

Parish: Earnley	Ward: West Wittering
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**E/17/01911/FUL**

**Proposal** Erection of 1 no. custom/self build dwelling - alternative to dwelling permitted by virtue of Class Q Prior Approval for change of use from agriculture to Class C3 (dwellinghouse) under E/15/02353/PA3Q.

**Site** 101 First Avenue Almodington Earnley PO20 7LQ

**Map Ref** (E) 482427 (N) 98898

**Applicant** Mrs O Anderson

**RECOMMENDATION TO DEFER FOR s106 THEN PERMIT**



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## **1.0 Reason for Committee Referral**

Parish Objection - Officer recommends Permit

## **2.0 The Site and Surroundings**

- 2.1 The application site is located to the south of First Avenue, Almodington within the rural area and outside of any settlement boundary. First Avenue is surrounded on each side by Land Share Association (LSA) plots that were established in the early 1950's and generally comprise a dwellinghouse with outbuildings and associated horticultural land; forming a small holding. Some of the LSA plots have changed over time, moving away from horticulture, although some remain in horticultural use. Many have been extended and, more recently, converted to dwellings under the Town and Country Planning (General Permitted Development) Order 2015, as amended. However, the road retains a spacious and informal rural character.
- 2.2 The application site is situated at the western end of First Avenue. There is a 2 storey dwelling to the north (101 First Avenue) and another 2 storey detached dwelling to the east (102 First Avenue), whilst to the south there is a nursery. To the north west of the site there is a single storey detached agricultural building which was granted prior approval for the conversion to a dwelling (15/01666/PAQ3) and subsequently granted planning permission to convert the building to residential and to erect a new pitched roof over a flat roof section of the building. To date neither the prior approval nor planning permission has been implemented.
- 2.3 The existing building on the site is constructed of blockwork and timber with a relatively low pitched roof of profiled fibre cement sheeting and has a central roller type door facing onto the turning area to the front. The building measures approximately 9.6m in depth and 7.5m in width, providing 72 sqm of floor area, with an eaves height of 2.3m and a ridge height off 3.65m. The building has 3 windows on each side and a single rear door. Previously, the building was used for battery chickens and subsequently as a general agricultural store. The application building was granted 'prior approval' for the conversion of the building to a residential unit (15/02353/PA3Q), the prior approval is valid until 15 September 2018 however this has not yet been implemented.

## **3.0 The Proposal**

- 3.1 The application seeks planning permission to erect a dwelling with a floor area of 72sqm to replace the existing building on the site. The proposed dwelling would be 9.6m (d) x 7.5m (w) x 3.65m (h) with eaves at 2.3m high.

- 3.2 Externally the proposed replacement building would have a narrower opening than the existing building to the north, providing a door with narrow glazed panels on each side. There would be a single rear access door to the south elevation. On the east side of the proposed building there would be 3 windows, similar, albeit slightly wider than the existing. On the west side 2 similar but slightly wider windows are proposed and in addition a pair of patio type doors also with a glazed panel on each side. Materials are proposed to be slate for the roof and black Cedral boarding on a low red brick plinth for the elevations. The roof would also include a single row of PV panels on each side along most of its length.
- 3.3 It is proposed to re-site the new dwelling to the west of the position of the existing building by approximately 2.5m. A single car parking space (2.4m by 4.8m) is proposed to the front/side of the dwelling where it has been moved away from the east boundary. The site is irregularly shaped, but on average is approximately 13m in width and 12.5m in depth. The proposed dwelling would be located on average approximately 3m from the west boundary, approximately 0.8m from the rear boundary and approximately 1.1m from the front boundary.

#### 4.0 History

15/02353/PA3Q      YESPAP      Part 3 Class Q application for prior approval - change of use of agricultural building from agriculture to 1 no. dwelling (C3 use class).

#### 5.0 Constraints

Listed Building	NO
Conservation Area	NO
Rural Area	YES
AONB	NO
Tree Preservation Order	NO
EA Flood Zone	
- Flood Zone 2	NO
- Flood Zone 3	NO
Historic Parks and Gardens	NO

#### 6.0 Representations and Consultations

##### 6.1 Parish Council

At its meeting on 20th July 2017 Earnley Parish Councils Planning Committee reviewed this application and resolved to object to the proposal to build a new building which would represent over urbanisation of a rural location and in addition the development would cause an increase in vehicle movements which would be contrary to the aims of sustainability both of which would be contrary to the Local Plan and National Planning Policy Framework.

