

BOROUGH OF KETTERING

Committee	Full Planning Committee - 04/09/2019	Item No: 5.4
Report Originator	Sean Bennett Senior Development Officer	Application No: KET/2019/0418
Wards Affected	Slade	
Location	New Lodge Farm, Church Lane, Cransley	
Proposal	s.73A Retrospective Application: Change of use from agricultural buildings to form three dwellings, associated works and garage extension (Retrospective) and sub-division of garden land	
Applicant	Mr D Cawthorn C/O Mr A Brown	

1. PURPOSE OF REPORT

- To describe the above proposals
- To identify and report on the issues arising from it
- To state a recommendation on the application

2. RECOMMENDATION

THE DEVELOPMENT CONTROL MANAGER RECOMMENDS that this application be APPROVED subject to the following Condition(s):-

1. The development hereby permitted shall not be carried out other than in accordance with the approved plans detailed below.

REASON: In the interest of securing an appropriate form of development in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

2. The walls hereby approved in the courtyard shall be completed within one year from the grant of this planning permission to a height of no less than 1.6m and shall be constructed in brick and/or stonework that matches the existing external materials of the buildings on the site.

REASON: In the interest of residential and visual amenity and in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

3. Notwithstanding the provisions of Article 3 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) no building, structure or other alteration permitted by Class A, B, C, D and E of Part 1 of Schedule 2 of the Order shall be erected, constructed or installed on the application site.

REASON: In the interest of residential and visual amenity and in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

Officers Report for KET/2019/0418

This application is reported for Committee decision because there are unresolved, material objections to the proposal from Great Cransley Parish Council

3.0 Information

Relevant Planning History

KE/2002/0541 – Change of use to guest house and dwelling – APPROVED – 17/12/2002 – the full description of this proposal provided in the relevant Officers Report was as follows:

The proposal is to convert a number of stone-built barns into holiday accommodation (with 8 fee generating bedrooms) which is envisaged as being run on a bed and breakfast basis. It is also proposed to have staff living in the premises and a separate annex for permanent living accommodation. The elevations of the buildings will remain the same as at present. Extension to the buildings is proposed to form a car port to the north west side of the buildings and internally to provide a first floor space within the existing two-storey barns.

KET/2008/0287 – Section 73A Retrospective Application: Conversion and change of use of barns to guest house and dwelling – APPROVED – 30/05/2008 – this permission relates to part of the building that formed part of the above permission and other than some changes to the internal layout was a repeat of that consent to that part of the building.

OFFICER NOTE: neither of these permissions appear to have been implemented

Site Visit

Officer's site inspection was carried out on 10/07/2019 and 06/08/2019

Site Description

The site is located in the open countryside approximately 1km to the west of the built-up area of Great Cransley and is accessed via a hard-paved single lane track from Church Lane, Great Cransley. The built-up area of Mawsley is approximately 270m to the west which can be accessed on foot from the site via Public Rights of Way.

