

a) **DOV/16/0063 – Variation of Conditions 2 (partition), 5 (storage use) and 6 (access to building) and removal of Condition 3 (noise) of planning permission DOV/14/01213 (Use of barn for mixed use of agricultural and building business storage) (Application under Section 73) - The Barn, north of 7 Millfield, St Margaret's-at-Cliffe**

b) **Summary of Recommendation**

Planning permission be refused.

c) **Planning Policies and Guidance**

Core Strategy (CS) Policies

- Policy DM1 states that development will not be permitted outside the settlement boundaries unless it is ancillary to existing development
- Policy DM3 restricts commercial buildings in the rural area unless it is shown that no suitable site within the village exists and then the development should be located adjacent to the village boundary.
- Policy DM4 allows for the re-use or conversion of rural buildings beyond the confines of the village boundary for commercial uses providing it is acceptable in other planning respects, is of suitable scale for the use proposed and contributes to local character.
- Policy DM15 protects the countryside from development which would harm its character or appearance. Development will only be permitted in the countryside in certain circumstances and provided that measures are incorporated to reduce, as far as practicable, any harmful effects on countryside character.
- Policy DM16 restricts development which would harm the character of the landscape.

National Planning Policy Framework (NPPF)

- The NPPF has 12 core principles set out in paragraph 17 which amongst other things seek to secure high quality design and a good standard of amenity for all existing and future residents.
- NPPF – is relevant as the proposal should seek to be of a high design quality and take the opportunity to improve the visual quality and character of the area. Paragraphs 56-58 and 64 seek to promote good design and resist poor design.
- NPPF – paragraph 28 seeks a prosperous rural economy by supporting sustainable growth and expansion of all types of business through conversion and new buildings.

- NPPF – Chapter 8 seeks to promote healthy communities
- NPPF – Chapter 11 seeks the protection and enhancement of valued landscapes, and that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty.
- Paragraph 123 states that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development, and aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development including through the use of conditions
- Section 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

The Kent Design Guide (KDG)

- The Guide provides criteria and advice on providing well designed development and advises that context should form part of the decision making around design.

d)

Relevant Planning History

DOV/14/01213 – Granted for the use of the barn building for a mixed use of agricultural and building business storage, subject to the imposition of conditions.

DOV/14/00528 – Withdrawn for the use of the barn building for a mixed use of agricultural and building business storage, following the Officers' recommendation to Refuse planning permission.

DOV/12/00142 – Certificate of Lawfulness for an existing use for the continued use of the Barn as a mixed use of agricultural, building business storage and incidental residential use. Refused.

DOV/12/00455 – 0771 – Certificate of Lawfulness for a proposed use for the mixed use of the Barn for agricultural, building business storage and ancillary residential purposes incidental to No.7 Millfield. Refused.

Enforcement Appeal A 2153022 – Change of use for business and incidental residential uses – Appeal Allowed.

Enforcement Appeal B 2153023 – Change of use of the Barn building and adjoining land from agricultural to a business and incidental residential uses –

Appeal Dismissed (subject to Notice being corrected).

Enforcement Appeal C 2152024 – Carrying out operations by the deposit of materials – Appeal part allowed (for a section of the land) and part dismissed.

Enforcement Appeal D 2153025 – Change of use of land from agricultural to business and incidental residential uses – Appeal Dismissed.

In 1990 and 1992 – the Barn building was constructed and extended for agricultural purposes. This use continued until (approximately) 2006 when the business use became the main use.

The barn building along with land surrounding it was the subject of the above four enforcement notices in 2011. The barn building was being used for business and domestic storage rather than for agricultural purposes. With regard to the appeal affecting the barn building, the Inspector upheld the enforcement notice and dismissed the appeal against it and required the use of the barn building to cease. The planning merits of using the barn for business and domestic purposes were assessed by the Inspector. In summary, he was concerned with the scale of the barn building and the possibility of the business use intensifying within it – which would have a wider and increased impact which would harm residential amenity.

Following the Inspector's decision the applicant submitted two LDC applications for the existing and proposed uses of the barn building. These were refused in 2013.

Under application 14/00528, for the same proposal as this current application, the Officer's recommendation to the Planning Committee was to refuse permission, but ahead of the meeting the application was withdrawn.

