

APPENDIX A

Report to Planning Committee 10 October 2024

2.2 REFERENCE NO - 22/502692/FULL		
PROPOSAL 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.		
SITE LOCATION Land North of Perry Leigh Grove Road Selling Kent ME13 9RN		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions.		
APPLICATION TYPE Large Major Other		
REASON FOR REFERRAL TO COMMITTEE Parish Council Objection		
Case Officer Alice Reeves		
WARD Boughton and Courtenay	PARISH/TOWN COUNCIL Selling	APPLICANT Mr Brian Macey AGENT VLH Associates
DATE REGISTERED 22.07.2022	TARGET DATE 17.10.2022	
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - All drawings submitted All representations received The full suite of documents submitted pursuant to the above application are available via the link below: - INCLUDE WEB LINK https://pa.midkent.gov.uk/online-applications/simpleSearchResults.do?action=firstPage		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is a large field within the Kent Downs Area of Outstanding Natural Beauty (AONB), which is now known as the Kent Downs National Landscape, although references in local and national policy continue to refer to AONB. The field has been

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divided into smaller enclosures for the keeping and grazing of horses. Within the field are a total of 17 steel containers and an established small timber stable building.

- 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.

2. PLANNING HISTORY

- 2.1 23/504318/LDCEX - Lawful Development Certificate (Existing) to establish lawful commencement of planning permission of 19/500224/FULL for erection of a single storey storage building. Appeal against non-determination allowed on 9.05.2024 and a certificate of lawfulness, confirming that works undertaken on the site have led to the implementation of planning permission Ref. 19/500224/FULL, was issued.
- 2.2 21/500428/CHANGE - 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.* The Enforcement Notice was quashed on 09.05.2024.
- 2.3 19/500224/FULL – Planning permission granted on 30.04.2019 for *Erection of a single storey storage building.*
- 2.4 19/503507/LDCEX - Lawful Development Certificate (Existing) refused on 07.05.2021 for a *mixed-use comprising of storage and equestrian, including use of existing building for stabling and storage, and outside storage of containers.*
- 2.5 17/504527/FULL - Retrospective planning application refused on 16.11.2017 for the *use of land for storing 15 storage containers.* An appeal was lodged against this decision and dismissed on 12.12.2018.
- 2.6 16/502524/LDCEX - Lawful Development Certificate (Existing) approved on 09.03.2017 for *use of land for storage of pallets.*
- 2.7 As set out above the site has a fairly complex planning history attached to it. It is considered useful for Members to have further knowledge of the above, which is set out as follows:

In 2017, a retrospective planning application for the use of land for storing 15 storage containers was refused by the Council (ref. 17/504527/FULL) and dismissed at appeal. The decision notice issued by the Council was accompanied by the following informatives;

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- (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.*

- 2.8 In dismissing the appeal 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.
- 2.9 Following the above, a planning application for a storage building (ref. 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 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, no other works have been undertaken to erect the storage building. When assessing the current application, the foundations that had been dug were unable to be located on an unaccompanied site visit. The applicant then submitted an application seeking a lawful development certificate (ref. 23/504318/LDCEX) to confirm that the application approved under ref. 19/500224/FULL had been implemented by virtue of the works described above. The applicant appealed against the non-determination of 23/504318/LDCEX shortly after the site visit.
- 2.10 An enforcement notice was served requiring the removal of the containers and an appeal was lodged with the Planning Inspectorate. The Inspectorate determined that the appeal should be dealt with by means of a Public Inquiry and this took place on 12th March 2024. The appeal relating to the application under 23/504318/LDCEX was assessed by the same Inspector and the site visits for both appeals were carried out at the same time. The Inspector allowed the existing Lawful Development Certificate appeal stating that the foundation dug on the site was in a location consistent with the previously approved application within the relevant time period and the approval had therefore been lawfully commenced. As a result, a Lawful Development Certificate was issued. Separately, the Inspector quashed the Enforcement Notice related to the use of the land and removal of the storage containers. The Inspector did set out that it is open to the Council to serve a further notice which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so, subject to the provisions of s171B(4) of the Act.

