

Parish:	Marshland St James	
Proposal:	The erection of 3 x single-storey dwellings involving the demolition of the existing buildings.	
Location:	Barn E of Crown Farmhouse Middle Drove Marshland St James Norfolk PE14 8JT	
Applicant:	Mr & Mrs Allen	
Case No:	23/01121/F (Full Application)	
Case Officer:	Clare Harpham	Date for Determination: 26 September 2023 Extension of Time Expiry Date: 11 November 2024

Reason for Referral to Planning Committee – The Parish Council object which is at variance with the officer recommendation. The Sifting Panel resolved on 9th October that the application be determined at Planning Committee.

Neighbourhood Plan: No

Case Summary

The application site is located within the countryside and to the east side of Middle Drove. The application is for the demolition of the existing two agricultural buildings and the construction of three single-storey dwellings (one detached, two semi-detached). The site has previously had prior approval permission under Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended, for the conversion of the existing agricultural buildings into three dwellings and this fall-back position is a material consideration in the determination of this application.

Key Issues

- Planning History
- Principle of Development
- Design, Character and Appearance
- Neighbour Amenity
- Highways Issues
- Flood Risk
- Crime and Disorder
- Other material considerations

Recommendation

APPROVE

THE APPLICATION

The application site is located on the eastern side of Middle Drove, Marshland St James, to the north of the dwelling known as Fairfield House and opposite Crown Farm. It would be accessed from the existing point of access, which serves the existing agricultural use. Currently on site are two relatively large agricultural buildings, one of which is constructed of bricks and profiled fibre cement sheets and the other which is a steel framed building clad in profiled metal sheeting.

This application seeks the demolition of the agricultural buildings and their replacement with three similar 'barn style' dwellings, one of which will be detached in place of the smaller barn to the north (albeit re-sited in a more linear position), and two which will be semi-detached in place of the larger barn.

The smaller detached dwelling to the north would have a similar footprint to that of the existing barn measuring 14m x 9.2m (existing barn is 14m x 9.25m). It would be 6.2m in height which is approximately 0.8m greater in height and would have the appearance of many typical modern barn conversions with vertical cladding and a vertical panelled roof (materials are proposed to be conditioned).

The larger building incorporating two dwellings is of a similar design and materials and would measure 23.5m in length with a max width of 14.5m and min width of 10.0m (the existing barn has a similar footprint with a length of 22.9m with a width of 14.5m). It would be 6.4m in height which is an increase of 2.0m.

SUPPORTING CASE

The proposed three dwellings will replace the barns which both benefit from prior approval for change of use to three residential dwellings under applications 20/00896/PACU3 and 20/00897/PACU3.

The Court of Appeal in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 confirmed that development under Class Q of the GDPO is a fallback position ie that it is a material consideration for planning applications that permitted development rights under Class Q can be exercised. It confirmed that the fallback position can be given material weight in determining subsequent planning applications.

In order for a fallback position to be realised, the development must be a 'real prospect' and it was confirmed in the 'Mansell' case that Class Q permitted development rights constitute a real prospect. On the basis that the existing barns on site benefits from prior approval under class Q under reference 20/00896/PACU3 and 20/00897/PACU3, the potential to convert the buildings to residential use is a real prospect and therefore a material planning consideration. The proposal will replace the barns with the same number dwellings as approved under 20/00896/PACU3 and 20/00897/PACU3 and in accordance with the above case law, the principle of the development can be supported.

Noting that the proposed dwellings will be the same in terms of the scale and design as those approved under 20/00896/PACU3 and 20/00897/PACU3, the visual impact of the proposal will be negligible given that the development will be entirely reflective of the current situation on site. Plot 1 will however be repositioned towards the front of the site, which is considered to be a benefit both in visual terms and in terms of future residential amenities. This is because Plot 1 will now address the street scene, rather than being positioned in a cluttered arrangement towards the rear of the site, and it will now result in a less contrived

private amenity area whereby the potential for overlooking and loss of privacy between the plots has been eliminated.

