

<b>REFERENCE NO - 18/504086/FULL</b>		
<b>APPLICATION PROPOSAL</b> Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden including erection of a woodstore, two car parking spaces and driveway, the installation of a solar PV array (two rows) and flue on southern roof slope, two heat exchange units and landscaping (part retrospective).		
<b>ADDRESS</b> Little Spitzbrook Farm Haviker Street Collier Street Kent TN12 9RG		
<b>RECOMMENDATION - REFUSE PLANNING PERMISSION</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> This is an application for retrospective planning permission for works carried out on an existing agricultural building. Officers are of the view that the development which has been carried out, as a result of the extent of the demolition and rebuilding works which have taken place, represents a new build residential building in the open countryside for which there is no justification or need demonstrated in the application. The site does not represent a sustainable location where new build dwellings would normally be considered acceptable. The substantial residential building on the site is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The large scale and visual dominance of the residential building on the site is considered to be out of character with and damaging to the setting of the adjoining listed properties on Haviker Street. The development which has been carried out represents new build residential development in an area at high risk of flooding which conflicts with Government guidance in the NPPF.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The application has been called-in for consideration by the Planning Committee by Ward Councillor David Burton, given the significance of the scale of potential enforcement action.		
<b>WARD</b> Marden and Yalding	<b>PARISH/TOWN COUNCIL</b> Collier Street	<b>APPLICANT</b> Mr & Mrs Cox <b>AGENT</b> IDE Planning
<b>TARGET DECISION DATE</b> 08/10/18		<b>PUBLICITY EXPIRY DATE</b> 22/11/18

### Relevant Planning History

15/508446/PNQCLA

Prior Notification for the change of use of part of an agricultural building to a dwellinghouse and associated operational development

For it's prior approval for:

- Transport and highways impacts of the development
- Contamination risks on the site
- Flooding risks on the site
- Noise impacts of the development
- Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed
- Design and external appearance impacts on the building

Prior approval granted.      Decision Date: 10.12.15

16/503415/SUB

Submission of details pursuant to Condition 2:  
Materials under reference 15/508446/PNQCLA

Approved.

Decision Date: 09.05.16

18/504501/FULL

Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden, two car parking spaces and driveway, the installation of solar PV array on southern roof slope, landscaping (part retrospective)

Pending Consideration (see next item on agenda)

## **MAIN REPORT**

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

- 1.01 The site is located on the east side and towards the southern end of Haviker Street, 230m approx. north of its junction with Green Lane. The main body of the site lies to the rear of the residential properties on Haviker Street at Little Spitzbrook Barn and the cottages at 3 and 4 Haviker Street. The main body of the site is accessed between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street. The main body of the site was until relatively recently occupied by a large steel portal framed agricultural building clad with corrugated iron sheeting and asbestos cement roof sheeting for which prior approval was granted on 10.12.15 for conversion to a residential dwelling. It is the view of your officers, that the agricultural building formerly on the site has, however, been substantially removed/demolished and a new large residential building (the subject of this application) has been erected on the site on the same building footprint and more or less within the same building envelope as the previous building. Retained parts of the original agricultural building have been incorporated into the new building. The site is adjoined by the residential properties at 1 and 2 Haviker Street Cottages to the south which are Grade II listed and the cottages at 3 and 4 Haviker Street to the north-west are also Grade II listed. The site is adjoined by open agricultural land to the north, east and south-east.
- 1.02 The site is located in the open countryside to the south-east of the Yalding village settlement and north-west of the Marden village settlement. The open countryside location is not subject to any landscape designation. The site is within Flood Zone 3 as shown on the Environment Agency's Flood Map.

### **2. PROPOSAL**

- 2.01 The application, as submitted, proposes the conversion of an agricultural barn building located to the rear and to the south-east of the residential properties at 3 and 4 Haviker Street to a single-dwelling on two floors with part of the building (the ground floor part of the western end of the building) retained for agricultural storage. The dwelling would be accessed from a paved driveway off Haviker Street and the majority of the curtilage around the dwelling would be paved. A detached log store is located to the southern side of the dwelling and two parking spaces are shown within the curtilage in the submitted plans. The submitted plans show the proposed dwelling to incorporate an open plan kitchen/dining room and living room, store room, boot room, utility room and wc on the ground floor and 7 bedrooms, 3 bathrooms, a shower room and a dressing room on the first floor. The roof to the dwelling incorporates solar panels to the south facing roof slope and two freestanding heat exchange units are located adjacent to the south elevation wall of the building. The application is essentially retrospective as the works are substantially completed.
- 2.02 There is a related second application (ref. 18/504501/FULL) which also forms part of the agenda. This application differs from the second application in that the first floor

residential accommodation in this application is essentially as built, extending across the full width of the upper part/roof void of the retained agricultural storage part of the building. In the second application (ref. 18/504501/FULL) the first floor residential accommodation as built is proposed to be reduced to bring it more in line with the previous grant of prior approval under application ref. 15/508446/PNQCLA in terms of floorspace. In addition to the above, the first floor windows currently installed to the western end of the building and the freestanding log store building and two heat exchange units which have been erected within the curtilage adjacent to the south elevation wall of the building are to be considered as part of this application. However, these elements of the development which has been carried out do not form part of the second application.

