

08 June 2022 at 7.00 pm

Council Chamber, Argyle Road, Sevenoaks

Published: 27.05.22



This meeting will be livestreamed to YouTube here:

https://www.youtube.com/channel/UCLT1f_F50fvTzjZk6Zqn6g. Mask wearing and social distancing are at the Public's discretion. For health and safety reasons, access may be limited and will be on a first come first served basis

Development Control Committee

Membership:

Chairman, Cllr. Williamson; Vice-Chairman, Cllr. Pett
Cllrs. Ball, Barnett, Brown, Cheeseman, Perry Cole, P. Darrington, Edwards-Winsor, Hogarth, Hudson, Layland, McGarvey, Osborne-Jackson, Purves, Raikes, Reay and Williams and a Vacancy

Agenda

There are no fire drills planned. If the fire alarm is activated, which is a continuous siren with a flashing red light, please leave the building immediately, following the fire exit signs.

	Pages	Contact
Apologies for Absence		
1. Minutes To approve the minutes of the meeting of the Committee held on 19 May 2022, as a correct record.		
2. Declarations of Interest or Predetermination Including any interests not already registered		
3. Declarations of Lobbying		
4. Planning Applications - Chief Planning Officer's Report		
4.1 21/02890/FUL - Seven Acres Farm, Hever Road, Edenbridge KENT TN8 5DJ Enlargement of gypsy travellers' site, by way of additional 5 mobile homes and 5 touring caravans.	(Pages 1 - 20)	Sean Mitchell Tel: 01732 227000
4.2 21/00462/FUL - Hollows Wood, Chelsfield Lane, Shoreham KENT BR6 7QT Construction of a new loading/turning bay	(Pages 21 - 36)	Jim Sperryn Tel: 01732 227000
5. Enforcement of Planning Control		

EXEMPT INFORMATION

Recommendation: That, under section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting when considering agenda item 5.1 on the grounds that likely disclosure of exempt information is involved as defined by Schedule 12A, paragraph 6a (Information which reveals that the authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person.)

Any Member who wishes to request the Chairman to agree a pre-meeting site inspection is asked to email democratic.services@sevenoaks.gov.uk or speak to a member of the Democratic Services Team on 01732 227000 by 5pm on Monday, 6 June 2022

The Council's Constitution provides that a site inspection may be determined to be necessary if:

- i. Particular site factors are significant in terms of weight attached to them relative to other factors and it would be difficult to assess those factors without a Site Inspection.
- ii. The characteristics of the site need to be viewed on the ground in order to assess the broader impact of the proposal.
- iii. Objectors to and/or supporters of a proposal raise matters in respect of site characteristics, the importance of which can only reasonably be established by means of a Site Inspection.
- iv. The scale of the proposal is such that a Site Inspection is essential to enable Members to be fully familiar with all site-related matters of fact.
- v. There are very significant policy or precedent issues and where site-specific factors need to be carefully assessed.

When requesting a site inspection, the person making such a request must state under which of the above five criteria the inspection is requested and must also provide supporting justification.

Public Access Links

Late Observations

If you wish to obtain further factual information on any of the agenda items listed above, please contact the named officer prior to the day of the meeting.

Should you need this agenda or any of the reports in a different format, or

have any other queries concerning this agenda or the meeting please contact Democratic Services on 01732 227000 or democratic.services@sevenoaks.gov.uk.

This page is intentionally left blank

4.1 21/02890/FUL

Date expired 17 December 2021

Proposal:

Enlargement of gypsy travellers' site, by way of additional 5 mobile homes and 5 touring caravans.

Location:

Seven Acres Farm, Hever Road, Edenbridge KENT TN8 5DJ

Ward(s):

Edenbridge South & West

Item for decision

The application has been referred to Committee by Councillor McArthur as the proposed is inappropriate development within the Metropolitan Green Belt.

RECOMMENDATION: That planning permission be GRANTED subject to the following conditions:

1) This planning permission is granted for a temporary period of three years only, from the date of this permission. By the date this permission expires, all caravans, utility building, structures, hardstanding, materials and equipment brought on to the land in connection with the use hereby approved, shall be removed and the site shall be restored to its previous condition, or restored in accordance with a scheme that has been submitted to and approved in writing by the Local Planning Authority.

In order that any other proposal for the use of the land for a longer period is the subject of a separate application, to be determined on its merits, having regard to the harm to the Green Belt, the status of the Local Plan and the allocation of sites for Gypsies and Travellers.

2) The development hereby permitted shall be carried out in accordance with the following approved plans and details:

1:2500 unnumbered location plan; 1:500 scaled BLOCK PLAN

For the avoidance of doubt and in the interests of proper planning.

3) The occupation of the site hereby permitted shall be carried on only by Nikita O'Driscoll, Nicole O'Driscoll, John Junior O'Driscoll, Chloe Connors, Savanha O'Driscoll and their resident dependants in compliance with the definition of gypsies and travellers set out in paragraph 1, Annex 1 of Planning Policy for Travellers August 2015. When the land ceases to be used by Nikita O'Driscoll, Nicole O'Driscoll, John Junior O'Driscoll, Chloe Connors, Savanha O'Driscoll or at the end of the expiry of temporary permission, whichever is the sooner, the use hereby permitted shall cease and all caravans, utility building, structures, hardstanding, materials and equipment brought on to the land associated with the use hereby permitted shall be removed.

Agenda Item 4.1

Given that the very special circumstances in this case clearly outweigh the harm to the openness of the Green Belt and any other harm.

4) There shall be no more than 5 residential pitches on the site. On each of the 5 pitches, no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended, shall be stationed on the site at any time, of which no more than 1 shall be a static caravan.

Given that the very special circumstances in this case clearly outweigh the harm to the openness of the Green Belt and any other harm, in accordance with Policy EN1 of the Local Plan.

5) No more than 1 commercial vehicle per pitch shall be kept on the site for use by the occupiers of the caravans hereby permitted and each commercial vehicle shall not exceed 3.5 tonnes in weight.

To preserve the visual appearance of the area as supported by EN1 of the Sevenoaks District Local Plan.

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any other order revoking and re-enacting that order with or without modifications), no walls, fences or other means of enclosures other than those approved under condition seven shall be erected on the site unless details of their size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out and retained in accordance with the approved details.

To safeguard the rural character of the area as supported by Policy EN1 of the Sevenoaks Allocations and Development Management Plan.

7) Within three months of the date of this decision, full details of landscape works, including boundary treatment and ecological enhancements, to be retained and proposed for the site, shall be submitted to the local planning authority. The approved details shall be completed within the next available planting season following approval of the landscape works and if within a period of three years from the date of this decision any of the trees or plants that form part of the approved details die, are removed or become seriously damaged or diseased then they shall be replaced in the next planting season with others of similar size and species.

To preserve and enhance the visual appearance of the area and the ecological value of the site as supported by EN1 of the Sevenoaks Allocations and Development Management Plan and policies LO8, SP11 of the Core Strategy.

8) No external lighting shall be installed on the site or affixed to any buildings on the site unless the local planning authority has first approved in writing details of the position, height, design, measures to control light spillage and intensity of illumination. Only the external lighting in accordance with the approved details shall be installed.

To safeguard the rural character of the area as supported by Policy EN1 of the Sevenoaks Allocations and Development Management Plan.

Informatives

1. Network Rail requests that the development complies with the following to maintain the safe operation of the railway and protect Network Rail's infrastructure.

Plant & Materials

All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, must at all times be carried out in a "fail safe" manner such that in the event of mishandling, collapse or failure, no plant or materials are capable of falling within 3.0m of the boundary with Network Rail.

Fencing

In view of the nature of the development, it is essential that the developer provide (at their own expense) and thereafter maintain a substantial, trespass proof fence along the development side of the existing boundary, to a minimum height of 1.8 metres. The 1.8m fencing should be adjacent to the railway boundary and the developer/applicant should make provision for its future maintenance and renewal without encroachment upon Network Rail land. Network Rail's existing fencing / wall must not be removed or damaged and at no point either during construction or after works are completed on site should the foundations of the fencing or wall or any embankment therein, be damaged, undermined or compromised in any way. Any vegetation on Network Rail land and within Network Rail's boundary must also not be disturbed. Any fencing installed by the applicant must not prevent Network Rail from maintaining its own fencing/boundary treatment.

Lighting

Any lighting associated with the development (including vehicle lights) must not interfere with the sighting of signalling apparatus and/or train drivers vision on approaching trains. The location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway. The developers should obtain Network Rail's Asset Protection Engineer's approval of their detailed proposals regarding lighting.

Noise and Vibration

The potential for any noise/vibration impacts caused by the proximity between the proposed development and any existing railway must be assessed in the context of The National Planning Policy Framework which hold relevant national guidance information. The current level of usage may be subject to change at any time without notification including increased frequency of trains, night time train running and heavy freight trains.

Vehicle Incursion

Where a proposal calls for hard standing area/parking of vehicles area near the boundary with the operational railway, Network Rail would recommend the

Agenda Item 4.1

installation of a highways approved vehicle incursion barrier or high kerbs to prevent vehicles accidentally driving or rolling onto the railway or damaging lineside fencing.

2. It is possible that a sewer now deemed to be public could be crossing the development site. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site.

For further advice, please contact Southern Water, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel: 0330 303 0119).

Website: southernwater.co.uk or by email at:

SouthernWaterPlanning@southernwater.co.uk

3. No information has been provided about the foul water drainage proposed to be installed for this development.

There is a presumption that connection to the Public Sewer should be the first considered method of sewage disposal. If non-mains drainage is to be pursued, the applicant will need to demonstrate why this is not practicable in this specific case. Full details will be required, including size, location and maintenance regimes. Due consideration should be given to the National Planning Policy Guidance, Paragraph: 002 Reference ID: 34-002-20140306 in respect of Non-Mains Sewerage and Building Regulations Approved Document H - Drainage and Waste Disposal. This information should be provided in the form of a report prepared by a suitably qualified and competent person and must be submitted with the application for it to be registered.

Proposals must be able to meet the Environment Agency's General Binding Rules, which can be found at <https://www.gov.uk/guidance/general-binding-rules-small-sewage-discharge-to-the-ground>, or, where the proposals are unable to meet the general binding rules the scheme must be capable of meeting the requirements of a specific discharge consent upon application to the Environment Agency.

Please note that the Local Planning Authority will note the submission of this information where provided but will not comment on its technical accuracy or provide technical guidance to the applicant.

Any further guidance should be obtained from the Environment Agency as the UK regulator for the pollution of surface or ground waters and discharge consents.

National Planning Policy Framework

In dealing with this application we have implemented the requirements in the National Planning Policy Framework to work with the applicant/agent in a positive, proactive and creative way by offering a pre-application advice service; as appropriate updating applicants/agents of any issues that may arise in the processing of their application and where possible and if applicable suggesting solutions to secure a successful outcome. We have considered the application in

light of our statutory policies in our development plan as set out in the officer's report.

Description of Site

- 1 The application site forms part of a triangular shaped parcel of land on the northern side of Hever Road under the ownership of the applicant. The wider land parcel is some 2.6 hectares in size, although the application site itself consists of a roughly crested shaped parcel within the north eastern corner of the site, amounting to some 0.98 hectares in size.
- 2 The site is located within the Metropolitan Green Belt, around 400 metres to the east of the town confines of Edenbridge. The nearest residential properties to the site are the Romani Way Council Gypsy site about 100m to the west, and Burnt Oak Farm about 300 m to the east. A railway line, situated within a cutting, runs along the rear boundary of the site.
- 3 The site is accessed via Hever Road and is largely laid to hardstanding. There is an existing barn used for commercial purposes to west and the existing site for the stationing of 10 caravans permitted under planning permission 20/02981/FUL.
- 4 The site is close to Edenbridge with access to services and facilities and within the designated Metropolitan Green Belt.

Description of Proposal

- 5 The adjacent site has accommodated Gypsy and Traveller families for more than 14 years. This use was originally unauthorised before temporary permission was granted on appeal in 2006. The Council granted a further temporary permissions in 2010, 2013 although these have expired. In 2020, a further planning permission was granted for 10 pitches that allowed for each pitch to have one static and a tourer, that accommodate gypsies and travellers that satisfies the definition set out within Annex 1 of the Planning Policy for Traveller Sites August 2015 (PPTS).
- 6 A permanent planning permission is being sought after for the introduction of a further 5 pitches to the northeastern corner of the site for occupants already living on-site due to cramped living conditions.

Relevant Planning History

- 7 04/01555 - Conversion of agricultural building to 2 no B1 units and installation of a cess pool and car park - Approved
- 8 05/01966 - Change of use to residential and stationing of six mobile homes, six utility rooms and six touring caravans for gypsy family - Refused. Allowed on appeal for a temporary period of 3 years.
- 9 09/02953 - Change of use for stationing of caravans for residential use with associated development (new access, driveway and retain extension to existing hard standing and septic tanks) - Approved for a temporary period of 3 years.

Agenda Item 4.1

- 10 13/02565 - A mixed use application for the retention of a barn for B1 use and the use of land for the stationing of caravans for residential purposes for 7 No gypsy pitches together with the formation of additional hard standing ancillary to that use - GRANTED (temporary)
- 11 20/02981 - Confirmation of the use of land for the stationing of 10 caravans for residential purposes and the retention of a barn for B1 use - GRANTED

Policies

- 12 National Planning Policy Framework (NPPF)
- 13 Paragraph 11 of the NPPF confirms that there is a presumption in favour of sustainable development, and that development proposals that accord with an up-to-date development plan should be approved without delay.
- 14 Paragraph 11 of the NPPF also states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:
 - the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
 - (Footnote 7 (see reference above) relates to policies including SSSIs, Green Belt, AONBs, designated heritage assets and locations at risk of flooding.)
- 15 Core Strategy (CS)
 - SP1 Design of New Development
 - SP6 Provision for Gypsies and Travellers and Travelling Showpeople
 - LO8 The Countryside and Rural Economy
- 16 Allocations and Development Management Plan (ADMP)
 - EN1 Design Principles
 - EN2 Amenity Protection
 - GB6 Siting of Caravans and Mobile Homes in the Green Belt
 - T2 Vehicle Parking
- 17 Other
 - Sevenoaks Gypsy and Traveller Accommodation Assessment 2017
 - SDC Development within the Green Belt SPD
 - Planning Policy for Traveller Sites - August 2015 (PTTS)
 - Sevenoaks Landscape Character Assessment SPD 2017

Constraints

18 The following constraints apply:

- Metropolitan Green Belt

Consultations

19 Edenbridge Town Council - Objects to the application for the following reasons:

20 “1) This site was allocated in the draft Local Plan which said: site to have no more than 10 permanent pitches in total to retain existing trees and hedges.

21 The response by the Town Council was that it accepts the need for these sites, but would not want to see this site exceed a maximum of 10. In 2013, a 3-year license for no more than 7 pitches; this had expired (13/02565), but confirmation was granted 2020 (20/02981/FUL).

22 2) The site is set in the Green Belt and should adhere to NPPF paragraph 139, and there is no clear justification to allocate further traveller development in this location.

23 3) The expansion of this site does not refer to the other site, which is close-by on Hever Road. This has the potential to cause conflict.

24 4) There is reference to the 5-pitches being used as a transit site which would be unusual to mix with existing permanent pitches.

25 5) Also the application states that all of pitches, whether mobile homes or touring will be used by the extended family of the current occupiers. Therefore they cannot be classified as needed transit pitches.

26 6) There detail Design and Access Statement has minimal information and quotes the site being access sought from the existing A21. Edenbridge is about 12 miles from the A21.

27 7) The location of the 'transit' pitches is not shown on the plan

28 8) There is no ecology report and no flood mitigation included.

29 9) It is in breach of policy GB6.”

30 Other Consultees -

31 SDC Planning Policy - “The LDS states that the Local Plan will be submitted for examination in 2023 and adopted in 2024. We are currently undertaking an update to the Gypsy and Traveller Accommodation Assessment (GT AA) to cover the period up to 2040. A main focus of the emerging Local Plan is

Agenda Item 4.1

sustainability, and sites in the most sustainable locations will be preferred over those which are more remote. National policy also states that new development should be focused outside of protected areas such as Areas of Outstanding Natural Beauty (AONB).

- 32 It is our intention to allocate available land for Gypsy and Traveller pitches in suitable and sustainable locations to meet the identified need. It is highly likely that these sites will be located in the Green Belt and therefore will be required to meet the Local Plan exceptional circumstances test.
- 33 The site at Seven Acre Farm has previously been assessed for potential allocation through the Local Plan process. The site was found to be more sustainable than many others submitted for consideration and in comparison to other existing sites. It does not lie within the AONB and is on the edge of a town with good services and facilities...
- 34 We are currently undergoing a call for sites and any sites that applicants wish to be considered for allocation within the Local Plan should be submitted to the Council through this process.”
- 35 Hever Parish Council (adjacent Parish Council) - Does not support the application
- 36 SDC Gypsy/Traveller Liaison Officer - No response
- 37 Network Rail - No objectives - recommend informatives
- 38 KCC Economic Development -
- 39 “Kent County Council acknowledges that Sevenoaks District Council is a CIL Authority. However, we set out below the assessed impacts upon County services which cannot be accommodated within existing capacity and request if CIL receipts are insufficient then s106 also be applied (as permitted under the CIL Regs as amended 2019) to top up to ensure the impacts upon these services are mitigated and the development is sustainable.
- 40 This development of 5 dwellings is applicable as it is on a site of more than 0.5ha and will place the following unfunded pressures on KCC:
- Secondary Education: £22,700
 - Community Learning: £82.10
 - Youth Service: £327.50
 - Libraries: £277.25
 - Social Care: £734.40
 - Waste: £918.35
- 41 It is requested that these impacts be noted in determining the application and that Sevenoaks District Council allocates all funds received from the development, and secures via s106, to ensure the impacts of the development can be met, so the development can be regarded as sustainable.”

- 42 Southern Water - No objection - informatives recommended
- 43 KCC Highways - No objection

Representations

- 44 6 representations received, objecting on the following matters:
- Out of character with the area;
 - Increased traffic;
 - De-value nearby properties;
 - Increase light pollution;
 - Works have already started;
 - Increase anti-social behaviour;
 - Impact upon nearby listed buildings within Hever Road;
 - Plots too near to the railway line.

Chief Planning Officer's appraisal

- 45 The main considerations of this application are:
- Impact upon the Green Belt;
 - Housing need/Gypsy Sites
 - Impact upon character and appearance of area
 - Impact upon highways
 - Other Issues

Impact upon the Green Belt

- 46 Current Government advice, in the form of the National Planning Policy Framework, supports the protection of the Green Belts and seeks to restrict development.
- 47 The advice states that there is a general presumption against inappropriate development within the Green Belt. Such development should not be approved, except in very special circumstances. Inappropriate development is, by definition, harmful to the Green Belt.
- 48 Paragraph 137 of the NPPF states that “The fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”
- 49 The site lies outside of any defined settlement boundary and is situated in the Green Belt and within the countryside. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework also says that when considering any planning application, substantial weight should be given to any harm to the Green Belt.