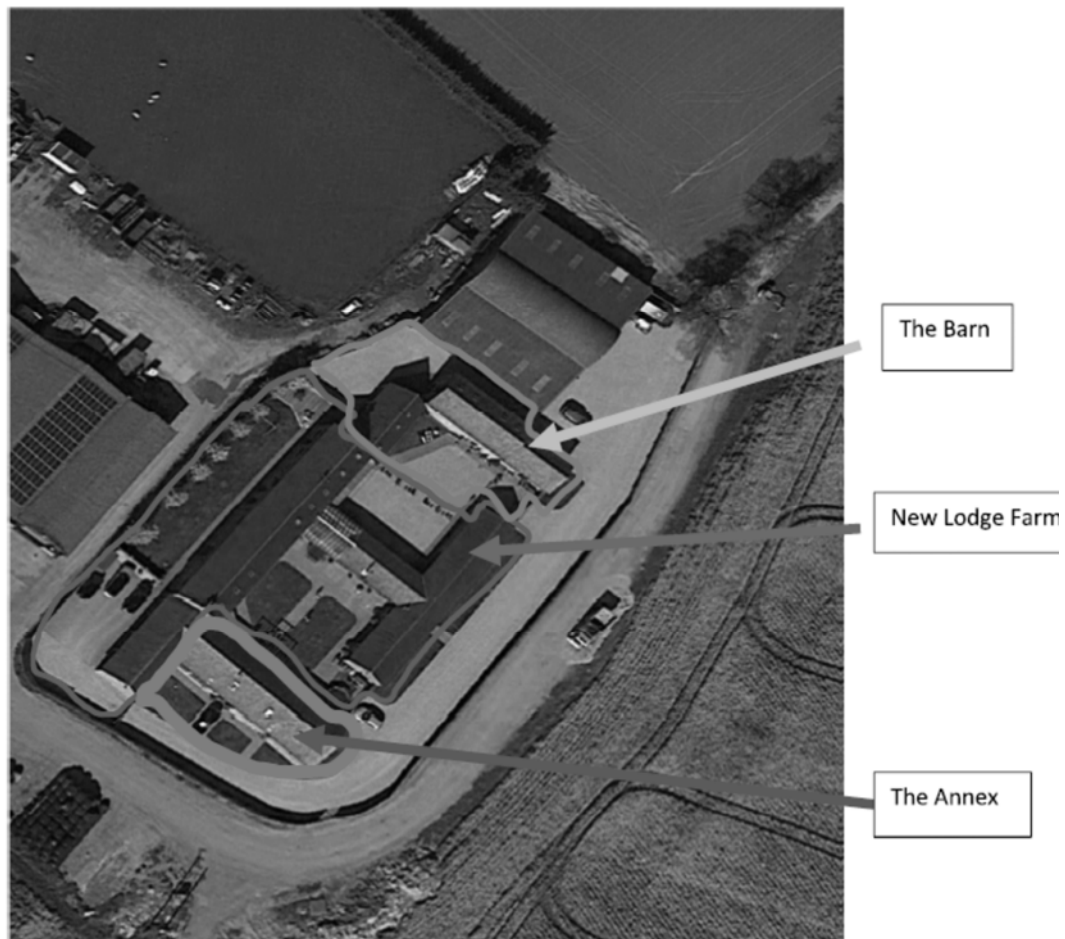
Public Right of Way (PROW) Bridleway (GG9) follows the route along the access from Great Cransley which continues along the site's eastern edge before continuing southwards to link up with other PROW's. Adjacent the site and to its north-east and north-west are modern agricultural buildings with farmland surrounding.

Despite the above permissions the range of former predominately stone farm buildings, set out in an enclosure layout, have instead changed their use to three independent dwellings believed to have been implemented without the

benefit of planning permission at some point between 2004 and 2006. These buildings have become known as and will be referred throughout this report as: (1) 'New Lodge Farm'; (2) 'The Barn'; and; (3) 'The Annexe'. The nature of these dwellings are as follows:

1. New Lodge Farm – is positioned between the other two dwellings in an H-layout and consists of single and two storey elements with four bedrooms and is referred to in the submission as the 'main residential unit'
2. The Barn – is located toward the northern extent of the site on the approach and consists of a predominately two storey dwelling with three bedrooms – this property is let from New Lodge Farm
3. The Annexe – is located toward the southern extent of the site and consists of a single storey two-bed dwelling and is also let from New Lodge Farm

The below extract of the submitted Design and Access Statement is provided to assist the reader to visualise the relationships of the dwellings to one another and the site layout:



The overall site has been retained in one ownership and does not have any connection with the surrounding farm business.

Proposed Development

The application originally sought retrospective planning permission for change of use of 'The Annexe' and 'The Barn' however it became apparent that 'New Lodge Farm' also does not have the benefit of planning permission and that a garage extension has also been constructed at an unknown time and thereby the original description of the application has been amended to reflect those matters.