6.2 WSSC Highways (summarised)

No objection. Conditions requiring the provision of cycles storage and car parking are recommended.

6.3 CDC Coastal and Drainage Engineer (summarised)

September 2017

No objection based on the additional information submitted.

July 2017

No objection. The site is close to flood zones 2 and 3 and recommend a condition that finished floor levels be set at a minimum of 300mm above the ground level of the site.

6.4 CDC Environment Officer (summarised)

Due to the location of the site, the proposed demolition works and the records of bats within close proximity there is a moderate likelihood of bats roosting with the building. A bat survey must be undertaken prior to determination of the application.

Any lighting scheme will need to take into consideration the presence of bats in the local area and should minimise potential impacts to any bats by avoiding unnecessary artificial light spill.

6.5 Third party comments

No letters of objection or support have been received.

6.6 Applicant/Agent's Supporting Information

In support of the application, the agent has advised:

- The applicant wishes to build a dwelling to meet both current needs and also latter life requirements - being constructed to full disabled requirements and at 'Build for Life' standard.
- Being a new build, as opposed to a change of use, the overall U values required for energy efficiency are far greater, thus resulting in a building with a much high energy efficiency levels
- The proposed siting is moved in order to move the property away from the driveway to the east that serves another nursery to the south
- Prior Approval has been granted for the change of use of the present building at the site from agriculture to 1no dwelling, this is both a viable and realistic option for the applicants to pursue. It is therefore clear that 1no dwelling will be provided on this site.
- I have instructed the services of a very experienced structural engineer from Archibald Shaw. Mr Peter Wilmott, a Chartered Civil and Structural Engineer. His letter submitted with the application notes that he has supervised a conversion of similar buildings at 82 Fletchers Lane, Sidlesham and that he considers the buildings on this site to be suitable for conversion. His expert opinion must carry significant weight.

- The availability of such a fall-back option - which is clearly both achievable and realistic - constitutes a compelling factor in this case. That said, I submit that this is not what the 'fall-back' requirement requires in order for it to be a significant material consideration. The relevant test of the fall-back position is not as the LPA have previously stated namely "a realistic prospect" - it does not have to be probably or likely: a possibility will suffice. This is the legal position as made clear in Samuel Smith Old Brewery (Tadcaster) V Secretary of State for Communities and Local Government, Selby DC and UK Coal Mining Ltd [2009] J.P.L. 1326.
- The LPA must not apply a different - and more stringent - test. Such an approach would be contrary to established case law and would be unreasonable.
- It is therefore plain beyond uncertainty or doubt that the planning balance clearly indicates that planning permission should be granted.

## **7.0 Planning Policy**

### The Development Plan

- 7.1 The Development Plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029 and all made neighbourhood plans. There is no made neighbourhood plan for Earnley at this time.
- 7.2 The principal planning policies relevant to the consideration of this application are as follows:

### Chichester Local Plan: Key Policies 2014-2029

Policy 1: Presumption in Favour of Sustainable Development

Policy 2: Development Strategy and Settlement Hierarchy

Policy 4: Housing Provision

Policy 5: Parish Housing Sites 2012- 2029

Policy 33: New Residential Development

Policy 39: Transport, Accessibility and Parking

Policy 40: Sustainable Design and Construction

Policy 42: Flood Risk and Water Management

Policy 45: Development in the Countryside

Policy 49: Biodiversity

Policy 50: Development and Disturbance of Birds in Chichester and Langstone Harbours Special Protection Areas

Policy 51: Development and Disturbance of Birds in Pagham Harbour Special Protection Area

## National Policy and Guidance

- 7.3 Government planning policy now comprises the National Planning Policy Framework (NPPF), paragraph 14 of which states:

At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking:

*For decision-taking this means unless material considerations indicate otherwise:*

*- Approving development proposals that accord with the development plan without delay; and*

*- Where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in (the) Framework indicate development should be restricted.*

- 7.4 Consideration should also be given to paragraph 17 (Core Planning Principles) and sections 5, 7 and 11 generally.

