



ITEM NUMBER: 11

PLANNING COMMITTEE DATE: 08 March 2023

REFERENCE NUMBER: UTT/21/2922/FUL

LOCATION: Rear Of Marshes
Cherry Street
Duton Hill

SITE LOCATION PLAN:



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Organisation: Uttlesford District Council Date: February 2023

PROPOSAL: Section 73A retrospective application for the retention of buildings for domestic storage of the occupants of the dwellinghouse known as Marshes.

APPLICANT: Mr Carter and Mr Gardiner

AGENT: Sole Concepts Limited

EXPIRY DATE: 17 November 2021

EOT Expiry Date: 15 April 2022

CASE OFFICER: Bruce O'Brien

NOTATION: Outside Development Limits. Within SSSI Impact Risk Zone. Within 6km of Stansted Airport. Adjacent to (east) of a Protected Lane. Adjacent to listed buildings. Edge of Flood Zones 2 and 3.

REASON THIS APPLICATION IS ON THE AGENDA: Called in by Councillor - Impact on the local rural community and neighbourhood, increased noise, pollution and light pollution. Traffic problems.

1. EXECUTIVE SUMMARY

1.1 This application is a retrospective application submitted under Section 73A of the town and Country Planning Act 1990 (as amended).

1.2 The application is one of a tranche of five applications that were submitted for the same site.

1.3 Three applications have been refused under delegated powers (UTT/21/2921/FUL, UTT/21/2923/FUL, UTT/21/2926/FUL); two have been recommended for approval of which this application is one, the other being UTT/21/2927/FUL.

2. RECOMMENDATION

That the Director of Planning be authorised to **GRANT** permission for the development subject to those items set out in section 17 of this report -

A) Conditions

3. SITE LOCATION AND DESCRIPTION:

3.1 The wider application site consists of a combination of former farm buildings and some recently installed structures. The buildings are associated with a listed building (Marshes), which is a single residential dwellinghouse. The site is a former farmyard situated to the rear of Marshes and it is accessed by way of a single driveway leading from the main highway, between Marshes and another bungalow dwelling, Greenbank. The drive leads eastwards onto the site where the land descends into a rural valley which contains a section of the river Chelmer.

3.2 The buildings in question for this application are the two most south-easterly buildings on the site.

The application relates to the operational development and use of units 4 and 5 on the site as identified on the submitted plans and planning statement.

These units are single storey buildings that have been in existence on the site for less than 4 years.

4. PROPOSAL

4.1 This is a retrospective planning application submitted under the terms of Section 73A of the Town and Country Planning Act (1990) for the retention of units 4 and 5, used for domestic storage by the occupants of the Marshes dwellinghouse. The units contain vehicles and machinery used to tend the wider parcel of land in ownership of the applicant, and other domestic items.

It is noted here that although the use of the buildings is for the occupants of Marshes, the buildings are not within the residential curtilage of the dwellinghouse.

4.2 The use of the buildings would be considered in relation to the planning unit within which they sit. The use of the whole planning unit is that of a 'mixed' or 'sui generis' use and under the rule in *Burdle*, it is the unit of occupation that is the appropriate unit to consider, until or unless a smaller unit is identified which is in separate use, both physically and functionally (*Burdle v SSE (1972)*). Here, a smaller unit is identified, but there is not a physical or functional separation from the main planning unit and the use constitutes one within the wider 'sui generis' site.

5. ENVIRONMENTAL IMPACT ASSESSMENT

5.1 The development does not constitute 'EIA development' for the purposes of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

6. RELEVANT SITE HISTORY

6.1

Reference	Proposal	Decision
UTT/0881/88	Change of use of redundant farm building to joinery workshop	Approved. 29.07.1988- applied to the whole of the building which comprises units 1 and 7 (wider site)
UTT/0328/01/FUL	Change of use of redundant farm building to church organ workshop (B1 use)	Approved 07.07.2001- applied to the front section of unit 2 (wider site)
UTT/0282/12/FUL	Conversion of part of farm building and alterations to extend organ workshop	Approved 30.04.2012 – applied to the rear section of unit 2 (wider site)
UTT/21/2921/FUL	Section 73A retrospective application for the retention of use of buildings for B2/B8 use for vehicle repairs and storage of vehicle parts.	Refused 16.01.2023
UTT/21/2923/FUL	Section 73A retrospective application for the retention of building for domestic storage of the occupants of the dwellinghouse known as Marshes	Refused 16.01.2023
UTT/21/2926/FUL	Section 73A retrospective application for the retention of buildings for B8 use as a commercial self-storage facility.	Refused 16.01.2023

7. PREAPPLICATION ADVICE AND/OR COMMUNITY CONSULTATION

7.1 No pre-application advice has been given and no community consultation has been undertaken.

8. SUMMARY OF STATUTORY CONSULTEE RESPONSES

8.1 Essex County Council Highways officers have assessed the proposed development and its access and parking arrangements. From a highway and transportation perspective the Highway Authority has no objections to make on this proposal as it is not contrary to the relevant transportation

policies contained within the Highway Authority's Development Management Policies.

