



9 December 2020

Report to: South Cambridgeshire District Council

Lead Officer: Joint Director of Planning and Economic Development

S/4252/19/FL, Fowlmere (Cherry Tree Field Shepreth Road, Fowlmere, Cambs SG8 6QU)

Proposal: Conversion of cowsheds to 3 bedroom house with Internal annexe and stabling

Applicant: Mr and Mrs Fulton

Recommendation: Approval

Key material considerations: Principle of Development
Visual amenity and local character
Sustainability issues

Date of Member site visit: N/A

Is it a Departure Application?: No

Decision due by: 13th November 2020

Application brought to Committee because: To allow consideration of Parish Council objection.

Executive Summary

1. This application seeks full planning permission to convert agricultural buildings into a single home, with integral annexe and creation of a garden area and erection of stable building
2. The application site is located in open countryside, between the villages of Shepreth and Fowlmere.

3. An objection has been received from Fowlmere PC on the basis that the scheme doesn't comply with the criteria of policy H/17 of the South Cambridgeshire Local Plan 2018.
4. A Class Q approval was achieved for the conversion of these buildings into 2 dwellings

Update Since November Committee

5. This application was considered by the Planning Committee on the 11th November 2020. Following an extensive discussion, members voted 8-2 in favour of the proposal set out in the application and did so following the officer's recommendation.
6. Following the committee's resolution, it was brought to the Council's attention that the Class Q approval that was issued in September 2018 (S/2685/18/PA) contained an error. The approval was dated the 17th September 2018 however a condition (4) required that the development be commenced by May 2016 – two years before the date of the actual decision. The conditions are listed in full below:
7. Cond 1: No development approved by this permission shall be commenced, unless otherwise agreed, until: a) The application site has been subject to a detailed desk study, including site walkover and preliminary Conceptual Site Model, to be submitted to and approved by the Local Planning Authority. b) The application site has been subject to a detailed scheme for the investigation and recording of contamination and remediation objectives have been determined through risk assessment and agreed in writing by the Local Planning Authority. c) Detailed proposals for the removal, containment or otherwise rendering harmless any contamination (the Remediation method statement) have been submitted to and approved in writing by the Local Planning Authority. d) The works specified in the remediation method statement have been completed, and a Verification report submitted to and approved in writing by the Local Planning Authority, in accordance with the approved scheme. e) If, during remediation and/or construction works, any contamination is identified that has not been considered in the remediation method statement, then remediation proposals for this material should be agreed in writing by the Local Planning Authority
8. Cond 2: The surface of the driveway to serve the dwellings hereby approved shall be constructed on a level that prevents surface water run-off onto the highway and shall be constructed from a bound material so as to prevent displacement of material onto the highway. The development shall be retained as such thereafter.
9. Cond3: Prior to the commencement of development a scheme for the disposals of surface water and foul water shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be such that it can be maintained for the lifetime of the development and shall be implemented prior to occupation of the dwellings hereby permitted.
10. Cond 4: That the change of use must be commenced on or before 30 May 2016.

11. The inclusion of a date that requires the scheme to be commenced before the permission was issued is clearly an error and it is accepted by officers that the decision should not have been issued when there was clearly a mistake in the wording. Furthermore, this error should have been identified and brought to the attention of members at the November 11th committee.
12. The applicant was aware of this error and has provided the council with a copy of an email from the previous case officer dated 29th May 2019. In this email, the officer confirms that this date was an error and that the standard time limits would apply. Unfortunately, the email was not copied to the planning file and the current officer was unaware of this communication.
13. The email dated 29th May 2019 was in response to a question from the purchaser's solicitor questioning the date that appeared in condition 4 on the decision notice (commencement by May 2016). The then case officer wrote back stating the following:
14. 'I can confirm that the May 2016 date appears to be an error on the templates, and I will look into getting this rectified. Any conversion must be completed within 3 years of the date of the prior approval (in this instance 17th Sept 2021)'.
15. The error was not in fact rectified. In any event, there was no power to rectify the prior approval once it had been issued. Once granted, approvals can only be quashed through the Courts. As a result of the date on the Condition, the prior approval was in effect incapable of implementation and could not itself amount to a fall-back position.

