

DELEGATED OFFICER REPORT

Application Ref: PN/22/93479

Site Address: HATTS COPSE FARM, BROOK LANE, BOTLEY, SOUTHAMPTON, SO30 2ER

Case Officer: Alex Webb

Description: Prior Notification application under Class Q for the change of use from Agricultural Buildings to 2no. Dwellinghouses (Use Class C3)

Particular Site Constraints?	Yes ☒	No ☐
Nature Conservation NE - SSSI Impact Risk Zones, HRA Screening Criteria, Solent Mitigation & Disturbance Zone Aviation safeguarding Airport Safeguarding Zones Nutrient Neutrality Catchment		

Planning History?	Yes ☒	No ☐
Z/26442/011 - Renewal of permission 26442/9 for conversion of detached garage and outhouse to separate dwellings for occupation by elderly parents (retention of development already carried out). Permitted 19 January 1994. Z/26442/014 - Construction of new agricultural shed following demolition of existing sheds and re-roofing of existing garage to include increase in ridge height. Permitted 19 May 2003. X/08/63160 - Relief of Condition 3 of planning permission 26442/6 to remove agricultural occupancy tie. Refused 19 September 2008. Allowed at appeal February 2009 F/11/69156 - Change of use from dwelling with outbuildings, annexes and paddocks to a mixed use to enable use of stables & paddock as a commercial liver Permitted 11/07/2011		

Publicity:	Letters ☐	Site Notice ☐	Newspaper ☐
Representations:	3 x Objections • within the Settlement Gap/Countryside • noise to neighbours, • increased urbanisation • increased traffic • duration of the noise is much longer than the use as a store for farm equipment. • Impact on water supply • contrary to Adopted Local Plan policies S3, S5, S6, DM1, DM2, DM3, DM8, DM9, DM10, DM13, DM14, DM17, DM18, DM19		
Parish Council:	Objection • The building is very close to a neighbouring property. • It is of an unimaginative design. • The current building is in a settlement gap as defined in the adopted local plan and therefore the change of use would not be permitted.		
HCC	No objection to the proposals from a highway perspective. The access in and out of site is existing, and no updates are proposed given its adequate geometry and visibility splays onto Brook Lane. Internally, whilst the site will not be put forward for adoption, there is adequate space for vehicles to turn and enable forward gear access and egress, and parking appears to conform to standards, though this will be for EBC to check as Local Parking Authority. Presuming kerbside refuse collections will take place, the Case Officer may wish to request a designated bin collection point is provided close to the highway, given the multiple positioning of bins. This will help prevent obstruction when accessing the site via the shared driveway, and EBC Direct Services should be consulted on this matter to ensure the collection point is located in a useful position.		

Ecology	This property is adjacent to Gould Copse SINC which is designated ancient woodland. A 20 m buffer is required between the ancient woodland boundary and any development. There are three records of bats very near to the site. Looking at aerial photos, this building looks to be adjacent to the woodland boundary, which would cause an unacceptable impact on this irreplaceable habitat. I would object to this application on the grounds that it would cause an unacceptable negative impact on an Ancient Woodland SINC.
Pollution (Contamination)	With respect to the application, due to the former uses of the site it has the potential to be impacted by land contamination, and the proposed new use is of type which is sensitive to contamination. Reference is made to the former use in the application, but no information is provided to show how actual or potential risks have been considered. It is recommended that the conditions are imposed.
Pollution (Environmental Health)	The planned two dwellings would locate within farmyard like premises and would be of agricultural character identifying with their surrounds. There should be no doubt in expectation these dwellings are accommodated amongst agricultural environs. Besides other dwellings exist on these lands. Considering the scale of these, an adverse and frequent noise impact to the planned dwellings is not anticipated. Nor do there appear other potential pollution sources such as agricultural odours or dust or fumes. Regarding artificial light, which is likely to be necessary for security purpose, excess illumination would impact this area. A demonstration of artificial lighting with the Institution of Lighting Engineers "<i>Guidance Notes for the Reduction of Obtrusive Light</i>" should be required through a planning condition. A Construction and Environmental Management Plan should also be required through a planning condition to ensure potential temporary adverse impacts such as noise and dust are controlled by Best Practicable Means.