8.2 Highway Authority

8.2.1 Essex County Council Highways officers have assessed the proposed development and its access and parking arrangements. From a highway and transportation perspective the Highway Authority has no objections to make on this proposal as it is not contrary to the relevant transportation policies contained within the Highway Authority's Development Management Policies.

9. PARISH COUNCIL COMMENTS

9.1 Great Easton and Tilty Parish Council object on the following grounds:

Question the description of the application.

Harm to local amenity

Contamination of river Chelmer

Safe removal of asbestos

Vehicle parking provision

Flood Risk

Ecology/protected species

Foul sewage disposal

Highways matters and sustainability of location.

Contrary to Local Plan policy E5 (Re-use of rural buildings)

These matters have been considered during the recommendation process and where relevant and/or material have been given the appropriate weight.

10. CONSULTEE RESPONSES

10.2 UDC Environmental Health

10.2.1 No objection to the retention of the units for domestic storage in association with the Marshes dwellinghouse. As domestic storage, it is considered that the noise generation from the units would be very limited.

10.3 Place Services (Conservation and Heritage)

10.3.1 The proposed development has been considered by way of an assessment of the cumulative impacts of the five applications that have been submitted for this site.

The whole development would cause less than substantial harm to the setting of the nearby listed buildings, by way of infill and intensifying the usage of the site with associated vehicle movements, noise, and lighting.

10.4 Place Services (Ecology)

10.4.1 No objection subject to all mitigation and enhancement measures and/or works being carried out in accordance with the details contained in an approved Biodiversity Enhancement Strategy (Wild Frontier Ecology, July 2022).

11. REPRESENTATIONS

11.1 A site notice was displayed on site and 10 notifications letters were sent to nearby properties. The application was posted in the press on 07.10.2021.

11.2 There has been one representation in support of the application.

11.2.1 The grounds for support are:
Disturbance levels are low from the site as a whole
Traffic impacts are not solely caused by the Marshes site
The countryside requires light industrial sites
Objections to the scheme from other neighbours are unbalanced

11.3 Object

11.3.1 There are 8 neighbour objections to the scheme on the grounds of:
Highway Safety
Intensification of use of the highway/a protected lane
Unauthorised uses
Harm to amenity
Harm to the setting of nearby listed buildings
Ecology/protected species
Drainage matters
Character and Appearance

11.4 Comment

11.4.1 Many of the objections relate to the five applications at the site and any cumulative impacts of the entire scope of uses at the site. The public representations have been considered during the recommendation process and where relevant and/or material have been given the appropriate weight.

12. MATERIAL CONSIDERATIONS

- 12.1** In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, The Development Plan and all other material considerations identified in the “Considerations and Assessments” section of the report. The determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 12.2** Section 70(2) of the Town and Country Planning Act requires the local planning authority in dealing with a planning application, to have regard to:
(a) The provisions of the development plan, so far as material to the application,;
(aza) a post-examination draft neighbourhood development plan, so far as material to the application,
(b) any local finance considerations, so far as material to the application, and
(c) any other material considerations.
- 12.3** Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, or, as the case may be, the Secretary of State, in considering whether to grant planning permission (or permission in principle) for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 12.4 The Development Plan**
- 12.4.1** Essex Minerals Local Plan (adopted July 2014)
Essex and Southend-on-Sea Waste Local Plan (adopted July 2017)
Uttlesford District Local Plan (adopted 2005)
Felsted Neighbourhood Plan (made Feb 2020)
Great Dunmow Neighbourhood Plan (made December 2016)
Newport and Quendon and Rickling Neighbourhood Plan (made June 2021)
Thaxted Neighbourhood Plan (made February 2019)
Stebbing Neighbourhood Plan (made 19 July 2022)
Saffron Walden Neighbourhood Plan (made 11 October 2022)
Ashdon Neighbourhood Plan (made 6 December 2022)
Great & Little Chesterford Neighbourhood Plan (made 2 February 2023)

