

APPLICATION REFERRED FROM THE WEEKLY LIST

WEEKLY LIST NO. 1472 – 26 April 2019

18/00676/FUL

**NEW BUILDINGS FARM, MUCKING HALL ROAD, BARLING
MAGNA**

PROPOSAL TO REFURBISH THE ORIGINAL OUT BUILDING AS STORAGE FOR THE RESIDENTIAL PROPERTY

1 DETAILS OF REFERRAL

- 1.1 This item was referred from Weekly List No. 1472 requiring notification to the Assistant Director, Place and Environment by 1.00 pm on Wednesday, 1 May 2019 with any applications being referred to this meeting of the Committee.
- 1.2 Cllr M J Steptoe referred this item on the grounds that the proposal would not be detrimental to the openness of the Green Belt but would be an improvement on what is currently in place.
- 1.3 The item that was referred is attached at appendix 1 as it appeared in the Weekly List.
- 1.4 A plan showing the application site is attached at appendix 2.

2 RECOMMENDATION

- 2.1 It is proposed that the Committee **RESOLVES**

To determine the application, having considered all the evidence.

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Application No: 18/00676/FUL Zoning: Metropolitan Green Belt

Case Officer: Mr Arwel Evans

Parish: Barling Magna Parish Council
Ward: Roche South

Location: New Buildings Farm Mucking Hall Road Barling
Magna

Proposal: Proposal to refurbish original outbuilding as storage
for residential property.

SITE AND PROPOSAL

SITE AND CONTEXT

The Site

1. The application site lies within the Green Belt and Coastal Protection Belt. It includes a converted barn in residential use with cartlodge to the rear. The residential curtilage was defined as part of the 2015 planning permission for the barn conversion which excluded a derelict former agricultural building to the east, part of which forms a wall to the cartlodge. There is planning and enforcement history in respect of the remnants of a derelict structure, including appeal decisions. It has been determined through these cases that in view of its condition the structure is unlikely to constitute a building. The remnant building has a footprint of 6m x 9m, but all four walls are incomplete and there is no roof.
2. The planning permission referenced 15/00334/FUL restricted outbuildings that would otherwise be permitted development under Class E. The Class concerns the erection of outbuildings within the curtilage of the dwelling house which is defined as the area of concrete hardstanding immediately to the east of the barn. The reason for the condition is to protect the openness and character of the Green Belt. However, as the proposed development would be outside of the curtilage it falls to be considered under LDF Policy GB1 and paragraph 143 - 145 of the National Planning Policy Framework (NPPF) (February 19).

The Proposal

3. The submitted details indicate the intention to refurbish the original outbuilding for the intended purpose of storage in connection with the occupation of the residential property. Plan reference 061 indicates the extent of the remnants of a structure together with the proposed finished form of this structure which would entail significant rebuilding works such as to make the building such that it constitutes a building. The height of the structure as proposed is indicated to be approximately 5.6 metres in height to its ridge line and 3.3 metres to its eaves. The plan indicates that the ridge height of the roof will

exceed the height of the building to which it will be attached to exceeding the height of the adjoining building by approximately 700mm.

4. The width of the structure is indicated to be the same as the width of the remnant structure which currently has an approximate height at its highest point of 4.6 metres (at its rear elevation). The submitted plans indicate that the existing brick walls are to be fully retained and built up to suit new gable whilst a pitched roof finished in slates is intended as part of the build. The existing former doorway opening at the side elevation of the building is shown as being retained whilst the front elevation will comprise a double door openings which will be greater in vertical extent than the current opening and which will result in the loss of the arched openings which once denoted / served the loft area of the former building. The opposite side elevation is shown to partly retain the existing openings which will in the case of one opening be partly reduced whilst as doorway will be located within an existing area of void.