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3. PROPOSED DEVELOPMENT

3.1 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 number of doors from 4 to 10 to allow easier siting and access of the storage containers within the building;
- Removal of approved earth banking around proposed building.

3.2 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.

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

4. CONSULTATION

4.1 Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.

4.2 Three letters of objection from separate addresses were received in relation to the first consultation. Concerns/comments were raised in relation to the following matters: -

Comment	Report reference
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;	See paragraph 7.5 – 7.12
Do not consider this a minor amendment;	See paragraph 7.15
The development has not been implemented;	See paragraph 2.10 and 7.4

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The design resembles an industrial unit out of keeping with the AONB;	See paragraph 7.5 – 7.12
Ten shipping containers are in excess of even generous agricultural requirements;	See paragraph 7.14
The materials should be amended to reflect a traditional Kent agricultural barn;	See paragraph 7.9
The applicant wishes to operate a commercial storage facility;	See paragraph 7.14
This would not be an improvement to the view of the shipping containers.	See paragraph 7.5 – 7.12
The storage of fuel would be a safety hazard.	See paragraph 7.13

4.3 Selling Parish Council objected to the application on the following grounds: -

Comment	Report reference
Almost no work has taken place and as such a new application should be submitted;	See paragraph 2.10 and 7.4
No justification for allowing an increase in size of the building;	See paragraph 7.14
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;	See paragraph 2.10 and 7.4
All previous conditions should continue to apply;	See paragraph 7.14 and 7.16
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;	See paragraph 2.7 - 2.10
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;	See paragraph 7.11
Concerned regarding the storage of fuel;	See paragraph 7.13
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.	See paragraph 7.14

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- 4.4 Amended drawings were submitted leading to the second round of consultation. Selling Parish Council responded setting out that they continued to object to the application. No further comments were made in addition to those already set out above.
- 4.5 In response to the second consultation two letters of representation were received from two separate addresses (both of whom had previously commented on the application as set out above). They continued to raise an objection and the following additional concerns/comments were raised in relation to the following matters: -

Comment	Report reference
The amendment is a marginal improvement visually but there will still be an unscreened view of a commercial storage facility;	See paragraph 7.5 – 7.12
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.	See paragraph 7.14

5. REPRESENTATIONS

- 5.1 **SBC Heritage:** - No objection
- 5.2 **Mid Kent Environmental Health:** - No objection
- 5.3 **Natural England:** - No comment

6. DEVELOPMENT PLAN POLICIES

- 6.1 **Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 –**
ST3 Swale Settlement Strategy
ST7 The Faversham area and Kent Downs strategy
CP4 Requiring good design
DM3 The rural economy
DM14 General development criteria
DM24 Conserving and enhancing valued landscapes

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7. ASSESSMENT

7.1 This application is reported to the Committee because Selling Parish Council has objected to the proposal. Considering these comments, and the proposal that has been submitted the committee is recommended to carefully consider the following points: -

- The Principle of Development
- Character and Appearance
- Living Conditions

Principle

7.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.

7.3 The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.

7.4 This application seeks a variation to condition 2 of the planning permission granted under ref. 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. As also set out above, via an appeal decision, a lawful development certificate has been issued which confirms that the development approved under ref. 19/500224/FULL has been lawfully implemented. 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

7.5 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.

7.6 The site is located within the Kent Downs AONB. Policy DM24 of the Local Plan states that planning permission for development within the AONB will only granted subject to

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it preserving and enhancing the special qualities and distinctive character of the AONB in accordance with national policy; further the delivery of the AONB management plan; minimising the impact of individual proposals and their cumulative effect on the AONB and its setting, mitigating any detrimental effects, including where appropriate, improving any damaged landscapes relating to the proposal; and being appropriate to the economic, social and environmental wellbeing of the area or being desirable for the understanding and enjoyment of the area. In national policy terms, the NPPF at paragraph 182 states that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty which has the highest status of protection in relation to these issues.