13. POLICY

13.1 National Policies

13.1.1 National Planning Policy Framework (2021)

13.2 Uttlesford Local Plan 2005

- 13.2.1** S7 – The countryside Policy
GEN1- Access Policy
GEN2 – Design Policy
GEN3 -Flood Protection Policy
GEN4 - Good Neighbourliness Policy
GEN7 - Nature Conservation Policy
GEN8 - Vehicle Parking Standards Policy
ENV2 - Development affecting Listed Buildings Policy
ENV11- Noise Generators
ENV12- Protection of Water Resources

13.3 Supplementary Planning Document or Guidance

- 13.3.1** Essex County Council Parking Standards (2009)
Uttlesford Interim Climate Change Policy (2021)

14. CONSIDERATIONS AND ASSESSMENT

- 14.1** The issues to consider in the determination of this application are:

- 14.2** **A) Principle of Development**
B) Access, parking, and highway safety
C) Environmental Health and Impacts upon amenity
D) Character and Appearance
E) Ecology
F) Heritage Considerations
G) Surface Water Drainage and Contaminants

- 14.3** **A) Principle of development**

- 14.3.1** Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework 2021 (NPPF).

- 14.3.2** The site is set in a location that is outside of any defined settlement boundary, recognised as the countryside.

The construction of buildings in the countryside is an acceptable form of development and the principle is generally acceptable subject to compliance with policies within the Local Plan, namely S7, GEN1, GEN2, GEN4, GEN7, GEN8, ENV2, ENV11, and ENV12.

- 14.4** **B) Access, parking, and highway safety**

- 14.4.1** Paragraph 110 (b) of the NPPF states that ‘safe and suitable access to the site can be achieved for all users’, whilst Paragraph 112 (c) asks that development should ‘create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards.’
- 14.4.2** Local Plan policy GEN1 relates to safe access and states that development will only be permitted where a) Access to the main road network must be capable of carrying the traffic generated by the development safely and c) The design of the site must not compromise road safety and must take account of the needs of cyclists, pedestrians, public transport users, horse riders and people whose mobility is impaired.
- 14.4.3** Essex County Council Highways officers have assessed the development, its access and parking arrangements. From a highway and transportation perspective the Highway Authority has no objections to make on this application as it is not contrary to the relevant transportation policies contained within the Highway Authority’s Development Management Policies.
- 14.4.4** The development is for the retention of buildings that would serve the dwellinghouse known as Marshes. They would be used solely for the storage of items and machinery for domestic use, not in association with any business. Therefore, there would be limited traffic movements involved with the use of the buildings.
- 14.4.5** In view of the above it is considered that the development , subject to the detailed conditions, would comply with the aims of Paragraphs 110 and 112 of the NPPF (2021) and Local Plan policy GEN1.
- 14.4.6** Local Plan policy GEN8 states that Development will only be permitted where the number, design and layout of the proposed vehicle parking places is appropriate for the location.
- 14.4.7** In the case of this application, the buildings are for the use of the occupants of the dwellinghouse known as Marshes and the dwelling has an established parking arrangement. There is no extra parking provision requirement for outbuildings in domestic use. Therefore, the proposal complies with Policy GEN8 of the adopted Uttlesford Local Plan 2005.
- 14.5** **C) Environmental Health and Impacts upon amenity**
- 14.5.1** Environmental Health Officers have reviewed the scheme and have no objection to the retention of the units for domestic storage in association with the Marshes dwellinghouse. As domestic storage, it is considered

that the noise generation from the units would be very limited, and the risk of any other harmful impacts are negligible.

14.5.2 Considering the possible use of the buildings for either commercial or industrial purposes, and the impacts that may arise from those uses, it is recommended that an approval decision should contain conditions whereby the use of the units is restricted to incidental use for the occupants of 'Marshes' and that no change of use shall occur without prior permission from the local authority.

14.5.3 The use would be restricted by planning conditions and as such, it is considered that there would be no risks to human health or the environment by way of noise or other disturbance; the proposal is in accordance with Local Plan policies ENV11 and GEN4 and the requirements of Paragraph 130 of the NPPF (2021).

14.6 D) Character and Appearance

14.6.1 Given the location of the site, Local Plan Policy S7 (The Countryside) applies. Policy S7 reflects the tenet of Paragraph 174 of the NPPF. Policy S7 states that the countryside will be protected for its own sake and that planning permission will only be given for development that needs to take place there or is appropriate to the rural area, with development only being permitted if its appearance protects or enhances the character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.

14.6.2 Local Plan policy GEN2 requires that developments must be compatible with the scale, form, layout, appearance, and materials of surrounding buildings and safeguard environmental features in its setting, enabling their retention and helping to reduce the visual impact of new buildings or structures where appropriate.

