

SUPPORTING STATEMENT

12th December 2021

PROPOSED DETACHED DWELLING.



Pinfold Farm, Preston Road, Ribchester, PR3 3YD

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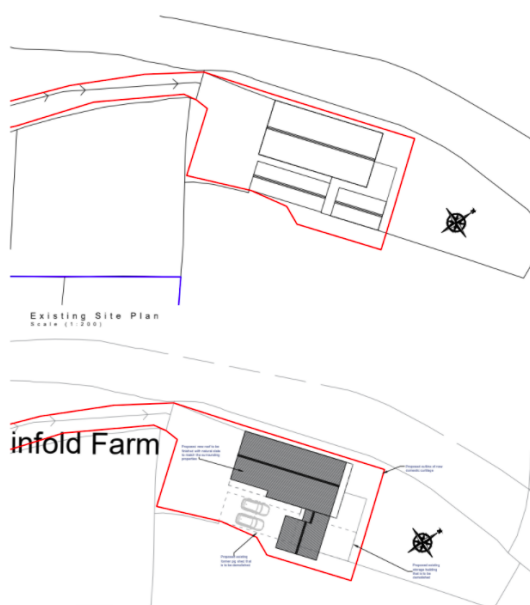
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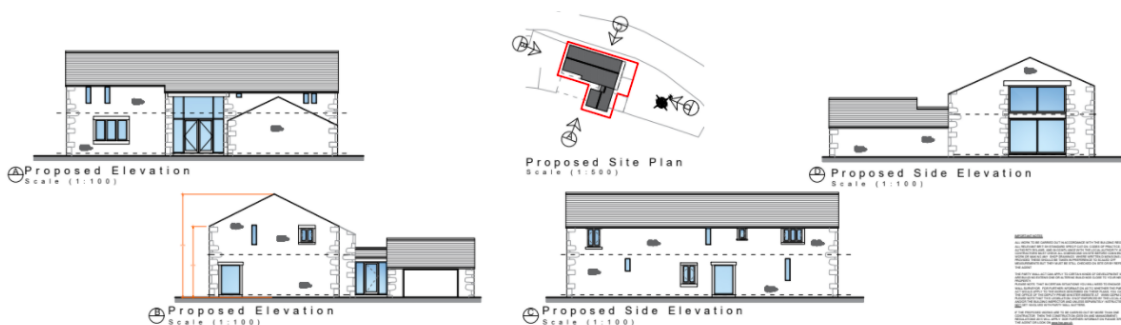
1. THE APPLICATION SITE

- 1.1 The application site comprises part of Pinfold Farm, located off Preston Road, Ribchester. It is situated within a predominantly rural area largely typified by open agricultural land with scattered dwellings/farmsteads and clusters/hamlets of dwellings also occupying the landscape. The wider site is surrounded by traditional residential dwellings.
- 1.2 Two buildings at Pinfold Farm occupy the site with access and hardstanding yard area. The site extends to 999m². The two buildings include a fully enclosed steel portal framed agricultural building, timber pig shed and their curtilages. Building 1 walls are constructed of concrete blocks to 1.5m high, clad in yorkshire boards and building 2 is of timber construction. The front western elevation of building 1 has a sliding steel door and the pitched roof is covered in concrete cement roof sheets. Up until March 2011, the buildings were used as part of Pinfold Farm's unit to house sheep and for storage.
- 1.3 The site is and will be accessed via the existing private roadway from Preston Road . The drive is used to access the surrounding dwellings and the agricultural yard. Traffic on and off site from one dwelling will not have an adverse impact on highway safety as it will not intensify use from its existing agricultural use.

