

4.3 SE/11/01874/FUL Date expired 11 October 2011

PROPOSAL: Conversion of barn to residential use, with demolition of some associated structures as amended by plans received 5 December 2011.

LOCATION: The Red Barn, Stack Road, Horton Kirby, Dartford DA4 9DP

WARD(S): Farningham, Horton Kirby & South Darent

ITEM FOR DECISION

This application has previously been considered by the Development Control Committee and is being referred back to consider the specific items of the contribution to affordable housing.

RECOMMENDATION: That planning permission be REFUSED for the following reasons:-

The application makes no undertaking in relation to an affordable housing contribution contrary to policy SP3 of the Core Strategy and H3 of the South East Plan, and the Council's Supplementary Planning Document: 'Affordable Housing'.

Informatives

- 1) The applicant was informed/advised how the proposal did not accord with the development plan, that no material considerations are apparent to outweigh these matters and was provided with the opportunity to amend or resubmit the application or provide further justification in support of it.
- 2) The applicant was informed of our concerns and was also informed of their right to appeal.
- 3) Was updated on the progress of the planning application.

Background

- 1 Application SE/11/01874/FUL was submitted to the Council and validated on 16 August 2011. It sought permission for the following:-
Conversion of barn to residential use, with demolition of some associated structures
- 2 At the request of Cllr McGarvey, the application was referred to Development Control Committee having been recommended for refusal on other grounds.
- 3 On 19 January 2012 the Development Control Committee of Sevenoaks District Council resolved to grant planning consent for the conversion of Red Barn, Stack Road, Horton Kirby, Kent for residential purposes. That resolution was subject to appropriate provision for an affordable housing contribution in accordance with Core Strategy Policy SP3 and the Supplementary Planning Document relating to Affordable Housing. In particular Members resolved to grant planning permission subject to the following:-

“That delegated authority be given to the Head of Development Services to grant planning permission subject to the imposition of appropriate planning conditions and subject to the completion of a satisfactory Section 106 obligation to secure an affordable housing contribution, such obligation to be completed within 6 months of the Committee's decision.

- 4 No Section 106 agreement has been completed because the applicant has not been willing to make an acceptable housing contribution. The committee resolution does not authorise a refusal of planning permission, and therefore the application is referred back to committee for a decision.
- 5 The applicant has made extensive representations to support his claim that the proposal is not viable and that no affordable housing contribution should be paid.

This addendum report covers:

- An update on how the proposal should be assessed against the NPPF, which came into force in March 2012, after the date this application was last reported to Committee; and
- Sets out the discussions that have taken place about the affordable housing contribution, including the policy position, the applicant's case and the Council's comments and conclusions.

The original committee report is appended to this document.

NPPF policies and the implications for this proposal

- 6 The site and the buildings around it appear to remain unchanged since the application was originally determined at committee. The main change between the original report and now is the fact that all government planning policy guidance/statement notes have been deleted and the National Planning Policy Framework (NPPF) has been brought into force. The paragraphs below set out how the NPPF applies to this proposal as set out in the original report

Impact of the development on the Green Belt-

- 7 The original report assessed the proposal against PPG2. This former guidance states that in such locations the conversion of existing buildings can be permitted subject to satisfying a number of criteria. It specifically stated that buildings should be capable of conversion without major or substantial reconstruction that and the development in should be keeping with the surroundings.
- 8 The report concluded that the proposed development went beyond what was considered to be a conversion and would amount to major reconstruction due to the extension. The report concluded that the proposal conflicted with policy GB3A of the Sevenoaks District Local Plan, and the advice contained within PPG2 and is inappropriate development in the Green Belt. There were also no very special circumstances to clearly outweigh their harm.
- 9 The National Planning Policy Guidance relating to Green Belt is now set out in paragraphs 80 of the National Planning Policy Framework. This document states that the primary purpose of the Green Belt is to keep land open to prevent urban sprawl and to safeguard the countryside. The document states that there is a

general presumption against inappropriate development, where the openness of the countryside/landscape would be adversely affected.

- 10 This document states that other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:-

The re-use of buildings provided that the buildings are of permanent and substantial construction.

- 11 The NPPF does not in my view bring in any significant changes that would affect the Council's position on the proposal. In this respect the previous recommendation was to raise objection to the proposal on Green Belt grounds, but this was not accepted by Members.

Impact of the development on the street scene

- 12 The proposal was originally assessed against PPS1.
- 13 It was previously concluded that the proposal would not undermine the character and style of the building and the proposal was considered to be acceptable.
- 14 The National Planning Policy Framework advocates the need for good design and states that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
- 15 It is considered that the NPPF does not change the Council's position on the scheme.

Highway Implications

- 16 No objection was raised to the proposal on highway grounds, and it is considered that the NPPF does not change the Council's position on this.

Impact on protected wildlife within the dwelling

- 17 Another key issue in respect of this application is whether the activities proposed can take place without undue harm to the potential wildlife within the application site.
- 18 The proposal was originally considered under PPS9 and circular 06/2005. This guidance originally stated "that the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat".
- 19 The previous committee report, suggested that the proposal was acceptable subject to conditions.
- 20 In terms of the natural and local environment, the NPPF expects similar protection.-
- 21 In terms of the NPPF, it is considered that that proposal does not affect the original conclusions of the report in terms of the impact on protected wildlife. If

Members are minded to approve the application, the conditions recommended by consultees would be required to comply with guidance in the NPPF.

Impact on the amenities of neighbouring properties

- 22 The original report raised no objection to the proposal on neighbouring amenity grounds. The NPPF is not considered to raise any further objections.

Affordable Housing

- 23 The impact on the NPPF of the proposal is discussed in paras 94-102 below.

Planning Policy: Affordable Housing

- 24 Policy SP3 of the Sevenoaks District Council Core Strategy states the following:

‘Provision of Affordable Housing’

In order to meet the needs of people who are not able to compete in the general housing market, the Council will expect the provision of affordable housing in all types of residential development including specialised housing. The location, layout and design of the affordable housing within the scheme should create an inclusive development.

The level and type of affordable housing required in any residential development will be assessed against the following criteria:-

- 1 *In residential developments of 15 dwellings or more gross 40% of the total number of units should be affordable.*
- 2 *In residential developments of 10-14 dwellings gross 30% of the total number of units should be affordable*
- 3 *In residential developments of 5-9 units gross 20% of the total number of units should be affordable*
- 4 *In residential developments of less than 5 units that involve a net gain in the number of units a financial contribution based on the equivalent of 10% affordable housing will be required towards improving affordable housing provision off-site*

Where an element of affordable housing is required at least 65% of the affordable housing units should be social rented, unless the Council is satisfied that an alternative mix meets a proven need.

In exceptional circumstances where it is demonstrated to the Council’s satisfaction through an independent assessment of viability that on-site provision in accordance with the policy would not be viable, a reduced level of provision may be accepted or, failing that, a financial contribution towards provision off-site will be required.

Permission will be refused where the size of the development is artificially reduced to fall below the threshold requiring provision of affordable housing.’

- 25 In this instance the proposal is for one dwelling and a financial contribution is required. The preamble to the policy states ‘permission will be refused for development that makes no contribution or inadequate contribution to affordable housing where provision could reasonably be made under the terms of the policy.’
- 26 The Core Strategy identifies that the need to provide affordable housing is important for two main reasons; firstly to enable people who cannot afford to rent or buy on the open market to live in a home that is suitable for their needs and that they can afford, and secondly to provide housing for people working in different aspects of the local economy, thus underpinning economic activity.
- 27 The NPPF requires that Local Planning Authorities should set policies for meeting affordable housing need (paragraph 50).
- 28 The South East Plan identifies a series of sub regional housing markets and that Sevenoaks District, together with Tonbridge and Malling and Tunbridge Wells, lies within the West Kent Housing market area. A West Kent Strategic Housing Market Assessment has been completed in accordance with Government guidance. It shows a high level of need for affordable housing across the housing market area and a shortfall in comparison with existing provision.
- 29 The provision of affordable housing is not just important in responding to housing need, it is also important to the economy. The West Kent Area Investment Framework identifies lack of affordable housing as a factor contributing to labour supply shortages. It is therefore important to increase future supply.
- 30 The Council’s Supplementary Planning Document (SPD) ‘Affordable Housing’ which was formally adopted in October 2011 provides advice on how the Council’s affordable housing policy, as set out in the Core Strategy, is to be implemented. It states that ‘the requirement for affordable housing will be applied to the conversion and change of use of any building, whether or not it is already in residential use, where that change results in a net increase in the number of units.’ (paragraph 4.4)
- 31 The SPD states that planning permission will be refused for development that makes no contribution or inadequate contribution to affordable housing, where provision could reasonably be made under the terms of the policy without making the development non viable (paragraph 6.3)
- 32 The SPD states that developers and landowners are ‘expected to consider the overall cost of development, including the required planning obligations and any other costs prior to negotiating the sale or purchase of land or an option. A nil input of grant should be assumed. Early consultation with the Council is therefore encouraged (paragraph 8.2).
- 33 It goes on to state that ‘where a developer or landowner considers that there are significant constraints affecting a development that would be sufficient to jeopardise or prevent them from meeting the Council’s affordable housing policy targets, this will need to be demonstrated to the Council by the submission of a suitable financial appraisal. The Council will adopt an ‘open book’ approach to this assessment and the developer / landowner will be expected to provide all relevant financial and other information behind the appraisal to enable the Council and/or independent valuer on the Council’s behalf to assess the nature, extent and impact of the constraints upon the viability of the scheme. It is

recommended that this information is submitted as part of any pre-application discussion and discussion will be encouraged to facilitate a clearer understanding of the issues and the ability to reach a suitable resolution.’ (paragraph 8.3)

34 It concludes that ‘if, following such an appraisal and based upon all available evidence, the Council concludes that the scheme is economically viable and if the affordable housing requirement is not met this could lead to the application being refused planning permission.’