Agenda Item 4.1

- 50 Paragraph 16 of the Planning Policy for Traveller Sites (PTTS) and the NPPF acknowledge that the development should therefore not be approved unless in very special circumstances. The PPTS states ‘subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm to as to establish very special circumstances’
- 51 Policy SP6 of the Core Strategy relates to provision for Gypsies and Travellers. It explains that sites will be provided by means of allocations in the Allocations and Development Management DPD for Gypsies and Travellers. The policy sets a number of criteria relating to such sites which relate, in summary, to the location of the site, provision of safe and convenient access and acceptable living conditions for occupants of the site, the site should not be subject to flooding, there should be no significant adverse landscape impact and consideration of alternative sites. The site is not an allocated site within the current Development Plan.
- 52 Consequently, the introduction of additional caravans together with hardstanding and parking areas would be harmful to both the visual and spatial openness of the Green Belt. Furthermore, the provision of further built form further reduces the openness. Although sited off-centre to the rear of an existing field, it is likely that a caravans etc. would be visible through the gap in the green cover created by the access road and the adjacent hedgerow fronting the site. The extent of the proposal would mean that it would result in the encroachment of development into the open. This would be contrary to one of the five purposes of the Green Belt included within paragraph 138 of the Framework.
- 53 Harm to openness and encroachment into the countryside must nevertheless be distinguished from other landscape and visual effects. Based on the site layout and scale of buildings, due to the sites’ relative containment that there would be no significant harm to landscape character. In relation to visual effects, whilst there would be some adverse impacts on the currently open and undeveloped views, it is not considered that these would be significantly or unacceptably harmful.
- 54 Taking this all together, whilst there is harm in principle the harm to openness and encroachment into the countryside would be limited. As the NPPF advises substantial weight should be given to any identified harm to the Green Belt.

Housing Need/Gypsy sites

- 55 Policy E of PPTS confirms that Green Belt boundaries should be altered only in exceptional circumstances. If a local planning authority wishes to make an exceptional, limited alteration to the defined Green Belt boundary (which might be to accommodate a site inset within the Green Belt) to meet a specific, identified need for a traveller site, it should do so only through the plan making process and not in response to a planning application. Sites have been proposed in the emerging Local Plan, despite a need being identified, however the emerging local plan examination has now stopped and therefore these identified sites would not be examined any further. In

the meantime, any need can only therefore be addressed through planning applications.

- 56 It is recognised that there has been a failure of policy over a considerable period of time, and that this site has been previously granted temporary/permanent permissions. Unfortunately, the Council has not made any gypsy and traveller site allocations and there is no development plan policy to apply to the provision of the proposal for gypsy and traveller sites within the District. The Emerging Local Plan, is some time away from adoption. Given this, reliance is placed on national policy and the PPTS.
- 57 The PPTS requires local planning authorities to set targets for providing Gypsy and Traveller pitches within each authority area and requires an assessment of need to be undertaken annually. It is acknowledged that there has been a significant and longstanding unmet need for pitches within the District and consequently, there is no 5-year supply of deliverable sites in place, as evidenced by SDC Policy comments.
- 58 The Council's 2017 Gypsy and Traveller Accommodation Assessment (GTAA) Final Report figures indicate a need for 51 pitches between now to 2035, but with recent planning permission that authorise sites, since 2017, the need now stands at 5 pitches. With this in mind, this current unmet need for sites should be given substantial weight in its consideration.
- 59 Currently, there are no pitches available at the Council's public sites or the turnover has been extremely low and therefore, is a long waiting list for pitches. With this site, there has been a gypsy and travellers occupying the land in excess of 14 years.
- 60 It is acknowledged that sites for gypsy and traveller sites will be within the Green Belt, as vacant urban land has a potential value for housing or commercial uses that makes it unviable as a gypsy site. This has been further evidenced with the previously proposed gypsy and traveller site allocations in the Emerging Local Plan being located in the Green Belt and to which moderate weight can be given to it as a material consideration.
- 61 Whilst Criterion (f) of Policy SP6 states that alternative sites should have been considered first before Green Belt locations, given the above conclusions on the likely location of Gypsy and Traveller sites will be in the Green Belt, it is considered that this site meets this criterion as well. As such, the use of the site is therefore supported by policy SP6 of the Core Strategy.
- 62 This site would provide for the accommodation needs of extended family members and assist in the relocation of travellers from the existing overcrowded pitches. Furthermore, it would support continued close family connections, which is an important part of gypsy community, and this would allow existing families with strong local connections to stay close together. In addition, bearing in mind the shortfall of available sites to meet the need, there is some merit in considering that a further 5 pitches on this site is immediate and deliverable, to making a valuable contribution in lowering the unmet need during the existing Local Plan period, again significant weight is attached in its consideration.

Agenda Item 4.1

- 63 Over the past fourteen years it has been demonstrated consistently that the families upon the site are Irish travellers and that there are 28 children on site of which many are of school age. Other occupants include family relatives and some other children that require medical treatment and others that have children to whom that attend the local schools of Primary and Secondary ages. Most of the occupants travel regularly for, albeit not necessarily together, carrying out mainly landscaping and aboricultural and the mothers stay at home with the children who are at school during term time. The site occupiers also trade at various horse dealing fairs. As such it is considered that the persons who currently reside on site currently meet the definition of a gypsy and traveller set out in the PPTS.
- 64 There is a clearly identified unmet need for Gypsy sites in the District. This is coupled with the fact that the District currently has no identified or allocated land for such provision. The circumstances of the occupants as identified in previous paragraphs, also weigh in favour of the development and that part of the site has been used as a gypsy site in excess of 14 years. It is also reasonable to presume that, given the level of unmet need, together with the extent of the Green Belt within the District, it is highly unlikely that alternative sites will be found through the allocations process that does not involve development in the Green Belt. As such there is an inevitability that some harm to the Green Belt will occur through the requirement to allocate sites for Gypsy / Traveller pitches, whether by definition, harm to openness or both. This has also been accepted by Inspectors considering appeals on other sites within the District. This is, to an extent, evident within the wording of Policy SP6 of the Core Strategy - criteria a) endorses the provision of sites within or close to existing settlements (and if close to but not within an existing settlement then this would infer a Green Belt location), whilst criteria e) seeks to prevent significant adverse harm to the landscape.
- 65 *Sustainable Location?*
- 66 Policy SP6 of the Core Strategy in part seeks to ensure that sites are located close to existing settlements with an accessible range existing local services.
- 67 The site is located approximately 850m as the crow flies from the centre of Edenbridge whereby there is limited facilities consisting of a Doctor's surgery, pre-school, primary school, shops and a Public Houses. Edenbridge is classified as a town with good provision of services and access to public transport provision.
- 68 Notwithstanding the above, in the context of a rural setting, the site is not considered to be isolated as it's in close proximity to Edenbridge whereby there is good access to services despite the view of the Town Council. Other gypsy and traveller sites within the District and those form part of the Emerging Local Plan site allocations are similarly situated in the rural areas in the Green Belt, in countryside locations. Such distances are not unusual in this context. The site occupiers will be largely reliant on private vehicles to access services and facilities. However, those services and facilities do not, on a day-to-day basis involve long journeys. As set out in paragraph 105 of the NPPF, opportunities to maximise sustainable transport solutions will

vary between urban and rural areas, and this should be taken into account in both plan- making and decision-making.

- 69 The nomadic lifestyle of gypsies and travellers obviously involves travelling for both economic and other purposes, towing their caravan. This involves the use of a private vehicle irrespective of location and so, whilst travelling, the same opportunities for using public transport simply do not apply. When away travelling, it will be necessary to access services and facilities wherever they are, rather than leaving and returning to the site on a daily basis for work.
- 70 In terms of other family members (or those that have ceased travelling) needing to access services and facilities including schools and medical establishments, the availability of these within a reasonable travelling distance is critical, bearing in mind that land in settlements or edge of settlements considered a suitable and sustainable location for housing for the settled population is, in most circumstances, simply not available to accommodate private gypsy and traveller sites. Opportunities to access regular bus services are therefore also less likely. In this case, the proximity to local schools, doctors and shops would certainly encourage shorter car journeys.
- 71 In wider sustainability terms a settled base can reduce incidents of unauthorised encampments, reduce the need for continuous travel and facilitate consistent access to schools and medical services etc. Therefore the site does provide a sustainable location for a gypsy and traveller site in relation to accessibility to services and facilities and that no conflict is found with Policy SP6 of the Core Strategy and relevant national policy in this regard.

Impact upon the character and appearance of the area

- 72 The impact of the development on the character and appearance of the area is a separate matter to the consideration of impact on openness, which relates to the absence of built form.
- 73 Policy SP1 of the Core Strategy requires all new development to be designed to a high standard and that it should respond to the distinctive local character of the area in which is situated, this is also reflected in Policy LO8 of the Core Strategy.
- 74 Policy EN1 of the ADMP requires that the layout of proposed development would respect the topography and character of the site and the surrounding area.
- 75 The Sevenoaks Landscape Area Assessment SPD 2017 defines the area of the application site as the landscape type as being low lying flat to gently undulating valley bottom with tree cover limited to field boundaries. Irregular fields, both arable and pasture, make up much of the landscape with tree belts, hedgerows and small watercourses delineating the field pattern. Post and wire fencing is also present around arable fields. Tree cover is generally limited to field boundaries although there are small areas

Agenda Item 4.1

of woodland around the settlement edge of Edenbridge including a traditional orchard.

- 76 An assessment to be made is whether it would cause undue harm to the visual amenity and character of the area and whether it is capable of being assimilated into the surrounding landscape without significant adverse effect.
- 77 Whilst it the site may appear isolated, is not a significant distance from the main residential development of Edenbridge. Further to west of the site lies another gypsy site, small collection of commercial units, and residential development. Directly to the north, is the railway.
- 78 `The impact of the low-level caravans would be limited upon the wider landscape character as it's contained within the existing site with the existing boundary treatments in place, however these existing boundaries can be strengthen should planning permission be forthcoming.
- 79 On balance, despite the number of pitches sought, whilst the development does cause some harm, but it is capable of being assimilated into the surrounding landscape without having a significant adverse visual effect. Any long distance views of the site are limited and therefore the landscape character of the area would be conserved and enhanced by further appropriate landscaping.

Impact upon highway

- 80 The site is of an adequate size to accommodate vehicles associated with the use, therefore the proposals would not increase pressure for local on street parking. This is compliant with policy T2 of the ADMP.
- 81 The existing access drive is well established and finished in tarmac. The access junction with the main road is wide with acceptable visibility onto Hever Road. Traffic associated with the site is likely to be limited and very low key.
- 82 There is sufficient hard standing on site for the turning of vehicles within the site as well as for the parking of vehicles.
- 83 Satisfactory parking can be provided on site and KCC Highways has raised no objection to the proposal.
- 84 *Assessment of any very special circumstances that may apply for this Green Belt proposal*
- 85 Paragraph 148 of the NPPF states that when considering any planning application, 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 is clearly outweighed by any other considerations.
- 86 The proposal is inappropriate development within the Green Belt. It would also be harmful to the openness and one purposes of the Green Belt. The

Framework states that substantial weight should be given to any harm to the Green Belt.

- 87 It is clear that the development is contrary to national policy, harmful to its openness and would encroach into the countryside, contrary to its main purpose. Substantial weight is accorded to the overall harm, however that harm to the openness and encroachment is limited by the site's visual containment and limited public visibility. Nevertheless there are a number of other considerations to weigh against that harm.
- 88 The pitches would enable existing families with strong local connections to reside close by and support others within the site. The proposal would provide a permanent base from which the families could access education and healthcare services and avoid the insecurity, risks and disadvantages associated with living by the road or doubling up on other pitches, where these may be unauthorised. Again, this is a further benefit of the proposal. The proposed occupants do not have dependants however may do so in the future which would allow for future children to have a settled base which affords them access to education and other services, as well as integration into the community. Given the circumstances and context in this case, limited weight can be attributed to his circumstance.
- 89 Paragraph 25 of the PPTS warns that sites in the open countryside should be very strictly limited, but, given the description of the site and its limited landscape impact, consequently, had the site not been in the Green Belt it would be considered it would have been a very strong, if not ideal, candidate for a gypsy and traveller site.
- 90 In relation to traveller status some information has been provided that shows the extended family connections to the existing Irish Traveller families on-site and the same families have lived on the site since its inception and this is not disputed.
- 91 To be weighed against the Green Belt harm is the unmet need for gypsy and traveller sites and the failure to provide for them through allocations to which significant weight is attached. Also give significant weight is also given to the likelihood that allocations will involve designated Green Belt land. Moderate weight is given to the personal circumstances of the extended family units and their wishes to remain together in order to provide stability and maintenance of the family unit(s).
- 92 In addition to the above, in exercising the function on behalf of a public authority and its duties under the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Due regard has been had to the existing/future occupiers' traditional way of life. Further regard has been had to the best interest of the children on-site. The wellbeing provided by an accessible and secure environment that the proposal would provide to gypsy families carries significant weight.

Agenda Item 4.1

- 93 When the above considerations are taken together in the round, the case does not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and the other harm resulting from the development, so as to comprise very special circumstances. As such to grant of permanent planning permission is not justified, at this present moment in time. Therefore, it is necessary to consider whether a temporary or personal planning permission would be appropriate. In this case, it is likely that a new local plan will be in place within the next 3 years, and that it will allocate sites for gypsies and travellers. A temporary permission would allow the local authority time to reconsider the development at the end of the temporary period in the light of any change in circumstances, in particular with regard to the supply of potential alternative sites through the local plan.
- 94 By granting planning permission for a temporary period of three years it would avoid the families either becoming homeless and to stop living in cramped conditions, and give them the opportunity to pursue a site through the local plan allocation process. This would be a proportionate approach to the legitimate aim of protecting the environment, and granting a personal permission for a limited period would have no greater impact on the applicants and their extended family than would be necessary to address the wider public interest.
- 95 As the harm to the Green Belt would therefore be temporary, the personal circumstances of the applicants and other considerations are sufficient to clearly outweigh the harm to the Green Belt and the other harms. Taking account of the positive obligation to facilitate the gypsy way of life, there are very special circumstances to justify a temporary permission in this instance.
- 96 Regard has been had to the Human Rights Act 1998. In this case, it is found that very special circumstances exist that makes the development acceptable, therefore, there would be no interference with the rights afforded under the Act.

Other issues

- 97 With regard to existing local residents, the proposed pitches would be some distance from any adjoining occupiers. The separation distance would be sufficient to prevent significant harm arising to the occupiers of those properties with regard to their privacy and light, and the proposal would not give rise to overbearing impact or be a form of development that would generate noise such that would be likely to cause unacceptable disturbance.
- 98 Representations relating to de-valuing property values is not a material planning consideration.
- 99 The site is not within flood zone and therefore a flood risk assessment is not required in this instance.
- 100 An ecological assessment is not required as the site has been used for grazing of animals and has been manicured in the past. The development proposed is temporary and is for the stationing of caravans and any harm

would be limited and conditions can be used to limit any impact arising in ecology terms from the development itself.

- 101 It is noted that works have started, however, any land level changes or operations outside the scope of this permission, this if this application is permitted, further enforcement of the permission can be pursued, likewise, if any conditions are not conformed with or to.
- 102 Edenbridge Town Council and Hever Parish Council objections have been considered in this instance, however, it is not considered that the application would be premature especially when the examination of the emerging Local Plan has been stopped. The unmet need of gypsy and traveller sites in the District is now acute, with no allocation Development Plan Documents in place, the only way the unmet can be met is by sites coming forward via the planning application process. In any event, as SDC Policy has stated, it would have been likely that this site would have been advanced for it to be allocated.
- 103 It is agreed that the development does constitute inappropriate development within the Green Belt. However, it is considered that this is an appropriate location as it near to Edenbridge and is more sustainable than other sites within District.
- 104 With regard KCC request for infrastructure provision, the permission is not for permanent dwellings and therefore the development is not CIL liable. As such, the request for monies is considered to be unreasonable in this instance.

Conclusion

- 105 The site is justified for occupation by those meeting the definition of gypsies and travellers and so a condition restricting occupancy accordingly will be required as well as restricting the number of stationed caravans on the site at any one time.
- 106 It is appropriate to require details of landscaping to strengthen the existing boundary treatments and soften the impact of the development. Although a temporary permission is being granted, an appropriate landscaping scheme would assist in mitigating the impact on the rural character of the Green Belt for the temporary period, whilst bringing ecological benefits. Conditions controlling the means of enclosure, external lighting, commercial uses and the storage of commercial vehicles over 3.5 tonnes, are necessary in the interests of protecting the rural character and landscape.
- 107 Although substantial weight has to be given to the Green Belt by reason of inappropriate development and the impact on openness, it is considered that this would be clearly outweighed by the significant and unique benefits of the proposal as previously mentioned above. As such, it is concluded that the very special circumstances exist, which would justify a temporary permission in the Green Belt in this instance.