2. THE PROPOSED DEVELOPMENT

- 2.1 The proposed development is for a detached dwelling, following an appeal, which allowed for a Class Q change of use from a barn to a dwelling. The appeal is discussed in more detail in the following section.
- 2.2 The proposed dwelling would sit on the footprint of the existing barn. It would be constructed in stone and render with a slate roof, replicating the other dwellings in the surrounding hamlet. The dwelling would be two storey in form with the appearance of a traditional barn. This is very much in line with the Council’s comments when the prospect of a class Q conversion was discussed with them. They felt the steel portal frame structure would not produce a dwelling in keeping with the other dwellings in the immediate vicinity. The current proposal seeks to take those comments into account to produce a dwelling that is more in line with what the Council’s first thoughts were.
- 2.3 On the ground floor the proposed dwelling would accommodate a lounge, kitchen/dining room and playroom. It would also have a double garage which would be attached to the southern elevation, consisting of a single storey ancillary element, in line with the existing pig shed (as seen on the plans below). The first floor would accommodate four bedrooms and a small office. A small garden to the east of the dwelling is proposed and the existing yard area will become a front yard and parking area.
- 2.4 The plans below show extracts of the site plan, floor plans and elevations of the proposed dwelling.





3. PLANNING HISTORY

3.1 The Council refused to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use of the existing barn into a dwelling (reference 3/2021/0096) in January 2021. Permission was refused on the grounds that:

‘The external appearance of building, having particular regard to overall design, external materials and fenestration arrangement would result in the introduction of a proposal of an overtly suburban character which would be read as an anomalous, incongruous and discordant introduction which would be visually incompatible with and unsympathetic to its rural surroundings in conflict with the requirements of the

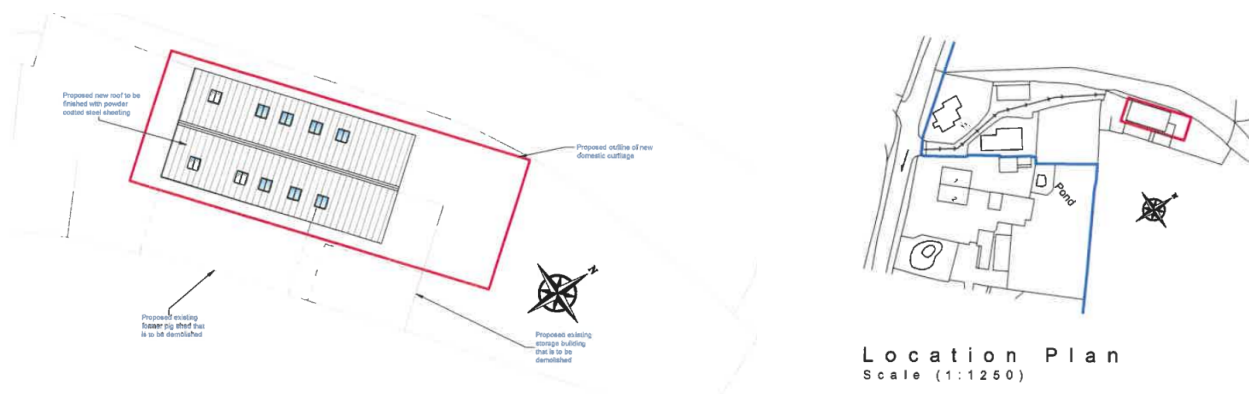
National Planning Policy Framework and Q.2(f) of the Town and Country Planning (General Permitted Development) (England) Order 2015.’

3.2 The applicant appealed the Council’s refusal and the appeal was allowed by decision notice dated August 2021 (reference APP/T2350/W/21/3274371). The inspector concluded *as such, I am satisfied that the proposal would not unacceptably harm the design or the external appearance of the building. Accordingly, I consider it would not conflict with the requirements of paragraph Q.2(f) of the GPDO.*

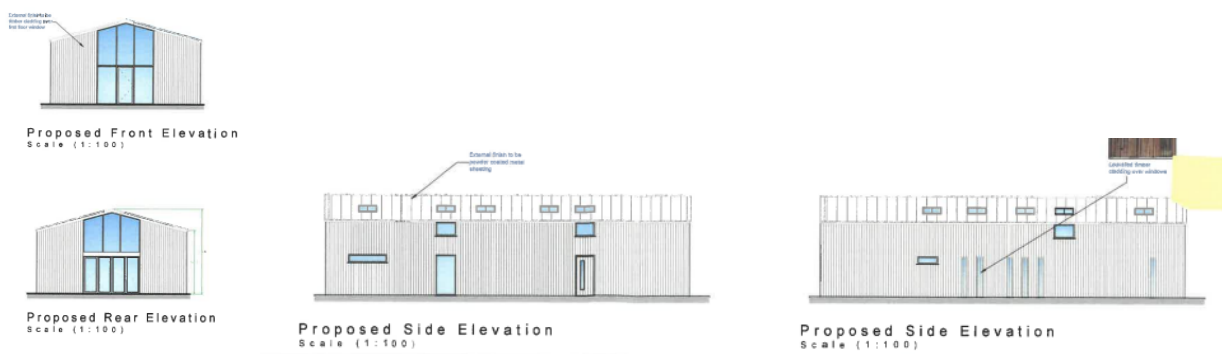
3.3 The appeal was allowed subject to the following conditions