Site Visit:	Yes ☒	No ☐
08/09/2022		

Policy:
National Planning Policy Framework Planning Practice Guidance Development Plan Section 38(6) of the Planning and Compulsory Purchase Act 2004 states: - "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise." The <u>Eastleigh Borough Local Plan 2016-2036</u> The most relevant policies are Strategic policies S1 and S2; and Development Management policies DM1, DM2, DM11 and DM14. Supplementary Planning Documents: Quality Places; Residential Parking Standards; Character Area Appraisals.

Assessment:
Hatts Copse Farm is within the countryside and Hedge End Local Gap. The buildings are located on the south west side of Brook Lane, set back behind the existing row of

detached and semi-detached properties. Vehicular access is via a set of gates and a gravel drive leading from Brook Lane to the central courtyard area of the property. The property contains several buildings including a large two-storey four bedroom detached dwellinghouse, two ancillary dwellings, domestic garages, a stable block and various outbuildings within the large domestic curtilage. The site is bounded by agricultural land to the south and west where there are also two ponds.

The site comprises two single storey buildings located to the front (north east) of the property, behind an existing row of residential properties. Building 1 (orientated south west to north east) is the smaller blockwork building painted white with a domestic style garage door, with pedestrian opening. The gabled roof consists of metal profile sheeting with painted timber cladding across the gable end. Building 2 (orientated north west to south east) is the larger of the two buildings, immediately adjacent to Building 1. It is constructed from timber (stained in a dark colour) with a flat metal profile sheet roof with large double timber doors on the front (south west) elevation and a small window on the side (south east) elevation.

Building 2 was permitted and erected under planning permission Z/26442/014 for the *construction of new agricultural shed following demolition of existing sheds and re-roofing of existing garage to include increase in ridge height* granted on 19/05/2003. At this point in time Building 1 was described as a 'garage'.

The agricultural tie on the property was removed under planning application X/08/63160 which was allowed at appeal in February 2009 (APP/W1715/A/08/26).

A subsequent planning permission, F/11/69156 for the *change of use from dwelling with outbuildings, annexes and paddocks to a mixed use to enable use of stables & paddock as a commercial livery* was permitted on 11/07/2011. The entirety of the property, including the application buildings was included within the red line boundary as shown on the submitted Site Location Plan and Hatts Copse Farm Site Plan (Hatts_v2) which accompanied the application. The design and access statement submitted with the application confirmed that "*main stable block and Barn buildings are to be associated with the livery as shown on the below plan*" the plan below was an extract from the submitted red line plan (Hatts_v2), including the application buildings. The case officer also confirmed in the officer report that "*The lifting of the agricultural tie in 2008/09 is not a material consideration when assessing the suitability of the site as a full livery*". This suggests planning permission was granted for the use of the barns and entire site for equestrian purposes.

Since the granting of permission F/11/69156 the land surrounding the application site has been used for a mixture of agricultural and equestrian purposes including the keeping of pigs and approx.145m² of vines have been planted. The applicants have submitted an image of an excel spreadsheet showing accounts for 'Kristina's' (dated from 05/04/2018-05/04/2021) as well as the letter received from the 'Rural Payments Agency'. The applicant states that income is generated from eggs, pigs, sheep heard, Lambs meat, cow sales, calf equipment sales, honey sales, plant sales and the rural payment. The image shows a substantial income from these sales with little profit overall.

Prior approval is sought for the change of use of the two buildings from agricultural use into two dwellinghouses (C3) under Class Q of the General Permitted Development Order 2015. building operations sought under paragraph Q1 (i) (1) include the replacement of windows, doors, roofs and exterior walls and also relate to water, drainage, gas and other services to the extent reasonably necessary to carry out building operations. No structural survey is submitted with the application.

The site is not within a flood zone or a Conservation Area, nor part of a military explosives storage area or a safety hazard area.

The buildings are not listed or are they within the curtilage of any listed building, nor a scheduled ancient monument.

This is not a planning application and therefore the normal statutory test under Section 38(6) is not relevant. The NPPF must be considered but *“only to the extent that it is relevant to the matter on which prior approval is sought...”*.

