

a) **DOV/19/00328 – Change of use of existing building to artist’s studio (B1) (retrospective) - Lucida Studios, East Street Farm, East Street, Ash**

Reason for report – Number of contrary views (10) and Councillor Call-in

b) **Summary of Recommendation**

Planning permission be granted.

c) **Planning Policy and Guidance**

Core Strategy Policies (2010)

DM1 – Settlement Boundaries

DM3 – Commercial Buildings in the Rural Area

DM4 – Re-Use or Conversion of Rural Buildings

DM11 – Location of Development and Managing Travel Demand

DM13 – Parking Provision

DM15 – Protection of the Countryside

DM16 – Landscape Character

Ash Neighbourhood Area

Note: No neighbourhood plan has yet been adopted.

National Planning Policy Framework (NPPF) (2019)

Paragraph 7 states that the purpose of the planning system is to contribute to the achievement of sustainable development. The objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Paragraph 124 states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Paragraph 127 states that planning decisions should ensure that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and landscaping, are sympathetic to local character and history and create places that are safe, inclusive and accessible with a high standard of amenity for existing and future users.

Paragraph 170 states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic beauty of the countryside.

Kent Design Guide (2005)

The guide provides criteria and advice on providing well designed development, emphasising that context should form part of the decision making around design.

Dover District Council Landscape Character Assessment (2006)

The site is within 'Ash Level'.

Kent and Medway Structure Plan (2006) - SPG4 Kent Vehicle Parking Standards

d) **Relevant Planning History**

DOV/95/00021 – Agricultural building to store fruit, fruit boxes and machinery -  
Granted

DOV/02/00293 – (*the application building*) Erection of general purpose agricultural  
farm building. – Prior Approval Not Required

DOV/09/01104 – (*located to northwest*) A change of use from agricultural storage  
buildings to use as predominantly trade related showroom and materials library  
related to the sale of hard surface landscaping materials - Refused

DOV/16/01490 – (*cold stores to north*) Prior approval for the change of use from  
storage (use class B8) to residential dwelling (Use class C3) - Prior Approval  
Refused – Appeal Allowed with Conditions

DOV/18/00732 – (*cold stores to north*) Erection of a detached dwelling, car barn,  
garden/cycle storage, landscaping and drainage (existing buildings to be demolished)  
– Refused – Pending Appeal Decision

DOV/18/01052 – (*barn to northwest*) Prior approval for the change of use from  
Storage or Distribution buildings (B8) to 3no. Dwellinghouses (C3) – Prior Approval  
Granted

e) **Consultee and Third Party Responses**

Representations can be found in full in the online planning file. A summary has been  
provided below:

Ash Parish Council – object due to the creation of a habitable unit within the building  
(containing food preparation and washing facilities) occupied by the applicant, which  
is not applied for in this change of use. Furthermore, 5.5 (of the application form)  
claims that the studio provides additional rural employment facilities which  
contradicts claims in the planning statement & could have implications for highways,  
access impact on residential amenity etc. The Parish Council asks for evidence of  
what rural employment opportunities are proposed & their scale and scope so that it  
can comment on that evidence in relation to the claim. Comments submitted by local  
residents would appear to be contrary to some of the claims in the planning  
statement & it is also noted that the application is retrospective.

Woodnesborough Parish Council – no objections

KCC Public Rights of Way – have no comments to make as the proposed change of  
use will have no impact on the restricted byway EE93.

KCC Highways and Transportation – It would appear that this development proposal  
does not meet the criteria to warrant involvement from the Highway Authority in

accordance with the current consultation protocol arrangements. An informative is suggested

#### Public Representations:

9 Representations of objection have been received and are summarised below:

- Sets precedent
- Site is outside of confines on agricultural land
- Change of use to studio has only commenced in last few months – prior to this, applicant was living in the barn & reported to Enforcement Officer in 2018
- Concerns there are plans to convert all buildings within applicants ownership to dwellings (due to prior approval conversion of other barn to three dwellings) and if developed to housing, would result in increase in housing in East Street by half, concerns area will end up as housing estate. Adjacent land (owned by applicant) is used for agriculture – concerns farm land will become a garden or another application will be submitted for an agricultural barn to service the land. Mobile home has been connected to a septic tank and electrics and a further portacabin is within the land under the ownership of the applicant.
- Lack of infrastructure including no mains drainage, gas & rubbish/recycling collection, issues with water supply and electricity and entire plot was subdivided into current arrangement (three plots)
- Agricultural barns on site were allowed on condition of tree screen – mature trees cut to hedge height in last 2 years
- Impact on noise
- Impact on wildlife and natural environment
- Light pollution
- Barn lies in the same field as the archaeological remains of a Roman Villa (identified in 1992 report)
- Highways safety issues – access to highway from A257 is hazardous due to speed and it is not possible for cars to enter and exit the byway simultaneously. East Street is a no through road with no passing places. Access from restricted byway which is unadopted and poorly maintained with no intention to develop the surface to cope with additional traffic the studio will bring – increased traffic could be problematic and dangerous for horse riders, ramblers, dog walkers and residents.
- Inaccuracies in application form and contradictions to planning statement – foul sewage & surface water cannot be disposed of in mains drainage (as there is none) – 13 residences rely on cess pits/septic tanks. Surely paints & solvents are hazardous materials – no details provided on how this will be disposed of, queries regarding employment of staff & benefit to rural economy

