



Mrs Parkin
Planning department
Gravesham Borough Council

8th August 2024

Dear Mrs Parkin,

20240607 - 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

I write to you as a concerned neighbour affected by the current unlawful use and proposed development at the above site. For context, I write to in the context of having been a resident at my property for 50 years!

I note there is already at least 61 separate objection letters relating to this application from residents, which clearly indicates the scale of the concern in this area over what has already become a nuisance site, and unfortunately appears to be proposed to become more unneighbourly as a result of the proposed development.

We do all have concerns about the ongoing unlawful use of the site since it was sold to the new owners earlier this year. The commercial operations I understood to include the storing of multiple HGV's, vans, and cars, and the disposal of contaminated wastewater.

Whilst there are a broad range of objections to the current unlawful and proposed use at the site, I have been advised to keep my objections focussed on the matters which are material to you as Planning Officers in considering this current application. Please therefore consider my comments as follows;

Existing Non-agricultural (commercial) Use of Site

It is understood that this current application is submitted under the provisions of Schedule 2, Part 3, Class R of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building (my emphasis) to a flexible use falling within one of a number of specified uses.

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.

It is therefore understood that, in order to benefit from the provisions of this legislation, it is necessary for the applicant to demonstrate that the building fulfils either one of the above criteria (i), (ii) or (iii).

However, Paragraph R3 (1) also says “*Before changing the use of the site under Class R (my emphasis), and before any subsequent change of use to another use falling within one of the use classes comprising the flexible use, the developer must.... (b) 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”.

Paragraph W (11) of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) says “*The development must not begin before the occurrence of one of the following –*

- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;*
- (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or*
- (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused”.*

It is therefore clear that development that requires an application for prior approval cannot be begun before;

- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required, or
- (b) giving their prior approval or,
- (c) before the expiry of 56 days following the date on which the application was received by the LPA without the authority notifying the applicant as to whether prior approval is given or refused.

Upon one of these three events occurring, development can then begin and, if it comprises only a change of use, and does not involve building operations, it will not be “begun” until the change of use is actually made, that is to say until the occupation of the building for its new use actually commences or, at the earliest, when it is ready for immediate occupation for that new use.

However, in this case, prior to the current owners and applicants acquiring the site, it was already being sub-let to a firm called SJB Transport Ltd., a professional removals and delivery service company. See this evidenced by the screenshot from the Companies House website below;

Search for a company or officer

Advanced company search

SJB TRANSPORT LTD

Company number 11831176

Follow this company File for this company

Overview Filing history People More

Registered office address
Walnut Hill Nurseries, Walnut Hill Road, Gravesend, England, DA13 9HL

Company status
Active

Company type
Private limited Company

Incorporated on
18 February 2019

Accounts

Next accounts made up to 28 February 2025 due by 30 November 2025

Last accounts made up to 29 February 2024

Confirmation statement

Next statement date 22 November 2024 due by 6 December 2024

Last statement dated 22 November 2023

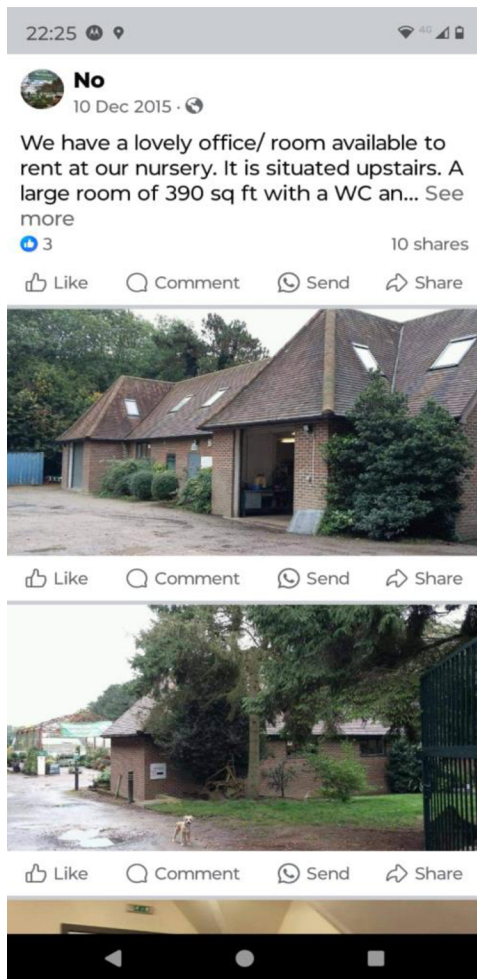
Further to this, there is clear evidence that the change of use of the existing building to a commercial operation by the existing owners has already begun. This is evidenced already by much of the submissions which form the 61 (at the time of drafting) objections already lodged. The evidence for the commercial use of the building by 'First 4 Drains' having already commenced is proven by photographs and videos that have been taken from residents. These show employees of this business frequenting the building since April 2024. Please see below some of the screenshots of this evidence (employees entering and exiting the building have purposefully been excluded to protect their privacy);