Background papers

Agenda Item 4.1

Site and block plan

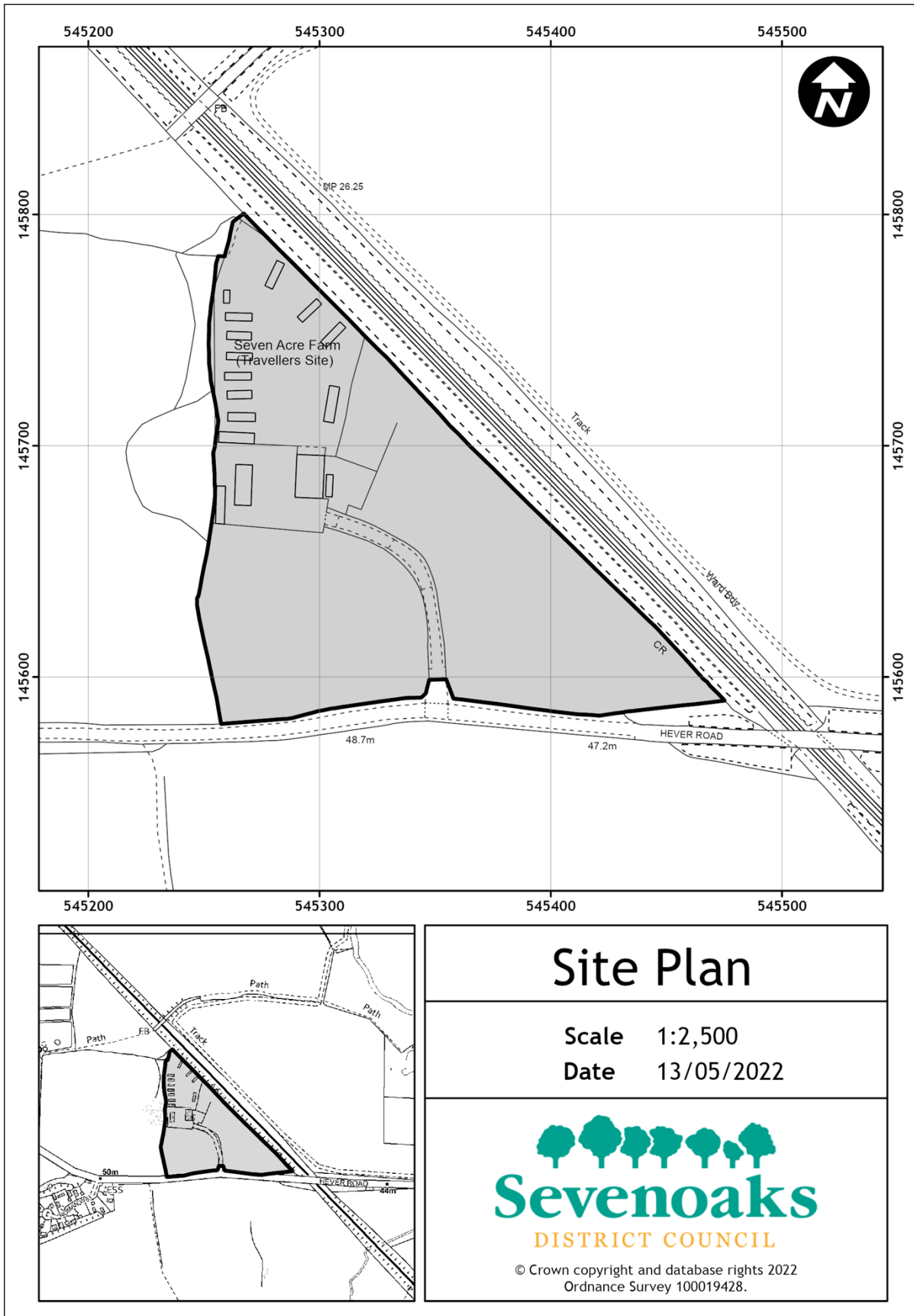
Contact Officer(s):

Sean Mitchell : 01732 227000

Richard Morris
Chief Planning Officer

[Link to application details:](#)

[Link to associated documents:](#)

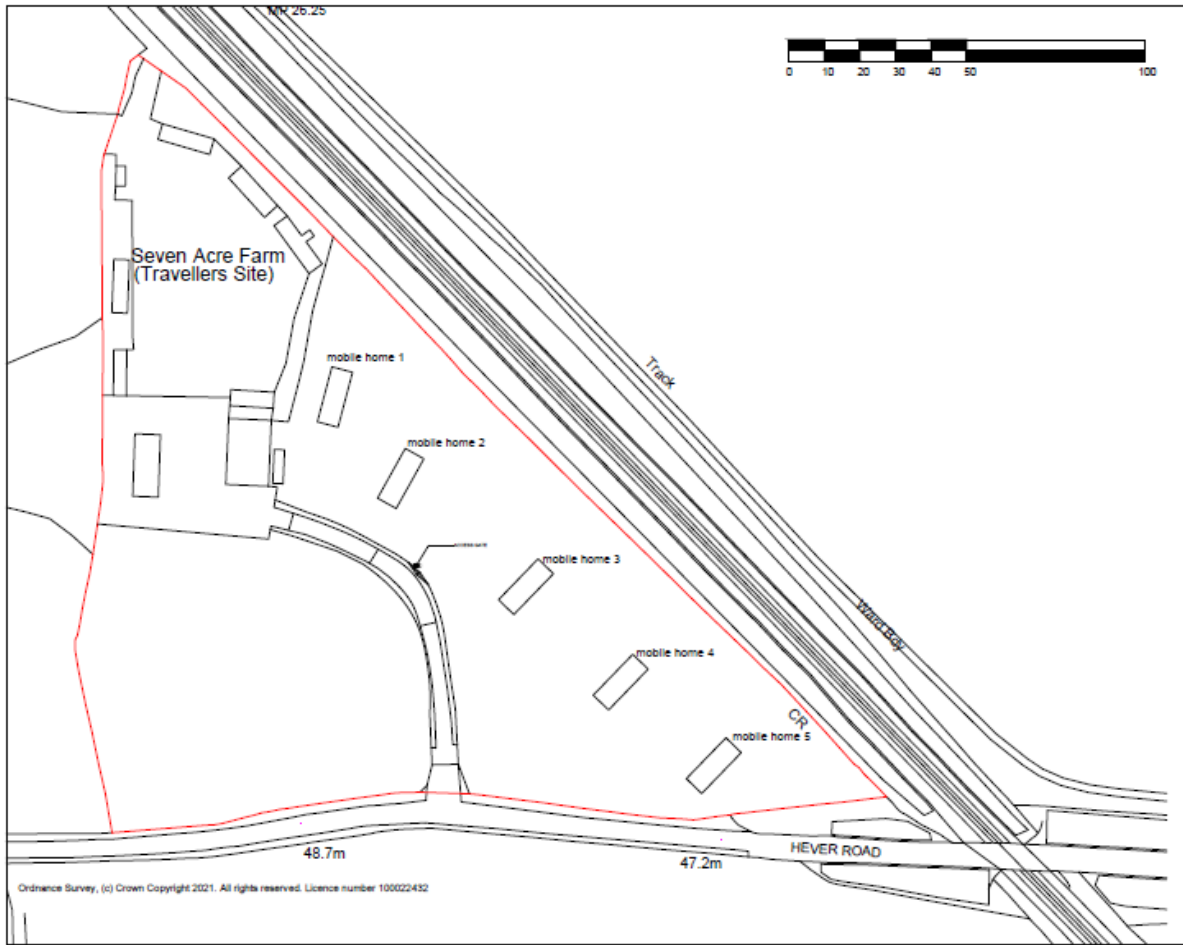


Site Plan

Scale 1:2,500
Date 13/05/2022



© Crown copyright and database rights 2022
Ordnance Survey 100019428.



4.2 <u>21/00462/FUL</u>	Revised expiry date 7 October 2021
Proposal:	Construction of a new loading/turning bay
Location:	Hollows Wood, Chelsfield Lane, Shoreham KENT BR6 7QT
Ward(s):	Crockenhill & Well Hill / Halstead, Kockholt & Badgers Mount

Item for decision

The application has been referred to Committee by Councillor Grint on highway grounds.

RECOMMENDATION: That planning permission be GRANTED subject to the following conditions:

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

In pursuance of section 91 of the Town and Country Planning Act 1990.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Block Plan, Barrier Details and Tree Removal Plan, Drwg No. J4/02071, Design and Access Statement, Rationale for Construction.

For the avoidance of doubt and in the interests of proper planning.

3) No trees, hedgerows or shrubs within the curtilage of the site, except those shown on the approved plan(s) or otherwise clearly indicated in the approved details as being removed shall be felled, lopped or pruned, nor shall any roots be removed or pruned without the prior consent of the local planning authority during development and for a period of five years after completion of the development hereby approved. Any trees, hedgerows or shrubs removed or which die or become dangerous, damaged or diseased before the end of a period of five years after completion of the development hereby approved shall be replaced with new trees, hedging or shrub species (of such size species and in such number and position as maybe agreed in writing), in the end of the first available planting season following their loss or removal.

In the interests of protecting the ancient woodland and protected species as supported by policy SP11 of the Sevenoaks District Core Strategy and EN4 of the Sevenoaks Allocations and Development Management Plan.

4) No development shall take place until an Arboricultural Method Statement (detailing all aspects of construction and staging of works) and a Tree Protection Plan in accordance with British Standard 5837:2012 (or later revision) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed details and no

equipment, machinery or materials shall be brought onto the site for the purposes of the development until fencing has been erected in accordance with the Tree Protection Plan. Within any area fenced in accordance with this condition, nothing shall be stored, placed or disposed of above or below ground, the ground level shall not be altered, no excavations shall be made, nor shall any fires be lit, without the prior written consent of the local planning authority. The fencing shall be maintained in accordance with the approved details, until all equipment, machinery and surplus materials have been moved from the site.

In the interests of protecting the ancient woodland and protected species as supported by policy SP11 of the Sevenoaks District Core Strategy and EN4 of the Sevenoaks Allocations and Development Management Plan.

5) No equipment, machinery or materials shall be brought onto the site for the purpose of the development, until a scheme showing the exact position of protective fencing to enclose all retained trees as shown on the submitted plans, beyond the outer edge of the overhang of their branches in accordance with British Standard 5837:2012: Trees in Relation to Construction (or later revision), has been submitted to and approved in writing by the local planning authority, and the protective fencing has been erected in accordance with the approved details. This fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

In the interests of protecting the adjacent ancient woodland and protected species as supported by policy SP11 of the Sevenoaks District Core Strategy and EN4 of the Sevenoaks Allocations and Development Management Plan.

6) Prior to the commencement of development, a Construction and Operational Traffic Management Plan should be submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout operational periods and shall include: (a) traffic planning and coordination, (b) on site traffic management policy, (c) impact and management on adjoining road network, public footpath SR569 and public bridleway SR649, (d) hazard and risk identification and mitigation measures, (e) implementation of traffic management such as traffic control diagrams and signs/line marking, (f) any parking for vehicles of site personnel, operatives and visitors, (g) loading and unloading of plant and materials.

To ensure that the development and operation does not prejudice the free flow of traffic and conditions of safety on the highway or cause inconvenience to other highway users in accordance with Policy T1 of the Sevenoaks Allocations and Development Management Plan.

Informatives

1) The developer is advised that Public Footpath SR569 and Public Bridleway SR649 crosses the application site. The grant of planning permission does not entitle developers to obstruct a public right of way. The diversion or stopping up of footpaths, bridleways and restricted byways is a separate process which must be carried out before the paths are affected by the development. It cannot be

assumed that because planning permission has been granted that an Order under section 257 will invariably be made or confirmed. Development, in so far as it affects a right of way, must not be started and the right of way should be kept open for public use, unless or until the necessary order has come into effect. It is an offence to obstruct or divert the route of a right of way unless carried out in complete accordance with appropriate legislation.

2) 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.

National Planning Policy Framework

In dealing with this application we have implemented the requirements in the National Planning Policy Framework to work with the applicant/agent in a positive, proactive and creative way by offering a pre-application advice service; as appropriate updating applicants/agents of any issues that may arise in the processing of their application and where possible and if applicable suggesting solutions to secure a successful outcome. We have considered the application in light of our statutory policies in our development plan as set out in the officer's report.

Description of Site

- 1 Hollows Wood is an area of predominately sweet chestnut woodland extending to some 58.5ha, which is split into three separate compartments divided by the M25/A24 link road. The site is designated as a Local Wildlife Site and lies within the North Kent Downs Area of Outstanding Natural Beauty (AONB) and North Downs Landscape Character Area (NCA 119). Most of the woodland has been historically coppiced over many decades to provide the woodland structure seen today, however the majority of the coppice has not been managed for over 30 years.

Description of Proposal

Agenda Item 4.2

- 2 The existing loading/turn round bay is to be reconfigured at the entrances from Chelsfield Lane at OS Map reference TQ 4972 6271 - to improve the access for the extraction of felled timber.
- 3 Timber extraction would occur over a 4 - 8 week period, once per year. There would be no more than 10 -12 HGV movements during this period.
- 4 The entrances have been redesigned for loading stacked timber onto lorries for removal from site so the surface will need to be suitable for 44 tonne articulated trucks to enter the wood. This surface will extend either side of Chelsfield Lane to allow for timber to be stacked either side of the road and be extracted by 8 wheelers or articulated lorries.
- 5 Hard standing areas are indicated on the submitted plans, and marked trees will need to be felled with timber stacked neatly in designated areas and brash chipped or crippled outside of the loading area. Stumps of marked trees will need to be removed and stacked to provide deadwood habitat at least 3m back from a path/work area edge. The hard standing area will then need to be levelled. The majority of the existing soil should be used in levelling the area and reconsolidated.

Relevant Planning History

- 6 None of relevance

Policies

- 7 National Planning Policy Framework (NPPF)
- 8 Core Strategy (CS)
 - SP1 Design of New Development and Conservation
 - SP11 Biodiversity
 - L08 The Countryside and the Rural Economy
- 9 Allocations and Development Management Plan (ADMP)
 - EN1 Design Principles
 - EN4 Heritage Assets
 - EN5 Landscape
 - SC1 Presumption in Favour of Sustainable Development
 - T1 Mitigating Travel Impact

Constraints

- 10 The following constraints apply;
 - Archaeological Notification Area
 - Kent Downs Area of Outstanding Natural Beauty
 - Ancient Woodland - Ancient Semi-natural Woodland
 - Local Wildlife Site
 - Metropolitan Green Belt
 - Public Rights of Way

- TPO/49/01/KSR and TPO/50/02/KSR
- Public Footpath SR569 and Public Bridleway SR649

Consultations

- 11 Badgers Mount Parish Council:
- 12 'We accept that woodland needs regular management by coppicing and that Hollows Wood has not been very well managed for many years as evidenced by the number of fallen trees throughout the woods.
- 13 We object to the proposed loading / turning bay as it requires the felling of mature oak and beech trees. While the proposed working area is at an existing gateway into the woods, it could have been located to a different position so that these hardwood trees do not need to be removed.
- 14 Similarly, having a public footpath through the middle of the work area on the north side of Chelsfield Lane presents an unnecessary hazard which could be avoided.
- 15 The Design and Access Statement states that 44 tonne articulated lorries will be used to transport the wood away from the site. This seems to be extremely inappropriate for such a narrow road as Chelsfield Lane which has a number of tight corners and only a few passing places so smaller lorries should be used'.
- 16 Shoreham Parish Council:
- 17 'Shoreham Parish Council objects to this development on the basis that the proposed scale of the development and the size of the hard standing will change the nature of the area and have a detrimental effect on the AONB. The size of the development is clearly designed to accommodate large vehicles, which are totally inappropriate for the rural country lane in which the bay is situated.
- 18 The proposed development appears to be much larger than the original but no plans of the existing structure have been provided with which to make a comparison. Finally, the development will involve the felling of a mature oak and the Parish Council therefore requests that the SDC Tree Officer visit the site with a view to assigning a Tree Protection Order'.
- 19 KCC Highways and Transportation:
- 20 In summary - No objection
- 21 'I note that the proposed operation will involve 10 - 12 HGV lorry movements per year to the site which I do not consider significant. Whilst I accept that Chelsfield Lane is narrow and single track, I feel that such a low number of movements can be managed by appropriate traffic management measures.
- 22 As I understand it the access points already exist and the application is to improve the turning and loading facilities either side of Chelsfield Lane.

Agenda Item 4.2

Without these improvements the same operations, with a similar number of HGV movements could still take place but with greater difficulties accessing the loading areas.

- 23 You will be aware that I have to take into account the recommendations of NPPF Clause 111, which states that planning applications should not be refused on highway grounds unless there would be an unacceptable impact on highway safety or the cumulative impact on the road network would be severe. I do not consider that this would be the case with this application and therefore I still consider that it would be inappropriate to recommend refusal on highway grounds as it would be difficult to defend should an appeal be forthcoming’.
- 24 Forestry Commission:
- 25 In Summary - No objection raised. They note that the site has in place a Forestry Commission approved Woodland Management Plan, which includes a 10-year felling licence. The Plan highlights a need for access and storage areas and meets with FC approval.
- 26 ‘Although the construction of these loading areas will lead to a small amount of ancient woodland loss, the wider ancient woodland will benefit from improved management, which the loading areas will help achieve’.
- 27 Natural England:
Refer to Standing Advice
- 28 KCC Heritage:
No Comments
- 29 KCC Ecology (Comments in regard to additional information in summary):
- 30 “The proposed development is within a Local Wildlife Site and an area of Ancient woodland and the proposal will result in the direct loss of an area of woodland (including the soil bank and associated ground flora).
- 31 The proposals is for the creation of a management compound to enable the implementation of the woodland management plan, which has been agreed by the Forestry Commission. The implementation of the woodland management plan will benefit the woodland and species within it.”
- 32 They have considered the above policies (paragraph 180 c) and d) of the NPPF) and in their opinion, this application, from an ecology perspective, meets the requirements as follows:
- “c) It’s our understanding that without the management plan compound the existing management plan cannot be implemented, and the management plan can be considered as the compensation strategy.
- d) This application will benefit the whole of the woodland through the implementation of the woodland (*plan*).”

- 33 KCC Public Rights of Way and Access Service (In summary):
- 34 Concerns raised over impact on Public Footpath SR569 and Public Bridleway SR649. Suggests mitigation and advises the applicant that no works can be undertaken on a Public Right of Way without the express consent of the Highways Authority.
- 35 SDC Tree Officer:
No objections to the proposal
- 36 Kent Wildlife Trust:
No response received

Representations

- 37 One representation received objecting to the application due to highway impact, and removal of trees.

Chief Planning Officer's appraisal

- 38 The main planning considerations are:
- Principle of Development and Impact on the Green Belt
 - Impact on the Landscape and AONB
 - Impact on Ancient Woodland and Trees
 - Ecological and Biodiversity Issues
 - Impact on Highways
 - PROW Issues

Principle of Development and impact upon the Green Belt

- 39 Para 11 of the NPPF confirms that there is a presumption in favour of sustainable development, and that development proposals that accord with an up-to-date development plan should be approved without delay.
- 40 Para 11 of the NPPF also states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:
- Application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (footnote 7); or
 - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 41 Footnote 7 relates to a variety of designations, including SSSIs, Green Belt, AONBs, designated heritage assets and locations at risk of flooding.

Agenda Item 4.2

- 42 Openness is an essential characteristic of the Green Belt and is different from visual impact. Openness is about freedom from built form. Even if there is absence of harm to openness, there can be harm in principal to the Green Belt from inappropriate development.
- 43 Paragraph 150 states that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Para 150 (b) includes engineering operations, of which is relevant in this application. It is considered that the works required to improve the access and loading bay would be appropriate in this location. The barriers proposed would retain the openness of the Green Belt due to their design; typical of forestry gates. The benefit to the long term management of the woodland would significantly outweigh any perceived harm to the Green Belt and its openness.

Impact on the Landscape and AONB

- 44 Core Strategy L08 states that the countryside will be conserved and the distinctive features that contribute to the special character of its landscape and its biodiversity will be protected and enhanced where possible.
- 45 The Countryside and Rights of Way Act 2000 states that the Local Planning Authority should conserve and enhance Areas of Outstanding Natural Beauty (AONB). Designating an Area of Outstanding Natural Beauty protects its distinctive character and natural beauty and can include human development.
- 46 There are therefore two considerations directly related to a site's AONB status when determining a planning application. Firstly does the application conserve the AONB and secondly, if it does conserve the AONB does it result in an enhancement. A failure to achieve both of these points will result in a conflict with the requirements of the Act.
- 47 The NPPF para 176 states that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB, which have the highest status of protection in relation to these issues (alongside National Parks and the Broads).
- 48 Policy EN5 of the ADMP states that proposals that affect the landscape throughout the District will be permitted where they would:
- a) Conserve the character of the landscape, including areas of tranquillity; and
 - b) Where feasible help secure enhancements in accordance with landscape actions in accordance with the Sevenoaks Countryside Assessment SPD.
- 49 The purpose of the AONB is not to prohibit development, but to preserve, enhance and reinforce its distinctiveness.
- 50 It is not considered that there would there be wider visual impact beyond the immediate environment of the site, nor would the proposal erode the

character of the wider landscape. The development is retained within a small site area, and would positively preserve this part of the AONB and enhance the woodland character of the landscape in the long term.

