



Delegated Report

Prior Approval Application

Planning Application No: 20240607

Location: Walnut Hill Nursery, Walnut Hill Road, Gravesend Kent

Description: Application to determine if prior approval is required for a proposed conversion of a building to a commercial use Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class R.

Applicant: Mr C Lawson

Site Visit Date: Desktop assessment

Submitted Documents/Plans

Application form
Planning Statement (plus Appendix 1)
Drawing no. 01 (Site Location Plan)
Drawing no. 02 (Existing Block Plan)
Drawing no. 03 (Existing GF Plan)
Drawing no. 04 (Existing FF Plan)
Drawing no. 05 (Existing Elevations (1 of 2))
Drawing no. 06 (Existing Elevations (2 of 2))
Drawing no. 07 (Proposed Block Plan)
Drawing no. 08 (Proposed GF Plan)
Drawing no. 09 (Proposed FF Plan)
Drawing no. 10 (Proposed Elevations (1 of 2))
Drawing no. 11 (Proposed Elevations (2 of 2))

Relevant Planning History

Reference	Description	Decision	Decision Date
20000600	Removal of existing portacabins and sheds and erection of a barn to provide equipment/materials storage, propagation area, potting and packing and loading areas at ground floor level and staff facilities, drying room, office and storage at mezzanine floor level and an external fire escape staircase at the side.	Permitted	18.05.2001
19970030	Removal of existing portakabins and sheds and erection of replacement building for gardening storage, machinery room, packing room and potting-up room at ground floor, incorporating sheltered walkway and refuse and chemical store, with office accommodation and storage at first floor level.	Refused	03.07.1997
19900708	Retention of portacabin and continue use as office/cloakroom/store room/rest room.	Permitted	16.01.1991

19870728	Retention and continued use of caravan as a canteen rest room and office	Refused	04.11.1987
19840450	Retention of caravan for use as a canteen rest room	Permitted	27.07.1984
19740322	Alterations, erection of a single storey extension at side for garage and at rear for lounge and dining room and formation of rooms in roof space.	Refused	14.10.1974

Development Plan

Gravesham Local Plan Core Strategy (2014)

- CS01 – Sustainable Development
- CS02 – Scale and Distribution of Development
- CS11 – Transport
- CS12 – Green Infrastructure
- CS18 – Climate Change
- CS19 – Development and Design Principles

Gravesham Local Plan: First Review (1994)

- T1 – Impact of Development on the Highway Network
- P3 – Vehicle Parking Standards

Paragraph 33 of the NPPF (2023) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2023), the Council will also seek to replace these.

National Planning Policy Framework (2023)

- Section 2 – Achieving sustainable development
- Section 8 – Promoting healthy and safe communities
- Section 9 – Promoting sustainable transport
- Section 11 – Making effective use of land
- Section 12 – Achieving well-designed and beautiful places
- Section 15 – Conserving and enhancing the natural environment

Supplementary Planning Guidance

- SPG 4 - KCC Parking Standards (2006)
- Gravesham Landscape Character Assessment (2009)

Consultations, Publicity and Representations

The application has been advertised on site. The consultation period expired on 7 August 2024.

Consultees

KCC Highways

I have concerns regarding the possible highway impact on the access roads to this site, particularly Walnut Hill Road and Nash Bank. Both of these lanes are narrow in width with lack of passing places, poor forward

visibility, no pedestrian facilities and no street lighting.

In order that I may fully assess that highway impact I would require a Transport Statement providing information relating to the number, size and frequency of vehicles generated by this proposal. Also an assessment of the number, size and frequency of vehicles generated by the existing permitted use as a plant nursery. Information regarding the routing of vehicles relating to their origins / destinations should be provided.

Once this information is available I will then be able to fully assess the highway impact and respond to your consultation request more fully.

It is important to note that Local Planning Authority (LPA) permission does not convey any approval to carry out works on or affecting the public highway.

Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because LPA planning permission has been granted.

For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture or landscape assets such as grass, shrubs and trees, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens and near the highway that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil.

Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

Kent County Council has now introduced a pre-application advice service in addition to a full formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. Further details are available on our website below:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and-technical-guidance>.

This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process. Further details on this are available on our website below:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/apply-for-a-dropped-kerb/dropped-kerb-contractor-information>

Once planning approval for any development has been granted by the LPA, it is the responsibility of the applicant to ensure that before development commences, all necessary highway approvals and consents have been obtained, and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority.

