

AGENDA ITEM NO. 8/3(b)

Parish:	Hockwold cum Wilton	
Proposal:	Retrospective change of use of first floor agricultural building to residential dwelling.	
Location:	Twelve Acre Farm Moor Drove (East) Hockwold cum Wilton THETFORD	
Applicant:	Mr Bryan Rutterford	
Case No:	21/01127/F (Full Application)	
Case Officer:	Mrs C Dorgan	Date for Determination: 2 September 2021 Extension of Time Expiry Date: 17 June 2022

Reason for Referral to Planning Committee – At the request of the Assistant Director

Neighbourhood Plan: No

Case Summary

The application is for the retrospective change of use of the first-floor of an agricultural building to residential use. The site consists of a series of paddocks bounded by post and wire fencing with some sporadic native hedges and trees. Within the wider site there are also existing field shelters, agricultural storage buildings, and storage containers. The application site of this application includes the agricultural building, immediate land surrounding the building, and access road leading to the building.

The application site is located on the northern side of Moor Drove (East), approximately 700m south of the village of Hockwold-cum-Wilton and is 4.75ha in size. The site is outside the development boundary of Hockwold-cum-Wilton and therefore categorised as countryside in the adopted Site Allocations and Development Management Policies Plan (SADMPP)(2016).

Key Issues

Principle of Development
Design, and Impact on Residential Amenity
Impact on Surrounding Neighbours
Highways Issues
Flood Risk
Other material considerations

Recommendation

REFUSE

Planning Committee
15 June 2022

21/01127/F

THE APPLICATION

The application is for the retrospective change of use of the first-floor of an agricultural building to residential use. The agricultural building was used for poultry in 2013, and is currently used for agricultural storage, with a retrospective residential flat on the first floor which was used as a residential flat and has been vacant for at least eight months, established by an Enforcement investigation (21/00018/UNAUTU). The site consists of a series of paddocks bounded by post and wire fencing with some sporadic native hedges and trees. Within the site there are also existing field shelters, agricultural storage buildings, and storage containers which were recently retrospectively approved. The application site of this application includes the agricultural building, immediate land surrounding the building, and access road leading to the building.

The application site is located on the northern side of Moor Drove (East), approximately 700m south of the village of Hockwold-cum-Wilton and has a holding of approximately 4.75ha. The site is outside the development boundary of Hockwold-cum-Wilton and therefore categorised as countryside in the adopted Site Allocations and Development Management Policies Plan (SADMPP)(2016). This application will also touch upon the permitted development rights contained within Class Q of Part 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), which allow a change of use from an agricultural building to dwelling(s).

SUPPORTING CASE

This is an unusual application in that what is proposed would be compliant with class Q as the building is of sound construction and totally convertible as has been proven by the works done.

Class Q is still possible either by converting the ground floor which is still an agricultural building or by reverting the first floor back to agricultural use and removing any domestic features making it an agricultural building as it was before, prior to an application. The building as a whole meets the 20th March 2013 requirements as it was a hatchery used for poultry by the previous owners at that time and was granted for that use. No change of use has occurred with permission, either via a planning application or due to time (certificate of lawfulness). Any temporary use between 2013 and the date of application if a Class Q application were made in the future would not affect the eligibility.

A more sensible approach in line with sustainability principals and to avoid the waste of resources is to deal with the conversion within a planning application, recognising the fall back option of taking everything apart and starting again, or, by converting the smaller ground floor instead.

The fall back option as dealt with in the case of *Mansell v Tonbridge And Malling Borough Council* [2017]EWCA Civ 131 allows the LPA to take account of the alternative scheme should the application not be accepted. In either of the fall back scenarios a dwelling would be created.

The fall back should therefore be given significant weight, and given it will mean a dwelling is created means this is not a case looking at a new dwelling.

The Local Policy predates *Mansell*, the NPPF and Class Q of the General Permitted Development Order.

Planning Committee
15 June 2022

It is clear in this case that retaining the work already done and adding the windows etc to make it a usable dwelling is the best option accepting that resources have already been used. It also creates a much needed additional dwelling.