- 2.03 It is the view of your officers, that the agricultural building formerly on the site has been substantially removed/demolished and a new large residential building (the subject of this application) has been erected on the site. The applicants' agent was therefore requested to amend the description of the development proposed in the application to the erection of a new building as opposed to the conversion of an existing building but the agent has declined to agree to this amendment. Government guidance in the NPPG states that the Local Planning Authority should not amend the description of the development proposed in an application without the change having been first discussed and agreed with the applicant. Hence, the description of the development proposed in the application remains for the conversion of an agricultural barn building contrary to officers view that the agricultural barn building was removed and rebuilt as a new building.

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

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)  
Maidstone Borough Local Plan 2017: Policies SS1, SP17, SP18, SP21, DM1, DM3, DM4, DM8, DM23, DM30, DM31, DM32

### **4. LOCAL REPRESENTATIONS**

#### **Local Residents:**

- 4.01 Three representations received from local residents raising the following (summarised) issues
- The new building is much larger than the original barn on which the planning permission was previously granted.
  - The property overshadows neighbouring properties.
  - The new building overlooks neighbouring properties to such an extent that it imposes on the privacy of the neighbouring occupiers.
  - Removal of foliage and trees would mean neighbouring properties would be overlooked.
  - The Environment Agency's past concern about the possible effects of increased flooding in the area as a result of this new development should be re-assessed.
  - Raising the height of the entrance road from Haviker Street to Little Spitzbrook Farm will significantly impact on flooding to the properties either side of the entrance.
  - Raising or changing levels of Little Spitzbrook Farmyard could increase potential flooding to neighbouring properties.

- The Environment Agency made a ruling when the property was being constructed under the GPDO scheme in 2016 that “no raising of any ground levels was to take place”. This has been blatantly ignored.
  - The development will detract from the value of neighbouring properties should the neighbouring owners wish to sell.
  - The plans do not indicate how parking will be provided for a 7 bedroom property. Only 2 car parking spaces are shown on the plans. Haviker Street has no provision for street parking. The addition of several cars will create severe disruption and hazard to road users.
  - The only buses that serve Collier Street are on school days, one am/one pm. Residents would need use of a car.
  - Traffic generated by a 7 bedroom house will change the nature of the lane.
- 4.02 Issues relating to the impact on the value of neighbouring property are not a material planning consideration and therefore cannot be taken into account in the determination of this application. The other matters raised by neighbours 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)

### **Collier Street Parish Council**

- 5.01 The Parish Council wish to adopt a neutral stance on this application.

### **Conservation Officer**

- 5.02 Advises that even if the new dwelling were not adjudged to lie within the curtilage of Little Spitzbrook Cottages, the building certainly lies within the setting both of these Grade II listed properties, and the adjacent listed Haviker Street Cottages, and any significant development on this land will affect the setting of the listed Little Spitzbrook Cottages. Further advises that what we are presented with now is entirely new-build development – neither a house nor a barn, but a very large monolithic volume, clad incongruously in grey weatherboard associated with pure agricultural buildings. Comments that the building is in no way therefore a barn conversion, but a wholly new residential construction. The size and scale of the new residence is wholly out of scale with the listed residential properties, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which it sits. Further comments that there is no functional requirement for the residential property being of such a large scale and so visually dominant, and it is this unnecessary dominance and over-bearing aspect that is so damaging to the setting of the adjacent listed buildings. Comments that the external materials and details are of low quality – poor quality brickwork in stretcher bond, with unsightly expansion joints; reconstituted cement boarding with repeating synthetic embossed patterns; synthetic slate to the roof; storm-proof windows, poor quality plastic rainwater goods; indifferent landscaping.

### **MBC Environmental Health**

- 5.03 Comments that in addition to the previous agricultural use of the site, the site is also within the Council’s potential contaminated sites based on information from the contaminated land database and historic maps databases. Further comments that there is no indication of any chance of high radon concentrations and there is no issue with the air quality in the area. Comments that the heat exchange units must

be installed and operated in such a way as not to have an adverse impact on all nearby sensitive premises. No objection raised subject to a condition being imposed on any grant of planning permission to ensure that any potential contamination encountered during the works is appropriately dealt with.

### **Kent Highways**

- 5.04 Commented that it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements.

### **KCC Ecological Advice Service**

- 5.05 Comment that they are satisfied with the conclusions of the submitted ecological report in relation to any potential impacts that the proposed development may have on any protected species or sites. Comment that the site is of low ecological value and they are satisfied with the proposed precautionary mitigation measures included within the report. Comment that it has been identified that the southern boundary contains habitat suitable for foraging bats which will be retained as part of the proposals. Comment that there are recommendations for a sensitive lighting strategy to ensure that there will be no detrimental impacts and advise that these measures must be implemented as part of the development. Comment that the application provides opportunities to incorporate features into the design which are beneficial to wildlife, such as native species planting or the installation of bat/bird nest boxes and further enhancements have been included within the submitted ecological report. Advise that measures to enhance biodiversity are secured as a condition of any grant of planning permission in accordance with Government guidance in the NPPF "*opportunities to incorporate biodiversity in and around developments should be encouraged*".

