

<b>REFERENCE NO - 22/501957/FULL</b>		
<b>APPLICATION PROPOSAL</b> Section 73 - Application for Removal of condition 14 pursuant to application 18/501312/FULL to omit passing bays to Bicknor Road (Cold store, irrigation lagoon and associated engineering, access and landscaping)		
<b>ADDRESS</b> Swanton Farm Bicknor Road Bicknor Kent ME9 8XJ		
<b>RECOMMENDATION</b> Delegated authority to grant subject to completion of a s106 agreement		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> In order to secure off-site passing bays, required under the 2018 permission, KCC would require a s278 agreement that involves works beyond the limits of the highway. The applicants have not been able to secure the agreement of either of the two third parties who own land either side of Bicknor Road.  Condition 14 was drafted to prevent use of the building until the offsite highway works had been completed. Government guidance is that this form of condition should not be imposed where there are no prospects of the action being performed within the time-limit imposed by the permission.  KCC have indicated that they support the removal of the condition and that the condition is not necessary in terms of highway safety/congestion.  The condition is no longer considered to be reasonable or necessary and should be removed. Other conditions from the original planning permission will need updating as appropriate. The original unilateral undertaking will need to be carried through as a s106 agreement.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Called in by Cllr Garten regarding highway safety and congestion		
<b>WARD</b> North Downs	<b>PARISH/TOWN COUNCIL</b> Bicknor	<b>APPLICANT</b> Mr R Goatham <b>AGENT</b> Bloomfields
<b>CASE OFFICER:</b> Marion Geary	<b>VALIDATION DATE:</b> 26.05.2022	<b>DECISION DUE DATE:</b> 31.10.2022
<b>ADVERTISED AS A DEPARTURE:</b> NO		

### Relevant Planning History

18/501312/FULL

Provision of a cold store, concrete hardstanding, irrigation lagoon and associated engineering operations (including land raising/earthworks) and the upgrading of an existing track and access with structural landscape enhancement and screening  
Approved 20.12.2018

19/501533/SUB

Submission of details pursuant to Condition 6 - Surface water drainage scheme, Condition 7 - Operation & maintenance manual, Condition 8 - Infiltration details, Condition 9 - Material colours, Condition 10 - Hard landscaping works, Condition 13 - Fencing & boundary treatments, Condition 17 - Construction management plan, Condition 21 - Plant or ducting details and Condition 22 - Landscape & ecological management plan of planning permission 18/501312/FULL (Cold Store)  
Approved 21.06.2019

21/501826/SUB

Submission of Details to Discharge Condition 5 (External Lighting) Subject to 19/503751/FULL (Use of land for caravan storage when caravans not being used for seasonal agricultural workers accommodation, conversion of barn to provide amenity block for seasonal agricultural workers, provision of waste water treatment plant)  
Approved 25.05.2021

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The site was the storage yard of an orchard on which has been built a large cold store (Controlled Atmosphere Store- CAS) for top fruit with associated works and the upgrading of an existing track and access.
- 1.02 The road access to the site is via Bicknor Road which is a single carriageway lane that has junction with Swanton Street (B2163) to the east which is inside a bend.
- 1.03 Bicknor Road between the gate to the CAS and Swanton Street has a sharp bend and the stretch to Swanton Street has 4 informal gravelled waiting bays, 2 on the south side and 2 that span both verges, also abutting land belonging to third parties.

### **2. PROPOSAL**

- 2.01 The planning permission for the CAS was subject to a condition 14 as follows:

*No use of the development hereby permitted shall take place until the off-site highways improvements have been completed in the form of passing bays to Bicknor Road under a s278 agreement with the Local Highway Authority.*

*Reason: To ensure appropriate highway conditions are maintained within the locality.*

- 2.02 The applicant states that they have not been able to secure a s278 Agreement with KCC who advised them to request the condition be removed from the planning permission.
- 2.03 The applicant proposes that the condition be removed because they claim that it is not achievable and does not meet the tests of a planning condition.
- 2.04 The agent advises that the CAS is complete but not yet in use in terms of the fruit crop being collected by HGVs.

### **3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan 2017 SS1, SP1, RMX1(1), DM1, DM23

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Maidstone Borough Council – Local Plan Review Regulation 22 Submission

- The Regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration and some weight must be attached to the document because of the stage it has reached. This weight is limited, as it has yet to be the subject of a completed Examination in public.