Indeed, it does appear from advertisements online that the building has been used as self-contained offices since as long ago as 2015;



Under ‘Interpretation’, Paragraph 3 (5) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) says “*The permission granted by Schedule 2 does not apply if...(b) in the case of permission granted in connection with an existing use, that use is unlawful*”.

This is illustrated by an appeal decision in Evesham (Wychavon DC) in February 2016 [3136527], where the application for prior approval which was the subject of the appeal had been submitted to the council on 6 July 2015. However, it was clear from the history of this appeal, and the appellant’s evidence, that the appeal property had been converted to residential accommodation a number of months prior to this date and that the building was occupied by residents over that time at least up until 30 June 2015. An inspector’s decision on a previous appeal [3005119] had confirmed that at the time of his site visit on 25 August 2015, the premises were in use for residential purposes and that this use appeared to be ongoing at that stage. The site visit in the instant appeal also pointed to the building already being used for residential purposes at that time.

It is therefore respectfully submitted that in light of the evidence put forward by neighbours, Gravesham Borough Council should refuse to determine this application for a change of use on the basis that it does not constitute development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building (my emphasis).

Following on from this point, any works for the adaptation of the building to the new use that affect only the interior of the building, or which do not materially affect the external appearance of the building, may not be considered to amount to development (by virtue of section 55(2)(a)). However, their completion so that the building is ready for imminent occupation for its new use may amount to a change of use so as to constitute the commencement of development for that purpose;

Building works

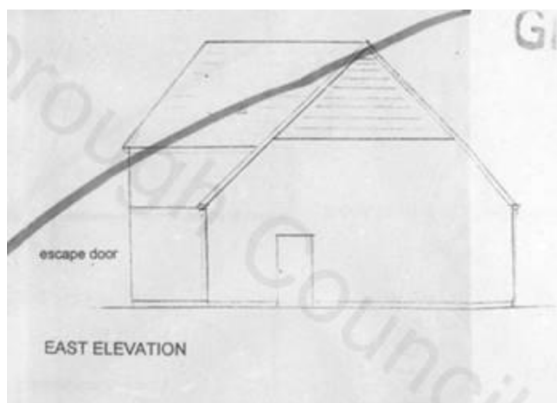
It is understood that it is possible that an application can be submitted for a change of use with any building works required to be submitted as part of a separate planning application, and it is recognised that from Paragraph 4.2 of the submitted Planning Statement says *“No operational development is to take place as part of this application, hence the existing and proposed floor plans and elevations are the same”*.

Indeed, bearing in mind that no building operations can be carried out under Class R, so that any works for the alteration of the building must necessarily be confined to works which affect only the interior of the building, or which do not materially affect the external appearance of the building (and which by virtue of section 55(2)(a) of the 1990 Act do not therefore amount to development), the scope for any element of rebuilding or structural alteration will be very limited indeed, and cannot take place if it would in any way affect the external appearance of the building.

However, under ‘Interpretation’, Paragraph 3 (5) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) also says *“The permission granted by Schedule 2 does not apply if... (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful”*.

In this case it is highly pertinent to note that building operations have already been carried out to the application building since the new ownership of the site by a commercial drainage company since April 2024. These works include the replacement of garage doors with glazing and so have affected the external appearance of the building and therefore considered to constitute development requiring of planning permission.