14.6.3 Paragraph 130 of the NPPF states that developments should add to the overall quality of the area, be visually attractive and be sympathetic to local character, including the surrounding built environment.

14.6.4 The scale and design of the buildings is neither excessive nor incongruous with this rural former farmyard site. The buildings are single storey, clad in green metal sheeting and have a modern agrarian appearance. Therefore, the buildings are appropriate for this site and the proposal complies with the broader aims of Paragraphs 130, and 174 of the NPPF (2021) and Local Plan policies S7 and GEN2.

14.7 E) Ecology

- 14.7.1** Concerns were raised with regards to the impact of the retrospective development upon protected and priority species. The applicant brought forward a biodiversity enhancement strategy which has been assessed by ECC Place Services Ecology.
- 14.7.2** Essex County Council, Place Services Ecology has confirmed that it has no objection subject to all mitigation and enhancement measures and/or works being carried out in accordance with the details contained in an approved Biodiversity Enhancement Strategy (Wild Frontier Ecology, July 2022).
- 14.7.3** As such, it is considered that subject to an appropriate condition, the development would not have a material detrimental impact on ecology. There would be no conflict with Local Plan policy GEN7 and the wider principles of Paragraph 180 of the National Planning Policy Framework (2021).
- 14.8** F) Heritage Considerations
- 14.8.1** The wider site which contains the units is situated to the east of a cluster of designated heritage assets, all of which are listed at Grade II:
- Brickhouse Farmhouse, a late sixteenth-century or early seventeenth-century house with two crosswings, timber framed and plastered with a red plain tile roof (list entry no: 1112252).
 - Five bay barn to north of Brickhouse Farmhouse, a seventeenth-century barn of five bays, timber framed and weatherboarded with a half-hipped thatched roof and hipped midstrey to the south, now converted into a dwelling (list entry no: 1322573) (Marshes).
 - Tingates Farmhouse, a sixteenth-century timber-framed and plastered farmhouse with red plain tile roof, of two storeys with original red brick central chimney stack (list entry no: 1112228), north-west of Brickhouse Farm.
- 14.8.2** The site is located off a Protected Lane (UTTLANE90 Little Easton/Tilty/Thaxted – Duck St to Folly Mill Lane).
- 14.8.3** Historically, the site was agricultural land belonging to Brickhouse Farm.
- 14.8.4** The Conservation officer's response to consultation looks at the development by way of an assessment of the cumulative impacts of the five applications that have been submitted for this site.
- 14.8.5** They conclude that the whole development would cause less than substantial harm to the setting of the nearby listed buildings, by way of infill and intensifying the usage of the site with associated vehicle movements, noise, and lighting.

14.8.6 However, given that five separate planning applications are submitted, the impacts of each application on the setting of nearby listed buildings must be separated from their cumulative impacts. In this regard it should be noted that three of the five applications have now been refused planning permission with at least one of those decisions citing heritage harm.

14.8.7 The two domestic storage buildings are sited to the south-east corner of the site, furthest away from the nearby heritage assets, and the uses are expected to have a low level of use and thus generate limited amounts of noise, disturbance, and external lighting.

14.8.8 Therefore, in this case, it is considered that any impacts to the setting of nearby listed buildings would not reach the bar of being classified as 'less than substantial harm' and the proposal is in accordance with Paragraph 202 Of the NPPF (2021) and Local Plan policy ENV2.

14.9 G) Surface Water Drainage and Contaminants

14.9.1 Paragraph 185 of the NPPF (2021) states that decisions should ensure that new development is appropriate for its location considering the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment.

14.9.2 Local Plan policy GEN3 states that outside of flood risk areas development must not increase the risk of flooding through surface water run-off.

14.9.3 Local Plan policy ENV12 aims to protect water sources. It states that development that would be liable to cause contamination of groundwater particularly in the protection zones shown on the proposals map, or contamination of surface water, will not be permitted unless effective safeguards are provided.

14.9.4 The site is in Flood Risk 1 Zone and adjoins Flood Risk Zones 2 and 3 which are related to the Chelmer Valley. A Flood Risk Assessment is not required in this instance.

14.9.5 The units and their use would not alter the risk of the contamination of nearby water sources by way of the discharge of foul water and/or trade effluents, neither is it expected that the development would pose a risk of flooding by way of surface water discharge.

14.9.6 That said, to ensure compliance with the above policies, a condition is recommended to be added to any approval, to demonstrate that the building provides an adequate soakaway or other method to remove surface water.

15. ADDITIONAL DUTIES

15.1 Public Sector Equalities Duties

15.1.1 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers.