- 51 Taking into consideration the above, the proposed development would conform to policy LO8 of the Core Strategy and EN5 of the ADMP.

Impact on Ancient Woodland and Trees

- 52 Paragraph 180 of the NPPF requires the protection of Ancient Woodland. It states that:

“c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”.

d) development whose primary objective is to conserve or enhance biodiversity should be supported...”

- 53 Wholly exceptional reasons may include where the public benefits would clearly outweigh the loss or deterioration of the habitat.

- 54 Natural England and the Forestry Commission have provided guidance on development proposals affecting ancient woodlands that represents a material planning consideration. This states amongst other factors that Ancient Woodlands are important for their wildlife, soils, recreational value and cultural, historic and landscape values. Ancient Woodlands are any area that’s been wooded continuously since at least 1600AD however ‘wooded continuously does not mean that there’s been a continuous tree cover across the whole site and that open space, both temporary and permanent, is an important component of ancient woodlands. The guidance notes that when making planning decisions, consideration should include conserving and enhancing biodiversity and reducing the level of impact of the proposed development on ancient woodland and ancient and veteran trees.

- 55 A plan submitted with the application indicates the removal of a number of trees on both sides of the road would be required to provide the required loading areas, including a mature Oak tree.

- 56 The applicant has submitted a detailed justification and rationale for the proposed development as part of the application. It states that Hollows Wood currently has poor management access and the woodland management plan recognises the need for the existing timber loading bay to be improved in order to facilitate woodland management from now and into the future. The lack of a suitable loading bay for timber extraction presents a significant constraint to the woodland’s management.

- 57 The Woodland Trust are a charitable organisation whose purpose is the management and enhancement of the woodland. The proposals form part of 5-year Woodland Management Plan and 10 year felling licence, agreed with the Forestry Commission. Prior to the Management Plan being reviewed, the Trust carried out a Woodland Condition Assessment to assess the condition

Agenda Item 4.2

and structure of the woodland habitats. The Assessment highlighted the importance and need for active coppice management in order to conserve and enhance the whole of the woodlands biodiversity. The key constraint to achieving this was the lack of a suitable loading bay.

- 58 Of a number of locations reviewed, the bays chosen are deemed to be the most suitable, as the site is only partly within an area of Ancient Semi Natural Woodland and has been designed to create the least loss and minimal impacts to the woodland and its ecological value. Furthermore, the bays already exist, although they cover a smaller area. The Trust have confirmed that the area proposed would provide the minimum practical area to offer hard surfacing to allow safe timber uplift from the management activity.
- 59 It was noted that the Forestry Commission would prefer the sizeable oak and beech tree to not be removed, or the design/location altered to avoid them (but otherwise made no objections for the plan in its entirety). Whilst there may be other design options, similar issues are likely to apply and trees required to be removed. In any event, sufficient information has been supplied with the application and therefore a decision can be made, and will need to be so on the application as now submitted.
- 60 The majority of the forest managed by the Trust in this location is Ancient Woodland. Thus, there will inevitably be some conflict between the effective management of the woodland and the provision of the necessary facilities to achieve this.
- 61 Whilst it is considered that the removal of any trees is regrettable, in this particular instance, the removal of a relatively small number to allow the development will enable effective conservation management of the 58.5ha ancient coppice woodland site.
- 62 In the circumstances, it's considered the proposed long-term public benefits to the preservation and enhancement of the wider ancient woodland would clearly outweigh the harm from the direct loss of deterioration of habitat that the proposals would result in and that exceptional circumstances exist to justify the proposals.
- 63 The proposals would allow the Woodland Trust to fulfil its aims and objective in the 5-year Woodland Management Plan. This will allow the sustainable and sensitive restoration and management of the ancient woodland coppice regime in order to enhance its ecological and conservation value, and to ensure it continues to deliver benefits for wildlife and for peoples safely.
- 64 The proposal is therefore considered to meet the relevant national and local policies in this regard.

Ecological and Biodiversity Issues

- 65 There is legislation which requires the Local Planning Authority to have regard to conserving biodiversity and to consider the potential ecological

impacts of a proposed development and provide enhancement where possible.

- 66 Policy SP11 of the Core Strategy states that the biodiversity of the District will be conserved and opportunities sought for enhancement to ensure no net loss of biodiversity.
- 67 The application is supported by a detailed rationale. This states that restoring and maintaining an active coppice cycle at Hollow's Wood will benefit a suite of ancient woodland species including ground flora, invertebrates, birds, small mammals and reptiles, as well as leading to a more varied and resilient woodland composition of some stands in the future. The continuous cycle of felling and extraction followed by rapid regrowth creates a varied understory in the woodland, allowing a mosaic of different habitats to form. The warmth and light that can reach the woodland floor through this process helps to encourage new plant growth, species diversification and insect activity thus increasing the biodiversity and wildlife value of the site.
- 68 It has been noted that KCC Ecology requested the size of the loading and turning bays be kept as small as possible. The applicant has stated that after careful consideration, the proposed location was selected as the most suitable, not least because it has low environmental impact and utilises existing access points. They have confirmed that the size sought is the minimum to be safe and effective.
- 69 It is considered that the applicant proposes a central location in relation to the rest of the woodland, which would offer good access with the least disturbance to woodland tracks, footpaths and ground flora within the woodland. The proposed plans would appear to offer hard surfacing of the minimum practical area required for sustainable woodland management, in a location determined to result in the least loss. The infrastructure will be used for the sole purpose of forestry operations and management, to enhance the woodland and have a beneficial effect on the ecological and biodiversity value of the area.
- 70 In light of the above, subject to suitable conditions, the proposals would comply with policy SP11 of the Core Strategy.

Impact on Highways

- 71 Paragraph 111 of the NPPF explains that "Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."
- 72 As noted previously, the proposed operation will involve 10 - 12 HGV lorry movements per year to the site, over a period of 4 - 8 weeks. This is not considered significant. Whilst it is accepted that Chelsfield Lane is narrow and single track, it is considered that such a low number of movements can be managed by appropriate traffic management measures that can be secured by condition.

Agenda Item 4.2

- 73 Furthermore, the access points already exist and the application is to improve the turning and loading facilities either side of Chelsfield Lane. Without these improvements the same operations, with a similar number of HGV movements could still take place but with greater difficulties accessing the loading areas.
- 74 Taking the above into account, plus the recommendations of NPPF paragraph 111 above, it is not considered appropriate to recommend refusal on highway grounds and that any perceived impact on the highway network can be mitigated and measures secured by condition despite the concerns raised by the Parish Councils.

Public Rights of Way Issues

- 75 Concerns were raised by KCC Public Rights of Way Officer over the impact on Public Footpath SR569 and Public Bridleway SR649.
- 76 Within the rationale provided by the applicant, a number of mitigation measures have been suggested to overcome the concerns raised by KCC. For example;
1. Where loading occurs on a public right of way marshals will be required and all appropriate health and safety signage will be installed both regarding machinery and timber stacks during forest operations with timber stacks being left in a safe and stable condition.
 2. All operators will comply with Health and Safety standards and be instructed to be mindful of public access at all times whilst on site, especially regarding equestrian users who may be utilising the adjacent public bridleway (SR649).
 3. All forest operations will be in accordance with UKFS (UK Forestry Standards and UKWAS (UK Woodland Assurance Standards) and FISA (Forest Industry Safety Accord) guides 503 & 706.
- 77 It is considered that the implementation of precautionary mitigation measures (including, but not limited to the above) can be secured by condition. Furthermore, the applicant will be advised that no works can be undertaken on a Public Right of Way without the express consent of the Highways Authority.
- 78 In conclusion, the issues raised about the footpath/bridleway can be addressed by planning condition and there is separate legislation that relates to footpaths/bridleways, outside of the planning process, that would also apply.

Planning Balance and Conclusion

- 79 The proposal would represent appropriate development within the Green Belt.
- 80 Whilst it is considered that the removal of any trees is regrettable, in this particular instance, the removal of a relatively small number to allow the development will enable effective conservation management of a

significantly larger area of 58.5ha ancient coppice woodland site. The long-term benefit and gain will significantly outweigh the loss of these specific small number of trees.

81 Overall, there are no other material considerations to indicate otherwise and as such the proposed development would comply with local and national planning policies.

82 It is therefore recommended that this application is GRANTED.

Background papers

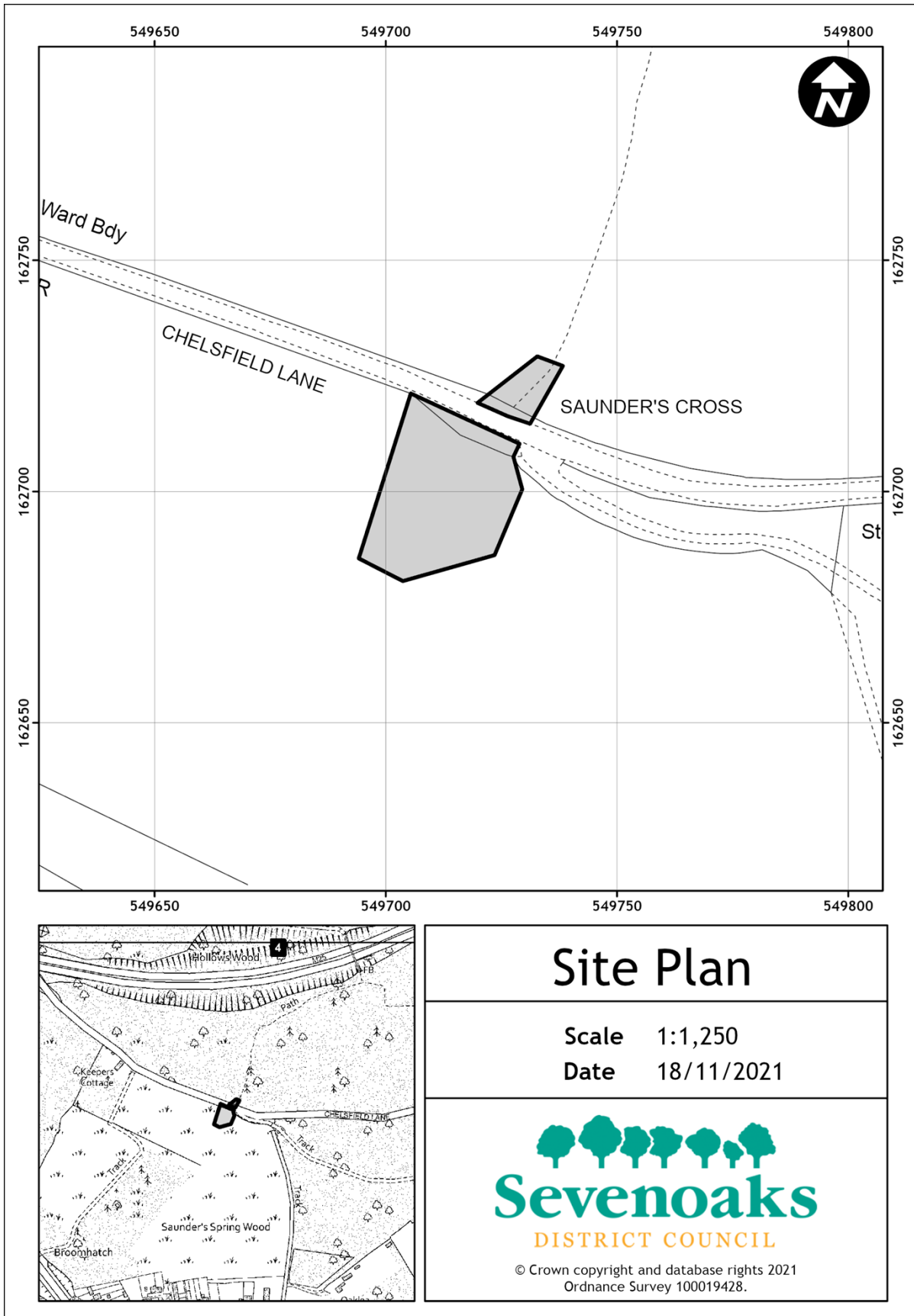
Site and block plan

Link to application details:

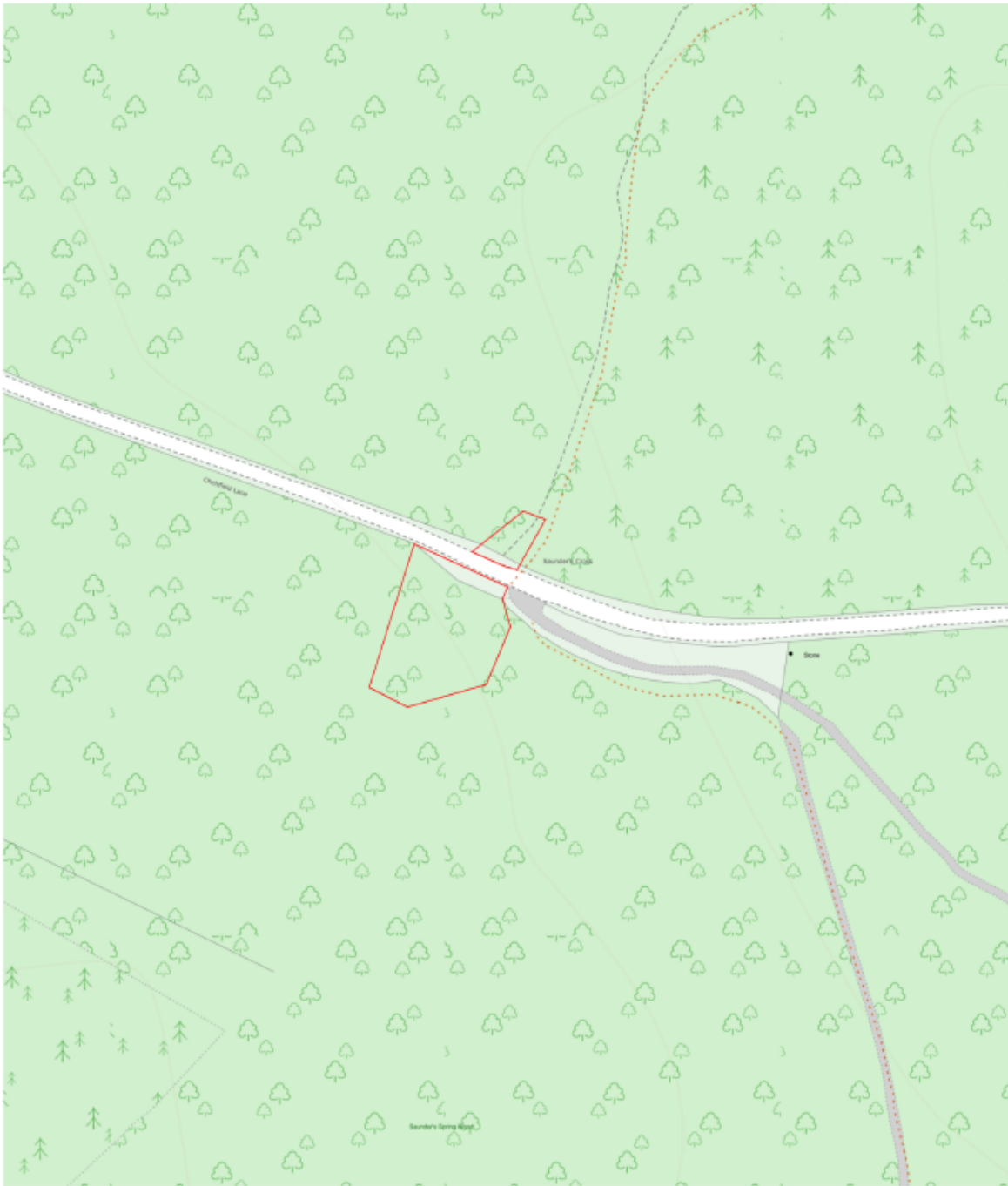
Link to associated documents:

Contact Officer(s): Jim Sperryn 01732 227000

Richard Morris
Chief Planning Officer



BLOCK PLAN



This page is intentionally left blank

5.1 - 19/00028 MCU

ENFORCEMENT OF PLANNING CONTROL

Rear of Little Buckhurst Barn, Hever Lane, Hever, TN8 7ET

ITEM FOR DECISION

RECOMMENDATION:

That authority is given to conclude the matter as non-expedient for planning reasons relating to local policies and the NPPF, and that enforcement action is not taken in this instance.

