

Section '4' - Applications recommended for REFUSAL or DISAPPROVAL OF DETAILS

Application No : 15/01932/PLUD

Ward:
**Chelsfield And Pratts
Bottom**

Address : Knockholt Farm New Years Lane
Knockholt Sevenoaks TN14 7PQ

OS Grid Ref: E: 546427 N: 160516

Applicant : Mr Alan Howell

Objections : YES

Description of Development:

Change of use and operational development to create Class C3 dwellinghouse of 223.3sqm floorspace with residential curtilage of 223.3sqm in accordance with details submitted under ref. 14/04750/FLXAG
CERTIFICATE OF LAWFULNESS FOR A PROPOSED CHANGE OF USE AND DEVELOPMENT

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding
Sites of Interest for Nat. Conservation

Proposal

This application is a for a certificate of lawfulness for proposed use or development for change of use and operational development to create Class C3 dwellinghouse of 223.3sqm floorspace with residential curtilage of 223.3sqm in accordance with details submitted under ref. 14/04750/FLXAG at a site recently named Knockholt Farm, New Years Lane, Knockholt.

The application relates to a partially constructed barn which was granted prior approval for siting and appearance in 2012 for agricultural purposes. The application requests that the Council grant a lawful development certificate to confirm that the barn structure can be altered and used as a dwellinghouse as proposed in a subsequent prior approval application in 2015.

Consultations

Representations have been received from the Orpington Field Club, who object to the proposal on its planning merits (which are unable to be considered in the determination of this application)

Sevenoaks District Council have no objection

The Pratts Bottom Residents Association consider that the application should be refused as there is no agricultural use at the site and therefore the question of whether the decision was issued after 56 days is irrelevant.

Planning Considerations

The application falls to be considered under Section 192 of the Town and Country Planning Act and is a legal decision regarding whether the proposed use / development would be lawful.

Planning History

06/00399/OUT Erection of four detached buildings for residential horticultural therapy training facility including student accommodation and staff dwelling and classroom and barn and formation of car park and access road
OUTLINE APPLICATION

Refused - inappropriate development harmful to the Green Belt 22.03.2006

12/00858/AGRIC Agricultural barn for the storage of agricultural machinery, tools and animal feed (determination as to whether prior approval required for siting, design and external appearance) (28 DAY CONSULTATION UNDER PART 6 OF THE GPDO 1995 (AS AMENDED))

Refused - inappropriate siting 12.04.2012

12/01898/AGRIC Agricultural barn for the storage of agricultural machinery, tools and animal feed (determination as to whether prior approval required for siting, design and external appearance) (28 DAY CONSULTATION UNDER PART 6 OF THE GPDO 1995 (AS AMENDED))

Approved 10.07.2012

12/03525/AGRIC Polytunnel (28 DAY CONSULTATION UNDER PART 6 OF THE GPDO 1995 (AS AMENDED))

Approved 04.12.2012

14/04750/FLXAG Change of use of Agricultural Building to Class C3 dwellinghouse (56 day application for prior approval in respect of transport and highways, contamination and flooding risks under under Class J of Part 3 of the GPDO).

Refused - insufficient evidence of agricultural business 10.02.2015

Analysis

An agricultural barn was granted prior approval in 2012 under reference 12/01898/AGRIC on the basis of a speculative business plan. Although procedurally there is no requirement for the Local Planning Authority to establish whether there is an agricultural trade or business at the site when considering a prior approval application, government advice at the time was that this was good practice. Consequently there was considerable correspondence during the course of this application between the Council and the applicant's agent regarding the site and eventually the Council's agricultural consultant agreed that evidence submitted was sufficient to demonstrate that an agricultural business was being set up.

Prior approval was granted for an agricultural barn and polytunnel (the latter not commenced), however it is significant that the Council's decision does not provide legal confirmation that a proposal complies with all conditions or limitations of the Class of permitted development in question, but is simply an approval of siting and appearance.

The barn has been partially constructed and consists of a steel frame and corrugated sheet roof. Temporary fencing has been erected around the perimeter and a small amount of equipment and materials are being stored under the roof (see photographs on the application file). The building has no walls or floor and the applicant has not confirmed substantial completion of the building as required by Part 6 Class A Condition A.2(7) of the Town and Country Planning (General Permitted Development) Order.

An application under Part 3 Class MB (now Class Q) of the Town and Country Planning (General Permitted Development) Order [the GPDO] was submitted for prior approval for the conversion of the partially completed barn to a dwellinghouse (reference 14/04750/FLXAG). In accordance with the legislation the Council's initial assessment of the application led to the decision that there was insufficient evidence to demonstrate an agricultural trade or business at the site and the application was refused for that reason.

The applicant considers that the change of use to a dwellinghouse would be lawful and has submitted reasons and evidence to support this. The Council has also made a more detailed assessment of the situation than that required by the prior approval process in order to provide a decision as to whether the works would be lawful. The relevant points are set out below:

1. Whether the decision for prior approval application 14/04750/FLXAG was issued to the applicant outside of the 56 day statutory period and a default consent exists.

The applicant considers that the application was submitted on 5th December 2014 and the fee paid the same day. Because the decision was issued on 10th February 2015 it is contended that it was not issued within the 56 day period.