Under application 14/01213, for the mixed use of the barn building, planning permission was granted and the Officer's recommendation was overturned, subject to the imposition of planning conditions set out and approved by the Planning Committee.

e) **Consultee and Third Party Responses**

Parish Council: The Parish Council believes the decision of the Planning Officer should be accepted in this case.

DDC Environmental Protection Officer: Under the previous application, the comments were: The proposed hours of operation should be in line with national operating hours for construction sites, namely: 0800-1800 hours (Mondays to Fridays) and 0800-1300 hours (Saturdays) with no noisy activity on Sundays or Bank Holidays. Furthermore, with regard to noise insulation, determination of the level of increased sound insulation required and installation of any sound insulation should be carried out by the applicant.

Under this current application, in view of the lack of any noise complaints from nearby residents being made to the Environmental Protection (EP) team, and

in view of the reasons submitted by the applicant, there is no objection to the removal of Condition 3.

In respect of Condition 6 to allow access to the site from 7.30am rather than 8.00am, there have been no complaints received by the EP team in relation to the hours of use (complaints were received in 2011 against Sunday use). The EP team does not object to extending the hours of use to 7.30am but remain of the opinion that the use of the access and building should not take place after 1pm on Saturdays, in order to safeguard residential amenity.

Kent Highways: Under the new protocol Kent Highways make no comment on this application.

Kent Public Protection Team: No objections are received.

Public Representations:

One letter of support has been received raising no objections to the increased hours of use and the existing noise levels.

Two letters of objection have been received (one from a near neighbour and another from a planning consultant representing the same near neighbour). The objections can be summarised as follows:

- The proposal represents a further attempt to intensify the use of the building
- Existing conditions have not been complied with. The previous Enforcement Notice had not been complied with.
- The use of the rear doors to serve the proposed business use (Condition 5) would lead to an erosion of the AONB and the character of the area
- The opening up of the two areas of the building would blur the uses approved and therefore further weaken the control of the use of the building
- The agricultural use has not given rise to complaints; the building business use has given rise to complaints.
- The existing hours of operation condition was suggested by the applicant at the appeal Hearing.
- The variation of conditions would fail to guard against intensification, would not safeguard residential amenity and would increase the impact of the use in the countryside and AONB.
- The proposal is contrary to Policy, contrary to NPPF and comprises unsustainable development

f)

1. **The Site and the Proposal**

Site Description

- 1.1 The application property comprises a portal framed barn building served by an access from Millfield which is a cul de sac of eight single storey dwellings.
- 1.2 The access has been created from Millfield, between the properties numbered 6 & 7 which leads to a long driveway culminating at the barn building. The driveway also serves some new and old stable buildings on its left hand side used for keeping horses and for domestic purposes. To the right of the driveway there is a fenced paddock, where horses are kept.
- 1.3 The barn building is rectangular in shape and measures some 33m long by 17m wide (561 sq m). There is a set of double doors to the front and a smaller set of double doors to the rear. Originally, the barn building which was built in 1990 was used for entirely agricultural purposes. Over more recent years the building has been increasingly used for domestic and business purposes. The agricultural use of the building declined as the business use increased.
- 1.4 The barn building falls within the Area of Outstanding Natural Beauty, outside the village confines of St Margarets at Cliffe. Two footpaths exist to the east of the barn, one of which cuts across the adjacent paddock in a north east to south west direction. As such, the barn is clearly visible to the public within the protected landscape. By reason of proximity, the rear of the building would be more visible from the public footpaths than the front of the building.

The Proposal Considered under 14/01213

- 1.5 This section of the report sets out the relevant section of the previous report to Committee to enable the Committee to understand the permitted use.
- 1.6 *“The submission of the application seeks to overcome the Inspector’s reasons for not granting planning permission for the use of the building for business/domestic purposes, referred to in the above section, as well as the reasons why Officers had recommended the previous planning application for refusal, prior to it being withdrawn.*
- 1.7 *The use proposed is for agriculture and building business storage. The hours of operation would be from 0730 hours to 1800 hours, Mondays to Saturdays, with no Sunday working. The extent of the business related storage would be confined to the front of the barn building up to some 253 sq m of floor space. The agricultural storage would be confined to the rear of the barn including a mezzanine floor (already in situ). The full extent of the agricultural storage would be some 430 sq m. The two areas of storage would be separated by a floor to ceiling*

partition.

