

2.2 REFERENCE NO - 23/500162/FULL		
APPLICATION PROPOSAL Proposed change of use of existing commercial building to single unit of holiday accommodation, with parking and turning space, amenity space and landscaping.		
ADDRESS The Stables Rushett Lane Norton Kent ME13 0SG		
RECOMMENDATION Approve subject to SAMMS PAYMENT		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection.		
WARD Teynham And Lynsted	PARISH/TOWN COUNCIL Norton, Buckland And Stone	APPLICANT Mr D Petherick AGENT Kingsway Planning
DECISION DUE DATE 31/05/23	PUBLICITY EXPIRY DATE 03/02/23	CASE OFFICER Claire Attaway

Relevant Planning History of building subject to this application

19/504418/FULL

Part retrospective application for change of use from B1 commercial use of property to part residential.

Refused Decision Date: 05.11.2019

Appeal dismissed Decision Date: 10.03.2022

Enforcement notice upheld Decision date: 10.03.2022

16/503815/SUB

Submission of details pursuant to Condition 2 - Materials for Proposed Roof and Condition 3 - Hard and Soft Landscaping of 14/502507/FULL.

Approved Decision Date: 21.06.2016

15/506487/FULL

Part Retrospective - Retention of use of existing store/workshop with roof and window alterations

Refused Decision Date: 01.10.2015

14/502507/FULL

Change of use from stables to office and workshop B1 use

Refused Decision Date: 02.03.2015

Appeal allowed Decision Date: 10.03.2016

SW/04/0645

Change of use of land and erection of stable block with paddock and menage new fencing and landscaping.

Approved Decision Date: 15.07.2004

The relevant planning history in relation to the building itself begins with a planning application (14/502507/FULL) in 2014 for the change of use of the stables to an office and workshop (Use Class B1) which was refused by the Council but allowed at appeal on 26 January 2016 under ref APP/V2255/W/15/3133029. That application sought planning permission to change the flat roof of the unauthorised extension to create a double gable end to the north east elevation, as well as the insertion of a number of new windows and doors. As the appeal was allowed, the

external alterations to the appearance of the building were authorised, as well as the commercial use of the building.

An appeal against the Council's decision to refuse planning permission (19/504418/FULL) for a live/work unit was dismissed on 10 March 2022 under ref APP/V2255/W/20/3261861, and the enforcement notice upheld meaning that the residential use of the building must cease within 12 months of that date.

Planning History of wider site

SW/11/0721

Conversion of redundant general purpose farm building and change of use into Class B1, office and workshop.

Refused Decision Date: 08.09.2011

SW/09/0687

Conversion of redundant general purpose farm building and change of use into holiday let accommodation – note this is not the building subject to the current application

Refused Decision Date: 21.09.2009

Appeal dismissed Decision Date: 24.06.2010

SW/08/1135

New general purpose farm building.

Grant of Conditional PP Decision Date: 18.12.2008

SW/05/0203

Equipment store in extension to stables

Refused Decision Date: 05.04.2005

Appeal allowed Decision Date: 15.11.2005

In terms of the most relevant planning history for the wider site, an application (SW/08/1135) for a new farm building alongside the stables was approved but this was not built. Instead, a similar but substantially different (longer and wider) building (the unauthorised building) was erected, and the Council served an enforcement notice dated 4th January 2012. The enforcement appeal was dismissed on 27th June 2012 and the building was eventually demolished. In the meantime, an application (SW/09/0687) to convert the unauthorised (and now demolished) building to a holiday cottage was refused and dismissed at appeal (APP/V2255/A/10/2124902) in June 2010 due to the impact of the proposed domestic style alterations of the building on the character and appearance of the rural area. The Inspector did not consider the unauthorised building should be described as a suitable existing rural building for conversion.