### **Environment Agency**

- 5.06 Raise no objection to the application, as submitted, for conversion of the agricultural barn to a single dwelling with retention of part for use as agricultural store. Comment that the submitted Flood Risk Assessment (FRA) outlines flood risk mitigation measures including raising the ground floor to 15.15mAOD above existing ground level and threshold of the building to 15.23mAOD primarily to protect against flooding. Comment further that the submitted plan shows all bedrooms at first floor level. Recommend the following condition:  
Condition: The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Herrington Consulting Ltd, dated August 2018 and the following mitigation measures detailed within the FRA:

1. Finished floor levels are set no lower than 15.15mAOD above Ordnance Datum (AOD) and threshold finished floor level are set no lower than 15.23mAOD.
2. No sleeping accommodation on the ground level.
3. Sleeping accommodation to be on the first floor as shown on EP Architects drawing No. 1696.P.01 dated 30.09.2015.

Reason: To reduce the risk of flooding and provide a safe access and egress for this development.

Further comment that the Local Authority will also need to be satisfied that, where appropriate, safe access and egress can be achieved from the site during a flood event.

## **6. APPRAISAL**

### **Main Issues**

6.01 The key issues for consideration relate to:

- Principle
- Relevant development plan policies
- Visual impact
- Residential amenity
- Traffic and parking
- Setting of listed buildings
- Flooding
- Ecology
- Other matters (including the relevance of the prior approval application)

### **Principle**

6.02 The site is located in the open countryside to the south-east of the Yalding village settlement and north-west of the Marden village settlement. The application, as submitted, proposes the conversion of an agricultural barn building to a single-dwelling on two floors incorporating 7 bedrooms.

6.03 Class Q, Part 3 of Schedule 2 to the GDPO 2015 (as amended) permits the conversion of existing agricultural units to residential dwellings within the limits set out in Q.1. The current application does not benefit from permitted development rights because it does not comply with the limits set out in Q.1 and is materially different from the previous prior approval application 15/508446/PNQCLA.

6.04 Whilst the current application has been submitted for the conversion of an agricultural barn building to a dwelling, officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing rural building. The original barn structure has effectively been demolished and rebuilt as a new dwelling. The principle of the erection of a new dwelling in this open countryside location is therefore not established by the previous grant of prior approval under application ref. 15/508446/PNQCLA which relates to the conversion of the agricultural barn building only.

6.05 Development Plan policy and Government guidance in the NPPF supports new housing in sustainable urban locations as an alternative to residential development in more remote countryside locations. The open countryside site, in this case, does not have good access to public transport and is remote from local services and facilities. As such, the site does not represent a sustainable location where such new build dwellings could be considered acceptable in principle.

### **Relevant development plan policies**

6.06 For the reasons set out below, officers are of the view that the development which has been carried out at the site represents the erection of a new build dwelling, as opposed to the conversion of an existing rural building, in the open countryside. As a new build dwelling in the open countryside, policies SS1 and SP17 of the Local Plan are also relevant. Policy SS1 states that the Maidstone urban area will be the principal focus for development with the secondary focus being rural service

centres. The policy also allows for some development within some larger villages. The development does not accord with policy SS1 and, as noted in 6.05 above, the open countryside site in this case does not represent a sustainable location where such new build dwellings could be considered acceptable in principle. Policy SP17 of the adopted Maidstone Borough Local Plan states that development proposals in the countryside will not be permitted unless they accord with other policies in the plan and they will not result in harm to the character and appearance of the area.

- 6.07 Policy DM30 of the adopted Maidstone Borough Local Plan relating to design principles in the countryside is also relevant to the current application. The policy seeks to ensure high quality design for proposals in the countryside. Amongst the criteria to be met are the following:
- The type, siting, materials and design, mass and scale of development and the level of activity would maintain, or where possible, enhance local distinctiveness including landscape features;
  - Where an extension or alteration to an existing building is proposed, it would be of a scale which relates sympathetically to the existing building and the rural area; respect local building styles and materials; have no significant adverse impact on the form, appearance or setting of the building, and would respect the architectural and historic integrity of any adjoining building or group of buildings of which it forms part.
- 6.08 The size and massing of the residential building for which retrospective planning permission is currently being sought is wholly out of scale and character with the adjoining cottage type properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west. These neighbouring cottages are also Grade II listed properties. The large scale and visual dominance of the new residential building in relation to the adjoining listed properties and the over-bearing aspect is considered to be damaging to the setting of the adjoining listed buildings. In light of the above, the proposals are considered to be in conflict with policy DM30 of the adopted Local Plan. The resulting harm to the character and appearance of the area and the countryside landscape is contrary to policy SP17 of the adopted Local Plan.
- 6.09 The applicant suggests that the application is assessed principally under policies SP21 and DM31 of the adopted Maidstone Borough Local Plan because it is a conversion of an existing agricultural building. Your officers do not agree. For the reasons set out in detail in paragraphs 6.39 to 6.47 below, it is the view of your officer that the application proposal is a new building, therefore DM31 does not apply.
- 6.10 In any event (and even if the Committee takes the view that the application proposal is a conversion of an existing building and not a new dwelling) it is the view of your officers that the application proposal does not comply with policies SP21 and DM31.
- 6.11 Policy SP21 states that the Council is committed to supporting and improving the economy of the borough and providing for the needs of businesses. One of the means through which this will be achieved is (Policy SP21 (vii)) by prioritising the commercial re-use of existing rural buildings in the countryside over conversion to residential use, in accordance with policy DM31. The re-use of the former agricultural building is therefore inconsistent with SP21 in principle, subject to the policy DM31.
- 6.12 Policy DM31 of the adopted Maidstone Borough Local Plan is in three parts. Part 1 of the policy reads as follows:

*Outside of the settlement boundaries as defined on the policies map, proposals for the re-use and adaptation of existing rural buildings which meet the following criteria will be permitted:*

- i. The building is of a form, bulk, scale and design which takes account of and reinforces landscape character;*
- ii. The building is of permanent, substantial and sound construction and is capable of conversion without major or complete reconstruction;*
- iii. Any alterations proposed as part of the conversion are in keeping with the landscape and building character in terms of materials used, design and form;*
- iv. There is sufficient room in the curtilage of the building to park the vehicles of those who will live there without detriment to the visual amenity of the countryside; and*
- v. No fences, walls or other structures associated with the use of the building or the definition of its curtilage or any sub-division of it are erected which would harm landscape character and visual amenity.*

Part 2 of the policy relates to *proposals for the re-use and adaptation of existing rural buildings for commercial, industrial, sport, recreation or tourism uses* and is therefore not applicable to the current proposals.

Part 3 of the policy is applicable to the current proposals and reads as follows:

*Proposals for the re-use and adaptation of existing rural buildings for residential purposes will not be permitted unless the following additional criteria to the above are met:*

- i. Every reasonable attempt has been made to secure a suitable business re-use for the building;*
- ii. Residential conversion is the only means of providing a suitable re-use for a listed building, an unlisted building of quality and traditional construction which is grouped with one or more listed buildings in such a way as to contribute towards the setting of the listed building(s), or other buildings which contribute to landscape character or which exemplify the historical development of the Kentish landscape; and*
- iii. There is sufficient land around the building to provide a reasonable level of outdoor space for the occupants, and the outdoor space provided is in harmony with the character of its setting.*

6.13 With regards to the above criteria to be met in Part 1 of the policy, whilst the original large steel portal framed agricultural barn building clad with corrugated iron sheeting and asbestos cement roof sheeting was typical of buildings found within the open countryside landscape, the current building with its reconstituted cement board cladding to the walls and synthetic slate to the roof, and modern domestic windows and doors is clearly not of a form, bulk, scale and design which takes account of and reinforces the countryside landscape character. Whilst typical of buildings found within the open countryside landscape, the original building on the site, as a result of its form, bulk, scale and design, was not the type of building which was envisaged as being suitable for conversion in accordance with criteria i and ii of Part 1 of Local Plan policy DM31 above.

6.14 The original and current buildings on the site do not meet the typology types of "character" former agricultural buildings which harmonise with the rural landscape. The pre-ambule to policy DM31 acknowledges (para. 8.4) that the quality and condition of rural buildings in the borough varies considerably and that the wide range of buildings includes buildings such as oast houses, which are indigenous only to the hop growing areas of the country and exemplify the historical development of agriculture in Kent. The pre-ambule to the policy further states that many of these



vernacular buildings have a degree of significance which merits consideration as a heritage asset. The pre-amble states that these functional buildings are often of simple form and character, so external alterations require careful consideration. Given the extent of the demolition and rebuilding work which has been carried to the original agricultural barn building on the site, officers are of the view that the works amount to major reconstruction. Furthermore, the works carried out, particularly the first floor balcony formed to the eastern end of the building and provision of glazing to the roof which projects above the roof ridge line, are not considered to be in keeping with the building character in terms of design and form and therefore conflict with criteria i and iii of Part 1 of the policy.

- 6.15 With regards to Part 3 of policy DM31, in respect of criteria i: the applicant has failed to make every reasonable attempt to secure a suitable business use for the building. The applicant did make an enquiry to the Council regarding possible use of the building as holiday homes and were advised that such a proposal was not likely to be looked on favourably because the building due to its form, bulk, scale and design would not be considered to accord with the requirements to be met in policy DM31 which still apply to the re-use and adaptation of existing rural buildings for tourism uses. Tourism is not, however, the only possible business use for the building, and no evidence has been submitted in support of the current application to demonstrate that a commercial re-use of the building was fully explored before the current residential use was considered. Furthermore, in respect of criteria ii: the building is not a listed building, an unlisted building of quality and traditional construction which is grouped with one or more listed buildings in such a way as to contribute towards the setting of the listed building(s), or other buildings which contribute to landscape character or which exemplify the historical development of the Kentish landscape. As noted in the comments from the Conservation Officer (see paragraph 5.02 above), the size and scale of the new residence constructed on the site is wholly out of scale and character with the neighbouring listed residential properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which the building sits. The application is therefore considered to conflict with criteria i and ii of Part 3 of policy DM31 of the Local Plan. Even when assessed as a conversion of an existing rural building, as suggested by the applicant in the application as submitted, the conversion fails to meet the majority of the criteria to be met in policy DM31 of the adopted Maidstone Borough Local Plan relating to the conversion of rural buildings.