### **4. LOCAL REPRESENTATIONS**

### **Local Residents:**

4.01 10 representations from local residents raising the following (summarised) issues

- There is sufficient space to accommodate passing bays.
- The third party landowner has no obligation to surrender land
- Highway Authority should exercise its compulsory purchase powers
- Applicant needs to lay tarmac and commit to maintain the off road areas
- The lorry drivers consistently ignore the bays
- The lane is on a diversion route for A249 roadworks
- More HGVs will access due to the CAS
- Dangerous HGVs manoeuvres
- Vehicle damage, personal injury and fatality
- Farm workers walkers, cyclists and horse riders use the road
- Access to gates is too short
- Construction work has proceeded- attempt at cost saving
- Applicants have purchased land which has existing double gates off the main Bredgar/Hollingbourne Road which is a safer alternative route into the site

Issues in terms of the behaviour of lorry drivers are not material planning considerations and therefore cannot be taken into account in the determination of this application. The other matters raised by neighbours and other objectors are discussed in the detailed assessment below.

## **5. CONSULTATIONS**

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

### KCC (Highways and Transportation)

- 5.01 KCC Highways did not object to the parent application, because otherwise the produce would have to be transported off site straight away in smaller loads.
- 5.02 Bicknor Road contains existing informal passing places which the applicant offered to formalise via a S278 agreement. There have been discussions regarding the detailed design and delivery of the required works which require third party land for a technically acceptable construction as the existing hedgerows adjacent to Bicknor Road would require removal and replanting back.
- 5.03 The relevant landowner is not willing to provide the required land to deliver the identified highway improvements. KCC Highways consider that an alternative (eg financial contribution) would place an unacceptable level of risk upon KCC in delivering the works.
- 5.04 The identified highway improvements would better enable the traffic movements to be accommodated, but due to the requirement for third party land, they are not deliverable. Non-delivery of the required works would not provide sustainable grounds for objection.

## **6. APPRAISAL**

### **Tests for Conditions**

- 6.01 The tests for conditions to be legally/policy compliant are:
- Necessary
  - Relevant to the development
  - Relevant to planning
  - Precise
  - Reasonable
  - Enforceable
- 6.02 In seeking to remove the condition, the agent has claimed that condition 14 fails all of the above tests.
- 6.03 It is considered that the condition is relevant to planning and to the development as it relates to offsite highway works to accommodate HGV traffic flows from the grant of a planning permission for a large new agricultural building.
- 6.04 It is also considered that the condition is precise- the applicant and KCC have spent 3 years negotiating to secure s278 works for passing bays to Bicknor Road so it is disingenuous of the applicants to claim they are unclear as to what the condition required.
- 6.05 The condition as drafted was enforceable as it is Grampian style: the lack of the s278 agreement for passing bays means that enforcement action could be taken over the use of the building without the condition having been met.
- 6.06 However, at the time of the planning permission being granted, it was incorrectly accepted that the works were reasonable as they were offered by the applicant and supported by KCC and the view of the Planning Committee was that the works were necessary in the interests of ensuring appropriate highway conditions. In hindsight, there should have been an assessment of whether this could be delivered.
- 6.07 These latter two issues of reasonableness and necessity need to be re-assessed in considering this s73 application in the light of the subsequent approach of KCC in the s278 discussion and the inaccurate land ownership information provided at the time by the applicant, detailed below.

### **Highway Safety**

- 6.08 KCC Highways and Transportation supported the development of the new CAS, advising that the application would not have a material impact upon the safety and operation of the adjoining highway network and that there was no unacceptable impact on highway safety, nor were the residual cumulative impacts on the road network severe. This conclusion arose from the CAS allowing for the crop to be removed in fully loaded HGVs rather than in more numerous underloaded HGVs and that the movements would be spread over a greater period of time.
- 6.09 KCC accepted the TA for the parent planning permission which estimated 70 two-way heavy goods vehicles (HGV) movements per month. Based upon each chamber having a capacity of 858 bins and each HGV having a capacity of 75 bins, this equates to an average of 2.2 movements per day when divided across a 30 day month.
- 6.10 When the planning application for the new CAS was submitted, no passing bays to Bicknor Road were proposed because the traffic assessment by KCC was that the proposal would not increase traffic numbers. This was on the basis that the top fruit

crop from the orchards would always need to be taken off site and the CAS lengthened the period of time over which that would need to take place.