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Further guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and->

technical-guidance. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181.

KCC Lead Local Flood Authority

Kent County Council as Lead Local Flood Authority have reviewed the application and regard the development as low risk.

This response has been provided using the best knowledge and information submitted as part of the planning application at the time of responding and is reliant on the accuracy of that information.

GBC Environmental Protection

The application details have been considered and the following comments are made.

Noise

The Planning Statement advises that the building is to be used as offices between 8am and 5pm Monday to Friday and in this respect, there aren't any noise concerns. It's noted that the company operates 24/7 and 10 vehicles are proposed to be parked on the site. It is not clear from the application if these vehicles will come and go from the site in response to night-time calls outs etc, and if so what sort of frequency is this likely to happen? Can this be clarified with the applicant please so that any impact in terms of noise from vehicles or equipment being loaded/unloaded etc. can be considered.

Contaminated Land

As no ground breaking is to occur, this is not a consideration.

Neighbouring properties

The consultation was carried out by site notice. There have been 69 neighbour objections to the proposal, with the following comments:

- Inappropriate location for this development; there are far better urban locations for such development.
- Planning permission is denied for small additions to houses in this Green Belt location so the scale of the development as proposed should certainly not be allowed.
- The area is rural and accessed by single, narrow country lanes, where the lanes can be steep, visibility is difficult and passing places are lacking.
- The previous plant nursery use was a suitable agricultural site in keeping with this location. An agricultural use should be maintained at the site.
- The previous commercial plant nursery had low visitor numbers and no HGVs or excessive vehicle movements.
- It is dangerous in terms of highway safety for HGVs to use the country lane as the road is not suitable for the size of vehicle and frequency of use.
- Unsafe for the many pedestrians, cyclists and horse riders (there are several stables nearby) that use this lane.
- HGVs in this location are dangerous and risky in terms of the safety of students from the schools nearby on the access route to the site.
- There will be an increase in road accidents from the proposal.
- The road surface will deteriorate rapidly with regular HGV use.
- The development is at odds with this area of natural beauty.
- Wildlife and trees will be affected and damaged by HGVs.
- Increase in light, noise and pollution from the additional vehicles and operations at the site.
- The site operations will disturb the peace of the adjoining campsite.
- The land is likely to become contaminated from vehicle storage on the site (leaking oil and other pollutants). It should be properly developed with appropriate surfacing and drainage; this should have been done before the operation commenced.

- Raw sewerage has been deposited at the rear of the site, contaminating the ground and surrounding land, which is in Zone 1 of a water source protection zone.
- The site is occupied by Flo-Well and First4Drains, both of which have the same directors and registered office at the site since 6 June 2024. There are other businesses also registered in the applicants' names for this address.
- The site was purchased in early 2024 and has already been used as an operating centre for HGVs and other support vehicles on a 24/7 basis, so is clearly already in commercial use. This does not comply with the Class R prior approval for the change of use of an agricultural building.
- Unauthorised extensive building work has been carried out at the site with industrial workshops and the rear of the site being turned into an area of waste disposal from 10 large tankers that are operating from the site 24 hours a day, 7 days a week, with even more vehicles attending for maintenance etc (up to 60).
- The current occupants started operating this site as an Operating Centre for HGVs under an Interim Licence issued by the Traffic Commissioner, to which an objection has been lodged. To obtain such a licence, planning approval should be required, so the current operations would appear to be illegal, together with building works that are taking place on the site. Enforcement action should be taken.
- Equestrian properties will lose business as horse owners will move their horses to a safer location, away from the disturbance, light and noise of the HGVs accessing the site. This will be the same for the adjoining campsite.
- The application lacks information and contains errors and inaccuracies, including no reference to the applicant setting up a vehicle operating centre at the site. The planning statement refers to the building and curtilage being used for commercial purposes, primarily offices; the evidence (a Transport Licence Application) indicates the primary use is as a liquid waste transport yard and with offices being a secondary use.
- Intimidation from company employees/drivers when conflicts have occurred on the road.

Officer's Analysis

Proposal

The application site previously operated as a commercial plant nursery. There is a building at the front of the site that was granted planning permission in 2001 that was constructed to provide equipment/materials storage, propagation area, potting and packing and loading areas at ground floor level and staff facilities, drying room, office and storage at mezzanine floor level. This building is the subject of this application.