A previous application for a similar proposal was previously refused on site. The reasons for refusal have been noted and addressed within this submission. Owing to the reduced scale of the proposal the development will not appear prominent. Accordingly, the benefits of providing new housing can be realised and in turn the flood risk Exception Test is passed. The previous concerns with regards to ecology have now also been resolved as confirmed by the Council's Ecologist.

The principle of new housing on this site is already established and the submission demonstrates that the proposal is technically acceptable and accords with Policies of the Development Plan. It is therefore respectfully requested that planning permission is granted.

PLANNING HISTORY

23/00029/F: Application Refused: 21/04/23 - Proposed demolition of existing barns and proposed 2 No. Dwellings - Barn E of Crown Farmhouse, Middle Drove, Marshland St James

20/00897/PACU3: Prior Approval - Approved: 09/10/20 - Prior approval for a change of use from agricultural building to a dwelling house (Schedule 2, part 3, Class Q) - Crown Farm, Middle Drove, Marshland St James

20/00896/PACU3: Prior Approval - Approved: 08/10/20 - Notification for Prior Approval for change of use of agricultural building to two dwelling (Schedule 2, Part 3, Class Q) - Barn E of Crown Farmhouse, Middle Drove, Marshland St James

RESPONSE TO CONSULTATION

Parish Council: OBJECT

The prior approval was for conversion, not demolition and the prior approval has expired.

The location is not suitable for additional traffic.

The application is for single-storey dwellings despite the site being in Flood Zone 3a. The site does not pass the sequential test as there are sites elsewhere that could be developed with a lower risk of flooding. The site does not pass the exception test regarding safety under flood resilient measures. The properties are single storey dwellings which should be built in flood zone 3. The site is on a low-lying single-track road which would be impassable in a flood and there is no safe refuge within 15 miles at the village.

The development would conflict with the stated aims of the Borough Council's sustainable development plan, contrary to the design and access statement, the development is 15 miles from the nearest village and a car will be required for journeys to the village amenities.

The site is within a marshland zone of influence listed in the Norfolk Green Infrastructure Plan and the Parish Council considers there are no mitigating circumstances for development to be allowed on this site. It will have a likely significant effect on the species and habitat features of this fen and designated site.

Highways Authority: NO OBJECTION

Ultimately accesses would be safe and parking and turning for vehicles would accord with the parking standards for Norfolk.

The proposed development site is however remote from schooling; town centre shopping; health provision and has restricted employment opportunities with limited scope for improving access by foot and public transport. The distance from service centre provision precludes any realistic opportunity of encouraging a modal shift away from the private car towards public transport. It is the view of the Highway Authority that the proposed development is likely to conflict with the aims of sustainable development and you may wish to consider this point within your overall assessment of the site.

Should the Local Planning Authority seek to approve the application conditions to secure and retain the vehicular/pedestrian access/crossing over the verge in accordance with the highways specification; that no gates/bollard/chain or other means of obstruction are erected across the approved access unless approved in writing by the LPA and that the access and on-site car parking/turning area is secured and retained in accordance with the approved plan and an informative in relation to works within the public highway are recommended.

Environment Agency: NO OBJECTION

The Flood Risk Assessment appears to relate to a previous version of the scheme. However, we have no objection to the proposed development, but strongly recommend the mitigation measures in the submitted flood risk assessment are adhered to.

Environmental Health & Housing – Environmental Quality: NO OBJECTION subject to conditions.

The application is for the demolition of existing barns and the construction of three dwellings. The applicant has provided a screening assessment indicating that there may be asbestos present, and that soil is to be imported onto site. A design and access statement has been submitted providing information on the proposed development. The site is on land that is seen with structures present for the duration of our records, the larger of the current barns is first seen in historic maps dated 1945 - 1970, the other is first seen in aerial photography from 1999. The surrounding landscape is largely agricultural.

Due to the previous use of the barns for agricultural machinery storage and the more sensitive change of use, conditions are recommended in relation to site characterisation, submission of remediation scheme, implementation of approved remediation scheme and reporting of unexpected contamination. Owing to the age of the property on site there is the potential for asbestos containing materials to be present, an informative is therefore recommended in relation to asbestos.

