the building to 2 No. four bedroom dwellings. That approval given on 29th April 2019 is current and merely requires an asbestos survey and method of removal to be agreed before work can start.

The applicants are life time residents of the local area and hail from the neighbouring parish of Narborough. They have an extended family locally and are very committed to this site. Whilst not usually a material planning consideration it does explain their attitude to the "fall-back position" in respect of this application. There is an existing substantial building on site which already has approval for conversion. They would however prefer to agree a smaller and better designed building in the local vernacular style with the planning authority. However, should this not be possible then the conversion will be executed. They have a young family to consider and this opportunity simply cannot be ignored.

The scheme as proposed is designed to better reflect the rural area it stands in. The materials chosen are found locally; brickwork, timber boarding and pantiles. Indeed the existing agricultural building it seeks to replace is wholly timber clad. The scale of the new building is respectful of its location. The floor area is some 39% smaller than the extant approval and the volume is 17% less. There is an increase in ridge height but this is merely to allow pantiles to be used on the roof instead of the corrugated fibre cement sheeting used on the existing building (which can accommodate a lower slope).

The proposed building lies fully within the footprint of the existing building. Concern has been raised about its possible impact on neighbouring properties. Apart from Charolais itself where there is a separation distance of 36m (and set at an angle) the nearest property is 1 Greys Cottages over 51m away and again set with a substantial offset to one side. The width of the proposed building (the predominate view seen from outside the site) is 9.3m, a reduction from 13.8m from the existing.

The area at present is not liable to flooding. However, to "future proof" the development, consideration must be given to the potential effects of climate change. When using the Council's own 100 year assessment, the north-east edge of the site may be affected by a 1

in 100 year flood but the building itself and the access drive still remain clear of a potential event. Whereas the approved conversion could prove to be more vulnerable.

Core strategy policy CS06 expects “more modest levels of development” to be permitted in rural villages, smaller villages and hamlets. SADMP Policy DM3 states that “New development in the designated Smaller Villages and Hamlets will be limited to that suitable for rural areas...” This proposal seeks to replace an existing approval with a scheme that is even more suited to its rural location.

SADMP Policy DM5 specifically allows for replacement dwellings in the countryside. So, if the existing building had already been converted to dwellings, then the concept of replacement with new dwellings would not be an issue, merely their appearance and scale. This application seeks a similar treatment; exchanging one potential scheme for another, rather than build twice. This surely reflects a more sustainable approach at a time when natural resources ought to be conserved.

## **PLANNING HISTORY**

18/00397/PACU3: Prior Approval - Refused: 23/04/18 - Prior Notification: Change of use of rabbit meat production unit to two dwelling houses - Building And Land N of Charolois And NE of Grays Cottages Low Road Pentney Appeal Allowed 29/04/19

## **RESPONSE TO CONSULTATION**

**Parish Council: OBJECT** for the following reasons:-

- Beyond building line of surrounding buildings.
- Insufficient detail in application (no measurements).
- Should have an ecological survey as suspect bats and newts are present on site.
- Out of keeping with surrounding buildings.
- We believe the hedge on the plan are Leylandii and not Yew as stated.
- Falls short of the emerging Neighbourhood Plan which has been informed by wide consultation with village residents e.g. be of high quality, heavily informed by immediate settings, generous use of local vernacular materials, provide evidence that due regard has been had to the contents of Pentney Heritage Character Appraisal, provide a comprehensive and locally informed scheme of soft landscaping.

**Highways Authority: NO OBJECTION** Having examined the information submitted I believe that ultimately accesses for the proposal would be safe and parking and turning for vehicles would accord for parking standards for Norfolk.

The site is remote from schooling, town centre shopping etc and as such the Highways Authority is of the view that the proposed development is likely to conflict with the aims of sustainable development. Should the application be approved conditions are recommended relating to the access/parking and turning.

**Environmental Health & Housing - Environmental Quality: NO OBJECTION** The information submitted does not indicate the presence of significant land contamination. However, the former use of the land for agriculture means that it's possible that some unexpected contamination could be present. Therefore I recommend a condition is applied relating to measures to be undertaken should unexpected contamination be encountered during development and an informative relating to asbestos.