FOR THE FOLLOWING REASONS: That the change of use of the converted stables to a residential property is compliant with planning policies and that the works have not resulted in any actual planning harm

- 1 The Council's enforcement team received a complaint in early 2019 that a former stable building to the rear of Little Buckhurst Barn had been converted to a residential dwelling.
- 2 Following enforcement investigations, the owners submitted an existing Lawful Development Certificate seeking to demonstrate that the stable building had been converted to a dwelling for more than four years. The Lawful Development Certificate 19/01445/LDCEX was reported to Development Control Committee in December 2019 and the application was refused on the 19 December 2019. The Council was not satisfied on the evidence submitted and the balance of probabilities that the building located on land rear of Little Buckhurst Barn has been used as a separate residential dwelling for more than 4 years and was not deemed to be immune from enforcement action. This was not a planning judgement of the acceptability of the scheme, just a decision on whether or not four years of continuous residential use had occurred.
- 3 The owners submitted a second Lawful Development Certificate 20/00847/LDCEX, where they provided additional information to support their claim of four continuous years of use. The application was again refused at the Development Control Committee on the 24 June 2020, for similar reasons to the previous refusal. I would again emphasis that this was not a planning judgement of the acceptability of the scheme, just a decision on whether or not four years of continuous residential use had occurred. The owners appealed the refusal of the Development Certificate 20/00847/LDCEX on 21 August 2020. Unfortunately, the appeal process took a far longer than expected. The Planning Inspectorate finally reached a decision on this existing LDC case on the 7 April 2022 with the appeal being dismissed.
- 4 The Inspector found that although the building appears to have been converted to residential in 2014, there has been no continuous use of the

Agenda Item 5.1

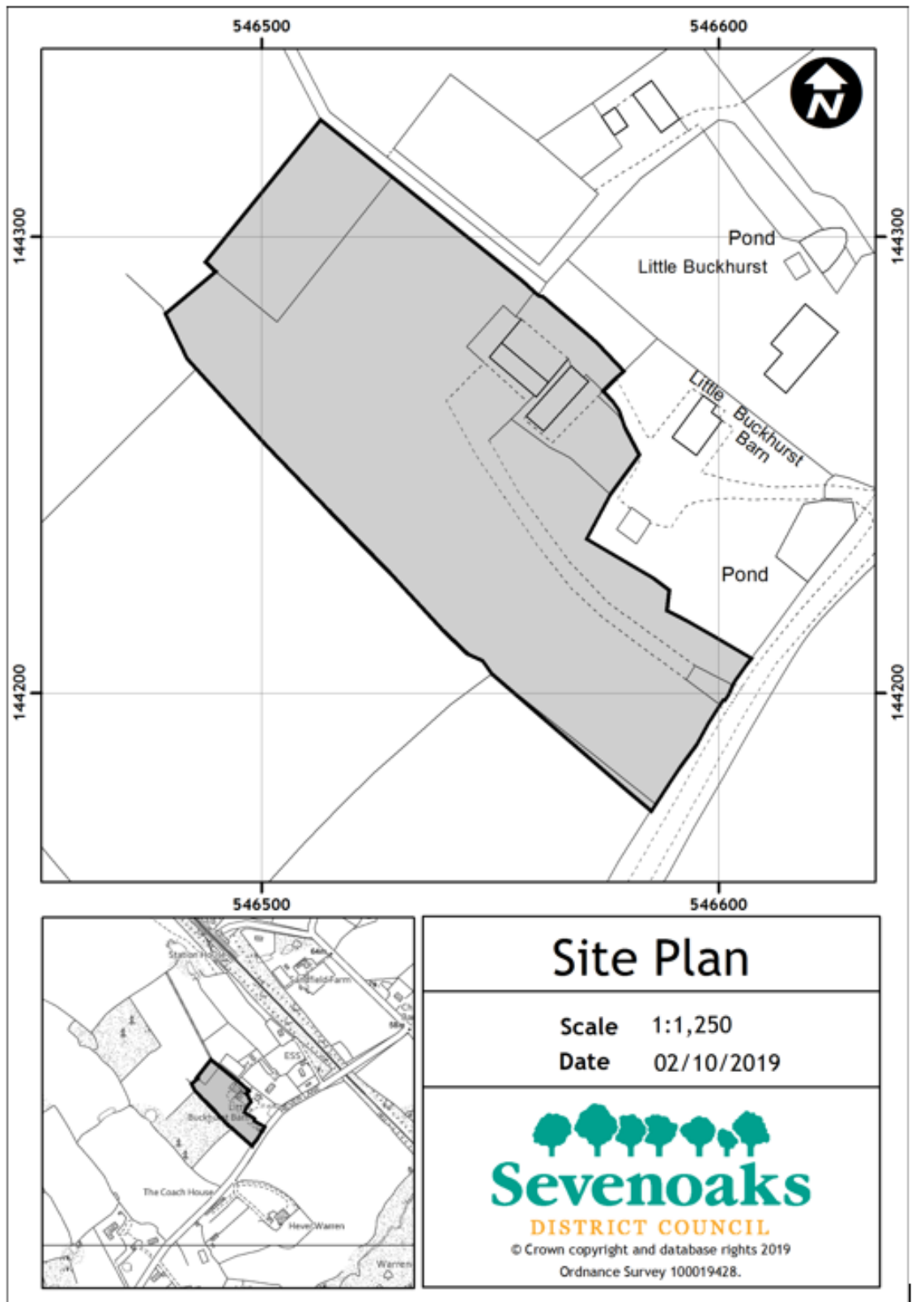
building for more than 4 years to deem the matter as immune from enforcement action. It was found that a lack of evidence had been put forward prior to 2017 when a previous tenant left the property due to damage caused. Continuous residential use of the building could only be proven from August 2018 onwards.

- 5 Whether or not to take Enforcement Action
- 6 The use of the building would become immune from enforcement action from August 2022 if no action is taken and therefore the Council needs to decide whether it is expedient to take enforcement action.
- 7 The Sevenoaks Enforcement Plan sets that that “there will be occasions where the breach of planning control does not have a harmful impact that would justify taking any enforcement action.” In this instance, there is a clear breach of planning control through the creation of a residential unit without planning permission and the owners have been unable to regularise as immune from enforcement action. However, the test for serving an Enforcement Notice and taking action has to be basis that there is significant harm caused by the development in question.
- 8 Although it has been determined that the matter is not immune from enforcement action over a period of time, the matter has never been assessed as a full planning application and against planning policy. This a key factor that needs to be taken on board when deciding if enforcement action is the correct route to take.
- 9 In this case we have had to decide whether to continue the investigation or whether to view the matter as non-expedient, based on a judgement on the planning issues of the case, relating to relevant planning policies, material planning considerations, the likelihood of planning permission being granted and the possibility of planning permission granted on appeal.
- 10 Planning assessment
- 11 The site lies within the green belt and under paragraph 150 of the National Planning Policy Framework allows for the re-use of buildings provided that the buildings are of permanent and substantial construction. Policy GB7 of the Sevenoaks Allocations and Development Management Plan also allows for such change of use subject to meeting certain criteria. The policy also allows for extensions as part of conversion works, so long as they are no disproportionate to the size of the original dwelling.
- 12 From the supporting documents with the two LDCEX applications, there has been no dispute that the stable buildings were converted and enlarged in 2014 to create a residential property. The converted stable building still stands on site today and the actual building operations associated conversion are immune from enforcement action, as four years has passed. The issue of the LDCEX applications has always been whether or not the owners could show four continuous years of use of the converted stables. No planning application has ever been submitted to find out whether or not the works were acceptable from a planning prospective.

- 13 The proposed re-use of the stable buildings as residential does not materially greater impact upon the openness of the green belt than the previous stable buildings. The property has a relatively modest garden area and does not extend the extent of developed areas from the former use. The stable conversion has been sympathetically carried out and is in-keeping with the existing character of the area, with timber weatherboarding walls and profiled metal roof.
- 15 Normally with proposed change of use applications, we would seek a structural survey to show that a building is capable of conversion without major or complete reconstruction that would detract from their original character. Clearly, this is not applicable in this instance, as the building was converted some 8 years ago and clearly capable of being used today as a residential use. Therefore, the continued residential use of the converted stable building is acceptable in local planning policies and national guidance.
- 16 It is our view that should a retrospective planning application be submitted the change of use to residential use would be found acceptable. Equally, if an Enforcement Notice was served and the owners appealed against ground a) i.e. that planning permission should be granted for the development, they would succeed and the Enforcement Notice would be quashed by the Planning Inspectorate.
- 17 I appreciate that this is an unusual situation, whereby two LDECX's applications have been refused, an appeal recently dismissed and the officers are not seeking to proceed enforcement action. However there are two distinct and different tests and thresholds at play here as detailed above. This is a case where there is a clear breach of planning control, but which does not result in any actual harm, as the works policy compliant. The Council would be acting unreasonably if it served an Enforcement Notice against works were found to be acceptable.
- 18 It is also worth noting that should the committee choose not to authorise the non-expedient route and ask that enforcement action to be taken, it is very likely that there will be an enforcement appeal would be lost and costs awarded against Council to unreasonably serving an Enforcement Notice for works that are not causing any harmful and acceptable in planning terms.
- 19 Therefore I recommend that residential use of the converted stable building be treated as non-expedient and that no enforcement action be taken.

Contact Officer(s): Tom Fry 01732 227000

Richard Morris
Chief Planning Officer



Appendices

Committee Report for 19/01445/LDCEX dated 18 December 2019

Committee Report for 20/00847/LDCEX dated 23 July 2020

Appeal Decision for 20/00847/LDCEX dated the 7 April 2022

4.1 Date expired 19 August 2019
19/01445/LDCEX

Proposal: Use of the building as a dwelling house

Location: Land Rear Of Little Buckhurst Barn, Hever Lane,
Hever Edenbridge KENT TN8 7ET

Ward(s): Cowden & Hever

Item for decision

The application has been referred to the Development Control Committee by Councillor Dickins for the committee to consider whether the evidence available justifies the grant of the Lawful Development Certificate.

RECOMMENDATION: That the Lawful Development Certificate be GRANTED for the following reason:

Evidence has been submitted which demonstrates, on the balance of probabilities, that the building located on land rear of Little Buckhurst barn has been used as a separate residential dwelling for more than 4 years and is therefore immune from enforcement action and lawful, in accordance with Section 191 of the Town and Country Planning Act 1990 (as amended).

Description of site

- 1 The application site comprises a large detached building on the western side of Hever Lane within both the Metropolitan Green Belt and High Weald Area of Outstanding Natural Beauty.
- 2 The building is located to rear of Little Buckhurst Barn, on elevated ground and is accessed via a long track leading from Hever Lane.
- 3 The site is set well back from the public highway and is not widely visible from the public realm.
- 4 According to the documentation submitted this building is the subject of this application and is known as Land rear of Little Buckhurst Barn.

Description of proposal

- 5 The Lawful Development Certificate seeks confirmation that the building known as Land rear of Little Buckhurst Barn has been used a dwellinghouse for a continuous period of at least 4 years.
- 6 This application seeks the confirmation of the building only. No evidence has been submitted to demonstrate that the land surrounding the building is associated garden or has been used a residential for a period of 10 years.

Relevant planning history

- 7 Relating to the building in question (Land rear of Little Buckhurst Barn):
SW/5/55/6577 - Lean to extension to existing shed. GRANT
- 8 Relating to the main dwelling (Little Buckhurst Barn)
93/00806/HIST - Renewal of planning permission SE/89/0263 to convert redundant barn to dwelling. GRANT
- 9 01/01063/CONVAR - Proposed conversion of garage to ancillary accommodation (revised scheme). GRANT
- 10 13/02619/HOUSE - Erection of a single storey rear extension and link extension. Alteration to main dwelling. Part demolition of existing retaining wall and proposed hard landscaping. GRANT

Policies and legislation

- 11 Town and Country Planning Act 1990 (as amended)
- 12 National Planning Policy Guidance

Constraints

- 13 The following constraints apply:
 - High Weald Area of Outstanding Natural Beauty
 - Metropolitan Green Belt

Initial Consultation

Consultations

Hever Parish Council

- 14 Object to this application and have made the following comments;

‘We have been contacted by a number of local residents who also attended the planning meeting. There is a consensus from those locals that the declared facts of *continuous* residence from the date stated in the application are not correct as the applicants did not live there continuously or without interruption. Locals would be prepared to swear an oath to this. This would indicate that the unauthorised use is not immune from planning enforcement.

The Sutton and East Surrey water statement (exhibit N) is a nominal sum and time period of 6 days / £ 2.55 which is not useful evidence. The EDF energy bill (exhibit O) is for both properties (Barn and Stables) *combined* and predicts a usage that will cost £638.10 - which is under that perhaps

Agenda Item 5.1

expected to run 2 properties with continuous residence (2 adults and 1 child in the stables) plus Barn occupant/s.

We note the absence of council tax, electoral roll or vehicle registration documents’.

Representations

15 The Council received letters relating to the following issues:

- 1 letter neither supporting or objecting,
- 27 letters supporting the applicants claim,
- 2 letters not supporting the applicants claim (this includes a representation from Hever Residents Association).

Reconsultation following receipt of additional statement

Consultations

16 Hever Parish Council -No further comments were received.

Representations

17 1 letter from Hever Residents Association not supporting the applicants claim.

Chief Planning Officer’s appraisal

Principle issues

18 Background to LDC’s:

This application is submitted under s191 of the Town and Country Planning Act 1990, seeking to establish the lawful use of the building as a residential dwelling. Section 191 (2) states that:

For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

- 19 The time limits for taking enforcement action are set out in s171B of the Town and Country Planning Act 1990 and the NPPF Planning Practice Guidance summarises this as follows:

Development becomes immune from enforcement if no action is taken:

- Within four years of substantial completion for a breach of planning control consisting of operational development;
- Within four years for an unauthorised change of use to a single dwellinghouse;
- Within ten years for any other breach of planning control (essentially other changes of use). However, this would also relate to non-compliance with a condition.

- 20 With regard to the degree of information to be submitted in support of such applications, the National Planning Practice Guide explains that;

- 21 In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

- 22 The guidance adds that;

"A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented."

- 23 To ensure that decisions are clear, precision in the terms of any certificate is vital. It is important to note that:

- a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (i.e. "*sui generis*" use); and

Agenda Item 5.1

where a certificate is granted for one use on a “planning unit” which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.

Background

- 24 The application seeks confirmation that the building to the rear (north-west) of Little Buckhurst Barn has been used as a self-contained dwellinghouse in its own right. The information submitted for this application correctly identifies the relevant test in this case is a 4 year period.
- 25 Land registry documents obtained by the Local Planning Authority show that Little Buckhurst (the neighbouring property), Little Buckhurst Barn (the main dwelling) and Land Rear of Little Buckhurst Barn (the building in question) were once part of the same title and within the same ownership (known collectively as Little Buckhurst).
- 26 Looking at the planning history for Little Buckhurst, a planning application was granted under reference SW/5/55/6577 for; ‘a lean to extension to existing shed’. The plan for that application identifies this ‘existing shed’ to be in the same location as the building subject to this application.
- 27 For clarity, there are a number of planning applications relating to the main dwelling, Little Buckhurst Barn. Little Buckhurst Barn was once redundant and planning permission was granted for its conversion as you see it today and should not be confused with any works carried out on the building in question, which is subject to this application.
- 28 Summary of evidence submitted by the applicant in support of the application

Evidence Source	Evidence
Statutory Declaration signed by applicant Mr R Barnett.	States the following: <ul style="list-style-type: none">• He and his partner, Mrs Isabel Fox purchased Little Buckhurst Barn in 2012.• The site contained an adjacent garage building (now converted into an annex) and there was a large storage and office building in the field behind the house, alongside some existing stables. The larger building had power, water, drainage as well as basic kitchen and bathroom facilities.

- In 2014 work began on the conversion of the storage and office building and it was completed in December 2014.
- He and his partner have resided at Little Buckhurst Stables since January 2015.
- Southern Water updates their records to include Little Buckhurst Stables in August 2015.

The applicant has submitted 15 exhibits to accompany the statutory declaration.

Exhibit A: Site location plan identifying the building and adjacent stables.

Exhibit B: Floorplans of the internal layout of the building.

Exhibit C: Invoice from Project Aluminium showing an order date of 20th September 2014 and invoice date of 27th October 2014.

Exhibit D: Photograph of windows and doors invoiced for by Project Aluminium.

Exhibit E: Invoice from ERS Maintenance and Refurbishments dated 8th December 2014 for supplying and fitting kitchen.

Exhibit F: Invoice from Jelly Plumbing dated 20th December 2014 for underfloor heating, bathroom and plumbing works.

Exhibit G: Signed statement from Mr Angus Clifford Baynes confirm that he worked on building renovations at the building in question in 2014. He has also stated that the applicants have

resided in the building continuously since January 2015.

Exhibit H: Statements from Mr Peter Hendry (tenant who lives in Little Buckhurst Barn), Jan Biddle (local farmer), Mel Sassa (family friend) and Colin Dixon (family friend) confirm that the applicants have resided in the building since January 2015.

Exhibit I: Statements from builders, Mr Elliot Stannard and Mr Patrick Purcell confirm they have undertaken maintenance work at the property and the applicants have resided in the building since January 2015.

Exhibit J: Letter from N Power addressed to 'Stables and Barn' dated 15th January 2014.

Exhibit K: Confirmation Letter and Insurance Schedule from NFU Mutual Insurance dated 12th December 2017.

Exhibit L: Final Tenants report confirming occupation dates of Lord Marcus Winter at Little Buckhurst Barn (main dwelling) from 7th July 2015 for 12 months.

Exhibit M: Application form submitted to SDC Street Naming and Numbering in September 2015 in order to place the building on the register naming it 'Little Buckhurst Stables'. Cheque and form returned in the absence of planning and building control references.

Exhibit N: Wastewater bills from Sutton and East Surrey Water dated 1st July 2015 and 23rd February 2016.

	<p>Exhibit 0: Letter from Sky TV confirming arrangement for Sky to be installed in the building in question for March 2016.</p> <p>Electricity Bills from EDF covering a period from 16th August 2017 - 11 March 2019 addressed with a supply address of Little Buckhurst Barn but addressed to Little Buckhurst Barn and Stables (the building in question).</p>
<p>Covering Letter/Statement</p> <p>Dated 14 May 2019</p>	<ul style="list-style-type: none"> • Sets out the background to the site and a summary of evidence submitted. • States the applicant converted the building in 2014 and has resided in it since January 2015. • Sets out the planning law considerations for determining this application.

29 Summary of evidence submitted by the applicant in the form of the Supplementary Planning Statement in support of the application:

Evidence Source	Evidence
<p>Supplementary Planning Statement (SPS) Ref JA/19/90</p>	<p>States the following;</p> <p>The evidence within the SPS does not definitively demonstrate that the applicants were residing at Little Buckhurst Stables, but it can be proven that they were not living at Little Buckhurst Barn throughout the relevant period as the property was either tenanted or being renovated.</p> <p>5 appendices have been submitted to support this claim;</p>

Appendix 1: Shows letter from Council Tax claiming 100% discount for unoccupied homes from 1.4.15 - 29.6.15 for Little Buckhurst Barn (main dwelling). Limited to 3 months discount.

Appendix 2: Letter from Eden Lettings and Sales with a date of 7 July 2015. Applicant states tenanted by Lord Winter who was evicted in 2017 and left property in a state of disrepair and uninhabitable.

Appendix 3: In August 2017 an application was made to Sevenoaks Council Tax department for an 'Uninhabitable Property Application'.

Appendix 4: Council Tax letter dated 17.8.17 confirming that a discount for unoccupied and unfurnished homes had been applied which covered the period 16.8.17 - 31.3.18.

Appendix 5: September 2018 - Present. Little Buckhurst Barn tenanted by Peter Hendry on Assured Shorthold Tenancy.

The SPS also states the following;

- **Highlights the applicant's daughter was born in 2016 and several visits were made to Little Buckhurst Stables by health visitors prior to her birth.**
- **States the applicant owns a London property but has either being going through remedial works or tenanted. It was tenanted between January 2013 - September 2015. A water leak in 2015 resulted in remedial works until May 2016. It was then tenanted between August 2016 - May 2017 and then from November 2017 to the present day.**

--	--

30 Summary of evidence held by the Council

Evidence Source	Evidence
Sevenoaks District Council Tax records	Information obtained on 23 July 2019 shows the building in question was only brought into banding for Council Tax purposes since May 2019.
Sevenoaks District Council Aerial Mapping	<p>2012 - No track has been created but access from Hever Lane and gate is in place.</p> <p>2015/2016- New roof to building, rear patio area, parking and turning area for cars and access track are all visible.</p>

31 Analysis of the Evidence:

The applicant, Mr R Barnett, has submitted a Statutory Declaration. This declaration sets out the background of the site at the time of purchase in 2012, confirms works started on converting the building in question in 2014 and were completed the same year; and that Mr R Barnett and his partner, Mrs I Fox have resided in the property since January 2015. The declaration also sets out the exhibits and endorses these by including them within the declaration.

32 As a legal declaration, this statement can be given significant weight. This is because a false declaration in a Statutory Declaration (even without any

Agenda Item 5.1

oath) would be a criminal offence of perjury (under section 5 of the Perjury Act 1911).