Natural England: NO OBJECTION

The application site falls within a Zone of Influence of one or more of the European designated sites scoped into the Norfolk GIRAMS. It is anticipated that certain types of development in this area are likely to have a significant effect on the sensitive interest features of these European designated sites, through increased recreational pressure. The GIRAMS has been put in place to ensure this additional recreational pressure does not lead to an adverse effect on European designated sites in Norfolk.

Natural England's advice is that this proposed development, and the application of GIRAMS will need to be formally checked and confirmed by the LPA as the competent authority via an

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appropriate assessment in accordance with the Conservation of Habitats & Species Regulations 2017, as amended. Additional Standing Advice also provided.

LPA Ecologist: NO OBJECTION

No objection to the submitted Ecology Report. If you are minded to grant consent then please condition bat licence and Mitigation in accordance with Section 6 of the Ecology Report.

The application is not subject to the statutory Biodiversity Net Gain Plan condition because it is exempt as the planning application was submitted prior to the statutory requirement for minor applications.

Regarding comments relating to the Marshland designated zone. The Parish Council have clarified that they are referring to the comments from Natural England which are referring to the Norfolk Green Infrastructure and Recreational disturbance Avoidance and Mitigation Strategy (GIRAMS). As recreational disturbance (when considered in combination only) is the only impact identified a GIRAMS tariff payment is considered acceptable to mitigate this impact. The GIRAMS is a country wide strategic approach to offsetting this type of impact which allows a common 'pot' to be used to mitigate impacts on European sites from development across Norfolk. This approach is agreed with Natural England.

A shadow HRA was submitted by the applicant on 2nd August 2023. This assessment has been completed by the case officer on 23rd January 2024. This is our record of the HRA which concludes the development is acceptable under the Habitat Regulations and on further assessments required for potential impacts to European protected sites.

Emergency Planning: NO OBJECTION

Due to the location in an area at risk of flooding it's advised that the occupants' sign up to the EA FWD service and prepare a flood evacuation plan.

REPRESENTATIONS

TEN letters of **OBJECTION** four objectors raising the following issues:

Ecology

- Proposal has little regard for wildlife. Owls and bats live in the sheds.
- There should be a biodiversity and protected species report.
- Development is in a habitat zone of influence.
- Middle Drove is not to be disturbed, it is designated under a natural habitat of assessment as providing valuable ecological infrastructure for the protection of rare, endangered or vulnerable habitats

Sustainability / highway safety

- No shop or pub in the village and lack of school places and doctors surgery places in the area.
- Development would be reliant on vehicles to travel, no public transport
- Concerned that construction traffic may block road
- Middle Drove is poorly maintained condition and no passing places
- Middle Drove struggles to handle existing traffic levels

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- Lorries use Middle Drove as cut-through so its busy and dangerous

Other matters

- Demolition of barns will set a precedent
- Noise and disturbance during construction
- Proposal is not in keeping with the area
- There has been no attempt to start the Class Q prior approval
- Barn E is capable of being converted without being re-built
- Development boundary line is unclear
- Due to demolition the proposal amounts to new dwellings in the countryside
- Possibility of asbestos containing materials
- Single storey dwelling should not be located in Flood Zone 3a

LDF CORE STRATEGY POLICIES

CS01 - Spatial Strategy

CS06 - Development in Rural Areas

CS08 - Sustainable Development

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)

National Design Guide 2021

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

PLANNING CONSIDERATIONS

The main considerations are:

- Planning History
- Principle of development
- Design, Character and appearance
- Impact on neighbour amenity
- Highway safety
- Flood risk
- Ecology
- Any other matters requiring consideration prior to determination of the application

Planning History:

The application site previously benefitted from prior approval under 20/00897/PACU3 for the change of use of the northern (smaller) barn from an agricultural building to a dwellinghouse. This was granted on 9th October 2020. The larger barn to the south was granted prior approval under 20/00896/PACU3 for the change of use from an agricultural building to two dwellings. This was granted on 8th October 2020.

These approvals were 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.