- 7.5 The government's New Homes Bonus (NHB) which was set up in response to historically low levels of housebuilding, aims to reward local authorities who grant planning permissions for new housing. Through the NHB the government will match the additional council tax raised by each council for each new house built for each of the six years after that house is built. As a result, councils will receive an automatic, six-year, 100 per cent increase in the amount of revenue derived from each new house built in their area. It follows that by allowing more homes to be built in their area local councils will receive more money to pay for the increased services that will be required, to hold down council tax. The NHB is intended to be an incentive for local government and local people, to encourage rather than resist, new housing of types and in places that are sensitive to local concerns and with which local communities are, therefore, content. Section 143 of the Localism Act which amends S.70 of the Town and Country Planning Act makes certain financial considerations such as the NHB, material considerations in the determination of planning applications for new housing. The amount of weight to be attached to the NHB will be at the discretion of the decision taker when carrying out the final balancing exercise along with the other material considerations relevant to that application.

## Other Local Policy and Guidance

- 7.6 The following Supplementary Planning Documents are material to the determination of this planning application:

- Planning Obligations and Affordable Housing SPD
- Surface Water and Foul Drainage SPD
- CDC Waste Storage and Collection Guidance

7.7 The aims and objectives of the Chichester in Partnership Community Strategy 2016-2029 which are relevant and material to the determination of this planning application are:

- Support communities to meet their own housing needs
- Influence local policies in order to conserve and enhance the qualities and distinctiveness of our area

## **8.0 Planning Comments**

8.1 The main issues arising from this proposal are:

- i. Principle of development
- ii. Impact upon character of the surrounding area
- iii. Impact upon the amenity of neighbouring properties
- iv. Ecological Considerations
- v. Highway safety
- vi. Flood Risk

### Assessment

#### i. Principle of Development

8.2 The application site is located outside of any defined settlement boundary and is within the open countryside where new development is usually restricted in accordance with policy 1 and 2 of the CLP, unless otherwise permitted within policies contained in the plan, which seeks to ensure that new development is directed to the most sustainable locations. Although the site lies in a rural area where new dwellings are not usually permitted, regard must be had to the 'fall-back position' for the site, which is that the existing building could be converted to a residential use under the 'prior approval' which has been granted. The building is structurally sound and capable of conversion without significant alteration, and there is no reason to conclude that the existing building could not be converted in situ to provide a dwelling on the site. The fall-back position of the possibility that a dwelling could be created on the site is a material consideration that carries significant weight in the determination of this application. As such, it would be unreasonable to resist the application to 'replace' the permitted dwelling despite the rural location of the site as a matter of principle.

#### ii. Impact upon character of surrounding area

8.3 The proposed dwelling would be of the same size and scale as the existing building on the site, and the use of dark boarding above a brick plinth combined with a slate roof would be in keeping with the local vernacular for rural buildings. The application site can be seen from First Avenue, however due to the scale and appearance of the proposed dwelling it is considered that it would not represent a harmful form of development that would detract from the rural character of the locality. The proposal therefore complies with section 7 of the NPPF policy 33 that requires new development to respect the character of the site and its surroundings.

### iii. Impact upon amenity of neighbouring properties

- 8.4 The proposed dwelling would be sufficiently distanced from the neighbouring dwellings to the north (33m) and east (21m) to ensure that the proposal would not result in any significant impacts upon the amenity of neighbouring properties. The proposal therefore accords with the requirements of policy 33 that requires new development to safeguard the reasonable amenities of neighbouring properties.

### iv. Ecological Considerations

- 8.5 The site lies within the 5.6km 'zone of influence' of the Chichester and Langstone Harbours Special Protection Area (SPA) and the 3.6km zone of influence of the Pagham Harbour SPA, where new development is likely to have significant environmental impacts on this internationally important designation. To mitigate against this, the applicant has agreed to provide a S106 Unilateral Undertaking and make a financial contribution of £871 to mitigate the harm of the development. It is therefore considered that the proposal complies with the provisions of Policies 50 and 51 of the CLP, and the proposal would not have an adverse impact upon the SPA's.
- 8.6 During the course of the application a bat survey has been undertaken and submitted for consideration. The bat survey did not find any evidence of bats roosting or foraging within the building, and no evidence of birds nesting within the building either. The ecologist who completed the survey does however identify that the vegetation to the south of the building could provide a habitat for nesting birds, and therefore recommends that the no site clearance is undertaken during bird nesting season.
- 8.7 Other recommendations from the ecologist include the strimming of grass surrounding the building prior to the works being undertaken to discourage reptiles from using the area, and also the provision of a bat and bird box is recommended in the interests of encouraging an increase in biodiversity on the site. Subject to the recommended measures being secured by condition it is considered that the proposal would meet the requirements of policy 49 of the CLP which seeks to ensure that biodiversity is not adversely affected, and where possible a net gain is secured.