35 At paragraph 8.7 the SPD states:

‘If, following the appraisal process it is considered that genuine economic constraints have been demonstrated in providing the required level of affordable housing, or financial contribution, the Council will expect the developer to fully explore options available to either achieve economic viability or to make a reduced housing/financial contribution. Such options could include: a variation in tenure, variation in size and type of units provided, reduction in affordable units on site, an alternative to on-site provision, or a financial contribution. Early consultation with the Council is encouraged if this situation is apparent.’

Viability and the affordable housing contribution

36 The Applicant has sought to demonstrate using a financial appraisal that a financial contribution cannot be made as the scheme is unviable.

As outlined above, the SPD states that if there are *‘significant constraints affecting a development that would be sufficient to jeopardise or prevent them from meeting the Council’s affordable housing policy targets, this will need to be demonstrated to the Council by the submission of a suitable financial appraisal.*

37 Currently the valuation of the development by the Council’s consultants has been set at £800,000. There have been checks of the applicant’s data. The appended table (See Appendix 1) summarises the applicant’s data, carried out by the Council’s Consultants. Two independent appraisals were undertaken. The first was based on the theoretical costs of the development, as if the applicant was a developer and would be selling the property on. The second appraisal was undertaken based on the actual costs that the applicant would incur on the basis that the dwelling is to be used as his own home.

38 In this case, the Council considers that it is not appropriate to include the theoretical costs as an assessment of whether the proposal is viable, as these are not costs that will be incurred and therefore, they are not ‘genuine economic constraints’.

39 The applicant argues that the costs of acquiring the land, the build costs, the professional fees, the marketing and letting and sales agent and sales legal fees, the cost of finance, and the profit should be taken into account, even if they have or will not actually be incurred, and has concluded that no affordable housing contribution would be required.

40 The requirement for an affordable housing payment, based on the SPD would be:

- Open Market Value = £800,000
 - Residual land value percentage calculation = $800,000 \times 0.388 = £310,400$
- (Item 4.3) 6

- Calculate 15% of residual land percentage = $310,400 \times 0.15 = \text{£}46,560$.
- Add the 15% figure to the residential land value = $\text{£}46,560 + \text{£}310,400 = \text{£}356,960$
- $\text{£}356,960 \times 0.1 = \text{£}35,696$ payable for affordable housing contribution.

41 Policy SP3 of the Core Strategy requires the full contribution of $\text{£}35,696$ for affordable housing. The SPD sets out the expectation for payment on commencement. Any alternative payment schedule needs to be justified. Paragraph 8.7 of the SPD refers to concerns about viability. The Council will take into account 'genuine economic constraints' that make it difficult to provide the affordable housing contribution.

42 The viability study submitted by the applicant argues that no contribution is required.

43 The conclusion of the applicant's viability study is as follows:-

"We have costed the project as if we were commercial developers undertaking the development for profit, including appropriate allowances for acquisition of the site, professional fees, development costs, abnormal costs and scale costs. It is appropriate to do this since otherwise there would not be a fair comparison between ourselves as individual developers on the one hand and commercial developers seeking to undertake the development for profit. It is unreasonable and unfair that we should be penalised by way of paying an additional social housing contribution cost for (for example) marketing costs of the project once built when we are not actually looking to sell the land.

The estimated costs of acquiring the site and undertaking the development shows that in commercial terms the project is unviable, with the costs of exceeding the estimates value once developed by more than $\text{£}500,000$ "

44 The Officer's concerns with the viability studies included the following:-

- The residual land value of the site has been submitted, which shows the land value at $\text{£}150,000$. There was no evidence of any land transaction with this sum paid, apart from a statement to this effect. There is evidence of $\text{£}50,000$ paid for a land transfer.
- The build cost for the proposal is shown as $\text{£}1,775$ per sqm. This has been queried as this is extremely high. The Council would expect build costs to be anywhere in the region of $\text{£}800 - \text{£}1,100$ per sqm. It has not been sufficiently demonstrated that build costs at this high level are justified or why they are considerably above the norm. A general allowance of $\text{£}1,200$ per m^2 has been used in the reviews of the viability appraisal undertaken by the consultants on behalf of the Council.
- Some additional costs are not standard construction costs, for example the solar panels, ground source heat pump and rainwater harvesting. Council policy encourages best practice in sustainable design and construction but does not require these measures, unlike the affordable housing contribution. These are non-essential and should not be used against the need to supply the affordable housing contribution. The build costs of

£1200 per m² are considered adequate to build to Code for Sustainable Homes level 3. The total value of the cost of these non essential items is as follows:

-	Solar panels	-	£12 000
-	Ground Source heat Pump	-	£35 000
-	Rainwater harvesting	-	£6000
-	TOTAL COST:	-	£53 000

- The document stated that there would be a fee of £13,050 for estate agency fees. The dwelling is known to be planned as a family home for the applicant and therefore there would be no costs involved in selling the property.

45 The appraisal of the site by the Council's consultants that considers the theoretical costs, looks at the costs that a developer would incur such as Agents fees, legal fees and stamp duty on the purchase of the land and sales fees and legal fees on the sale of the property. The appraisal also includes profit at 15% of the sales price. This appraisal gives a residual land value of £62,147 which when compared to the land value of £150,000 shows that the scheme is not viable. This appraisal is not relied on as it includes costs that will not be incurred by the applicant and are not therefore genuine economic constraints.

The second report by the Council's consultants shows the actual situation based on the actual costs that will be incurred whereby the "theoretical costs" have been removed as the applicant has not bought the property on the open market and is building the house for his own use and does not intend to sell the completed property. This appraisal has removed the costs associated with the agent's fees, legal fees and stamp duty on the purchase of the land, the sales fees and legal fees on the sale of the property and the profit element.

46 This appraisal gives a residual land value of £185,647 which shows that the scheme could support a financial contribution of around £35,000 and still remain viable when compared to the site value of £150,000.

47 The Council's position is that the report, which shows the removal of theoretical costs, is the correct approach that should be taken for the site, in accordance with the SPD.

48 Both the reports referring to theoretical costs and actual costs incurred assume that all of the costs of the development would need to be financed at a rate of 6% interest. The costs of the development as a whole are £567,680. The value of the mortgage taken out by the applicant in 2008 was for £593,970 at an interest rate of 4.88%.

The Applicant's Case

- 49 The applicant argues that the Actual Costs Report is erroneous.
- 50 He is of this view, as he considers that it ignores site acquisition costs of £50,000 paid in May 2010. (Note comments on this in the Group Manager's appraisal – see para 71 below).
- 51 The applicant has advised that the National Planning Policy Frameworks is relevant as it provides:
- A presumption in favour of sustainable development (paragraph 14) and in particular that consent should be granted without delay.
 - That development should support a prosperous rural economy, especially supporting the development of agricultural businesses through conversion of existing buildings and otherwise (paragraph 28). Noting that the aim of the conversion is to support an existing farming business and enable it to continue in the long term.
 - That a financial contribution need not be sought if it can be robustly justified that none should be paid (paragraph 50).
 - Authorities should normally approve planning applications for residential use (paragraph 51)
 - Plans should provide that contributions (including social housing contributions) sought from landowners requires careful attention to cost and viability and must allow a willing landowner and willing developer to deliver the project. (paragraphs 173 and 174)
 - That where planning obligations are being sought, authorities should be sufficiently flexible to prevent planned development being stalled. (paragraph 205).
- 52 The applicant also refers to the following:
- 1 The applicants have produced evidence that they had engaged their architect in connection with the site as far back as 2006.
 - 2 The applicants have produced evidence of pre-planning consultation with the Council in June 2009 – the mortgage was taken out in December 2008 and the site acquired in May 2010. The applicants submitted a planning application relating to the site in 2010: SE/10/01790/FUL. (*officers note: this application was refused permission on 12.8.10*).
 - 3 The applicants cannot proceed without borrowing. So even if the mortgage were unrelated to the development, finance would be required, and the cost of that finance would be approximately the same if not significantly higher than the costs of the current mortgage and would need to be taken into account in the financial assessment.
 - 4 Since December 2008 the applicants have held the proceeds of the 2008 mortgage in bank accounts to meet the costs of the development. They could repay the 2008 mortgage and take a new loan to raise a new

mortgage the cost of which would be allowable in the financial appraisal. This artificial manoeuvre should not be necessary in the light of paragraphs 186, 187 and 205 of the National Planning Policy Framework.

- 5 It is not relevant that the mortgage is not secured on the development site. The loan will finance the development costs and accordingly the interest costs are costs to be taken into account in the financial appraisal whether the loan is secured on the site, on other land or not secured at all. A site valued at £150,000 is not acceptable as security for a loan of £600,000, so the fact the site is not mortgaged is not surprising.
- 6 It has also been suggested that since the site was acquired in May 2010, long before the current application was submitted, means that the acquisition costs should not be included in the financial appraisal. The submission of planning application SE/10/01790/FUL shows this argument too is unsustainable and site acquisition costs are allowable.
- 53 The applicant has also submitted copies of title to Langlands, Black Cottage, 1 and 2 Flint Cottage and Rabbits Farm. Reference to the AMC charge/mortgage is made as follows:
- Entries 6 and 7 of the charges register of title K700976 (Rabbits Farm);
 - Entries 1 and 2 of the charges register of K951081 (Black Cottage and Flint Cottages); and
 - Entries 3 and 4 of the charges register of title K676880 (Langlands, being the same as land to the east of Dartford Road).
 - Note the date of the charge (23 December 2008) being the same in all cases and a day after the mortgage offer.
- 54 The applicant has also advised in relation to a document about the transfer of land that the financing costs are such that consideration of the £50,000 cost of the land purchase is essentially irrelevant. In referring to the transfer, the applicant states that the benefiting land was (and is) not owned by the transferee (the applicant and his wife Louise, the applicants under the planning application) but by the applicants mother Sarah. It is stated that $\frac{1}{3}$ of the value of the property (i.e. Red Barn) transferred by the transferor (Sarah and applicant) was before the transfer owned $\frac{2}{3}$ by the applicant and $\frac{1}{3}$ by family trustees. The applicant paid £50,000 for that further $\frac{1}{3}$ interest of the trustees. The applicant has also advised that he is registered as the legal owner of certain other family land, including the retained land (as defined in the transfer), he is also the trustee of that land for other members of the family, and neither he nor his wife Louise have any economic interest in it.
- 55 In addition to the above and to address the Council's concerns, the applicants have stated they are willing to enter into a s106 agreement to the effect that if the developed site is sold outside the applicants' family within 10 years from the grant of a planning consent, the full social housing contribution of £35,648 will be payable.

