



To: Chair & Members of the Planning Committee

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Tuesday, 5th October 2021

Dear Councillor

PLANNING COMMITTEE

You are hereby summoned to attend a meeting of the Planning Committee of the Bolsover District Council to be held in the Council Chamber on Wednesday, 13th October, 2021 at 10:00 hours.

Register of Members' Interests - Members are reminded that a Member must within 28 days of becoming aware of any changes to their Disclosable Pecuniary Interests provide written notification to the Authority's Monitoring Officer.

You will find the contents of the agenda itemised from page 2 onwards.

Yours faithfully

A handwritten signature in black ink that reads "Sarah Steenberg".

Solicitor to the Council & Monitoring Officer



We speak your language

Polish **Mówimy Twoim językiem**
Slovak **Rozprávame Vaším jazykom**
Chinese **我们会说你的语言**

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If you require an adjustment to enable you to participate in or access the meeting please contact the Governance Team at least 72 hours before the meeting starts.

PLANNING COMMITTEE

AGENDA

**Wednesday, 13th October, 2021 at 10:00 hours taking place in the Council Chamber,
The Arc, Clowne**

Item No.	PART 1 – OPEN ITEMS	Page No.(s)
1.	Apologies For Absence	
2.	Urgent Items of Business To note any urgent items of business which the Chairman has consented to being considered under the provisions of Section 100(B) 4(b) of the Local Government Act 1972.	
3.	Declarations of Interest Members should declare the existence and nature of any Disclosable Pecuniary Interest and Non Statutory Interest as defined by the Members' Code of Conduct in respect of: a) any business on the agenda b) any urgent additional items to be considered c) any matters arising out of those items and if appropriate, withdraw from the meeting at the relevant time.	
4.	Minutes To consider the minutes of the last meeting held on 15 th September 2021.	To Follow
	<u>APPLICATIONS TO BE DETERMINED UNDER THE TOWN & COUNTRY PLANNING ACTS</u>	4 - 29
	20/00499/DETA2R - Change of use of agricultural buildings to granny flat and two holiday lets at Mill Pond House, Whaley Road, Langwith, Mansfield, NG20 9HS.	

PARISH Langwith Parish

APPLICATION LOCATION Change of use of Agricultural Buildings to granny flat and two holiday lets
APPLICANT Mill Pond House Whaley Road Langwith Mansfield
APPLICATION NO. Mr Tim Barker
CASE OFFICER 20/00499/DETA2R
DATE RECEIVED Miss Kay Gregory
 9th November 2020

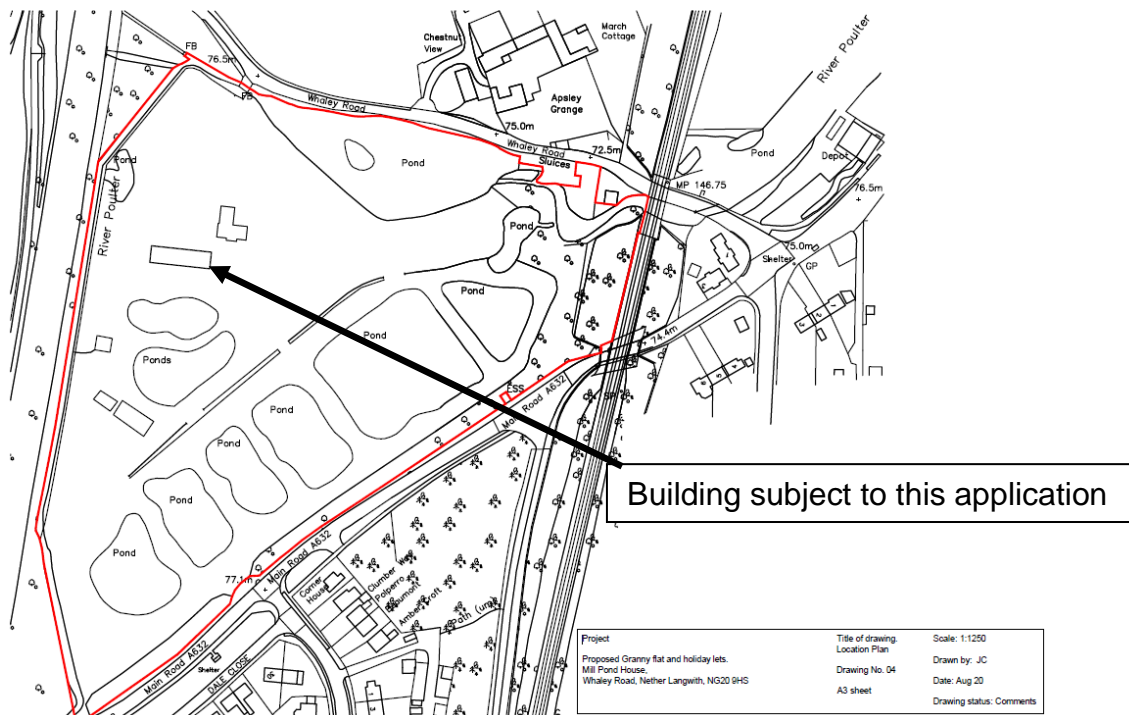
SUMMARY

This application has been referred by officers to Planning Committee to allow Members the opportunity to consider any potential flood risk issues associated with the site and proposed development, given an outstanding Environment Agency objection.

The key issues relevant to the determination of this application are:

- Whether the proposal complies with the provisions of Class Q of Part 3, schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- Whether sufficient information has been submitted to adequately demonstrate that all matters relating to highway safety, flood risk, contamination, design and external appearance, provision of natural light, and the practicality / desirability of location and siting of the proposal have been overcome to the satisfaction of the Local Planning Authority and relevant consultees.

Site Location Plan



OFFICER REPORT ON APPLICATION NO 20/00499/DETA2R

SITE & SURROUNDINGS

The application site is within the settlement of Nether Langwith but is outside of the development envelope, located within the designated countryside.

To the north of the site, on the opposite side of Whaley Road is a small complex of residential properties, predominantly converted from former farm buildings.

To the west of the site is open countryside. Adjoining the west boundary is a multi-user footpath trail, on elevated levels occupying a former rail track. Beyond this is the Poulter Country Park with woodland trails.

To the east, on the other side of the railway bridge is the built up residential area of Nether Langwith. Properties in this part of the settlement are predominantly Council and former Council owned stock. This is also a Boots chemist, café, car repairs garage small convenience store close to the site.

The application site is a large triangular shaped piece of land, constrained by the two elevated railway lines to the east and west, the one to the east is the live Robin Hood Line, with Whaley Thorns railway station 650m to the north of the site (see aerial image below).



There are several fish ponds on the application site, all used in connection with the existing agricultural enterprise.

There is also a large detached property, approved by reason of 05/00199/FUL (see photo below) and a large, single storey detached outbuilding approved under 00/00279/FUL which is currently used to store agricultural machinery in association with the land use; and which is the subject of this proposal.



Land levels are relatively flat on site, but drop slightly towards the southern part of the site where there are existing fish ponds, used in association with the permitted use.