- 33 While it is noted that Mrs I Fox is named on the title as owning the site, which contains the building subject to this application, the absence of a statutory declaration signed by Mrs I Fox does not reduce the weight given to the declaration provided by Mr R Barnett.
- 34 A visit to the site and the evidence provided by the applicant in exhibits A, B, C, D, E, F, G and I, clearly demonstrate that building to the rear of Little Buckhurst Barn has been converted into residential accommodation and that on the balance of probability this was substantially completed at the end of 2014. The building is a self-contained, separate building with its own access leading from Hever Lane.
- 35 The Councils 2012 aerial photography does not suggest that building works had commenced at that time, although an access had been created from Hever Lane with a gate in situ. Aerial photographs dating to 2015/2016 indicate a separate access and track, car parking and turning area (with cars parked), private amenity space and a new roof. Aerial photographs dating to 2018 are consistent with this and clearly indicate a residential use of the site. The 2015/16 and 2018 aerial photography supports the applicants claim, and clearly indicate a residential use of the site, and as such can be given substantial weight.
- 36 Seven written statements (exhibits G, H and I) from builders, a local farmer, a tenant of the applicants (who lives at Little Buckhurst Barn) and two family friends have all stated the applicants have resided in the building at the rear of Little Buckhurst Barn since January 2015. While these are not legal declarations, they are consistent with the statements within the statutory declaration and as such, can be attributed moderate weight.
- 37 Correspondence from energy and water suppliers, utility and a Sky installation letter have been provided (exhibit J, N and O). This correspondence is addressed to 'The Stables' (the building subject to this application), 'Little Buckhurst Barn', or 'Little Buckhurst Barn and Stables'. Given that the postal address differs, the supply address is not clear and the electricity and water usage figures are ambiguous, these exhibits hold limited weight.
- 38 Exhibit M shows a returned application form in September 2015 to Sevenoaks District Council Street Naming and Numbering. This shows intent to use the building as a residential property. Exhibit K is a contents insurance policy dated 12th December 2017 for three addresses including 'The Stables'. The document states this the building in question is the applicant's main home. Exhibit L is a final tenants report confirming occupation dates of a tenant at Little Buckhurst Barn (main dwelling), which demonstrate the applicants were not living in this property.
- 39 These exhibits are consistent with each other and with the statements made within the declaration, and as such can be attributed moderate weight.

40 Council Tax records show the building land rear of Little Buckhurst Barn was only brought into banding for Council Tax purposes from May 2019. While paying Council Tax is a good way of proving occupation, not paying Council Tax does not prove the building was not occupied; only that Council Tax was not paid. For this reason, I give the absence of Council Tax records, in this instance, limited weight.

41 Analysis of evidence submitted by the applicant in the form of the Supplementary Planning Statement (SPS):

The SPS states that Lord Winter occupied the property from July 2015 for 2 years. Appendix 2 only shows the tenancy start date, not the end date. Exhibit L, which was previously submitted, is a final tenants report for Lord Winter. The start date is consistent with that of Appendix 2, but states the tenancy was for 12 months only. Therefore, there is an inconsistency with the dates that Lord Winter occupied Little Buckhurst Barn and a question over the occupancy of Little Buckhurst Barn from July 2016-2017.

42 Appendix 1, 3 and 4 shows correspondence with Sevenoaks Council Tax claiming 100% discount for unoccupied homes from April 2015 - July 2015, an application in August 2017 for an 'Uninhabitable Property Application' and a Council Tax letter confirming a discount for unoccupied and unfurnished homes which covered August 2017 - April 2018. Appendix 5 is a tenancy agreement for Peter Hendry starting September 2018 to the present day.

43 The further evidence submitted does not definitively demonstrate that the applicants were residing in Little Buckhurst Stables, but it does provide evidence that two other properties (London property and Little Buckhurst Barn) within the applicants' ownership were tenanted for some of the relevant period; therefore making the argument that they were residing at Little Buckhurst Stables more probable.

Other issues

44 Whilst Hever Residents Association have stated that they have received responses from local residents disputing that the applicants have been in continuous residence for a period of four years, these have not been forwarded to the Council and details have not been provided. Furthermore, despite the comments from Hever Parish Council that residents are prepared to contest the applicant's assertions on oath, no further declarations have been provided.

45 In the circumstances, I consider only very limited weight can be attached to this evidence.

46 Hever Residents Association have stated they consulted 12 residents that are close to the application site. They confirmed 7 responses were received confirming that the applicants have not been in continuous residence for a period of four years or more at the Stables (the building in question) and 1 response (which was initially unclear) but later confirmed the applicants had lived in the Stables continuously for 4 years.

Agenda Item 5.1

- 47 I have not been provided with names and addresses of these residents and therefore I cannot be certain that I have not already counted them. In the interest of fairness, I have not counted these responses individually and have counted Hever Residents Association's response as one.
- 48 With regard to the comments made by Hever Parish Council, that state locals residents are prepared to swear on oath that the applicants did not live there continuously or without interruption, no statutory declarations have been provided to this affect, so no weight can be attributed to this.

Conclusion

- 49 The relevant test in the determination of this application is whether, on the balance of probability, the evidence available supports the applicants claim that the building has been used as a dwelling for a period of 4 years or more. In my view, the evidence submitted by the applicant, particularly the Statutory Declaration, supports the contention that the building has been used as a dwelling for the relevant period of time.
- 50 The Local Planning Authority has no substantive evidence to contradict that produced by the applicants.
- 51 In light of the evidence available and Government Guidance, it is my conclusion, on the balance of probability, that the building to the rear (north-west) of Little Buckhurst Barn has been used as a dwellinghouse for more than 4 years. As such, the use is immune from enforcement action and has become the established lawful use.

It is therefore recommended that this application is granted.

Background papers

Site and block plan

Contact Officer(s): Rebecca Fellows

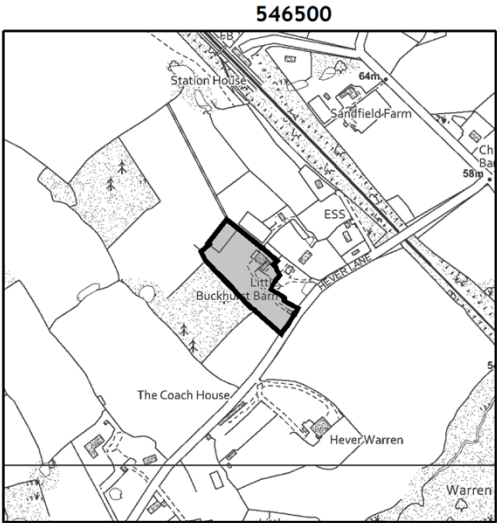
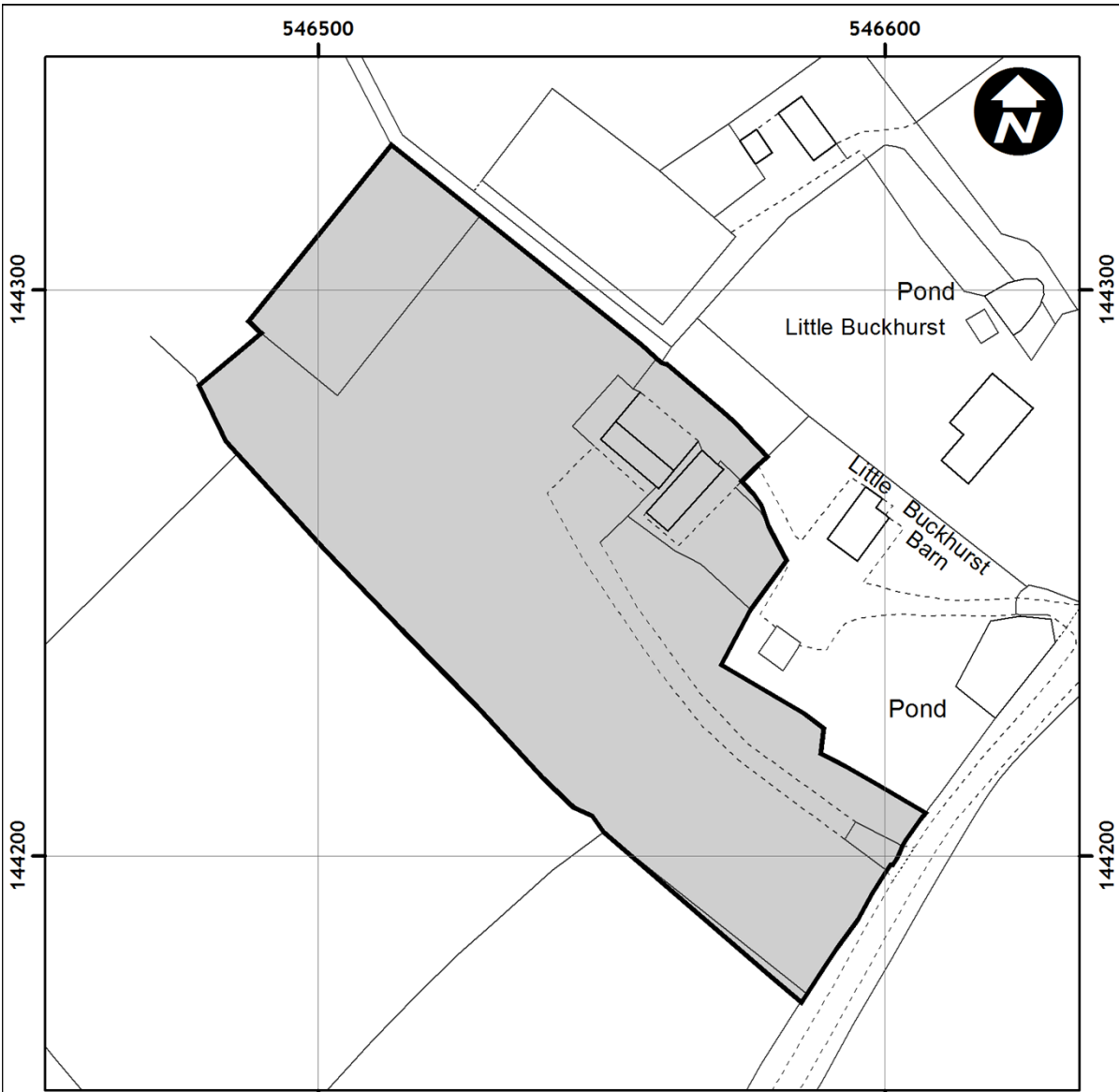
Extension: 01732 227000


Richard Morris

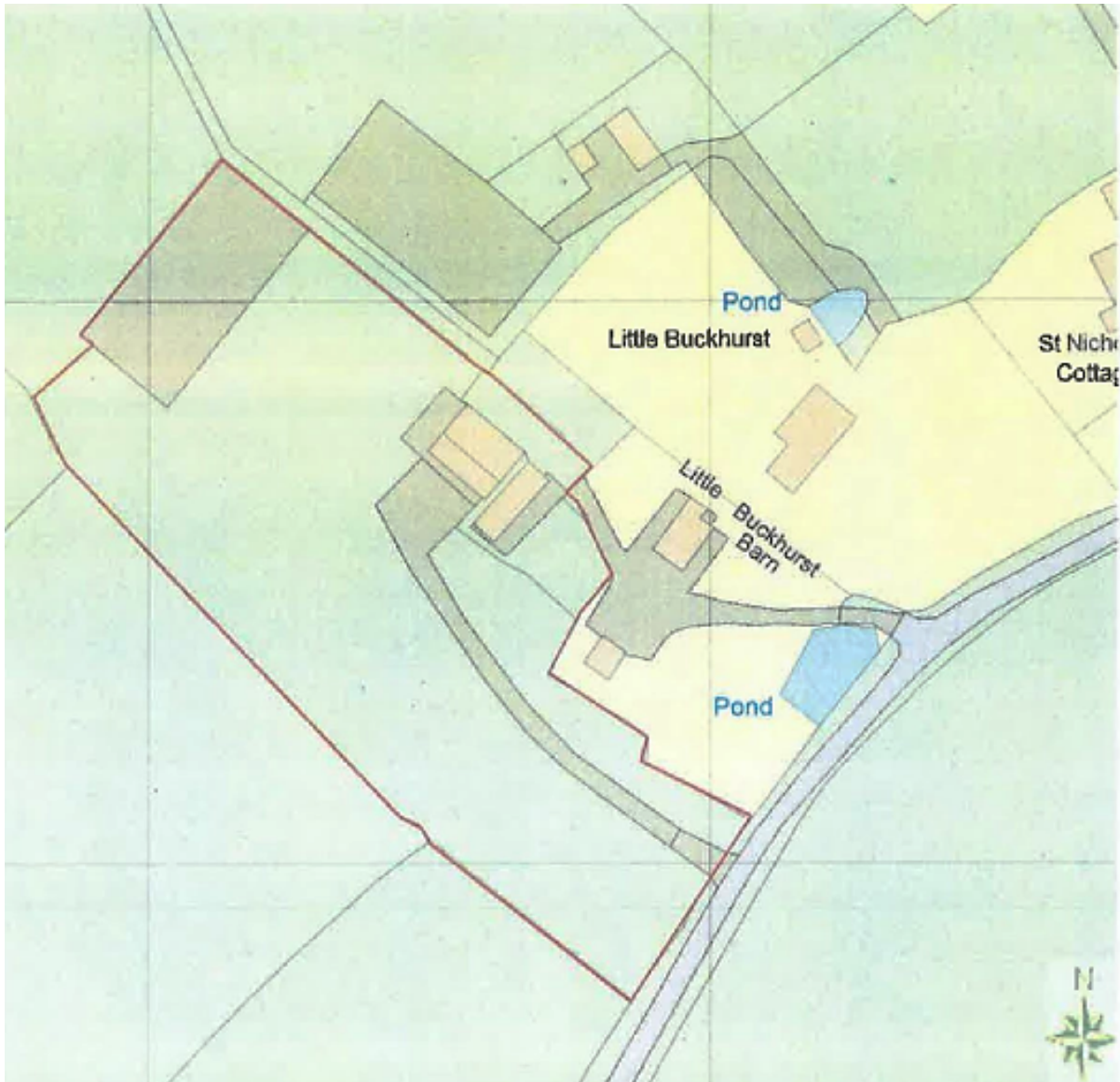
Chief Planning Officer

Link to application details: <https://pa.sevenoaks.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Link to associated documents: <https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PRJYYLBKITA00>



<h1>Site Plan</h1>	
Scale	1:1,250
Date	02/10/2019
	
<p>© Crown copyright and database rights 2019 Ordnance Survey 100019428.</p>	



4.3 Date expired 15 May 2020
20/00847/LDCEX

Proposal: Use of the building as a dwellinghouse.

Location: Land Rear Of Little Buckhurst Barn, Hever Lane,
 Hever KENT TN8 7ET

Ward(s): Cowden & Hever

Item for decision

The application has been referred to the Development Control Committee by Councillor Dickins for the committee to consider whether the evidence available justifies the grant of the Lawful Development Certificate.

RECOMMENDATION: That planning permission be GRANTED subject to the following conditions:

Evidence has been submitted which demonstrates, on the balance of probability, that the building located on land rear of Little Buckhurst Barn has been used as a separate residential dwelling for more than 4 years and is therefore immune from enforcement action and lawful, in accordance with Section 191 of the Town and Country Planning Act 1990 (as amended).

Description of site

- 1 The application site comprises a large detached building on the western side of Hever Lane within both the Metropolitan Green Belt and High Weald Area of Outstanding Natural Beauty.
- 2 The building is located to rear of Little Buckhurst Barn, on elevated ground and is accessed via a long track leading from Hever Lane.
- 3 The site is set well back from the public highway which results in it not being widely visible from the public realm.
- 4 This building is known on the Council's records as Land rear of Little Buckhurst Barn. The applicant's Planning Statement confirms that the applicant refers to the building as "Little Buckhurst Stables".

Description of proposal

Agenda Item 5.1

- 5 The Lawful Development Certificate seeks confirmation that the building known as Land rear of Little Buckhurst Barn has been used as a dwellinghouse for a continuous period of at least 4 years.
- 6 This application is a resubmission of the refused application 19/01445/LDCEX. This application includes additional evidence from the applicant which did not form part of the earlier application.

Relevant planning history

- 7 Relating to the building in question (Land rear of Little Buckhurst Barn):
 - 8 SW/5/55/6577 - Lean to extension to existing shed. GRANT
 - 9 19/01445/LDCEX - Use of the building as a dwelling house. REFUSED at planning committee on 18 December 2019 as Members considered that insufficient evidence had been submitted to demonstrate, on the balance of probabilities, that the building had been used as a dwelling for a continuous period of four years.
- 10 Relating to the main dwelling (Little Buckhurst Barn):
 - 11 93/00806/HIST - Renewal of planning permission SE/89/0263 to convert redundant barn to dwelling. GRANT
 - 12 01/01063/CONVAR - Proposed conversion of garage to ancillary accommodation (revised scheme). GRANT
 - 13 13/02619/HOUSE - Erection of a single storey rear extension and link extension. Alteration to main dwelling. Part demolition of existing retaining wall and proposed hard landscaping. GRANT

Policies and legislation

- 14 Town and Country Planning Act 1990 (as amended)
NPPG

Constraints

- 15 The site lies within the following constraints
 - High Weald Area of Outstanding Natural Beauty
 - Metropolitan Green Belt

Consultations

- 16 Hever Parish Council:
- 17 Object to this application and have made the following comments;

- 18 “We repeat the comments made on the previous application. There is a consensus from a number of local residents that the declared facts of *continuous* residence from the date stated in the application are not correct as the applicants did not live there continuously or without interruption. Locals would be prepared to swear an oath to this. This would indicate that the unauthorised use is not immune from planning enforcement.
- 19 The Sutton and East Surrey water statement (exhibit N) is a nominal sum and time period of 6 days / £ 2.55 which is not useful evidence. The EDF energy bill (exhibit O) is for both properties (Barn and Stables) *combined* and predicts a usage that will cost £638.10 - which is under that perhaps expected to run 2 properties with continuous residence (2 adults and 1 child in the stables) plus Barn occupant/s.
- 20 We note the absence of council tax, electoral roll or vehicle registration documents”.

Representations

- 21 We received the following comments
- 1 letter neither supporting nor objecting.
 - 6 sworn Statutory Declarations setting out evidence in objection.
 - 1 objection from Hever Residents Association stating that there is still insufficient evidence.