Under The Town and Country Planning (General Permitted Development) (England) (Amended) Order 2015 some specified works can be carried out without requiring planning permission, providing they are within certain limits. Class Q of Part 3, Schedule 2 of the GPDO 2015 (as amended), allows agricultural buildings to be converted into dwellinghouses (Class C3) providing:

The building was previously used solely for an agricultural use as part of an established agricultural unit;

- The cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3 or the cumulative floor space of the existing building changing use to larger dwellinghouse exceeds 465m².
- the floor space of any larger dwellinghouses does not exceed 465m²; (this includes building which have previously changed use under Class Q within the established agricultural unit);
- The cumulative number of separate smaller dwellinghouses does not exceed 5 and the floor space of any larger dwellinghouses does not exceed 465m² (this includes building which have previously changed use under Class Q within the established agricultural unit);
- The site is not occupied under an agricultural tenancy
- There has been no PD development under Class A (a) or Class B (b) of GDPO Part 6
- the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point
- the development would consist of building operations other than the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and partial demolition to the extent reasonably necessary to carry out building operations
- the site is on article 2(3) land;
- The site does not form part of a site of special scientific interest; safety hazard area or military explosive storage area;
- The proposal is not for a listed building or scheduled monument.

The planning statement (paragraph 3.1) and application form (dated 20.07.2022) states that the site is and was in use on 20th March 2013. This statement is not supported by the site visit on 08.09.2022, which evidenced both buildings used for the storage and usage of domestic items, including:

Building 1

- Bicycles x 8
- Bicycle trailer
- Workshop and equipment
- Wine storage

Building 2

- Several items of gym equipment including 2 items of equipment fixed to the internal structure of the building
- Domestic furniture including garden furniture, mirrors, cupboards and storage boxes
- Domestic vehicle trailer

Only the following items of an agricultural nature; a tractor, bailer and livestock trailer parked within Building 2 were noted on the day of the application site visit. A car and domestic vehicle trailer were also noted parked inside of Building 2 on a previous site visit on 14.06.2022.

The applicants have also confirmed in email correspondence dated 15/08/2022 that *“there is presently a 50/50 use of the Hay-barn and workshop for agri/resi use”*. There has therefore been a material change of use of both buildings as they are currently in a mixed use of agricultural and domestic usage.

The applicants have been asked to provide further evidence (supporting evidence, photos, chronology and statements) in respect of criteria Q.1 (a) to clarify what the buildings were being used for on 20th March 2013 as the planning history would suggest they were in use for equestrian purposes. The applicant has provided photographs of the surrounding land from 2011/2012 however no further information on the buildings at this time has been provided.

It is unclear from the evidence submitted at Appendix A whether there is an established agricultural unit. The applicant has been asked to clarify the extent of any associated agricultural trade or business, however no further information on ‘Kristinas’ has been submitted. It is therefore considered that it is not in accordance with criteria (a) of Class Q.

Consequently, there is insufficient evidence to indicate that the site is or was used solely for an agricultural use as part of an established agricultural unit on the requisite dates as set out under paragraph Q.1 (a) as the buildings have not been solely or last in agricultural use prior to and since 20th March 2013.

The accumulative floor space proposed for change of use would be 192m², less than 450m², and is therefore compliant with Class Q (b). No other building on the site has been converted under Class Q.

The external alterations have been amended and reduced during the application process. The proposal would retain the existing external walls and dimensions of the existing building. Some partial demolition of the south east (side) elevation of Building 1 and the north west (side) elevation of Building 2 would be required to provide a connection between the two buildings as proposed House A would utilise Building 1 and part of Building 2.

No building condition report has been submitted to confirm the buildings are capable of conversion however given the level of partial demolition and external works proposed the extent of the works are considered reasonably necessary to carry out building operations, as allowed by paragraph Q.1(i)(i).

The site is owned, not tenanted

The site is not on article 2 (3) land,

The planning history confirms that no PD rights under Part 6 (PD rights for agricultural buildings) have been exercised on the agricultural unit

The proposal is not for a listed building or scheduled monument.

Prior Approval matters – only the following matters can be considered.

Transport and highway impacts

The Highways Officer raises no objection to the proposals from a highway perspective and the proposed parking provision of 4 spaces would meet the requirements of the Residential Parking Standards SPD. The provision of cycle storage could be conditioned if prior approval were to be given.

Noise Impacts

The EBC Environmental Health officer confirms that *'an adverse and frequent noise impact to the planned dwellings is not anticipated'* and there would not be *'other potential pollution sources such as agricultural odours or dust or fumes'*. The provision of artificial lighting and the need for a Construction Environmental Management Plan could be conditioned if prior approval were to be given.

