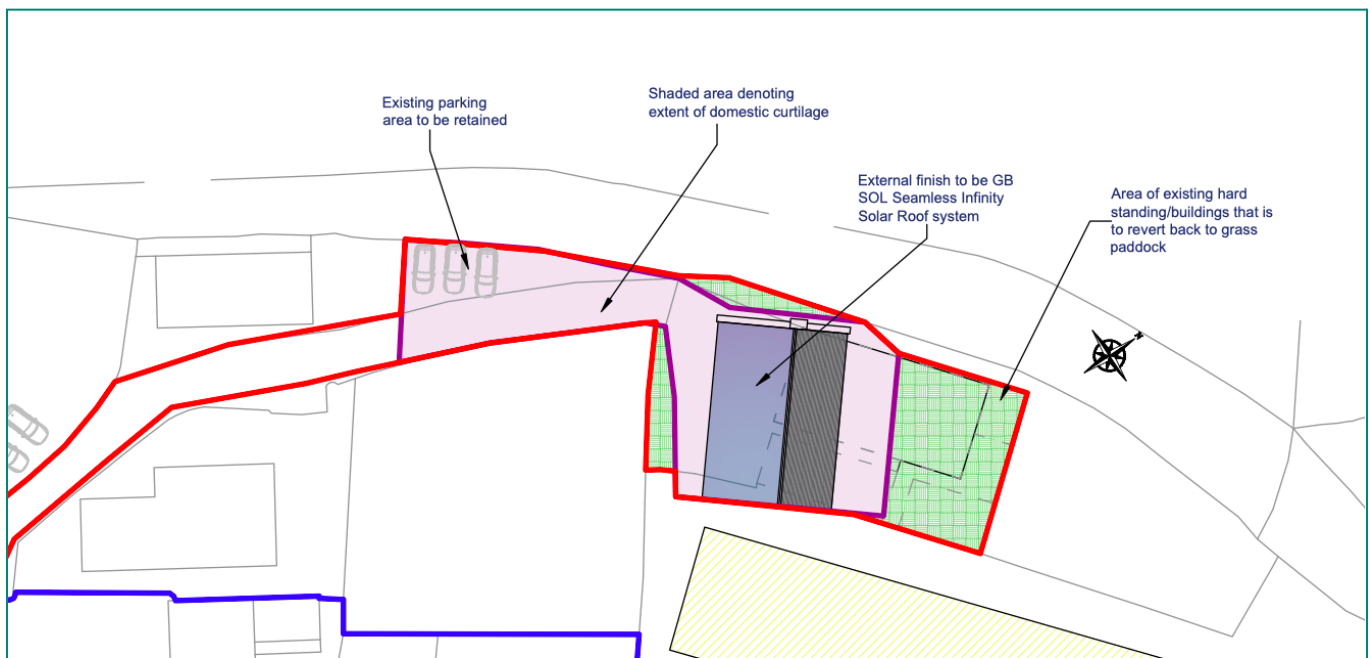


## SUPPORTING STATEMENT

12th December 2022

### Proposed demolition of Approved Domestic Dwelling to New Improved Energy Efficient Domestic Dwelling



**Pinfold Farm, Preston Road, Ribchester, PR3 3YD**

Prepared by MacMarshalls Rural Chartered Surveyors & Planning Consultants



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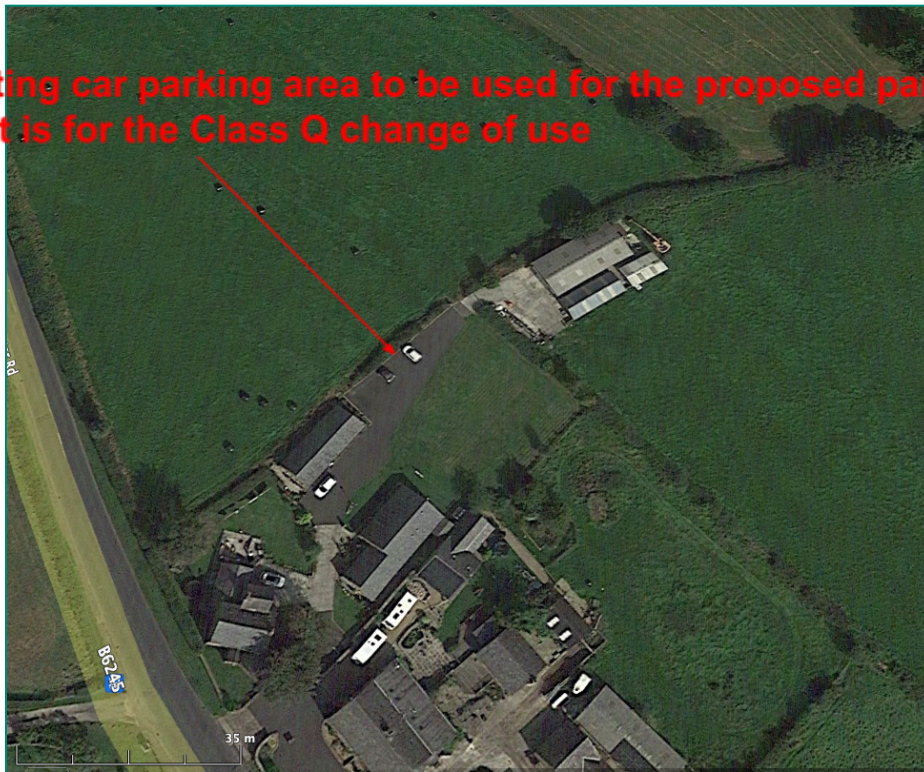
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## 1. THE APPLICATION SITE

- 1.1 The application site comprises part of Pinfold Farm, located off Preston Road, Ribchester. It is situated within a predominantly semi rural/ 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 Three buildings at Pinfold Farm occupy the site with access, existing parking for 3 cars and hardstanding yard area. The site extends to 1114m<sup>2</sup>. The three buildings include a fully enclosed steel portal framed building, timber pig shed and storage buildings and their curtilages. Building 1 walls are constructed of concrete blocks to 1.5m high, clad in yorkshire boards and the other buildings are 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 In August 2021 prior approval was given at an allowed appeal (reference APP/T2350/W/21/3274371) for the change of use of building 1 to a single dwelling (further details are given in the planning history section below). The other two buildings were proposed to be demolished. The site is therefore approved for residential use.