Paragraph Q.2(3) (at the time of the prior approval) stated that 'development under Class Q is permitted subject to the condition that development under Class Q(a) and under Class Q(b), if any, must be completed within a period of three years starting with the prior approval date.' As such both of the previous consents granted prior approval have now lapsed and not extant.

Notwithstanding this, while the conversion of the barns was not carried out, the principle of a residential use and conversion to two dwellings was established under class Q and the applicant could apply again under Class Q, Part 3, Schedule 2 of the GPDO for prior approval of the barns to a residential use.

While recent Statutory Instrument 2024 No.579 has made changes to the regulations since the previous prior approvals were granted, there are transitional arrangements which means that until 20th May 2025 applicants can choose whether to apply for prior approval under the new regulations (which came into effect on 21st May 2024) or the previous regulations immediately prior to the 21st May 2024 under which the previous prior approvals were granted. Either way, the existing agricultural buildings could be granted prior approval again.

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. There are objections to the proposal as it is considered the demolition of the barns and redevelopment of the site will set a precedent, however each application is considered on its own merits.

This application does not involve building works to the existing buildings but involves the demolition of the existing agricultural buildings and their replacement with two new buildings forming three dwellings which will emulate the agricultural buildings, albeit with the northern barn (smaller) being sited in a different position to provide for improvements in layout for residential use.

Principle of Development:

The application site is within an area designated as countryside within the Site Allocations and Development Management Policies Plan (SADMPP) 2016. Consequently, development is restricted to that which is identified as suitable in rural areas by other policies of the local plan. There are a number of objections, including from the Parish Council regarding the fact that the proposal would conflict with the principles of sustainable development and is within an area where housing would not normally be approved unless there was justification in accordance with para. 84 of the NPPF or Policy DM6 (Housing needs of rural workers) of the SADMPP 2016.

Notwithstanding the above, it is material consideration that there has been prior approval permission at the application site for the conversion of the existing buildings to three residential properties. The applicant has a 'fall-back' position should this application be refused and in practical terms it means that the existing buildings could be converted into three dwellings, albeit a further application for prior approval under Class Q of the GPDO would be required.

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.

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.

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 buildings given that consent was previously granted, albeit that they would have to reapply for prior approval under Class Q. This is therefore a material consideration of some weight in the determination of this application, although its significance is reduced given it does not have extant consent.

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 prior approval was again sought and implemented, and the applicant then decided to replace the buildings with three 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.

A previous application 23/00029/F (for two dwellings) at the site was refused as one of the proposed dwellings, due to its excessive height and scale would have appeared overly prominent in the landscape and vastly out of scale with the adjacent development. The proposal was 22.5m in length which was similar to the existing building, however it was 2 ½

storeys in height, measuring 10.8m; with excessive glazing and a large rear balcony with an additional projecting wing that incorporated a swimming pool. The proposal was refused for three reasons; that it was not sympathetic to the surrounding development and would be overly prominent in the landscape; that the limited benefit of development within flood zone 3a was overshadowed by the visual harm the development would have on the landscape; and that the site has the potential to support roosting bats and nesting barn owls and an ecology survey had not been carried out. It is considered that this application has overcome these reasons for refusal, and these will be set out within the relevant sections below.

The proposed development also includes increasing the size of the residential area beyond that approved under 20/00897/PACU3 and 20/00896/PACU3. The approved dwellings have a very limited residential curtilage due to the restrictions imposed by Class Q. Policy CS06 of the Core Strategy 2011 indicates that development should usually be refused where it encroaches onto greenfield land unless essential for agriculture. However, the area of land proposed to be changed to residential garden lies immediately behind and beside the proposed dwellings and is considered sufficient to allow the dwellings a reasonable amount of external amenity space.

It is considered the change of use of this land is justified because the approved dwellings had insufficient amenity space following the prior approval and that the use of the land as garden is not considered to have any significant harm on the character or appearance of the surrounding countryside.

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

Design, Character and Appearance:

The existing buildings are not considered to have a positive impact on the street scene, nor do they have any architectural merit which would be important to preserve. They are constructed of profiled steel and a mix of bricks and profiled cement board.