East elevation as previously approved, and as now being shown following recent unlawful works to the building this year;



In this context, it is submitted that the fore-mentioned Paragraph 3 (5) is indeed relevant, and the provisions of Schedule 2 should not be applicable in this case. It is respectfully submitted that the application should therefore be refused on this basis.

Curtilage

It should be particularly noted that an the extremely restrictive definition of “curtilage” is prescribed by paragraph X for the purposes of Class R. This allows only a very small area of land adjacent to the agricultural building to be included in the permitted change of use. It is confined to:

- (i) 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
- (ii) 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 submitted proposed block plan and site location plan both indicate by a red line that there would be an area of curtilage which amounts to the whole of the area of land under the ownership of the applicant. It does not appear that any curtilage has been defined to comply with the fore-mentioned requirements.

A development that seeks to include more than this very limited amount of land in the change of use will not be permitted development under Class R. Prior approval applications under Class R where a larger area of land has been included have been summarily rejected, and the rejection of the application has been upheld on appeal. On this basis it is submitted that the proposed plans should not be considered as acceptable.

Furthermore, it is relevant to note that, should a reduced area of curtilage be being considered, that the area surrounding the application building, just like the application building itself, has already begun use in connection with the drainage business. Unfortunately, the whole of the site identified by the red line on the submitted site plan has been used in connection with the business that has now unlawfully made use of this former agricultural site for at least 4 months.



Proposed Use of Site

Whilst this application has been submitted for a proposed office use, the submitted Planning Statement has confirmed that *‘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’*. Notwithstanding the evidence submitted that the application building has previously partly been used for offices in connection with other businesses and so has not been used solely for purposes ancillary to agriculture, it is readily apparent that the proposal is for the application building to be used for office purposes in conjunction with the overall use of the site as a depot for the drainage company.

Indeed, the application building is already being used as an office as part of the existing Sui Generis use which covers the whole of the site. As there is no clearer evidence than on the ground, it is respectfully submitted that the council should be refusing this application on the basis that the proposed use is not one which would fall within any of those flexible uses that are permissible under the provisions of Class R.

Transport and Highways impacts

Paragraph W (3) of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) says “*The local planning authority may refuse an application where, in the opinion of the authority - (a) the proposed development does not comply with, or (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions...limitations or restrictions specified in this Part as being applicable to the development in question*”.

I note that KCC Highways has already expressed its own concerns in relation to the suitability of the proposed use with respect to transport and highways impacts;

“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”.

I cannot see that any Transport Statement or further information has been provided to overcome the concerns of this consultee.

Paragraph 4.1 of the submitted Planning Statement says ‘*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*’. However, as can be evidenced by any visitor to the site over the last few months, the business is clearly storing dozens of vehicles at the site. On the day before the drafting of this letter, there were several HGV’s being stored at the rear of the site, and many cars and vans stored at the front of the site.

It is clear for all to see that the number of vehicles associated with this existing business is not appropriate to be located in this rural area, and a suitable commercial premises should be found in a more sustainable and accessible location.

Summary

In conclusion, whilst there remains a number of outstanding and unlawful developments on the site in recent months which are subject to investigations from the planning department, I consider there to be several material grounds why this particular application should not be considered acceptable in relation to the provisions of Class R. These include;

- The existing building is not agricultural in use and the building has already changed to a commercial use in advance of any approval having been granted, in contravention of the provisions of the legislation;

- Building works have been carried out to the application building in recent months unlawfully, and therefore the building cannot be permissible for any application under the provisions of the legislation;
- The proposed use is not actually that of a stand-alone office use but that of an office to be used ancillary to the overall use of the site as a commercial depot for a drainage business; such use does not constitute a flexible use permissible under the provisions of this legislation; and
- The proposed use should not be considered acceptable in this rural area on transport and highways grounds, given that the lanes in the area are not appropriate for HGV's and the vehicles that are evidently necessary for the operations of the proposed business.

I trust that this information is sufficient for the council to withstand this application. However, please let me know should any further evidence be required.

Yours sincerely,