This application seeks determination pursuant to Article 3, Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) in respect of a proposed conversion of the building to a commercial use Class E.

The submitted Planning Statement states the site is intended to be occupied by a drainage company (First4Drains) that is looking to open an office. The proposed development is described as follows:

The company operates 24/7 with the offices intended to be operational between 8am and 5pm Monday to Friday. The company owns around 60 vehicles and with the exception of 10, 50 are remotely based from across the local area all the way to places such as Birmingham.

Having recently purchased the former Walnut Hill Nursery site, the Applicant now wishes to use the main existing agricultural building to the front as offices as a new primary use of the Site, rather than have offices incidental to an agricultural use. No operational development is to take place as part of this application, hence the existing and proposed floor plans and elevations are the same.

Form officers visiting the site the drainage company has been operating on the site since March 2023. Therefore the change of use at this site started before the submission of this prior approval application on 4 July 2024. This is shown on the below photographs.





Assessment

Class R of Part 3 of Schedule 2 of The Town and Country (General Permitted Development) (England) Order 2015 (as amended) relates to changes of use of 'agricultural buildings to a flexible commercial use' and permits development consisting of:

... a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use—

(a) falling within one of the following provisions of the Use Classes Order—

- (i) Class B2 (general industrial) of Schedule 1;*
- (ii) Class B8 (storage or distribution) of Schedule 1;*
- (iii) Class C1 (hotels) of Schedule 1;*
- (iv) Class E (commercial, business or service) of Schedule 2; or*
- (v) Class F.2(c) (outdoor sport or recreation) of Schedule 2; or*

(b) for the provision of agricultural training.

Under the Class R conditions (R.2) the definition of 'curtilage' above is specifically set out as follows:

R.2

(c) after a site has changed use under Class R, the planning permissions granted by Class E of Part 7 of this Schedule apply to the building, subject to the following modifications—

- (i) "curtilage" has the meaning given in paragraph X (interpretation) of this Part;*

Interpretation of Part 3

X. For the purposes of Part 3—

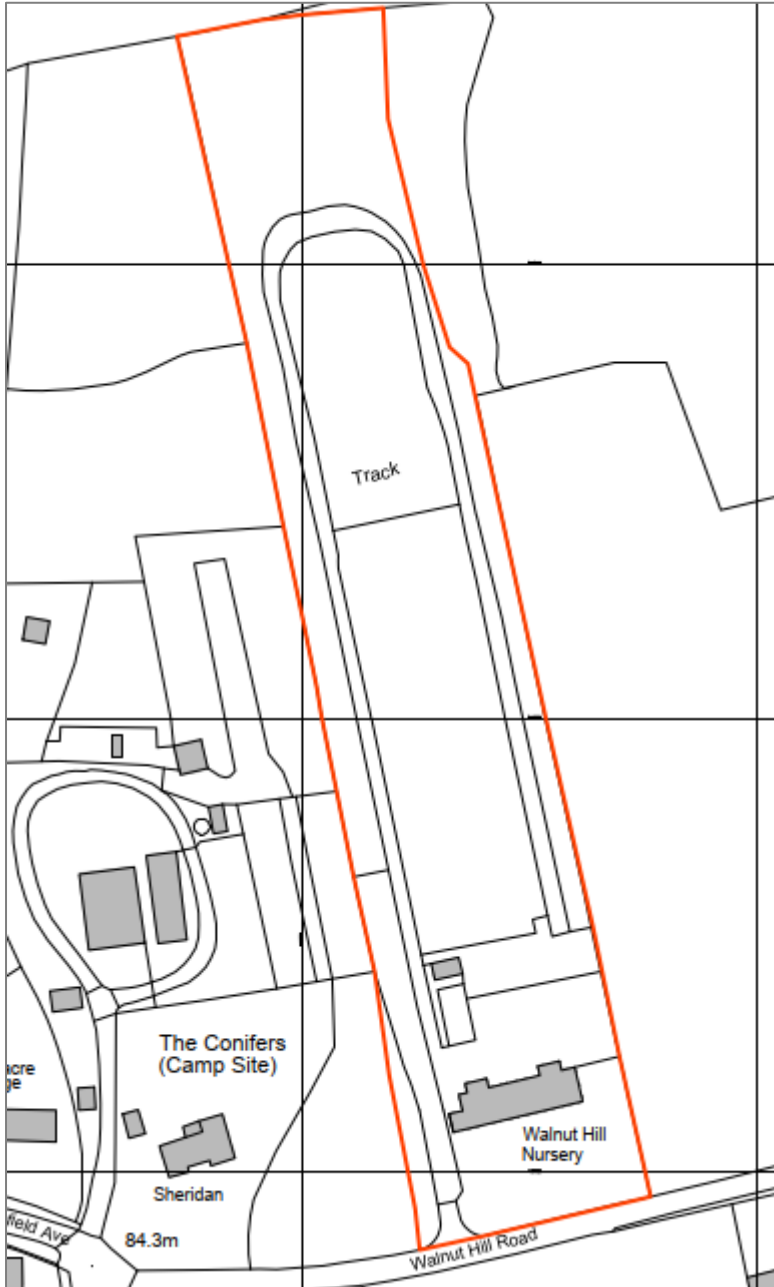
“curtilage” means, for the purposes of Class Q, R or S only—

