

SECTION '2' – Applications meriting special consideration

Application No : 16/02897/RECON

Ward:
Darwin

Address : Yellow Barn Holwood Farm New Road
Hill Keston BR2 6AB

OS Grid Ref: E: 542431 N: 162918

Applicant : Mr Gary Mercer

Objections : YES

Description of Development:

Removal of condition 3 and 10 of planning permission reference 15/03635/FULL3 concerning the removal of all permitted development rights and the restriction of the A3 use (Restaurant and Cafe) solely in connection with Holwood Farm Shop Ltd

Key designations:

Biggin Hill Noise Contours
Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding
Smoke Control SCA 24

Proposal

This application seeks the removal of the following conditions which were imposed in connection with application reference 15/03635 relating to the enlargement of the existing farm shop to form a butchery counter and preparation area, and the enlargement of the first floor mezzanine area to create a restaurant:

No 3: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending revoking and re-enacting this Order) all permitted development rights are hereby removed from the site. The proposed development shall be completed as set out in the approved drawings and no changes to the scheme shall be undertaken without the approval in writing of the Local Planning Authority.

Reason: In order to ensure that the impact of any further development at the site can be properly assessed by the Council to ensure that the interests of the Green Belt and local residents can continue to be protected and to comply with policies BE1 and G1 of the Unitary Development Plan and the National Planning Policy Framework.

No 10: The A3 use hereby granted planning permission shall be carried out only by Mr Gary Mercer and/or Ms Sarah Clout of Holwood Farm

Shop Limited and by no other person without the agreement in writing by the Local Planning Authority.

Reason: The acceptability of the A3 use in this location is linked to its association with Holwood Farm Shop and therefore a personal permission has been imposed to ensure that should the circumstances change, the impact of a more intensive commercial operation on the Green Belt and surrounding residential amenities can be properly assessed, and in order to accord with policies BE1 and G1 of the Unitary Development Plan.

The application is accompanied by a supporting statement.

Location

The application site is located in the Green Belt and occupies a corner plot between Shire Lane and New Hill Road within the curtilage of Holwood House Farm, Downe. Holwood Farm lies to the south east of the junction of Shire Lane and New Road Hill.

Consultations

Downe Residents' Association (DRA) - Support for Bromley Council's decision removing all development rights. Permission has been granted to extend the premises and it often occurs that permitted development rights are removed following extensions to prevent overdevelopment of the site. We do not see why an exception should be made in this instance. Support the condition that no other person without written agreement from Bromley Council should be allowed to carry out the A3 use. The application should be refused.

A statement of support was received from a Bromley resident on the basis that the proposal would be of benefit to the local community.

Comments from Consultees

No technical Highways objections were raised.

Planning Considerations

The application falls to be considered with regard to the following UDP policies:

- T3 Parking
- BE1 Design of new development
- BE2 Mixed use developments
- BE3 Buildings in rural areas
- G1 The Green Belt
- G10 Development Related to Farm Diversification
- EMP5 Development outside business areas

The National Planning Policy Framework (NPPF) and London Plan also constitute important policy considerations. The National Planning Practice Guidance is also of relevance in so far that it conveys the six conditions tests.

Planning history

The application site is the site of a former Farm and Dairy business which ceased operation in September 2006. Since then a number of planning permissions have been granted. The most relevant application to the current application proposal is:

10/01251 - planning permission was granted for the conversion of the farm buildings into 1 four-bedroom dwelling with office and 2 three-bedroom dwellings with 6 car parking spaces, together with the conversion of a barn into a farm shop (Class A1) and 20 car parking spaces with associated landscaping and enclosures. The works also involved the demolition of a large Atcost barn and hay barn.

13/01375 - approval granted for variation of condition 2 (opening hours) of application reference 10/01251 to allow opening hours on a Saturday of 09:00 - 18:30 and Sundays of 10.00:17.30.

15/03635 - planning permission granted for conversion and enlargement of existing farm building into butchery counter and butcher preparation room; addition of mezzanine floor to existing coffee shop to be converted to Class A3 (Restaurant) Use, conversion of remainder of the building into 3 bedroom dwelling; and associated elevational alterations and provision of extended fire escape staircase.

