

PLANNING COMMITTEE – 25 MAY 2023**PART 3**

Report of the Head of Planning

PART 3Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 21/504388/FULL		
APPLICATION PROPOSAL Erection of a permanent agricultural dwelling with associated parking.		
ADDRESS Woodland Farm High Oak Hill Iwade Road Newington Kent ME9 7HY		
RECOMMENDATION That planning permission is Refused		
SUMMARY OF REASONS FOR REFUSAL The Planning Committee resolved to grant planning permission for the development on 23 rd June 2022, subject to completion of a S106 Agreement to tie the new agricultural dwelling to the surrounding farmland operated as an egg farm. The applicant has not entered into this Section 106 Agreement, and without this the application is considered unacceptable. Furthermore, an application seeking prior approval for the conversion of part of an agricultural building on the farm to five dwellings has been recently submitted, and this suggests that there is potential for an existing surplus building to be reused or replaced on the site, rather than constructing a new dwelling, which will lessen the impact on the character and appearance of the surrounding countryside.		
REASON FOR REFERRAL TO COMMITTEE The resolution from the Planning Committee on 23 rd June 2022 did not include authority for officers to refuse the application under delegated powers in the event that a S106 Agreement was not completed.		
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Bobbing	APPLICANT Mr Jy Stedman AGENT Consilium Town Planning Services Limited
DECISION DUE DATE 05/11/21	PUBLICITY EXPIRY DATE 24/02/22	CASE OFFICER Megan Harris

Planning History

As set out in the committee report attached at Appendix 1. Since this report, the following application has been submitted at the site:

23/500946/PNQCLA

Prior notification for the change of use of agricultural barn to 5no. dwellings and associated operation development. For its prior approval to: - Transport and Highways impacts of the development. - Noise impacts of the development. -contamination risks on the site. - Flooding risks on the site. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change from agricultural use to C3 (dwellinghouses)- Design and external appearance impacts on the building. - Provision of adequate natural light in all habitable rooms of the dwellinghouses.

Pending Consideration

1. BACKGROUND

- 1.1 This application was reported to Planning Committee on 23rd June 2022 and was recommended for approval. A copy of this report is attached at Appendix 1. Members resolved to approve the application, subject to the applicant entering into a Section 106 Agreement which would tie the land and dwelling together to prevent one from being severed from the other. Such a mechanism via a S106 Agreement was considered necessary due to the relatively large size of the dwelling, the specific need for a permanent residential presence at the egg farm, and the specific ability of the egg farm enterprise to support, in financial terms, the costs associated with a dwelling of this size. Whilst the dwelling was deemed to be affordable for the farm enterprise itself, some concern was expressed about the potential for the dwelling to be severed from the unit and the likelihood that it would be unaffordable to the wider agricultural worker community. Whilst proposed condition 18 in the committee report attached at Appendix 1 ensures the occupation of the dwelling would be limited to agricultural workers, it does not prevent the farm being sold separately from the dwelling – nor can a planning condition achieve this. The Agreement would provide an appropriate mechanism to secure this. It was agreed with the Planning Committee that such a mechanism would meet the tests of reasonableness and necessity.
- 1.2 Whilst the applicant initially agreed to enter into this Agreement following the committee resolution, they subsequently raised concern over the drafted wording of the document, and in particular the fact that the land and dwelling would be tied together in perpetuity. It is considered that a time-limited mechanism that would free the dwelling from the terms of a S106 agreement at a set date would not be appropriate, nor are officers aware of any similar circumstances where an agricultural dwelling has been tied for a time-limited period only. In addition, it is noted that there is an application process under the Planning Acts to modify or discharge a S106 Agreement if it no longer serves a useful purpose.
- 1.3 The agent subsequently advised by email dated 28/11/22 that their client was willing to sign an agreement in the terms required by the Council. However, since this date and despite numerous attempts to chase progress, a signed agreement has not been submitted. A report was due to be considered by the Planning Committee in January, but was withdrawn from the agenda after the applicant's agent persuaded officers that their client had every intention of completing the S106 Agreement. Despite being given a clear deadline to do so, the Agreement has not been forthcoming. For this reason, the application is being reported back to Planning Committee.
- 1.4 As set out in the planning history section above, an application for prior approval for the conversion of part of an agricultural building to five dwellings has now been submitted at the site and is currently pending consideration. The implications of this application in relation to this scheme for a new agricultural dwelling is considered below.

2. DISCUSSION

- 2.1 The officer report attached at Appendix 1 did not include reference to the need for a Section 106 Agreement. However, a Planning Committee is entitled to reach a different planning outcome and judgement, including the use of planning conditions and S106 Agreements, provided that there are sound planning reasons for doing so. The key relevant tests for a planning obligation are as follows –

Necessary to make the development acceptable in planning terms – the Agreement is necessary to tie the dwelling to the need identified, i.e. as a farm dwelling, in an area where a new dwelling would not otherwise be permitted.