It is considered that the proposed dwellings are acceptable in terms of their design which emulates the design of the previous prior approval applications which retained the existing built form and had vertical timber board cladding and a dark grey tin roof. Full details of the materials, other than vertical cladding and vertical roof cladding, has not been provided within this application but can be conditioned.

In addition, a condition would also be attached removing permitted development rights for the erection of extensions and outbuildings in order to retain control over development which if not controlled may have an adverse impact on the character and appearance of the countryside.

The northern building (which is relocated closer to the road) would be increased in height from approximately 5.4m to 6.2m (an increase of 0.8m) and the southern barn would be increased in height from approximately 4.4m to 6.4m (an increase of 2.0m). It is considered that these relatively small height increases would not have any significant adverse impact on the character and appearance of the area. The resulting scheme would have the appearance of many typical modern barn conversions which would enhance the character and appearance of the site and its impact on the locality.

As the proposal includes relocating the smaller northern barn a condition will be placed on the decision notice to ensure that this barn is demolished prior to the occupation of the proposed dwellings.

This proposal, whilst taller due to flood risk mitigation, is similar in scale to the existing buildings and the design approved under 20/00896/PACU3 and 20/00897/PACU3 and consequently is not considered to materially harm the character or appearance of the surrounding countryside. Consequently, the refusal reason given within the decision for 23/00029/F is considered to have been overcome as the proposed dwellings will not be overly prominent in the landscape.

Subject to the conditions referred to above, the proposed development is considered acceptable having regard to the provisions of the NPPF, in particular para. 135, Policy CS06 and CS08 of the Core Strategy 2011 and Policies DM5 and DM15 of the SADMPP 2016.

Impact on Neighbour Amenity:

The impact on the neighbour to the south has been considered. While the proposal is single storey it is of note that the finished floor levels will be set at 0mAOD which is approximately 0.6m above the existing ground levels. Therefore, there will be a raised patio area to plot 3 and this is approximately 12m from the southern boundary which is hedging approx. 2.3m in height. The dwelling is a further 7.8m from the boundary and further forward within its plot. The overall distance from the raised patio to the neighbouring dwelling being 19.8m and 20.8m from the proposed dwelling. It is therefore considered that given the distance of nearly 21m and the existing screening that there will be no material overlooking to this neighbour. Given the orientation, distance and scale of the proposal there will be no material impact with regard to being overbearing or overshadowing.

There is a neighbour to the western side of Middle Drove, however the distance between the proposal and this neighbour is in excess of 30m and therefore there will be no material impact on this neighbour.

The interrelationship between Plot 1 and 2 has also been considered. The proposed dwellings would be located 13.1m apart and there would be windows facing each other. Again, given the necessity to increase finished floor level this would have the impact of elevating these windows and therefore the boundary treatment between the two dwellings which is shown as 1.8m in height would be insufficient. This could be resolved by raising the height of the proposed boundary treatment and a condition can be added to provide details of an alternative boundary treatment prior to occupation of the dwellings. Therefore, the relationship between the two plots would not have any adverse impacts with regard to overlooking, being overbearing or overshadowing.

There would be no adverse impacts upon amenity and the proposal would comply with para. 135 of the NPPF and Policy DM15 of the SADMPP 2016.

Highway Safety:

Middle Drove is a narrow road, with passing provision in places and there are objections from third parties that the road is poorly maintained, not suitable for construction traffic and that the development would mean future occupants are reliant on private vehicles to travel.

The remoteness of the location is acknowledged, however as mentioned above it is a significant material consideration that the existing barns could gain prior approval for conversion under Class Q, Part 3, Schedule 2 of the GPDO. One of the considerations within Class Q are highways issues and there are no objections to the proposal from the Local Highways Authority with regard to highway safety, although conditions are recommended to upgrade the access, remove permitted development rights regarding gates or other means of obstruction across the access, and the provision of the parking and turning within the site prior to occupation.

Overall, the proposal complies with para. 114 of the NPPF, Policy CS11 of the Core Strategy 2011 and Policies DM15 and DM17 of the SADMPP 2016.