- 56 Further information was submitted by the applicant to support his case, in the form of Counsel's opinions on the approach to assessing viability taken by the Council.
- 57 These opinions argue on behalf of the applicant that viability should be assessed objectively, using for example, an industry standard model and not on the basis of the particular circumstances of the applicant. Furthermore, it is argued that the assumptions that these models used should include provision for costs of acquisition, financing, profit and professional fees even if those costs have not been or will not be incurred.
- 58 The Opinions concluded that the approach taken by the Council, which looks at the costs that have been and will actually be incurred, is manifestly unreasonable and unfair.
- 59 The applicant's Counsel raises a number of key points, extracts of which are re-produced below.

"...The planning system seeks consistency and certainty, and it is for that reason that the industry has developed tools such as the HCA toolkit and the Three Dragons assessment. There is absolutely no warrant for considering the individual circumstances of any individual applicant because to do so will inevitably always lead to different results, and such unpredictability is itself an anathema to the planning process and it ignores the fundamental point that because planning permission runs with the land, it cannot be assumed that any given applicant will implement the development. The land could be sold many times over before it is developed.

The only proper, sensible and reasonable basis to approach assessments such as these is for the planning authority to assume that the site will be developed by a developer according to the industry wide assumptions contained in the standard packages referred to above and taking into account the development requirements of the site."

- 60 Reference is made to the RICS Professional Guidance titled "Financial Viability in Planning", including:

"Further, the Guidance Note defines financial viability for planning purposes as:

'An objective financial viability test of the ability of a development project to meet its costs including the cost of planning obligations, while ensuring an appropriate Site Value for the landowner and a market adjusted return to the developer in delivering the project'.

It goes on to state: 'In undertaking scheme specific viability assessments, the nature of the applicant should normally be disregarded, as should benefits or disbenefits that are unique to the applicant. The aim should be to reflect industry benchmarks in both development management and plan making viability testing.'

- 61 A further Opinion relates specifically to the Council's view that the scheme could be modified to reduce the costs of the development to provide the funds for affordable housing. It states:

“...The viability assessment consideration must be based on the actual development for which permission is sought. In this case the development includes ground source heat pumps, rainwater harvesting and solar panels...

More generally it seems that the Council is attempting to divert sums from the Applicants' proposed development budget to make a financial contribution to provision of affordable housing in Sevenoaks District. So far as I am aware there is no policy justification for this either in local or national planning policy or indeed on any other basis.”

- 62 In addition, further correspondence was received from the applicant emphasising the point referred to above and referring to what is considered to be the key NPPF and Core Strategy policies.

Group Manager Planning Services - Appraisal

- 63 On 23 October two final financial appraisals were submitted by Adams Integra and summarised the Council's policy position on the affordable housing contribution, based on those appraisals. As previously confirmed the actual costs report confirms that an affordable housing contribution should be paid for this application, to the value of £35,647.
- 64 The aim of the financial appraisal is to provide an objective financial viability test of the ability of a development project to meet its costs including the costs of planning obligations.
- 65 Officers remain of the opinion that the circumstances that have been outlined by the applicant are not genuine economic constraints which would make the scheme unviable and would therefore prevent the affordable housing contribution from needing to be paid.
- 66 The abnormal costs could be amended to make significant savings. These elements have not been justified by the applicant. The unnecessary abnormal costs alone for the solar panels, ground source heat pump and rain water harvesting amount to £53,000.
- 67 Whilst the applicant's mortgage was taken out before any prospect of gaining planning permission, the important consideration is that the viability appraisals assume that finance would need to be taken out to finance this project, and that even at a higher interest rate than that secured by the applicant, the project would be viable and the affordable housing contribution could be paid.
- 68 The mortgage taken out and the transfer payment made by the applicant, were made well in advance of any proposal submitted to the Council for a change of use and redevelopment of the site for residential purposes. In page 9 of the applicant's submissions of November 2012 the applicant states that since December 2008 they have held the proceeds of the mortgage in bank accounts. It would be reasonable to presume that this sum would raise further income in interest that could be put towards the financial costs of the scheme. The applicant has not referred to this option.
- 69 The applicants have clarified that the site was valued at £150,000. They paid £50,000 for $\frac{1}{3}$ of the site and were gifted the remaining $\frac{2}{3}$ of the site from a

family member. Note that the appraisals by the Council's consultants refer to the higher sum of £150,000, as it is now known this sum was not paid, this alters the financial appraisal and allows for an additional financial cushion.

- 70 The applicants would consider delaying payment of the S106 contribution to a later date. The applicants have advised that they are willing to enter into a S106 agreement to the effect that if the developed site is sold outside the applicants' family within 10 years from the grant of a planning consent, the full social housing contribution of £35,648 will be payable. However the applicants stated intention is not to sell the property outside the family and it is most unlikely that a contribution would ever be received.
- 71 There is a genuine need for the contribution now, the scheme is viable and an affordable housing contribution is therefore justified to comply with policy. It has not been demonstrated that there are genuine economic constraints to providing it.
- 72 In addition if the Council were satisfied there were genuine economic constraints (which they are not) the applicant would be expected to explore all options to achieve economic viability and/or to pay a reduced contribution.
- 73 As the comparison table attached to this report shows, the assumed build costs are high and the costs for the provision of solar panels, ground source heat pump and rainwater harvesting could be reconsidered. The financial costs could be reconsidered to reflect this and the actual costs that will be incurred
- 74 There could have been no expectation at the time the mortgage was taken out of a grant of planning permission. There have also been many policy changes since that time that could have had an impact on the consideration of the proposal.
- 75 The Council's consultants have demonstrated that if the build costs are reduced to a more typical, but still very generous level, and the items for solar panels, ground source heat pump and rain water harvesting are deleted, then the scheme is viable. From January 2011 an affordable housing contribution has been required for schemes of this nature and the costs of the scheme should have been re-evaluated to address this as part of the latest application and any claim that the proposal is not viable, in accordance with the advice in the SPD.
- 76 In addition, there could be a further financial cushion if the site acquisition costs of £150,000 were not incurred in full. The finance the applicant has secured is also at a lesser rate (4.88%) than is allowed for in the consultants appraisals (6%) and thus the costs of the finance to the applicant would have been less in actuality. However, the applicant's submitted finance costs appear to include all the interest costs of the 25 year mortgage resulting in much higher finance costs than would be the case for a shorter term loan to fund construction. This argument is not supported by local or national policy or guidance. These costs would go far beyond what would be considered appropriate for a private individual or a developer. The finance required by the applicant was a mortgage taken out before the planning application was submitted. The mortgage was not secured on this scheme and the financing does not appear to cover the requirement for an affordable housing contribution. In considering the funding of a scheme it is standard practice to take into account all the costs of development including the need to fulfil any policy requirements such as affordable housing contributions.

- 77 The independent financial appraisals robustly demonstrate that this proposal based on the actual costs incurred, is viable, and that the full affordable housing contribution can be paid in accordance with the policy.
- 78 Officers have reviewed the position following receipt of the Counsel's Opinions submitted by the applicant.
- 79 In assessing viability, officers have used an industry standard model. The difference between officers and the applicant relates in the most part to the information that has been put into that model. The theoretical version of the model referred to assesses the proposal as if the applicant is a developer and this is the version of the viability assessment the applicant supports.
- 80 In creating the theoretical version of the model to assess viability, some of the financial data that is needed for the assessment would not have been or will not be incurred. For example, in this case, that would include the fees that would normally be incurred for the sale of a property on completion, and the developer's profit.
- 81 It is generally understood that the developer's profit is there to cover the risks to the developer and those financing the scheme. On this basis the level of profit varies between schemes and developers based on that level of risk. Therefore, one of the difficulties with a model where theoretical data is input is which values to use. Profit is not required for this scheme as the proposal is to be retained as a home for the applicant, so allowing for a developers profit of 15% or more is not considered to reflect the actual circumstances of this development.
- 82 Officers consider that using a model with financial data that is inaccurate as fictional values will have to be input, is not the most appropriate way to assess viability in this specific case. The SPD on affordable housing expects applicants to demonstrate that there are genuine economic constraints to providing the level of affordable housing required. If fictional values are being used, to make an assessment of a proposal look like it is from a developer when it is not, it is hard to see how this concurs with a need to demonstrate 'genuine economic constraints'.
- 83 The SPD also expects a developer to fully explore the options available to achieve economic viability or to make a reduced housing contribution.
- 84 The applicant argues that he should be treated as a developer for the basis of the financial appraisal but that in addition, it would be inappropriate "to divert sums from the applicants' proposed development budget to make a financial contribution to provision of affordable housing in Sevenoaks District", as would be required by a developer in accordance with the SPD.
- 85 In reviewing the issues raised by the applicant officers are of the view that the equitable way to deal with viability issues is to apply the industry standard models of viability, but to depart from these where there is clear evidence to do so.
- 86 The RICS Guidance referred to by the applicant, outlines the types of developer that that the guidance mostly relates to. None of these cover the scenario we have for this case, where someone is not a developer, and where the development is proposed for themselves, where many of the costs you would normally expect to be incurred will not be, such as professional fees for the sale

of the property. The RICS Guidance also states that in undertaking scheme specific viability assessments the nature of the applicant should normally be disregarded.