- 6.11 However, in response to local concerns, the applicant offered as a “gesture of good will” to improve 4 passing places that informally existed. They submitted a land ownership plan which showed they controlled all land south of Bicknor Road. The offer comprised works to be secured by an appropriately worded condition via a S278 off site highways legal agreement.
- 6.12 The application was approved at the 29 November 2018 Planning Committee with the condition drafted as suggested by KCC.
- 6.13 In early 2019, Section 278 drawings were submitted to KCC for technical approval of 4 passing bay locations (within the Highway Boundary) involving the formalisation/surfacing of the existing passing places.
- 6.14 Due to land ownership and tree issues, the project was amended to comprise two passing bays with the caveat from KCC that the works must be within the Applicant’s or Highway land.
- 6.15 KCC required that the widening of the carriageway into the adjacent verge would need a full depth of construction, damaging tree roots of the Poplar windbreak necessitating KCC to ask for its and planting a replacement windbreak behind, at least 2m from the new edge of the proposed passing bay. Hence, the engineering and new tree planting required much more landtake that could not avoid extending beyond public highway.
- 6.16 The applicants then became aware that they did not actually own the land needed for the works beyond the highway as a strip of land on the south side of Bicknor Road was owned by a third party landowner who was approached but declined to discuss giving permission.
- 6.17 The applicants then approached the owners of farmland to the north who also declined to discuss giving permission.
- 6.18 KCC’s position is stated above.
- 6.19 In terms of the comments made by objectors, it should be noted that the passing bay condition can only relate to the new CAS and thus the HGVs arising from that. It is not appropriate for the planning condition to seek to rectify pre-existing difficulties with passing vehicles on a country lane, especially where the transportation of fruit crops from field to storage is an expected activity.

#### **PUBLIC SECTOR EQUALITY DUTY**

- 6.20 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

#### **7. CONCLUSION**

- 7.01 KCC’s approach to the s278 agreement has become incompatible with the original goodwill offer of the applicant which was that the passing bays would be improved within the limits of the highway and would only involve adding surfacing.
- 7.02 The applicants state they have not been able to secure the agreement to enter into negotiations of either the 2 third parties who own land either side of Bicknor Road
- 7.03 KCC support the removal of the condition and thus the condition is not necessary in terms of highway safety/congestion.

- 7.04 Condition 14 was drafted to prevent use of the building until the offsite highway works had been completed. Government guidance is that this form of condition should not be imposed where there are no prospects of the action being performed within the time-limit imposed by the permission. On this basis, condition 14 is no longer considered to be reasonable or necessary and should be removed.
- 7.05 Other conditions from the original planning permission will need updating as appropriate. The original unilateral undertaking will need to be carried through as a new s106 legal agreement.

## 8. RECOMMENDATION

**GRANT planning permission subject to the following conditions and the prior completion of a legal agreement to secure the heads of terms set out below** with delegated authority to the Head of Development Management to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee with a Monitoring fee of £1,020.

- Traffic routing

And the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:  
  
P1790/02 Proposed Access Arrangement; HLA-283-101 Section X-X; hla 283 02 Rabbit Guard Spec, ACG&S-SF-250 Rev D Block Plans 1 of 2; ACG&S-SF-250 Rev D Block Plan 2 of 2; ACG&S-SF-251 Rev F Floor Plan; ACG&S-SF-252 Rev E Proposed Elevations & Section; ACG&S-SF-253 Rev F Proposed Levels Plan; ACG&S-SF-253a Existing Levels Plan; ACG&S-SF-254 Rev C Levels Elevation; ACG&S-SF-261 Rev C Proposed Entrance; ACG&S-SF-262 Roof Plan; ACG&S-SF-292 Rev B Proposed Site Levels Plan & Elevations; ACG&S-SF-293 Rev B App 5-Prop Site Levels Elevations; ACG&S-SF-294 Rev B Mitigation /Enhancement Plan; ACG&S-SF-300 Rev B Illustrative Sections of Landscape; ACG&S-SF-301 Plan Indicating Routing; 01 Site Layout; 02 Pond Sections;  
  
Reason: To clarify which plans have been approved.
- 2) The building hereby permitted shall be used only for the storage of fruit that has been grown within Swanton Farm and/or Gibbens Farm (shown on drawings 01.002.1769.01SF and 01.002.1769.02GF) unless otherwise agreed in writing by the Local Planning Authority and it shall not be used for any other purpose.  
Reason: The building in the AONB is justified only by the operational needs of Swanton Farm and Gibbens Farm.
- 3) No open storage of plant, materials, products, goods for sale or hire or waste shall take place on the land outside of the building.  
Reason: To safeguard the character and appearance of the surrounding area.
- 4) No external lighting shall be installed on the site except in accordance with details approved under 21/501826/SUB. The lighting shall be retained as approved and controlled to be motion sensitive outside of normal working hours and not to remain on all night.  
Reason: In the interests of avoidance of light pollution.