Chief Planning Officer’s appraisal

- 22 Background to Lawful Development Certificates:
- 23 The Government’s Planning Practice states that when considering an application for a lawful development certificate: “A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.”
- 24 This application is submitted under s191 of the Town and Country Planning Act 1990, seeking to establish the lawful use of the building as a residential dwelling. Section 191 (2) states that:
- 25 For the purposes of this Act uses and operations are lawful at any time if—
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Agenda Item 5.1

- 26 The time limits for taking enforcement action are set out in s171B of the Town and Country Planning Act 1990 and the NPPF Planning Practice Guidance summarises this as follows:
- 27 Development becomes immune from enforcement if no action is taken:
- Within four years of substantial completion for a breach of planning control consisting of operational development;
 - Within four years for an unauthorised change of use to a single dwellinghouse;
 - Within ten years for any other breach of planning control (essentially other changes of use). However, this would also relate to non-compliance with a condition.
- 28 With regard to the degree of information to be submitted in support of such applications, the NPPF Planning Practice Guide explains that:
- “In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”
- 29 Therefore in this case the Local Planning Authority are required to assess whether, on the balance of probability, there is sufficient evidence to demonstrate that the building in question has existed as a dwelling house for a period of 4 years since the date of this application (since 20.03.2016).

Background

- 30 The application seeks confirmation that the building to the rear (north-west) of Little Buckhurst Barn has been used as a self-contained dwellinghouse in its own right. The information submitted for this application correctly identifies the relevant test in this case is a 4 year period.
- 31 Land registry documents obtained by the Local Planning Authority show that Little Buckhurst (the neighbouring property to the east), Little Buckhurst Barn (the main dwelling) and Land Rear of Little Buckhurst Barn (the building in question) were once part of the same title and within the same ownership (known collectively as Little Buckhurst).
- 32 Looking at the planning history for Little Buckhurst a planning application was granted under reference SW/5/55/6577 for; ‘a lean to extension to existing shed’. The plan for that application identifies ‘the existing shed’ to be the building in question for this application.
- 33 For clarity, there are a number of planning applications relating to the main dwelling, Little Buckhurst Barn. Little Buckhurst Barn was once redundant and planning permission was granted for its conversion as you see it today and

should not be confused with any works carried out on the building in question, which is subject to this application.

Evidence Available

34 Summary of evidence submitted by the applicant in support of the application:

Evidence Source	Evidence
<p>Statutory Declaration signed by applicant Mr R Barnett.</p>	<p>States the following:</p> <ul style="list-style-type: none"> • He and his partner, Mrs Isabel Fox purchased Little Buckhurst Barn in 2012. • The site contained an adjacent garage building (now converted into an annex) and there was a large storage and office building in the field behind the house, alongside some existing stables. The larger building had power, water, drainage as well as basic kitchen and bathroom facilities. • In 2014 work began on the conversion of the storage and office building and it was completed in December 2014. • Southern Water updates their records to include Little Buckhurst Stables in August 2015. <p>The applicant has submitted 15 exhibits to accompany the statutory declaration.</p> <p>Exhibit A: Site location plan identifying the building and adjacent stables.</p> <p>Exhibit B: Floorplans of the internal layout of the building.</p> <p>Exhibit C: Invoice from Project Aluminium showing an order date of 20th September 2014 and invoice date of 27th October 2014.</p> <p>Exhibit D: Photograph of windows and doors invoiced for by Project Aluminium.</p> <p>Exhibit E: Invoice from ERS Maintenance and Refurbishments dated 8th December 2014 for supplying and fitting kitchen.</p>

Exhibit F: Invoice from Jelly Plumbing dated 20th December 2014 for underfloor heating, bathroom and plumbing works.

Exhibit G: Signed statement from Mr Angus Clifford Baynes confirm that he worked on building renovations at the building in question in 2014. He has also stated that the applicants have resided in the building continuously since January 2015.

Exhibit H: Statements from Mr Peter Hendry (tenant who lives in Little Buckhurst Barn), Jan Biddle (local farmer), Mel Sassa (family friend) and Colin Dixon (family friend) confirm that the applicants have resided in the building since January 2015.

Exhibit I: Statements from builders, Mr Elliot Stannard and Mr Patrick Purcell confirm they have undertaken maintenance work at the property and the applicants have resided in the building since January 2015.

Exhibit J: Letter from N Power addressed to 'Stables and Barn' dated 15th January 2014.

Exhibit K: Confirmation Letter and Insurance Schedule from NFU Mutual Insurance dated 12th December 2017.

Exhibit L: Final Tenants report confirming occupation dates of Lord Marcus Winter at Little Buckhurst Barn (main dwelling) from 7th July 2015 for 12 months.

Exhibit M: Application form submitted to SDC Street Naming and Numbering in September 2015 in order to place the building on the register naming it 'Little Buckhurst Stables'. Cheque and form returned in the absence of planning and building control references.

Exhibit N: Wastewater bills from Sutton and East Surrey Water dated 1st July 2015 and 23rd February 2016.

Exhibit O: Letter from Sky TV confirming arrangement for Sky to be installed in the building in question for March 2016. Electricity Bills from EDF covering a period from 16th August 2017 - 11 March 2019 addressed with a supply address of

	<p>Little Buckhurst Barn but addressed to Little Buckhurst Barn and Stables (the building in question).</p>
<p>Statutory Declaration signed by Mrs Rosemary Fox (mother in law to applicant)</p>	<p>States the following:</p> <ul style="list-style-type: none"> • Confirms that her daughter Mrs Isabel Fox and her son in law Russell Barnett and granddaughter Tiggy Barnett born November 2016 have lived in the building behind Little Buckhurst Barn since the start of 2015. • States that her daughter Mrs Isabel Fox moved out of her house in 1996 and only moved back in 2012/2013 for a short time due to illness. She then moved to Little Buckhurst Barn in 2013 and then moved to their family home since 2015 which is Little Buckhurst Stables located at the rear of Little Buckhurst Barn. • That since her granddaughter Tiggy has been born she has looked after her most Fridays at the family home behind Little Buckhurst Barn. • That they are frequently at Little Buckhurst Stables with the family for parties and celebrations and spent Christmas day 2018 there.
<p>Statutory Declaration signed by Mrs Isabel Fox wife of applicant Mr R Barnett.</p>	<p>States the following:</p> <ul style="list-style-type: none"> • That she along with her husband purchased Little Buckhurst Barn in 2011 and have lived in the building located at the rear of Little Buckhurst Barn since 2015. • That they moved from the main house Little Buckhurst Barn into the converted stable building to the rear in 2015. • That since 2013 she has commuted into London for work and has used local facilities in and around Hever such as dentists in Oxted, hairdressers in Westerham, the doctors in Edenbridge and Pembury Hospital for an operation in 2015. • That during her pregnancy all hospital and doctors' appointments were local at Pembury and Edenbridge. • Includes an image of a personal child health record, medical records, birth certificate, and certificate of baptism for her daughter Tiggy this is however all addressed to Mrs Isabel Fox at Little Buckhurst Barn.

	<ul style="list-style-type: none"> • Includes an image of an email from their hired nanny Alix Geer nee. Lancey. The email explains that she was employed through a company called Pure Nannies to look after Tiggy Barnett (daughter of Mrs Isabel Fox and Russell Barnett). The email, states that she was employed from 8 March 2017 until present to care and supervise Tiggy at the family home which she confirms was Little Buckhurst Barn Stables. She also confirms that on occasion she would stay at the property overnight whilst the parents were away. A number of photographs of Tiggy and the nanny (Alix Geer nee. Lancey) and the family in and around the property and land are also included. • All the vehicles the applicants have used are indeed registered to Little Buckhurst Barn but are parked outside the stables where they have lived since 2015 and this is clearly visible from Hever Lane. • They have a cleaner every week (Mel Crawford) although no documents on this are submitted. • A variety of documents are in her possession with the address on them which include a P45, payslip, mortgages, pension plans, DBS checks, and investment funds from 2013 to present. Although following attempted frauds it is stated that post was re-directed to the main house.
<p>Statutory Declaration signed by Ms Belinda St John - Slater.</p>	<p>States the following:</p> <ul style="list-style-type: none"> • Both Isabel Fox and Russell Barnett moved into the barn at the rear of Little Buckhurst Barn in January 2015. • Has visited them and their daughter Tiggy on numerous occasions for coffee mornings, barbeques and dinner parties.
<p>Covering Letter/Statement Dated 14 May 2019</p>	<ul style="list-style-type: none"> • Sets out the background to the site and a summary of evidence submitted. • States the applicant converted the building in 2014 and has resided in it since January 2015. • Sets out the planning law considerations for determining this application.

35 Summary of evidence submitted by the applicant in the form of the Supplementary Planning Statement in support of the application:

Evidence Source	Evidence
<p>Supplementary Planning Statement (SPS) Ref JA/19/90</p>	<p>States the following;</p> <p>The evidence within the SPS does not definitively demonstrate that the applicants were residing at Little Buckhurst Stables, but seeks to demonstrate that they were not living at Little Buckhurst Barn throughout the relevant period as the property was either tenanted or being renovated.</p> <p>5 appendices have been submitted to support this claim;</p> <p>Appendix 1: Shows letter from Council Tax claiming 100% discount for unoccupied homes from 1.4.15 - 29.6.15 for Little Buckhurst Barn (main dwelling). Limited to 3 months discount.</p> <p>Appendix 2: Letter from Eden Lettings and Sales with a date of 7 July 2015. Applicant states tenanted by Lord Winter who was evicted in 2017 and left property in a state of disrepair and uninhabitable.</p> <p>Appendix 3: In August 2017 an application was made to Sevenoaks Council Tax department for an ‘Uninhabitable Property Application’.</p> <p>Appendix 4: Council Tax letter dated 17.8.17 confirming that a discount for unoccupied and unfurnished homes had been applied which covered the period 16.8.17 - 31.3.18.</p> <p>Appendix 5: September 2018 - Present. Little Buckhurst Barn tenanted by Peter Hendry on Assured Shorthold Tenancy.</p> <p>The SPS also states the following;</p> <ul style="list-style-type: none"> • Highlights the applicant’s daughter was born in 2016 and several visits were made to Little Buckhurst Stables by health visitors prior to her birth.

Agenda Item 5.1

	<ul style="list-style-type: none"> States the applicant owns a London property but has either been going through remedial works or tenanted. It was tenanted between January 2013 - September 2015. A water leak in 2015 resulted in remedial works until May 2016. It was then tenanted between August 2016 - May 2017 and then from November 2017 to the present day.
--	--

36 Summary of evidence held by the Council:

Evidence Source	Evidence
Sevenoaks District Council Tax records	Information obtained on 23 July 2019 shows the building in question was only brought into banding for Council Tax purposes since May 2019.
Sevenoaks District Council Aerial Mapping	<p>2012 - It can be seen that no track has been created to the building, but access from Hever Lane and gate is in place.</p> <p>2015/2016- New roof to building, rear patio area, parking and turning area for cars and access track are all visible. Cars can be seen parked outside the building.</p>

Analysis of the Evidence

37 One of the applicants' (Mr R Barnett) Statutory Declaration provides significant weight in consideration as it is a legal declaration. This was previously submitted for the application considered and refused at committee in December 2019. This declaration sets out the background of the site at the time of purchase in 2012, confirms works started on converting the building in question in 2014 and were completed the same year; and that Mr R Barnett's and his partner Mrs I Fox have resided in the property since January 2015. The declaration also sets out the exhibits and endorses these by including them within the declaration.

38 A Statutory Declaration has also now been provided by Mrs Isabel Fox (the wife of Mr R Barnett) and this again provides significant weight in consideration as it is a legal declaration. This declaration was not submitted for the previous

application. This declaration sets out some of the background of the site and states that Mrs I Fox resided in the property since January 2015 with her partner Mr R Barnett. The declaration also includes as detailed above a series of photographs and images of documents to endorse the declaration. This includes details of the birth of the applicants' daughter, Tiggy, including details of her baptism at Chiddingstone Church in 2017, and confirmation from their nanny that she was permanently employed between 2017 and the present day to look after Tiggy at the building located to the rear of Little Buckhurst Barn. This further reinforces the evidence already provided which demonstrates that the applicants were living at the building for the required period.

- 39 A Statutory Declaration has also been provided by Mrs Rosemary Fox the mother of Mrs Isabel Fox which again provides significant weight in consideration as it is a legal declaration. This declaration was not submitted for the previous application. The declaration as detailed above confirms that the applicants were living in the building behind Little Buckhurst Barn since January 2015.
- 40 Another Statutory Declaration has also been provided by Ms Belinda St John - Slater, which again provides significant weight in consideration as it is a legal declaration. The declaration as detailed above confirms that the applicants were living in the building behind Little Buckhurst Barn since January 2015.
- 41 Since 'Little Buckhurst Stables' did not have an address on record, all important documents such as car registrations, insurance, tax returns, payslips etc. were all registered to 'Little Buckhurst Barn'. As was established in the previous application, the applicants were not living in Little Buckhurst Barn itself and this was proven with the tenancy agreement and other information provided to the Council as part of the Supplementary Planning Statement. While these documents would be helpful in proving the use of the building, it is not a pre-requisite for a residential use and does not mean that the building in question did not have a residential use.
- 42 The conduction of a site visit and the evidence provided by the applicant in exhibits A, B, C, D, E, F, G and I, clearly demonstrate the building to the rear of Little Buckhurst Barn has been converted into residential accommodation and that on the balance of probability this was substantially completed at the end of 2014. The building is a self-contained, separate building with its own access leading from Hever Lane.
- 43 The Councils 2012 aerial photography shows that no building works had commenced at that time, although an access had been created from Hever Lane and a gate insitu. Aerial photography taken in August 2016 clearly shows a separate access and track, car parking and turning area (with cars parked), private amenity space and a new roof. 2018 aerial photography is consistent with this and clearly shows a residential use of the site. The 2016 and 2018 aerial photography supports the applicants claim and shows a residential use of the site, and as such can be given substantial weight.
- 44 Written statements (exhibits G, H and I) from builders, a local farmer, a tenant of the applicants (who lives at Little Buckhurst Barn) and two family friends have all stated the applicants have resided in the building at the rear of Little Buckhurst Barn since January 2015. While these are not legal declarations, and

Agenda Item 5.1

provide less weight alone, they are consistent with the statements within the statutory declarations provided and as such, hold moderate weight.

- 45 Correspondence from energy and water suppliers, utility and a Sky installation letter have been provided (exhibit J, N and O). This correspondence is addressed to 'The Stables' (the building subject to this application), 'Little Buckhurst Barn', or 'Little Buckhurst Barn and Stables'. Given that the postal address differs, the supply address is not clear and the electricity and water usage figures are ambiguous, these exhibits hold limited weight.
- 46 Exhibit M shows a returned application form in September 2015 to Sevenoaks District Council Street Naming and Numbering. This sought to place the building on the register naming it 'Little Buckhurst Stables'. This was returned in the absence of planning and building control references. This shows intent to use the building as a residential property. Exhibit K is a contents insurance policy for three addresses, including 'The Stables'. The document states this the building in question is the applicant's main home. Exhibit L is a final tenants report confirming occupation dates of a tenant at Little Buckhurst Barn (main dwelling). These exhibits are consistent with each other and with the statements made within the declaration.
- 47 Council Tax records show the building land rear of Little Buckhurst Barn was only brought into banding for Council Tax purposes from May 2019. While paying Council Tax is a good way of proving occupation, not paying Council Tax does not prove the building was not occupied; only that Council Tax was not paid. For this reason, I give the absence of Council Tax records, in this instance, limited weight.
- 48 Analysis of evidence submitted by the applicant in the form of the Supplementary Planning Statement ("SPS"):
- 49 The SPS states that Lord Winter occupied the property from July 2015 for 2 years. Appendix 2 refers to "Little Buckhurst" and only shows the tenancy start date, not the end date. Exhibit L, which was previously submitted, is a final tenants report for Lord Winter. The start date is consistent with that of Appendix 2, but states the tenancy was for 12 months only. Therefore, there is an inconsistency with the dates that Lord Winter occupied Little Buckhurst Barn and a question over the occupancy of Little Buckhurst Barn from July 2016-2017.
- 50 The rest of the evidence within the SPS attempts to demonstrate that the applicants were not residing at Little Buckhurst Barn, suggesting by implication that they were instead residing at the building in question.
- 51 Appendix 1, 3 and 4 shows correspondence with Sevenoaks Council Tax relating to Little Buckhurst Barn (not the application site) claiming 100% discount for unoccupied homes from April 2015 - July 2015, an application in August 2017 for an 'Uninhabitable Property Application' and a Council Tax letter confirming a discount for unoccupied and unfurnished homes which covered August 2017 - April 2018. Appendix 5 is a tenancy agreement for Peter Hendry starting September 2018 to the present day.

- 52 The further evidence submitted does not definitively demonstrate that the applicants were residing in Little Buckhurst Stables, but it does suggest that two other properties (London property and Little Buckhurst Barn) within the applicants' ownership were tenanted for some of the relevant period; therefore making the argument that they were residing at Little Buckhurst Stables more probable.

Objections and Evidence Received During the Application

- 53 It is noted that 6 Statutory Declarations have been provided by the public, all of which dispute the claims made by the applicants. Consideration of the significance and weight to be attributed to these is considered below:

54 A Statutory Declaration has been submitted by Ms Jane Rosam which states that on an unspecified date shortly after the existing tenants of Little Buckhurst Barn left the property she spoke to the applicant Mr Russell Barnett whom she had difficulty meeting as he had to come from London to see her. Whilst this is a Statutory Declaration, it holds limited weight in this case as the dates are not specified. It also does not provide enough evidence that the building located at the rear Of Little Buckhurst Barn was not being used as a separate residential dwelling.

55 A Statutory Declaration has been submitted by Mr N Burke and Dr J Burke. This states that they have not met the applicant's at their property and that when they had concerns about the existing tenants in the main house at Little Buckhurst Barn in 2017 the applicants were not available to resolve the issue. It states that they received a request in January 2018 to install a broadband antenna onto their house to assist with a broadband connection to the stables. Again, whilst this is a Statutory Declaration, it holds limited weight in this case as it does not prove beyond reasonable doubt that the building located at the rear Of Little Buckhurst Barn was not being used as a separate residential dwelling.

56 A Statutory Declaration has been submitted by Dr N A Brummitt and Dr A C Araujo. This states that they moved to their address in April 2012 and had no knowledge or contact with the applicants whom claim to have been in residence. They state that they met the applicants in July 2018 at Hever Golf Club at a party and that the applicant Mr R Barnett stated that he wouldn't be seen at the property as he lived in London and only occasionally came to use the property for business purposes. They also explain that they had never seen them at Hever Railway station in the morning or evening commuting from the application property. They also reference anti-social behaviour from existing tenants at Little Buckhurst Barn and having problems being able to arrange to meet or contact the owners of the property (the applicants) as they did not live in the area. They state that they have only recently seen them in partial residence since 2019. Whilst this is a Statutory Declaration, and provides evidence that at certain time periods the applicants may have been in London and not necessarily contactable, it holds limited weight in this case as it does not prove beyond reasonable doubt that the building located at the rear Of Little Buckhurst Barn was not being used as a separate residential dwelling by the applicants.