Directly related to the development – the Agreement sought directly relates to the dwelling and land holding that supports the farm enterprise and which has been used to support and justify the need for a dwelling of the size proposed as part of the planning application.

Fairly and reasonably related in scale and kind to the development – the Agreement only relates to the land holding and farm enterprise that supports the dwelling and is fairly and reasonably related.

- 2.2 It is considered that the Planning Committee exercised sound planning reasons for the requirement to tie the agricultural dwelling to the wider farm enterprise. Without this Agreement in place, it is possible that the dwelling could be severed from the surrounding farm enterprise in the future. It is unlikely that a dwelling of the scale and design proposed would be within the reach of a general farm worker as part of the wider agricultural community. If the dwelling was to be severed from the enterprise, Officers would be concerned that it could result in pressure to remove the agricultural occupancy restriction completely, which in turn would remove the justification for the dwelling at this current time.
- 2.3 The recent submission of an application for prior approval to convert an existing building at the farm to 5 dwellings also has significant implications for this application for a new agricultural dwelling. The prior approval application provides a clear indication that there is potential for an existing building on the site to be adapted for conversion to residential use, rather than the erection of a new building which would have a greater impact on the character and appearance of the countryside. The re-use of existing buildings should always be the first consideration in the countryside rather than the construction of new development, as set out in policy DM12 which states that the siting of an agricultural dwelling should firstly explore whether there are suitable buildings available for conversion at the enterprise. In light of this new position and change in circumstance, it is considered that the application no longer complies with policy DM12 of the Local Plan. These concerns have been relayed to the agent, but no response has been received. It is considered that this should now form a reason for refusal.
- 2.4 Officers have also raised concern that the prior approval application would have an impact on the business case put forward for the new agricultural dwelling, as the conversion would significantly reduce the scale of one of the poultry sheds at the site and brings into question whether the business plan provided as part of the full planning application is up to date. An agricultural dwelling of the scale proposed was justified in part due to the scale of the farming operation on the site, and a reduction in the size of the poultry shed on the site could suggest that the business may be reducing in size and potentially reduce the turnover / income projected to support the dwelling. The applicant has verbally advised that the number of hens kept on site will not be reducing, and that the remaining chicken shed on the farm will be altered internally to provide additional space for hens to make up for the space lost by the conversion. However no detail of this has been provided.

CONCLUSION

2.5 The applicant has failed to complete the S106 Agreement required by the Planning Committee to tie the new dwelling to the farm enterprise, and the development is considered to be unacceptable in the absence of this. In addition, given the recent submission of the application for prior approval and clear indication that there is a surplus building at the existing site that could be capable of conversion, and the potential impact of this on the turnover of the business, it is considered that the application now no longer complies with Policy DM12 of the Local Plan.

3. RECOMMENDATION – REFUSE for the following reasons:

- (1) In the absence of a Section 106 Agreement to tie the ownership and occupation of the proposed agricultural dwelling to the wider farm unit, there is an unacceptable risk that the dwelling could become severed from the farm unit and, due to its size and scale, be unaffordable to the wider agricultural worker community. If the unit is unable to be occupied by an agricultural worker, this would support the removal of the agricultural occupancy condition and ultimately could result in a large unrestricted residential dwelling in the countryside, which is contrary to both local and national policies to protect the countryside and avoid isolated new dwellings in the countryside. The application is therefore contrary policies ST3, DM12 and DM24 of “Bearing Fruits 2031: The Swale Borough Local Plan 2017”.
- (2) The submission of an application for prior approval (ref.23/500946/PNQCLA) to convert a building within the farm to 5 dwellings strongly indicates that one of the agricultural buildings on the farm is available and capable of conversion to residential use. This was not disclosed to the Council as part of this application, nor has any explanation or evidence been provided as to why this building could not be re-used, adapted or replaced as an alternative to the proposed new-build agricultural dwelling, to provide the accommodation required for the enterprise. In addition, no updated information has been provided to the application to demonstrate the impact on the farm enterprise and turnover arising from the loss of this building for the housing of poultry. As such, the application has failed to adequately consider or demonstrate that there are no suitable buildings available for conversion on the site, or that the development has been designed to limit the extent of built form in this isolated countryside location within an Area of High Landscape Value, and the business case to support the development is outdated and insufficient to demonstrate that the enterprise can support a dwelling of the size proposed. As such, the new dwelling has not been justified and the development would be harmful to the countryside and landscape, contrary to policies ST3, DM12, and DM24 of “Bearing Fruits 2031: The Swale Borough Local Plan 2017”.

The Council’s approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