**Natural England: NO COMMENT** please refer to Standing Advice.

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## **REPRESENTATIONS**

**FOUR** letters of **OBJECTION** covering the following:-

- Site is in an area which floods due to the dykes.
- More dwellings will add to traffic and water problems in Low Road.
- Low Road is unsuitable for more development, it's used by farm vehicles and as a rat run, is single track and has pot holes etc.
- Proposal is behind building line and would set a precedent, backland is not wanted in Pentney.
- Speculative development.
- Building was originally granted for meat production, as was the house on site. When the agricultural license finished the building should be removed.
- Concerns about asbestos dust when roof is removed.
- Concerned about position of access track in relation to dyke.
- Proposed building is higher than the existing building.
- Proposal is not infill.
- Not in keeping with planning regulations set out for Pentney nor the emerging Neighbourhood Plan.
- If the Parish Council had been aware of previous appeal then they could have presented objections.

## **LDF CORE STRATEGY POLICIES**

**CS01** - Spatial Strategy

**CS02** - The Settlement Hierarchy

**CS06** - Development in Rural Areas

**CS08** - Sustainable Development

**CS10** - The Economy

**CS11** – Transport

**CS12** - Environmental Assets

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM2** – Development Boundaries

**DM5** – Enlargement or Replacement of Dwellings in the Countryside

**DM15** – Environment, Design and Amenity

**DM17** - Parking Provision in New Development

## **NATIONAL GUIDANCE**

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

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

National Planning Practice Guidance - Provides National Planning Practice Guidance, in support of and in addition to the NPPF

National Design Guide 2019

## **PLANNING CONSIDERATIONS**

The main issues to consider when determining this application are as follows:

Planning History  
Principle of Development  
Design and Scale  
Neighbour Amenity  
Highways Issues  
Flood Risk  
Crime and Disorder  
Other material considerations

### **Planning History**

In April 2019 prior approval was granted at appeal (appeal attached) for the change of use of the existing rabbit meat production unit to two dwellinghouses (18/00397/PACU3). This approval was granted under Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended.

Applications under Part 3 of the GPDO allow for the change of use of certain buildings (following detailed regulations and conditions) and in the case of Class Q allows for the conversion of agricultural buildings which may be redundant for agricultural purposes into residential dwellings, which would not otherwise be permitted. Consequently while the conversion has not yet been carried out the principle of a residential use and conversion to two dwellings has been established and is extant.

Whilst there are strict criteria within the regulations governing what can be granted approval under Class Q, Part 3 this does not preclude an application for planning permission being submitted for building works which do not fall within the scope of permitted development to be made either at the same time, or after a prior approval application in respect of the change of use of the same building.

This application does not involve building works to the existing building, but involves the demolition of the existing agricultural building and its replacement with a new building forming two dwellings which will emulate an agricultural building, albeit of a different design to the existing building.

### **Principle of Development**

Pentney is classed as a ‘Small Village and Hamlet’ within the settlement hierarchy (Policy CS02) and as such is has no development boundary and is within an area designated as countryside. Whilst some residential development is allowed under ‘infill’ Policy DM3 of the SADMP this is not relevant in this case as the application site is to the rear of existing residential development and consequently does not represent a ‘sensitive infilling of a small gap in an otherwise built up frontage’. There are also objections both from the Parish Council

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and third party representations that the proposal does not comply with the Neighbourhood Plan, however whilst the neighbourhood area was designated on 19th January 2018 the Borough Council are still awaiting their draft proposal.

Notwithstanding the above, it is material consideration that there is prior approval permission at the application site for the conversion of the existing building to two residential properties. The applicant has a 'fall-back' position should this application be refused and in practical terms it means that the existing building could be converted into two dwellings which are actually larger in terms of footprint than what is now proposed.

The status of a fall-back development as a material consideration is not a new concept and has been applied in court judgements such as 'Samuel Smith Old Brewery v The Secretary of State for Communities & Local Government, Selby District Council and UK Coal Mining Ltd'. This decision states that for a fall-back position to be a 'real prospect', it does not have to be probable or likely: a possibility will suffice. It is also noted that 'fall back' cases tend to be very fact-specific and are a matter of planning judgement. Examples are given within the judgement where for instance there may be an old planning application which is still capable of implementation or where it could be argued that the impact of that which was permitted development would be much the same as the impact of the development for which planning permission was being sought.

