

**PLANNING COMMITTEE – 13 APRIL 2023****PART 2**

Report of the Head of Planning

**PART 2**Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 22/502692/FULL</b>		
<b>APPLICATION PROPOSAL</b> Section 73 - Application for minor material amendment to approved plans condition 2 (to allow an increase in size and relocation of the building within the site) pursuant to 19/500224/FULL for - Erection of a single storey storage building.		
<b>ADDRESS</b> Land North of Perry Leigh Grove Road Selling Kent ME13 9RN		
<b>RECOMMENDATION</b> Approve, subject to conditions		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Objection		
<b>WARD</b> Boughton and Courtenay	<b>PARISH/TOWN COUNCIL</b> Selling	<b>APPLICANT</b> Mr Brian Macey <b>AGENT</b> VLH Associates
<b>DECISION DUE DATE</b> 17/10/22	<b>PUBLICITY EXPIRY DATE</b> 02.01.2023	<b>CASE OFFICER:</b> Alice Reeves

**Planning History**

19/500224/FULL

Erection of a single storey storage building.

Approved Decision Date: 30.04.2019

19/503507/LDCEX

Lawful Development Certificate (Existing) for a mixed-use comprising of storage and equestrian, including use of existing building for stabling and storage, and outside storage of containers.

Refused Decision Date: 07.05.2021

17/504527/FULL

Retrospective planning application for the use of land for storing 15 storage containers.

Refused Decision Date: 16.11.2017

16/502524/LDCEX

Lawful Development Certificate (Existing) for use of land for storage of pallets.

Approved Decision Date: 09.03.2017

**Appeal History:**

18/500093/REF

Retrospective planning application for the use of land for storing 15 storage containers.

Dismiss or Dismiss -Notice Upheld/Varied Decision Date: 12.12.2018

21/500122/ENF

Appeal against Enforcement Notice: Without planning permission the material change of use of the Land from the keeping and grazing of horses to a mixed use of the Land for the keeping and grazing of horses and the stationing of storage containers.

Appeal In Progress

## 1. DESCRIPTION OF SITE

- 1.1 The site is a large field within the Kent Downs Area of Outstanding Natural Beauty (AONB), which has been divided into smaller enclosures for the keeping and grazing of horses. On the eastern side of the field there is a long line of steel containers, 15 in total, with the line broken by an established small timber stable building, which appears to be in need of repair.
- 1.2 There are wooden pallets stacked on the site close to the site entrance. A Lawful Development Certificate for the use of a small part of the land for storage of these pallets was granted under reference 16/502524/LDCEX.
- 1.3 In 2017, a retrospective planning application for the use of land for storing the 15 storage containers was refused by the Council (17/504527/FULL) and dismissed at appeal (APP/V2255/W/18/3200455). The refusal decision was accompanied by the following informatives;  
  
*Informative(s):*  
  
*(1) The applicant is encouraged to explore the possibility of replacing the containers with a small, well-designed agricultural building, and to seek pre-application advice regarding same from the Local Planning Authority.*  
  
*(2) The Council's decision means that the containers continue to represent unauthorised development and the applicant is urged to remove the containers from the site without delay. The Council will not hesitate to take formal enforcement action if the containers are still in place after the end of December 2017.*
- 1.4 The applicant at that time argued that the containers were to provide secure storage for materials associated exclusively for the maintenance of the stable and livery facilities and the surrounding land; such materials previously being stored outside until becoming vulnerable to theft. The containers were said to contain tractors, tools, diesel, racking, stable related materials and crates used for repair. The Inspector found the containers incongruous within the AONB, and he saw no reason why the contents could not be housed in a building of more sympathetic design.
- 1.5 An application for a storage building (19/500224/FULL) which would house a number of storage containers in the north east corner of the site was submitted to the Council shortly after the appeal and was approved with strict conditions that no storage containers which are not housed inside the building should remain on site once the building was completed. Whilst excavations for the concrete pad have taken place and as a result the planning permission has been commenced, no other works have been undertaken to erect the storage building.

- 1.6 An enforcement notice has been served for the removal of the containers and an appeal has been lodged with the Planning Inspectorate. The Inspectorate has determined that the appeal should be dealt with by means of a Public Inquiry but no communication from the Inspectorate has been received with regards to a proposed date.

## **2. PROPOSAL**

- 2.1 This application seeks planning permission to vary condition 2 (approved drawings) pursuant to approved application 19/500224/FULL. These changes include the following:

- Increase the approved building by 4m in length; 1m in depth and 1.1m in height;
- Increase of doors from 4 to 10 to allow easier siting and access of the storage containers within the building;
- Proposed building to be sited 0.6m away from the previously approved location;
- Removal of approved earth banking around proposed building.

