Recommendation Report for

REF NO: **Y/84/14/PD**

LOCATION: South Barn
Drove Lane
Yapton

PROPOSAL: Prior notification under Class MB for change of use of agricultural building to a dwellinghouse (C3)

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	Conversion of the existing barn into one 2 bedroom split level dwelling. A parking and turning area is located within the existing walled courtyard at the end of the access track. In addition to the change of use, a number of new windows and doors are proposed. No demolition is required.
SITE AREA	The gross floor area of the building amounts to 101m2. The external space is broadly the same resulting in a total site area of around 202m2 or 0.0202 hectares.
RESIDENTIAL DEVELOPMENT DENSITY (NET)	50 dwellings per hectare.
TOPOGRAPHY	Predominantly flat.
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	No boundary to the sides or rear. There is a part 2, part 2.3m high flint wall to the front which encloses a small courtyard of land.
SITE CHARACTERISTICS	Existing rectangular barn of a traditional style made up of horizontal timber boards with a corrugated sheet roof. The building has a roof of almost 7m in height. Parts of the flank elevation appeared to be held up by timber posts. The barn appeared to be in use for the storage of agricultural equipment/machinery. The site is accessed by a track from Drove Lane. The track is currently unsuitable for domestic type cars.
CHARACTER OF LOCALITY	Rural. The site is surrounded on all sides by agricultural land with a ploughed field immediately adjacent to the north-western (rear) and south-western elevations. There are agricultural buildings a short distance to

the northeast and a solar farm to the southwest.

RELEVANT SITE HISTORY

Y/100/13/PD	Prior Notification under Class M (Flexible Uses) for change of use from agricultural to B1 (Business)	No Objection 28-01-2014
Y/101/13/PD	Prior Notification under Class M (Flexible Uses) for change of use from agricultural to B1 (Business)	No Objection 28-01-2014
Y/102/13/PD	Prior Notification under Class M (Flexible Uses) for change of use from agricultural to B1 (Business)	No Objection 28-01-2014
Y/64/14/PD	Prior notification under Class MB for change of use of agricultural building to a dwellinghouse(C3)	Objection 12-09-2014 *Appealed*
Y/2/48	Erection of dutch barn	ApproveConditionally 07-09-1948
Y/2/48/A	Grain dryer	Approve 03-05-1950
Y/30/71	Extension to dutch barn	Permit'd Devel 21-09-1971
Y/9/72	Building for storage of implements combines grain etc	Permit'd Devel 15-03-1972

None.

REPRESENTATIONS

Representations received:

Four letters of objection including one from the tenant farmer. Grounds of objection are as follows:

* The site is part of an agricultural tenancy;
* The building is used full time for the storage of machinery etc.;
* The access track is used regularly to access "Southbarn and Rife" fields and also a muck standing;
* The barn, access track and Drove Lane all regularly flood;
* Bats & Barn Owls roost in the barn;
* There are no mains connections to the property so it would cause much disturbance to the area to have these laid and connected; and
* The conversion of the barn would be out of keeping with the area and would not merge in with it's surroundings.

Comments on Representations received:

Comments noted. Unfortunately, under the terms of Class MB of Part 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), the local authority can only have regard to the following issues:

(a) transport and highways impacts of the development;
(b) noise impacts of the development;
(c) contamination risks on the site;
(d) flooding risks on the site; or,
(e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.

These are discussed in the conclusions section. Objections having regard to other impacts cannot be considered.

CONSULTATIONS

WSCC Strategic Planning
Environmental Health
Environment Agency

Consultations responses received:

Environment Agency - "The site is located in Flood Zone 3 defined by the NPPF as having a high probability of flooding. I can confirm that having reviewed the information submitted, we have no objections to the proposal as submitted."

WSCC Highways - "The proposal is for the prior notification of an existing agricultural unit into a single residential unit with access onto the publicly maintained highway with Main Road via an existing access point. From an inspection of the plans alone, there is no apparent visibility issue at the point of access onto Main Road. The most recently available verified accident records reveal there have been no personal injury accidents in the vicinity of the existing point of access, indicating a low risk of highway safety issues with this proposal. The conversion of an agricultural barn into residential will generally result in a reduction of movements from the site. However, even if there is a small increase in movements there would not be a detriment to highway safety from this proposal."