- 7.7 Section 85 of the Countryside and Rights of Way Act sets out that: *“In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England (...) must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty”*. It is noted that this element of the Act has been varied since the determination of the previous application where the legislative requirement read *“In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.”*
- 7.8 As set out above, the starting point in this case is the implemented planning permission for the storage building approved under ref. 19/500224/FULL and the assessment centres on whether the proposals as now submitted still meet the requirements of the relevant policies.
- 7.9 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, it was requested that the agent amended the materials to timber weatherboarding and timber up and over doors and an amendment was received on this basis. It is acknowledged that there are more doors proposed on this building than was previously approved, 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.
- 7.10 Whilst it is proposed to increase the footprint and height of the building, this is by a limited amount and not to a degree that would give rise to unacceptable additional harm in comparison to the previously approved scheme. Given the location in the north-east corner of the site, the development will not lead to unacceptable visual amenity concerns subject to compliance with the conditions below. Accordingly, the development would comply with policies CP4, DM3, DM14 and DM24 of the Local Plan.

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- 7.11 The Parish Council and local residents comments are acknowledged 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. The concerns with regards to a lack of landscaping in this sensitive area within the AONB are shared by Officers and it is considered that landscaping is required to soften the impact of the building. It is also taken into account that earth bunds are not representative of this part of the AONB and as such it is considered that soft landscaping, carefully chosen to reflect the surrounding landscape, would provide the opportunity to integrate this development into the area in a more natural way compared to an earth bund. Furthermore, it would also provide the opportunity for greater biodiversity benefits compared to an earth bund. As a result a condition is recommended requesting details of proposed landscaping to be submitted to and agreed by the Council to ensure that sufficient screening of the building is undertaken.
- 7.12 Overall, it is considered that the amended development remains in accordance with policies DM14 and DM24 of the Local Plan and the NPPF. Moreover, through providing improved soft landscaping rather than a bund, it is considered that a net gain would be achieved in visual terms which would further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty relative to the fallback position.

Living Conditions*Existing residents*

- 7.13 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Given the separation distances to the nearest residential properties it is not considered that there would be any loss of privacy, overshadowing or loss of light to neighbouring residents. The comments in relation to the storage of fuel are noted, 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

- 7.14 Comments have been received that the building will be used as a commercial storage building however, the planning system does not allow decisions to be made on the basis of what uses could or could not take place in the future. In terms of what can be stored in the building, the condition imposed on the planning permission issued under ref. 19/500224/FULL restricted this to storage of machinery, equipment, materials and items related to the use of the application site for agriculture and/or for the keeping of horses. However, as part of the Public Inquiry which was held for the appeal lodged against the Enforcement Notice related to the containers on the site, the Council took the view that the containers were being used for the storage of machinery and materials associated with the paddocks and also the pallet business. As a result, it is recommended that the relevant condition is amended to reflect this. Therefore, if the

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building was used for other purposes, in breach of this condition, the Council would have the option to consider enforcement action.

- 7.15 Comments have been received that the amendments are not minor. Although there is no definition of 'minor material amendments', it is clear in this case that the proposal is not so substantially different that it could not be considered under a S.73 application. The current application is subject to the same publicity requirements as a new planning application and therefore it is not considered that any interested party has been prejudiced.
- 7.16 With regards to conditions, as the previous permission has been implemented there is no requirement to include the standard time limit for implementation. The condition regarding the items stored in the building has been amended for the reasons set out above. The approved drawing condition has been amended to reflect the amended details and all other previous conditions have been included as well as additional conditions regarding landscaping for the reasons outlined previously in the report.

Conclusion

- 7.17 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 it is considered that planning permission should be granted.

CONDITIONS

- (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 and materials associated with the paddocks and pallet business.

Reason: In the interests of residential and visual amenity.

- (3) Any containers positioned within the building hereby permitted shall be so

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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

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whatever planting season is agreed.