The building proposed for conversion is within Flood Zones 2 and 3, as well as the ponds to the south of the building, and the site access and pond to the north. The existing residential property and most of the driveway lie just outside of the flood zone.

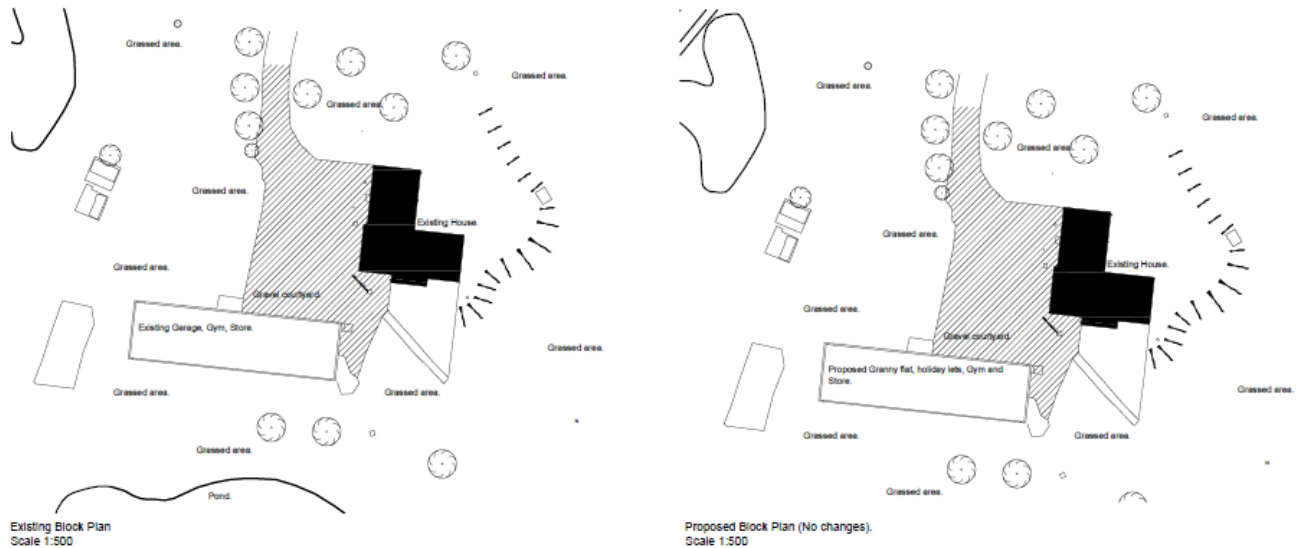
A small part of the site to the north of the building and east of the access is within the Aspley Grange Conservation area (CA), as identified on the plan below.



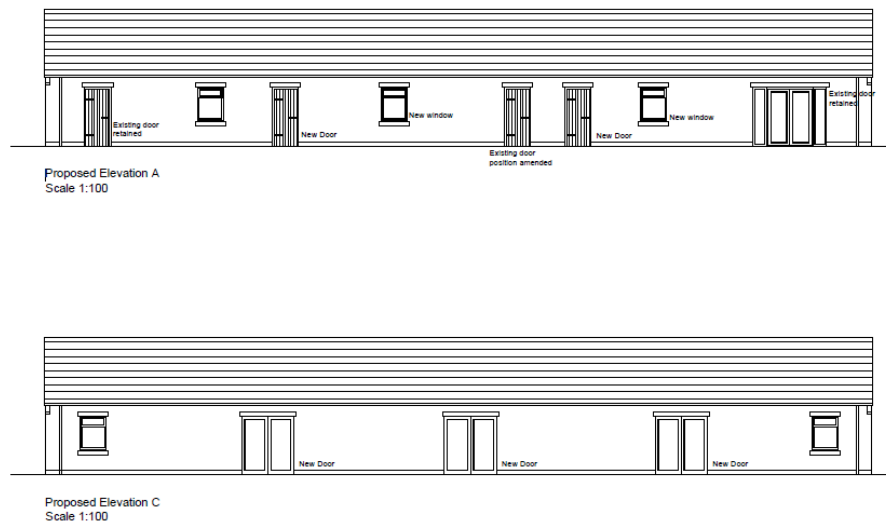
Discussions with other officers considered the proximity of the site to the CA boundary and the fact that the application site boundary included the ponds to the north which are within the CA, but it was accepted that the fundamental part of the site proposed for development was outside of the CA boundary and so the proposal should not be discounted from the Class Q process on that basis.

PROPOSAL

This application is seeking Prior Approval under the provisions of Class Q of the General Permitted Development Order 2015 (as amended) to convert an existing agricultural storage building into two one bedroom holiday lets, one 'granny annex', a domestic gym and small store room.



There shall be no external alterations to the building other than three patio style doors installed into the rear elevation overlooking the fish ponds, and three small windows in the front elevation overlooking the parking court.



Internal alterations include the subdivision of the existing open plan building into the three residential suites, with space retained for a gym on one side and a store on the other.



10/00347/FUL	Grant conditionally	Conversion of part of fish farm building to use as kennels reception and office, erection of extension block for ten dog kennels with runs and creation of customer parking area. NOT IMPLEMENTED.
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CONSULTATIONS

BDC Drainage engineers

- Recommend two standard advisory notes.

BDC Conservation

- There doesn't appear to be any conservation / heritage issues associated with this application. I confirm that I do not intend to make any comments.

DCC Highways – see highway issues summary

- Withdrew initial objection.
- No objections subject to conditions

Environment Agency – see flood risk summary

- Maintain their objection
- We do not know what the potential flood depths are at this location because we do not have detailed flood modelling data. We expect the applicant to provide this data so they can assess whether their proposed development will be safe from flooding, by comparing the potential height of the flood water to the ground levels on site.
- Recommend additional information is submitted or the application refused.

PUBLICITY

The application has been publicised by way of a site notice and letters sent to 23 adjacent properties. There have been no representations received as a result of the publicity.

Policy and Legislative requirements

Statutory Instrument

- Town and Country Planning (General Permitted Development) (England) Order 2015 - as amended in 2018 (No. 343) and 2019 (No. 907)
- Schedule 2, Part 3 – Changes of Use - Class Q

Local Plan for Bolsover District (“the adopted Local Plan”)

Planning law requires that applications for planning permission be determined in accordance with policies in the adopted Local Plan, unless material considerations indicate otherwise. In this case, the most relevant Local Plan policies include:

- SS1 – Sustainable development
- SS9 – development within the countryside
- SC2 – Sustainable design and construction
- SC3 – High quality design
- SC5 – Changes of use and conversions in the countryside
- SC7 – Flood risk
- SC11 – Environmental quality (Amenity)
- SC14 – Contaminated and unstable land
- SC16 – Development impacting on conservation areas

- ITCR10 – Supporting sustainable transport patterns
- ITCR11 – Parking provision

National Planning Policy Framework (“the Framework”)

The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and policies in the Framework most relevant to this application include:

- Paragraphs 7-10: Achieving sustainable development
- Paragraphs 47-48: Determining applications
- Paragraphs 54-57: Planning conditions and obligations
- Paragraph 118: Making effective use of land
- Paragraphs 124-128: Achieving well-designed places
- Paragraph 165: Sustainable Drainage Systems
- Paragraphs 170 and 175: Conserving and enhancing the natural environment

ASSESSMENT

Schedule 2, Part 3, Class Q of the General Permitted Development Order 2015 (as amended), outlines the criteria to consider a change of use from an agricultural building to a dwelling.