(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or

(b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser;

In this case, the application site does not solely include the main building on the site where the use is sought to be changed to Class E; the application site consists of the whole (previous) plant nursery site:

Site Location Plan:



On this basis, the proposal would not be permitted development as it does not solely relate to the building and curtilage as defined within Class R. The application should therefore be refused, and planning permission should be sought. This matter will be discussed further below in the consideration of the Class R conditions.

For completeness, the proposal has been assessed against the permitted development criteria below.

Paragraph R.1 states that development is not permitted by Class R if:

- (a) the building was not used solely for an agricultural use as part of an established agricultural unit—*
 - (i) on 3rd July 2012;*
 - (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or*
 - (iii) in the case of a building which was brought into use after 3rd July 2012, for a period of at least 10 years before the date development under Class R begins;*

In this case, the previous lawful use of the site was a plant nursery. The most recent planning application for the site (20000600) confirms this. Such a use falls under the description of agriculture and therefore the proposal would comply with R.1 (a)(i).

- (b) the cumulative floor space of buildings which have changed use under Class R within an established agricultural unit exceeds 1,000 square metres;*

The ground floor and first floor of the main building on the site that is proposed to change to offices equate to approximately 386m². The proposal would therefore comply with R.1 (b).

- (c) the site is, or forms part of, a military explosives storage area;*
- (d) the site is, or forms part of, a safety hazard area; or*
- (e) the building is a listed building or a scheduled monument.*

R.1 (c), (d) and (e) do not apply to the site.

There are further conditions that must be met where development is permitted by Class R. These are set out under R.2:

- (a) a site which has changed use under Class R may, subject to paragraph R.3, subsequently change use to another use falling within one of the use classes comprising the flexible use;*
- (b) for the purposes of the Use Classes Order and this Order, after a site has changed use under Class R the site is to be treated as having a sui generis use;*
- (c) after a site has changed use under Class R, the planning permissions granted by Class E of Part 7 of this Schedule apply to the building, subject to the following modifications—*
 - (i) “curtilage” has the meaning given in paragraph X (interpretation) of this Part;*
 - (ii) any reference to “office building” is to be read as a reference to the building which has changed use under Class R;*
- (d) where the site is to be used for general industrial purposes within Class B2, it must only be used for the processing of—*
 - (i) raw goods, excluding livestock, which are produced on the site and are to be sold on the site, or*
 - (ii) raw goods mentioned in paragraph (i) together with goods ancillary to the processing of those raw goods.*

As stated above, in this case the site boundary extends around the whole site rather than just the frontage building and land immediately around and beside it. It is therefore considered that condition R.2 (a)(i) would not be met in terms of the curtilage definition, and the development cannot therefore be permitted. In line with the procedure for applications for prior approval under Part 3, W (3) states that the local planning authority may refuse an application where, in the opinion of the authority, (a) the proposed development does not comply with any conditions, limitations or restrictions specified as being applicable to the development in question. On the basis that condition R.2 (a)(i) is not met, the application should be refused. The current use of the application site has already changed to what would appear to be a mixed Sui Generis/Class B8 (storage and distribution) and Class E (office) use, and not an agricultural use as it formerly was. A planning application for a change of use should therefore be sought in this regard; the prior approval process is not the correct procedure to assess the development.

Furthermore, under R.3 (1)(b), before changing the use of the site under Class R, and before any

subsequent change of use to another use falling within of the use classes comprising the flexible use, the developer must, where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit exceeds 150 square metres, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (i) transport and highways impacts of the development;
 - (ii) noise impacts of the development;
 - (iii) contamination risks on the site; and
 - (iv) flooding risks on the site,
- and the provisions of paragraph W (prior approval) apply in relation to that application.