#### Agents' response

The agent responded to comments on 17<sup>th</sup> April 2019. This response is available to view in full in the online planning file and is summarised below;

- In respect of Ash Parish Council comments, the building is not occupied by the Applicant and it appears that their comments have been based on some local residents views. Woodnesborough Parish Council raises no objections. The KCC Public Rights of Way Officer raises no objections and confirms there will be no impact on the restricted byway EE93.

- Representations express concern that this change of use to an artists studio will somehow result in more dwellings being built, with suggestions that this change of use will result in 10 dwellings or even a 'housing estate'. Any such development would be subject of separate planning permission and these assumptions are baseless. My Client is a successful artists with an established reputation both at home and abroad and he has been using the building as an artists studio for several years without, it appears from the representations, many of his neighbours even being aware that this studio exists. The neighbours refer to the use as 'proposed' and raise concerns about the change of use leading to extra traffic and also concerns about the change of use creating noise impacts to residents. Clearly, as my Client has been using the building as a studio for some time, none of these issues have arisen, otherwise these representors would have known the studio was there, including the nearest neighbour who states she is the closest neighbour living directly opposite the 'proposed studio'.
- The barn subject of this application was granted permission in 2002 under reference DOV/02/00293. Several representors have referred to removal of trees that were 'required to be retained by a condition'. The approval did not include any such condition.
- Contrary to the comments made by one representor, my Client purchased the barn in 2015 and commenced the use of the studio straight away. My Client does not live in the barn, having his own residence elsewhere (I am happy to provide you with evidence of his private address should you wish) and your recent visit clearly shows you the contents of the Studio. On this point, my Client would like to add the following comments; *'The building seemed to me to present the possibility of an ideal studio away from the hustle and bustle of city life.(I have worked as artist, photographer and film-maker in a wide variety of different spaces and this smaller barn is as good as I have achieved elsewhere in three decades). The studio is most definitely not viewed by me as any kind of permanent accommodation. What provision I have made for an overnight stay, which is all I would ever do, and that only occasionally, is of a basic kind and would simply be invoked on an art project which required a few days of continuous and concentrated work. The studio is ideal for the construction of larger-scale works due to easy transport access both in and out via the new double doors leading to the courtyard in front of the barn. The Case Officer will surely have assessed for herself that this building has been used in its present form for some time (as it happens since it was purchased) and the fact that none of the present objectors were aware of this means that I must have been successful in keeping a private and low profile (with an added determination not to disturb my neighbours if at all possible. Regarding fears that I will be seeking to use other parts of my property of additional buildings, these are really groundless concerns as it is not my intention to do this: apart from anything else, the agricultural designation of my smallholding would preclude this from any such possibility either now or in the future. Finally I feel justified in speaking up for myself (even just a little) as a moderately successful artist who has established a reputation here and abroad, which I am more than willing to share with those of my immediate neighbours who feel in our age of commerciality and consumerism, that a lifetime engagement with the beauty of nature through their work is a goal worth pursuing.'*

f) **1. The Site and the Proposal**

- 1.1 The application site relates to a detached agricultural building within part of a larger agricultural site located outside of the settlement. The application site is

located on the western side of East Street in Ash, which is to the north of the A257 (Ash Bypass). The site is part of a larger plot of land under the ownership of the applicant and part of this is rented to farmers for keeping sheep. The barn in question was constructed in 2002 following the prior approval application for the erection of a general-purpose agricultural building (planning reference DOV/02/00293). To the north of this barn is an enclosed courtyard and parking area, bounded by an approximately 2m high timber fence and gate on the northeast side. The means of enclosure and gates have been installed as permitted development. There is a portable building within the courtyard to the northwest side of the site and to the northwest is a larger detached storage building currently used to store private motor vehicles, which was the subject of a recent prior approval application for the change of use to three dwellinghouses (DOV/18/01052 – Prior Approval Granted). To the south of the application building is a caravan and hardsurfaced area. This is the subject of a separate enforcement investigation.