The Class states:

Class Q – Agricultural buildings to dwellinghouses

Permitted development

Q. Development consisting of—

- A change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; or*
- Development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in C3 (dwellinghouses) of that Schedule.*

Q.1 -Development not permitted under the provision this Class if:

Part (a) - The site was not used solely for an agricultural use as part of an established agricultural unit—

- On 20th March 2013, or*
- In the case of a building which was in use before that date but was not in use on that date, when it was last in use, or*
- In the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;*
 - The site is to remain part of an agricultural holding for the provision of fish breeding (predominantly carp) for the restaurant sector. Concerns were raised at the start of the process as it was suspected that there was a recreational element to the business, however the applicant confirmed in an email dated 2/2/21, that:
 - *"We don't have people fishing out their fish, we only have people attend to pick up fish, to get the fish out I fish them out but also friends and family will help me fish them out, we don't have anyone paying or coming fishing. Besides that would need a change of*

use. We used to sell small fish by the thousands, we would use a large net run round the edge of the pond to get them out but it became economically unviable as the feed cost more than we were getting for them so we changed to selling fewer but larger fish, but these have to be line caught and stored in holding tanks, that's what I get help with up to 12 times a week. So it is only used for agricultural purposes. The plan would be if the conversion happened to let the residents use some of the ponds to fish if this would be permitted."

- Following discussion with colleagues it was agreed that the current activities would be no different to labourers coming to work on a farm. As such it is considered that the site is in sole agricultural use. If the application is considered to be acceptable a condition can be included to ensure there are no recreational activities and if residents are to be permitted to fish the ponds, then that would be in association with the existing business.

Part (b) of Class Q is not relevant to the proposal as the conversion will not be for a 'larger dwellinghouse' (up to 465m²).

Part (c) - *In the case of—*

(i) *A smaller dwellinghouse, within an established agricultural unit—*

(aa) *The cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or*

(bb) *The floor space of any one separate smaller dwellinghouse having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 100 square metres;*

- The proposal complies with part C in so far that there are three residential units being created, and they do not exceed 100m² – approximately 53m².

Part (d) of Class Q does not apply as there have been no other conversions under the Class Q provisions.

Part (e) - *the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;*

- The applicant is the landlord and tenant of the agricultural business, and so no further consent is required.

Part (f) *less than 1 year before the date development begins— an agricultural tenancy over the site has been terminated, and the termination was for the purpose of carrying out development under Class Q, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use;*

- The agricultural tenancy has not terminated and will continue to stay in use for fish farming.

Part (g) - *Development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit— since 20th March 2013; or where development under Class Q begins after 20th March 2023, during the period which is 10 years before the date development under Class Q begins;*

- Parts A and B relate to the erection of, and / or extension to agricultural buildings within an established agricultural holding. There have been no buildings erected under these

provisions since 20th March 2013. It appears that the building subject to this proposal was built circa 2005.

Part (h) - *The development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;*

- There are no external extensions proposed past any part of the existing building.

(i) The development under Class Q(b) would consist of building operations other than—

(ii) The installation or replacement of—

(aa) windows, doors, roofs, or exterior walls, or

(bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and

(iii) Partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i);

- The alterations proposed to the building in order for it to function as a C3 use are in accordance with the limitations above; new and altered windows and doors, internal partitions and the provision of services.

Part (j) - *The site is on article 2(3) land;*

- No part of the area of land proposed for development is within the Conservation Area.

Part (k) - *The site is, or forms part of a site of special scientific interest, a safety hazard area, a military explosives storage area;*

- No part of the site is any of the above criteria.

Part (l) *the site is, or contains, a scheduled monument*

- Not a scheduled monument

Part (m) *the building is a listed building.*

- Not a Listed Building

It is considered that the proposal complies with Class Q (a) and (b), and the relevant conditions of Part Q.1 of the Schedule, and as such can be considered as under the Class Q process as potential 'Permitted Development'.

Prior Approval Process

Class Q.2 (1) identifies that in instance where a proposal has been considered to comply with the provisions contained within Class Q (a & b), and satisfies the conditions of Q.1, before commencing development the developer must apply to the Local Planning Authority for a determination as to whether the Prior Approval of the Authority will be required.

The matters relating to Prior Approval as stated in part Q.2 are provided below with an explanation of how the proposed development has been considered, giving full regard to responses from the relevant consultees.

Part (a) Transport and highways impacts of the development

The County Highway Authority has been consulted on the proposal.

They initially responded on the 21st December 2020, advising that, *“Whaley Road is subject to the national speed limit and available visibility does not accord with this (would require 2.4m x 203m in both directions with the visibility splays clear of obstructions greater than 1.0m in height. In addition, the layout of the access does not (from street view image) meet current layout criteria in terms of width. Even if it is considered that vehicles are generally travelling slower than the speed limit, visibility is likely to be substandard and there is no supporting evidence of reduced vehicle speeds.*

It is considered that the applicant should be requested to submit details demonstrating an access layout meeting current layout criteria (provided with forward and exit visibility sightlines commensurate with 85thile vehicle approach speeds) to serve intensified vehicular activity or supporting evidence demonstrating that the development proposals will not result in a significant increase in vehicular movements associated with the site access.”

The comments were sent onto the applicant, the agent responded on the 22nd December querying *“whether they would have to change the driveway if it is an existing feature? The client will not be seeing additional vehicles on the site. The granny flat resident will not have a vehicle as that is the sole reason of them living there. The Holiday lets will only bring an additional 2 cars per weekend if they are rented - which I doubt will be all year and with the clients sons and daughters in the process of moving out, the likelihood is that there will be fewer cars on the site. In respect of this, is it really necessary to amend the driveway for a reduction of cars?*

A site visit was arranged with the applicant and their agent on the 29th January 2021, to look at the site access and whether the visibility splays requested by the highway authority could be achieved, and whether the existing driveway would be of sufficient width to serve the existing and proposed use of the site.

During the site visit, measurements were taken at the access. A 203m visibility could not be achieved to the west by reason that the applicant’s boundary terminates 120m along the highway at the railway bridge, which is elevated high above the road and which has a high, solid obstruction (bridge wall) against the highway boundary. There is also a bend in the road just west of the access which restricts views to some extent (see photos below).

At the access facing west



Further along to the west showing bridge



The area of land within the splay to the west contains a number of trees, shrubs and a hedge along the boundary which would have to be pruned or removed to achieve adequate visibility along a 120m length. These trees are not within the Conservation Area boundary and so

would not require any formal permission to prune them back from the road frontage.