- 87 As in this case the circumstances surrounding the financial costs of the development are different from those a developer would incur, and the proposal is not by a developer, there is an argument to place more weight on the scheme specific aspects of the proposal when assessing viability. The RICS Guidance does not state that scheme specific viability assessments will always be inappropriate. If the Council is to assess whether there are 'genuine economic constraints' that apply in this case, in accordance with the SPG test, the fairest way of doing so for the applicant, in the Council's view, in comparison to other viability assessments that are submitted, is to use an industry standard model, but using financial data based on the costs that will be or have been incurred.
- 88 The applicant makes the claim that we are being unfair and treating him differently from a developer. If we look at actual costs for a developer and theoretical costs for a private individual as suggested by the applicant, in officer's view this does not appear to be a fair approach either. If the circumstances of the case changed and the site was sold to a developer, there is an option for them to amend the Section 106 based on the specific circumstances at that time. Whilst Counsel is correct in that the planning permission goes with the land, in line with SPD, it is clear that in assessing viability it is necessary to look at the actual figures for each specific case.
- 89 When we assess a scheme using the industry standard model, the actual costs to a developer are input, not theoretical costs. It would not be a fair approach for a developer to have to use actual costs and for private individuals to be treated as a developer but, thereby having to use fictional values as some of their costs would be theoretical. If the circumstances of the case changed and the site was sold to a developer, there is an option for them to amend the Section 106 based on the specific circumstances at that time. Whilst Counsel is correct in that the planning permission goes with the land, in line with SPD, it is clear that in assessing viability it is necessary to look at the actual figures for each specific case, and whether there is scope to modify the scheme to provide the affordable housing contribution.
- 90 The advice and guidance in the NPPF is also relevant. The applicant refers to it in detail as justification for his case. For clarity, key paragraphs are referred to below. Paragraph 50 states:-
- "To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:
- plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);
 - identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand; and

- where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.”

91 The Core Strategy and Sevenoaks District Local Plan (saved policies) include policies that address the above issues.

92 Paragraph 51 states:-

“Local planning authorities should identify and bring back into residential use empty housing and buildings in line with local housing and empty homes strategies and, where appropriate, acquire properties under compulsory purchase powers. They should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.”

93 This paragraph should not be read in isolation and account also needs to be taken of requirements in other parts of the NPPF such as the provision of affordable housing in accordance with adopted policies.

94 Paragraph 173 states:-

“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”

95 There was an Affordable Housing Viability Assessment carried out for the Core Strategy and Policy SP3. The findings of this assessment are on the Council’s website and summarised in paragraph 5.3.8 of the Core Strategy. The Council is satisfied that Policy SP3 and the evidence base that underpins it comply with paragraph 173 of the NPPF. This is supplemented by the guidance in the affordable housing SPD.

96 The NPPF highlights the importance of providing affordable housing. It also highlights that importance of viability. In this case, as stated above it is the Council’s view that the applicant has been unable to demonstrate that there are significant genuine economic constraints that would render the scheme unviable and that all options have been explored to establish if the scheme could be made viable or a reduced contribution be offered.

- 97 The applicant puts great emphasis on paragraph 187 of the NPPF which states that “Local authorities should look for solutions rather than problems, and decision-takers...should seek to approve applications for sustainable development where possible.”
- 99 In this case, we have had lengthy and extensive discussions on the information submitted by the applicant. The applicant has not demonstrated that the proposal is acceptable having regard to the affordable housing policy. It is the applicant’s responsibility to demonstrate that there is justification for non-compliance with this policy. Decisions made by the applicant about the scheme prior to the imposition of the affordable housing policy in January 2011 or the decision not to modify the high costs of the build, are part of the applicant’s risk.

Conclusion

- 99 Planning policy at local and national level accepts that financial contributions to social housing may be waived if a development is rendered unviable by imposition of a financial contribution.
- 100 In the case of the Red Barn site, the applicant has not in the Council’s view demonstrated that the scheme is unviable or that there are genuine economic constraints to providing the required affordable housing contribution.
- 101 Whilst the applicants are a farming family, no evidence has been submitted to justify this proposal as an agricultural dwelling or as an essential diversification project for the farm. The applicants do not work in agriculture and there is no agricultural justification for waiving the contribution. The Council can therefore give little weight to the stated benefit of supporting an existing family business.
- 102 The Council have entered into protracted discussions with the applicants to seek to clarify all the financial aspects of the scheme and enable the applicant to make his case. The applicant has provided a wealth of information to support his case, but has not addressed the fundamental concerns outlined in this report about the build costs, abnormal costs and actual costs that have been incurred, to demonstrate that he has explored all options to seek to make the scheme (more) viable and that there are genuine economic constraints involved.
- 103 As it stands, an affordable housing contribution of £35,647 is due. The applicant has not agreed to this payment, payable upon commencement, as is expected. The applicant has only offered payment under a caveated agreement that would not comply with the Council’s policy and would not ensure a timely payment, if any payment at all, as payment was only offered if the developed site is sold outside the applicants’ family within 10 years from the grant of a planning consent
- 104 Accordingly the proposal is contrary to policy SP3 of the Core Strategy and the Affordable Housing SPD.
- 105 The SPD makes it clear that non-payment of the affordable housing contribution can only be justified if there are genuine economic constraints that apply and that then all options have been explored to make the scheme viable or to provide a reduced contribution. Whilst the applicant has been advised of this, none of these justifications have been demonstrated and on the basis of the information we have been provided with, it is not considered that any such justification exists

in this case, if the proposal is assessed on the basis of the actual costs that will be incurred.

106 There is no affordable housing contribution proposed in accordance with Policy SP3 of the Core Strategy and the SPD and no legal agreement in place. The NPPF supports the Council's view that provision for affordable housing should be made when there is no justification that the proposal is unviable.

107 Accordingly, the application is recommended for refusal.

Background Papers

Site and Block plans

Contact Officer(s): Vicky Swift Extension: 7448

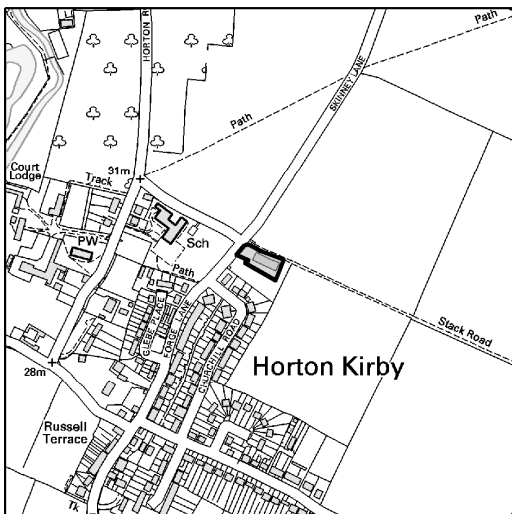
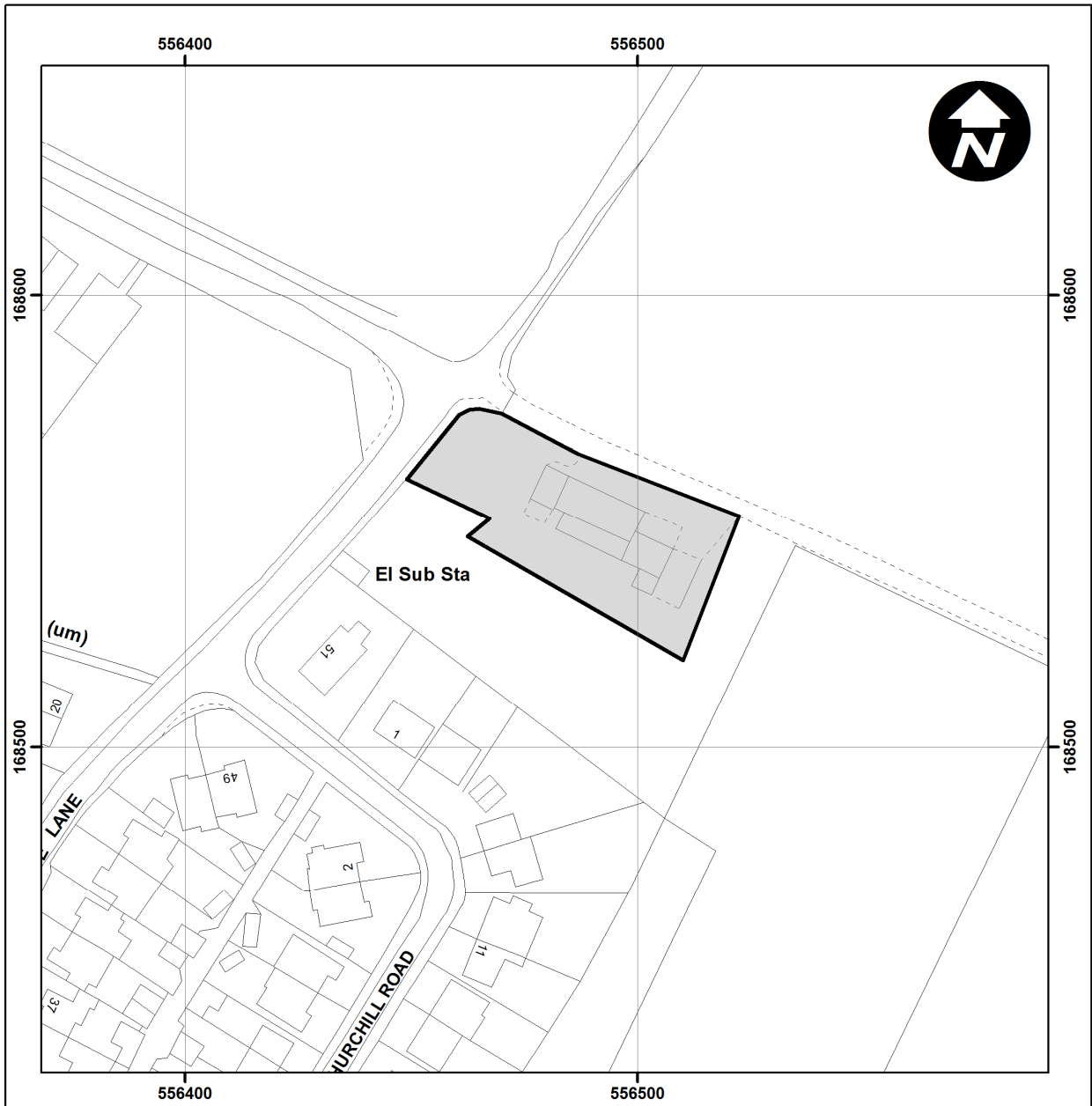
Kristen Paterson
Community and Planning Services Director

