Re: Planning Application Ref. 25/00950/FUL Retention of Dwelling – Agricultural Buildings South East of Rose Cottage, Puddock Road, Warboys

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Dear Charlotte

I write in response to the Council's previous refusal (Ref: 24/00693/FUL) and the current position regarding application 25/00950/FUL. This letter sets out why planning permission should be granted for the retention of the existing dwelling, supported by relevant case law, the Council's own previous decisions, and a binding Unilateral Undertaking.

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1. The Core Issue Identified by the Council

The previous refusal (24/00693/FUL) identified:

- No recognised fallback position;
- Sequential Test failure, framed as a "net new dwelling" in Flood Zone 3;
- Unresolved contamination matters.

All three are now fully addressed.

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2. Lawful and Implementable Fallback Position

The adjacent agricultural building has an extant **Class Q Prior Approval** (Ref: 25/00925/PMBPA) for conversion to **three dwellings**.

In *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314, the Court of Appeal held:

"The test is whether there is a real prospect of the fallback scheme being implemented… it does not need to be probable, or likely, only that it is a real possibility."

This is a low threshold, and our fallback clearly meets it:

- **Lawful:** The prior approval is valid until July 2028, with no impediment to implementation.
- **Real prospect:** The consent could be implemented at any point, subject to the usual Class Q timescales and conditions.

Similarly, in *R v Secretary of State for the Environment & Havering BC* (1998), the Court confirmed that in assessing fallback weight, one must:

"…establish that there is a lawful fallback, that there is a real prospect of it being carried out, and compare the harm caused by the fallback with that of the proposed development."

That comparison strongly favours the current proposal, as the surrendered 3-dwelling scheme would have introduced three households to Flood Zone 3, whereas this proposal introduces only one.

Importantly, the Class Q consent establishes a **higher residential baseline** than the original 1-dwelling barn conversion — one that has already passed the Council's tests for access, flood risk mitigation, and rural character under Local Plan Policies LP2, LP5, LP10, LP37, and the NPPF.

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3. Legal Extinguishment of the Fallback – The Unilateral Undertaking

To avoid any cumulative impact, the applicant has executed and submitted a **binding Unilateral Undertaking** under Section 106 TCPA 1990, covenanting **not** to implement the extant 3-dwelling Class Q consent (Ref: 25/00925/PMBPA).

This covenant is **targeted** — it extinguishes the right to build that particular 3-unit scheme but does **not** prevent submission of a future application for a reduced-unit proposal on the same building, subject to full assessment.

Strategic policy compliance:

- **LP2 & LP5:** Avoids overdevelopment in a location of flood risk.
- **LP4 & LP37:** Maintains design compatibility and sustainable settlement patterns.
- **NPPF paras. 161–162:** Removes any net increase in households in Flood Zone 3, proportionately applying the Sequential Test.

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4. Addressing the Sequential Test and Flood Risk

The Sequential Test's purpose is to steer new residential development to areas with the lowest probability of flooding (NPPF para. 161). However:

- **Policy baseline:** The Council has already accepted the principle of dwellings in this location — both through 21/01655/FUL and the Class Q consent for three dwellings.
- **No net increase:** With the Class Q fallback legally extinguished by the UU, this proposal results in **no net increase** in dwellings in Flood Zone 3 compared to the already consented baseline.
- **Same or reduced vulnerability:** The residential use already established by prior approvals will not intensify; indeed, replacing the 3-dwelling fallback with a single dwelling reduces the number of households potentially exposed to flood risk.
- **Siting and design:** The current dwelling occupies the same developed footprint as the approved barn conversion and incorporates appropriate floor levels and resilience measures, meeting LP5 and LP37 design requirements and the mitigation principles in NPPF para. 162.

- **Availability of alternatives:** Even if the Sequential Test were applied afresh, there is no other, lower-flood-risk site that could lawfully deliver the same number of dwellings already permitted on this site under the fallback consent. The existing development rights apply only to this land, so relocating the scheme would mean giving up those lawful rights — making this site the only realistic location. As *Mansell* confirms, a fallback need only be a "real possibility" — which this clearly is — and when it is demonstrably less harmful than the consented scheme it replaces, it must be given substantial weight.

Conclusion on Sequential Test:

On both a technical and planning balance basis, the Sequential Test is satisfied — either because there is no net additional development in Flood Zone 3 (and therefore no intensification to test), or, if applied, the proposal would pass due to the absence of any sequentially preferable alternative and the reduction in potential households compared to the lawful fallback.

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5. Contamination – Fully Resolved

In an email dated **12 August 2025**, the Environmental Health Officer confirmed:

"I have no objection to the application subject to the inclusion of the standard contamination condition to secure post-completion verification. This will satisfactorily address the matter."

This position mirrors the approach taken in the Class Q consent and fully satisfies LP5 and NPPF para. 183.

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6. Planning Balance

When weighed against the lawful fallback, if surrended, this proposal:

- **Does not** increase dwelling numbers in Flood Zone 3;
- Avoids unnecessary demolition and waste, meeting **NPPF para. 119** on efficient use of land;
- Maintains the rural character and spatial pattern supported in previous approvals;
- Resolves all technical matters (flood risk, contamination, design, bin provision).

In *Mansell*, the Court of Appeal confirmed that genuine fallbacks — even if less than probable — must carry real weight in planning balance. Here, the fallback is not only genuine but has been voluntarily relinquished, delivering an equivalent or better outcome in policy terms.

Public benefit vs harm: The retention of an existing dwelling, in lieu of the 3-dwelling fallback, produces a net reduction in potential households in Flood Zone 3, with no increase in environmental or visual harm. On this basis, the public benefit of regularising the dwelling clearly outweighs any residual policy conflict.

Conclusion

The application now fully accords with Local Plan Policies LP2, LP4, LP5, LP10, LP37 and relevant NPPF provisions (paras. 119, 161–162, 183). The fallback position, UU, and EHO confirmation resolve all refusal reasons, and the planning balance decisively supports approval.

Accordingly, I respectfully request that the application be approved.

Kind Regards

David Mead

The Planning Partnership