A distance of 203m could be achieved to the east, and the alignment of the road provides relatively clear views along the highway, as identified in the photo below. Some hedge trimming, and shrub tree removal would also be required within the required splay to the east. This, however would be within the Conservation Area. Trees within this area are also afforded protection by a Tree Preservation Order and as such a formal application would be required for any works to them.

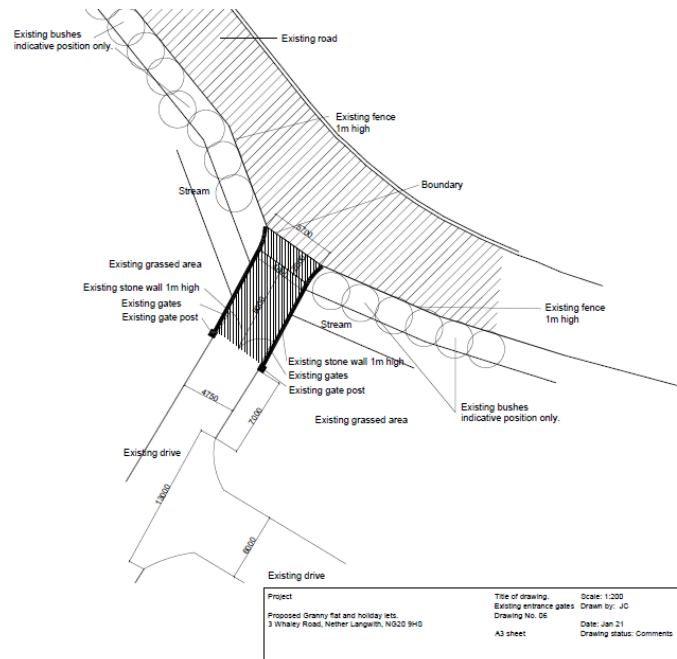


Given that visibility could not be achieved in either direction, due to obstructions (railway embankment and trees) the applicant was advised that a speed survey would be necessary to try and confirm that vehicle speeds are low and as such the required splays could be reduced. During the site visit, a significant amount of time was spent at the access where vehicle numbers were infrequent, with relatively low speeds.

In respect of the highway authority's initial comments regarding the width of the access, the agent submitted addition information in an email dated 31st January, comprising the photograph below to demonstrate that two vehicles can if required pass on the access.



The agent also submitted the plan below following a series of measurements taken at the site entrance, to identify that the width of the access is 5.7m, and at the narrowest point is 4.8m.



The Highway Authority was sent the plan and photos submitted in respect of the access and visibility.

The highway authority was also asked whether trees were to be classed as an obstruction for the purposes of assessing obstructions in the visibility splay. This was considered to be especially relevant as trees to the east, within the splay area were afforded formal protection and as such, their removal had to be warranted.

The Highway Authority did not respond until the 11th May 2021, advising that, *“there was a previous application in respect of this site that required visibility improvements at the existing access point but it does not appear this has been complied / fully complied with and the proposal would further intensify the use of the access.*

The Highway Authority still maintains its concern over visibility from the access and suggest that the original requirements are complied with (will likely accept just the hedge, not trees) or a speed survey undertaken.

With regard to the access itself, whilst ideally it should be wider (minimum 4.8m with widening of 0.5m for each side where the access is bounded by a wall, fence, hedge, line of trees or similar) the Highway Authority may be prepared to accept this in its current form providing visibility is improved to original requirements or in line with 85th percentile wet weather speeds whereby it is considered a vehicle in the access would be visible to a vehicle approaching.”

Following on from these comments the applicant proceeded to try and hire a speed gun, and seek advice on how to carry out speed surveys, in order to reduce the required splay, and to satisfy the highway authority that the existing access was of sufficient width.

The highway authority was emailed on the 12th May to ask whether *“it would be acceptable*

that the applicant carries out their own speed survey. It would need to take place over a couple of months, different days, times and weather conditions. The applicant is also an ex-police officer so is fully aware how to do the speed survey. Or does it need to be done by a company who specialise in highway issues?"

Several chase up emails were then sent to the highway authority, for their comments on the applicant's request, but no comments were received.

The applicant submitted a letter on the 27th July, to air his frustrations at the delay with the highway authority response. He queried a proposal further along Whaley Road for an Alpaca petting farm, where there were no highway objections. He considered that their access was more obscured and that it would generate a significantly higher level of traffic than his proposal.

He was also frustrated that the highway authority objected to his proposal solely from viewing Google maps, as they were not attending site visits. *"Having looked at google maps I can confirm that the pictures they viewed are over 10 years old. After 5 months of requesting it, highways have agreed to let me undertake a traffic survey as long as it complies with CA185. Having had a look at this document it is clear to see we cannot comply as we don't have enough traffic. They want a survey of at least 200 cars in the specified time slots. I carried out a count last week and we only had 87 cars during this period. I have checked the speeds of vehicles in the road and they are between 22 and 27 mph. You have visited the site and have witnessed yourself that vehicles are travelling at these speeds not at the national speed limit. We have lived here for 8 years and have never had a problem entering or exiting our entrance, there have been no accidents in this time in any entrance of Whaley Road that I'm aware of."*

Despite no response being received from the highway authority, they were emailed by the case officer on the 6th August advising them that, *"the applicant has made a complaint to the Council about the processing of the application, and it has been called into Planning Committee for a decision."*

You mention in your comments dated 11th May 2021 that the visibility improvements at the access do not appear to have been carried out in accordance with the previous application.

There was a planning application in 2000 (00/00279/FUL), which I think must be the one you are referring to in your comments. This was for the "Creation of a fish farm involving construction of 11 ponds, building for holding fish, storage and services, Polytunnels and siting of a temporary dwelling".

If the conditions (on this application) weren't ever complied with, then after a period of ten years they would become immune from enforcement action. Members are likely to ask the question that if the approved use of the site for a fish farm and residential property has been operating for 21 years without any reported incidents at the access, were the conditions required by the highway authority necessary and reasonable?

Could you please confirm which of the conditions imposed on the 2000 application are now 'necessary and appropriate' for this current proposal?

The applicant is also concerned that he isn't able to comply with CA185 for the required speed survey. He doesn't consider that he can survey the specified 200 cars within the time slots, as the road is not that busy. He managed to include 87 cars during the period, and they travelled at speeds between 22 and 27mph (although he hasn't submitted any technical evidence to date). Would a lower number of vehicles be sufficient for the survey?

If the highway authority sustains their objections to the current proposal are you able to provide me with a reason for refusal on highway safety grounds? If Members are resolved to refuse the application at Committee would the Highway Authority support the Council in the event that a planning appeal is submitted (which I consider would be likely)."

The highway authority finally responded on the 14th September 2021, advising that, "the previous highway authority response made reference to an earlier application which required improvements to visibility and the access. Your comments regarding conditions being immune from enforcement action after a period of 10 years is noted as is the fact the length of time the site has been operating.

A review of Crashmap data indicates no accidents within the last 5 years.

Whilst the previous improvements to visibility and width of the access would be beneficial to all site users, given the above, the current use of the site and the proposal under this application it is considered it would be difficult to sustain a recommendation of refusal in this instance."