Flood Risk:

The application site is located within flood zone 3 and a tidal hazard mapping area where parts of the site could flood up to 1.0m in the event of a breach of the tidal defences.

It is the responsibility of the LPA to steer development to areas at least risk of flooding. In this case the application is based upon the fact that a fall-back position applies as the existing barns could be converted to residential dwellings under different legislation (Class Q), where the sequential test does not apply.

There are objections from the Parish Council and third parties based upon the fact that the proposal is for single storey dwellings within flood zone 3. However, there are no objections to the proposal from the Environment Agency as finished floor levels are raised above the potential flood levels and so the application can be made safe for its lifetime provided the mitigation measures within the flood risk assessment are conditioned.

As stated above the sequential test has not been carried out due to the fall-back position. However, the proposal would pass the exception test as it has been demonstrated that the proposed development could be made safe for its lifetime and the existing barns could be converted to a residential use by utilising permitted development rights for a very similar scheme.

It is considered the proposal has overcome the previous reason for refusal on flood risk grounds within application 23/00029/F which was refused as it was considered that the limited benefit of approving a dwelling in this location was overshadowed by the harm caused on the landscape by the very substantial dwelling which was proposed.

Overall, given the fall-back position, the proposal would comply with paras. 169 and 170 of the NPPF 2023 and Policy CS08 of the Core Strategy 2011.

Ecology:

Protected Species:

There are third party objections to the proposal regarding the existing ecology on site, i.e. bats and owls within the existing barns. In addition, the previous application was refused as the conditions on site made it possible that there were protected species (EPS) which could be impacted by the proposal and an ecology survey had not been carried out.

Within this application the applicant provided an ecology report during the application process, which has identified the presence of two day-roosts for common pipistrelle bats within the existing brick-built barn. Therefore, it is a legal requirement that the demolition of the barn will require a licence from Natural England and relevant mitigation. There was evidence of barn owls present within both barns, however no nests were present, and the pellets found were old. It was concluded that there were more suitable sites for roosting in the locality and that the loss of the barns as infrequent roosting sites would have a minor impact. There are no objections from the Ecology officer provided the proposed mitigation and licence provision is conditioned.

The three "derogation tests" have been considered which must be applied by Natural England when deciding whether to grant a licence to a person carrying out an activity which would potentially harm an EPS. For development activities this licence is normally obtained

after planning permission has been obtained, however in line with the Wooley court judgement they are now considered. The three tests are that:

- the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative; and
- favourable conservation status of the species must be maintained.

The application site is not within an internationally designated or nationally designated site. Whilst the proposal is not essential for reasons of overriding public interest, the provision of three dwellings can contribute to the housing supply of the borough. In addition, the ecology survey submitted states how the favourable status of the species would be maintained. Due to the nature of the application where the approval is reliant upon the 'fall-back' position, there are no alternative sites where the proposed development could be relocated.

There are no objections from the Ecology officer provided the proposed mitigation within the ecology report and the provision of an EPS licence prior to the commencement of development is conditioned.

GIRAMS:

There have been objections from the Parish Council and third parties regarding the site being within the Marshland Zone of Influence.

This has been clarified as to what is meant by 'the proposed site falls within a marshland - Zone of Influence listed in the Norfolk Green Infrastructure Plan. This refers to the Norfolk Green Infrastructure and Recreational disturbance Avoidance and Mitigation Strategy (GIRAMS). The response from Natural England dated 17th August identifies that the development is within the Zone of Influence of European designated sites. As recreational disturbance (when considered in combination only) is the only impact identified a GIRAMS tariff payment is considered acceptable to mitigate this impact. The GIRAMS is a county wide strategic approach to offsetting this type of impact which allows a common 'pot' to be used to mitigate impacts on European sites from development across Norfolk. This approach has been agreed with Natural England.

A shadow Habitats Regulation Assessment (sHRA) was submitted by the applicant on 2 August 2023 and has been completed. The HRA has concluded a no likely significant effect on the integrity of the European sites within scope (The Wash, North Coast and The Brecks). In legislative terms this development is therefore acceptable under the Habitats Regulations and no further assessment is required for potential impacts to European protected sites.