### **Visual impact**

- 6.16 As a result of its siting to the rear of the neighbouring residential properties along Haviker Street and the screening provided by existing trees and vegetation, particularly to the south of the site, the large residential building currently on the site which replaced the former agricultural building does not have a significant impact in public views along Haviker Street. However, the building, as a result of its height and scale, does have an impact from some viewpoints along the road.
- 6.17 The residential building currently on the site, differs from that approved under the previous prior approval application in that the residential accommodation now extends into the upper part/roof void of the retained agricultural storage part of the building, a first floor balcony has been formed to the eastern end of the building, and the window and door layout to the external facades have changed, including first floor windows to the western end of the building and the provision of glazing to the roof which projects above the roof ridge line. The more substantial portal frame which has been erected to the building extends beyond the profile of the existing retained parts of the steel frame to the original building and as a result the current building on the site is slightly higher and more bulky than the building that previously existed on the site. In addition to the above, solar panels have been

added to the south facing roof slope, the residential curtilage has been enlarged, and a freestanding log store building and two heat exchange units have been erected within the curtilage adjacent to the south elevation wall. This has resulted in the further domestication of the substantial building on the site and its curtilage and an increased visual impact in the open countryside location.

- 6.18 In the Maidstone Landscape Character Assessment (LCA) (Amended July 2013) the site falls within the Laddingford Low Weald landscape area. The LCA comments that Laddingford Low Weald is a coherent landscape where continuity is provided by linear development along the roads and the regularity of field pattern, which becomes larger scale away from the settled areas. The LCA states that built development has a moderate impact on the landscape, with a strong contrast between traditional properties and more recent development. The LCA comments that visual detractors within the landscape comprise large agricultural barns and silos, polytunnels, pylons and fencing and that whilst there are striking examples of local vernacular, recent development often degrades the setting of traditional buildings. Amongst the actions to conserve and improve the Laddingford Low Weald landscape are to avoid further infill development and soften the visual impact of large agricultural barns and silos with native planting. The current substantial residential building on the site is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The current substantial new build residential building as a result of its large scale, design and appearance is out of scale and character with the adjoining cottage type properties on Haviker Street, is not of a scale and design normally considered appropriate for new build dwellings in the open countryside, and conflicts with the aims and objectives of the above Landscape Character Assessment.

#### **Residential amenity**

- 6.19 The main body of the site in which the application building is located lies to the rear of the residential properties on Haviker Street at Little Spitzbrook Barn and the cottages at 3 and 4 Haviker Street to the north-west. The main body of the site is accessed between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street. The residential properties at 1 and 2 Haviker Street Cottages adjoin the site to the south.
- 6.20 The part residential building and part agricultural storage building for which retrospective planning permission is sought in the current application generally reflects the footprint, height, bulk and massing of the agricultural barn building which previously existed on the site and for which prior approval was granted under application ref. 15/508446/PNQCLA for conversion to a dwelling. However, as a result of the more substantial portal frame which has been erected to the retained parts of the original building on the site, the current building is slightly higher and more bulky than the building that previously existed on the site. Given the separation distances between the existing residential building and the neighbouring residential properties referred to above, any modest increases in the height, footprint, bulk and massing of the existing building on the site, which in officers view represents a new building as opposed to the conversion of an existing building (as suggested by the applicant), compared to the previous building are not likely to have any material impact on the amenities of the occupiers of the neighbouring properties in terms any unneighbourly overbearing, enclosing, overshadowing and/or loss of outlook impacts. Whilst the size and scale of new residential building erected on the site is seen as over-bearing and overdominant in the context of the neighbouring smaller cottage type properties on Haviker Street, it is not considered that the building results in any overriding and unneighbourly impact issues.
- 6.21 The large residential building currently on the site has first floor windows to the western end elevation of the building facing the rear of Little Spitzbrook Barn as a

result of the extension/enlargement of the first floor residential accommodation in the previously approved (under ref. 15/508446/PNQCLA) residential conversion of the original building. The first floor windows to the western end elevation of the building increase the potential for overlooking to the rear of the neighbouring property at Little Spitzbrook Barn. However, given the separation distance between the first floor windows to the western end of the building and the neighbouring property at Little Spitzbrook Barn, it is not considered that the current proposals raise any overriding issues with regards to loss of privacy to the occupiers of Little Spitzbrook Barn.

- 6.22 The changes made to the first floor fenestration to the side (north and south facing) elevations of the residential building currently on the site from that previously approved (under application ref. 15/508446/PNQCLA), including that resulting from the extension/enlargement of the first floor residential accommodation to provide two additional bedrooms, are not considered to raise any overriding issues with regards to overlooking and loss of privacy to the occupiers of neighbouring properties.
- 6.23 Vehicular and pedestrian movements to and from the site associated with the residential use of the building via the accessway which runs between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street are not likely to have a significantly greater impact on neighbouring properties than the vehicular and pedestrian movements associated with the previous agricultural use of the building.