The highway authority therefore withdrew their objection and recommended conditions relating to space within the site being provided for construction materials and plant, and for parking spaces to be provided for each of the 'lets'.

The application site has ample space clear of the highway boundary to store any construction materials, and there is sufficient space existing in front of the building for guest parking. Therefore these condition would not be required.

They also recommended a condition restricting the use of the annex part of the proposal to be used ancillary to the main house. This condition would not be considered as reasonable given that the application is a proposed Class Q conversion from agricultural to residential (C3).

The proposed use is not likely to generate significant levels of vehicle movements to and from the site, and given that there have been no reported incidents at the access, and given the highway authority's withdrawal of their original objection, it would not be reasonable to refuse the application on highway safety grounds.

Part (b) - Noise impacts of the development

The levels of external noise associated with the fish farming enterprise, along with comings and goings from the residential property are expected to be excessive.

There will be some noise generated by guests using the holiday lets, but this is not considered to be over and above the noise levels generated by the residential property immediately adjacent to the building.

As such, there is not expected to be any adverse noise levels generated from the proposed

use, and there will be no detriment to the amenity of guests. The site is rural in appearance and use, and would provide a relatively tranquil space for guests.

Part (c) - Contamination risks on the site

There are no known contamination risks associated with the site.

Environmental health was consulted on the proposal but did not provide any comments.

The use of the site as an agricultural fish farming enterprise has not resulted in any part of the site becoming contaminated from heavy machinery or the use of hazardous substances.

It is also unlikely that the applicant would introduce contaminants onto the site as this would increase the risk of contaminating the ponds.

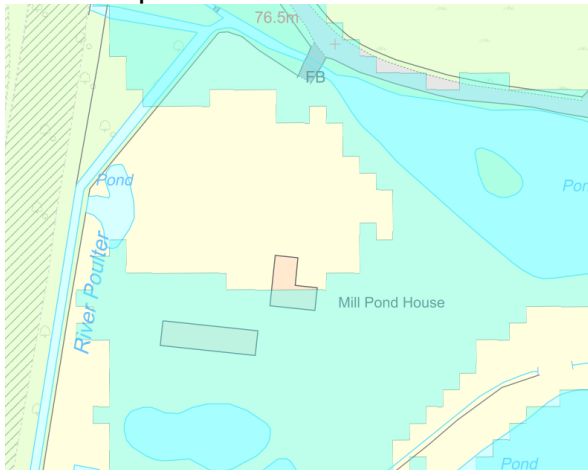
It is therefore considered that contamination risks on site are low, and given there are no proposals to carry out any engineering works, there will be no disturbance to ground levels.

Part (d) - Flooding risks on the site

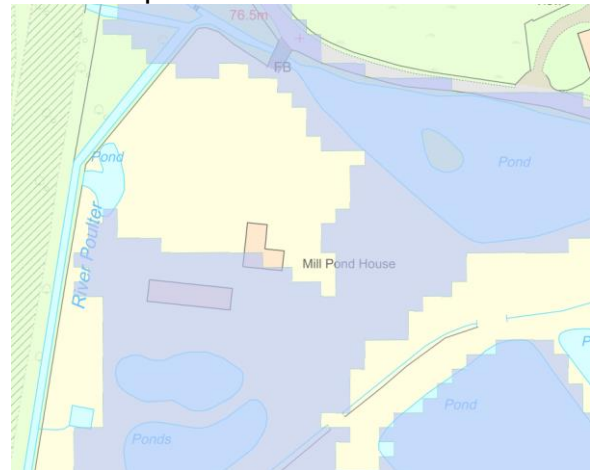
Class Q applications are expected to seek prior approval relating to flood risks, in consultation with the Environment Agency.

The entire building proposed for conversion falls within Flood Zones 2 and 3 as identified on the two extracts below. These images have been taken from Datasets produced by the Environment Agency, for distribution, in this instance to MyMaps, which is the GIS system used by Bolsover District Council.

Flood Map – Rivers and Sea Zone 2



Flood Map – Rivers and Sea Zone 3



This application was not accompanied by a Flood Risk Assessment.

The Environment Agency (EA) initially responded on the 7th December 2020, advising that they object to the application and recommend that permission is refused. This is by reason that:

“The application site lies within Flood Zone 3, which is land defined by the planning practice guidance as having a high probability of flooding. The National Planning Policy Framework

(paragraph 163, footnote 50) states that a Flood Risk Assessment (FRA) must be submitted when development is proposed in such locations.

An FRA is vital to making informed planning decisions. In its absence, the flood risks posed by the development flood are unknown. This is sufficient reason for refusing planning permission."

The EA stated that in order to overcome their objection, the applicant should submit a FRA which is able to demonstrate that the development is safe without increasing risk elsewhere, and where possible should reduce flood risk overall.

The EA provided web links and guidance on how to prepare an FRA.

The applicant's representative (agent) was informed of the need to provide an FRA on the 7th December 2020, and he subsequently sent in an email and letter (Keith Simpson Associates – 16/10/06) from the applicant in respect of discussions around a previous application in 2000, which was for the creation of the fish farm and the provision of a temporary dwelling. On the 2000 application, the EA finally withdrew their objection subject to there being no raised land levels within an area of land to the south of the site, where the fish holding ponds were to be sited. This land, being the lowest on site would therefore be available to accommodate a flood event. The temporary dwelling, and agricultural building (now subject to this proposal) were constructed on slightly higher land levels outside of the area identified as low lying ground.

During the processing of an application in 2005 for the erection of the permanent dwelling which is sited adjacent to the proposed conversion, the EA were consulted at various stages of the process, objecting each time from the lack of a suitable FRA. Although they noted that a topographical survey had been submitted and acknowledged that it went some way to addressing their concerns, they did not consider that the topographical survey satisfactorily constituted an FRA, as outlined in relevant national guidance, which at that time was PPG25 – Development and Flood Risk.

The case officer processing the 2005 application acknowledged in their report, that the EA maintained their objection, but considered that knowledge of the site and the previous 2000 approval for the fish farm and temporary dwelling (whereby the EA removed their objection) alleviated their concerns. This was on the basis that land levels around the ponds were not to be raised, and land levels where the buildings were sited, were slightly higher than the ponds. The house and outbuilding were therefore sited on the highest land within the fish farm and in the area least at risk from flooding. The case officer subsequently approved the application without an FRA, and contrary to EA advice.

A copy of the applicant's letter from Keith Simpson Associated, regarding the previous applications on site was sent to the EA on the 10th December 2020, for their formal consideration.

The agent submitted an email of the 16th December claiming that the guidance on FRA preparation was irrelevant by reason they were applying for a conversion, and not a new build. They indicated that they would include mitigation such as drainage channels to the front entrances, raising the floor levels, use of low permeability materials, a concrete slab,

closed cell insulation to walls and floor and ceramic floor tiles, and PVC skirting.