1. DESCRIPTION OF SITE

- 1.1 The site, approx. 0.07 hectares in area, lies outside any Local Plan defined built up area boundary, within a small cluster of houses set along Rushett Lane. The proposal relates to a single storey timber clad building that was originally erected as stables but is now being used as a residential unit (without planning permission).
- 1.2 The building itself is L shaped and is situated on the south eastern corner of the site. The walls are clad in black stained weatherboarding above a brick plinth and the pitched roof is covered in slate tiles. The site is well screened from the road by tall boundary hedging and wooden gates. The driveway leads to a large area of hardstanding that surrounds the side of the building which is used for parking and turning. The remaining part of the

site consists mainly of a grassed area of land. Beyond that, to the north and west, the site is surrounded by paddocks which are in the applicants ownership.

2. PROPOSAL

- 2.1 This application seeks planning permission to change the use of the building permitted under 14/502507/FULL for a commercial use into a two bedroom holiday let. The proposal involves internal alterations only. The office would be used as a second bedroom. An area to the side and rear of the building will be used as garden space, and the two existing car parking spaces to the front will be retained.
- 2.2 The building will not be enlarged, and the materials will remain as existing. However, the existing elevations of the building differ slightly to that approved under 14/502507/FULL, and this application seeks to regularise the following alterations:
- South-West Elevation – glazed panel to doors altered
 - North-West Elevation – glazed panel added to door
 - South-East Elevation – fourth window deleted
 - North-East Elevation – new window inserted, and glazing added to double doors

3. PLANNING CONSTRAINTS

- 3.1 Designated countryside.

4. POLICY AND CONSIDERATIONS

- 4.1 Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:

ST1 Delivering sustainable development in Swale

ST3 The Swale settlement strategy

ST7 The Faversham area and Kent Downs strategy

DM3 The rural economy

DM7 Vehicle Parking

DM14 General development criteria

DM24 Conserving and enhancing valued landscapes

- 4.2 Supplementary Planning Document (SPD):

The Swale Borough Council Car Parking Standards SPD May 2020. The guidance advises that secure and convenient cycle parking is essential to encourage people to use this mode of travel, and that developments should incorporate electric vehicle charging points into the parking design.

The Swale Borough Council Landscape Character Biodiversity Appraisal SPD 2011. The site is located within the Lynsted Enclosed Farmlands. The overall condition of the landscape is rated good and landscape sensitivity is rated moderate. The guidelines focus on conserving and reinforcing its distinctive character.

5. LOCAL REPRESENTATIONS

- 5.1 Norton, Buckland, and Stone Parish Council recommends the application is refused, commenting as follows:

It would seem that the building as exists now is in fact that which was refused permission under application 19/504418/FULL.

This building, as now built, is a domestic dwelling, and has been occupied for some time. As such, there is no permission in place for this building. The now existing floor plan and exterior shown in this application are identical to that of refused application 19/504418/FULL.

In refusing the appeal to 19/504418/FULL the Government Inspector gave as a reason for dismissing the appeal as “Although there has been no increase in its overall size, the windows and doors that have been inserted give the building a domestic appearance. Moreover, despite the existing vegetation which partially screens the site, the residential use with its private garden area and domestic paraphernalia and associated parking has changed the rural character and appearance of the site to a harmful degree.”

What is being sought by this application is to approve the same building as was refused by Swale Borough Council and at Appeal under application 19/504418/FULL, although now as a holiday let rather than a permanent residence.

Whilst noting that the applicant suggests that if approved, occupation should be time restricted, the Council considers that such a condition would be difficult to monitor or enforce.

- 5.2 Consultation letters were sent to neighbouring properties and a site notice was displayed. One neighbour responded raising concern that further agricultural buildings could be added and then retrospective permission sought to convert to residential use resulting in a large residential site. They question if the applicant will move if the proposal is approved.

6. CONSULTATIONS

- 6.1 **Natural England:** - no objection subject to strategic mitigation (SAMMS) payment being secured in respect of possible increased recreational disturbance to The Swale SPA/Ramsar site.
- 6.2 **KCC Highways and Transportation:** - consider this to be a non-protocol matter.
- 6.3 **The Council’s Environmental Protection Team:** - no objection subject to a land contamination condition.
- 6.4 **The Council’s Economy and Community Services (ECS):** - considers the proposal supports the council’s commitment to the visitor economy and support for building the range of accommodation in the area.

7. BACKGROUND PAPERS AND PLANS

- 7.1 Application papers and drawings referring to application reference 23/500162/FULL.