Link to application details:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=LOOX0KBKOCRO0>

Link to associated documents:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=LOOX0KBKOCRO0>



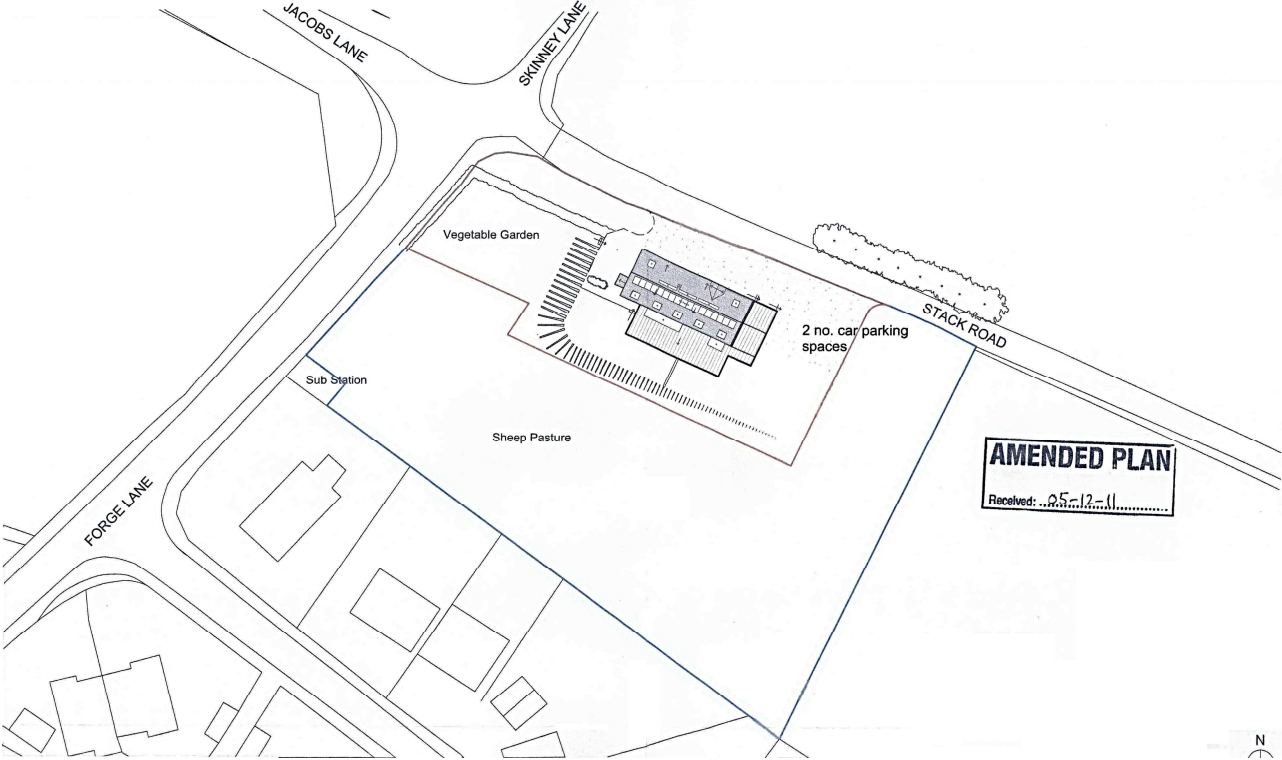
Site Plan

Scale 1:1,250
Date 23.11.2011



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Sevenoaks District Council, 100019428, 2011.

BLOCK PLAN



APPENDIX 1

Comparison of Costs

ITEM	COSTS CLAIMED BY APPLICANT	CONSULTANTS REPORT – THEORETICAL COSTS	CONSULTANTS REPORT – ACTUAL COSTS	SDC COMMENTS
Site acquisition costs	May 2010 £50 000 paid for 1/3 share of site. Remaining 2/3 of the site gifted to applicants from a family member.	Existing use value of £150 000.	Existing use value of £150 000.	Says site was acquired at £150 000 it was valued at. No evidence to confirm this. There is evidence to confirm that £50 000 was paid and the remainder gifted.
Financing costs	May 2012 annex refers to net advance for mortgage of £593 970 (July 09 completion statement). 19 June 2012 email refers to financing cost for mortgage of £439 716. Nov 12 submission refers to mortgage costs of £442 869	Assumes finance for whole cost of project.	Assumes finance for whole cost of project.	This mortgage was arranged in 2008 and was secured on a number of properties, none of which was the application site. First quarterly payment due 1.3.09. Secured on other properties known as Langlands Farm, Rabbit Farm, Black Cottage, 1 & 2 Flint Cottages that are owned by another person.
Sales values	Para 3.2 of applicants May 2012 submission quotes £725 000.	£800 000	£800 000	Sales values amended to £800 000 when more accurate information available.
Build costs	£1775 per metre squared	£1200 per metre squared considered acceptable.	£1200 per metre squared considered acceptable.	No evidence of why build costs are so high. SDC Consultants have allowed for a generous build cost above the average due to the circumstances of the case.
Other costs	Claimed costs of solar installation, ground source heat pump or rainwater harvesting.	Not included solar installation, ground source heat pump or rainwater harvesting.	Not included solar installation, ground source heat pump or rainwater harvesting.	
Profit levels	Where referred to uses 17.5%	15%	0%	The applicant has advised that the home would be for him to live in and is not a development project. Accordingly, there would be no need for a profit.
Other assumptions		5% of build costs for contingency. 10% of build costs for professional fees.	5% of build costs for contingency. 10% of build costs for professional fees.	
Interest rates	4.88% payable quarterly.	6%	6%	
Other	Includes sales & legal fees, agents fees, stamp duty.	Includes sales & legal fees, agents fees, stamp duty.	Excludes sales & legal fees, agents fees, stamp duty.	Excluded fees are those that will not be incurred.
Notes	Claims solar panels, ground source heat pumps and rainwater harvesting as abnormal costs.	Not accepted as not required to gain code level 3.	Not accepted as not required to gain code level 3.	

Conclusion	No affordable housing contribution can be paid.	No affordable housing contribution can be paid.	Affordable housing contribution of £35 647 can be paid.	
Other comments	Have offered a S106 to confirm that if applicants family sell site within 10 years from consent the full contribution of £35 648 will be payable.	Costs input as if the scheme was being carried out by a developer but as this scheme is not, many of the costs would not be incurred.	Costs input to reflect the actual costs involved. Still a query over the £150 000 site acquisition costs.	The test is 'are there genuine economic constraints' and if there are, have they explored all options to achieve economic viability/ a reduced contribution.

APPENDIX 2

Previous Report

Development Control Committee: 19 January 2012

SE/11/01874/FUL Item No. 5.05

5.05 – SE/11/01874/FUL Date expired 11 October 2011

PROPOSAL: Conversion of barn to residential use, with demolition of some associated structures as amended by plans received 5th December 2011.

LOCATION: The Red Barn, Stack Road, Horton Kirby, Dartford DA4 9DP

WARD(S): Farningham, Horton Kirby & South Darent

ITEM FOR DECISION

This application has been referred to Development Control Committee at the request of Councillor McGarvey, on the grounds that the proposal would have no greater harm on the Green Belt and that the proposal would represent a visual improvement to the site.

RECOMMENDATION: That planning permission be REFUSED for the following reasons:-

The land lies within the Green Belt where strict policies of restraint apply. The proposal by virtue of the extent of reconstruction work/new extensions would be inappropriate development harmful to the maintenance of the character of the Green belt and to its openness. This conflicts with policy GB2 of the Sevenoaks District Local Plan, policy SP5 of the South East Plan, policy L08 of the Sevenoaks Core Strategy and the government advice contained within Planning Policy Guidance Note 2.

This submission provides no affordable housing contribution contrary to policy SP3 of the Core Strategy and H3 of the South East Plan.

Description of Proposal

- 1 This application seeks permission for the conversion of an existing barn to residential use, with demolition of some of the associated structures. It is proposed that the new residential dwelling would contain four bedrooms. In addition to this it is also proposed that the building would contain the main farm office and a music room for one two one music tuition.
- 2 It is proposed that the following works are proposed:-
 - To remove the corrugated iron staging at the south of the building
 - Remove the Dutch Barn structure at the east end of the building
 - Remove the corrugated iron structure at the south east end of the building
 - Expose the traditional brickwork of the historic barn

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Development Control Committee: 19 January 2012

SE/11/01874/FUL Item No. 5.05

- Reuse the lean to structure on the south side of the existing building, improving its appearance
 - Add an extension to the existing brick barn within the existing footprint of the Dutch Barn.
- 3 It is proposed that vehicular access to the site will be gained from the private road that runs to the north of the barn as existing. 2 parking spaces will be provided to the east of the barn providing space for personal and farm vehicles. A small private garden is proposed to the west of the barn.
- 4 There are also a number of solar panels proposed on the rear of the building.