He was advised by the planning case officer to submit the proposed mitigation to the EA for their consideration to see if it was sufficient to withdraw their objection. He was also advised that buildings used for dwellinghouses (C3) are classed as 'more vulnerable' within the guidelines for Flood Risk Assessments, and therefore development proposals for conversions to residential would trigger the need for an FRA. He was advised that one of the deciding criteria for the Class Q Prior Approval process are to take into account, among other considerations, "flooding risks on the site", and as such, the Local Planning Authority would not be able to determine the application, or look to provide a favourable recommendation until the EA confirmed they have no objections.

The EA responded to the agents email from the 16th December, maintaining their objection on a lack of a FRA. They considered that an FRA is vital to making informed planning decisions and in its absence the potential flood risks posed by the development are unknown.

They acknowledged that they had seen the correspondence from Keith Simpson, submitted during the application in 2005. They stated that, *"due to the passage of time since this previous application, we now need to review the flood risk at this site again."*

Since 2006 the national flood risk guidance has changed, including the Framework along with updated climate change guidance. We therefore need a detailed Flood Risk Assessment showing the flood risk on site and the proposed mitigation measures for the proposed development.

Unfortunately the EA does not hold any flood risk data for the River Poulter. The Flood Risk Assessment will therefore need to estimate the flood risk to the site. The applicant could provide their own flood risk model to accurately assess the risk of flooding to the site. Alternatively, the applicant could undertake a topographic survey of the site and analyse this data to estimate the flood risk to the development. The applicant would need to find out the topographic levels of the channel/banks of the River Poulter, and also the levels of the wider site as well as the topographic floor level of the building.

The FRA should then compare the bank levels to the proposed floor levels. The FRA can also consider the ground levels of the areas of the site shown on the EA flood zone maps as flood zones 2 and 3. The FRA should also discuss any historic or previous flood events known at this location.

If the topographic analysis shows the proposed ground floor level to be close to the level of the River Poulter, the applicant may need to produce a full flood risk model for the Poulter to properly assess the flood risk posed. The applicant may also wish to include a first floor so sleeping accommodation is raised and the occupants have a safe refuge from flooding.

The Flood Risk Assessment should also consider the access and egress routes to the site and how these routes would be affected in a flood event. With regards to the emergency plan for the site, please note that the site is not in an Environment Agency flood warning area."

Advice was supplied with their comments, on how to prepare the FRA.

The agent was sent the formal EA response and advised that an FRA would be required, and that it should accord with their advice.

The agent submitted a preliminary FRA and topographical plan on the 8th January 2021 and the EA were re-consulted.

The EA advised that the topographical plan was illegible so a revised one was submitted on the 26th January 2021 (LSS01 Rev01).

The EA formally commented on the 3rd February 2021 maintaining their objection on the basis that the submitted FRA does not adequately demonstrate that the site is sufficiently above flood levels, and fails to comply with the requirements for site-specific flood risk assessments as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the Planning Proactive Guidance and therefore does not adequately assess the flood risks posed by the development. The submitted FRA fails to:

- Consider how people will be kept safe from the identified flood hazards
- Consider how a range of flooding events (including extreme events) will affect people and property
- Consider the requirement for flood emergency planning including flood warning and evacuation of people for a range of flooding events up to and including the extreme event
- Take the impacts of climate change into account

The EA advised in their previous correspondence that they do not hold any flood data for that area around the River Poulter, but Members should be advised when considering the proposal that the onus is on the applicant to provide necessary information to ascertain whether a site is suitable for development. The fact that the EA do not hold data on the River Poulter should not be sufficient justification to overlook their current objections to the proposal.

The EA advised that without hydraulic model data, they could not estimate the potential flood levels at the property. The topographic survey data submitted does not relate to the flood zones in a way which clearly indicates a flood level. Therefore, in order to obtain accurate estimated flood heights for this site, the applicant must provide their own hydraulic model.

They also advised that the submitted FRA does not include information on access and egress within the floodplain. Therefore, the submitted model data should also inform the emergency plans for the site with regards to access and egress during periods of flooding.

The model data should include the 1 in 100 year 30% and 1 in 100 year 50% flood scenarios, in line with climate change guidance for the Humber region. Information is available online at <https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>.

The EA advised that in order to overcome their objections the applicant would need to submit a revised FRA, and include the data gathered from hydraulic modelling.

As a footnote to their comments the EA advised that if the Council are minded to approve the application without the hydraulic model data, they recommend that the development includes a first floor refuge in the event of a flood, as the flood depths which may affect the ground floor are unknown.

The outbuilding is only single storey, with a relatively shallow roof pitch. It has an eaves height of 2.44m, and a ridge height of 4.7m. This would not be sufficient space for the adequate provision of a first floor refuge.

With a 'FULL' planning application for proposed development, provided the Council are content that the principle of converting the building was acceptable, they could negotiate with the applicant an extension to the building to provide the first floor refuge, or the provision of dormer windows in the roof space. Unfortunately with Class Q proposals, extensions to the building are not permitted. This was put to the applicant and they were advised to withdraw the application and re-submit as a Full planning application, which would allow for other operational development. The applicant rejected this option.

The agent emailed on the 6th February with details he had found on line in respect of a Flood Evacuation Plan, to show what actions should be undertaken in the event of a flood. He proposed mitigation in the event of a flood, such as moving the relative out of the annex into the main house, any visitors to the holiday lets would be contacted to cancel their stay in the likely event of a flood. If visitors are staying in the 'lets' they will be asked to leave immediately. Where immediate action is required, flood barriers can be installed, and a bund could be constructed next to the brook which would create an immediate barriers between the brook and the buildings.

The planning case officer responded on the 8th February advising that, *"the main issues I have identified in your comments are in respect of the cancelling of the holiday-let in the event of bad weather, or the option for the relative to access the main property."*

With this type of application (Class Q), you are fundamentally proposing the creation of three separate, self-contained dwellings that could be sold on the open market. That is the main principle for using the Class Q provisions. We wouldn't be able to permanently limit the use of the units for an annex and holiday lets only. This was one of the reasons why I suggested that a Full application for the change of use of the building would have been the better option for this type of proposal.

Also, the creation of a bank/bund would likely amount to an engineering operation and so wouldn't be permitted under the Class Q provisions."

The EA also responded to the agents flood evacuation proposals on the 8th February 2021, advising that, *"we have not changed our position in relation to this site and there is added difficulty in this location as it is an ordinary watercourse. As such we do not hold hydraulic modelling for this watercourse however the site is indicated to fall within flood zones 2 and 3 respectively."*

As such we have suggested that some degree of modelling is likely to be required to show the true impact of flooding to this site."

With reference to a bund/bank next to a watercourse we would not recommended this although, as this is an ordinary watercourse the decision would lay with the LLFA as to whether this is acceptable.

The FRA will need to show that there is no increased impact to third parties by including a new defence. Again this would likely need some degree of modelling to assess potential impacts on third parties (please note impacts on 3rd parties are not limited to structures).

It should be noted that the potential use of flood resilience and resistance measures such as flood barriers should not be used as a primary means of flood mitigation and should not be used for prolonged periods of time.”