The concept of 'fall-back' is also considered more recently in 'Michael Mansell v Tonbridge & Malling Borough Council' where approval was given for the redevelopment of the site of a large barn and a bungalow to provide four dwellings. The judgement covers more than one aspect of the decision but makes reference to Class Q of the GDPO as a 'fall-back' position and reiterates the comments made in the Samuel Smith Old Brewery case that the council should satisfy itself that there was a 'real prospect' of the fall-back development being implemented, although it was again reiterated that the basic principle is that 'for a prospect to be a real prospect, it does not have to be probable or likely; a possibility will suffice'.

Consequently taking the above into account it is considered that there is a 'real prospect' of the applicant implementing the fall-back position of converting the existing building given that the consent is extant and has over two years to run. This is therefore a material consideration of significant weight in the determination of this application.

The main issue therefore with regard to the determination of this application is whether the proposal would materially harm the character and appearance of the countryside. If the prior approval application was implemented and the applicant then decided to replace the building with two new dwellings, Policy DM5 of the SADMP would be relevant which states that proposals for replacement dwellings or extensions to existing dwellings will be approved where the design is of high quality and will preserve the character or appearance of the area in which it sits.

The proposal whilst large, actually has a smaller footprint to that approved under 18/00397/PACU3 and whilst it has a steeper pitched roof in order to accommodate pantiles it is not considered to materially harm the character or appearance of the surrounding countryside. Whilst it does incorporate a front projection (southern elevation), as this is screened by the existing dwelling known as Charolais it would not be visible in the wider countryside to the rear (north).

Consequently taking the above into consideration the proposal is considered acceptable in principle.

## **Design and Scale**

The proposed semi-detached dwellings are designed to emulate an agricultural building with horizontal wooden cladding atop a brick plinth and a pantile roof with vertically emphasised windows and large gable end glazed elements. There are objections from the Parish that there is insufficient detail in the application and no measurements, but the submitted plans are shown to a recognised scale and the floor plans show the building would be 30m in length which is less than the existing building on site. The Parish also object stating that the proposed building is not in keeping with surrounding buildings nor are the materials of a local vernacular. It is a consideration that there is already approval for conversion of the existing building which is also a horizontally clad wooden building and pantiles are a readily used local material in the area.

Overall the design and scale of the proposal is considered acceptable and complies with para 127 of the NPPF, Policies CS06 and CS08 of the Core Strategy and Policies DM5 and DM15 of the SADMP.

## **Neighbour Amenity**

The proposal is single storey in nature and located to the north and north-east of the dwellings which are fronting onto Low Road. Consequently there would be no material overshadowing or overlooking of the nearby residential properties by the proposal. The proposed building is 1.45m taller than the existing building still has relatively low eaves and would not have an overbearing impact upon any neighbouring dwellings.

Whilst the proposed access is along the western boundary which is between Charolais and 1 Greys Cottages, it is not considered that given the distance and the fact that it is for two dwellings that this would have a material impact. It is also of note that this is the position of the existing approved access. There is an objection that the access is close to a dyke but it is not clear why this would be considered unacceptable.

Objections have been received that the roof space could be converted to provide additional accommodation that would cause overlooking. Whilst this is unlikely given the restricted headroom, a condition is recommended which removes permitted development rights for roof alterations and therefore should any future changes be sought, planning permission would be required and any changes / impact could be assessed.

The proposal is therefore considered acceptable and complies with para. 127 of the NPPF, Policy CS08 of the Core Strategy and Policy DM15 of the SADMP.

## **Highways Issues**

There are no objections to the proposal from the Highways Officer on highway safety grounds. Whilst comment is made regarding the sustainability of the application site in relation to service provision, it is again of note that there is an extant prior approval permission and therefore the number of vehicular movements is not considered to be different to those already approved.

Objections have been received relating to the suitability of Low Road for serving additional development but there are no objections on this basis from the Highways Officer, nor does the proposal differ in terms of highways impact from that already approved.

Consequently the proposal complies with para. 109 of the NPPF, Policy CS11 of the Core Strategy and Policy DM15 and DM17 of the SADMP.