- 1.8 *The applicant has set out the equipment, plant and machinery that would be stored within the agricultural section and what plant and machinery would be stored in the building business section.*
- 1.9 *The applicant has nearby landholdings amounting to some 20 acres. Site plans have been submitted with the application.*
- 1.10 *The applicant considers that appropriate controls through planning conditions could be used to ensure that the two storage areas remain distinct and the impacts arising from the business use restricted.*
- 1.11 *The applicant considers that the proposed use is compliant with Development Plan and NPPF policies and objectives.”*

Proposal under Consideration in the Current Application

- 1.12 The proposal seeks to vary some of the conditions imposed on the permitted application. Appendix 1 of this report provides a copy of the decision notice with the wording of all the conditions set out.

Condition 2 – partition

- 1.13 The proposal seeks to insert a set of double doors into the partition to provide an internal link between the two distinct areas of the barn building. Combined with the variation of Condition 5, the request for the partition seeks to avoid moving equipment and plant around the building to the far side (north eastern side) and to avoid vehicles crossing the land as this would harm the condition of the ground and harm the character and appearance of the countryside. The applicant considers that no additional impact upon residents would ensue through the variation of this Condition.

Condition 3 – noise

- 1.14 The proposal seeks to remove the condition as it is not necessary. The applicant considers that the other conditions would regulate the use of the barn building and prevent it from intensifying to any significant or noisy extent.

Condition 5 – Relocate the uses of the barn building

- 1.15 The proposal seeks to swap the uses of the areas of the barn building so that the agricultural use takes place in the front section of the barn and the building business use takes place in the rear section of the barn. This swap around of uses would also be related to the proposed variation of Condition 2 and the reasons behind providing an internal link between the two areas. The applicant considers that access to the agricultural ‘area’ is required at all times of the day and is not controlled by the conditions relating to hours of use. In swapping around the

uses, the potential for disturbance to the residents in Kingsdown Road is reduced as the activities associated with the agricultural use are more contained and further from those properties.

Condition 6 – Hours of operation

- 1.16 The proposal seeks to extend the hours of operation to begin at 7.30am (and not 8am) Mondays to Saturdays, and to extend the hours of use on Saturdays from 1pm to 6pm.
- 1.17 The applicant considers that the proposed hours reflect the business hours of the building trade and would safeguard the amenities of nearby residents.

2. **Main Issues**

2.1 The main issues are:

- the impact of the proposals on the character and appearance of the area, including whether the use conserves or enhances the AONB
- the impact upon residential amenity

3. Assessment

- 3.1 For ease of reference part of the previous assessment set out in the Report to the Planning Committee for application DOV/14/1213 is set out below. This is then followed by an assessment of each of the proposed changes to conditions.
- 3.2 *“The appeal decision concerning four Enforcement Notices addressed the issue of the planning merits of the business storage/domestic storage use in the barn. In essence, the Inspector considered that the use of the barn building in 2011 may not have been problematic at the time but there was ample room within the barn for a building business use to expand and a more intensive building business was a concern to the Inspector. He also opined that it was not apparent (to him) that conditions attached to a grant of planning permission could guard against unacceptable intensification or otherwise control such a use to an acceptable degree. The Inspector considered that the continued use of the barn had a realistic potential to expand which would harm the living conditions of neighbouring residents (those in Millfield and in adjacent gardens). However, the use of the building was not considered to harm the character or appearance of the area, including the AONB. Furthermore, the Inspector considered that the use would not materially affect the proximity of the edge of the conservation area on the eastern edge of the paddock.*
- 3.3 *Policy DM4 is particularly relevant because it relates to the conversion or re-use of rural buildings. Permission would normally be given for buildings in the rural areas but in all cases the building to be re-used or converted must be of suitable character and scale for the use*

3.4 *proposed, contribute to local character and be acceptable in other planning respects.*

3.5 *The key determination is the balance between supporting business growth in the rural areas through the re-use or conversion of rural buildings and whether the scale of the proposed use including its potential to grow would cause harm in the public interest - in this case, the AONB, the local character, the Conservation Area, and the living conditions of the existing and future occupiers of nearby residential properties.*

Whilst the existing operation appeared to the Inspector not to cause harm any planning permission would run with the land and not the applicant. Therefore the current operation could change in the future. This could be changed through letting the different floor areas of the building to tenants other than connected to the business, introducing ancillary uses and operations such as cleaning, repairing, servicing of plant and equipment, storage of tools and materials, parking, or introducing further items for storage, increasing the frequency of the use of the access and increasing the size and frequency of vehicles visiting the site.

