

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 11/03862/PLUD

Ward:
Cray Valley East

Address : Crouch Farm Crockenhill Road Swanley
BR8 8EP

OS Grid Ref: E: 549371 N: 167282

Applicant : Mr H Batchelor

Objections : YES

Description of Development:

Temporary use of part of the land as a landing strip for a Gyrocopter for no more than 28 days per calendar year (Certificate of Lawfulness for a Proposed Development)

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding
Local Distributor Roads

This application was deferred by Members at the Planning Sub Committee on 7th June in order to seek additional clarification in relation to the screening process concerning the Environmental Impact Assessment. The previous report, together with addenda, follows.

Proposal

A Certificate of Lawfulness for a Proposed Use is sought for the use of a landing strip for a period of no more than 28 days in total per calendar year. The supporting letter advises that there is no built development associated with the proposed use; however, the applicant may affix a small windsock to a wooden pallet which will be placed beside the landing strip while the gyrocopter takes off or lands, which will then be taken away again. The letter goes on to say that the grass is kept cut short in this area in any event but may be cut again if necessary before the landing strip use commences; and that the land will revert without difficulty to its "normal" agricultural use, which is for testing and calibrating farm machinery, for the rest of the time.

Location

The development proposed involves a scheme on a site of 1.2516 hectares (excluding the access track connecting it to Crockenhill Road) which forms part of existing agricultural land. The application site is located within the Metropolitan Green Belt and adjoins the B258 Crockenhill Road connecting St Mary Cray and Crockenhill Village. The site is located approximately half way between these two areas. The site comprises 200 acres of land used for arable farming, and the main buildings associated with the farm form a cluster located within a 20 metre proximity north of Crockenhill Road.

Agricultural activity has historically existed at the application site known as Crouch Farm. The application site adjoins Crouch Farm House, a Grade II listed farmhouse of early traditional framed construction which is considered to date back in parts to the Fourteenth Century and which has a shared history with the farmyard, although it is now under separate ownership.

Comments from Local Residents

Nearby owners/occupiers were notified of the application and responses, including legal representations, were received which can be summarised as follows:

- noise pollution
- proposal will have an adverse impact on the local environment and neighbouring amenity
- this along with other intended developments is turning Crouch Farm into a commercial venture where agriculture is no longer the priority
- the applicant is seeking to develop Crouch Farm through piecemeal development and through piecemeal development in circumstances where this is not appropriate
- insufficient information to support the proposal
- unlikely the strip will be used in isolation
- detailed proposals for the rest of the land required
- proposal does not fall under Class B Part 4 of the GPDO 1995 on the basis that:
 - no indication that operations are not permanent
 - adverse impact from noise
 - proposal constitutes a statutory noise nuisance
- proposal requires a comprehensive EIA screening
- application should be refused and an Article 4 direction removing permitted development provisions should be imposed
- adverse impact on neighbouring statutory listed building

In response to the above a letter has been submitted by the agents dealing on behalf of the application with and refuting a number of the points made.

Comments from Consultees

No objection raised by the Civil Aviation Authority.

Planning Considerations

This proposal needs to be specifically considered under Schedule 2, Class B of Part 4 of the General Permitted Development Order 1995 (as amended) – “Temporary Buildings And Uses”. This states that:

The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes referred to in paragraph B.2, and the provision on the land of any moveable structure for the purposes of the permitted use.

Paragraph B.2 advises that the purposes mentioned in Class B are:

- (a) the holding of a market;
- (b) motor car and motorcycle racing including trials of speed, and practising for these activities.

It is considered that there is sufficient information to determine the application.

In response to legal representation made on behalf of objectors, the following points are made in relation to the status of Certificates of Lawfulness for Proposed Use or Development under part 4 GDPO:

- a. No indication that the operations are not permanent.... use of the landing strip and access road will not be able to return to agricultural use – The terms of the application clearly state that the proposed use will only take place for no more than 28 days per calendar year and also clarify that no permanent development is proposed.
- b. Restrictions on development in a Site of Specific Interest (SSSI): SSSI's are legally protected under the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way (CROW) Act 2000 and the Natural Environment and Rural Communities (NERC) Act 2006. As the land in question is not located in an SSSI, the Local Authority's duty to consult Natural England has not been triggered. Therefore the restriction on the development in a SSSI relating to motor sports cannot be upon relied in this case to refuse the application nor can it be considered a material consideration in this particular context.
- c. Not appropriate to use CLOPUD where operations are likely to constitute statutory noise nuisance under part 3 Environmental Protection Act 1990: S.79(1)(g) of the Environmental Protection Act 1990 sets out the definition of noise nuisance (noise emitted from premises so as to be prejudicial to health or a nuisance). However, s.79(6) states that subsection (1)(g) does not apply to noise caused by aircraft other than model aircraft. Therefore, it is appropriate for the Council to determine this matter by way of a CLOPUD.