#### **Traffic and parking**

- 6.24 The new dwelling is accessed from an existing accessway off Haviker Street. Whilst the seven bedroom dwelling will generate vehicle movements to and from the site and along Haviker Street, any increase in such vehicle movements over and above those associated with the use of the previous agricultural barn building on the site is not likely to be so significant as to materially impact on traffic flows along Haviker Street or result in highway safety issues along the road or in the vicinity of the access to the road.
- 6.25 The submitted site layout plan shows the accessway off Haviker Street and the majority of the land within the site around the new dwelling to be paved with two parking spaces adjacent to the south-western corner of the dwelling. Adequate paved hardstanding areas exist within the site for further vehicle parking to be accommodated on site. The paved hardstanding area at the western end of the building also allows access to the retained agricultural store part of the building. It is not considered that the retrospective application raises any overriding traffic, parking or highway safety issues.

#### **Setting of listed buildings**

- 6.26 The neighbouring properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west are Grade II listed. The new dwelling on the site lies within the setting of both pairs of adjoining listed buildings and the nature and extent of the development which has been carried out at the site affects the setting of the listed buildings. The Conservation Officer has advised that what we are presented with now is entirely new-build development – neither a house nor a barn, but a very large monolithic volume, clad incongruously in grey weatherboard associated with pure agricultural buildings. The Conservation Officer further comments that the building is in no way therefore a barn conversion, but a wholly new residential construction and that the size and scale of the new residence is wholly out of scale with the listed residential properties, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which it sits. The Conservation Officer comments that it is

the large scale and visual dominance of the new dwelling and the over-bearing aspect that is so damaging to the setting of the adjacent listed buildings.

- 6.27 Whilst the development which has been carried out at the site is considered to be damaging to the setting of the adjacent Grade II listed buildings, it is considered that the development has led to less than substantial harm to the significance of the designated heritage assets and in such circumstances, Government guidance in the NPPF (para. 196) advises that the resulting harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The rebuilding of the former agricultural barn building on the site to provide a seven-bedroom dwelling and an agricultural store is not considered to result in any public benefits which outweigh the resulting harm to the significance of the adjacent designated heritage assets by virtue of the harm to their setting.

### **Flooding**

- 6.28 The site falls within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map. The flood risk is from the nearby river – Lesser Teise – located some 900m to the east of the site. Dwellinghouses are identified as *more vulnerable* in the Flood risk vulnerability classification in the Technical Guidance to the National Planning Policy Framework. The submitted Flood Risk Assessment (FRA) states that the risk of fluvial flooding has been examined under the design flood event, which includes a 35% allowance for climate change over the next 100 years (i.e. a 35% increase in peak river flow) and under this scenario the site is shown to flood, with flood depths reaching a maximum of 130mm next to the building. The FRA further states that the risk to the future occupants of the dwelling has been mitigated by raising the finished floor of the ground floor, which is located 220mm above the design flood level and, in addition, it is proposed that the threshold of the building is raised further to minimize the risk of internal flooding during an event which exceeds the design event. The FRA recommends that the threshold of the building should be set to 15.23m AODN (i.e. 300mm above the design flood level). The raised floor and threshold levels are shown on the submitted proposed plan.
- 6.29 The NPPF states that, where required safe access and escape is available to/from new developments in flood risk areas. The Practice Guidance to the NPPF states that access routes should be such that occupants can safely access and exit their dwellings in design flood conditions and that vehicular access to allow the emergency services to safely reach the development will also be required. The submitted FRA indicates that Haviker Street will be subject to flooding under the design event and this is the only access road to the development. The FRA states that the levels along the safest route to an area outside of the floodplain via Haviker Street have been established and using the design flood event conditions that include the impacts of climate change, the highest predicted flood depths is 0.23m. The FRA concludes that safe access/egress is available to/from the site during a flood event.
- 6.30 The submitted FRA recommends that flood resilience measures be incorporated into the design of the building where practicable, the owner and occupants of the dwelling sign up to the Environment Agency's floodline warnings and that this should be used in combination with the Flood Evacuation Plan that has been prepared (and submitted with the application), and the surface water management strategy for the development will need to be developed to a detailed design stage taking into account the requirements set out in the FRA which propose the use of Sustainable Drainage Systems (SuDS). Implementation of the recommendations of the FRA in the development can be secured by planning conditions imposed on any grant of planning permission.

- 6.31 The issue of flooding was considered under the previous prior approval application ref. 15/508446/PNQCLA for the change of use of part of the building to a dwellinghouse and associated operational development and the previous application was not considered to raise any overriding issues in this regard. It should be noted that Government policy/advice directs that Change of use applications do not need to apply the Sequential and Exception tests to applications (the more stringent tests – which seek to steer development away from areas at risk of flooding) and need only ensure that they are safe. The current application, as submitted, proposes the conversion of an agricultural barn building to a dwelling with part of the building retained for agricultural storage and, as such, the application would not be considered to raise any new flood risk issues which were not considered and addressed under the previous prior approval application for change of use and conversion of an existing building.
- 6.32 The works which have been carried out in excess of those given prior approval under application ref. 15/508446/PNQCLA are likely to make a material difference to the assessment of the flood risk. As noted in section 6.04 above, your officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building on the site amount to the erection of a new building as opposed to the conversion of an existing building. The NPPF states (para. 155) that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). The NPPF states (para. 157) that – so as to avoid, where possible, flood risk to people and property, the sequential test (amongst other requirements) and then, if necessary, the exception test should be applied to the location of development. The NPPF states (para. 158) that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding and that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The submitted FRA does not address the issue of the sequential test in relation to the location of the development (for the reasons set out above), and as, in your officers view, the existing residential building on the site represents a new building following demolition of the original barn building, there is no specific reason why the new building needs to be located on the site of the original building in an area at high risk of flooding. The erection of a new build dwelling on the site has not been justified in terms of flood risk.
- 6.33 Whilst the Environment Agency have raised no objection to the application with regards to flood risk (see comments in section 5.06 above), it must be noted that the Environment Agency have considered the application as a conversion of an existing agricultural barn to a dwelling as opposed to the erection of a new residential building to which more stringent tests are applied.

