

Your Ref: 20240099

Our Ref:

FAO Amanda Cue
Planning Department
Gravesham Borough Council
Civic Centre
Windmill Street
Gravesend
Kent
DA12 1AU

16 April 2024

Dear Ms Cue

**LETTER OF OBJECTION
PLANNING APPLICATION 20240099
OAKLEIGH FARM, BUCKLAND ROAD, HIGHAM, ROCHESTER KENT ME3 7HY**

We have been instructed by [REDACTED] to submit a letter of objection to planning application 20240099 (the "**Application**") seeking permission for the retrospective change of use of an agricultural building (the "**Building**") to a light industrial use under use Class E(g) at Oakleigh Farm, Buckland Road, Higham, Rochester, Kent ME3 7HY (the "**Site**") as it will directly impact his property, [REDACTED]

[REDACTED]
[REDACTED] We are aware an enforcement notice has now been served on the farm requiring that part of the Site stop being used for Class E(g), B2 and B8 Uses not connected to agriculture and a large amount of materials be removed from the Site. While we remain unsatisfied with how the Council delayed in issuing an enforcement notice on the Site, that is subject to separate correspondence and this letter focuses solely on the Application in relation to the Building.

We are also aware [REDACTED] have submitted a letter of objection to the Application and we strongly support the objections raised [REDACTED]

In summary, this letter objects to the Application and submits that it should be refused on the following grounds:

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- The Application contains numerous inaccuracies and misleading information and as such cannot be properly considered and fairly commented upon.
- The Application is not in accordance with local and national planning policies.
- Access to the Site is unsafe and unsuitable due to intensification of use.
- The Application is known to have a detrimental impact on neighbouring amenity.
- The development does not reflect Use Class E(g) and should be for a change of use to Class B2.

Policy background

Section 70(2) of the Town and Country Planning Act 1990 (as amended) and Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that a planning application be determined in accordance with the local development plan unless material considerations indicate otherwise. From our review of the Application, there are no strong material considerations that have been identified or highlighted that would suggest the local development plan should be deferred from, or in such event any explanation or justification for such a deferral.

In this context, the local development plan is the Development Plan for Gravesham (which consists of the Gravesham Local Plan Core Strategy and Local Plan Policies Map (2014), Gravesham Local Plan First Review (1994) – saved Policies, and Kent County Council Minerals and Waste Local Plan 2013-30 (2020)) (the “**Local Plan**”). The Application is also subject to the policies contained in the National Planning Policy Framework (the “**NPPF**”).

As officers will be well aware, the Council as decision maker is required to consider the Application in accordance with the plans and policies contained in the above. If a decision is made on the Application and there is a justiciable legal error this will give rise to a claim for judicial review of the Council's decision, and we will advise Mr Skinmore accordingly in such circumstances.

Objections

Inaccuracies and misleading information in the Application

The biggest and most obvious inaccuracy or misleading statement is the absence of the word ‘retrospective’ from the proposed development. At present the description reads as a standard application seeking permission for a proposed project, however, the reality of this Application is that the development has already been undertaken. On that basis the consideration of the Application is entirely different. The Application description should be amended to record this properly. This correction will also impact on the ability of the Council to impose proper and enforceable conditions – taking into account the real-time impacts of the development, as opposed proposed impacts in the ‘normal’ run of planning applications.

The Supporting Planning Statement (the “**Statement**”) and drawings submitted with the Application contain a number of factual inaccuracies we wish to bring to the Council's attention. These are listed below. Whether contained in the Application in error or so as to be deliberately misleading, the Application cannot be granted while it contains such flaws. They make it impossible for the Council and any other party to fairly and properly consider and comment on the contents of the Application. In view of this, we consider it legally unsound if the Application were to be granted under these circumstances.

1. Paragraph 2.2 of the Statement provides the Site is “largely agricultural in nature with the farm primarily associated with the production of a variety of vegetables, hay and the growing of trees for timber products. The holding also includes a mix of other uses, including a stable building, two scaffolders yards and a builder's yard.” However, the Site has not grown trees for many years and most of the Site is used for equestrian uses or grazing land, with ancillary uses including a shop, nursery and improper, unregularised uses that are the subject of the current enforcement action by the Council.