- 1) Prior to the first occupation of the dwelling hereby permitted details of the boundary treatment of the residential curtilage shall be submitted to, and approved in writing by, the LPA. The boundary treatment shall be erected or planted prior to occupation and retained thereafter.
- 2) Prior to the first occupation of the dwelling hereby permitted the two adjacent agricultural buildings shall be removed as shown on the Proposed Site Plan Reference 002.

3.4 The approved plans are shown below for reference.



Extract Site Location Plan & Block plan



Extract elevations of approved dwelling

4. PLANNING POLICY AND ASSESSMENT

- 4.1 The Council's Proposals map defines the site within open countryside. Open Countryside is defined in the adopted Core Strategy as a designation currently defined within the proposals map of the District Wide Plan mainly of land outside Settlement Areas but not designated Greenbelt or AONB.
- 4.2 Normally the erection of a dwelling in this location would be contrary to Local Plan policy, however the applicant has a legitimate fallback position due to the appeal being allowed for a Class Q change of use from the existing barn into a dwelling.
- 4.3 It is established in case law that permitted development rights can legitimately represent a fallback position when considering alternative proposals for development of the same site. The relevant legal principles relating to fallback were set out in *R v Secretary of State for the Environment and Havering BC (1998) EnvLR189*. In that case Mr Lockhart-Mummery QC, accepted submissions that there were three elements to the fallback test:

"First whether there is a fallback use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is "yes" a comparison must be made between the proposed development and the fallback use."

- 4.4 The notion of the Class Q fallback position was subsequently and comprehensively dealt with at the landmark Court of Appeal case, *Mansell vs Tonbridge and Malling Borough Council [2017]*. The case concerned an appeal of a decision dismissing a claim for judicial review of a planning permission granted by Tonbridge and Malling Borough Council, the development being the demolition of a barn and bungalow and the construction of four detached dwellings. At the time of the decision, and prior to subsequent amendments, Class Q of Schedule 2, Part 3 of the General Permitted Development Order authorised the barn to be converted to three residential units with a combined floorspace of up to 450m². Coupled with the replacement of the existing bungalow, also supported by policy at the time, the resultant effect was that the principle of development existed for four residential dwellings, such four dwellings being the same number of units for the proposed redevelopment of the site.
- 4.5 The judge stated in this case that : *“I cannot accept that argument. In my view the officer did not misunderstand any principle of law relating to a fallback development. His advice to the members was sound. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar...in this case...it was plainly appropriate, indeed necessary, for the members to take into account the fallback available to the East Malling Trust as the owner of the land, including the permitted development rights arising under Class Q in the GPDO and the relevant provisions of the development plan. Not to have done so would have been a failure to have regard to a material consideration, and thus an error of law.”*
- 4.6 The second challenge was whether there was a ‘real prospect’ of development under Class Q on the lack of contemporaneous evidence that the landowner had contemplated such development. Lindblom LJ confirmed the legal considerations in determining the materiality of a fallback position as a planning judgement were:
- the basic principle is that for a prospect to be a “real prospect”, it does not have to be probable or likely; a possibility will suffice;
 - there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make

use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the circumstances of the case in hand.

- 4.7 He then concluded that the clear desire of the landowner to develop and maximise the value of the site was sufficient to demonstrate there was a real prospect to the Class Q fallback position in this case. Therefore, the council made no error in law in giving material weight to such fall back position.
- 4.8 The applicant has been granted permission to change the use of the building into a dwelling under Class Q. The *Mansell vs Tonbridge and Malling Borough Council [2017]* case established that the permitted development rights arising under Class Q were a material consideration in the determination of a subsequent planning application.
- 4.9 Secondly, the test of the fallback position is that the implementation of the approval only has to be a possibility, it does not have to be probable or likely. The approval of Class Q is therefore considered to be at least a possibility that the approved scheme will be implemented. The *Mansell vs Tonbridge and Malling Borough Council [2017]* did not consider it necessary as to how the applicant would make use of any permitted development rights available to him under the GPDO, however in this case he has by securing a Class Q permission under permitted development and therefore the fallback position is strengthened by determining that it is a 'real prospect' which satisfies the basic principle of the fallback position. The current proposal is considered to clearly align with the High Court decision.
- 4.9 Turning to the *R v Secretary of State for the Environment and Havering BC (1998)* case the judge raised three questions. The answer to the first is that it is considered that there is a lawful ability to undertake such a use i.e. residential, secondly it has already been established there is a real prospect of such a use occurring, and the third question raises the issue of a comparison between the proposed development and the fallback use.

- 4.10 The approved change of use of the barn to a dwelling, will create a modern barn conversion style that is more in line with the Council's original comments and suggestions about the site pre appeal. The Inspector acknowledged in the appeal decision that the agricultural building that is the subject of the appeal is a relatively modern fully enclosed portal frame structure. The proposed dwelling would result in a more traditional style building which would have a vernacular appearance and sit more in line with the cluster of dwellings at the front of the site.
- 4.11 It is accepted that the proposal includes a double garage which was not part of the approved scheme, however the addition of a single storey ancillary structure would provide an improved design rather than a monolithic modern dwelling and it sits where the other sheds currently are, therefore it is built up at present. The site is set back from the road, however the upper part of the dwelling is visible and the proposed dwelling would have a slate roof with the use of stone quoins which create a dwelling of a improved appearance in the rural landscape than the powdered coated metal sheeting roof and timber clad walls which are proposed for the approved class Q dwelling.
- 4.12 The volume of the proposed house is 787m³ and 105m³ for the garage. There is a reduction in the volume of the built area as the existing volume is 917m³, comprising 763m³ for the barn and 154m³ for the pig shed. Accordingly, there is an overall improvement in the openness and visual impact of the proposed full application dwelling compared to the existing site buildings.
- 4.13 Overall the design of the proposed dwelling is considered to be a significant improvement compared to the approved dwelling. The design of the proposed dwelling is of a more rural vernacular style compared to the more urban modern design of the approved dwelling (in line with the Council's own original comments). The proposal is considered to be in line with an appeal decision in Taunton (reference APP/W3330/W/20/3248009) which was for two dwellings replacing existing agricultural buildings. The inspector concluded that *However, there is a realistic fallback position which would result in the same amount of housing being delivered in the same location, and in these circumstances, I afford the conflict with the development plan moderate weight. The appeal proposal would however deliver significant benefits to the appearance of the site compared to that fallback position, and this carries significant weight in favour of the appeal proposal. Overall, taking account of the Framework and the*

above considerations, I find that the benefits of the proposed development compared to the identified fallback position are a material consideration which outweighs the conflict with the development plan and justifies granting planning permission for the proposal. Consequently, I conclude that the appeal should be allowed.

5. CONCLUSION

- 5.1 The applicant considers that the fallback position created by the approval of a Class Q dwelling is a material consideration to the outcome of this application and represents a 'real prospect'. Therefore where there is demonstrably a realistic prospect of a permitted development scheme being implemented, and where an alternative proposal would normally conflict with the development plan, insofar as it being an unsuitable location for housing, the potential for the fallback position to outweigh that conflict must be considered by the local authority. It stands to reason that, where the alternative new-build proposal offers an enhancement to the setting when compared to the fallback, the development should be allowed to proceed.
- 5.2 In light of the above submissions, it is concluded that, for the reasons stated, the proposed development would provide a significant improvement to the appearance of the site and the wider rural landscape compared to the previously approved dwelling and therefore on that basis we respectfully request that the planning application is approved.

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