- 1.2 The application site is accessed via restricted byway (EE93) which runs to the east of the site, connecting the A257 to East Street. On the opposite side of the byway (to the northeast of the site) is East Street Barn and beyond this is The Willows which together with the application site, was previously one larger site. Access to the byway from East Street is restricted by a timber gate across the byway and to the north of the site. As such, vehicular access is from the entrance to the byway from the A257 to the south of the site.
- 1.3 This application seeks permission for the change of use of the existing building to artist's studio (B1) (retrospective). The description of the application has been amended to include 'retrospective'. This amended description was subject to further advertisement and consultees were notified. The agents' Planning Statement and Response to Representations identifies that the building has been used as an artist's studio for at least 3 years. The submitted floor plan indicates a single open space in the building, with no subdivision. The change of use results in no new external alterations to the building, which is finished in dark green corrugated steel, with a pitched corrugated roof (with translucent panels allowing daylight into the building). There are large glazed doors on the northwest elevation (opening to the enclosed courtyard).
- 1.4 Within the building are a number of racks, shelves and sets of drawers for the store and display of artwork, as well as a number of tables, chairs and other domestic furniture. There is also, what appears to be living accommodation within the eastern half of the building which includes a kitchen, bedroom and shower/WC. It is noted that the agent has advised residential use occurs for overnight stays on occasions. Notwithstanding, the application before committee (as supported by the submitted plans) is for a change of use to an artist studio (B1) only. The matter relating to residential use is subject to a separate enforcement investigation and does not form part of the proposal subject of this planning application.

## **2. Main Issues**

- 2.1 The main issues for consideration are:
  - The principle of the development
  - The impact on the character and appearance of the area
  - The impact on residential amenity

## Assessment

### Principle of Development

- 2.2 The site lies outside of the settlement confines identified in Policy DM1 and is therefore within the countryside (subject to Policies DM15 and DM16 discussed later). Policy DM1 (Settlement Boundaries) states that development will not be permitted on land outside the urban boundaries and rural settlement confines unless specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses.
- 2.3 Policy DM3 makes provision for new commercial development in the rural area. Although outside settlement confines, the use applied for generates little traffic or other related activity. On balance it is considered the use applied for is suitable particularly in the light of policy DM4.
- 2.4 Policy DM4 (Re-Use or Conversion of Rural Buildings) states that beyond the confines of Rural Service Centres, Local Centres and Villages permission will be given for re-use or conversion of such buildings for commercial uses.
- 2.5 It is therefore considered that the principle of the development is acceptable in this rural location, subject to site-specific considerations.

### Impact on the Character and Appearance of the Countryside

- 2.6 By virtue of its siting, the application building is visible from East Street, the A257 and restricted byway EE93 (providing access to the site from the A257), as well as surrounding countryside and agricultural land. The site is located outside of the settlement confines identified in Policy DM1 and, being in the countryside is therefore subject to Policies DM15 (Protection of the Countryside) and DM16 (Landscape Character). Policy DM15 seeks to avoid development which will harm the character or appearance of the countryside and Policy DM16 seeks to avoid development which would harm the character of the landscape area.
- 2.7 The proposals result in a change of use of the existing building and no additional external alterations are proposed as part of application. As such, the development is not considered to result in the loss of, or to adversely affect the character or appearance of the countryside. The proposals would therefore accord with Policy DM15. Furthermore, the development is not considered to harm the character of the landscape and would therefore accord with Policy DM16 and Paragraph 170 of the NPPF.

### Impact on Residential Amenity

- 2.8 The application building is located approximately 60m to the west of the nearest neighbouring dwelling; East Street Barn to the north of the site. There are a number of dwellings to the north of the site along East Street, however these are in excess of 100m from the application building and are therefore considered unlikely to be affected by the proposals in respect of impact on residential amenity (including overbearing, overshadowing or loss of privacy). As stated, no new external alterations are proposed as part of this application for a change of use of the existing building and as such, there is no change to the siting, scale or massing of the barn.

- 2.9 In respect of privacy, the development would create no new windows, doors or openings and does not overlook or result in perceived overlooking of the nearby properties. As such, it is considered the change of use does not result in harm to the privacy of nearby residents.
- 2.10 It is stated in the planning statement that the use of the building as an artist's studio has been operating at the site for several years and that the applicant works alone in the studio. No complaints have been received by environmental health in relation to the building in the past three years. In respect of disruption to nearby residents from noise or light pollution, were this to become an issue, it could be controlled by environmental health legislation.
- 2.11 Consequently, as the proposals result in no change to the siting, scale or massing of the existing building, the change of use does not result in undue harm to the residential amenities of nearby properties in accordance with Paragraph 127 of the NPPF.