2. Many dates throughout the Statement are incorrect, including multiple references to Hire Heat Ltd's occupation of the Building. The Statement claims the company occupied the Building from February 2016, however, they only began occupation in the autumn of 2018 through starting and mobilising their business. [REDACTED] can provide photographic evidence of this on request and, as can be seen on Companies House, Hire Heat Ltd were not incorporated until February 2019.
3. The Statement also incorrectly says on multiple occasions that Hire Heat Ltd will be vacating the building in February 2024. As we are now passed this date, it can be confirmed they have not vacated the Building. [REDACTED] has been notified by the Council that Hire Heat Ltd do not intend on vacating until August 2024, likely after the Application has been determined, meaning Hire Heat Ltd's historic use of the Building is highly relevant to the Application.
4. The other applications referenced under "Other relevant applications" are not relevant to consideration of the Application. The application at Cheney's Farm Barn relates to a change of use for B8 storage and distribution, which would be far less disruptive than an industrial use. Further, the prior approval application granted under Class R at Queens Farm cannot be comparable as the planning considerations for a prior approval application are much more limited than for a full application, such as the Application.
5. The Statement claims the operation hours out of the Building have been "confined between the hours 08:00 – 17:00 Monday – Friday". This is not correct and [REDACTED] can provide photo and video evidence to demonstrate that Hire Heat Ltd had been running a 24/7 business from the Building; the Company are even advertised online as being 24-hour.
6. Paragraph 4.9 of the Statement is misleading in stating no changes have occurred to the exterior of the Building since February 2016. Since 2019, a secure compound has been attached to the Building and a portacabin has been sited to the west of the Building. Further, if such industrial uses are to continue at the Building, some external changes should be required as it currently has numerous missing and broken windows which are unsightly and provide no protection to neighbouring properties from the disruption caused by the use of the Building. The Application makes clear no external changes will occur as part of the development.
7. Paragraph 4.11 provides that no trees or vegetation will be removed as a result of the Application. However, vegetation was removed from the Site when the secure compound was added to the Building, which can be seen on Google Maps. Therefore, damage to vegetation has already been caused as a result of the unlawful change of use which the Application seeks to regularise.
8. Paragraph 7.2 of the Statement says the nearest neighbouring property is 12 metres from the Building, [REDACTED] (not mentioned in the Application) and is within 1 metre. Evidence of this has been provided in the letter of objection submitted by the owners [REDACTED]. In addition, the track runs adjacent to Oakleigh Lodge within ten metres [REDACTED].
9. Drawings P.3207.040.A and P.3207.050.A are missing a window on the ground floor east elevation that directly overlooks the residential property, [REDACTED]. These drawings also do not represent the actual façade and layout of the Building, for example, there are no centre windows as shown on the elevations.

For a retrospective application seeking to regularise existing development to contain so many inaccuracies is nonsensical. The development has already been carried out and the impacts are well known and evidenced. This makes it particularly alarming for the Application to include such misleading information. On this basis alone, the Application should be refused as to grant it will be preventing statutory consultees and members of the public from providing comments on the true nature of the development.

The remainder of the objections, below, follow the above theme - that the Application contains manifest errors - but focuses on specific, material errors in more detail.

Issues with access to the Site

The Statement provides the following in relation to access and parking:

“4.13. The building benefits from an existing access via a private hardstanding that’s runs from the site west and then south to the main highway of Buckland Road. There are no proposed changes to this.

4.14. There is ample parking within the site to accommodate parking for multiple vehicles. Due to the small scale of the building it is anticipated that any vehicle movements to and from the site would be limited.

...

7.8. Access to the site is also currently utilised by other commercial businesses including those associated with the existing Scaffolder’s yard, builders’ yard and the agricultural operations at Oakleigh Farm and as a result, it is not considered that the proposed light industrial use of a small building would result in any material increase in vehicle movements.”

The Application thus concludes it can be approved in accordance with paragraph 111 of the NPPF which requires development not be permitted where localised, residual impacts from development on its own, or in combination with other planning developments, will result in severe impact on road traffic, road safety or excessive pressure for on-street parking. However, [REDACTED] strongly contests this assertion.

The access road to the Site is best described as a “track” rather than road – the type often seen in a farmland setting and not intended for daily, heavy use by cars, vans, lorries, telescopic access vehicles. However, all types of vehicles have been needed for use specifically at the Building, which has historically been used 24/7. The Council will note the track is a Kent County Council footpath NS141 with access to this crossing Buckland Road into the entrance of the farm and continuing west to Church Street.

Also, as set out in the NPPF, the highway impacts must be considered “*in combination with other planning developments*”. Therefore, the intensification of use of the whole Site is highly relevant to this part of the Application. The number of vehicles accessing the Site has drastically increased as a result of intensification and [REDACTED] has recorded between 60 and 100 movements per day. This has also resulted in cars parking on the access road to the west [REDACTED] due to the lack of parking on the Site as a result of the excessive amount of vehicles moving around the Site. The Application is therefore clearly wrong in its assertion “*There is ample parking within the site*”.

There are also approved developments by Medway Council MC/21/1694 and MC/19/0287 for for 293 new dwellings in the locality which will also increase traffic long Buckland Road. [REDACTED] is concerned Buckland Road will not be able to cope with the combination of the Application development, the new residential development and the intensification of use at the Site safely particularly with footpath access onto the site across Buckland Road.

Further, both neighbouring residential properties, [REDACTED] have an obligation in their title deeds to contribute to the maintenance of the access road for the Site. They have already had to expend a significant amount of money to ensure maintenance of the farm road, but this is now unrealistic given the intensification and proposed diversification of use of the Farm, when the obligation was drafted to maintain access to agricultural land. It is not realistic for these properties to be able to maintain the road to a safe quality considering the number of vehicles using the Site and the industrial vehicles which need to access the Building.