### **Ecology**

- 6.34 The submitted Ecological survey report concludes that the site in general is of low ecological value and that the majority of habitats on the site are common and widespread. The report states that the greatest ecological value is found within the southern boundary habitat which will be retained and enhanced. The current application is essentially retrospective as the works are substantially completed. Any impact on the ecological interests of the site would have already taken place.
- 6.35 The submitted Ecological survey report recommends post development enhancement comprising new planting, including a diverse mixture of native tree and shrub species commonly used for planting hedgerows, the installation of bat boxes within retained boundary trees, the use of a bat sensitive lighting scheme for the development, the installation of a total of three sparrow terrace nest boxes on the external elevations of the building at the eaves, and the installation of log pile refugia within retained boundary habitats for hedgehogs. The Ecological survey

report concludes that the proposed site enhancements will maintain and increase the ecological value of the site and provide suitable habitat for a range of wildlife including invertebrates, breeding birds and bats. The proposed site enhancements can be secured by planning conditions imposed on any grant of planning permission.

### **Other Matters**

- 6.36 The Applicant asserts that the prior approval granted on 10.12.15 is a relevant material consideration to this application.
- 6.37 Your officers agree that the fallback position (what could happen on the land if the planning application was not approved), including any permitted development rights (with or without prior approval), can be a material consideration in the determination of planning applications, see *Mansell v Tonbridge and Malling BC* [2018] JPL 176.
- 6.38 Your officer's primary position is, however, that there is no fall-back position (in terms of PD rights or the prior approval) in relation to the building that forms the subject of this application because the previous agricultural building no longer exists.
- 6.39 Your officer's rely on the analysis in High Court (*Hibbitt v Secretary of State for Communities and Local Government and Rushcliffe Borough Council*) in a decision dated 09.11.16 and further in the Court of Appeal (*Graham Oates v Secretary of State for Communities and Local Government and Canterbury City Council*) in a decision dated 12.10.18.
- 6.40 In *Hibbitt v SSCLG* [2016] EWHC 2853 (Admin) Green J considered (in the context of whether a development fell within the PD rights in Class Q) the distinction between a conversion, and a rebuild, and summarised the position as follows (at paragraph 27).

*"[27] In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in "agricultural building". There will be numerous instances where the starting point (the "agricultural building") might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. ..."*

- 6.41 Green J's approach was expressly approved by the Court of Appeal in *Oates v SSCLG* [2018] EWCA Civ 2229 in which the court held that a planning inspector had been entitled to find that works to chicken coops was not permitted development as these had resulted in the creation of new buildings, notwithstanding that the original buildings had been incorporated into the new buildings and had not been demolished, see paragraph 37 of the judgment of Lindblom LJ:

*"[37] Put simply, the principle here is unsurprising: that a building constructed partly of new materials and partly of usable elements of previous structures on the site, after other elements of those previous structures have been removed through demolition, may in fact be a "new" building; or it may not. The facts and circumstances of every case will be different. But, in principle, the retention of some of the*

*fabric of an original building or buildings within the building that has been, or is being erected, does not preclude a finding by the decision-maker, as a matter of fact and degree, that the resulting building is, physically, a "new" building, and that the original building has ceased to exist. This, in effect, is what the inspector found here. In doing so she made no error of law. She was not compelled to find that because some elements of the original buildings had survived in the construction of the buildings now on the site, the buildings were not and could not be, as a matter of fact, "new buildings". That suggestion is untenable".*