#### Other Material Considerations

##### Impact on Parking/Highways

- 2.12 The change of use results in no change to the siting or scale of the building. There is an existing paved parking area (providing one parking space) to the northeast of the application building, with further parking space available in the adjacent enclosed yard to the northwest. 2006 SPG4 Kent Vehicle Parking Standards states that for this type of use, 1 car parking space per 35m<sup>2</sup> is required. Based on this, approximately 4 parking spaces are required. Whilst it is stated the applicant works alone in the studio, were the number of users of the building to increase in the future, given the availability of parking within the site, the development is unlikely to cause increased parking pressure in the surrounding area. A condition can be imposed requiring details and securing parking for the use applied for.
- 2.13 Whilst concerns have been raised regarding the access to the site from the A257 via the restricted byway (which is an unmade road), no changes to the existing access are proposed under this application. The agent has confirmed that, as there is a locked gate across the section of restricted byway to the north of the site (preventing vehicular access from East Street), all access to the site for deliveries or other service vehicles (such as sewage collection) is from the A257 to the south (via the byway). The extent of the use is limited by the floor area of the building and based on the current use, by one occupant, the use is likely to be very limited and is therefore unlikely to result in additional harm to highway safety.

##### Impact on Flood Risk

- 2.14 The application site is located in Flood Zone 1, which has the lowest risk from flooding. The proposals result in no increase to the scale or massing of the building and the proposed use would be non-habitable. As discussed, the alleged residential occupation of the building is the subject of an enforcement investigation. Nonetheless, the proposals are considered acceptable in respect of risk from flooding.

### Other Issues

- 2.15 As stated, the change of use to an artist's studio involves no additional external alterations to the siting, scale or massing of the building. The use is considered unlikely to result in significant harm to local wildlife.
- 2.16 Concerns have been raised in relation to foul sewage disposal as the application form states this will be disposed of to mains sewers. There are no public sewers in proximity to the site and as such, the agent has clarified that foul sewage, as well as grey water from the studio sink are stored in a septic tank. Concerns have also been raised in relation to the storage and disposal of hazardous waste. The agent has clarified that the applicant is "very conscious of the potential negative impact on the environment of oil-based products so only uses water dispensable colours" and as this waste water is grey water from the studio sink, it would be stored within the septic tank which would be emptied by a contractor and is therefore unlikely to result in pollution or contamination.
- 2.17 One of the representations received references archaeological findings of a Roman Villa in relatively close proximity to the application barn. Furthermore, land to the southwest of the application building is within an area of archaeological potential surrounding a Roman dock. However, as the change of use results in no additional groundworks or excavation, there would be no harm to archaeology.

### **3. Conclusion**

- 3.1 Whilst the application site is located outside of the settlement confines identified in Policy DM1, the change of use would accord with Policy DM3 and DM4 and is therefore considered acceptable in principle. No new external alterations or changes to the siting or scale of the existing building are proposed and therefore the development does not result in harm to the character or appearance of the countryside and landscape. Due to the separation distance from nearby residential dwellings, as well as the lack of external alterations to the application building, the change of use does not result in undue harm to residential amenity in respect of overshadowing, overbearing or loss of privacy and the development therefore accords with Paragraph 127 of the NPPF. Conditions can be imposed which would control the use of the building, to ensure no resultant harm occurs. Concerns have been raised regarding occasional overnight stays at the barn. The implications of this are currently being investigated by the Councils Enforcement section and are not the subject of this application.

### **g) Recommendation**

I PERMISSION BE GRANTED subject to conditions which include:

- 1) The development hereby permitted shall only be carried out in accordance with the following approved plans: 190226-S-001 Rev A (Site and Location Plans) received 3<sup>rd</sup> May 2019 and 190226-E-001 (Existing Plan and Elevations) received 13<sup>th</sup> March 2019.  
Reason: For the avoidance of doubt.

- 2) The application building shall only be used as an artist's studio (B1) and for no other purpose, including any other purpose in the same use class of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.  
Reason: In order to preserve the amenity of the locality.
- 3) The application building shall at no time be used as a gallery or open to any visitors or members of the public to view or purchase artworks or for any other purpose.  
Reason: In the interests of sustainability and in order to prevent further activity and parking at the site which would be likely to be detrimental to highways and byway safety.
- 4) Detailed plans showing the provision of four car parking spaces within the site shall be submitted to the Local Planning Authority for their approval within two months of the date of this decision notice. The approved parking spaces shall be provided as such, within one month of the approval of details and retained for such purposes thereafter.  
Reason: In the interests of highway safety and amenity.
- 5) No deliveries and dispatches to or from the site shall take place before 08:00 and after 21:00 on any day.  
Reason: In the interests of residential and rural amenity.

II The following informative from KCC Highways and Transportation be included in the decision notice:

- i) It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>  
The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

III Powers to be delegated to the Head of Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by the Planning Committee.

Case Officer

Rachel Morgan