

APPENDIX 2

DOV/14/001213 – Change of use of barn to mixed use comprising of agricultural and building business storage at The Barn, north of 7 Millfield, St Margarets-at-Cliffe

Summary of Recommendation

Planning permission be refused.

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 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.

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.

Relevant Planning History

DOV/14/00528 – Withdrawn, following the Officers' recommendation to Refuse planning permission.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.

Consultee and Third Party Responses

Parish Council: No objections

Agricultural Consultant: In view of the planning history and the proposal no agricultural assessment is required. However, commentary is provided with regard to the proposed storage of agricultural plant and machinery as follows: The agricultural equipment set out in the list of items provided in the application can be justified for the land holdings the applicant has; the barn doors would need to be increased in height to accommodate a Ford 7600 tractor (but the mezzanine floor may make this difficult); the size of the agricultural section of the barn could theoretically accommodate a hay crop from the 20 acres of the applicant's landholding although this would not be enough to be "viable" in supporting anyone full-time; the limited height of the doors and the mezzanine floor would restrict hay bales being stacked within the barn; horse grazing would probably be more profitable a use from the landholdings; of the list of agricultural plant and equipment items set out in the application only a small part of the floor area would be needed; the agricultural plant and equipment would not necessarily also be used for business purposes.

DDC Environmental Protection Officer: 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.

Kent Highways: Under the new protocol Kent Highways make no comment on this application, but had previously requested that no materials are stored on the site and that the size of vehicle be restricted.

Public Representations:

Some 95 letters or emails have been received. Eighty five are in support of the applicant, his business, the contribution the applicant and his business make to the area, and the proposed use.

Ten letters of objection has been received. The objections are set out in summary as follows:

- The frequency of the use of the barn would give rise to comings and

goings that would harm the living conditions of the occupiers of nearby properties

- To enforce the limitations that are intended by the applicant to restrict the nature of the storage use and the comings and goings of vehicles, plant and equipment would be ineffective and difficult. This is more difficult as the applicant has previously “flouted” the planning regulations
- The barn is still being used for business purposes
- Ancillary uses would be likely to commence giving rise to further activities and comings and goings
- The Inspector at the previous appeal did not consider that intensification of the use could be controlled to any acceptable degree
- The use would harm the character and appearance of the countryside and its special landscape and natural beauty as the site falls within the AONB
- The proposal is contrary to Policy, contrary to NPPF and comprises unsustainable development

1. **The Site and the Proposal**

- 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.

- 1.5 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.
- 1.6 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.
- 1.7 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.
- 1.8 The applicant has nearby landholdings amounting to some 20 acres. Site plans have been submitted with the application.
- 1.9 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.
- 1.10 The applicant considers that the proposed use is compliant with Development Plan and NPPF policies and objectives.

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 The proposed layout of the barn building is shown on submitted drawing 02 B, and a full list of items to be stored in the building has been submitted with the application.
- 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 and is therefore a useful starting position in

considering the current application for business and agricultural use.

- 3.3 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.
- 3.4 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.
- 3.5 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 proposed, contribute to local character and be acceptable in other planning respects.
- 3.6 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.
- 3.7 As the issues remain broadly the same as those identified and assessed by the Inspector it is considered that the AONB would not be harmed as a result of the current proposal and that the character and appearance of the conservation area would be preserved.
- 3.8 Under the previous application which was withdrawn ahead of the Planning Committee but after the Planning Report was written there were a number of uncertainties with the proposal. These have largely been addressed with the submission of this current application, although there remain some areas for discussion:
- During the enforcement investigation the applicant used the argument that some of the machinery was required for agricultural purposes when in fact it appeared to be used for the building business.

- During the enforcement investigation and the appeals, officers and the Inspector were told of a number of different uses of the barn building and it was the Inspector who settled the matter by confirming that the use of the barn was for business storage and domestic purposes
- The Enforcement Notice requires the cessation of the barn building and adjoining land for mixed building business use and residential use incidental to No.7 Millfield as a single dwellinghouse, and the removal from the building and adjoining land of all non agricultural items used in connection with the building business use and incidental residential use. The compliance with this Notice should have been in February 2012. The Committee also should be aware that since the decision to dismiss the appeals the barn building has continued to be used in breach of the Enforcement Notice. A legitimate question for Members is whether given the previous and existing actions of the applicant during previous planning investigations before the 2011 Hearing and since the enforcement notice has been upheld, will the imposition of conditions be adhered to in perpetuity and/or will they place undue and disproportionate reliance on officers to monitor the compliance with the conditions. As far as some of the applicant's proposed conditions is concerned, one off events such as the installation of a solid partition within the building or noise insulation within the barn building could be considered to be able to be reasonably monitored by officers. However, seeking compliance to conditions such as hours of operation, the type of plant and equipment stored, the size and frequency of lorries/vehicles for example, might require daily visits at times, and would be likely to place undue and disproportionate reliance on officers to effectively monitor the situation. It is likely that they would need to be there at the right time of day or evening to monitor the situation. The difficulty with trying to impose planning conditions and one of the key tests for imposing conditions is their enforceability and the ability to provide effective monitoring.
- The applicant claims that his existing site at Ringwould is not secure enough and there have been thefts. Therefore, in his view, this justifies storing the itemised plant and machinery at the application Barn. The applicant's approach is to minimise security at the Ringwould site so that the impression is given that there is limited value in the items stored within the buildings located on that site. The Ringwould site is now used for the storage of timber and some materials. The applicant has promised to forward crime numbers in due course. The difficulty with the applicant's approach is that the applicant's need for storage is not unlike many other rural business' needs for storage and therefore why is this need, in this case, justifiable. Furthermore, Officers suggest that the applicant's

approach could be seen as 'the thin end of the wedge' as a case could be made, eventually, for every form of storage of plant, equipment, materials, machinery etc because of concern over thefts. There is no evidence of how security has been increased to prevent break-ins.

3.9 Taking every matter raised in the consultation responses and representations by the applicant, the proposed use cannot properly address the concerns of the appeal Inspector, in the opinion of Officers. 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.

3.10 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.

3.11 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.

Conclusion

4.0

4.1 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 is of significant concern. With this in mind, it is considered that the proposal would not safeguard the living conditions of the occupiers of nearby residential properties.

4.2

As the merits of the proposed use are considered to harm the residential amenities of existing and future nearby occupiers it is appropriate to consider whether conditions could be imposed to address the harm identified. A set of conditions has been submitted by

the applicant, and the issue of conditions has been assessed above. From the officers' viewpoint, the applicant complied with the requirements of the notices in as far as they related to the land north of the barn building (Appeals C and D – see part d above). However, in respect of the notice against the barn building, this notice has not been complied with. The applicant has not demonstrated to officers a willingness to comply or attempt to comply with the enforcement notice in respect of the barn building. On balance, and for the reasons set out above, it is officers' view that it would not be possible to adequately mitigate and control unacceptable impacts through the use of reasonable and enforceable conditions.

Recommendation

- I PERMISSION BE REFUSED, for the following reasons: (1) The proposal 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