The access into the site is located within Flood Zone 3, and the dwelling will be partly within Flood Zone 2. A Flood Risk Assessment has been prepared and is submitted with this application which concludes that the site benefits from defences that provide protection during the 1% annual probability (1 in 100 chance each year) fluvial event including climate change. There are no recommendations for the design of the flat which will be on the first floor and the site is considered to pass the Sequential Test.

PLANNING HISTORY

21/00434/F: Application Permitted: 21/09/21 - Retrospective Change of use of land for the siting of 8 storage containers - Committee Decision

20/00366/FM: Application Permitted: 11/01/21 - Retrospective application for use of land for an equine care / livery business, mobile home / temporary accommodation ancillary mobile unit housing customer w.c.s, office and tack room - Committee Decision

14/01644/F: Application Permitted: 13/02/15 - Application for the erection of a general-purpose agricultural building

14/01645/F: Application Withdrawn: 20/11/14 - Application for the erection of six polytunnels; (3x) 20m x 5m polytunnels and (3x) 20m x 4m polytunnels

14/01648/F: Application Withdrawn: 20/01/15 - Application for the proposed change of use of land for the siting of a temporary agricultural dwelling

14/01659/F: Application Permitted: 21/01/15 - Application for the erection of three polytunnels; (1x) 20m x 8m, (1x) 20m x 5m, (1x) 20m x 4m

14/01657/F: Application Permitted: 21/01/15 - Application for the erection of three polytunnels; (1x) 20m x 8m, (1x) 20m x 5m, (1x) 20m x 4m

14/01658/F: Application Permitted: 21/01/15 - Application for the erection of three polytunnels; (1x) 20m x 8m, (1x) 20m x 5m, (1x) 20m x 4m

12/01724/F: Application Permitted: 18/12/12 - Construction of dog kennels

12/00448/F: Application Permitted: 29/05/12 - Retrospective consent for a change of use of land for the siting of temporary agricultural dwelling (mobile home) - Committee Decision

11/01949/F: Application Permitted: 01/08/12 - Retrospective application for the construction of three chicken runs and a timber shed

11/01793/F: Application Permitted: 09/01/12 - Retrospective application for the increase in height of machinery/feed store with reference to previously approved application 08/02714/F. - Committee Decision

08/02714/F: Application Permitted: 05/02/09 - Construction of machinery/feed store

Planning Committee
15 June 2022

21/01127/F

RESPONSE TO CONSULTATION

Parish Council: OBJECT for the following reasons:-

- Road Safety - The road and its access to Station Road cannot support more traffic.
- The site should not be developed for residential use as it does not meet the circumstances listed below.
- Inaccuracy in the statements of West Norfolk Core Strategy 2011.
- Inaccuracy in the occupancy statement, as it has been occupied for the previous few years.

Local Planning Policy is contained in the West Norfolk Core Strategy 2011 as follows:-
Conversion to residential use will only be considered where:

- the existing building makes a positive contribution to the landscape; This building is not nor will it make a positive contribution to this rural landscape.
- a non-residential use is proven to be unviable; This building is not being used to meet its potential. It could most definitely serve use as an agriculture building.
- the accommodation to be provided is commensurate to the site's relationship to the settlement pattern; The area is agricultural and houses, no permanent residential housing. The neighbouring business has only been allowed temporary caravan as the business requires 24 hours monitoring of livestock.

Highways Authority: NO OBJECTION

The proposed dwelling has an adequate means of access to the highway thanks to recent improvements to the access onto Station Road (B112).

The site should make adequate provision for the parking and turning of vehicles, and I recommend the following condition: SCH21 for parking, turning, and re-entering

Environmental Health & Housing - Environmental Quality: NO COMMENT

Environment Agency: NO COMMENT please refer to Standing Advice.

Natural England: NO OBJECTION

REPRESENTATIONS

TWO letters of **OBJECTION** by the same third party, covering the following:-

- Expansion of the property boundary onto Moor Drove East.
- Permanent fencing placed across a portion of Moor Drove East, narrowing the track for vehicles and pedestrians and increasing possibility of falling into the ditch when crossing the drain.