The agent submitted an email on the 9th February, with a web link to gov.uk, flood warning information. They claimed that if the post code for the property is put into the system it states that the barn is not in a high risk area, and the house is at very low risk. When this was tested, the government ‘advice’ was that sea and river flooding in that area was ‘very low risk’ but that the EA is responsible for managing the flood risk from rivers and the sea. When the map was viewed, it identified the barn to be at medium risk of flooding. Given that the gov.uk guidance identifies that the EA are responsible for managing river flood risk, it is vital that their comments are fully adhered to during the processing of the application, and if sufficient information cannot be submitted to withdraw their comments, then the recommendation would be to refuse the application.

The applicant considered that the EA were not a statutory consultee and as such could the development go ahead even with their objections? The agent was advised that the EA are a Statutory Consultee and as such the Local Planning Authority should adhere to their advice when determining development proposals in flood zones, to ensure that all information has been gathered to demonstrate that a development is safe in the event of flooding.

The agent requested direct contact with the EA to assist with the required information, the EA subsequently sent their contact details. Emails following on from this in March and April 2021 suggested that the applicant was looking to organise a suitable company to complete the hydraulic modelling on his behalf, and that they would start this process once the highway issues were resolved.

In March 2021, the applicant submitted a freedom of Information request to the EA, for information relating to the required Flood Risk Assessment content, specifically to Product 4 guidance. According to the information he received, this stated *that “information will only be provided where it is available as we do not hold detailed information on all watercourses.*

Product 4 – Producing a Flood Risk Assessment (FRA) where you:

- Require mapped and tabulated outputs from an Environment Agency model e.g. flood levels for a range of events*
- Require information on local defences and historic flooding events*
- Do not need to undertake additional hydraulic modelling”.*

The EA had already confirmed in their previous response that Hydraulic modelling would be required to inform flood levels at the site. As such, product 4 would not be applicable in this instance. He would need to use product 5 or 6 as this allowed for hydraulic modelling within

the produced FRA. They did state in their response however, that *“we have no records of historic fluvial flooding at this location. However, we would advise that this does not mean there has never been historic flooding in this location or that the area is automatically free from a risk of flooding. We do not claim that all flood events have been recorded.”*

The applicant has requested that I include the fact that he *“applied to EA for information they hold on the site, as per gov.com instructions, for a level 4 pack. This revealed that they hold no information in this area. Also that there are no monitoring stations up stream on the Poulter, the nearest one is 3 miles downstream at Cuckney.”*

On the 22nd July, the applicant submitted a letter to Bolsover District Council. He queried the EA responses during processing of the application, stating that various maps from government websites show that flood risk is medium from river flooding, and low from surface water flooding (the EA do not monitor surface water flooding, only river and seas). He stated that he had submitted a topographical survey which identifies the barn to be the highest point of land within the site, and that demonstrates that the map which the EA are referring to bears no resemblance to actual flood risks in the area. He also questioned that the EA would not carry out a site visit. The applicant is concerned that the cost of hydraulic modelling and a full FRA is prohibitive and just viewing the land and referring to the topographic map clearly shows that the water couldn't flow uphill. The house is shown as low risk yet the barn 20 feet away is higher. He advised that they are registered on the Government flood risk alert system and if this did highlight a risk they would cancel any bookings, until resolved.

The EA sent their final response to the applicant's letter on the 20th September 2021. They advised that a site visit would not provide any new data. They do not question the actual ground levels as they are identified on the topographic survey, the information which is missing in order to inform the proposal, is flood heights, which can be obtained with a hydraulic model. They do not consider it possible to estimate flood flows on site by eye, the hydraulic model will be based on the size of the river catchment, the typical rainfall in the area and the ground conditions. As mentioned above, the onus is on the applicant to provide the necessary information to ascertain whether a site is suitable for development.

The EA state *that flood maps for planning (flood zone 2 and flood zone 3) at this location are based on national scale modelling produced in previous years called JFlow. All that the flood zone data can tell us here is the risk of flooding (i.e. how far the flood water might extend in each flood event), not the height, depth or velocity of the flood water. In the absence of other suitable evidence, this JFlow modelling remains the best available data for the location. In order to understand the flood risk and know what depth the flood water could be on site, the applicant will need to compare the flood heights to the topographic site levels.*

The EA agree that the applicant's topographical survey will likely be more accurate than the data which the EA hold, as the topographic data used to produce the JFlow model will be from an aerial survey of the local area called LiDAR.

The EA confirm that if the applicant believes their accurate topographic data would show that the site is not in the floodplain of the River Poulter, e.g. it is in Flood Zone 1, then they need to provide evidence, in the form of a hydraulic model that shows the site is not in the floodplain.

The applicant therefore needs to commission a hydraulic model to estimate the flood risk for

the River Poulter at this location, allowing them to complete a full risk assessment in line with the technical guidance to the National Planning Policy Framework and supporting identification of appropriate mitigation, such as raised finished floor levels. They can then use their modelled flood heights to compare to the topographic survey and see which parts of the site are within flood zone 3 or flood zone 2.

Due to the cost of commissioning a hydraulic modelling survey the applicant requested the application be determined by Planning Committee, on the basis that he considers that land levels around the buildings are sufficiently high enough to protect residents in the event of a flood, and if an event does occur then the mitigation measures put proposed earlier in the process would be sufficient.

The EA does not necessarily consider that the applicant is incorrect in their assumptions, they are concerned that insufficient information has been submitted to accurately assess current flood levels at the property.

According to the most current data which the Council hold on their mapping system, the building subject to this proposal is located in both flood zones 2 and 3 which are areas at the highest risk of flooding.

It should also be noted that the access drive from Whaley road, and part of the driveway which will be used by residents also lies within Flood Zones 2 and 3.

The Council fully acknowledge that the cost of submitting the required information is high, but without the FRA and hydraulic modelling the relevant consultee is not able to confirm whether the site is safe from, or at low risk of flooding.

Flash flooding and prolonged periods of heavy rain are more commonplace than they were 16 years ago when the permanent dwelling was constructed in the absence of a FRA.

The climate change crisis becomes more evident each year with increased flood events around the country. The application site has ponds to the north and south of the buildings, and the river Poulter runs from the north of the site, and then meanders along the entire western boundary of the site, which is bound by elevated land levels.

The Local Planning Authority therefore considers that full investigation of potential flood risks must be carried out to ensure that the site is safe. As previously mentioned, the onus is on the applicant to provide the required information, and as such Members are requested to refuse the application in accordance with the officer recommendation.

Part (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 site is currently used for the breeding and provision of fish, predominantly Carp, sold to the Asian restaurant market. In order to carry out the operations, fish are caught by rod or net techniques, by family, friends, or if required, labourers. There is no heavy machinery brought on site to catch the fish, and there are no frequent traffic movements to and from the site.

The applicant would like to optimise the use of the holiday lets, allowing guests the opportunity to use the ponds for catching fish in association with his agricultural business.

This could be a 'unique selling point', and would not affect the normal operations of the business provided there is no 'commercial' fishing permitted.