- 2.2 The initial drawings also sought a change in wall covering from timber weatherboarding to metal sheet cladding and metal up and over doors, however, Officers requested this was amended back to timber weatherboarding and timber up and over doors and revised drawings were received on this basis. The roofing material would remain as approved which is metal sheeting.

- 2.3 The storage containers are proposed to be sited within the building to add to the security of the site.

## **3. PLANNING CONSTRAINTS**

Area of Outstanding Natural Beauty KENT DOWNS

Potential Archaeological Importance

## **4. POLICY AND CONSIDERATIONS**

**Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017**

**ST3** (Swale Settlement Strategy)

**CP4** (Design)

**DM3** (The rural economy)

**DM14** (General development criteria)

**DM24** (Valued landscapes)

## **5. LOCAL REPRESENTATIONS**

- 5.1 The Parish Council objected to the initial submission for the following summarised reasons:

- Almost no work has taken place and as such should be a new application should be submitted;

- The previous permissions should be revoked as the applicant has not shown any special circumstances, the building does not serve a public interest and should not be built on agricultural land;
- No justification for allowing an increase in size of the building;
- Strongly oppose removal of landscaping as great emphasis was made in 2019 permission on the importance of visual amenity due to location on the edge of the AONB;
- All previous conditions should continue to apply;
- Proposal for storage of fuel is alarming;
- Applicant has shown scant regard to planning rules and hasn't responded positively to assistance given by Swale Borough Council to help mitigate the impact of the storage containers;
- Whatever permissions are given for this application it is asked that officers ensure the work is completed within the timescales given and that all conditions are adhered to.

5.2 The Parish Council comments on the amended plans were the same as submitted above.

5.3 Three letters of objection were received from neighbours before the amendments were received and can be summarised as follows:

- The original barn design and location was inconspicuous with traditional materials and colours – timber doors and cladding were to be screened with banks of earth which would provide screening from the footpath;
- The containers on site remain an eyesore;
- Do not consider this a minor amendment;
- The development has not been implemented;
- The design resembles an industrial unit out of keeping with the AONB;
- The applicant does not have a strategic plan but is wasteful of the time and resources of Swale Borough Council and local residents;
- The applicant has a history of multiple applications for various schemes to keep industrial shipping containers on site;
- The visual impact outlined by this application is completely different to the previously approved and would look like a modern commercial storage unit;
- Ten shipping containers are in excess of even generous agricultural requirements;
- The materials should be amended to reflect a traditional Kent agricultural barn;
- If approved in due course the building will be sold as commercial storage units;
- The building should not be allowed to store fuel;
- This would not be an improvement to the view of the shipping containers.

5.4 Two letters of objection were received after re-consultation on amended plans raising the same matters as above and additional matters which can be summarised as follows:

- The amendment is a marginal improvement visually but there will still be an unscreened view of a commercial storage facility;
- Fuel should not be stored in the building as the site has a history of fires;
- Further commercial traffic is undesired and would be detrimental to the safe and desired use of Grove Road which will see the completion of a number of houses nearby which is already increasing vehicle numbers.

## 6. CONSULTATIONS

- 6.1 **Natural England:** No comment
- 6.2 **SBC Environmental Protection Team:** No objection to increase the size and relocation of the building within the site.
- 6.3 **SBC Design and Conservation Manager:** No objection however, the building should be constructed in same materials as previously approved.

## 7. BACKGROUND PAPERS AND PLANS

- 7.1 All plans and documents relating to both 22/502692/FULL and 19/500224/FULL.

## 8. APPRAISAL

### Principle of Development

- 8.1 The site has a substantial planning history in relation to the siting of storage containers on the land. Two applications for these containers have been refused - a planning application that was refused and later dismissed at appeal and an application for a Lawful Development Certificate that was refused and is the subject of a current appeal (currently awaiting a date for a Public Inquiry). The Inspector that handled the dismissed appeal noted that the applicant should work with the Council to consider a well-designed storage building on the land rather than the unsightly storage containers. As a result, application 19/500224/FULL was subsequently submitted and approved for a storage building in the northeast corner of the site adjacent to an existing building.
- 8.2 This application seeks a variation to condition 2 of 19/500224/FULL. The relevant section of the Act (Section 73) that this application has been submitted under is very clear in that *“On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted”*. As a result, the only consideration as part of this application is whether the variations, as set out in the proposal section above are acceptable and therefore the principal of siting a storage building on the site has been accepted and is not able to be further considered.