Description of Site

- 5 The application site relates to a large agricultural building located on the corner of Stack and Forge Road. The site lies in a semi rural location on the edge of the village of Horton Kirby and South Darenth. The site is accessed off Stack Road which is a private right of way.
- 6 The application site relates to three main elements. The first is a 19th century two storey masonry barn building. The building is constructed from yellow stock brick with a purple slate roof. In addition to this the building has a number of later precast agricultural extensions/lean-tos. The building to the east of this is a 1950s precast agricultural shed extension. There is also a two storey timber extension to the west gable and a lean to extension to the south elevation. The building was used in hop production in particular hop picking and drying. It appears that it is still used for agricultural purposes today.
- 7 The building forms part of Court Lodge Farm a large family run farm with a variety of operations. The farming operations remains diverse producing hops, lavender, wheat and also farms sheep.
- 8 The site is located in the Metropolitan Green Belt and the Area of Local Landscape Importance.

Constraints

- 9 Metropolitan Green Belt

Policies

South East Plan

- 10 Policies – SP5, C3, C4, NRM5

Sevenoaks District Local Plan

- 11 Policies – EN1, GB3A

Sevenoaks Core Strategy

- 12 Policies– LO8, SP1, SP11

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Other

- 13 Planning Policy Guidance 2

Planning History

- 14 10/01790/FUL Conversion of barn to mixed residential and business use.
REFUSE 12/08/2010.

Consultations

Parish/Town Council

- 15 The Parish Council supports this revised application on the grounds that the proposed architectural detailing is in keeping with the existing barn and the impact on the green belt will be less as parts of the barn are to be demolished and the floor plate will be less. Many of the existing materials such as the slates will be re-used.
- 16 The Parish Council endorses this development because it is a 'betterment' of the current situation where the existing barn is in a very dilapidated condition. The proposal will result in an improvement to the street scene.

KCC Highways have made the following comments:-

- 17 No highway objection subject to an appropriate condition being attached requiring the applicant to install appropriate wheel wash facilities during construction to prevent materials being deposited on the highway.

The Environment Agency have made the following comments:-

- 18 We have no objections to the proposal so long as the following two planning conditions are imposed to any planning permission granted.

Drainage

- 19 We understand from the application documents that the foul drainage from the site will pass to a main sewer. We have no objections to this. Any surface water drainage from the new buildings (such as roof water) may be able to drain to soakaway provided that there is no discharge direct to groundwater, and that there is no discharge to land affected by contamination (including made ground). The downpipes for the soakaways should be sealed at ground level to prevent any potentially contaminating spillages from entering the system.
- 20 Condition one: No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.

Reason: To ensure that site drainage does not present a risk to groundwater. The site is underlain by head deposits over the Seaford Chalk formation. This situation represents a secondary aquifer over a principal aquifer. The site also

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lies within the Source Protection Zone for the Horton Kirby public water abstraction. The site is consequently in a highly vulnerable location with regard to groundwater.

Land Contamination

- 21 Condition two: If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for a remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To ensure development is in accordance with PPS 23: Planning and Pollution Control. The site is underlain by head deposits over the Seaford Chalk formation. This situation represents a secondary aquifer over a principal aquifer. The site also lies within the Source Protection Zone for the Horton Kirby public water abstraction. The site is consequently in a highly vulnerable location with regard to groundwater.

Storage of fuels/chemicals

- 22 Informative: Care should be taken during and after construction to ensure that all fuels, oils and any other potentially contaminating materials should be stored (for example in bunded areas secured from public access) so as to prevent accidental/ unauthorised discharge to ground. The areas for storage should not drain to any surface water system.
- 23 Informative: Where it is proposed to store more than 200 litres (45 gallon drum = 205 litres) of any type of oil on site it must be stored in accordance with the Control of Pollution (oil storage) (England) Regulations 2001. Drums and barrels can be kept in drip trays if the drip tray is capable of retaining 25% of the total capacity of all oil stored.

KCC Ecology have made the following comments:-

- 24 Under the Natural Environment and Rural Communities Act (2006), "Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity". In order to comply with this 'Biodiversity Duty', planning decisions must ensure that they adequately consider the potential impacts of a proposed development on protected species.
- 25 Planning Policy Statement 9: Biodiversity and Geological Conservation states that "the aim of planning decisions should be to prevent harm to biodiversity".
- 26 Paragraph 99 of Government Circular (ODPM 06/2005) Biodiversity and Geological Conservation - Statutory Obligations & Their Impact Within the Planning System states that 'It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted

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otherwise all relevant material considerations may not have been addressed in making the decision.'

- 27 Natural England has published Standing Advice on protected species and Ancient Woodland. When determining an application for development that is covered by the Standing Advice, Local Planning Authorities must take into account the Standing Advice.
- 28 The Standing Advice is a material consideration in the determination of applications in the same way as a letter received from Natural England following consultation.
- 29 We are satisfied that the Ecological Assessment report has adequately considered the potential for impacts on protected species as a result of the proposed development; the potential for impacts on bats, breeding birds and badgers have been identified and the report makes several recommendations (discussed below).

Bats

- 30 The emergence surveys have identified that bats are roosting within the building. The survey has suggested some mitigation however sufficient detail has not been provided with in the report. A detailed mitigation strategy must be submitted for comment.

Badgers

- 31 An active outline badger sett was identified on the site and as a result the proposed development will result in the loss of the badger sett. Sufficient information has not been submitted on the proposed mitigation - a detailed mitigation strategy must be submitted for comment.

Birds

- 32 Suitable habitat is present on site for breeding birds. The mitigation detailed in paragraph 5.2.2 and 5.2.3 must be carried out.

Enhancements

- 33 The key principles of PPS9 are not only to avoid, mitigate or compensate for harm to biodiversity but also to incorporate ways to enhance and restore it. An ecological enhancement strategy must provide details on the enhancements to be incorporated in to the proposed development. Suggestions for enhancements include the use of native local species in any landscaping or sections of rough grassland around the edge of the site.

Representations

- 34 1 letter of objection has been received in connection with this application, the main objections include the following:-

Impact on the Green Belt

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Impact on the countryside

Precedent the proposal would set

Head of Development Services Appraisal

Principal Issues

- 35 The principal issues relate to;
- Principle of re-use
 - Impact of the development on the Green Belt-
 - Impact of the development on the street scene
 - Highway Implications
 - Impact on protected wildlife
 - Impact on the amenities of neighbouring properties

Principle of re-use

- 36 The most relevant up-to-date advice for re-using rural buildings is contained within PPS7. In addition PPG2 and GB3A of the local plan set out the criteria for assessing such proposals. PPS7 states that Govt is supportive of the re-use of appropriately sited and suitably constructed buildings in the countryside, that re-use for commercial purposes is preferred, but that residential conversions may be more appropriate in some locations and for some types of building.
- 37 With regard to the above it is clear that the re-use of rural buildings in the countryside and green belt can be an appropriate form of development and is encouraged by Government, subject to the impact of the proposed use on the local environment.

Green Belt

- 38 The proposal seeks permission for the conversion of the existing building including an associated shared curtilage for the building. The site is located within the MGB where strict policies of restraint apply.
- 39 New buildings within the Green Belt are considered as inappropriate development and by definition harmful. PPG2 however does state in such locations the conversion of existing buildings can be permitted subject to satisfying a number of criteria. PPG2 accepts conversion of existing buildings subject to no greater impact on the openness, and control over extensions and new buildings. Buildings should be capable of conversion without major or substantial reconstruction and the development in keeping with the surroundings.

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- 40 Policy GB3A permits the re-use of buildings within the Green Belt providing that the proposed new use will not have a materially greater impact than the present use on the openness of the Green Belt.
- 41 Criteria 2 of policy GB3A states that buildings should be of permanent and substantial construction and capable of conversion without major or substantial reconstruction. In addition to this policy GB3A states that the conversion of existing rural buildings to dwellings will not be permitted where such building are unsuitable for conversion without re-building and/or extension, or extensive alteration.
- 42 PPS7 is also relevant to this application, it states that new house building should be strictly controlled and isolated new dwellings require special justification. In addition to this it also supports the reuse of existing buildings where this would meet sustainable development objectives. Re-use for economic development purposes will usually be preferable, but residential conversions may be more appropriate in some locations, and for some types of building. The landscape should be preserved or enhanced.
- 43 In the application case, the brick built building is considered to be of some architectural merit as it has some character/charm and the other buildings are utilitarian appearance, not uncommon to many 20th Century farm buildings. Such buildings are these are normally accepted as functional agricultural buildings required to aid agriculture despite the impact they have (in this instance) on the openness of the Green Belt. It is important to highlight that the buildings are appropriate within the Green Belt.
- 44 The first criteria is whether the new use would have a materially greater impact than the use of the present building.
- 45 As stated above notwithstanding their appearance and current form, it is important to highlight that the existing buildings are appropriate development in the Green Belt.
- 46 As stated above, it is proposed to convert the existing building to residential use. Two lean two elements are to be removed, so there will be a reduction in the overall footprint, however these elements are not considered to be suitable for conversion, given their current form.
- 47 The policy states that the building has to be of permanent and substantial construction and would be capable of conversion without major or complete re-construction.
- 48 The structural statement states the following:-
Main Barn
- 49 As stated above, the main brick built barn is a late 19th century barn building. The building is constructed from yellow stock brick with a purple slate roof.

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- 50 The structural survey concludes that the main barn structure is a well built robust structure typical of buildings of its age and type. The report confirms that once the sources of movement are have been addressed it would only require some minor straight-forward masonry repairs. The report states that the loadbearing masonry walls need to be stitched with a Helibar type repair where cracks are apparent. It is considered that the existing footings arrangements are adequate and will not require further strengthening due to the changed of use.
- 51 In view of the conclusions from the structural survey, the brick built element of this building is considered to be capable of conversion.