The southern elevation of the buildings overlook the ponds and well maintained grounds, providing a pleasing outlook for residents, as identified on the photos below.



Although an area of outdoor amenity space has not been provided on the plans, there is sufficient space to the south to enclose each of the units, providing some designated outdoor amenity space.



Should Members be mindful to approve the application, they are requested to defer the decision until such time that an amended site layout plan has been submitted for the provision of outdoor amenity space.

It is therefore considered that the location and siting of the building does not make it impractical or undesirable to change the use from agricultural storage to residential.

Part (f) - The design or external appearance of the building

The building subject to this application is relatively contemporary in its appearance and has no traditional features. It is laid out in a simple rectangular form, and is relatively low in height, at eaves and pitch level.



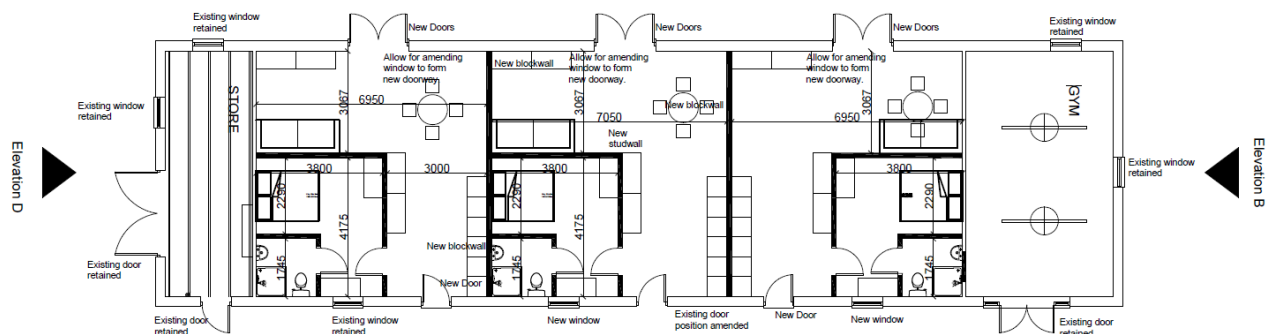
The proposed alterations to the building are minimal, they include new doors in the southern elevation, and new and altered doors and windows in the northern elevation.

It is considered that the minor alterations to the building will not cause any detriment to design and external appearance and will not harm the rural character of the site.

The alterations accord with the provisions of Class Q.1 part h, which requires that the development will not result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point, and building operations consist only of the installation or replacement of windows, doors, roofs, or exterior walls, with necessary provision for water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse.

Part (g) - The provision of adequate natural light in all habitable rooms of the dwellinghouses

The application proposes new glazed doors along the southern elevation of the building to provide light into the living and dining areas for each unit. Existing windows would be utilised, and new windows formed on the northern elevation of the building, would provide light into the bedroom of each unit, although it is accepted that light entering the room would be limited by reason of the position of the window which will be obscured by stud walls.



Whilst the proposed siting of windows does not maximise daylight levels into habitable rooms, it is accepted that if the application had been considered acceptable (in terms of flood risk), then an amended plan could have been submitted to install roof lights into a vaulted roof space, and provide additional openings or widen existing ones where required. New doors could also be glazed to provide additional light.

On that basis, and by reason that each habitable room does have some daylight provision, it is not considered reasonable to refuse the application on those grounds.

CONCLUSION

The applicant was advised at various stages of the application process to withdraw the application and re-submit as a 'Full' application, given the complex nature of Class Q proposals. A 'Full' application could potentially alleviate the need for a site specific flood risk assessment and hydraulic modelling to be carried out, as negotiations could be entered into to allow an extension to the building, through an increase in height or the installation of dormer windows, in order to provide a suitably sized first floor refuge for guests in the event of a flood. A 'Full' planning application would also allow for other operational development to be carried out within the site to provide some mitigation for flood defence. Only building operations reasonably necessary for the conversion of the building are permitted under Class Q. Extensions and other operational development are not permitted. The applicant was made aware of this.

Bolsover District Council, in principle, supports proposals for tourist accommodation and so would have worked proactively with the applicant to try and achieve a satisfactory outcome, should the application have been submitted or revised as a 'Full' proposal. The Local Planning Authority has worked proactively with the applicant for several months during processing of this application, but have not been able to overcome the fundamental issues associated with the sites location in an area that is at risk of flooding.

Should Members regard the building proposed for conversion to be sufficiently high enough in the event of a flood, they should also be satisfied that the access and driveway, which do not appear to have been altered in accordance with the previous permissions are also at a sufficient height in the event of a flood, because given that the site is surrounded by water, this is likely to be the only available way to exit the site in an emergency. This may be evident to some extent during the Committee site visit.

The Local Planning Authority sympathises with the applicant over the cost of preparing the necessary evidence to inform the Environment Agency response, but given the current climate control crisis, increasing rainfall/flooding events around the country, and the fact that the proposal is for new residential development, the need to give full and proper consideration to potential flood risks is fundamental.

For that reason Members are requested to refuse the application in accordance with officer recommendations.

If Members are mindful to approve the application against Environment Agency advice, they are requested that the application is deferred, with an agreement from the applicant to extend the determination date, to allow for some minor amendments to be made to the external elevations of the building, in order to provide a better standard of daylight, and to provide some external space to the south of the building to be used as outdoor amenity space. There would be no requirement to re-consult on minor amendments and so only a short extension of time would be required.

RECOMMENDATION - Refuse

Reason for Refusal

1. Part Q.2 (1) of Class Q, Part 3, Schedule 2 of the Town and Country Planning General

Permitted Development Order 2015 as amended, requires that where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to 'flood risks on the site' (sub section d).

The building proposed for conversion, along with the site access and part of the driveway is sited within Flood Zones 2 and 3. The submitted Flood Risk Assessment which is deemed to be inadequate by the Environment Agency, does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the planning practice guidance, and therefore fails to adequately assess the flood risks posed by the development. Without the submission of necessary information by the applicant, the proposal is considered to be contrary to the provision of Class Q as potential flood depths are at this location are unknown.

Statement of Decision Process

The case officer has worked proactively with the applicant during processing of the application to try and overcome issues associated with the proposal. Whilst highway issues have been resolved, the applicant has not submitted adequate information to overcome the fundamental objection from the Environment Agency, with regards to potential flood risk issues, and as such the Local Planning Authority had no other option than to recommend the application for refusal.

Equalities Statement

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e. "the Public Sector Equality Duty").

In this case, there is no evidence to suggest that the development proposals would have any direct or indirect negative impacts on any person with a protected characteristic or any group of people with a shared protected characteristic

Human Rights Statement

The specific Articles of the European Commission on Human Rights ('the ECHR') relevant to planning include Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

It is considered that assessing the effects that a proposal will have on individuals and weighing these against the wider public interest in determining whether development should be allowed to proceed is an inherent part of the decision-making process. In carrying out this 'balancing exercise' in the above report, officers are satisfied that the potential for these proposals to affect any individual's (or any group of individuals') human rights has been addressed proportionately and in accordance with the requirements of the ECHR.