## **Flood Risk**

The application site is located within Flood Zone 1 of the SFRA 2018 however it is in an area which could be vulnerable to surface water flooding (1% AEP with climate change). The agent has submitted information which shows that the area which could potentially be affected by surface water flooding, to the north and west of the site and outside the area where the dwellings would be located and the access. In addition the agent has confirmed that the finished floor levels will be raised to 300mm above existing ground level. The flood risk mitigation is considered acceptable and complies with the Standing Advice from the Environment Agency.

Surface water is proposed to soakaway and foul drainage to package treatment plant which is considered acceptable in this area which is not served by mains drainage.

The proposal therefore complies with para. 155 of the NPPF, Policy CS08 of the Core Strategy.

## **Crime and Disorder**

There are no issues related to crime and disorder which arise due to this application.

## **Other material considerations**

The proposal is to demolish an existing building and there are objections from the Parish Council that an ecology survey has not been submitted as they suspect bats and newts are on the application site. Usually when an application for a barn conversion, or to demolish a barn is submitted an ecology survey is provided at validation stage; however when determining an application for prior approval, ecology is not a factor which can be considered within the Regulations (Class Q, Part 3, Schedule 2 of the GDPO). This does not mean that an applicant / developer does not need to take ecology and protected species into account as there is other legislation relating to protected species which prior approval does not preclude them from complying with. Consequently as there is an extant prior approval application at the site which could be implemented, an ecology survey has not been requested. Again, when carrying out development there is still a legal requirement to comply with the other relevant legislation.

Following the planning officer's site visit and comments received by the Parish Council, the agent has confirmed that the hedge marked on the plans as 'yew' and to the south of the application site, screening the proposal from Charolais, is in fact a leylandii hedge and not worthy of protection.

Objections have been received to the application by the Parish Council and some third party representatives and many of the issues raised are covered above. It was stated that the Parish Council did not know about the appeal (18/00397/PACU3) and therefore were not able to comment or object. It is indeed the case that Parish Councils are not statutory consultees within applications for prior approval and this is because the applications are assessed against the regulations, in this case Class Q, Part 3, Schedule 2 of the Town and Country (General Permitted Development) Order 2015, as amended.

Concerns have been raised regarding potential dust when removing the existing barn roof which is likely to contain asbestos. There is legislation within The Control of Asbestos Regulations 2012 that requires the suitable assessment of whether asbestos is present prior to demolition or other work is carried out and for the asbestos to be managed / removed properly. Environmental Quality have requested an informative be placed on the decision notice to this effect.

## CONCLUSION

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that an application must be determined in accordance with the development plan unless material considerations indicate otherwise.

Whilst the proposal constitutes the re-development of a parcel of countryside to the rear of existing residential development which would be contrary to the development plan, it is a strong material consideration that the applicant has extant prior approval permission for the conversion of the existing building into two dwellings which are even larger than those proposed and that this has a real prospect of being implemented. Members are requested to have due regard to this position.

In addition the proposal is considered to have no material harm on the character and appearance of the countryside, neighbour amenity, highway safety or flood risk in the locality.

The application is therefore duly recommended for approval.

## RECOMMENDATION:

**APPROVE** subject to the imposition of the following condition(s):

- 1 Condition: The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 1 Reason: To comply with Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 2 Condition: The development hereby permitted shall be carried out in accordance with the following approved plans:-
  - Location Plan 'co-ordinates 573053,313435';
  - Drawing no. 501 'Floorplan';
  - Drawing no. 502 'Elevations';
  - Drawing no. 503-RevA 'Proposed Block Plan'; and
  - Drawing no. 506-RevA 'Proposed Cross Section.'
- 2 Reason: For the avoidance of doubt and in the interests of proper planning.
- 3 Condition: Prior to the first occupation of the development hereby permitted the proposed access / on-site car parking / turning area shall be laid out, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.
- 3 Reason: To ensure the permanent availability of the parking / manoeuvring areas, in the interests of satisfactory development and highway safety.
- 4 Condition: Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B, D and E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the enlargement, improvement or other alteration of a dwelling house, the enlargement

of a dwelling house consisting of an addition or alteration to its roof, the erection or construction of a porch outside any external door of a dwelling house, or a building that is incidental to the enjoyment of the dwellinghouse, shall not be allowed without the granting of specific planning permission.

- 4 Reason: In order that the Local Planning Authority may retain control of development which might be detrimental to the amenities of the locality if otherwise allowed by the mentioned Order.
- 5 Condition: In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with current best practice, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

- 5 Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.