The Applicant is in fact proposing alterations which fall into the definition of an aerodrome (PPG24 defines): It is considered that the proposal does not fall within this definition nor within the more formal definition set out in s.105 Civil Aviation Act

1982 as the area of land identified as the landing strip will be in use no more than 28 days per year and does not therefore trigger the 'set apart' or 'commonly used' elements of the definition.

Environmental Impact Assessment

In addition to the above the Council has undertaken a formal Environmental Impact Assessment screening to assess whether an EIA is required. (Planning Policy Guidance 24: Planning and Noise has also now been superseded by the National Planning Policy Framework.)

The development proposed involves a scheme on a site of 1.2516 hectares (excluding the access track connecting it to Crockenhill Road). In examining whether the proposal is EIA development it has been necessary to examine whether the proposal falls within the description of paragraph 10(b) "Infrastructure Projects" of Column 1 of Schedule 2 to the Regulations and exceeds the threshold in column 2 of the table in Schedule 2 of the Regulations.

The Council has compared the examples given under the heading contained in paragraph 10(b) to the current application (subject to an Environmental Impact Assessment). The Council has not been persuaded that this application is comparable to the list of examples provided, and therefore the Council is of the view that this application cannot be classed as an urban development project, within the meaning of the regulations.

In determining that this application does not require an Environmental Impact Assessment the Council has taken into consideration the wording of the EIA Directive which states that its scope is 'wide and very broad' but having looked at the European Commission's Interpretation of Certain Project Categories of Annex I and II of the EIA Directive Urban Development Projects (2008-022) (pages 34-35) this application falls outside of the scope of the urban development project category.

It has also been necessary to examine whether the proposal falls within Schedule 2 para 10(e) – "construction of airfields". The application before the Council is not for the construction of an airfield therefore the Council is of the view that this application does not fall within this definition.

As regards Schedule 2 paragraph 13, "Changes and Extensions" the application before the Council is not for a change to or extension of development of a description listed in Schedule 1 or of a description listed in paragraphs 1 to 12 of column 1 of Schedule 2 or development of a description mentioned in Schedule 1 undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years. Therefore this application does not fall within this definition.

Therefore, although the landing strip is over one hectare the description of the application does not fall within the description of development set out in paragraphs 10(b) and (e) of Schedule 2. As such, the applicable thresholds and criteria cannot be used in this circumstance.

Even if the proposal was considered to fall within Schedule 2 (which this Council does not consider it does), it would not be likely to cause significant effects on the environment by virtue of factors such as its nature, size or location, having regard to the Selection Criteria in Schedule 3 of the Regulations and the terms of the European Directive.

Planning History

A number of planning applications have been submitted in relation to this site. Under application ref. 05/01095, planning permission was granted for the creation of new farm access further to the west, together with an associated driveway and replacement field entrance. Under ref. 07/01466, planning permission was granted for a replacement agricultural building.

Under application ref. 10/00211, permission was sought to convert three agricultural buildings within Crouch Farm to B1 business use and B8 storage use with ancillary car and van parking. Under ref. 10/01989, permission was sought to change the use of a single agricultural building (Building A) from agricultural use to Class B1 business use with associated parking. Both these 2010 applications were refused by the Council but allowed at appeal. A further application to vary hours of operation was refused by the Council and dismissed at appeal (ref. 11/01984).

Conclusions

The evidence submitted by the applicant and third party correspondence has been examined from a legal perspective. It is advised that there is sufficient evidence to demonstrate that the proposal constitutes permitted development under Class B of Part 4 of the Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Background papers referred to during production of this report comprise all correspondence on file ref. 11/03862, and other cases set out in the Planning History section above, excluding exempt information.

RECOMMENDATION: CERTIFICATE BE GRANTED

- 1 The proposal constitutes permitted development under Class B of Part 4 of the Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Application:11/03862/PLUD

Address: Crouch Farm Crockenhill Road Swanley BR8 8EP

Proposal: Temporary use of part of the land as a landing strip for a Gyrocopter for no more than 28 days per calendar year (Certificate of Lawfulness for a Proposed Development)