The applicant appears to be aware that planning permission was required for what is now proposed and relies much on the passage of time for justification.

The application also proposes to subdivide the site's inner courtyard by wall to create outside space for each dwelling.

Any Constraints Affecting the Site

Within the open countryside

4.0 Consultation and Customer Impact

Great Cransley Parish Council: Object to the proposal on the following summarised grounds:

- Located in the open countryside inconsistent with Local Policy 7 and RA3 and the revoked Policy 1 of the North Northamptonshire Core Spatial Strategy
- The site's development has not been carried out in accordance with the 2008 permission and thereby the granting of that permission is not a material consideration
- The proposal does not maintain the vitality of rural community
- Other permissions granted outside of village confines is not applicable – the application should be considered on its own merits
- The proposal involves the re-use of existing buildings but there is no local need and therefore the application should be refused
- The change of use of the main house should also be subject to a change of use

KBC - Environmental Protection: Say '*no comments.*'

NCC – Local Highway Authority (LHA): Say that they cannot support the application requiring further information to fully assess the proposals; with the following summarised observations:

- Whether the proposal is for two or three dwellings should be clarified

- Access is via a long access road
- Parking standards should be applied
- No dimensions of the car parking spaces have been provided
- No cycle parking has been proposed
- Details of refuse collection are required and details of fire tender access
- The proposal should not interfere with PROW

5.0 Planning Policy

National Planning Policy Framework (NPPF):

2. Achieving sustainable development
5. Delivering a sufficient supply of homes
8. Promoting healthy and safe communities
9. Promoting sustainable transport
11. Making effective use of land
12. Achieving well-designed places

Development Plan Policies

North Northamptonshire Joint Core Strategy (JCS):

1. Presumption in favour of sustainable development
8. Place shaping
9. Sustainable buildings
11. The network of urban and rural areas
28. Housing requirements
29. Distribution of new homes
30. Housing mix and homes

Saved Policies in the Local Plan (LP) for Kettering Borough:

7. Environment: Protection of the open countryside
- RA5. Rural Area: Housing in the open countryside
- RA14. Rural Area: Reuse and conversion of rural buildings

6. Financial/Resource Implications

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None

7.0 Planning Considerations

Accepting that the application is retrospective the golden thread that should be kept in mind as the below report progresses is; in the event that the application is considered to be acceptable today based on Planning Policy and guidance then planning permission should be granted.

The key issues for consideration in this application are: -

1. The principle of the development
2. Fall-back position

3. Impact on character and appearance
4. Impact on residential amenity and the farm business
5. Impact on highway safety
6. Implications of the proposal being retrospective

1. The principle of the development

The site is located in the open countryside. Saved Policies 7 and RA5 of the Local Plan and Policies 11 and 29 of the JCS severely restrict development in such locations in the interests of securing a sustainable pattern of growth and to protect the intrinsic character of the open countryside. The proposal does not meet any of the exception criteria laid out in the JCS but it does support the appropriate re-use of rural buildings.

We then look to Saved Policy RA5 of the Local Plan, which says that *'planning permission will not normally be granted for residential development in the open country'* but then goes on to give certain exceptions. Exception (ii) permits the *'reuse/conversion, retention and/or reinstatement of a suitable rural building'* and then refers to saved Policy RA14. There is no requirement in this exception criteria to, at the same time, also demonstrate a need, as intimated by Great Cransley Parish Council. The basic tenet thereby for conversion of existing buildings in the open countryside is consistent with the Development Plan when taken as a whole.

