

**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 was originally on the agenda for Plans Sub Committee on 22<sup>nd</sup> October 2015 but was withdrawn from the agenda by the Chief Planner in order to seek further legal advice on the application. The report has been revised below to accord with the further advice.

This application is a for a certificate of lawfulness for proposed use or development for change of use and operational development to create a 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 (not that it was established).

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. Although further information was submitted on 17<sup>th</sup> December 2014, including a change to the description of some of the works, on balance it is considered that this submission does not alter the original validation date of the application taking into account the specific requirements of the GPDO, and that the application was valid on the date of original submission, which was 8<sup>th</sup> December 2014.

In the validation letter, the 56th day was stated as 11<sup>th</sup> February which reflected the late submission of the description of development, however the Council is advised that the decision was not issued within the 56 day period since contrary to understanding at the time, the late submission did not delay the validation date, and the application was therefore not refused within the required period, and the applicant may benefit from a default approval of the prior approval application as claimed in accordance with the submitted details.

## **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. No information has been submitted to address this point despite this report being previously in the public domain from its original inclusion on the agenda for 22<sup>nd</sup> October.

### **3. Whether the agricultural activity at the site is an agricultural trade or 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 relevant date for the existence of an agricultural trade or business is 20<sup>th</sup> 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 27<sup>th</sup> 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 or bank statements 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 some doubt as to whether the activity at the site (in particular at the required date of 20<sup>th</sup> March 2013) is or was an agricultural trade or business.

This is a difficult point to determine as there is no statutory test for what constitutes an "agricultural trade or business". Despite the unexplained gaps in information provided (e.g. no trading accounts or bank statements) the Council does not have any positive evidence to show that there is not an agricultural trade or business at the site, and there was a business plan submitted prior to the submission of this application in 2012 which appeared sound.

#### **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). The applicant has had the opportunity to address this and other points raised in the published report from 22<sup>nd</sup> October committee, but has not. However, at this stage it is not clear that this is a reason to refuse the application.

#### **Conclusion**

On balance, it does appear that the applicant is correct in his assertion that the decision was issued outside of the statutory period, however 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 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 the above reasons. It is therefore recommended that the certificate be refused.

**RECOMMENDATION: APPLICATION BE REFUSED**

**The reasons for refusal are:**

- 01 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)**