- 1.4 The previous pre application (RV/2022/ENQ/00041), stated,  
  
*'that the proposal due to its location would place reliance on private motor vehicle'*  
  
This is wholly untrue as there is a bus stop right outside Pinfold Cottages (well within walking distance). A copy of the bus timetable showing the various routes to Preston and Chipping have been submitted with this application. Therefore, future residents therefore have the option of using the bus. In addition, the fact the class Q conversion has been granted means a dwelling will be provided on site, whether that be through the class Q or this proposal if approved. Accordingly, due to the fallback position, the sustainability of the location is not relevant to the proposal and assessment.
- 1.5 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 site. There is a parking area for the existing dwellings with

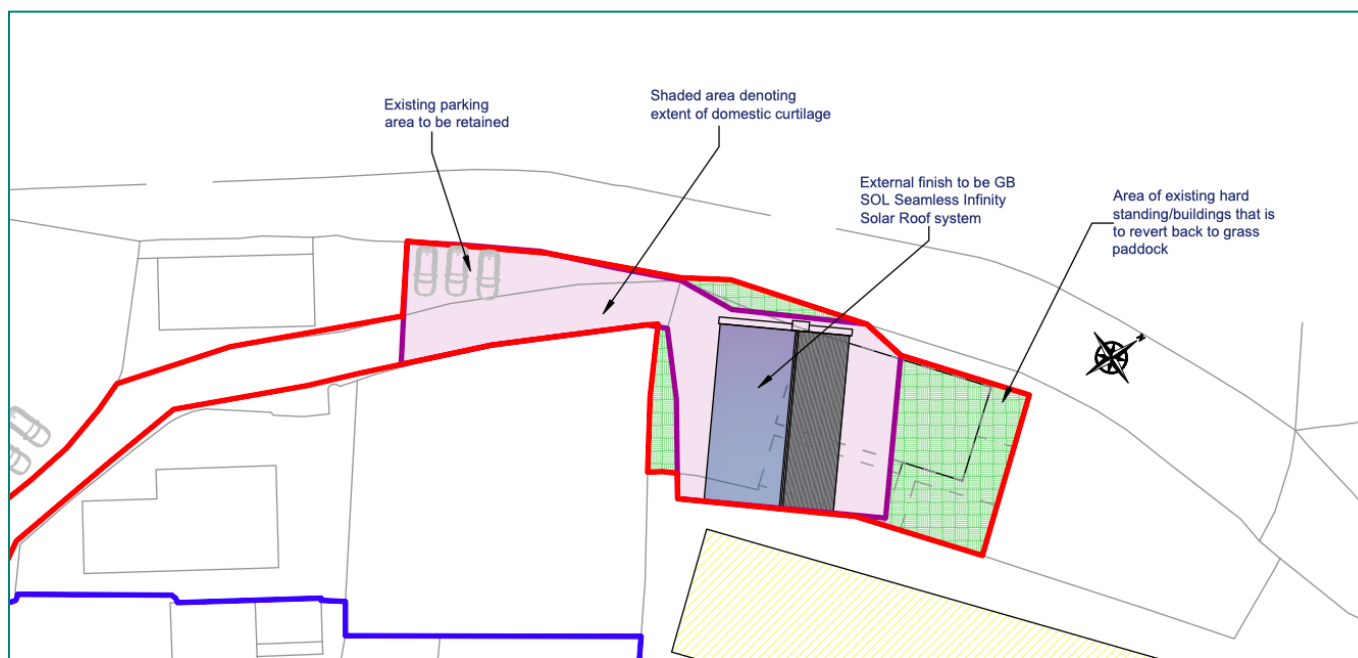
space to park 3 cars for the proposed new dwelling. This was also the position for the approved class Q scheme. The area of existing parking is shown on the google earth extract below.