LDF CORE STRATEGY POLICIES

CS02 - The Settlement Hierarchy

CS06 - Development in Rural Areas

CS01 - Spatial Strategy

Planning Committee
15 June 2022

CS08 - Sustainable Development

CS11 – Transport

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016

DM1 – Presumption in Favour of Sustainable Development

DM2 – Development Boundaries

DM5 – Enlargement or Replacement of Dwellings in the Countryside

DM15 – Environment, Design and Amenity

DM17 - Parking Provision in New Development

DM21 - Sites in Areas of Flood Risk

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2019

PLANNING CONSIDERATIONS

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

- Principle of Development
- Design, and Impact on Residential Amenity
- Impact on Surrounding Neighbours
- Highways Issues
- Flood Risk
- Other material considerations

Principle of Development

Hockwold-cum-Wilton is classified as a 'Key Rural Service Centre' along with Feltwell, within the settlement hierarchy under policy CS02 of the Core Strategy which allows for limited growth of a scale and nature appropriate to secure the sustainability of the settlement in line with policy CS06 in rural areas. The application site is located well outside of the development boundary of Hockwold-cum-Wilton and under policy DM2 of the SADMPP, would be classified as the countryside and subject to policies regarding the countryside such as policy CS06 of the Core Strategy.

Policy CS06 aims to protect the intrinsic beauty of the countryside and states that the conversions to residential use will only be considered where: the existing building makes a positive contribution to the landscape; a non-residential use is proven to be unviable; the accommodation to be provided is appropriate to the sites relationship to the settlement pattern; and the building is easily accessible to existing housing, employment and services.

Planning Committee
15 June 2022

Furthermore, in terms of highway, there is a focus on improving accessibility between towns and villages so helping to reduce social exclusion, isolation and rural deprivation as set out in policy CS11.

The applicant has stated that from 2014 the holding is an equestrian holding in part, which is let out. The applicant has partially converted the first floor of the building and was subject to an Enforcement investigation in the beginning of 2021 for the use of the first-floor which was occupied by a tenant at the time of a site visit by the Enforcement Officer. No further reason has been given for the retention of the residential first-floor, other than that the "proposed dwelling would provide a use for an empty building and enhance the setting of the site which currently has no agricultural use." The scheme is not considered to meet the criteria listed in policy CS06 and given its distance from existing provisions would give rise to social exclusion, contrary to policies CS06 and CS11.

The applicant has argued a 'fall-back' position which involves applying for the conversion to a residential use through Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) Order (GDPO) 2015 (as amended) for a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses); and building operations reasonably necessary to convert the building to a dwellinghouse.

The status and concept of a fall-back development as a material consideration has been established through High Court Cases. Precedent judgements have referred to Class Q of the GDPO as a 'fall-back' position and state that Councils should satisfy themselves that there is a 'real prospect' of the 'fall-back' development being implemented. For a 'fall-back' position to be considered a 'real prospect', it does not have to be probable or likely: a possibility will suffice. The applicant has stated that if this application were to be refused, they would take out the first floor and convert the whole building under Class Q of the GDPO.

However, in order to have a 'fall-back' position, the building is required to meet the requirements of Part 3, Class Q of the GDPO. As it currently stands, the development fails to comply with the conditions set out under Q.2, "that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required". Development that requires a planning application for prior approval cannot be begun before the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required or giving their prior approval. Therefore, at present the applicant is unable to implement the 'fall-back' position to convert the building under Class Q of the GDPO.

Whilst the concept of a 'fall-back' position is a material consideration, ultimately, this application which is for the retrospective change of use of the first floor to residential use, has forfeited its rights for a change of use under the prior approval procedure within the GDPO. Under a prior approval application, the local planning authority would consider and control a number of matters including, whether the siting or location of the building will make it impracticable or undesirable for the building to change from an agricultural building to a dwelling, and the design and external appearance of the building. These matters considered under a Class Q prior approval procedure, are repeated in policy CS06 of the Core Strategy and policy DM15 of the SADMPP.