Biodiversity Net Gain (BNG):

This proposed development is not subject to the statutory Biodiversity Gain Plan as BNG is not applicable as the planning application was submitted before the statutory requirement for minor applications came into force.

Other matters requiring consideration prior to the determination of this application:

It is considered that the proposal would not give rise to any issues relating to Section 17 of The Crime and Disorder Act 1998.

The application states that foul drainage arrangements are unknown, however this can be dealt with via condition.

The proposal involves the demolition of existing barns where there is the possibility of contamination due to prior use, and also the potential given their age to have asbestos. There are third party objections on the basis that there could be asbestos on site. There are

no objections from the Environmental Quality Team provided conditions are placed on any decision ensuring contamination is identified and remediation is carried out as necessary.

Pre-commencement conditions relating to the EPS Licence, Contamination and the foul drainage have been agreed in writing by email dated 17th October 2024.

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.

While the proposal constitutes the residential re-development of a parcel of countryside which would be contrary to the development plan, it is a material consideration that the applicant has had prior approval permission (albeit lapsed) for the conversion of the existing buildings into three dwellings. The fact that the prior approval consent has lapsed weakens the fall-back position, however there is a prospect that the barns could be converted utilising permitted development rights as set out within Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended if prior approval was sought again.

This is a finely balanced decision and when weighing up the planning balance Members are requested to have due regard to this position.

Regarding other matters the proposal is considered to have no material harm on the character and appearance of the countryside, neighbour amenity, highway safety, flood risk or ecology within the locality and therefore the application is 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:
 - Drawing No. PP1000 Rev D 'Site and Location Plan';
 - Drawing No. 1527-0000-001 'Topographical Survey'; and
 - Drawing No. PP1100 Rev A Floor Plans, Elevations and Sections.
- 2 Reason: For the avoidance of doubt and in the interests of proper planning.
- 3 Condition: Prior to the first use on site full details of the type, colour and texture of all materials to be used for the external surfaces of the development shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 3 Reason: To ensure that the design and appearance of the development is appropriate in accordance with Policy DM15 of the Site Allocations and Development Management Policies Plan (2016) and the principles of the National Planning Policy Framework.
- 4 Condition: Prior to the commencement of groundworks, an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
- (i) a survey of the extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
 - (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with the Environment Agency's Land Contamination Risk Management (LCRM).
- 4 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. This needs to be a pre-commencement condition given the need to ensure that contamination is fully dealt with at the outset of development and to ensure that it complies with Policy CS08 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016 and the general provisions of the NPPF 2023.
- 5 Condition: Prior to the commencement of groundworks, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 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. This needs to be a pre-commencement condition given the need to ensure that contamination is fully dealt with at the outset of development and to ensure that it complies with Policy CS08 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016 and the general provisions of the NPPF 2023.

- 6 Condition: The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of groundworks, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.
- 6 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. This is also to ensure that it complies with Policy CS08 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016 and the general provisions of the NPPF 2023.
- 7 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 the requirements of condition 4, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 5, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 6.
- 7 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. This is also to ensure that it complies with Policy CS08 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016 and the general provisions of the NPPF 2023.
- 8 Condition: Prior to the first occupation of any of the dwellings hereby permitted the vehicular/pedestrian access/crossing over the verge shall be constructed in accordance with the highways specification TRAD 5 and thereafter retained at the position shown on the approved plan. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway.
- 8 Reason: To ensure construction of a satisfactory access and to avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety in line with para 114 of the NPPF 2023 and Policy CS11 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016.
- 9 Condition: Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order (2015), (or any Order revoking, amending or re-enacting that Order) no gates/bollard/chain/other means of obstruction shall be erected across the approved access unless details have first been submitted to and approved in writing by the Local Planning Authority.
- 9 Reason: In the interests of highway safety in line with para 114 of the NPPF 2023 and Policy CS11 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016.