Arun D.C. Environmental Health - "No adverse comment. However, there is no detail as to the provision of utilities to the site such as water supply".

Comments on Consultation responses:

Comments noted.

POLICY CONTEXT

Designation applicable to site: Outside built up area boundary.

DEVELOPMENT PLAN POLICIES

Arun District Local Plan 2003:

PLANNING POLICY GUIDANCE

NPPF National Planning Policy Framework

POLICY COMMENTARY

This application falls to be determined under the provisions of Class MB of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) in respect of:

(a) a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and

(b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

This application falls to be determined under the provisions of Class MB of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) in respect of:

(a) a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and

(b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

The principle of the development is not in dispute. Class MB allows for the change of use (and limited building operations) provided that:

(1) the site was in an agricultural use on 20/03/13;
(2) that the cumulative floor space within the agricultural unit does not exceed 450m2;
(3) that the number of dwellings does not exceed 3;
(4) that the site is not occupied under an agricultural tenancy (unless the consent of both landowner and tenant has been obtained);
(5) that less than 1 year before development begins, an agricultural tenancy was terminated (unless both the landlord & tenant agreed that the site was no longer required for agricultural use);
(6) that there has been no recent permitted development in accordance with Part 6 of the GPDO;
(7) that the development would not increase the existing footprint;
(8) that the building operations are limited to installation/replacement of windows, doors, roofs & walls and services (water, electricity, gas etc) or partial demolition to facilitate these works;
(9) that the site is not on article 1(5) land, does not form part of (a) a site of special scientific interest, (b) a safety hazard area or (c) a military explosives storage area;
(l0) that the is not or does not contain a scheduled monument and that the building is not a listed building.

In addition, the curtilage must comply with the interpretation provided at Part 3, Paragraph O of the GPDO 1995 (as amended):

"curtilage means, for the purposes of Class M, MA or MB only -

(i) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or

(ii) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building,

whichever is the lesser";

The above criteria have been checked and it is considered that the proposal is not permitted development because the site is occupied as part of an agricultural tenancy and the tenant farmer has not agreed to the change of use. This issue will be analysed in the conclusions section.

Where a proposal is permitted development in accordance with the above, Class MB (paragraph MB.2 (1)) states that an application must be made to determine whether or not the prior approval of the Council will be required. Although, it is judged that that the proposal is not permitted development, this issue was not identified until after the prior approval application had been submitted and accepted. The Council can only have regard to the following impacts:

(a) transport and highways impacts of the development;
(b) noise impacts of the development;
(c) contamination risks on the site;
(d) flooding risks on the site; or,
(e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.

The Order also states that the provisions of Paragraph N shall apply in relation to any application and part (8) of paragraph N includes the following:

"(8) The local planning authority shall, when determining an application-

(a) take into account any representations made to them as a result of any consultation under paragraphs (3) or (4) and any notice given under paragraph (6); and, (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012 as if the application were a planning application."

This allows the local planning authority to have regard to any representations received and the NPPF but only in relation to the 4 issues stated above. Advice has been received from the DCLG which confirms that it is not possible to refuse prior approval on the basis of an issue/impact not listed above. The Local Planning Authority has 56 days to provide its comments to the applicant's agent or it is deemed that they have no objection. This period expired on 11/12/14.

However, as the submission of a prior approval application is only a condition of the proposed change of use being permitted development (see Class MB.2(a)), and given that in this case, the change of use is not permitted development, it is not considered that the late determination of this application has any material impact on the fact that the proposed change of use does not comply with Class MB and is therefore not authorised by the Town and Country Planning (General Permitted Development) Order 1995 (as amended). It should also be noted that the applicant had provided a written statement with the application that described Class MB.1(d) as "not applicable". It was not until the receipt of the tenant farmers objection on 25/11/14 (over a month into the application) that there was any indication that the site was part of an agricultural tenancy.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

WHETHER PERMITTED DEVELOPMENT:

The first thing to consider is whether the proposed change of use complies with the terms of Class MB.1. This section of the Order sets out the cases where development is not permitted. It includes at (d) the restriction that where the site is occupied as part of an agricultural tenancy, both the landlord and the tenant must give their express consent to the change of use. The occupiers of Drove Lane Farm have confirmed that they are tenant farmers and that they use the building for the storage of agricultural equipment/machinery.