3.6 *It is also apparent that the transportation of the proposed business storage items either by being loaded onto vans or lorries and driven away, or by being pulled on a trailer, are going to give rise to clattering, banging and other intermittent noises not conducive close to a residential area.*

3.7 *The point of access to the site, from Millfield, is between and close to Nos 6 and 7. The access to the land to the rear partly shares the crossover/access/driveway with No.6. The use of the access for farming traffic is not a regular occurrence at the moment, but is a daily occurrence for the current business. Once agricultural traffic also uses this access there would be two unrelated uses using an access that is close to Nos.6 and 7 and near to the remaining properties in the cul de sac. In addition, the access remains in use for domestic purposes and horse related purposes (the use of the stables/buildings and land and paddock either side of the drive to the Barn). The future use of the access is therefore a significant concern.”*

Current Position

3.8 Since the grant of planning permission last year Investigation Officers have visited the site four times as a result of complaints regarding non compliance with Conditions and other activities taking place on and adjacent to the land. The submission of the details for CCTV has taken place to comply with Condition 11 and these have been approved. The visits have not shown a breach in the hours of operation. However, Officers are currently investigating a possible breach of the hours of operation. Conditions 2, 3, 5, 7 and 10 remain in breach.

- 3.9 The Planning Committee in granting permission identified the conditions that it considered would enable the building business to continue whilst safeguarding the future amenities of the occupiers of nearby dwellings. This current application seeks to vary or remove four of these conditions.

Conditions 2 & 5

- 3.10 In essence, the applicant is seeking to swap the uses of the two areas of the barn (to have the agricultural use at the front and the business use at the rear) and to insert a set of double doors into the partition to allow an internal link between the two areas.

- 3.11 It is of concern that the uses would be swapped around. The building business use has a degree of containment at the front of the barn, served by an existing hard standing and access and being closer to existing buildings along this access. Vehicle manoeuvring, loading and unloading, and the use of vans and small lorries take place in front of the barn. Should permission be granted, this level of activity would be more visible from two public footpaths and would lead to a further encroachment of commercial activity into the more open countryside and the AONB. Furthermore, it is considered that this activity would be more visible from the residential properties in Kingsdown Road and the conservation area. A greater intensity of commercial activity in this location would detract from the rural character and appearance of the area. Views from the Conservation Area and footpaths would be adversely affected by not only the activity around the doors to the barn, but this would also represent an encroachment into the open countryside and landscape of commercial noise, activity, and comings and goings. Commercial vehicles driving over the existing grass/field would drive close to or over the right of way to sweep in towards the double doors. It is anticipated that frequent use of this area by vehicles would despoil the land. It is also anticipated that a future application could be submitted to provide hardstanding to the rear of the building, which would be made on the basis of need. This may be difficult to resist if there is an obvious impact upon the landscape.

- 3.12 The applicant considers that the uncontrolled use of the rear of the barn by the agricultural activities would likewise do damage to the land but also lead to activity outside of the hours of operation currently controlling the business use which would affect nearby residents. However, there is no evidence that there is any current and frequent agricultural activity associated with the rear of the barn building. There is no evidence that what agricultural activity that does take place causes disturbance. The barn is within the countryside and agricultural activity associated with the use of the barn adjacent to the open countryside is what is expected in the countryside.

- 3.13 It is considered that the swapping around of the uses would lead to a further encroachment of commercial and incongruous activity into the countryside and the AONB.

3.14 With regard to the opening up of the partition to provide double doors and an internal link, it is of concern that having offered/accepted the need for the partition the applicant now wants to change the partition and provide the opportunity to combine the distinct areas before he has first put the partition into place. No need has been established or justified at this stage for the internal link and it is of some concern that the proposal could lead to the increase of building business activity and storage within the building. The variation opens up the opportunity to intensify the building business and further erode the living conditions of the occupiers of nearby properties.

3.15 Assuming that the partition stays in the same place the area for business use would become considerably larger at 430 sq. m. rather than 253 sq m as approved, which implies intensification. This is a significantly different proposition to that given planning permission by Committee.

3.16 The point of the partition was to separate the two uses and aid enforcement. The proposed insertion of doors into the partition would undermine the purpose of the partition and make enforcement much more difficult.