15.1.2 The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

15.1.3 Due consideration has been made to The Equality Act 2010 during the assessment of the planning application, no conflicts are raised

15.2 Human Rights

15.2.1 There may be implications under Article 1 (protection of property) and Article 8 (right to respect for private and family life) of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions; however, these issues have been taken into account in the determination of this application.

16. CONCLUSION

16.1 The development has been assessed against local and national policy requirements and is found to be in accordance with those policies. Any approval decision shall be subject conditions that shall restrict the use of the buildings to that of storage for the occupants of Marshes only and for no other business purpose, ecology mitigation and a plan to demonstrate surface water drainage.

17. CONDITIONS

- 1** The development shall be retained in its current form in accordance with the approved plans and documents as set out in the Schedule. The development shall not undergo any changes or alterations unless agreed in writing by the Local Planning Authority.

REASON: To protect the living conditions of the occupants of nearby residential dwellings, to limit the intensification of local traffic generation and the use of the access to the wider site and to protect the character and appearance of the countryside and the setting of nearby heritage assets in accordance with Local Plan policies ENV2, S7, GEN1, GEN2, GEN4 and ENV11.

- 2** The approved buildings shall not be used for any commercial or business purposes.

REASON: To protect the living conditions of the occupants of nearby residential dwellings, to limit the intensification of local traffic generation and the use of the access to the wider site and to protect the character and appearance of the countryside and the setting of nearby heritage assets in accordance with Local Plan policies ENV2, S7, GEN1, GEN2, GEN4 and ENV11.

- 3** The approved buildings shall be used for the storage of items used by the occupants of the dwelling house known as Marshes. The use of the buildings, as part of a mixed-use site, is classed as 'Sui Generis' and no change of use of the building shall take place without permission from the Local Planning Authority.

REASON: To protect the living conditions of the occupants of nearby residential dwellings, to limit the intensification of local traffic generation and the use of the access to the wider site and to protect the character and appearance of the countryside and the setting of nearby heritage assets in accordance with Local Plan policies ENV2, S7, GEN1, GEN2, GEN4 and ENV11.

- 4** Within 3 months of the date of this decision notice, a detailed plan of the method of the disposal of surface water from the roofs of the approved buildings shall be submitted to the Local Planning Authority for their written approval. Thereafter if any remedial works are required they shall be implemented in full in a timescale to be agreed in writing with the Local Planning Authority .

REASON: To prevent the risk of flooding by way of surface water run-off in accordance with Local Plan policy GEN3

- 5** Within 3 months of the date of this decision notice, all mitigation and enhancement measures and/or works shall be carried out in accordance

with the details contained in the Biodiversity Enhancement Strategy (Wild Frontier Ecology, July 2022).

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

REASON: To comply with the requirements of Local Plan policy GEN7, to enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species).

APPENDIX 1
Essex Highways Authority Consultation Response

Your Ref: UTT/21/2922/FUL
Our Ref: 51739
Date: 6th December 2022



CC: (by email) *DM, SMO2, Chelmsford*
Cllr Martin Foley

Paul Crick
Director for Highways
and Transportation

To: Uttlesford District Council
Assistant Director Planning & Building Control
Council Offices
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SAFFRON WALDEN CB11 4ER

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Recommendation

Application No. UTT/21/2922/FUL
Applicant Mr D Carter and Mr B Gardiner
Site Location Rear Of Marshes Cherry Street Duton Hill
Proposal Section 73A retrospective application for the retention of buildings for ancillary domestic storage for the dwellinghouse known as Marshes

SUPERSEDES PREVIOUS RECOMMENDATION DATED 14TH DECEMBER 2021

Marshes is a group of buildings which benefits from an existing historic access onto Cherry Street. The historic access is constrained and does not meet current standards, and therefore the Highway Authority would endeavour to ensure that use of the historic access does not extend beyond the level of vehicle use associated with the lawful use of the application site.

Since the highway recommendation dated 14/12/2021, the applicant has provided a transport statement. The Highway Authority has had some difficulty in establishing the permitted lawful use of the buildings associated with the application from the transport statement and has sort clarification from Uttlesford District Council on this matter.

Therefore, having regard to the previous use of the building, from a highway and transportation perspective the Highway Authority has no objections to make on this proposal as it is not contrary to the relevant transportation policies contained within the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011 and Uttlesford Local Plan Policy GEN1.

Note:

The rural location of the site is such that for the vast majority of journeys the only practical option of travelling to and from site would be the private motor vehicle. This should be taken into consideration by the Planning Authority when assessing the overall sustainability and acceptability of the site.

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