South extension

- 52 The report states that the existing timber structure of the southern lean to is to be retained and re-used. The infill block work will also be retained as far as is possible and insulation standards allow. The corrugated iron, plastic and fibrous cement panels cladding and roofing this structure are not fit for insulated domestic enclosure and will be replaced with a stained horizontal timber board cladding to reflect the local agricultural and domestic vernacular, which can be insulated to the required standard. This approach of highly insulated timber clad timber frame construction will also be adopted for the east extension. These two structures will be further unified with standing seam metal roofs, which will suit the lower pitch of the lean to roof and make them apiece in contrast to the materials of the original barn.
- 53 The structural survey states in relation to this element of the scheme that the existing frame will require some repair and replacement of decayed and damaged elements. In both the walls and roof, the existing framing will be augmented with additional frame members within the existing envelope to provide support at close centres for the insulation and finishes required for the domestic purposes and to suit proposed opening arrangements. All of the main existing frame elements will be retained and reused.
- 54 It also states that the ground floor level will be raised with a new slab cast on top of the existing on insulation to meet the levels within the main building.
- 55 In view of the above I consider that it would be possible to convert the south extension.
- 56 The report also sets out how the integrity of the building would be affected, after the proposed alterations had taken place and concludes that this will be acceptable. In conclusion the structural report also confirms that the existing structures to be retained are in fair condition for buildings of their age and type although they will inevitably require some minor repair and maintenance works in order to bring them up to current standards.
- 57 As stated above, it is considered that sufficient information has been submitted with regards to the brick element and rear extension to establish that these particular elements of the building can be satisfactorily converted without major reconstruction.

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- 58 In addition to the elements that are being converted the existing machinery shelter is being removed and a new element is proposed on the side of the building. The new eastern wing would measure, approximately 3.6 metres by 9.2 metres.
- 59 Policy GB3A of the Sevenoaks Local Plan, states that the conversion of existing rural buildings to dwellings will not be permitted where an extension is proposed. Given the size and scale of the new wing on the eastern elevation, it is considered that the proposal would conflict with the goals and objectives of policy.
- 60 Although it is acknowledged that some elements of the building are to be removed such as the machinery shelter and the element to the west, the current structures are deemed appropriate development in the Green Belt and so by definition are accepted agricultural development that does not harm its openness as they are intrinsic to it. There is little to be gained from taking away structures that are appropriate and potentially re-constructing new elements that are in policy terms inappropriate in the Green Belt. Proposals that involve domestic extensions would be inappropriate development in the Green Belt and therefore more harmful in principle and to openness.
- 61 In view of the above, I consider that taken as a whole, the proposal involves major reconstruction of key elements of the proposed new use through the proposed extension even though the main barn could have potential for conversion. As the submitted scheme depends on the space provided by the elements that would involve major re-construction through the proposed extension, the scheme as a whole cannot comply with the requirements of GB3A or PPG2 and is therefore inappropriate development in the Green Belt harmful to its openness.

Impact on the Openness of the site

- 62 PPG2 confirms that the most important aspect of Green Belts is their openness and the fundamental aim of Green Belt Policy is to maintain the openness of the land. It states that the open character must be maintained as far as can be seen ahead. At the same time the visual amenities of the Green Belt should not be injured by development proposals.
- 63 As stated above one aspect of a scheme like this is the impact from the creation of a residential curtilage. In some cases, it is considered that a curtilage could harm the open character of the land due the maintenance of the land which would result in a change in its character (which is considered to be harmful to the open character of the land) and the associated residential paraphernalia which results with a residential use of this nature (such as tables and chairs, washing lines, play equipment – which the council would have no control over). It is considered that the use of planning conditions would not control satisfactory control the harm.
- 64 In this particular case the building is located on a prominent corner location at the end of Stack Lane. The size of the curtilage has however been reduced in size to mitigate any visual harm. In this respect the size and shape of the curtilage is considered to be acceptable.

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- 65 The final element of the policy GB3A of the Sevenoaks District Local Plan is that the form, bulk and general design of the buildings should be in keeping with their surroundings and respect local building styles and materials. The form, bulk and general design of the buildings are in keeping with their surroundings and respect local building styles and materials.
- 66 The proposed external changes to the brick built structure are considered to be acceptable and are considered not to adversely undermine the integrity of the existing agricultural building.
- 67 The west wing is also considered on balance to be visually acceptable. The new extension would be built in different materials to the existing building and would contrast with the existing brick built structure. With appropriate material conditions, it is considered that an extension of this nature would work from a visual perspective as it would appear as separate element in contrast to the existing built structure.
- 68 I have concerns over the visual impact of the rear elevation of the building. The south extension has been designed with a number of windows and doors within it that are considered to be at odds with the character and style of the existing building. On balance given there location in the new extension at ground floor level, they are not considered to undermine the character and style of the building significantly to warrant an objection on planning grounds.
- 69 Revised plans have now been sought which reduces the number of solar panels and the number of roof lights on the rear elevation. On balance given the reduction in the number of opening and solar panels within the roof space, the proposal is considered to be acceptable. A balance has to be struck in this case, with the desirability of utilising sustainable energy and the need to maintain the character and integrity of the agricultural building. I am of the view that a balance between the number of solar panels and the visual impact of the building has been met.

Very Special Circumstances

- 70 PPG2 states that, very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The applicant refers specifically to the following:-
- The family owns substantial land in Horton Kirby, currently farmed by my mother and me in partnership. My mother is approaching 70 years old and while likely to carry on for some time will not be around forever. I believe her current plans are that she will bequeath the current farmhouse to my brother and the land to me. I hope and plan to carry on farming the land after my mother dies but to do that we need a farmhouse. I do not believe that, following any sale, a new owner or owners (likely to be a commercial landowner and/or land speculators), will consider the interests of the village in the same way we do.
 - The overall openness of the Green Belt is increased by reason of the substantial reduction in both footprint and volume of the buildings and

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structure present at the site if the development proceeds, increasing views across the Green Belt. Another way of making the same point is, in the words of paragraph 3.8 of PPG2, that the impact of the site on the openness of the greenbelt as a whole is reduced if the development proceeds. The development actually increases the openness of the greenbelt, which is the aim of the Green Belt policy.

- As well as reducing the bulk of the buildings and structures at the site, the proposals improve the appearance of an otherwise undistinguished locality by removal of ugly corrugated iron structure and reinforced concrete agricultural structures on the one hand and by and exposing the historic brick barn in the context of a sympathetic modern development on the other.
- That improvements to the overall openness and appearance in the Green Belt are capable of being very special circumstances is shown in the appeal decision for Kennels Farm, Otwood Lane, Otwood, Tandridge. In this particular case the application sought permission for the for the conversion of a disused agricultural building.
- The development if it proceeds will make a net contribution of carbon free energy to the national grid, over and above electricity consumed by the development.
- The redevelopment of the buildings for use ancillary to the family farm materially assists in securing the family farming operation (including in particular the specialised hop operation historically associated with Kent) and associated employment.

- 71 An assessment of whether these circumstances are very special, and if they are, whether they clearly outweigh the harm in principle to the Green Belt and any other harm, will be made later in this report, once all of the potential areas harm have been considered and assessed.

Affordable Housing

- 72 Policy SP3 of the Core Strategy additionally indicates that the Council will expect the provision of affordable housing in all types of residential development. In the case of development that result in the net increase of less than five units 'a financial contribution based on the equivalent of 10% affordable housing will be required towards improving affordable provision off-site'. The Council's Affordable Housing SPD gives guidance on the calculation and delivery of the necessary contribution. Policy SP3 itself is adopted for the purposes of decision making and, on several occasions, the Council has been found on appeal to correctly be giving weight to its contents.
- 73 The applicant has submitted no agreement or an affordability appraisal to establish money required for the affordable housing contribution at the current time.

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- 74 As no contribution has been offered at the time during the duration of the application I am of the view that this should form a separate reason for refusal.

Highway Issues

- 75 The access is already in situ, in view of this and the existing use of the site, I consider that there would be no adverse access issues to warrant an objection on planning grounds.

Ecological Issues

- 76 Another key issue in respect of this application is whether the activities proposed can take place without undue harm to the potential wildlife within the application site.
- 77 Section 40 of the Natural Environment and Rural Communities Act (2006) states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. Section 40(3) of the same Act also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.
- 78 PPS9 and circular 06/2005 are also critical in assessing an application of this nature. The documents relate specifically to the importance of protecting wildlife. The guidance states "that the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat".
- 79 Circular 06/2005 specifically states that "*it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted.*"
- 80 Policy NRM5 of the South East Plan 2009 and policy SP11 from the Sevenoaks Core Strategy are applicable. These policies specifically states that the Local Planning Authority will "ensure that site evaluation is undertaken to establish the nature conservation value of proposed development sites"
- 81 As KCC Ecology have confirmed that it would be appropriate in this case, if the application were to be approved, to impose a conditions requesting that a bat mitigation strategy would need to be approved by the LPA prior to works starting. In this strategy they have said that it would need to provide details of the methodology proposed to carry out the works and details of replacement roosts. In addition to this a badger mitigation strategy detailing the methodology and timing for the loss of the sett would also be required.

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- 82 In view of KCC comments, the proposal complies with the above aforementioned policies and is considered to be acceptable.

Impact on neighbouring amenity

- 83 Policy EN1 from the Sevenoaks District Local Plan states that the proposed development including any changes of use does should not have an adverse impact on the privacy and amenities of a locality by reason of form, scale, height, outlook, noise or light intrusion or activity levels including vehicular or pedestrian movements.
- 84 The nearest residential properties are 51 Forge Lane and 1 and 3 Churchill Road. There is approximately 47 metres between these and the application site. Given this distance it is considered that there would be no adverse impact to warrant an objection.
- 85 In this respect the proposals would not adversely affect that amenities of neighbouring occupiers or the street scene and I therefore consider it would comply with policy **EN1** of the SDLP.
- 86 No other properties are considered to be affected by the proposal.