### v. Highways Safety

- 8.8 The proposed development would not give rise to an increase in vehicle movements beyond the level which would be expected from the authorised use of the existing building, or the fall-back position should it be converted to a dwelling. It is therefore considered that the proposed development would not have a significant impact upon the highway network. The proposed development includes a parking space to serve the dwelling, and space would be provided to the front of the dwelling to accommodate turning.



8.9 It is considered that the parking provision and turning arrangements would be sufficient to serve the proposed dwelling and to ensure vehicles can enter and exit the site in a forward gear. It is therefore considered that the proposed development would be afforded with adequate and safe access arrangements. For the reasons stated the proposal would meet the requirements of policy 39 of the CLP in respect of highway safety.

#### vi. Flood Risk

8.10 The application site lies in Flood Zone 1, however flood zone 2 wraps around the eastern side of the building. The Council's drainage engineer originally requested that the floor levels within the building be raised by 300mm due to the proximity of the flood zone. Following the submission of additional information setting out the proposed flood mitigation measures, as shown below, the drainage engineer is satisfied that the risk of flooding can be adequately managed using appropriate construction measures and removed this request.

8.11 The proposed flood mitigation measures include;

- The ground floor being constructed on a water exclusion strategy, with a finished ground floor slab a minimum of 200mm above existing ground level,
- Waterproof sealant on external walls and waterproof paint on internal walls,
- Solid floor construction with no air bricks,
- Hollow fibre internal doors will not be used on the ground floor,
- Electrical sockets will be sited at least 900mm above floor level,
- Flood boards will be provided for the external doors, and
- In event of a flood it is also proposed to link the property to an alarm system to warn of an imminent flood event.

8.12 It is recommended that the proposed measures are conditioned to ensure the development is carried out in accordance with these details to ensure the proposal would effectively manage the flood risk. The proposal therefore complies with policy 42 in this respect.

#### Conclusion

8.13 Based on the above it is considered the prior approval which has been granted to convert the existing building from an agricultural use to residential represents a fall-back position for the site which is a material consideration that carries weight. Given the fall-back position that means the site could be developed to provide a dwelling on the site, the proposed 'replacement' dwelling complies with the development plan, which would otherwise restrict the provision of new dwellings in this rural location. The proposal would be acceptable in respect of its impact upon the character of the area, the amenity of neighbouring properties, highway safety, drainage and ecology and therefore the proposal complies with development plan policies 1, 2, 33, 39, 49, 50 and 51 in addition to the NPPF and therefore the application is recommended for approval.

## Human Rights

8.14 In reaching this conclusion the Human Rights of the applicants and nearby occupiers have been taken into account when reaching this recommendation and it is concluded that the recommendation to permit is justified and proportionate.

### **RECOMMENDATION**

**PERMIT WITH S106** subject to the following conditions and informatives:-

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2) The development hereby permitted shall not be carried out other than in accordance with the approved plans: 1B, 2B and 18A

Reason: To ensure the development complies with the planning permission.

3) **No part of the development hereby permitted shall be first occupied** until the car parking has been constructed and laid out in accordance with the approved site plan and the details specified within the application form. These spaces shall thereafter be retained at all times for their designated purpose.

Reason: In the interests of ensuring sufficient car parking on-site to meet the needs of the development.

4) **No part of the development hereby permitted shall be first occupied** until covered and secure cycle parking spaces have been provided in accordance with plans and details that shall first have been submitted to and approved by the Local Planning Authority. Thereafter the cycle parking shall be retained for that purpose in perpetuity.

Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies.

5) **Prior to first occupation of the dwelling(s) hereby permitted** the associated boundary treatments shall be provided in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include;

- (a) scaled plans showing the location of the boundary treatments and elevations, and
- (b) details of the materials and finishes.

Thereafter the boundary treatments shall be maintained as approved in perpetuity.