This application has been submitted in order to seek prior approval in line with R.3 but has been submitted after the change of use has taken place. This also means that the application fails to comply with the condition set out within Class R.3 (1)(b), regarding the timing of the submission of the application, as the change of use has already taken place.

For completeness, however, the above impacts and risks set out under R.3 (1)(b) will be discussed below.

Transport and highways impacts of the development

Saved policies T1, T5 and P3 of the Local Plan 1994, Policy CS11 of the Core Strategy 2014 and paragraph 115 of the NPPF 2023 comprise the relevant highways considerations for this proposal. These policies ensure that development has an acceptable amount of parking, is not detrimental to the highway network and promotes sustainable transport methods.

The site lies outside the urban area on a rural lane. Concerns have been raised by KCC Highways as well as neighbouring properties regarding the possible highway impact on the access roads to this site, particularly Walnut Hill Road and Nash Bank. Both of these lanes are narrow in width with a lack of passing places, poor forward visibility, no pedestrian facilities and no street lighting.

In order to fully assess the highways impact of the proposal, a Transport Statement is considered to be required, providing information relating to the number, size and frequency of vehicles generated by this proposal. In addition, an assessment of the number, size and frequency of vehicles generated by the previous permitted use as a plant nursery should be included as a comparison. Information regarding the routing of vehicles relating to their origins / destinations should also be provided.

On the basis of such highways concerns, prior approval would be required for the proposal, and due to the lack of highways information within this application, would be refused.

Noise impacts of the development

The NPPF 2023 states that planning decisions should aim to secure a high standard of amenity for all existing and future users (paragraph 135f). The impact on amenity is also considered with regard to the criteria within Policy CS19 of the Core Strategy 2014, which states that new development should be located, designed and constructed to safeguard the amenity of its occupants, and those of neighbouring properties and land, and avoid adverse environmental impacts.

The Council's Environmental Protection team have commented on the proposal. They advise that in respect of the proposed operation of the building as offices between 8am and 5pm Monday to Friday there would not be any noise concerns.

However, it is noted that the company that owns the site operates 24/7 and 10 vehicles are proposed to be parked on the site. It is not clear from the application details whether these vehicles will come and go from the site in response to night-time calls outs etc, and if so with what sort of frequency this would be likely to happen.

Neighbour comments have also raised concerns about the 24-hour operation of the site. Such an operation should be clarified in detail in order to properly assess any impact in terms of noise from vehicles or equipment being loaded/unloaded etc.

On the basis of such noise concerns, prior approval would be required for the proposal, and due to the lack of noise information within this application, would be refused.

Contamination risks on the site

In relation to the office building, as no ground breaking would occur, contamination would not be a consideration, as confirmed by the Council's Environmental Protection team.

However, concerns have been raised from neighbour consultations about the location of the site in a groundwater source protection zone (Zone 1), and the risk of contamination from sewage being dumped on the site, as well as from the cleaning and maintenance of the large numbers of drainage and waste vehicles using the site. This matter has not been addressed within the application, and due to the lack of such information about potential contamination from the activities on the wider site, prior approval would be refused, as there would be conflicts with Policy CS19 of the Core Strategy 2014 and paragraph 191 of the NPPF 2023.

Flooding risks on the site

Kent County Council as Lead Local Flood Authority have reviewed the application and regard the development as low risk. On this basis, the proposal would comply with Policies CS18 and CS19 of the Core Strategy 2014 and paragraph 167 of the NPPF 2023.

Conclusion and Recommendation

The application fails to meet the permitted development criteria as set out in Class R of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), particularly with regards to the curtilage definition under condition R.2 (a)(i), and the timing of the application submission under R.3 (1)(b). The proposal would not therefore be permitted development and this application for prior approval is refused.

Furthermore, if prior approval were to have been required under R.3 (1)(b) it would have been refused, as the use of the site is causing harm with regards to highways, noise and contamination matters, and insufficient information has been submitted to address these impacts.

(For reasons for refusal and informatives, see draft Decision.)

Case Officer:	Mrs Katherine Parkin	Team Leader:	Richard Hart
Signed:	<i>K. Parkin</i>	Signed:	<i>R Hart</i>
Dated:	21st August 2024	Dated:	29th August 2024