Consequently, despite the applicant's argument that there is a 'fall-back' position for the development, the 'fall-back' position cannot be implemented at present. Furthermore, considering the matters to be addressed under the prior approval application for Class Q, the local planning authority consider the development, if applied through prior approval, would be refused for its siting, location and design. Therefore, the weight attached to the

Planning Committee
15 June 2022

applicant's 'fall-back' position, is nominal and not as simple as the Planning Agent and Applicant present. Conclusively, the retrospective development is not supported by local policies CS06 and CS08 of the Core Strategy and policy DM15 of the SADMPP.

Design and Impact on Residential Amenity

The current agricultural building is 20m long, 7m wide, and 5.5m tall. The agricultural building is constructed in concrete blocks, painted green, with a horizontal timber clad, lean-to shed along the north elevation. The building is agricultural in appearance, with tall doors on the north elevation, and a first-floor fire door on the south elevation. At present there are no domestic features to the building.

The part-conversion to a dwellinghouse involves minimal changes to the design of the building with an external metal stairwell to the south elevation and the insertion of windows on the north, east and south elevation to serve the first floor residential flat. The minimal alterations to the existing building would not significantly impact the setting of the countryside as the building would largely retain its agricultural appearance. However, it is considered the conversion of such a building, which does not already positively contribute to the landscape, does not comply with policy CS06 by reason of its agricultural appearance.

Furthermore, the scheme lacks private external amenity space for the occupiers of the residential flat. The National Design Guide (NDG) emphasises external spaces to support the health and wellbeing of the occupiers of the residential dwelling and their users. The scheme is therefore considered contrary to the provisions prescribed in the National Design Guide (NDG). Additionally, it is not clear if acceptable outdoor private amenity space could be provided given its proximity to a store and storage containers, which would give rise to noise impacts.

Notwithstanding the nominal contribution of the building itself to the landscape, the internal arrangements of the building; with a residential first floor and agricultural ground floor, are conflicting uses and would give rise to dis-amenity to the potential occupiers of the residential unit. Potential impacts, such as noise and odour, is likely to occur from the use of the agricultural unit, which would be detrimental to the resident's amenity. Paragraph 187 of the NPPF states that planning decision should ensure new development can be integrated effectively with existing businesses and that there the operation of an existing building could have a significant adverse effect on new development, including change of uses, the applicant should be required to provide suitable mitigation before the development has been completed. As the development is retrospective and no suitable mitigation has been submitted to safeguard the amenity of the potential occupier of the residential unit, the scheme fails to comply with provisions with the NPPF.

In summary, the scheme fails to comply with policies CS06 and CS08 of the Core Strategy, policy DM15 of the SADMPP for its design, and provisions with the NPPF and NDG.

Impact on Surrounding Neighbours

The application site is isolated, surrounded by open countryside and agricultural fields. The closest residential neighbours to the site lie approx. 590m to the north, 290m to the east, 379m to the south-east, and 204m to the southwest. Given these distances there will not be an impact on any residential properties in the vicinity.

In relation to impact on surrounding neighbours, the development would have no impact to the neighbours and only in respect to impact on neighbours, would partially comply with policy CS08 of the Core Strategy and policy DM15 of the SADMPP.

Planning Committee
15 June 2022

Highways Issues

One comment in objection stated that the applicant erected permanent fencing on the track, consequently narrowing the track with vehicle users and pedestrians. The applicant has the right to erect a fence on his land and the Highway Authority had no concerns regarding access or highway safety.

Furthermore, there are no objections to the scheme from the Highway Officer on highway safety grounds. The Highway Officer stated that the access to and from the proposed dwelling was made adequate due to recent improvements.

Therefore, in respect to highway safety, the development would comply with policy CS11 of the Core Strategy and policy DM15 of the SADMPP.