**Existing car parking area to be used for the proposed parking like it is for the Class Q change of use**

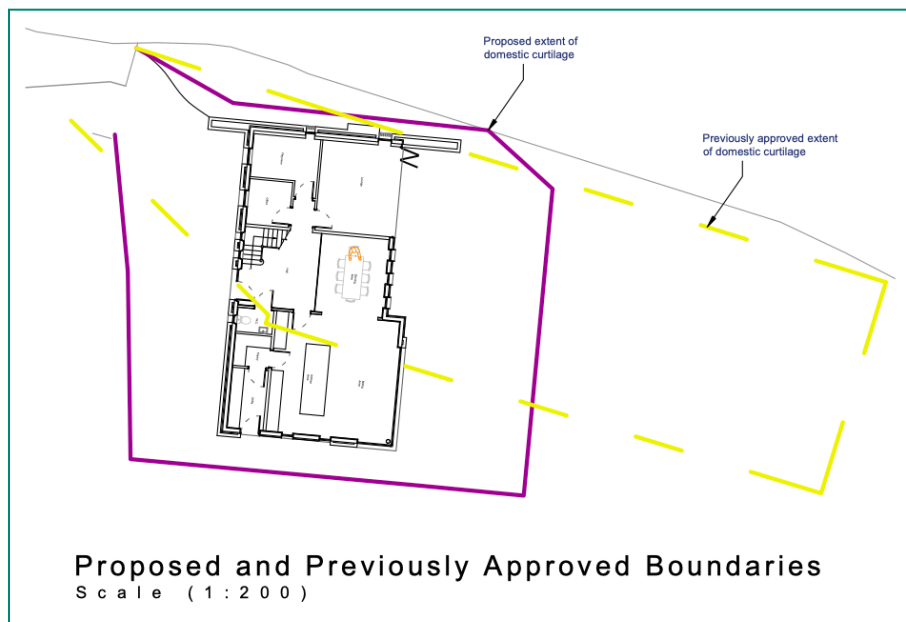


## 2. THE PROPOSED DEVELOPMENT

- 2.1 The proposed development is for a detached dwelling, following an appeal, which allowed for a Class Q change of use from a building to a dwelling.
- 2.2 The proposed dwelling has a different orientation to the class Q building. This is to maximise the energy efficiency of the build as the proposed roof is to be made out of a seamless solar roof system (not panels that project beyond the roofline, they form the actual roof cladding). Due to the reorientation of the dwelling, the yard area to the north and a small section to the south and west will revert back to grassland paddock area, creating an open grass area where there currently is not. As seen on the extract plan below, these areas are shown coloured green below. They show that part of the area where the existing class Q building sits will revert back to grassland paddock (not part of the residential curtilage). The area of the green is a significant 230m<sup>2</sup>.



2.3 Further, the class Q curtilage extended further north east of the existing class Q building. Therefore, although the proposed dwelling extends beyond the class Q curtilage to the east, it reduces the curtilage to the north. This is shown on the extract plan below.