5. Relevant Planning History

5. 00/00690/COU: - Change of Use of Agricultural Building to B1 Use with Associated Parking - Permitted

09/00656/FUL: - Restore Elevations and Re-Erect Pitched Roof to Eastern Barn and use as Implement Store Ancillary to Agricultural Use of Adjoining Land, Change of Use of Western Barn to Two Class B1 Business Units with Associated External Alterations, and Re-Erect Pitched Roof to Open Cattle Shed and Use as Covered Vehicle Parking. New Driveway and New Access onto Mucking Hall Road - Refused

10/00079/FUL: - Change of Use of Western Barn to 2No. Class B.1 Business Units with Associated External Alterations, Reduce Extent of Hardstanding, Lay Out Parking Area and Plant Landscaping-Permitted

11/00338/COU: - Proposed Extension and Alteration of Existing Barn (Including New Raised Roof with Dormers) for Use as a Single Dwellinghouse Incorporating an Office and Agricultural Store Associated with Use of Land at the Site for the Purpose of Agriculture -Refused & appeal dismissed

13/00143/LDC: - Application for Lawful Development Certificate for Proposed Reinstatement of Agricultural Building and Use of Adjoining Land in Association with it - refused

14/00412/DPDP3M:- Proposed conversion of part of agricultural building to dwelling - refused

15/00334/FUL: - Proposed Change of Use of Existing Barn to Three Bedroom Dwelling Incorporating Single Storey Extension and New Roof- permitted

16/00556/FUL: - Proposed new car port for 4 cars - permitted

Appeals & Enforcement

13/00029/NOTICE:- Appeal Against Enforcement Notice: Work to derelict farm building - dismissed

13/00023/REFUSE:- Application for Lawful Development Certificate for Proposed Reinstatement of Agricultural Building and Use of Adjoining Land in Association With It - appeal dismissed

17/00858/FUL: Demolish and Reconstruct Original Outbuilding to be used for Storage. Refused 28.11.2017

MATERIAL PLANNING CONSIDERATIONS

6. The site is located within the Metropolitan Green Belt and Coastal Protection Belt as identified in the Council's adopted Allocations Plan (2014). The proposal needs to be assessed against local Green Belt policies and the National Planning Policy Framework. There is a general presumption against inappropriate development within the Green Belt and such development should not be approved, except in very special circumstances. Inappropriate development is, by definition, harmful to the Green Belt. Great importance is attached to maintaining Green Belts with the aim to prevent urban sprawl and keep land permanently open.
7. The main consideration is the impact on the Green Belt; however, the site is also within the Coastal Protection Belt where Policy ENV2 requires that development does not adversely affect the open and rural character. There are two dwellings nearby and the impact on the amenities of the occupiers also needs to be considered.
8. The NPPF at paragraphs 143 indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
9. Paragraph 144 of the NPPF indicates that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
10. Paragraph 145 of the NPPF indicates that the local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
 - a) buildings for agriculture and forestry;
 - b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
 - c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
 - d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

- e) limited infilling in villages;
 - f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and states at paragraph 89 that the construction of new buildings should be regarded as inappropriate in
 - g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: - not have a greater impact on the openness of the Green Belt than the existing development; or - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
11. Taking the proposed development into account in the light of the relevant considerations, it is considered that a number of fundamental issues arise in the case of this proposed development which the determining authority does not consider to constitute a refurbishment of the original building. It has been established in connection with other previous planning applications including planning reference 11/00338/COU which was refused 1st August 2011 and subject of an appeal which was dismissed that the remnants of the structure which occupied the site of this application site at that time (which formed part of the application) was not sufficient such as to constitute a building thereby rendering these aspects which formed part of that development inappropriate by definition of the NPPF and contrary to Green Belt policies and the councils policies which were aligned to national planning policy. It is noted that the Inspector's decision indicates that the structure as such occupied the site at the time of the planning appeal would be re - built to serve an agricultural implement store. It is noted from the site history that since the decision was issued regarding the 11/00338/COU an application for a lawful development certificate was made under planning reference Ref 13/00143/LDC dated 11 March 2013 which was refused on 10th May 2013. The description of this development which was subject to an appeal reference APP/B1550/X/13/2199328 was noted to be as follows: reinstatement of original building and use of adjoining land in association with it. This appeal was dismissed.