- 5) Sustainable surface water drainage shall accord with the details approved under 19/501533/SUB.  
Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding.
- 6) The operation and maintenance of the sustainable drainage scheme shall accord with the details approved under 19/501533/SUB.  
Reason: To ensure that any measures to mitigate flood risk and protect water quality on/off the site are fully implemented and maintained (both during and after construction), as per the requirements of the NPPF and its associated Non-Statutory Technical Standards.
- 7) The wall, doors and roof materials shall accord with the details approved under 19/501533/SUB.  
Reason: To ensure a satisfactory appearance to the development in the Area of Outstanding Natural Beauty.
- 8) The hard landscape works shall accord with the details approved under 19/501533/SUB and be carried out in accordance with the approved details before the first occupation of the building.  
Reason: To ensure a satisfactory appearance to the development.
- 9) The approved details of the parking/turning areas shall be completed before the first use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access thereto.  
Reason: In the interests of highway safety and to ensure efficient internal movements within the site
- 10) All HGVs shall use the access detailed in drawing P1790/02 which shall be completed in accordance with the details hereby approved before first use of the building hereby permitted. The approved sight lines shall thereafter be kept free of all obstruction to visibility above 1.0m high.  
Reason: In the interests of amenity and highway safety.
- 11) All fencing and boundary treatments (including acoustic barriers) and ongoing maintenance shall accord with the details approved under 19/501533/SUB, installed prior to first use of the building and retained thereafter.  
Reason: To protect the amenity of adjoining occupiers and ensure a good standard of design is achieved.
- 12) The building hereby approved shall not be used until all land engineering to visually screen the building has been carried out strictly in accordance with the drawings ACG&S-SF-260 rev E; ACG&S-SF-292 rev B; ACG&S-SF-293 rev A; ACG&S-SF-294 rev B.  
Reason: In order to secure a satisfactory form of development having regard to the topography of the site
- 13) No HGVs shall enter or leave the site during the hours of 1800hrs and 0800hrs.  
Reason: In the interests of local amenity.

- 14) The landscaping shall be as approved under 19/501533/SUB in drawings HLA 283 PS 001 rev C 04-12-18 and HLA 259 101. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding season following completion of the development (or such other period as may be agreed by the Local Planning Authority) and any trees or plants which within a period of 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.  
Reason: To ensure that the proposed development is satisfactorily integrated with its immediate surroundings and provides landscape screening and ecological enhancement.
- 15) The landscaping details shall be carried out during the first planting season following first occupation of the building. Any seeding or turfing which fails to establish or any trees or plants which, within 10 years from the commencement of use, die or become so seriously damaged or diseased that their long-term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation.  
Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.
- 16) Prior to the first use of the premises, all mitigation measures in the noise report approved under 18/501312/FULL shall be implemented in full and retained thereafter including a 3m high by 3m wide barrier extending south from the southwest corner of the cold store and a 2m high barrier in front of the accommodation units.  
Reason: To protect the amenities of the neighbouring caravan occupants.
- 17) Plant (including ventilation, refrigeration and air conditioning) or ducting systems shall accord with the details approved under 19/501533/SUB.  
Reason: To protect the amenities of the area
- 18) A landscape and ecological management plan (LEMP) shall be implemented in accordance with the details approved under 19/501533/SUB.  
Reason: To safeguard and improve natural habitats and features within the site.

### **Informatives**

- 1) It is understood that the reservoir will be used for drainage, however if filled from a groundwater source then you may need an abstraction licence. If the proposal involves the retention of more than 25,000 m<sup>3</sup> of water above normal ground level and will require registration with the relevant Local Authority under the Reservoirs Act 1975, and an impoundment licence from us under Section 25 of the Water Resources Act 1991. Further information can be found on <https://www.gov.uk/guidance/reservoirs-owner-and-operator-requirements>.
- 2) You are advised to implement a suitable scheme of directional signage to ensure that the traffic associated with the new building follows suitable routes.
- 3) You are advised that any HGV refrigeration units should switch to plug in refrigeration when on the site.