The information that the Application provides in relation to access is inadequate and fails to consider the intensification of use of the whole Site and local development. Being retrospective in nature, the impacts of the development are already known and the vast increase in use of the access road is already not safe to pedestrians and horse owners and has resulted in improper parking along the access road, due to the Site’s inability to withstand the development. The Application therefore cannot be granted in accordance with paragraph 111 of the NPPF.

Policy CS11 of the Local Plan provides new development should mitigate their impact on highways as required. The Application has failed in this regard.

Detrimental impact on neighbouring amenity

As stated throughout this letter, due to the retrospective nature of the Application, we are in the unusual position where the development's impact on neighbourhood amenity is already known.

Policy CS19 of the Local Plan outlines that new development will safeguard the amenity, including privacy, daylight and sunlight of neighbouring properties.

We contend the Application cannot be granted in accordance with the above policy. [REDACTED]

[REDACTED] As set out above, the Building has been used 24/7 and resulted in noise and traffic movements accessing and leaving the Site at all hours of the day. The access track goes directly past [REDACTED] and this has resulted in unacceptable levels of noise and disruption.

In addition to disruption from traffic, the Building does not allow for protection from noise for neighbouring properties. As mentioned, the Building is in a poor state of repair with broken and missing windows. If such permission were ever granted for the Building, we would hope some external works would be required, but the Statement has made clear none are proposed as part of the Application. The poor quality of the Building also contravenes Policy CS07 of the Local Plan which provides particular support will be given to small and flexible industrial spaces of "high quality".

Further, as highlighted above, the Application incorrectly states the distance from the neighbouring, residential properties and omits to show windows directly facing [REDACTED]. This consequently downplays the potential impact of the Application on neighbouring amenity. Given the extremely close proximity the Building has with residential property and that windows face onto residential property, the above impacts must be stressed. Conversion of an agricultural building to daily, industrial use has a detrimental impact on the privacy enjoyed [REDACTED] and causes unacceptable levels of noise and disruption for both [REDACTED].

As is explored further below, the industrial uses of the Building have been general - producing noise, fumes, odours, and smoke. This is not appropriate in such close proximity to residential properties and further reiterates the ways in which the Application fails to protect the neighbourhood amenity.

We also note the intensification and diversification of use of the Site has resulted in an increase in criminal activity in the locality, having a further detrimental impact on neighbouring, residential properties.

The proposed use class should be B2

A fundamental flaw with the Application is that it seeks to have granted a change of use to Class E(g), which is for "*any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit*".

As has been set out above, as the Application seeks retrospective approval, we already know the development does have a detriment impact on the amenity of the area by causing noise, smell, fumes and smoke. Therefore, the Application should seek a change of use to Class B2 for "*the carrying on of an industrial process other than one falling within the uses described in Schedule 2, Class E, sub-paragraph (g)*".

The Building has been used at all hours and on all days for all manner of industrial activities, including welding and the burning of materials that have produced fumes, smoke and smells. It is therefore asserted the Application cannot seek to regularise "light industrial uses", of the kind that would be suitable in a residential area without causing detriment to the amenity.

There is a substantial amount of appeal casework on the distinction between Class E(g) (formerly class B1) and Class B2 which assists in demonstrating this point. As a starting point, the appeal Southwark 11/01/2012 DCS No 100-075-696 demonstrates that if activities on site adversely affect the amenity of neighbouring residents, the use class is B2; considerations include the amount of noise produced and the number and type of vehicles needed at the industrial unit. This was reaffirmed in appeal Lambeth 13/07/2017 DCS No 400-015-956, where it was confirmed a business could not occupy a Class B1 unit due to neighbours' complaints about noise, dust, heavy goods vehicles and hours of operation including evenings, weekends and holidays.

The development has already occurred at the Building and has already resulted in unacceptable levels of noise, produced fumes and smoke, produced an increase in traffic including from heavy goods vehicles, and been operated at all hours.

This flaw in the Application also nullifies all points in the Statement about the permitted development rights for change of use from agricultural to commercial. This was already inapplicable to the Application due to the development occurring without permission, but its irrelevance is reiterated by the fact the Application should be seeking a change of use to Class B2.

This represents a manifest error in the Application meaning it should be refused. However, if the Council were still minded to grant the Application in spite of this, we would hope the Council would be swift in taking enforcement action required if the Building continued to be operated as Use Class B2.

Conclusion

We have set out in detail a number of reasons why the Application cannot lawfully be granted, including highlighting why it cannot be approved as being in accordance with local and national planning policy, without clear, reasoned and justified grounds for accepting the proposal contrary to policy. In light of these reasons, we strongly suggest the Council refuse the Application.

We note not all statutory consultees have yet commented on the Application and we reserve the right to comment further once these responses have been published.

Please treat this letter as notice [REDACTED] position in the event of the Application being approved, it would be open to challenge by way of judicial review.

Yours faithfully

[REDACTED]