Other relevant application are briefly summarised below:

06/00051 - Planning Permission was granted for a replacement light industrial workshop.

00/00620 - Planning Permission was granted for a change of use of poultry building from agricultural use to light industrial workshop.

06/03484 - Planning Permission was granted for a change of use of 3 existing site buildings to Class B1(c) / B8 uses with associated parking.

06/04162 Planning Permission was granted for alterations to existing building (3) to re-construct walls to eastern and western elevations.

06/02586 planning permission was granted for a conversion of farmhouse into three bedroom flats/expansion of existing laundry cottage to form two bedroom dwellings plus conversion of former calf sheds to form three bedroom dwelling and stables, grooms quarters and dairy to form four bedroom dwelling with office and 17 car parking spaces with associated landscaping and enclosures. An extension of time for this implementation of this proposal was granted under Ref: 10/0128.

Conclusions

In assessing the merits of this application, in the first instance it is necessary to explore the planning history of this site, in particular the planning permission originally granted for the farm shop under reference 10/01251, and the more recent permission granted under reference 15/03635 for the enlargement of the shop to provide a butchery counter and restaurant. Secondly, it is necessary to assess the reasons for the imposition of the two disputed conditions.

Background

Under reference 10/01251 planning permission was sought for a farm shop; the accompanying Design and Access Statement advised that the proposal would aim to "provide a retail food outlet and food that is; of known provenance, locally produced or distributed, value for money ... produced or distributed by cooperatives, worker-managed businesses, small industries and cottage businesses where possible/ appropriate." The existing farm shop began operating in 2012. Under reference 15/03635, the applicant submitted a very special circumstances case for the expansion of the butchery element of the business, which indicated that the proposal would enhance the retail offer, provide jobs (1.5 FTE), and contribute to the local economy. The Council concurred.

In respect of the extension to the existing café to form an A3 restaurant use (to provide hot breakfasts and lunches), the first floor level of the extension would provide a new kitchen area with an additional 14 covers. Whilst the mezzanine would be entirely contained within the existing building and the restaurant would not operate in the evenings, concerns were raised about the possibility that the business could be sold at some time in the future and that a future operator could seek to extend the hours of operation. To that effect, the Council imposed Condition 10 restricting the operation of the restaurant to the applicants who also operated the ground floor farm shop. This was in addition to Condition 4 which stated that the use could not operate before 09.00 and after 18.30 Monday to Saturday, nor before 10.00 and after 17:30 on Saturdays.

The committee report concerning application reference 15/03635 also noted that some concerns had been expressed about the future of the site if it were to be sold, and the risk that if a more intensive commercial operation took over it would have the potential to have a greater impact on local residential amenities and the Green Belt. It was noted that if this situation did arise, some changes would be possible under permitted development that the Council would have no control over. Whilst it was concluded that this application proposal met the relevant policy tests, in order to ensure that the Council maintained sufficient control over the site in the long term in order to protect the interest of local residents and the Green Belt, all permitted development rights were removed from the site.

Conditions tests

Paragraph 203 of the National Planning Policy Framework states: "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions". Paragraph 206 of the National

Planning Policy Framework states the planning conditions should only be imposed where they are:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise;
6. reasonable in all other respects.

In respect of Condition 3 regarding the removal of all permitted development rights, the General Permitted Development Order enables various works to be undertaken to both commercial and residential properties, under Schedule 2, Part 1 (Development within the curtilage of a dwellinghouse) and Part 7 (Non-domestic extensions, alterations, etc). The imposition of this condition was to prevent an undesirable intensification in the use of the site, including a potentially more intensive commercial operation and enlargement of the existing structures. In effect, the enlargement of the existing commercial unit was deemed acceptable on the basis that any further development at the site should be properly assessed by the Council to ensure that the interests of the Green Belt and residential amenity could continue to be protected.