The appeal decision concluded as follows:

In the light of all the evidence I conclude, on the evidence now available, that

the Council's refusal to grant a lawful development certificate in respect of what was described in the application as reinstatement of original building and use of adjoining land in association with it, at New Buildings Farm, Mucking Hall Road, Barling Magna, SS3 0NH, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

12. It is noted that a separate appeal APP/B1550/C/13/2207161 was made in relation to an enforcement notice issued by the council on 18 September 2013. The details of the appeal were noted to be as follows:
- o The breach of planning control as alleged in the notice is, without planning permission, works to a derelict building (shown coloured red on the attached plan) comprising: (i). The insertion of RSJ steel beams and roof timbers; (ii). The erection of roofing boards and roof covering; (iii). The laying of a concrete floor; (iv). The extension (in height) of the north and west brick walls; (v). The construction of 2 x front corner sections; (vi). The insertion of a front stud wall clad in timber; and (vii). The insertion of two wooden doors to the front elevation.
 - o The requirements of the notice are to (i). Permanently remove the RSJ steel beam supports and associated timbers forming part of the roof structure; (ii). Permanently remove the flat roof boards and roof covering; (iii). Permanently remove the concrete floor to the front and inside of the building; (iv). Permanently remove the brickwork shown hatched on the attached photographs marked 1 to 3 appended to this notice; (v) Permanently remove the wooden doors, wooden frontage and stud wall; (vi). Permanently remove the guttering; (vii). Permanently remove from the site all materials and debris resulting from carrying out from steps (i) to (vi).
 - o The period for compliance with the requirements is 8 months.
 - o The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
13. The appeal was dismissed, and planning permission refused. The enforcement notice was upheld and remains in force. It is noted that the Inspector's decision with regards to this appeal indicated the following:
- However, this is not an end of the matter in relation to the appeal on ground (c) for, if the eastern barn could be considered to have remained an extant building, it would have been possible, under section 55(2) of the 1990 Act as amended, to undertake the carrying out of works for the maintenance, improvement or other alteration of the building, provided that these were works which (i) only affected the interior of the building or (ii) did not materially affect the external appearance of the building.
11. Unfortunately for the appellant the eastern barn is, I consider, too ruinous to be considered a building. Indeed, the Inspector in the 2004 appeal commented that 'the north elevation comprises a long tall brick wall and on the eastern side there are some remains of walls which may have been another barn'. The photographs taken by the Council on 6 October 2009, albeit undertaken after works to the eastern barn had commenced, show its ruinous state, whilst the 2012 appeal Inspector also refers to the extent of rebuilding then proposed as 'very substantial' and expressed himself 'not convinced that it should count as part of the original buildings in this context'. The description given by the Council, at paragraph 5.3 of their statement, also

reinforces the point.