2.4 In conclusion, the area of the approved class Q curtilage, parking and access road is 907m<sup>2</sup> and the area of the proposed curtilage with garden, parking and access is 878m<sup>2</sup>. Therefore, overall there is a reduction of 29m<sup>2</sup> in respect of the area to be developed.

2.5 The class Q change of use produces a floor area of 300m<sup>2</sup> with a volume of 745.38m<sup>3</sup> and the proposed new dwelling has a reduced floor area of 220m<sup>2</sup> with a reduced volume of 736m<sup>3</sup>.

2.6 The proposed dwelling would be constructed in locally sourced stone and timber cladding. The roof would be constructed of a highly sustainable GB SOL Seamless infinity Solar Roof system. The dwelling would be two storey in form with the appearance of an innovative design using traditional materials. This is very much in line with the Council's comments during pre application discussions (expanded on later on).

2.7 On the ground floor the proposed dwelling would accommodate a lounge, kitchen/dining room, office, utility and playroom. The first floor would accommodate four bedrooms (two ensuite) and a family bathroom. A small garden to the north east of the dwelling is proposed.

2.8 Floor plan and elevation plan extracts of the proposed dwelling are shown below.



2.9 No sustainable features, other than compliance with building control were added to the class Q proposal (mainly due to the class Q restrictions). The current proposal seeks to change that. It offers significant energy efficiency improvements. These are listed as:

2.9.1 GB SOL Seamless infinity Solar Roof system - an example of which is shown below. It is described as,

*‘The Infinity solar roof is an almost seamless glass roof with exceptional power generation capacity. Solar panels are mounted within a structural framing system and the roof is then finished with high quality welded aluminium flashings that are powder coated for colour matching. The result is a sleek glass and aluminium roof covering from ridge to gutter and side to side, with huge solar power output and a 25 year warranty.’*

This design has been used in AONBs as it is in keeping with cladding used for agricultural buildings, whilst providing solar electricity. That with the ground source heat pump will ensure the dwelling is not reliant on grid electricity.



2.9.2 Proposed new ground source heat pump with adjoining pipework in the field (using PD rights). These are described as:

*‘A ground source heat pump, sometimes referred to as a ground-to-water heat pump, transfers heat from the ground outside your home to heat your radiators or underfloor heating. It can also heat water stored in a hot water cylinder for your hot taps and showers.’*

*Thermal transfer fluid (TTF), a mixture of water and antifreeze (sometimes known as ‘brine’) flows around a loop of pipe, buried in your garden or outdoor space. This loop could either be a long or coiled pipe buried in trenches, or a long loop (called a ‘probe’) inserted into a borehole with a diameter of around 180mm.*

*Heat from the ground is absorbed into the fluid, which then passes through a heat exchanger into the heat pump. This raises the temperature of the fluid and then transfers that heat to water.’*



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They will reduce the household carbon footprint and heat the dwelling as well as the water.

2.9.3 In addition, the dwelling will have a Mechanical Ventilation with Heat Recovery (MVHR). This is described as,

*‘a whole house ventilation system that both supplies and extracts air throughout a property. Heat recovery is an option used in domestic dwellings, and helps to reduce the heating and cooling demands of buildings.’*

### 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:

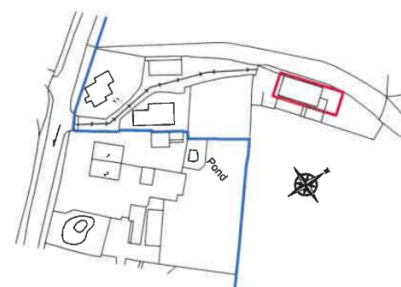
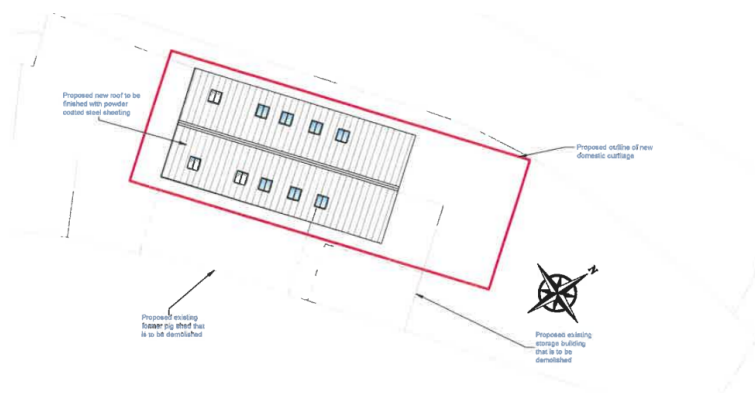
*'The external appearance of building, having particular regard to overall design, external materials and fenestration arrangement would result in the introduction of a proposal of an overtly suburban character which would be read as an anomalous, incongruous and discordant introduction which would be 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.