The GPDO requires a number of items to accompany an application for prior approval under Class MB. These include *"a written description of the proposed*

development" at N(2)(a). The applicant in this case altered the written description of the proposed development in an email sent on 17th December 2014 stating that instead of the roof being replaced with tile as proposed in the original application documents, it would now be retained. This is clearly a change to the written description of development and it would not be reasonable to expect the Council to entertain such a change at any point during the life of a time limited application, since it necessitates reconsideration of the proposal against the regulations. It is clear that the 17th December was the date when the applicant therefore provided the complete written description of development and this is the date from which the Council validated the application, therefore issuing the decision on 10th February by email prior to the expiry of the 56 day period.

Although the Council's correspondence referred to the date of receipt as 8th December this was the original date of receipt - it was clear that in the same correspondence the 56th day was stated as 11th February which reflected the late submission of the description of development.

The decision was therefore issued within the 56 day period and the application refused, therefore the applicant cannot benefit from a default approval as claimed.

2. Whether the works to convert the building to a dwellinghouse exceed that permitted under Class MB

Class MB permitted:

(a) a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and
(b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

Development is not permitted by Class MB for various reasons including:

(g) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point; and
(i) the development under Class MB(b) would consist of building operations other than—
(i) the installation or replacement of—
(aa) windows, doors, roofs, or exterior walls, or
(bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and
(ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph MB.1(i)(i);

In this case the building has not yet been completed in accordance with the details submitted for the agricultural prior approval and consists solely of a steel frame and corrugated roof. A summary of the works required was provided in a letter from Ashborn Associates dated 16th December 2014. Taking into account the comments made in the Ashborn Associates letter it is apparent that the works required to form a dwelling will go well beyond the building operations set out in

MB.1(i)(1) as they will involve more than the installation or replacement of windows, doors, roofs or exterior walls, in particular given that the building has no floor at all and an additional first floor is proposed.

The applicant has confirmed that no further survey or details of construction requirements has been sought. The National Planning Practice Guidance states as follows: *"Building works are allowed under the change to residential use. The permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However, it recognises that for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted. The right allows for the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right."*

The partially completed building is clearly some way from being able to function as a dwelling in accordance with the practice guidance, and there will clearly be new structural elements required and these will go beyond the building operations permitted.

3. Whether the agricultural activity at the site is an agricultural trade or business

The relevant date for the existence of an agricultural trade or business is 20th March 2013. Although the Council acknowledged the business plan submitted with the agricultural prior approval in 2012, the existence of an agricultural trade or business has not been considered since that time and there was only a plan, and not a trade or business at the site. The business was speculative and would have needed to have been properly established in order that the site could benefit from the relevant permitted development rights.

The evidence submitted confirms that the applicant is registered with the Rural Payments Agency, and in an email dated 27th September 2015 he confirms *"Like many other farmers I run the business as a sole trader, trading in my name. Consequently there is no company and so no company number. As set out in the LDC application I have been registered with the Rural Payments Agency since 19th October 2011. The business income has so far been principally from selling wethers whilst building up the breeding flock. Consequently whilst I work at the 30 acre farm every day the farm income has been rising steadily. The Council has been provided with a considerable number of receipts and invoices. Because of the size of the business I have not previously needed to have trading accounts drawn up. My income is now running at about £15,000 pa which is around the average agricultural worker's pay, illustrating the success of the farm."*

A number of receipts and invoices have been submitted with the application. Almost all relate to items purchased for the site such as animals, fencing, veterinary products etc. There is one sales related document submitted with the application dated 17/10/2014 in relation to 10 sheep. No accounts of any type have been submitted. No further evidence has been produced to support the above statement. There is no other evidence at all submitted related to sales or income, and there is considerable doubt as to whether the activity at the site (in particular at the required date of 20th March 2013) is or was an agricultural trade or business. It would appear that the keeping of animals at the site is more of a hobby rather than a business.

Although the site may be in use for agriculture as set out in Section 336 of the Town and Country Planning Act 1990, regard must be had to the definition of an agricultural building in the GPDO which is "*a building used for agriculture which is so used for the purposes of a trade or business*" and '*agricultural use*' refers to such uses. The activity at the site is clearly very low key, and there is insufficient evidence to conclude that there is an agricultural trade or business at this site on the required date.

4. Whether the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building

The sketches submitted with the prior approval application show that the steel frame would be clad in wood and skylights appear to be inserted into the roof. It would appear that these could exceed the external dimensions of the existing building. This is not permitted by virtue of condition MB.1(g).

Conclusion

Even if the applicant is correct in his assertion that the decision was issued outside of the statutory period, this does not mean that the works are automatically permitted development, they would also need to comply with all of the other conditions and limitations of Class MB (now Class Q), and the information above makes clear that for a number of reasons they do not.

In summary, having considered all of the available evidence, the Council is not satisfied that the partially constructed barn would benefit from permitted development rights under Class MB (or replacement Class Q) of the GPDO to be converted into a single dwellinghouse for all of the above reasons. It is therefore recommended that the certificate be refused.

RECOMMENDATION: APPLICATION BE REFUSED

The reasons for refusal are:

The change of use and operational development to convert the building to a dwellinghouse are not lawful as the proposal would not comply with the conditions and limitations of Class MB (now Class Q) of Part 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (now 2015)