12. However, even if one accepted that the eastern barn remained a building, the works do materially affect the external appearance of the building. They introduce a flat roof between the two gable end walls and a new wooden frontage with double wooden doors set in to replace a missing side of the building. In reaching that view I have applied, so far as material, the existing case law to which I have been referred: however, I have no doubt that the works undertaken have involved 'development' for the purposes of the Act.
13. I have also considered the possibility that the works could constitute 'permitted development' by virtue of Article 3 and Class B within Part 6 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended. However, in this case the works fail to constitute permitted development because, in my view, there was not an existing building to extend or alter. Whilst there is some evidence that the building, when it existed and when in use, was an agricultural building, there is also insufficient evidence to support the contention that the appeal site was on agricultural land comprised in an agricultural unit.
14. The information cited is directly relevant to the consideration of this current application in that it establishes material facts and a position that the structure before unauthorised works were undertaken to it to make it more substantial essentially did not amount to a building. Although described as such in this current application it is not considered that the application in the light of the site history and the unauthorised works undertaken which is still the subject of an enforcement notice upheld at appeal, adequately reflects the circumstances. Furthermore it is considered that in terms of character and impacts although constituting a different description, it is considered that there is no difference between this current application and that application considered under planning reference 17/00858/FUL 'Demolish and Reconstruct Original Outbuilding to be used for Storage' - this application being Refused 28.11.2017.
15. On the basis of the facts established previously in that the structure prior to the time of the undertaking of unauthorised works was not sufficient to constitute a building and given that unauthorised works have now been undertaken in what is clearly an attempt to render the structure as such that it could potentially be viewed / considered to be a building - the local planning authority does not accept that the proposals as now described relate to refurbishment of an outbuilding. The measures taken to increase the massing of the structure that was subject of appeal under the cited appeal references were unlawful which therefore does not provide a basis for acceptance of the proposals as now described which in any event is considered to be inappropriate development by definition of the NPPF (even if it were the case that the structure as appears current day was not subject to an enforcement notice).

16. It is noted that the proposed site does not lie within the residential curtilage of the converted barn, so notwithstanding the wording of condition 3 which covers the whole site, there would have been no PD under Class E in any event. Residential curtilage is not necessarily the same as the planning unit. It is normally considered to be an area of land attached to a house and forming one enclosure with it, which is often the garden area. In this case the garden area, as defined in condition 5 of the 2015 permission, is considered to be the curtilage. The proposed building lies outside of this area.
17. To grant planning permission would be contradictory to national planning policy advice as such would undermine the very principles established by previous planning decisions, and appeal decisions.
18. Given the circumstances, the lawful position is that there is no provision in place from a planning perspective for the works which have been undertaken to the structure which prior to the unauthorised works taking place was not considered to constitute a building. The development proposed constitutes a new build therefore in the Metropolitan Green Belt which would constitute inappropriate development.
19. Given the last known use of the land on which the remnant structure is located which was that of an agricultural use prior to its abandonment the use of the site would be tantamount to a material change of use whilst the proposals in any event as a new building or as an extension to an existing building (the latter of which is not accepted as the structure is not considered to be a building in lawful planning terms given the enforcement notice still in force) would constitute inappropriate development in the Green Belt based on the criteria set out by paragraphs 145 of the NPPF.
20. It is noted that the application is accompanied by a supporting statement prepared by John Dagg; Barrister (MRTPI). It is noted that in point 2 of the statement that it is stated that the 2015 and 2016 permissions open a 'new chapter' in the planning history of the site. However, the site of the remnant structure subject of this application has not been subject of a change of use therefore reference to the new chapter in this context is considered irrelevant. The site does not form part of the residential planning unit and therefore the reference to the lawfulness of the development in the light of the enforcement notice is not a relevant point.
21. The points raised under point 3 is noted. The development as previously indicated amounts to the same inappropriate development whether a demolition and re build or further works to a structure which is the subject of an enforcement notice upheld on appeal. The extent of the fabric as shown on the drawings is largely subject of unauthorised works which are the facts which the council considers counteract the case put forward by the applicant in point 5 of the statement.
22. The council does not agree with the assessment made under point 6 of the statement whilst the increase in the massing of the structure has to be

considered against the proportion which existed before the unauthorised works took place.

23. The point raised under point 8 with regards to the enhancement of the appearance of the group of buildings is noted. However, it is not considered that this aspect given the fundamental issues raised is sufficient when placed against the fundamental issues which justify the refusal of this application. There are considered to be no very special circumstances weighing in favour of the development proposed in the light of the site history, which clearly places considerable weighting to the position maintained by the council in this instance.

Conclusions

The development site is located outside of the residential curtilage of the converted barn and is intended to provide ancillary space for the wider residential unit which on the basis of its status would be subject of a material change of use.