Contamination Risks

The buildings are in a mixed use and the EBC contamination officer has stated that *'due to the former uses of the site it has the potential to be impacted by land contamination, and the proposed new use is of type which is sensitive to contamination'* and it is noted that no information is provided to show existing or potential risks have been considered as part of the proposal. The provision of further reports in relation to a Preliminary Investigation and Preliminary Risk Assessment documenting previous and existing land uses of the site and adjacent land, a site investigation documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the Preliminary Investigation and site-specific scheme for remedial works and measures could be conditioned if prior approval were to be given.

Flood Risk

The application site is located within Flood Zone 1 and therefore in an area of low flood risk from fluvial sources. Furthermore, it does not lie within a "critical drainage area" notifiable by the Environment Agency. For these reasons there is no requirement under Class Q to consult the Environment Agency.

Whether the location or siting of the building makes it otherwise impractical or undesirable to change use to residential

The terminology "impractical" and "undesirable" are not defined in the GPDO however the NPPG makes it clear that LPAs should apply a reasonable ordinary dictionary meaning to the words. Impractical indicates that the location and siting would not be sensible or realistic and the word undesirable suggests that it would need to be harmful or objectionable. The NPPG is clear that Class Q does not apply a test in relation to sustainability of location given the inherent rural location of agricultural buildings. It states; *"That an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval"*. Just because the buildings are situated in designated countryside, it is not sufficient to render it unacceptable in this regard. Indeed, given the location of the buildings close to other buildings along Brook Lane and with existing services, it is considered that, for the specific purposes of the test under Class Q, the siting and location is acceptable.

The design or external appearance of the building

The proposed building operations subject of this application are confined to the elements allowed for in Class Q. The proposed new openings would not detrimentally affect the character and appearance of the buildings. There is therefore no justification to refuse on design/appearance grounds.

Other matters: -

Ecology

The proposal involves the conversion of two rural buildings which may contain potential bat roosting features. The EBC ecologist has objected on the grounds that the proposal would cause an unacceptable negative impact on an Ancient Woodland SIN. It is advised that a Preliminary Ecological Appraisal and Bat Survey should therefore be carried out to identify the protect species that could be affected and to enable the imposition of suitable conditions

to mitigate against any potential effects on protected species. Notwithstanding the prior approval limitations previously stated, consideration of such ecology matters is necessary in accordance with the Wildlife and Countryside Act 1981 (as amended) and legislation relating to the protection of European Protected Species.

Habitat Regulations

Article 3 (1) of the GPDO imposes a condition of any permission under the GPDO that in cases where a development is likely to have a significant effect on a European site, either alone or in combination, the development must not be begun until the developer has received written notification of the approval of the LPA under Regulation 75 to 78 of the Conservation of Habitats and Species Regulations 2017. Any such habitat regulations application must be made as a separate process to this Prior Approval application and before the permitted development begins.

Natural Light

It is clear from the proposed floor plans and elevations that each habitable room within each unit would be lit by a window. It is considered that the proposal complies with the natural light test set out in the GPDO.

Summary

The planning history of this site indicates the buildings were formally in equestrian use, following the granting of planning permission F/11/69156 and it is unclear what the use of the buildings were on 20th March 2013.

The buildings only qualify if they were in agricultural use on or before 20th March 2013, (irrespective of when they ceased to be used for agriculture) provided their use did not change to any other purpose after they ceased to be used for agricultural purposes. There has clearly been a material change of use to a mixed agricultural and domestic use since 20th March 2013.

Based on the submitted information and the planning history of the site, it appears that the proposal does not meet the required criteria of Class Q (a) and the change of use cannot be considered under the provisions of Class Q.

Conclusion

The information submitted cannot demonstrate that the proposal is in compliance with the criteria of Class Q(a) of the General permitted Development Order 2015, (as amended), in relation to the existing use of the building and the site of the proposed change of use.

Equalities Implications:

Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states:

- A public authority must, in the exercise of its functions, have due regard to the need to:
 - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

When making policy decisions, the Council must take account of the equality duty and in particular any potential impact on protected groups. It is considered that this application does not raise any equality implications

Conclusion: For the reasons set out above, prior approval is refused for the following reasons:

- 1) The site, the subject of this prior notification, was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013 and was not last in use for an agricultural use. It does not therefore meet the criteria of Class Q(a) of the General Permitted Development Order 2015. Accordingly, it is considered that the proposed conversions are not permitted development under Class Q of the Town and Country Planning (General Permitted Development) 2015 (England) Order 2015.

Recommendation:

PERMIT ☐

REFUSE ☒

Comments ...