**Location Plan**  
Scale (1:1250)

### Extract Site Location Plan & Block plan



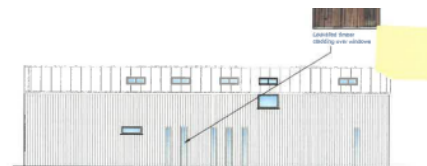
**Proposed Front Elevation**  
Scale (1:100)



**Proposed Rear Elevation**  
Scale (1:100)



**Proposed Side Elevation**  
Scale (1:100)



**Proposed Side Elevation**  
Scale (1:100)

### Extract elevations of approved dwelling

3.5 Since then, the LPA have refused an application for the demolition of the buildings on site and the erection of a new dwelling (3/2021/1271). There were three reasons for the refusal, summarised as,

- Contrary to open countryside policy
- Unsustainable development
- Adverse impact on external appearance, scale of curtilage, visual impact, visual amenities.

3.5 These reasons were readdressed by the applicant with an amended design and a pre-application submitted to the LPA in order to try and enter meaningful discussions about the proposal (RV/2022/ENQ/00041).

- 3.6 The applicant struggled to obtain a response to the pre application, however a written response was given with limited explanation. A further telephone call with the planning officer resulted in a further redesign for a modern, innovative design, rather than a barn style lookalike dwelling. No response has been given to date, therefore the applicant has made the decision to submit a further planning application.

#### 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. This has been mentioned by the LPA at both the last refused application and the last pre application response, however they have failed to fully explain why this principle does not apply to this proposal. An Inspector in a recent cost application for an appeal (APP/F2415/C/22/3292748) stated,

*'The wording of Condition 3 in this appeal is very similar to that found in the previous well-established case law. The appellant clearly explained this in their statement of case, and the case law was the reason for my decision to quash the notice under ground ©. The Council should have followed this case law, and by not doing so acted unreasonably which directly caused the appellant to incur unnecessary expense in the appeal process.'*

4.3 The above is applicable to the current assessment, as so far, although case law is mentioned by the LPA, they have failed to explain exactly why it is not relevant to this proposal. It is a reason to deviate away from local policy and explanation by the applicant has been given, even though the last decision notice states it is without sufficient justification. Further emails in response to the pre application report have been sent by the applicant's agent, however they have not been answered by the LPA.

4.4 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.”*

4.5 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 450m<sup>2</sup>. 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.

4.6 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.”*

4.7 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 judgement in the circumstances of the case in hand.

4.8 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.

4.9 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.

4.10 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.

4.11 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.

- 4.12 The approved change of use of the barn to a dwelling, will create a modern barn conversion style. 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 modern innovative, sustainable design with traditional materials. This is something that was discussed with the LPA on the phone.
- 4.13 The double garage has been removed from the previous scheme, reducing the built area and volume. The site is set back from the road, however the upper part of the dwelling is visible and the proposed dwelling uses materials in keeping with agrarian buildings.
- 4.14 There is a reduction in the volume, built area and floor area, accordingly, there is an overall improvement in the openness and visual impact of the proposed full application dwelling compared to the existing site buildings and yard area.
- 4.15 Significant energy efficiency improvements have been made to the latest proposal, providing a distinct improvement on the approved class Q design. These have been listed in this statement.
- 4.16 Overall the design, layout, and environmental aspects of the proposed dwelling are considered to be significant improvements compared to the approved class Q dwelling. The design of the proposed dwelling is an innovative design (in line with the Council's 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.'*

- 4.17 Conclusions for the proposal are in line with the above comments by the Inspector. It is acknowledged there is conflict with the local plan, however the fallback position is a significant material consideration.

## **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. This was not sufficiently addressed by the LPA in that last application. It stands to reason that, where the alternative new-build proposal offers an enhancement to the setting, enhanced design and significant environmental benefits 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 environment and 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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