### Character and Appearance

- 8.3 The site is located within the Kent Downs AONB and as such, proposals need to be sympathetic to the surroundings. The initial submission under this current application sought both an amendment to the size and position of the building but also to the approved materials, seeking permission for metal sheet wall covering and metal up and over doors. Given the sensitive location and the discussion in the previous report regarding materials, I requested that the agent amended the materials to timber weatherboarding and timber up and over doors. It is acknowledged that there are more doors proposed on this building to better access the storage containers sited within, however, a condition will be included to ensure these are painted black along with the featheredge weatherboarding to the walls, so they do not stand out. Whilst it is proposed to increase the footprint and height of the

building, this is by a limited amount and not to any degree that I would now consider to give rise to unacceptable additional harm in comparison to the previously approved scheme. Given the location in the north-east corner of the site, I do not believe this will lead to serious visual amenity concerns subject to compliance with the conditions below and would comply with policies CP4, DM3, DM14 and DM24 of the Local Plan.

- 8.4 I acknowledge the Parish Council and local residents comments with regards to landscaping and note that the proposed earth bund that was proposed to surround the previously approved building has been removed from these plans. I appreciate and share the concerns with regards to a lack of landscaping in this sensitive area within the AONB and as such will include a condition requesting details of proposed landscaping to be submitted to and agreed by the Council to ensure that sufficient screening of the building is undertaken in accordance with policies DM14 and DM24 of the Local Plan. In overall terms I am of the view that soft landscaping, as an alternative to an earth bund will give rise to visual and biodiversity benefits.

#### Living conditions

- 8.5 Given the separation distances to the nearest residential properties I am not of the opinion that there would be any loss of privacy, overshadowing or loss of light to neighbouring residents. I note the comments in relation to the storage of fuel however, this is not a planning matter and it is not unusual for agricultural storage buildings to store fuel for tractors and associated machinery.

#### Other Matters

- 8.6 Comments have been received that the building will be used as a commercial storage building however, the planning system does not allow us to make decisions on what uses could or couldn't take place in the future. Conditions are included below to ensure the use of the building is for the storage of equipment and machinery for the purposes of agriculture and the keeping of horses and any breach of this condition can be dealt with by enforcement powers available to the council should the matter arise.
- 8.7 I note the comments of local residents and the Parish Council regarding the lack of work on the site however, the digging of foundations for a concrete pad would amount to commencement of the development previously approved and as such, it is not necessary to submit a fresh planning application for the proposed changes.
- 8.8 I also note that comments have been received that the amendments are not minor. Although there is no definition of 'minor material amendments', it is clear to me in this case that the proposal is not so substantially different that it couldn't be considered under a S.73 application. The current application is subject to the same publicity requirements as a new planning application and therefore I do not believe that any interested party has been prejudiced.
- 8.9 With regards to conditions, as the previous permission has been implemented there is no requirement to include the standard time limit for implementation. All other previous conditions have been included as well as additional conditions regarding landscaping for the reasons outlined previously in the report.

## 9. CONCLUSION

- 9.1 Overall, the proposed building whilst of a slightly larger footprint and overall height, would provide a building in which to store 10 of the existing storage containers which are currently an incongruous addition to the site within the AONB. A condition requiring the removal of the remaining storage containers will ensure that all containers on the site would be held within a black stained timber featheredge boarded building which would be an improvement to the landscape and something the Council has been trying to work towards for a number of years. Now the materials have been amended to those suitable for buildings within the AONB I am of the view that planning permission should be granted.

## 10. RECOMMENDATION

GRANT Subject to the following conditions:

### CONDITIONS to include

- (1) The development hereby approved shall not be carried out otherwise than in complete accordance with drawings PL0052.18.02.C and PL0052.18.03.B.  
Reason: In the interests of visual amenity.
- (2) The building hereby permitted shall be used only for the storage of machinery, equipment, materials and items related to the use of the application site for agriculture and/or for the keeping of horses.  
Reason: In the interests of residential and visual amenity.
- (3) Any containers positioned within the building hereby permitted shall be so positioned that no part of it is visible from outside the building.  
Reason: In the interests of visual amenity.
- (4) Any container within the application site that is not re-positioned within the building hereby permitted shall be removed from the site within one calendar month of the substantial completion of the building.  
Reason: In the interests of visual amenity.
- (5) All external boarding in the development hereby permitted shall be black stained featheredged timber weatherboarding.  
Reason: In the interests of visual amenity.
- (6) The timber up and over doors to be used on the development hereby permitted shall be stained black.  
Reason: In the interests of visual amenity.
- (7) No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees,

shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (8) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the first use of the building or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (9) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

## **INFORMATIVES**

- (1) The applicant is hereby notified that the Council sees this approval as a solution to the unauthorised stationing of containers on the site, and that it expects the applicant to respond positively by an early commencement and completion of construction and a swift removal of all containers from the site, other than those used within the building itself.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.



The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



22/502692/FULL - land north of Perry Leigh Grove Road Selling ME13 3RN  
Scale: 1:2500  
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