8. APPRAISAL

Principle of Development

- 8.1 The site is situated within the designated countryside where Policy ST3 of the Local Plan, which seeks to resist development unless supported by the NPPF. The NPPF at paragraph 84 states that a positive approach should be taken to sustainable development to promote a strong rural economy and that support for all types of rural businesses and tourism developments can be achieved through conversion of existing buildings and well-designed new buildings which respect the character of the countryside. Paragraph 85 of the NPPF recognises that sites to meet local business and community needs in rural areas may have to be found outside existing settlements and in locations that are not well served by public transport.
- 8.2 Policy DM3 of the adopted Local Plan supports the rural economy by encouraging economic development, especially by prioritising the re-use of rural buildings over new builds. The most relevant section of the supporting text to this policy is as follows:

For the rural tourism sector, given the outstanding environment in Swale and its potential contribution to the economy, the Council wishes to see an expansion of sustainable rural tourism initiatives that can benefit local communities, economically and socially as well as raising awareness and support for the conservation and enhancement of the Borough's natural assets.

- 8.3 In this case, in terms of the current lawful use of the site, the Enforcement Notice issued by the Council in respect of the use of the building as a residential unit (which was later dismissed under ref. APP/V2255/W/20/3261861) set out that the breach of planning control was that a change of use from commercial to residential had taken place. As the Inspector did not vary the terms of the notice it must be concluded that the Inspector also concluded that the existing use at that point was commercial. On that basis, as that is the last lawful use of the site, the conversion of an existing rural building into holiday let accommodation is acceptable in terms of paragraph 84 of the NPPF and in accordance with Policy DM3 of the Local Plan. Furthermore, the Council's Tourism Officer supports the proposal and is of the view that this destination will appeal to those seeking a rural retreat.

Character and appearance

- 8.4 The Inspector for the most recent appeal (APP/V2255/C/20/3256509) considered the windows and doors that had been inserted gave the building a domestic appearance, and that its private garden area and associated parking resulted in harm to the character and appearance of the area. However, that application (19/504418/FULL) sought a residential use on a considerably larger site, where the Inspector found the benefit of one new dwelling did not outweigh the harm to the countryside. In this case, the proposal would create a good tourism opportunity in a rural location. In addition, as the site area is now much smaller, there would not be the opportunity for the same harm to the

countryside to occur. Additionally, the use of the site as a holiday let would mean that it would be less likely that residential paraphernalia associated with unrestricted residential use, such as the need for washing lines, trampolines etc. would be present on the site. Therefore, the impact on the countryside would be reduced in comparison to the harm that the Inspector identified for an alternative proposal and outweighed by the benefits the proposal would bring to the area and the Borough as a whole.

- 8.5 In respect of the differences of the external appearance of the building outlined in paragraph 2.2 above, Members should refer back to what was considered the lawful commercial use of the building. There are permitted development rights in respect of industrial / office buildings, of which these would fall within. The alternations are very minor and on this basis no concern is raised in regard to this.

8.6 Impact Upon living conditions

The closest neighbouring properties that are most affected by the proposal are situated across the lane to the south-west, and approximately 95m to the north-west. However, due to the position of the building and the significant separation distance to other properties, there is found to be no identifiable harm to the amenities of neighbouring properties surrounding the site.

Highways

- 8.7 The site is situated in a rural location with limited access to public transport and in all probability, visitors would rely on a car for their journeys. However, it seems unlikely that the holiday let would generate a significant amount of traffic, and in any case, it will be dispersed throughout the day. Furthermore, Kent Highways and Transportation does not consider the proposal meets the criteria to warrant involvement from them. The parking area is considered adequate to accommodate any visitors to the site therefore it is considered there are not any reasons to refuse the application on highway or traffic grounds.

Landscaping

- 8.8 The Planning Statement at para 19 states that additional landscaping works and biodiversity improvements could be incorporated into the scheme. Members will note condition (8) which requires landscaping details to be submitted to ensure the character and appearance of the rural landscape is enhanced.