The residential curtilage relates to the more confined area around the dwelling rather than the planning unit and was defined by condition in the planning permission for conversion. Permitted development has been removed by condition, but as the site is outside the curtilage there would have been no PD in any event. The derelict structure which is subject to an enforcement notice is not considered to be a building which entails that the extent of the works are tantamount to a new building within the Green Belt which is not a replacement building or indeed a building that is in the same use as the former building of which only now remnants of remain when taking into account the additions made to the remnant subject of the unauthorised works.

The building would not be a replacement for the former agricultural building on the site which is substantially dilapidated as it is proposed to be used to serve the wider residential unit. The scale of the building proposed would significantly increase the bulk and mass of development compared with the existing situation. The development would, therefore, have a materially adverse impact on the Green Belt in terms of its openness and also result in encroachment.

No very special circumstances have been demonstrated that would clearly outweigh the harm caused by the development which would therefore, be contrary to the National Planning Policy Framework and Policy GB1 of the Core Strategy.

Representations:

24. Barling Parish Council: Support

Barling Magna Parish Council considered this application at its meeting on 17 January 2019. The Parish Council commends this application for approval in order to bring back into productive use a derelict and unattractive building.

25. Cadent: No objection. Standard advice issued

Searches based on your enquiry have identified that there is apparatus in the vicinity of your enquiry which may be affected by the activities specified. Can you please inform Plant Protection, as soon as possible, the decision your authority is likely to make regarding this application.

Neighbour Representations:

26. Two letters have been received from the following addresses;

2 New Buildings Cottages, Mucking Hall Road, Barling.
Glebe farm, Barling

Who make the following comments in support the application;

- o The current building is an eyesore and our outlook would be much benefitted by it being rebuilt. If left it will only deteriorate.
- o We understand and appreciate the restrictions on building in the green belt but feel that in this instance, the pragmatic solution is to allow the planning application.
- o Mr Bacon has gone to great lengths to redevelop the main property with as much sympathy for the surrounding area as possible and we believe he would do the same with regard to the outbuilding
- o As a neighbour to this site and a resident that walks past it regularly, I think that it is about time that this building was put to good purpose. It has fallen into further decline following years of application wrangling. Rebuilding it and putting it to good use is what needs to happen. It was a building so let it be rebuilt on the same footprint and remove this eyesore.

REFUSE

- 1 The application site lies within the Metropolitan Green Belt as identified in the Rochford District Council Local Development Framework Allocations Plan. The National Planning Policy Framework sets out the general presumption against inappropriate development within the Green Belt. Such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

In this case the proposed building would lie outside the residential curtilage of the converted barn and is for use in connection with the wider residential unit. The construction of a new building which it is considered this development essentially constitutes does not fall within any of the exceptions set out in paragraphs 143-145 of the National Planning Policy Framework.

Consequently, the proposal would amount to inappropriate development in the Green Belt. It would result in encroachment into the countryside and introduce a building that would be of significantly greater mass and bulk than the existing derelict structure it would replace. The development would, therefore, be materially harmful to the openness of the Green Belt and the purposes of including land within it. The detail put forward in support of the development is not considered to amount to the very special circumstances that would clearly outweigh the harm to the Green Belt. The development would, therefore, be contrary to Policy GB1 of the Rochford District Council Local Development Framework Core Strategy and the National Planning Policy Framework.

Relevant Development Plan Policies and Proposals:

National Planning Policy Framework February 2019.

Rochford District Council Local Development Framework Core Strategy Adopted Version (December 2011) Policies ENV2; GB1 and CP1.