The applicant has also confirmed the agricultural tenancy by supplying a copy of the tenancy agreement. The applicant argues that as the barn is listed in the tenancy agreement as an item of 'fixed equipment' which was agreed as redundant and that as the farmer has signed this agreement, that this means that the farmer has given his express consent for the change of use. However, upon close scrutiny of the tenancy agreement, it is clear that it states that the farmer can use the building at his own risk and that the landlord may at any time enter the holding and repair/demolish/remove the building at his own expense. It does not state that the redundant building can be used or converted for another purpose. It is therefore not considered that the agreement gives express consent to the proposed use. Furthermore, it is clear from the tenant farmers objection that he does not agree to the application.

It should also be noted that the "Explanatory Memorandum" for SI 2014 No. 564 makes it quite clear that Class MB.1 (d) was brought in to protect farmers:

"8.3 Consultation responses also identified a need to protect tenant farmers in circumstances where a building may be converted from agricultural use leaving the tenant unable to practically run their business. To address this, the express consent of both the landlord and tenant will be required before a change of use takes place, and where an agricultural tenancy has been brought to an end, in whole or in part, in order to take advantage of the new rights, development will not be allowed for a year unless the landlord and the tenant have agreed that the building is no longer needed for agricultural purposes."

Notwithstanding that it is the local authority's view that the proposed change of use is not permitted development (and therefore that a prior approval application should not have been submitted), it is still considered relevant to assess the application against those criteria listed in MB.2 (1) and this assessment follows.

TRANSPORT AND HIGHWAY IMPACTS:

The Highway Authority have not raised any objections to the application. They comment that there are no apparent visibility issue at the point of access onto Main Road and that there have not been any recent personal injury accidents in the vicinity of the existing point of access. They have requested a condition on cycle parking but as the application is being refused, this cannot be imposed.

CONTAMINATION AND NOISE IMPACTS:

ADC Environmental Health Officers have not raised any objections or comments with regards to noise or contamination issues.

FLOOD RISK:

The Environment Agency note that the site is in Flood Zone 3 but that having reviewed the information submitted, they have no objections to the proposal as submitted.

SUITABILITY OF THE SITE:

Class MB (paragraph MB.2 (1)) also advises that these prior approval applications can be determined with regard to whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a residential use.

The site is located off an existing single track road which stretches approximately 1km back from the junction with Main Road. The building in question stands alone but is only 300-400m from the main farm complex.

In a recent Arun decision concerning a Class MB conversion from a grain store to two dwellings on Stakers Farm in Yapton (Ref Y/77/14/PD), it was considered that the buildings location within a farm complex meant that new dwellings were undesirable. It is considered relevant to mention this because it is important to be consistent across the district. However, in this case, the barn is on its own and although there are 'working' fields to the rear and sides, access & egress to the barn would be via a walled courtyard to the front. As such, it is not considered that there would be any conflict arise between the use of the barn as a dwelling and the use of the surrounding agricultural land. It is noted that there is a muck heap near to the building but it is considered that the farmer could find an alternative way to access this or simply move it elsewhere on the farm. It is therefore considered that this is a suitable and practical location for residential dwellings

REPRESETATIONS FROM LOCAL RESIDENTS:

It is considered that the representations of neighbouring properties have been considered elsewhere in the report.

SUMMARY:

It is considered that the proposed change of use is not permitted development having regard to Class MB.1 (d) of the Order and therefore, although the local authority raises no objections in respect of highway issues, noise or contamination issues, flood risk or the location of the building, the application must fail and should therefore be refused for the following reason.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

OBJECTION

1 Part 3, Class MB.1 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) states that development is not permitted where the site is occupied under an agricultural tenancy, unless the express consent of the tenant has been obtained. In this case, the site is occupied as an agricultural tenancy and the tenant farmer has not given his express consent to the change of use. Therefore, the proposal change of use is not permitted development under the terms of Class MB and the prior approval application must fail.