Reason: In the interests of protecting the amenity of neighbours.

6) **No part of the development hereby permitted shall be occupied** until refuse and recycling storage facilities have been provided in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. Thereafter the refuse and recycling storage facilities shall be maintained as approved and kept available for their approved purposes in perpetuity.

Reason: To ensure the adequate provision of onsite facilities in the interests of general amenity and encouraging sustainable management of waste.

7) **The development hereby permitted shall not be first brought into use** until a fully detailed landscape and planting scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a planting plan and schedule of plants noting species, plant sizes and proposed numbers/densities, and for large scale developments shall include a program for the provision of the landscaping. In addition all existing trees and hedgerows on the land shall be indicated including details of any to be retained, together with measures for their protection in the course of development. The scheme shall make particular provision for the conservation and enhancement of biodiversity on the application site. The works shall be carried out in accordance with the approved details and in accordance with the recommendations of the appropriate British Standards or other recognised codes of good practice. The approved scheme **shall be carried out in the first** planting season after practical completion or first occupation of the development, whichever is earlier, unless otherwise first agreed in writing by the Local Planning Authority. Any trees or plants which, within a period of 5 years after planting, are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved unless otherwise first agreed in writing by the Local Planning Authority.

Reason: In the interests of the visual amenities of the locality and to enable proper consideration to be given to the impact of the proposed development on existing trees.

8) The development hereby permitted shall be carried out in strict accordance with the approved Flood Risk Assessment produced by Stephen Jupp; and the following mitigation measures detailed within the Flood Risk Assessment:

- The ground floor being constructed on a water exclusion strategy, with a finished ground floorslab a minimum of 200mm above existing ground level, hard-core bed at least 100mm thick, of well compacted inert material, blinded with fine inert material to provide a smooth base, damp proof membrane of polythene at least 1200 gauge and concrete slab at least 150mm thick, and insulation as rigid closed-cell material.
- Waterproof sealant on external walls and waterproof paint on internal walls,
- Solid floor construction with no air bricks,
- Hollow fibre internal doors will not be used on the ground floor,
- Electrical sockets will be sited at least 900mm above floor level,
- Flood boards will be provided for the external doors, and
- In event of a flood it is also proposed to link the property to an alarm system to warn of an imminent flood event.

The **mitigation measures shall be fully implemented prior to occupation** and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the Local Planning Authority.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

9) The development hereby permitted shall not be constructed other than in accordance with the materials specified within the application form and plans, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that a harmonious visual relationship is achieved between the new and the existing developments.

10) The implementation of this planning permission shall be carried out strictly in accordance with the method of works and mitigation measures detailed in the recommendations section of the submitted Bat Scoping Assessment dated 17 October 2017 produced by The Ecology Co-op.

Reason: To ensure that the protection of ecology and/or biodiversity is fully taken into account during the construction process in order to ensure the development will not be detrimental to the maintenance of the species.

## INFORMATIVES

1) The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

### 2) S106

This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990.

3) The developer's attention is drawn to the provisions of the Wildlife and Countryside Act 1981, the Conservation (Natural Habitats etc) Regulations 1994, and to other wildlife legislation (for example Protection of Badgers Act 1992, Wild Mammals Protection Act 1996).

These make it an offence to kill or injure any wild bird intentionally, damage or destroy the nest of any wild bird intentionally (when the nest is being built or is in use), disturb, damage or destroy and place which certain wild animals use for shelter (including badgers and all bats and certain moths, otters, water voles and dormice), kill or injure certain reptiles and amphibians (including adders, grass snakes, common lizards, slow-worms, Great Crested newts, Natterjack toads, smooth snakes and sand lizards), and kill, injure or disturb a bat or damage their shelter or breeding site. Leaflets on these and other protected species are available free of charge from Natural England.

The onus is therefore on you to ascertain whether any such species are present on site, before works commence. If such species are found or you suspected, you must contact Natural England (at: Natural England, Sussex and Surrey Team, Phoenix House, 32-33 North Street, Lewes, East Sussex, BN7 2PH, 01273 476595, [sussex.surrey@english-nature.org.uk](mailto:sussex.surrey@english-nature.org.uk)) for advice. For nesting birds, you should delay works until after the nesting season (1 March to 31 August).

For further information on this application please contact Fjola Stevens on 01243 534734