Very Special Circumstances

- 87 PPG2 states that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The applicants refers to the following:-
- The family owns substantial land in Horton Kirby, currently farmed by my mother and me in partnership. My mother is approaching 70 years old and while likely to carry on for some time will not be around forever. I believe her current plans are that she will bequeath the current farmhouse to my brother and the land to me. I hope and plan to carry on farming the land after my mother dies but to do that we need a farmhouse. If we are not able to get one it we will have to reconsider our plans, and as Cllr McGarvey says a sale at some point most certainly cannot be ruled out. I do not believe that, following any sale, a new owner or owners (likely to be a commercial landowner and/or land speculators), will consider the interests of the village in the same way we do.
- 88 The personal situation of the application is acknowledged but the issues raised are not considered to be unique, or moreover, considered to overcome the harm to the openness of the Green Belt, bearing in mind the harm in principle and harm to the openness and character of the Green Belt that would be caused by this proposal, especially considering that there may be potential for the conversion of the main barn, without the need to include elements that involve major reconstruction.
- The overall openness of the Green Belt is increase by reason of the substantial reduction in both footprint and volume of the buildings and

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structure present at the site if the development proceeds, increasing views across the Green Belt. Another way of making the same point is, in the words of paragraph 3.8 of PPG2, that the impact of the site on the openness of the greenbelt as a whole is reduced if the development proceeds. The development actually increases the openness of the greenbelt, which is the aim of the Green Belt policy.

- As well as reducing the bulk of the buildings and structures at the site, the proposals improve the appearance of an otherwise undistinguished locality by removal of ugly corrugated iron structure and reinforced concrete agricultural structures on the one hand and by and exposing the historic brick barn in the context of a sympathetic modern development on the other.

89 It is acknowledged that some elements of the building are to be removed such as the machinery shelter and the element to the west, (the ground floor area of the wing is 48 metres squared). The current structures are however deemed appropriate agricultural development in the Green Belt and so by definition are accepted development that does not harm its openness as they are intrinsic to it. There is little to be gained from taking away structures that are appropriate and potentially re-constructing new elements that are inappropriate in the Green Belt. Proposals that involve major re-construction would be inappropriate development in the Green Belt and therefore more harmful in principle and to openness. The same argument can however be made for the visual impact of the proposal. The buildings are agricultural in their character and are appropriate within the landscape in which they sit, and as such I do not consider that this in itself would outweigh the harm to the Green Belt.

- That improvements to the overall openness and appearance in the Green Belt are capable of being very special circumstances is shown in the appeal decision for Kennels Farm, Otwood Lane, Otwood, Tandridge. In this particular case the application sought permission for the for the conversion of a discussed

90 The applicants have drawn attention to the following appeal decisions:-

Other appeal decision, which include:-

Application at Kennels Farm, Outwood Lane, Outwood

I have read the decision on these. It is however considered that they do not set a precedent.

For the appeal at Kennels Farm the inspector concluded that "I have little doubt that the milking barn is of permanent and substantial construction". In this case, the proposal did not involve construction of an extension, and as such the case cannot be used as a direct comparison.

91 Case law/previous decisions are not normally a very special circumstance, as it is rarely possible to replicate very special circumstances applicable

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elsewhere on a different site, in a different location, with a different set of circumstances and policies.

- The development if it proceeds will make a net contribution of carbon free energy to the national grid, over and above electricity consumed by the development.
- 92 Many applicants try to argue that the net contribution to the national grid would be a very special circumstance. As this is something that could be put forward across the District, I do not consider that it would be a very special circumstance that would overcome the harm to the Green Belt.
- The redevelopment of the buildings for use ancillary to the family farm materially assists in securing the family farming operation (including in particular the specialised hop operation historically associated with Kent) and associated employment.
- 93 As concluded with the first point the personal situation of the application is acknowledged but the issues raised are not considered to be unique, or moreover, considered to overcome the harm to the openness of the Green Belt, bearing in mind the harm in principle and harm to the openness and character of the Green Belt.
- 94 In this case I consider that the very special circumstance case presented does not overcome the harm to the Green Belt.

Other Issues

- 95 There are considered to be no other issues that need to be addressed.

Conclusion

- 96 In conclusion it is considered that the proposed development, goes beyond what is considered to be a conversion and would amount to major reconstruction due to the extension. Therefore the proposal conflicts with policy GB3A of the Sevenoaks District Local Plan, and the advice contained within PPG2 and is inappropriate development in the Green Belt. There are no very special circumstances to clearly outweigh their harm.

Background Papers

Site and Block Plans

Contact Officer(s): Vicky Swift Extension: 7448

Kristen Paterson
Community and Planning Services Director

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Link to application details:

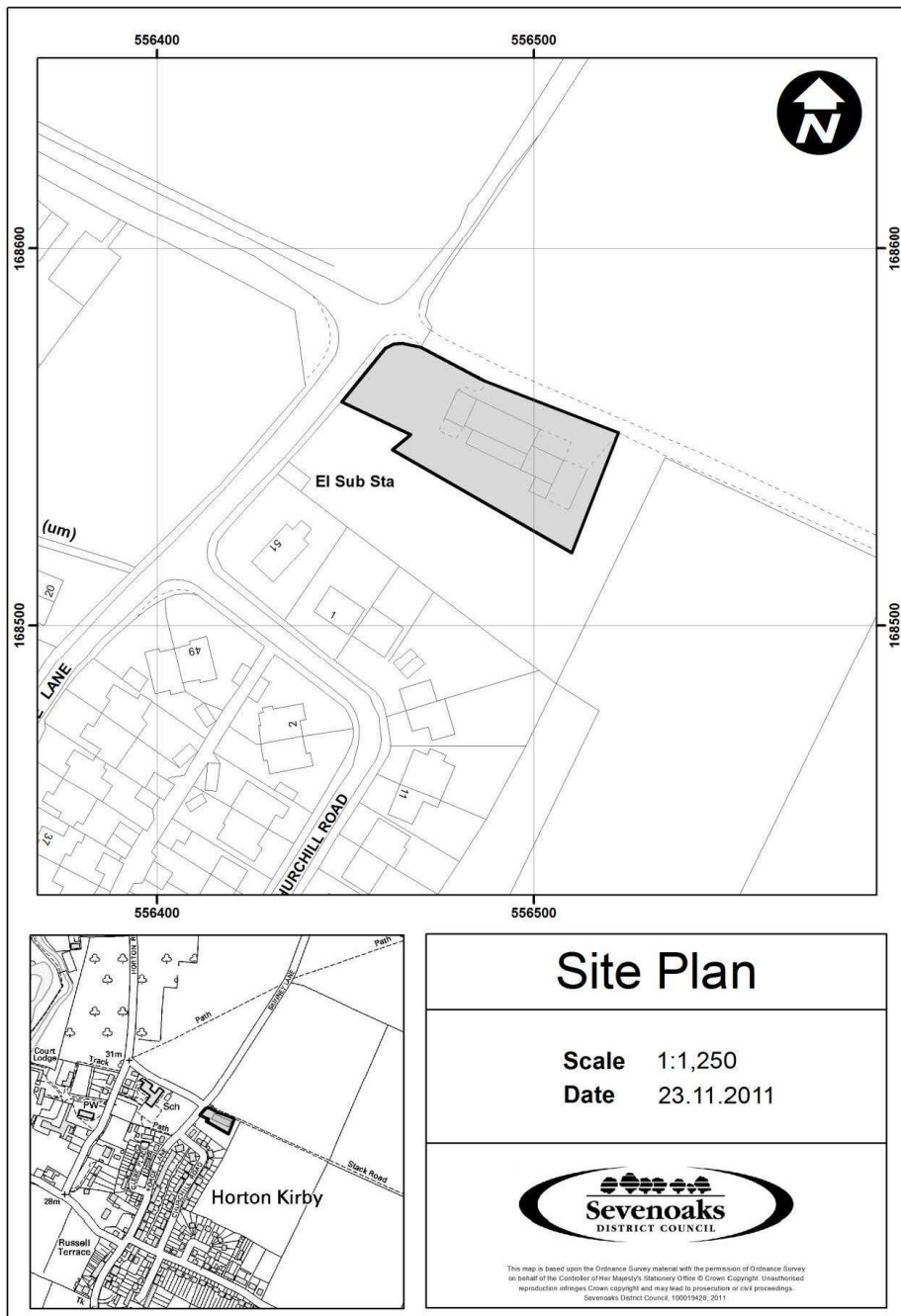
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Link to associated documents

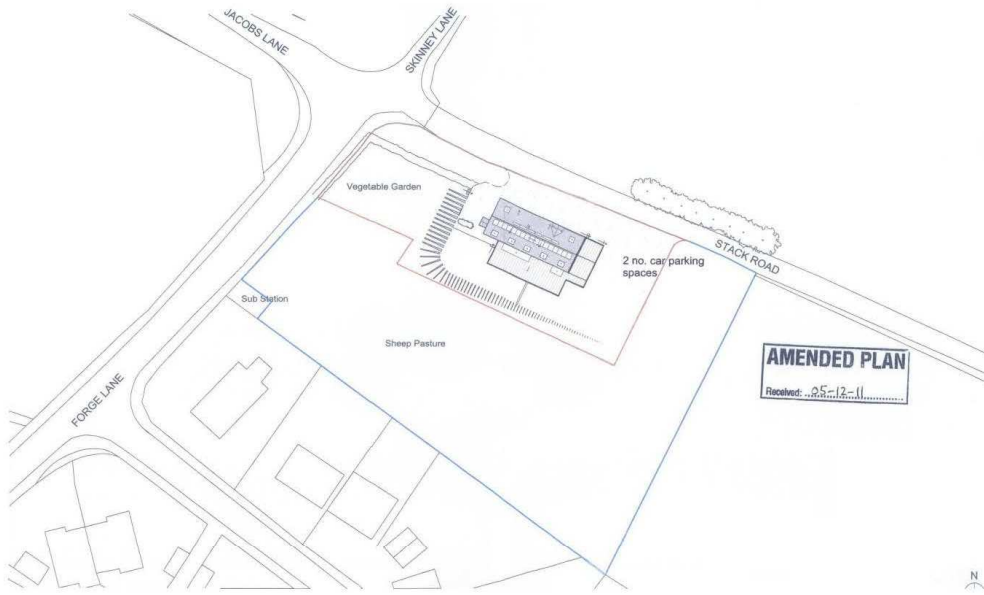
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