Turning thereby to the referred saved Policy RA14 of the Local Plan. This Policy says that *'planning permission will be granted for the reuse or conversion of existing buildings...in the open countryside...'* and then goes on to give a series of criteria that should all be satisfied for a proposal to be considered acceptable. The criteria are; (i) the building should be physically suitable for conversion and retain its character; (ii) the use should be compatible with adjacent farming activities; (iii) extensions should be small and complementary; (iv) in keeping with the original design and features of the building; (v) retain or reinstate walls and roofs; (vi) provide complementary screening and garden land; and (vii) protect wildlife.

The majority of the criteria seek proposals to respect the character and appearance of the conversion building. In that regard the host buildings of the proposal have no doubt experienced noticeable changes to their original agricultural appearance. However, overall the conversion has been handled sensitively, made use of pre-existing openings, resisted the creation of new openings on out-ward facing elevations and has retained a strong farmstead enclosure layout. Whilst it is notable that the openings have not been as sensitively handled as those permitted in the 2002 application, they are considered to be within the permitted thresholds of Policy RA14, which seeks to retain the external appearances of the host rural buildings.

An extension, for which retrospective permission is also sought, involved the construction of a garage, rear access hallway with above storage space associated with 'The Annexe' and 'New Lodge Farmhouse' is modest and inconspicuous and reinforces the enclosure layout. And there is considered to be subordinate and *'complementary'*.

A condition shall be attached revoking the permitted development rights for the dwellings and thereby ensure that any further additions or alterations continue to respect the traditional rural nature of the buildings.

In addition; the residential use has been implemented without any significant recognisable changes to the building's external appearance, the provision of a curtilage fence provides a screen which means that the proposal is not readily perceivable as a change to the agricultural function of the buildings. Moreover, the proposal makes adequate provision for useable garden space for each dwelling. There is also no reason to believe that the proposal would harm biodiversity in light of the already implemented nature of the proposal. The dwellings have been in place for at least twelve years without any apparent conflict with surrounding farm uses. The proposal thereby is considered to be consistent with the criteria laid out in Policy RA14 and therefore follows that it meets the exception for reuse of buildings in the open countryside permitted by Policy RA5 and is broadly consistent with Policy 11 of the JCS which permits appropriate reuse of rural buildings.

The granting of the 2002 and 2008 applications to a quasi-residential use (guesthouse) is also demonstrative of this Policy compliance.

It is therefore considered and notwithstanding the retrospective nature of the proposal that the development is acceptable in principle. As to why the applicant chose not to apply for planning permission to change the building's use to residential before implementation or at any time prior to now, is not clear.

This Development Plan policy approach is consistent with paragraph 79 of the NPPF which, amongst other things, allows the development (for housing) where the proposal relates to the reuse of redundant or disused buildings. This Government leaning to open countryside development for existing buildings is also consistent with General Permitted Development allowances which permits the change of use of agricultural buildings to residential provided they meet certain conditions. It is highly probable that if the proposal had not been implemented then their simple change of use would have been permitted under the General Permitted Development Order today.

Notwithstanding the above findings in favour of the proposal, in light of the retrospective nature of the proposal and the often-understandable resistance to grant permission in such circumstances, the fall-back position will be discussed below.

2. Fall-back position

In circumstances such as this, where a residential use and building operation has existed for over four years without the benefit of planning permission, a Certificate of Lawfulness is more commonly sought rather than planning permission. Why this approach has not adopted by the applicant in this case is not entirely clear. However, in order to determine whether or not there is a legitimate fall-back position it is necessary to consider whether the change of

use would have 'deemed consent' due to the passage of time and thereby whether a Certificate of Lawfulness would be issued in the event that such an application was submitted.

Looking at 'New Lodge Farmhouse' and the 'The Barn' first; Council records available indicate that these properties have been used as independent dwellings since mid-2006 and the extension was, on the balance of probability likely to have been built at around the same time. Crucially there does not appear to have been any attempt to conceal the use with the dwellings having been used continuously for over four years for residential purposes. Thereby, in the event that a Certificate of Lawfulness application was to be received, it is highly probable that 'The Barn' and 'New Lodge Farmhouse' would be found to be immune from enforcement action and thereby would have deemed consent as independent dwelling-houses and the Certificate would be issued. The fall-back position therefore for these dwellings is legitimate and is a considerable factor that should be taken into account when assessing this application as in effect 'New Lodge Farmhouse' and 'The Barn' already have consent granted to them through the passage of time.