- 10 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.
- 10 Reason: To ensure the permanent availability of the parking/manoeuvring areas, in the interests of satisfactory development and highway safety in line with para 114 of the NPPF 2023 and Policy CS11 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016.
- 11 Condition: The development hereby permitted shall be carried out in accordance with the submitted Flood Risk Assessment (FRA) dated January 2023 by Ellingham Consulting Ltd. In particular, the FRA states:
- Finished floor levels will be set no lower than 0.0 m AOD.
 - Flood resilient measures will be incorporated up to 300 mm above finished floor levels.
- 11 Reason: To ensure the development will be reasonably safe from the risks of flooding for its lifetime in accordance with Policy CS08 of the Core Strategy 2011 and the NPPF 2023.
- 12 Condition: Notwithstanding the provisions of Schedule 2, Part 1, Classes A, AA, 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), enlargement of a dwellinghouse by construction of additional storeys, the enlargement, improvement or other alteration of a dwellinghouse, the enlargement of a dwelling house consisting of an addition or alteration to its roof, or the erection or construction of a porch outside any external door of a dwellinghouse, or the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool shall not be allowed without the granting of specific planning permission.
- 12 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 above mentioned Order. In order to comply with Policy CS06 and CS08 of the Core Strategy 2011 and Policy DM5 of the SADMPP 2016 and the provisions of the NPPF.
- 13 Condition: The demolition of the buildings identified within the Ecological Appraisal as Barns A and B shall not in any circumstances commence unless the Local Planning Authority has been provided with either:
- a) a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified activity/development to go ahead; or;
 - b) a statement in writing from the relevant licensing body or the Local Planning Authority to the effect that it does not consider that the specified activity/development will require a licence.
- 13 Reason: The Habitats Directive requires a system of 'strict protection' for certain protected species. It is a criminal offence to consciously harm European protected species without a licence, which would only be issued if the statutory licensing body is satisfied that the derogation criteria are met. However, the risk of criminal prosecution might not prevent harm from taking place. This condition therefore helps to ensure that a developer will apply for an EPS licence and, if they do not, can be prevented in advance from undertaking the activities that might jeopardise the protected species,

before the species is harmed. This condition can be enforced by a temporary stop notice or by injunction. This condition ensures that the Local Planning Authority is complying with its statutory obligations with respect to the Habitats Regulations. In addition to comply with Policy CS12 of the Core Strategy 2011 and the provisions of the NPPF.

- 14 Condition: The development hereby permitted shall be carried out in strict accordance with the Ecology Report dated July 2024 by Wild Frontier Ecology. In particular in relation to Section 6 of the report relating to 'Mitigation Measures.'
- 14 Reason: In order to comply with the provisions of the NPPF, Policy CS12 of the Core Strategy 2011 and the Habitat Regulations.
- 15 Condition: Prior to the first occupation of the dwellings hereby permitted the northern barn, shown on drawing 1527-0000-001 with a ridge height of 5.2 and eaves height of 3.9, shall be demolished and the resulting materials shall be removed from the site.
- 15 Reason: To ensure that the development is compatible with the amenities of the locality and that the building does not remain, given the justification for this approval. In line with the principles of the NPPF, Policy CS06 of the Core Strategy 2011 and Policy DM15 of the SADMPP 2016.
- 16 Condition: No development shall commence until full details of the foul water drainage arrangements for the site have been submitted to and approved in writing by the Local Planning Authority. The drainage details shall be constructed as approved before any part of the development hereby permitted is brought into use.
- 16 Reason: To ensure that there is a satisfactory means of drainage in accordance with the NPPF, and Policy CS08 of the Core Strategy 2011.
- This needs to be a pre-commencement condition as drainage is a fundamental issue that needs to be planned for and agreed at the start of the development.
- 17 Condition: Notwithstanding the information submitted, prior to first occupation/use of the development hereby permitted, a plan shall be submitted to and approved in writing by the Local Planning Authority indicating the positions, heights, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the occupation/use hereby permitted is commenced or before the building(s) are occupied or in accordance with a timetable to be approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 17 Reason: To ensure that the development is compatible with the amenities of the locality in accordance with the NPPF and Policy DM15 of the SADMPP 2016, in particular to ensure that there is no overlooking between plots 1 and 2.