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

The Council's approach to the application

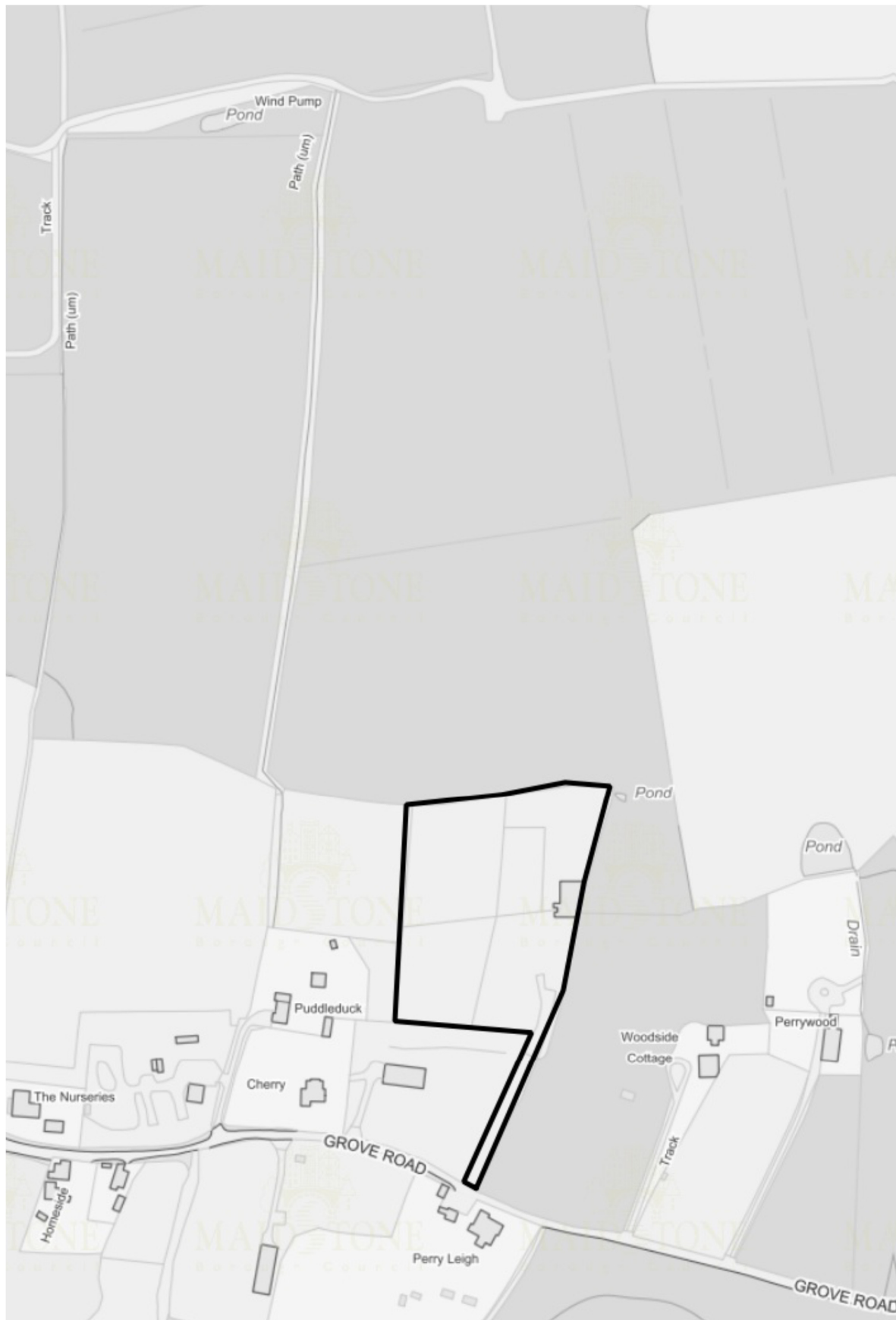
In accordance with paragraph 38 of the National Planning Policy Framework (2023), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, 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.

In this instance:

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

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