SPA Impact

- 8.9 As Members will be aware, the Council seeks developer contributions on any application which proposes additional residential development within 6km of the Special Protection Area (SPA). The application site is within 6km of the SPA, and as such the Council seeks a mitigation contribution of £314.05 for each new holiday unit. However, the applicant has already paid £245.56 in respect of application ref 19/504418/FULL that was dismissed at appeal. Therefore, the applicant is only required to pay the difference, i.e., £314.05 - £245.56 = £68.49. This matter will need to be dealt with before any planning permission can be issued.

Other Matters

- 8.10 The status of the building as a holiday let should be protected and condition (3) will ensure this is the case. However, the Parish Council raise concern that it would be difficult to monitor or enforce. It is evident from previous appeal decisions that unauthorised use on this site was dealt with by the Planning Enforcement team. Therefore, this is not seen as a reason to justify refusal of planning permission.
- 8.11 The local representation raises concerns that further agricultural buildings could be added which would be then converted to residential use. Any future development here that is not included within the proposal, and requires planning consent, would require an application for planning permission which the Council would assess on its own merits.

9. CONCLUSION

- 9.1 The proposal will re-use an existing rural building and support the rural economy. The potential impact of this proposal upon the character and appearance of the rural area, as well as the comments of the Parish Council have been considered. The impact is considered to be minimal and considerably outweighed by the benefits it would bring to the Borough. On this basis planning permission should be granted, subject to the conditions which have been included below.

- 10. RECOMMENDATION - GRANT** Subject to the following conditions and the collection of a SAMMS payment.

CONDITIONS

- (1) The development to which this permission relates must be begun no later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The development hereby approved shall be carried out in accordance with the approved drawings Floor Plans PE/13/145.01 Rev D and Block Plans PE/13/145.03 Rev D.

Reason: For the avoidance of doubt and in the interests of proper planning.

- (3) The holiday let hereby permitted shall be used solely for the purpose of holiday accommodation; shall not be used by any person or persons as their sole or main residence and the accommodation shall not be occupied by any person or group of persons for more than four weeks in any calendar year.

Reason: As the site lies outside any area intended for new permanent residential development and as the permission is only granted in recognition of the applicant's intention and the Local Planning Authority's wish to encourage suitable provision of holiday accommodation in this attractive rural area.

- (4) The area shown on approved drawing PE/13/145.03 Rev D as a vehicle parking space shall be provided before first occupation of the holiday let hereby permitted, and this area shall at all times be retained for the use of the occupiers of the

holiday accommodation. No permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to these areas.

Reason: Development without provision of adequate accommodation for the parking and turning of vehicles is likely to lead to parking inconvenient to other road users and be detrimental to highway safety and amenity.

- (5) Prior to the first occupation of the holiday accommodation hereby permitted, one electric vehicle charging point shall be provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. All Electric Vehicle chargers provided must be to Mode 3 standard (providing a minimum of 7kw) and SMART (enabling Wi-Fi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list:

<https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>

Reason: To encourage the use of electric vehicles, in the interests of climate change and reducing pollution.

- (6) Prior to the first occupation of the holiday accommodation hereby permitted, provision and permanent retention of secure, covered cycle parking facilities shall be completed in accordance with details that shall first have been submitted to and approved by the Local Planning Authority.

Reason: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits.

- (7) The holiday accommodation hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day and shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

- (8) Within six months of the date of this decision, full details of both hard and soft landscape works – which shall include an ecology enhancement plan demonstrating how the site will be enhanced to benefit biodiversity – shall be submitted to 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.

- (9) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be implemented 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.

- (10) 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.

- (11) If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of;

- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
- b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
- c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

Reason: To ensure any land contamination is adequately dealt with.

- (12) Upon completion, no further development permitted by Classes A, B, C, D or E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

Reason: In the interests of the amenities of the area.

INFORMATIVES

- (1) This permission has only been granted after receipt of a financial contribution to the Strategic Access Management and Monitoring Strategy in respect of the nearby Special Protection Area.

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.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with

the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwelling is occupied.

Due to the scale of development there is no scope to provide on-site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off-site mitigation is required.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (to be secured prior to the determination of this application) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others (<https://birdwise.org.uk/>).

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.