Turning to 'The Annexe' property; this lawful use situation is a little less clear primarily because the property appears to exist in a way that is linked more closely to 'New Lodge Farmhouse' in terms of how the Council Tax is collected as a whole on both dwellings. This application has however, been supported by a series of evidences with a view to demonstrating that whilst there are some technical linkages between the 'New Lodge Farmhouse' and 'The Annexe' that they function as independent dwellings with 'New Lodge Farmhouse' being the landlord. These evidences include:

- Drawings showing that 'The Annexe' and 'New Lodge Farmhouse' have no internal connections and that 'The Annexe' has all the necessary facilities and accommodation to be able to function as an independent dwelling house with separate private areas
- An accountant and letting agent letter confirming that 'The Annexe' has been let since May 2014
- A Council letter confirming the current occupier of 'The Annexe' with no apparent ties to the occupier of 'New Lodge Farmhouse' in terms of name
- Tenancy agreement dated July 2015
- Bank Statement and Car Insurance documents from the current occupier (although these give 'New Lodge Farmhouse' as an address)
- An accountant letter and letting agent letter confirming that 'The Annexe' effectively pays a proportion of 'New Lodge Farmhouse's' Council tax

On site it would appear that 'The Annexe' and 'New Lodge Farmhouse' have a close relationship (such as the availability of a shared internal courtyard amenity space) but not intimate and are perfectly capable of functioning as two independent residential units without assistance from one another.

It is also apparent that there has been an element of concealment associated with 'The Annexe', not so much how it appears physically on site but insofar as Council records are concerned, whether on purpose or not. The last two points in the above list of provided information is demonstrative of this view.

Planning Practice Guidance says: "*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.*" (Paragraph: 006 Reference ID: 17c-006-20140306)

The key test thereby is whether on the 'balance of probability' on the basis of the information available whether the existing use is lawful.

In this case, whilst there is some ambiguity in the information provided, by virtue of the information that has been provided and on the strength of what can be seen on site on the balance of probability the 'The Annexe' has been used for a continuous period of at least four years as an independent dwelling. A Certificate of Lawfulness would therefore most likely be issued.

The fall-back position therefore for the proposal as a whole is legitimate and is a considerable factor that should be taken into account when assessing this application as in effect the three dwellings on the site already have consent granted to them through the passage of time.

3. Impact on character and appearance

Policy 8 (d) of the JCS consistent with Chapter 12 of the NPPF seeks development to respond to an areas local character and wider context.

This matter has been discussed in the above Section 7.1 as its visual quality is linked to its in-principle acceptable where conversions are proposed in the open countryside.

There may be some detailed elements of the conversion that may have been handled slightly more sensitively, such as to certain openings. However, as a whole the conversion consists of a high-quality sympathetic design that pays respect to the rural character buildings and its rural surroundings.

The proposed subdivision of garden land is contained within the enclosed built-form of the dwellings and thereby does not have any adverse visual implications. The wall shall be conditioned to be completed within one year from the grant of permission and to be built in matching brick or stone work.

The proposal therefore is considered to be acceptable in this regard.

4. Impact on residential amenity and the farm business

The JCS in Policy 8 (e), consistent with the paragraph 127 (f) of the NPPF seeks to safeguard residential amenity.

The dwellings do not have an association with the surrounding agricultural business or rural land uses and appear to have been occupied in that manner since 2006. In particular 'The Barn' has a very close relationship to a sizeable modern agricultural building with another larger range of barns to the north. However, the fact that the residential use appears to have co-existed with the surrounding agricultural business without seeming issue for over ten years there is no reason to believe that this would not remain the case going forward and thereby not have harm to the residential amenities of occupiers. As such it would be unreasonable to impose an agricultural 'tie' condition.