Prior Approval Process

16. Class Q of the General Permitted Development Order was originally introduced in 2014 and allowed the conversion of agricultural buildings into (up to) 3 dwellings on an agricultural unit if the total floor space did not exceed 450 sqm /4,843 sqft.
17. These regulations were amended in April 2018 and have marginally increased the floor area threshold to 465 sqm for 3 larger dwellings. The regulations also allow for the development of up to 5 smaller dwellings with a total floor space of 100 sqm. The provisions can be combined to deliver up to 5 dwellings per agricultural unit subject to the individual floor space limitations although no more than 3 dwellings may be larger dwellings.

The Fallback Position

18. At the November committee, the officer advised the elected members that a Prior Approval had been granted. The officer also made reference to caselaw from 2017 (*Mansell v Tonbridge & Malling BC* – see further below) as this case considered the question of permitted development rights as a fall-back position when considering a relevant planning application. The officer went on to inform the committee that it was necessary to consider the application against the other

development that could occur i.e. the 2 dwellings that had been accepted through the prior approval process. Reference was made to the fallback position and the 2018 approval.

19. On the basis of the above, although it should be noted that the prior approval of 2018 is not capable of implementation and cannot itself amount to a fall-back position with a real prospect of being carried out, the officer is satisfied that there is no reason to believe that a further submission for prior approval would not now be approved for conversion of the buildings into 2 dwellings under Class Q. The previous owner did apply for prior approval in 2018 and the Council granted the application. The current planning application relies on the existence of the prior approval in seeking planning permission. There is a clear implication behind the planning application, that if planning permission were refused, there would be an intention to build out according to permitted development rights. This has been confirmed in conversation with the applicant. The barns are in the same condition as when the prior approval was granted in 2018 and there has been no significant change to the regulations that would result in a different outcome. In all the circumstances, the officer's planning judgment is that there is a fall-back position, with a real prospect of being carried out, that an application for prior approval would be made and granted under Class Q, consistently with the approval in 2018. Members should give significant weight to this legitimate fall-back position.

Case law

20. The case law that provides guidance on the relevance of a fallback position is from *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314.
21. In this case, the Court of Appeal clarified the position /approach taken by planning officers of considering a "realistic fallback provision" when advising councillors on a planning application.
22. The appeal was made by an objector to a planning application that sought permission for the demolition of an existing apple store and bungalow and the construction of four detached dwellings on a site in Kent. The planning application was approved by the local authority on the recommendation of the planning officer, who considered that there was a realistic fallback position that the landowner could seek to develop the site by converting the 600 sq.m apple store into three dwellings occupying up to 450 sq.m. and replacing the bungalow with a modern dwelling in accordance with the Council's local plan. The officer considered that the effect of a scheme under Class Q would be a contrived development whereas the submitted planning application offered a "more comprehensive and coherent redevelopment of the site". As such, the officer recommended approval even though the site was outside any village development boundary and deemed as being in "open countryside".
23. On the issue of the fallback position, the appellant argued that the officer's view in considering this applied was not realistic because there was evidence that the site owner would not have sought to convert the apple store as it would have been uneconomic to do so hence the fallback position was only a theoretical scenario that the planning committee should not have taken into account as a material consideration. The Court found that the site owner had clear and firm intentions

to redevelop the site and that it was appropriate and necessary for the council to take this into consideration when assessing the application. It was a matter of planning judgment in the particular circumstances of the case whether there was a real prospect of a fall-back development being carried out should planning permission be refused. There was no rule of law that it would in every case depend on allocation for the alternative development, planning permission having been granted for that alternative, or on the developer saying precisely how he would make use of any permitted development rights.

Summary

24. Whilst there was clearly an error in the condition that was attached the Prior Approval meaning that that Prior Approval is incapable of being implemented, it is considered that a fallback position with a real prospect of being carried out still exists. The barns are in the same condition as when the Prior Approval was granted in 2018 and there has been no significant change to the regulations that would result in a different outcome, against which the committee should consider the current proposal. Therefore, I would invite committee members to reach a decision to approve the application now before members as that made at the November 11th committee and to do so on the basis that such a decision is wholly reasonable notwithstanding the error in the Class Q approval that was issued in September 2018 (S/2685/18/PA).

Site and Surroundings

25. The application site consists of 2 substantial, relatively modern agricultural buildings located within the open countryside. The site is outside of any development framework. There is an existing access from the Shepreth Road that serves the buildings. The site is surrounded by field hedgerows interspersed with specimen trees.

Planning History

26. S/2685/18P/A- Prior notification of conversion of agricultural buildings into 2 no. dwellings. Approved 17/09/2018

S/0086/17/PA - Prior notification for conversion of buildings into 2 no. dwellings. Refused on basis of lack of highway information 14/03/2017.

Planning Policies

27. National Planning Policy Framework 2018 (NPPF)
National Design Planning Guidance (PPG)
National Design Guide 2019

28. South Cambridgeshire Local Plan 2018

S/1 Vision

S/2 Objectives of the Local Plan
S/3 Presumption in favour of Sustainable Development
S/7 Development Frameworks
S/8 Rural Centres
CC/4 Sustainable Design and Construction
CC/6 Construction Methods
CC/7 Water Quality
CC/8 Sustainable Drainage Systems
CC/9 Managing Flood Risk
HQ/1 Design Principles
H/17 Reuse of Buildings in the Countryside for Residential Use
NH/4 Biodiversity
NH/14 Heritage Assets
SC/10 Noise Pollution
SC/11 Contaminated Land
TI/2 Planning for Sustainable Travel
TI/3 Parking Provision
TI/8 Infrastructure and New Developments

South Cambridgeshire Supplementary Planning Documents (SPDs):

29. Greater Cambridge Sustainable Design and Construction - Adopted January 2020
Trees and Development Sites – Adopted Jan 2009
Biodiversity – Adopted July 2009
District Design Guide – Adopted March 2010

Consultation

30. Shepreth Parish Council – Acknowledges that the site benefits from a Prior Approval for 2 homes but do not support application for 1 home on the basis that proposal doesn't comply with policy H/17. Request that the application be considered by the committee:
- The site hasn't been marketed
 - In the absence structural engineers report can't be sure that these buildings will support a first floor
 - Character of the area will be changed by this development and increase in height will increase visibility
31. Fowlmere Parish Council – No objection
32. Council's Archaeology Officer – Initial concerns as within 150m of West Hill Scheduled Ancient Monument (subterranean iron age/roman settlement). Following submission of additional information, it is clear that the works will involve very little intrusion into the ground and therefore no objection is raised, and no condition is required.

33. Local Highways Authority (Cambridgeshire County Council) – No objections to the use of this access for a single dwelling. Recommend conditions to ensure that the existing visibility splays are maintained and other standard highways requirements.
34. Ecology Officer - No objections received in response to report submitted by applicants
35. Contaminated Land Officer - No objection. Do not consider that the works will be so invasive as to require a condition for a full contamination report
36. No comments have been received from any neighbouring properties.

The Principle of Development

37. The starting point when considering applications is to assess them against the Development Plan. In this instance, the South Cambs Local Plan is the primary document. Decisions should be made in accordance with the Development Plan unless material considerations indicate otherwise.

Local Plan policies seek to control development within the countryside and are intended to facilitate growth within the existing settlements, where there is better access to services and facilities. Policy S7 emphasises the need to restrict development outside of the Development Frameworks to that which is necessary or is covered by other policies within the Local Plan. These exemptions include affordable housing, agricultural workers dwellings and the conversion of rural buildings.

Policy H/17 is particularly relevant to the conversion of rural buildings and contains the following criteria:

- The buildings are unsuitable for employment use, evidenced by a 12-month marketing exercise to demonstrate that there is no demand
- The buildings are structurally sound, not makeshift in nature and are of permanent, substantial construction;
- There will be an enhancement to the immediate setting of the buildings
- The form, bulk, design, landscaping and materials used in the change of use and adaptation are sensitive
- There is a safe vehicular access

38. It is considered appropriate to further explain how this application accords, or not, with the criteria in policy H17. It is also important for members to be aware of the Class Q approval that has been given for these buildings to be converted into 2 separate dwellings.
39. Employment re-use: Whilst the principle of seeking the re-use of the buildings for employment purposes is fully accepted it is considered that there are several reasons why the lack of a marketing exercise should not be a reason for refusal.

Firstly, these buildings have achieved an approval for conversion. Secondly, the location is remote from any population and the creation of an employment centre in this location may generate a significant amount of vehicles movements. Thirdly, the access into the site, whilst acceptable for a single dwelling, is unlikely to be sufficient for an employment use, that may generate a significant number of vehicle movements. This may require the establish hedgerow to be removed to create larger splays. It is also relevant to note that the NPPF does not require that rural building be marketed for employment use when considering an application for conversion.

40. Structural integrity of building: The building has received a Class Q approval and therefore it has been considered to be of sufficient permanence, strength, structural integrity to be considered as a conversion rather than a rebuild. Further information has been submitted from a fully qualified structural engineer to demonstrate how the steel frame of the building will support the conversion and can be adapted to create the additional height.
41. Enhancement of the buildings/surroundings: The buildings are in a good state of repair and the land is tidy. The proposal will create a well designed home that will make good use of the structure. The additional planting will enhance the character of the area.
42. The design of the building will be sensitive: The proposed conversion is well designed and uses suitable materials that will be appropriate for this location. The additional height will not have an adverse impact upon the wider landscape
43. Highway Safety: The Highway Authority is satisfied that the access is suitable for a single dwelling.

Permitted Development/Fallback position

44. Case law from 2017 (Michael Mansell and Tonbridge and Malling Borough Council) established the need for decision makers to take into account permitted development rights (Class Q in this instance) when considering a planning application. This 'fallback' position needs to be properly considered by members as it is essential that members assess the current proposal against other development that could legitimately occur through the exercise of permitted development rights.
45. Character and Heritage Assets

The visual impact of the conversion is a key consideration for this application. As noted above, policy H17 requires an assessment of the visual impact. The buildings are located within open countryside and can be seen from various vantage points. The buildings, whilst visible, sit comfortably within the landscape and do not detract from the character of the area. The increase in the height of the 2 main buildings by just over a metre will not affect the character of the buildings as the form and footprint will remain the same. The profile sheeting will replicate the current structure and the use of timber cladding on external elevations is common in the area.

The increase in the height of the central linking area to house a stairwell will have an impact upon the character of the building but it is considered that the style of the change will appear similar to the traditional approach of creating a covered yard in between existing buildings to create shelter. The curved roof is considered to be an acceptable design solution.

The initial site plan included the buildings and the entire field within the 'red line'. This has been amended to show only the buildings and the proposed garden area within the application site. This limited curtilage area will prevent any domestic sprawl/paraphernalia encroaching into the field/paddock area between the building and the road. It was not considered necessary to consult upon the revised curtilage plan as it was purely for clarification purposes and the extent of the garden had not been raised as an issue by any third party

The site is not located near any Listed Buildings or Conservation Area. The Archaeologist has referred to nearby features but has concluded that these works will not have a prejudicial impact upon any archaeological assets.

46. Highway Matters

The application seeks to use the existing access/field gate to serve the dwelling. This is the same arrangement as was permitted through the previous Class Q approval. The access point, whilst suitable for farm buildings or a house is unlikely to be suitable for an increase in use without having to form large visibility splays, that would inevitably result in the relocation of large sections of established hedgerow.

The Highway Authority have requested conditions to ensure that the current visibility splays are kept free of obstruction together with other standard conditions.

The Highway Authority have confirmed that the access is suitable for this development and that any visibility works can be carried out within the applicant's land.

47. Sustainability Considerations

It is accepted that the site is located in an unsustainable location in terms of accessibility to facilities and services. The Class Q approval allows the creation of 2 dwellings whilst this application would result in a single home. This would inevitably result in a reduction in vehicle movements. The application is also proposing a range of measures for energy production and reduction in use of power. These include

- Concealed solar panels over the entire roof
- Ground source heat pump
- Solar panels to provide power to gates, external lighting and stable
- Self-cleaning biomass stove

- Surface water collection tanks (underground) for livestock and irrigation.

48. Residential Amenity

The buildings are located within an isolated location and the conversion into a single home will not have any obvious impact upon any other property.

49. The proposal includes a generous garden area that will benefit future occupants.

50. Other Matters

51. Ecology: The application is supported by an ecology survey. The report shows that bats are using the site and hedgerows for foraging purposes but there is no evidence of any roosts within the structures.

52. Trees/Hedgerows: The conversion of these buildings into a single home will not result in the loss of trees. The hedgerows around the site will remain as will the hedgerows on the road frontage. The application proposes further planting around the site.

53. Flooding: A small part of the building is located within Flood Zone 2. As this is an application for a conversion there is no objection in principle. The applicant has confirmed that the finished floor level will be 150mm above ground level thereby reducing any risk of flooding.

54. Contaminated Land: The building and garden area have been used for agricultural purposes and there is potential that contamination may exist. The Council's Environmental Health Officer has looked at the application in detail and is of the view that this development will not present any issues.

55. Conclusion

56. Whilst it is accepted that there is an error in the 2018 Class Q Prior Approval it is considered that this previous acceptance constitutes a reasonable fallback position. As such, the conversion of these buildings into a single home, incorporating a range of environmentally sympathetic technologies, is considered to be a more sustainable form of development.

57. Recommendation

That planning permission be granted subject to appropriate planning conditions/informative:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

- 2) The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.

Amended curtilage plan November 2020
Elevational drawings 5137/1 Nov 19 2020
Floorplans 5137/1 Nov 19 2020
Stables/Ground Intrusions/Water Treatment Unit 5137/2 Nov 19 2020
Ecology Report May 2020

Reason: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.

- 3) Prior to the occupation of the development, hereby permitted, the curtilage(s) of the approved dwelling(s) shall be fully laid out and finished in accordance with the approved plans. The curtilage(s) shall remain as such thereafter.

Reason: To ensure an appropriate level of amenity for future occupiers and to avoid the property being built and occupied without its garden land, in accordance with policy HQ/1 of the South Cambridgeshire Local Plan 2018.

- 4) Prior to the first occupation or bringing into use of the development, hereby permitted, visibility splays shall be provided each side of the vehicular access in full accordance with the details that shall have first been submitted to and approved in writing by the Local Planning Authority. The splays shall thereafter be maintained free from any obstruction exceeding 0.6m above the level of the adjacent highway carriageway.

Reason: In the interests of highway safety, in accordance with paragraphs 108 and 109 of the NPPF 2019).

- 5) No development shall take place above ground level, other than demolition, until samples of the external materials to be used in the construction of the development have been submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that the external appearance of the development does not detract from the character and appearance of the area, in accordance with policy HQ/1 of the South Cambridgeshire Local Plan 2018.

- 6) Notwithstanding the provisions of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that order with or without modification), the enlargement, improvement or other alteration of the dwellinghouse(s) shall not be allowed without the granting of specific planning permission.

Reason: To protect the amenity of occupiers of adjoining properties, in accordance with policy HQ/1 (part n) of the South Cambridgeshire Local Plan 2018.

- 7) No development shall commence until details of soft landscape works have been submitted to and approved in writing by the local planning authority. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and an implementation programme.

Reason: In the interests of visual amenity and to ensure that suitable hard and soft landscape is provided as part of the development, in accordance with policies NH/2 and HQ/1 of the South Cambridgeshire Local Plan 2018.

Informatives:

- 1) The granting of planning permission does not constitute a permission or a licence to a developer to carry out works within the highway or to cause any disturbance to the highway

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