Agenda Item 5.1

- 57 Mr D M and Mrs W S Shapland have submitted a Statutory Declaration which states that they live directly next door to the application site and met the applicants in early 2012. They claim that they spoke to the applicants at the time and were advised by them that they would be moving back to London. They also state that the applicant Mr Russell Barnett started building works at the stables in late 2014 and he spoke to them at this time to explain that he was doing building work to use the building as an office and storage space. They also state that they did hear Mr Barnett 'occasionally' at the property 'when he would cut the grass or ride his quadbike on the land'. They go on to explain that Little Buckhurst Barn (the main house) was rented out to tenants Marcus Winter and Mark Carter in the middle of 2015 whom they did meet. They explain that they had some concerns about their animals roaming around and had to contact the applicant Mr Barnett to discuss this matter. They state that they had trouble meeting them as they had to come from London. They then state that in 2017 the tenants moved out and that the applicants were then seen more frequently at Little Buckhurst Barn. They also state that if the applicants had been living in the area they would have realised that the tenants were not looking after the property and causing issues. This does to some extent corroborate the applicant's evidence that the main house at Little Buckhurst Barn was indeed being rented out to tenants and was subject to significant damage and needed complete refurbishment. It does not however demonstrate beyond reasonable doubt that the building located at the rear Of Little Buckhurst Barn was not being used as a separate residential dwelling by the applicants during this time even if they were commuting or spending some time in London.
- 58 A Statutory Declaration has been submitted by Mr and Mrs W Cowell. This states that they saw no evidence of anyone living in the stables before 2019. They also reference a party at Hever Golf Club in 2018 in the same manner as the Statutory Declaration submitted by Dr N A Brummitt and Dr A C Araujo. They state that at this party the applicant Mr Barnett stated he was living in London and that his wife Isabel Fox was living at her parents' house in Edenbridge. They also make similar reference to tenants at Little Buckhurst Barn and anti-social behaviour as stated in other Declarations. They also state that they have never seen the applicants commuting into London for work. Reference is made to a company named Domus Innovation whom undertook work to the kitchen at Little Buckhurst Stables and changes to the correspondence address for the applicant Mr Russell Barnett to an address in London.
- 59 A Statutory Declaration has been submitted by Mr John Adkins, Chair of Hever Residents Association. This explains that he visited the site on 29 July 2019 to discuss the application with the applicants. Mr Adkins states that he questioned them about the comments mad at the party at Hever Golf Club in 2018 and that they admitted to telling a 'silly lie' The Declaration states that this type of behaviour demonstrates a 'willingness of the applicants to be untruthful.'
- 60 With regards to the Declarations made by Mr and Mrs Cowell and John Adkins, whilst the applicants may or may not have owned a property in London and may have made verbal statements in 2018, it does not provide any further detailed evidence that the building at the rear of Little Buckhurst Barn was not an established residential use and the sworn Statutory Declarations do not provide any proof of this beyond reasonable doubt.

- 61 Further evidence has been submitted by the applicants in response to the above which contradict the claims made. They have submitted property details which appear to indicate that the last sale of the London property on a Right Move website sold prices list was in 2012.
- 62 The applicants also explain that Domus Innovation is a company which Mr R Barnett the applicant owns and it does not state that a kitchen was installed in January 2015. It does make reference to over 20 years in experience. The company known as Houzz referenced by Mr and Mrs Cowell showcases projects and states that the barn project was completed in 2015 which would correspond with the applicant's claims.
- 63 They provide details to explain that Domus Innovation was registered to 36a Cheyne Court and the applicants explain that this is simply because they could collect mail from the concierge and required a central London bank branch to promote the business at clientele around the area.
- 64 The applicants explain that 36a Cheyne Court was rented through Foxton's estate agents to Tara Harandi Zadeh and that Domus Innovation opened an account with Houzz in 2016 and various projects were uploaded to the site after that date. They explain that Elliott Stannard fitted phase 2 of their larger kitchen in December 2015 - February 2016 as shown on his work album. The applicants state that a kitchen was installed in 2014, 2015, 2016 and according to Domus Innovations own Facebook page 2017. This, the applicants explain is due to various applications and sites stating dates of pictures uploaded and not the date a specific picture was taken.

Conclusion

- 65 The relevant test is on the balance of probability and the local planning authority has no substantive evidence to contradict that produced by the applicants. In light of the evidence submitted, it is probable the building to the rear (north-west) of Little Buckhurst Barn has been used as a dwellinghouse for more than 4 years. As such, the use is immune from enforcement action and has become the established lawful use.

Recommendation

- 66 It is therefore recommended that this application is GRANTED.
- 67 It is however recommended that the lawful development certificate confirms only that the building has been used for residential purposes, and not for the wider land surrounding the building, to ensure the certificate is adequately precise.

Background papers

Site and block plan

Contact Officer(s): Mark Mirams : 01732 227000

Richard Morris
Chief Planning Officer

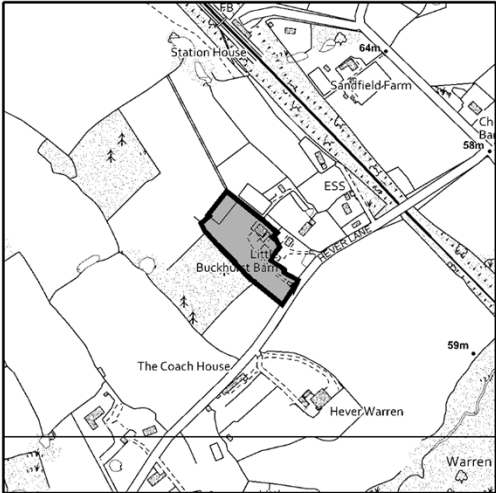
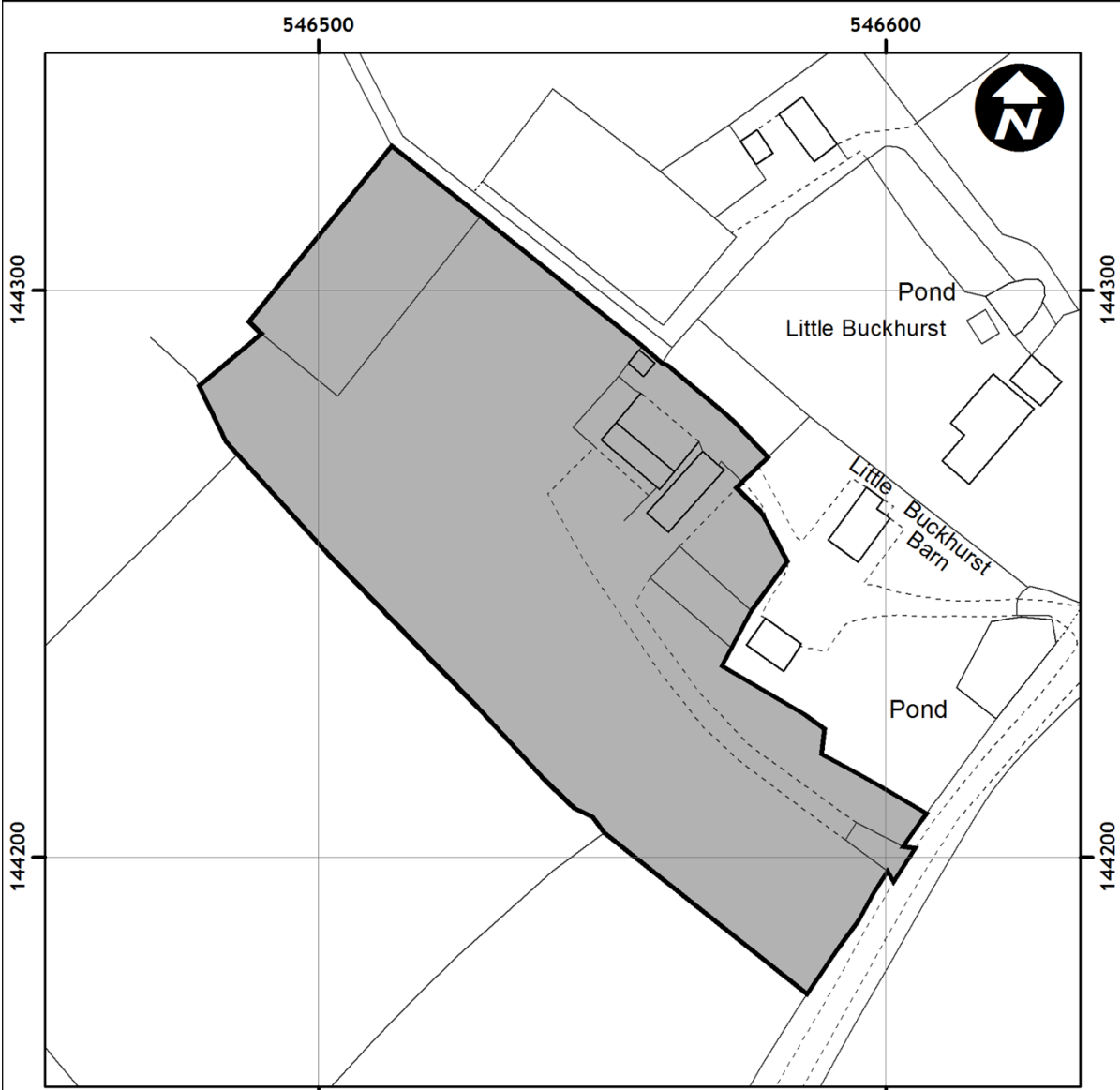
Agenda Item 5.1


Link to application details:

<https://pa.sevenoaks.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Link to associated documents:

<https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Q7I4EOBKMJL00>



<h1>Site Plan</h1>	
Scale	1:1,250
Date	01/07/2020
 <p>Sevenoaks DISTRICT COUNCIL</p> <p>© Crown copyright and database rights 2020 Ordnance Survey 100019428.</p>	





Appeal Decision

Site visit made on 25 January 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 April 2022

Appeal Ref: APP/G2245/X/20/3258138

Little Buckhurst Barn, Hever Lane, Hever, Edenbridge TN8 7ET

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development ("LDC").
- The appeal is made by Russell Barnett & Isobel Fox against the decision of Sevenoaks District Council.
- The application Ref 20/00847/LDCEX is dated 19 March 2020
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is applied for is described as '*Use of the building as a dwellinghouse*'.

Decision

1. The appeal is dismissed.

Background

2. S171B(2) of the 1990 Act as amended says that where there has been a breach of planning control involving the change of use of any building to use as a single dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
3. On this basis the appellant must successfully demonstrate, on the balance of probability, that the breach of control commenced four years before, ie prior to 19 March 2016 ("*the material date*") and has continued since.
4. Although the address on the application form states 'Little Buckhurst Barn', a dwelling which the appellants bought in 2012, the actual building at issue is one known as 'Little Buckhurst Stables', a detached converted stable block that has been significantly extended and altered to facilitate a residential use. This detached building sits some distance to the rear of the former, and once part of the same planning unit it has now been effectively severed from the main dwelling's site by wooden fencing and a small gate.
5. The building is single storey, but with some limited roofspace accommodation, and now accommodates two bedrooms (one with an en suite shower room, a large kitchen/dining room, a snug, and a 'family bathroom'. The building has its own independent vehicular access leading from Hever Lane, and the location plan's red line rings what might be considered the dwelling's curtilage.
6. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. With the test of the evidence being on the balance of

Agenda Item 5.1

Appeal Decision APP/G2245/X/20/3258138

probability the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

7. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990. Accordingly, it must be assessed whether, as a matter of fact and degree, the building has been in used as a single dwellinghouse during the relevant four year period prior to the submission of the LDC application.

Reasons

8. In this particular instance the Council has refused to grant a LDC because it considers that the appellant has not, on the evidence advanced, sufficiently demonstrated that the building located on land to the rear of Little Buckhurst Barn (LBB) has been used as a separate residential dwelling for more than the requisite four years.
9. In planning terms a dwelling or dwellinghouse is defined as a self-contained building or part of a building used as residential accommodation, and usually housing a single household. In the case of *Gravesham BC v SSE & O'Brien* [1982] it was held that the distinctive characteristic of a dwellinghouse was its ability, to afford to those who used it, the facilities required for day to day private domestic existence. Here it is clear that the building contains all such facilities.
10. It is generally accepted that works began on the conversion and alteration of the building during 2014, with evidence adduced to this effect including receipts for kitchen installation and details of plumbing/heating facilities. In their Statutory Declarations (SDs) the appellants say that these works were completed in December 2014, and they claim that they subsequently moved from Little Buckhurst Barn into the converted building to the rear in January 2015. These dates are corroborated by other persons, including Isobel Fox's mother, Mrs Rosemary Fox, who have provided supporting evidence.
11. Mr & Mrs Shapland live close by in the dwelling, 'Little Buckhurst', which sits adjacent to LBB, and have since 2008. They have submitted a SD which provides a chronological account of relevant events surrounding Little Buckhurst Barn and Little Buckhurst Stables (LBS). The SD says that the appellants took ownership of LBB in 2012 and they lived there for a while but, prior to the works to the stables commencing in 2014, they apparently told the Shaplans that, due to the lengthy commute, they would be moving back to their property in London. Referring to the 2014 works, they say that Mr Barnett would return from time to time, with him indicating to the Shaplans that he was improving the stables as, with space for both work and storage, he could operate his building development business from there. They make reference to the old concrete and metal exterior being reclad with timber and then painted black, which I noted at my site visit.
12. The Shaplans say that, in the middle of 2015, the LBB dwelling was rented out to someone who appears not to have been the most neighbourly of tenants, yet the appellants were seemingly not present to oversee this tenure. The tenant

(Item No 5.1) 40

apparently caused damage to the dwelling and, in late 2017, after he had vacated

Agenda Item 5.1

Appeal Decision APP/G2245/X/20/3258138

the premises, the Shaplads allege that the appellants showed them the extent of the damage caused. In fact, the appellants refer to this matter in their Supplementary Planning Statement, where it is indicated that the said tenant took occupation in July 2015 and was evicted in July 2017 leaving the property in a state of disrepair. The Shaplads then go on to indicate that sometime in 2018 the appellants did appear to be present more and it was assumed they had come to live at the premises, full time.

13. Turning to continuity, in the judgement of *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 it was held that a use can only become lawful if it continues throughout the relevant immunity period, such that the Council could have taken enforcement action at any time. This was subsequently applied in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568 where it was held that there is a difference between an established dwelling, when an occupier does not have to be continuously or even regularly present in order for the building to remain in use as a dwelling, and where there is no established use. Accordingly, to be immune from enforcement action under s171B(2), the use of a building as a dwellinghouse must be affirmatively established throughout the four year period.
14. Correspondence from Sutton and East Surrey Water indicates that a water connection with the building was made in 2015, EDF energy confirm an electricity connection, and also a Sky television installation was made in March 2016. A letter has also been produced from MHX computer systems which says that Ms Fox's "*home office, located in a converted barn at the back of the premises behind the stable block*" was visited in September 2016, with a view to a reconfiguration during her maternity leave.
15. Isobel Fox's personal SD confirms that her daughter, Tiggy, was born in late 2016, and a baptism certificate provided shows she was christened locally in August 2017. Medical records, and other documentation relating to Tiggy are addressed to Ms Fox at LBB. Her SD, dated 19 February 2020, also states "*We continue to see our neighbours as infrequently as when we lived in the thatched barn*"; the thatched barn presumably referring to LBB. Whether or not this was an attempt to rebut a comment in the SD of Dr N A Brummitt and Dr A C Araujo whereby it is said "*I do not recall ever having seen either of them at Hever Station taking the train into London in the morning or returning in the evening*" is not clear. However, I give less weight to such recollections and, likewise, an alleged conversation at the local golf club which amounts to only hearsay, whereas the comprehensive account provided by the Shaplads, given their proximity to the building at issue, I have afforded significant weight.
16. The jigsaw appears to have been completed by Peter Hendry, who took the tenancy of LBB in August 2018, and confirms that the appellants lived next door at LBS throughout this time. This would show that the manner of occupation had by this time materially changed.
17. Although the appellants state in paragraph 12 of their SD, dated 9 May 2019, that we have resided continuously at Little Buckhurst Stables since January 2015, I am not convinced from the evidence provided that this was the case. There is a comparative lack of detail in the appellants' evidence from this particular date up until August 2018, when Mr Hendry took occupation of LBB, and this would tend

(Item No 5.1) 42

to be corroborated by the Shaplands. The damage seemingly done by the tenant

to LBB, discovered in 2017, strongly suggests that the appellants were not residing at the dwelling, at least certainly not to any significant degree, otherwise the tenant's behaviour would have surely been discovered sooner. Although the appellants in their Supplementary Planning Statement make brief reference to the eviction and the resultant damage which left the property "*completely uninhabitable*" they do not indicate why they were left unaware as to the tenant mistreating the property. However, in contrast, the Shaplands' SD would tend to throw some light on this matter.

18. In the circumstances it seems credible that if the appellants had been residing at LBS during the two years between July 2015 and early summer 2017 they would have been in a position to have guarded against the internal damage done to LBB which the appellants say was to such an extent that an approach was made to the Council regarding Council tax liability due to the dwelling's internal condition.
19. Too much emphasis appears to have been placed on the fact that conversion works took place in 2014 – although it is not readily apparent from the evidence when all the facilitating works and fittings were completed - with the assertion that the building's residential use commenced in January 2015. There is also little account by the appellants of how, and to what extent, the building was used up to and beyond the material date, which is crucial to this appeal. Further, the statements in support of the appellants claims would appear to be too consistent, whereas one would normally expect varying gaps in the memories of witnesses.
20. On the basis of the evidence adduced I conclude that a breach of planning control has occurred, namely the unauthorised use of the building for residential purposes. However, the fitting out of a building for an intended residential use is different to that of the actual use being seen to have begun. In this particular instance, whilst it is clear that a whole series of works were carried out to the former stables building in 2014, it is not obvious as to when exactly these were finished with a sufficient degree of continuity of use reached to warrant a settled residential occupation.
21. Instead, taking all the evidence together, both in support of the proposal and that which counts against it, the picture given, at least until early summer 2017 just prior to the LBB's tenant eviction, is one of a casual use which, certainly by the time that Peter Hendry took occupation of LBB in August 2018, had evolved to such a degree that a material change of use had by then taken place. Accordingly, I find that, on the balance of probabilities, the said breach had not, by 19 March 2020, acquired immunity from enforcement action.
22. For the reasons given above I conclude, on the evidence available, that the use was not lawful on 19 March 2016, within the meaning of section 191(2) of the Town and Country Planning Act 1990.
23. Accordingly, I will exercise my powers under section 195(3) of the Act as amended.

Timothy C King

Agenda Item 5.1

Appeal Decision APP/G2245/X/20/3258138

INSPECTOR

Planning Application Information on Public Access - for applications coming to

DC Committee on Wednesday 8 June 2022

4.1 21/02890/FUL - Seven Acres Farm, Hever Road, Edenbridge, KENT TN8 5DJ

[Link to application details:](#)

[Link to associated documents:](#)

4.2 21/00462/FUL - Hollows Wood, Chelsfield Lane, Shoreham, KENT BR6 7QT

[Link to application details:](#)

[Link to associated documents:](#)

This page is intentionally left blank