Condition 3

3.17 The applicant considers that the noise condition is no longer required and should be removed. The EP Officer suggests that the noise condition could be removed as there have been no complaints regarding noise. The reason behind the condition is to ensure that what noise that does emanate from the building is acceptable to safeguard residential amenity. Officers are not aware of any noise readings that have taken place. If there were readings, they may show that the activity taking place within the barn is not audible from the nearest residential boundary and other sensitive locations. This would mean that no measures other than the closing of the doors are required to contain the noise. Or, if there were readings they may show that some insulation measures are required.

3.18 In the absence of any noise readings to demonstrate that there are no concerns it would ordinarily be necessary to retain the condition to safeguard local amenity on a precautionary basis. The condition has only been relevant for 6 months and despite the comments from the EP Officer it is suggested that the condition should remain until such times as it is demonstrated that the condition is no longer needed or that the existing barn structure contains the noise within the building to an acceptable level so that no measures are required. In addition, any planning permission runs with the land and not the applicant, which means that a different user might change the current working practice and operation

Condition 6

3.19 The EP Officer does not raise concerns with regard to allowing the business activity to begin at 7.30am but does raise concerns over allowing the business activity to extend throughout Saturdays if the activity causes noise disturbance at the nearest residential boundaries.

3.20 To begin on a building site around 8am it is anticipated that the barn would need to be accessed prior this for tools and equipment to be loaded and taken to site. The increased morning hours are therefore acceptable on the basis of need, with the existing conditions in place and on the advice of the EP Officer.

3.21 On the basis that the usual construction industry hours run until 1pm on Saturdays, the applicant has not demonstrated why in his case the activities and use associated around the barn should operate longer hours. However, for the purposes of coming back to the barn, unloading, cleaning and locking up it would seem reasonable to allow the applicant some additional time after 1pm on Saturdays in which to do this. It is suggested that the use could operate until 2pm on Saturdays. The existing condition precludes Sundays, Bank and Public Holidays

Conclusion

3.22 Although the re-use of rural buildings is supported in principle by the Development Plan and NPPF, the scale of the proposed business use and its opportunity to intensify and have a greater impact upon nearby residential properties and the ANOB and conservation area is of significant concern.

3.23 There have been on-going breaches of planning control taking place on the land for at least 7 years. The appeal decision upheld the Enforcement Notice against the use of the barn and the Inspector identified his concern over future intensification of the use and how this might harm local residents. The planning permission granted in 2015 and the use of conditions sought to strike the balance between allowing the barn to be used for the building business and agriculture and the safeguarding of residential amenity, the conserving of the AONB and preservation of the character and appearance of the Conservation Area.

3.24 The proposal seeks to push back the boundaries established by the permission without any demonstration of need or justification that the conditions should be varied or removed.

3.25 The report on DOV/14/01213 (see Appendix 2) sets out Officers' concerns over the additional impact upon the AONB and the setting of the Conservation Area and the potential for the amenities of residents to be further affected in the future. As such, it is recommended that the application is refused.

g)

Recommendation

I PERMISSION BE REFUSED, for the following reasons:

(1) The variation of Condition 2 would give rise to an unrestricted and uncontrollable intensification of the use of the barn building for business storage use which would cause harm to the living conditions of the occupiers of nearby residential properties contrary to Policy DM3 of the Dover Core Strategy and paragraphs 17, 56-59 and 64 of the National Planning Policy Framework

(2) The removal of Condition 3 would fail to demonstrate that the future living conditions of the occupiers of nearby residential properties would be adequately safeguarded, contrary to Paragraphs 17 and 123 of the National Planning Policy Framework.

(3) The variation of Condition 5 would give rise to additional commercial activities and comings and goings within the open countryside and Area of Outstanding Natural Beauty (AONB). These would result in an incongruous and obtrusive encroachment into the landscape which would cause harm to the character and appearance of the rural area, the setting of the Public Right of Way, the setting of the Conservation Area and the natural beauty and landscape of the AONB contrary to Paragraphs 17, 15, 75 and 134 of the National Planning Policy Framework

II PERMISSION BE GRANTED to vary Condition 6 to amend the hours of operation to between 0730 and 1800 hours, Mondays to Fridays, and from 0730 and 1400 hours on Saturdays and at no time on Sundays, Public or Bank Holidays. No building business related activities or operations shall take place on the land or within the building outside those times.

III Powers be delegated to the Head of Regeneration and Development to settle any necessary planning conditions or reasons for refusal in line with the recommendations and as resolved by the Planning Committee.

Case Officer

Vic Hester