Flood Risk

The access of the site is located in flood zone 3a, an area which has high probability of flooding and benefits from flood defences. The building is located in flood zone 2, with medium probability of flooding. The Planning Agent has submitted a Flood Risk Assessment, which states that the site access is at risk of surface water flooding but benefits from defences on the Cut-off Channel and Little Ouse. Generally, the probability of site flooding from the EA is less than 1% annual probability due to existing flood defence systems. Furthermore, the residential dwellinghouse will be restricted to the first floor of the building and complies with EAs standing advice for development in areas of flood risk. Additionally, in accordance with EAs standing advice, sequential test is not required if the development involves a change of use and as the classification of the building is both 'more vulnerable' (residential unit) and 'less vulnerable' (building for agricultural use) located within flood zone 2, an exception test is not required.

To summarise, in terms of flood risk, the development would comply with policy CS08 of the Core Strategy, policy DM21 of the SADMPP, and provisions within the NPPF.

Other material considerations

Natural England has a standing objection to the scheme as no ecology report was submitted despite the application site being approx. 1km from the Breckland Special Protection Area (SPA) and therefore within the 1.5km constraint zone around the SPA, and within the Impact Risk Zones of the following Sites of Special Scientific Interest (SSSI). Therefore, further information was requested.

After submitting an ecology report which demonstrated that as this application for the change of use of an existing building with no land changes, there would be low risk of additional distance from visitors on nesting density of stone curlews, and unlikely to cause an increase in people movements, vehicle movement and associated changes as a result of the existing development within the vicinity. Furthermore, as there are a number of other farm buildings within the immediate area as well as a residential housing to the north, as such the increase in accumulative impacts through noise, light and human disturbance is likely to be minimal when compared with the existing facilities in the immediate vicinity as well as other developments in combination. Based on the ecology report, Natural England withdrew their standing objection and had no objections to the scheme.

The comment in objection claimed that the boundary of the site was encroaching onto Moor Drove East with the erection of a rail and post fence. Questions over ownership and possible encroachment are civil matters.

Planning Committee
15 June 2022

The scheme is therefore considered to comply with policy CS12 of the Core Strategy and provisions within the NPPF.

CONCLUSION

The proposal for a retrospective change of use of the first floor of an agricultural building to a residential flat with agricultural storage on the ground floor, outside the development boundary of Hockwold-cum-Wilton is contrary to established local and national policies.

As Members will be aware, planning decisions must be made in accordance with the Development Plan, unless material considerations indicate otherwise. The material consideration of a 'fall-back' position offered by the Planning Agent and application is not granted substantial weight in this application, as the works related to the application are already enacted and the rights to apply for prior approval have thus been forfeited.

Furthermore, the design, siting and location of the building does not and will not make a positive contribution to the setting of the countryside landscape. The design of the building and lack of provisions for private external amenity space would give rise to dis-amenity to future occupiers, which is further exacerbated by the juxtaposed use of the building. For these reasons, the development is considered contrary to policies CS06 and CS08 and the Core Strategy and policy DM15 of the SADMPP, as well as provisions of the NPPF and National Design Code.

RECOMMENDATION:

REFUSE for the following reason(s):

- 1 The application site lies outside the development boundary for Hockwold-cum-Wilton as defined in the SADMPP (2016), where policies seek to restrict development to that identified as suitable in rural areas. The retrospective change of use of the first-floor to a residential unit fails to comply with the criteria for the conversion of an agricultural building within Policy CS06 of the Core Strategy (2011). In particular, the existing building is not considered to make a positive contribution to the landscape, no evidence has been submitted to demonstrate that a non-residential use would be unviable and the building has poor accessibility to existing housing, employment and services.

While the applicant asserts a 'fall-back' position exists under Part 3, Class Q of the GPDO 2015, it is considered such 'fall-back' position is forfeit as the development is retrospective. In the absence of any material considerations which would indicate a deviation from the adopted Development Plan, the proposal is therefore contrary to Policy CS06 of the Core Strategy (2011) and Policy DM2 of the SADMPP (2016).

- 2 The proposed development, by reason of the juxtaposed use of the residential unit at first-floor and agricultural storage at ground-floor would give rise to a poor relationship and potential for dis-amenity to future occupiers which is contrary to local and national policies. The development therefore fails to comply with Policies CS06 and CS08 of the Core Strategy (2011), Policy DM15 of the SADMPP (2016), and provisions in the National Design Guide and NPPF.

Planning Committee
15 June 2022