The relationships between the three dwellings on the site do not appear to cause any issue and any minor issues than may currently exist through the sharing of the inner courtyard will be overcome through the provision of the proposed sub-dividing walls. Those walls can be required to be completed within one year from the grant of a permission. The internal space is consistent with National Space Standards and the private out space arrangements are appropriate to ensure a good standard of living for occupiers.

As such and with strength given to the length of time that the residential use has inured with the surround rural land use activities the proposal would not have an adverse impact to residential amenity or the ability of the farm business to operate in the way that it currently does.

The proposal therefore is considered to be acceptable in this regard.

6. Impact on highway safety

The JCS in Policy 8 (b) seeks to ensure a satisfactory means of access and provision for parking and resists development that would prejudice highway safety.

The site is located in a rural location; however, it is within relatively easy reach of Mawsley facilities on foot across fields and the more limited facilities available in Great Cransley and thereby the location has a modicum of sustainability. The in-principle acceptability of housing here however relates to their converted nature rather than their location.

The site is accessed via a 1km single hard-paved track, which it shares with PROW Bridleway GG9 and which allows slow passing of vehicles with care and is well-maintained. This road-way allows access and egress to the dwellings in anything but the most extreme of weather conditions, as is the case in most rural village locations. The access therefore is satisfactory and the continued use of the road-way going forward for the small number of movements that the residences create would not be significant and therefore would not compromise highway safety in the area and in particular on Church Lane, Great Cransley.

The site has at least four parking spaces available per dwelling and probably up to another 20 in the private area to the front. This provision is ample with

cycle storage available in the garages and private areas. The site is accessibility to fire tenders and the existing refuse collection arrangements appear to function successfully.

The proposal therefore and having regard to the fact that the dwellings and their movements have been influencing the highway arrangements in the area for over ten years, is not considered to give rise to highway safety concerns.

7. Implications of the proposal being retrospective

As the proposal is retrospective, in the event that an application is refused the Local Planning Authority would be obliged to take enforcement action. As such the expedience of whether or not to take enforcement action is a material planning consideration in such circumstances and if it is considered that it would not be expedient to take enforcement action then this would amount to weight that should be applied in favour of the proposal.

In this case in the event that the proposal would continue without the benefit of planning permission (which it would) the opportunity for the Council to take Enforcement action is remote in the extreme by virtue of the fall-back position, discussed above. This fall-back is simply that due to the passage of time the change of use and the associated operational works carried out would have deemed consent and thereby would be issued a Certificate of Lawfulness in the event that the applicant submitted such an application.

Notwithstanding this fall-back position, which is weighty, the proposal has been found to be acceptable in any event as it relates to the conversion of traditional agricultural buildings rather than a new build. The failure therefore not to submit an application for the proposal prior to implementation or at any point prior to now is not clear.

A notably benefit associated with the grant of planning permission is that the permitted development rights of the dwellings can be revoked in the interests of the visual amenity of the traditional rural buildings. Such a proposition would not exist with the issuing of a Certificate.

That being the case it would not be expedient for Enforcement Action to be pursued in the event that this application is refused and therefore that weight would be carried in further favour of the proposal.

Nevertheless, and as such whilst the carrying out of unlawful operations and changes of use cannot be condoned, the applicant is keen to regularise the situation and therefore the retrospective nature of the proposal should not unduly count against them with the application considered on its planning merits.

Conclusion

In light of the above, including the discussed fall-back position, the proposal is considered to comply with the Development Plan and the aims of objectives of the NPPF and therefore is recommended for approval.

Background Papers

Title of Document:

Date:

Contact Officer:

Sean Bennett, Senior Development Officer on 01536
534316**Previous Reports/Minutes**

Ref:

Date: