

**PLANNING COMMITTEE – 22 JUNE 2023****PART 3**

Report of the Head of Planning

**PART 3**Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 22/505870/FULL</b>		
<b>APPLICATION PROPOSAL</b> Conversion and change of use of existing detached disused and abandoned former light industrial workshop into a three bedroom dwelling (C3) and conversion and change of use of existing adjacent detached former associated office and store (previously hay barn) currently disused into a home office to be used for the dwelling occupier including part demolition of existing commercial workshop and installation of a sewage treatment plant and EV charging point.		
<b>ADDRESS</b> Light Industrial Unit (Disused) Land Adjacent To Pebble Court Farm Woodgate Lane Borden Kent ME9 7QB		
<b>RECOMMENDATION REFUSE</b>		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Support / Called in by (as was) Cllr Nick Hampshire		
<b>WARD</b> Borden And Grove Park	<b>PARISH/TOWN COUNCIL</b> Borden	<b>APPLICANT</b> Mr & Mrs Michael Miller <b>AGENT</b>
<b>DECISION DUE DATE</b> 13/02/23	<b>PUBLICITY EXPIRY DATE</b> 11/01/23	<b>CASE OFFICER</b> Alice Reeves

**Planning History**

21/503856/FULL

Partial demolition of existing unit and replacement of existing flat roof with new pitched roof. Works to include replacement DG windows and doors to match existing fenestration and installation of a sewage treatment plant. (Resubmission of 21/502266/FULL)  
Approved Decision Date: 15.09.2021

21/502266/FULL

Partial demolition of existing unit and replacement of existing flat roof with new pitched roof.  
Approved Decision Date: 23.06.2021

21/500951/PNQCLA

Prior Notification for change of use of agricultural building to 1no. dwelling and associated operational development. For it's prior approval to: - Transport and Highways impacts of the development - Noise impacts of the development - Contamination risks on the site - Flooding risks on the site - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change from agricultural use to C3 (dwellinghouses) -

Design and external appearance impacts on the building, and - Provision of adequate natural light in all habitable rooms of the dwellinghouses.

Refused Decision Date: 30.04.2021

19/506446/PNPA

Prior Notification for change of use of 1no. building from light industrial (Class B1 (c)) to 2no. dwellings (Class C3). For its prior approval to: - Transport and Highways impacts of the development - Contamination risks on the site - Flooding risks on the site - Where the building is located in an area that is important for industrial services or storage or distribution services or a mix of those services, whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services.

Refused Decision Date: 03.02.2020

Appeal Dismissed Decision Date: 30.09.2020

19/505970/FULL

Conversion of existing disused light industrial workshop to a four bedroom dwelling, and conversion of existing adjacent associated office and store into a home office to be used by the dwelling occupier. Proposals include part demolition of existing workshop and installation of a sewage treatment plant.

Refused Decision Date: 24.01.2020

Appeal Dismissed Decision Date: 30.09.2020

19/506161/PNOCLA

Prior notification for the change of use of an office building (Class B1 (a)) to a dwellinghouse (Class C3). For its prior approval to: Transport and Highways impacts of the development - Contamination risks on the site - Flooding risks on the site - Impacts of noise from commercial premises on the intended occupiers of the development.

Refused Decision Date: 22.01.2020

19/502883/PNPA

Prior notification for the change of use from premises in light industrial use (class B1(c)) and any land within its curtilage to 1 no dwellinghouse (class C3). For its prior approval to: - Transport and Highways impacts of the development. - Contamination risks on the site. - Where the building is located in an area that is important for industrial services or storage or distribution services or a mix of those services, whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services.

Refused Decision Date: 24.10.2019

Appeal Withdrawn

SW/93/0558

Lawful development certificate for extension and alteration of original double garage/workshop, use of original double garage and workshop and extensions and alterations as a workshop, use of adjoining land for uses ancillary to the workshop use.

Approved Decision Date: 12.08.1993

## SUMMARY

A lawful development certificate was granted for the larger building and its surrounding land in 1993 for a mixed use relating to motor cars, camper vans, minibus hire and assembly and testing of solar panels. No specific Use Class was specified on the decision notice as the lawful use was considered to be a mixed use.

In 2019 a purported Prior Approval application for conversion to residential use from light industrial Class B1(c) use of the larger building was submitted, but evidence submitted with that application suggested that the lawful mixed use had been abandoned by 2009 and the property

de-rated as domestic storage for Pebble Court only. The Prior Approval application was therefore refused as neither the lawful use nor the (by now) lawful domestic storage use were B1(c) uses.

A number of other applications as listed above have been submitted for the site in attempt to get a change of use for at least one of the buildings for a residential dwelling, all of which have been refused and two subsequently dismissed at appeal. One of these applications (19/505970/FULL) was for the conversion of the same building to a residential dwelling as proposed now which the Inspector dismissed concluding that the lack of accessibility to services by sustainable transport modes was contrary to both the Local Plan and NPPF and the presumption in favour of sustainable development did not apply in this case.

Most recently, physical alterations to the building, including its partial demolition, were approved in 2021.

## **1. DESCRIPTION OF SITE**

- 1.1 The site lies in a remote rural location not visible from any public vantage points, outside any defined built-up area boundary with difficult access via a private unmade track from Woodgate Lane. The buildings are adjacent to an existing bungalow known as Pebble Court, and includes two separate single storey buildings which have fallen into a state of disrepair. The nearest neighbouring property is Pebble Court sited approximately 30m from the building, with Heatherbank and Ebbisham sited over 100m from the site. The dwellings in the locality are predominantly detached bungalows however, two storey dwellings can be seen along Maidstone Road.
- 1.2 The larger building comprises metal sheet roofing, brickwork, blockwork and metal sheeting to walls and aluminium single glazed windows with timber doors. The smaller building comprises metal sheet roofing, timber boarding and timber windows and doors.
- 1.3 The site cannot be seen from any public vantage points due to the siting at the end of the private track.

## **2. PROPOSAL**

- 2.1 The application seeks planning permission for the conversion of the larger building into a 3no. bedroom dwelling and the smaller building into a detached home office. The proposed alterations to the larger building include partial demolition of the building, replacement pitched roof in red tiles stained timber boarding exterior walls and replacement double glazed upvc windows and doors. The proposed dwelling would provide 3no. bedrooms (one en-suite), bathroom, kitchen, lounge/diner and garage/store with utility.
- 2.2 The smaller building, proposed for use as a home office would retain its metal sheet roof, stained timber boarding and include replacement brown upvc windows and doors. The building would accommodate an office, studio, kitchenette and toilet.
- 2.3 The description and site plan shows a sewage treatment plant to the rear of the proposed office building.

## **3. PLANNING CONSTRAINTS**

- 3.1 Designated countryside

#### 4. POLICY AND CONSIDERATIONS

##### 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies;

**ST1** (Delivering sustainable development in Swale)

**ST3** (The Swale settlement strategy)

**CP3** (Delivering a wide choice of high quality homes)

**CP4** (Design)

**DM3** (The rural economy)

**DM7** (Parking)

**DM14** (General development criteria)

**DM16** (Alterations and extensions)

**DM19** (Sustainable design and construction)

**DM21** (Water, flooding and drainage)

**DM24** (Conserving and enhancing valued landscapes)

##### 4.2 Supplementary Planning Document (SPD): Swale Parking Standards

#### 5. LOCAL REPRESENTATIONS

##### 5.1 Borden Parish Council:

*“Borden Parish Council have resolved to support the application, with the provision that a macadamised road is laid (not tarmac macadamised).”*

#### 6. CONSULTATIONS

6.1 **Kent County Council Public Rights of Way:** No comment.

6.2 **Kent County Council Highways & Transportation:** Proposal does not meet the criteria for involvement from the Highway Authority.

6.3 **Environmental Health:** No adverse comments or observations.

#### 7. BACKGROUND PAPERS AND PLANS

7.1 Application papers and drawings referring to application reference 22/505870/FULL.

#### 8. APPRAISAL

##### Principle of Development

8.1 The main consideration in the determination of this application is whether this would be classed as sustainable development. The Council’s Local Plan states that development proposals will be supported in accordance with the settlement hierarchy which is set out in

Policy ST3. This identifies settlements in descending order of sustainability and this site being located in the designated countryside, outside of any built up area boundary, lies in the least desirable location for residential development as set out by this policy. Sites which are located outside of any defined built up area boundary and in the designated countryside are considered to be covered by national and local planning policies which restrict development in the countryside, in particular new residential units.

- 8.2 In respect of existing buildings in the countryside, prior to conversion to a residential use, policy DM3 of the Local Plan firstly requires evidence to demonstrate that alternative commercial / employment uses have been marketed for a reasonable period in a manner and at a price that reflects that use. The application does not contain any evidence that these alternative uses have been robustly tested for a reasonable period and it has not been sufficiently proven that the site/building is unsuitable for a non-residential use. The site has good connections to the A249 and M2 and could be ideal for a small business that would benefit from a rural location. On this basis, it is not considered that the proposal complies with policy DM3 of the Local Plan.
- 8.3 The site is located outside a defined settlement and has limited access to amenities, meaning that the use of the car is essential in order to access necessary day to day services and facilities such as a doctor's surgery and schools. The distance of the site from amenities and the lack of street lighting makes travel by foot or cycle undesirable and future occupants are likely to be largely reliant on the use of a private car to access services and facilities which is contrary to the environmental aims of the NPPF. There are also limited opportunities for public transport to be utilised.
- 8.4 An appeal for the conversion of the same unit to a dwelling as is now being proposed was previously refused and dismissed at appeal due to its unsustainable location. There has been no substantial change to national and/or local planning policy to take a different view on the principle of development now. The appeal decision has been attached as Appendix A below.
- 8.5 Based on the above it is therefore considered that the proposal would not represent sustainable development and application is considered to be contrary to policies ST1, ST3, DM3 and DM14 of the Local Plan.

#### Character and appearance

- 8.6 The proposed alterations to the buildings are considered to be an enhancement to the existing with higher quality materials including tiled roof and stained weatherboarding to the exterior walls rather than the existing metal sheeting and blockwork. An application for similar external alterations was previously approved (whilst the building remained in commercial use).
- 8.7 The application is considered to comply with policies CP4 and DM16 in terms of design however, the key issue here relates to the principle of development rather than the design and appearance.

#### Living Conditions

- 8.8 Due to the position of the building and separation distanced to other properties, there is found to be no identifiable harm to the amenities of neighbouring properties surrounding the site.

On this basis it is considered that the application complies with policy DM14 in respect of living conditions of occupants and neighbours as policy DM14 seeks to ensure that development does not cause significant harm to amenity.

#### Highways and Parking

- 8.9 KCC Highways & Transportation when originally consulted set out that it fell below their threshold for commenting. It is noted that neither the Council nor the Inspector when considering the previous application submitted under 19/505970/FULL took the view that the traffic generated by one dwelling would give rise to harm to highway safety and convenience. It is considered that this assessment remains valid and the proposal would not give rise to any unacceptable harm in this regard.
- 8.10 It is noted that Borden Parish Council have supported the application on the basis that Woodgate Lane (which is a Public Byway – ref ZR73) is resurfaced as per the applicant's intention. In respect of this matter, Officers have corresponded with a KCC Highways & Transportation representative and it was advised that discussions had taken place with the applicant and the intention was to lay an additional tarmac surface from Maidstone Road up to the private track where this site is accessed.
- 8.11 However, it is important to note that there is no detail provided with the application regarding this and the applicant has also provided an email which refers to this element of the proposal not forming part of the application. Despite this, even if the road was to be resurfaced, Woodgate Lane is a narrow, single-track route accessible to all traffic. As such, a separate footpath and any lighting would not seemingly be able to be provided. As a result, it is not considered that even if the surface was improved that it would provide a route which was particularly attractive to pedestrian / cyclists, particularly during winter months or hours of darkness. In any case, the route would still only provide access to a location where future occupants would be required to use an infrequent bus service to access services and facilities. Therefore, even in a scenario where the road was resurfaced, I do not consider that this would make the site sustainable.
- 8.12 Separately, whilst it is acknowledged that the appropriate resurfacing of this section of Public Byway would provide a public benefit to general users of this route, significant weight is given to the fact that it does not form part of this proposal and falls outside the red line boundary of the application site. In any case, the benefit would be limited, and it does not override the issues in relation to sustainable development as outlined above.
- 8.13 No details were shown on the proposed site plan for parking however it is considered that the site is large enough for an adequate number of cars to be parked to be compliant with the Council's Parking SPD and that this could have been dealt with by condition if there were not overriding factors relating to the principle of development.

#### Impact upon Special Protection Area

- 8.14 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) to secure off site mitigation against the increased recreational disturbance of the 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 residential unit. The application does not include such

a contribution or the means of securing a contribution and it is therefore considered that this amounts to a reason for refusal.

## 9. CONCLUSION

9.1 The negative impact of an additional dwelling in this remote location has already been established at appeal and the current application has not provided any evidence to suggest that the building/site is undesirable as a commercial or community unit or that it would represent sustainable development. It is acknowledged that the Council is unable to demonstrate a 5 year supply of housing land (currently 4.83 years) and in cases such as these, paragraph 11 d) of the NPPF sets out that:

*“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>7</sup>; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

9.2 In this case the benefits of 1 additional dwelling would be limited and heavily outweighed by the harm identified above. In conclusion the proposal is contrary to policies ST1, ST3, DM3 and DM14 of the adopted Local Plan. It is therefore considered that the application should be refused.

## 10. RECOMMENDATION

REFUSE for the following reasons:

- (1) The proposed conversion of the larger building to a residential dwelling would not represent sustainable development as this location is a considerable distance outside any established built-up area boundary where few amenities exist and occupants would be dependent on private transport for all daily needs. This would be contrary to the environmental objective of the National Planning Policy Framework (as set out in paragraph 8) which requires the planning system to facilitate the delivery of sustainable development and moving to a low carbon economy. There has also been no supporting evidence submitted with the application that the building is unsuitable for commercial or community uses. This harm would significantly and demonstrably outweigh any benefits of the scheme (including its very limited contribution to the overall supply of housing in the Borough). The application is therefore contrary to policies ST1, ST3, DM3 and DM14 of Bearing Fruits 2031: The Swale Borough Local Plan and paragraphs 8 and 11 of the National Planning Policy Framework.
- (2) The proposed development will create potential for recreational disturbance to the Swale Special Protection Area. The application submission does not include an appropriate financial contribution to the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (SAMMS), or the means of securing such a contribution, and therefore fails to provide adequate mitigation against that potential harm. The development would therefore affect the integrity of this designated European site, and would be contrary to the aims of policies ST1, DM14, and DM28 of Bearing

Fruits 2031 - The Swale Borough Local Plan 2017; and paragraph 181 of the National Planning Policy Framework.

### **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 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.

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. The proposal thus 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 (NE) 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 advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, 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 (NKEPG).

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 (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied. Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required in this instance.

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 by either s106 agreement or unilateral undertaking on all qualifying developments) 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 and this is a matter that may still need to be resolved at appeal stage.

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.

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.