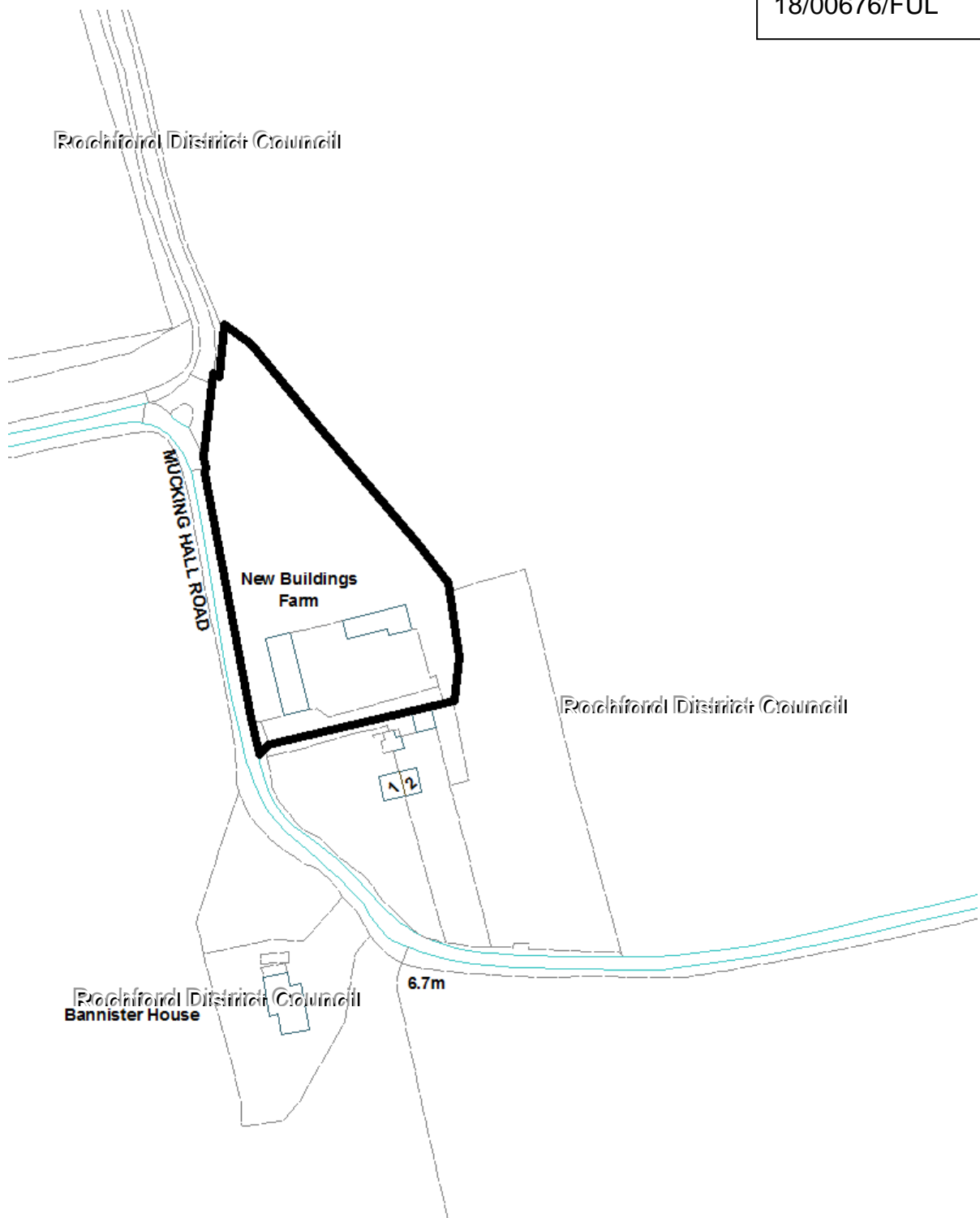
Rochford District Council Local Development Framework Allocation Plan (February 2014).

Rochford District Council Local Development Framework Development Management Plan (December 2014) policies DM1; DM27 & DM30

Parking Standards: Design and Good Practice Supplementary Planning Document (December 2010)

The local Ward Member(s) for the above application is/are Cllr M J Lucas-Gill Cllr M J Steptoe Cllr A L Williams

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