The wording of Condition 3 serves to removal all permitted development rights in respect of both the commercial and residential elements permitted under reference 15/03635. Whilst the restriction of certain permitted development rights is considered necessary and relevant to planning and the development permitted, it is considered that the wording of the condition could be made somewhat more precise given residential/commercial split which exists. To this effect, it is considered that:

- (a) in respect of the residential element, permitted development restrictions should not apply to the erection of new buildings, structures, or the erection of external walls or enclosures within its curtilage; and
- (b) in respect of the commercial element, all permitted development rights should continue to be maintained in view of the special local nature of the use.

In respect of Condition 10, rather than restricting the use to the current operators of the site, it is considered that the wording of this condition should be amended to take account of the fact that, whilst the operators could well change in the future, the Council could more reasonably condition the sort of use which occurs within the commercial element so that it remains consistent with the original objectives set out by the applicant and endorsed by the Council in its granting of planning permission for this local business. This would be on the following terms:

The premises shall be used as a ground floor farm shop incorporating a butchery and green grocery and ancillary first floor restaurant, and for no other purpose (including any other purpose in Classes A1 or A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). The development shall not be carried out otherwise than in complete accordance with the plans set out in Drawing No PROP-01, Rev 3 of

application reference 15/03635/FULL3- unless otherwise agreed in writing by the Local Planning Authority.

Taking account of the above, it is concluded that the subject conditions should be varied, rather than removed.

RECOMMENDATION: PERMISSION

Subject to the following conditions:

- 1 The development to which this permission relates must be begun not later than 26th May 2019.**

Reason: Section 91, Town and Country Planning Act 1990.

- 2 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority.**

Reason: In order to comply with Policies BE1 and G1 of the Unitary Development Plan and in the interest of the visual and residential amenities of the area.

- 3 3. (a) In respect of the residential dwellinghouse permitted under reference 15/03635/FULL3, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no buildings or other external structures, including external enclosures of any kind shall be erected or made within its curtilage without the prior approval in writing of the Local Planning Authority (b) in respect of the commercial element, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending revoking and re-enacting this Order) all permitted development rights are hereby removed from the site. The proposed development shall be completed as set out in the approved drawings and no changes to the scheme shall be undertaken without the approval in writing of the Local Planning Authority.**

Reason: In order to ensure that the impact of any further development at the site can be properly assessed by the Council to ensure that the interests of the Green Belt and local residents can continue to be protected and to comply with policies BE1 and G1 of the Unitary Development Plan and the National Planning Policy Framework.

- 4 The use shall not operate before 09:00 and after 18:30 Monday to Saturday, and before 10:00 and after 17:30 on Sundays.**

Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the amenities of the area.

- 5 Before commencement of the use of the land or building hereby permitted parking spaces and/or garages and turning space shall be completed in accordance with the approved details and thereafter shall be kept available for such use and no permitted development whether permitted by the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any Order amending, revoking and re-enacting this Order) or not shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages.**

Reason: In order to comply with Policy T3 of the Unitary Development Plan and to avoid development without adequate parking or garage provision, which is likely to lead to parking inconvenient to other road users and would be detrimental to amenities and prejudicial to road safety.

- 6 The curtilage of the dwelling hereby permitted shall be implemented as shown on the drawing (Ref: SITE-01 Rev 4) and shall not be altered at any time without prior approval in writing by, or on behalf of the Local Planning Authority.**

Reason: In order to comply with policies T15 and G1 of the Unitary Development Plan and to ensure that no encroachment of the Green Belt occurs.

- 7 The premises shall be used as a ground floor farm shop incorporating a butchery and green grocery and ancillary first floor restaurant, and for no other purpose (including any other purpose in Classes A1 or A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). The development shall not be carried out otherwise than in complete accordance with the plans set out in Drawing No PROP-01, Rev 3 of application reference 15/03635/FULL3 - unless otherwise agreed in writing by the Local Planning Authority.**

Reason: To protect the intrinsic local nature of the use and to ensure the impact of an alternative and potentially more intensive commercial operation at the site can be properly assessed, in order to accord with policies BE1 and G1 of the Unitary Development Plan and the National Planning Policy Framework.