- 6.42 As illustrated in *Hibbitt*, the retention of part of the original agricultural building (the vertical steel columns and roof rafters only in the current case) does not necessarily mean the development amounts to a conversion as opposed to a rebuild. The Judge further commented that the nub of the point being made by the Inspector, in the Judge's view correctly, was that the works (which in this case included the construction of all four exterior walls) went a very long way beyond what might sensibly or reasonably be described as a conversion. The Judge commented that the development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building.
- 6.43 In *Oates*, the court held that the Inspector had made no error in finding that the original buildings had ceased to exist and that she was not compelled to find that because some elements of the original buildings had survived in the construction of the buildings now on the site, the buildings were not and could not be, as a matter of fact, "new buildings".
- 6.44 In the case of the current application building at Little Spitzbrook Farm, your officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing building.
- 6.45 This is because as a result of the works that have in fact been carried out, the original barn structure has effectively been demolished and a new more substantial steel portal frame erected with retained parts of the existing structure (the vertical steel columns and roof rafters of the original portal frame only) tied to the new more substantial portal frame. The more substantial portal frame which has been erected to the building extends beyond the profile of the existing retained parts of steel frame to the original building and as a result the current building on the site is slightly higher and more bulky than the building that previously existed on the site. Horizontal floor beams are provided for the new first floor. New infill foundations appear to have been constructed, and new walls and a roof have been constructed infilling between and around the new steel portal frame and retained vertical steel columns and roof rafters of the original building.
- 6.46 As the original barn building has effectively been replaced with a new building, the fall-back positions of implementing the previous grant of prior approval or indeed relying on the permitted development rights attached to the barn do not now exist.
- 6.47 If the Committee **does not** accept the Officer's view and that the works carried out amount to a conversion, then what could be built under PD (of which the prior approval is an illustration) can and should be given weight as a relevant fallback position (in that the Committee should consider the relative merits of the application proposal against the alternative under PD rights). It is the Officer's view that the alternative development under PD rights i.e the fallback position, would be preferable to the application proposal.

- 6.48 The works proposed in this application are different from those granted prior approval in that the first floor residential accommodation is extended into the upper part/roof void of the retained agricultural storage part of the building, a first floor balcony has been formed to the eastern end of the building, and the window, door and glazing layout to the external facades have changed, including first floor windows to the western end of the building and the provision of glazing to the roof which projects above the roof ridge line. The more substantial portal frame which has been erected to the building also results in the current building being slightly higher and more bulky than the original building. In addition to the above differences, solar panels have been added to the south facing roof slope, the residential curtilage has been enlarged, and a freestanding log store building and two heat exchange units have been erected within the curtilage adjacent to the south elevation wall.
- 6.49 As set out above, your officer's view is that these additional changes have a harmful visual impact and are detrimental to the setting of the neighbouring listed buildings.
- 6.50 Therefore it is your officer's view that the fallback position does not weigh in favour of granting planning permission for the application proposal.
- 6.51 As the works for which planning permission is sought are substantially completed and the current application is essentially retrospective, the condition requested by the Environmental Health Officer (see 5.03 above) relating to any potential contamination encountered during the works is no longer applicable.
- 6.52 The proposed development is CIL liable. The Council adopted a Community Infrastructure Levy on 25 October 2017 and began charging on all CIL liable applications approved on and from 1 October 2018. The actual amount of CIL can only be confirmed once all the relevant forms have been submitted and relevant details have been assessed and approved. Any relief claimed will be assessed at the time planning permission is granted or shortly after.

## **7. CONCLUSION**

- 7.01 The current application is essentially retrospective as the works to provide a new dwelling at the site are substantially completed. Whilst the current application has been submitted for the conversion of an agricultural barn building to a dwelling, your officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing building. Your officers stance on this matter is supported by decisions in both the High Court and Court of Appeal.
- 7.02 The former agricultural barn building on the site was granted prior approval under previous application ref. 15/508446/PNQCLA for the change of use of part of the building to a dwellinghouse and associated operational development. As, in your officers view, the agricultural barn building has been subsequently demolished and rebuilt as a dwelling, the fall-back position of converting the former building cannot now be applied. In any case, your officer's consider the application proposal to be more harmful, in terms of visual amenity, than the fallback position under PD (as illustrated by the prior approval).
- 7.03 The open countryside site does not have good access to public transport and is remote from local services and facilities. As such, the site does not represent a sustainable location where such new build dwellings could be considered acceptable.
- 7.04 The changes which have been made to the appearance of the residential building for which prior approval was previously granted under application ref. 15/508446/PNQCLA compared to the building for which retrospective planning



permission is currently sought, together with the enlarged residential curtilage and associated structures, are considered to result in the further domestication of the substantial building on the site and an increased visual impact in the open countryside location. The current substantial residential building on the site is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape.

- 7.05 The size and massing of the dwelling (7 bedrooms) for which retrospective planning permission is currently being sought is wholly out of scale and character with the adjoining Grade II listed cottage type properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west. The large scale and visual dominance of the new dwelling in relation to the adjoining listed properties and the over-bearing aspect is considered to be damaging to the setting of the adjoining listed buildings.
- 7.06 The site is within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map. The principle of conversion of an existing building on the site to a dwelling within the flood zone was established by the previous grant of prior approval under application ref. 15/508446/PNQCLA and a new application for the conversion of the former building on the site would not be considered to raise any new flood risk issues which were not considered and addressed under the previous prior approval application. However, your officers are of the view that the current residential building on the site represents new build development in an area at high risk of flooding and, as such, Government guidance in the NPPF seeks to direct new residential development away from areas at the highest risk. As a new build residential development the current building on the site is in conflict with the NPPF guidance as the location has not been justified in terms of flood risk.
- 7.07 The development which has been carried out on the site is not considered to raise any overriding unacceptable unneighbourly impacts, traffic, parking or highway safety issues, or impact on ecological and biodiversity interests at the site.
- 7.08 Refusal of planning permission is recommended for the reasons set out below.

## **8. RECOMMENDATION**

REFUSE planning permission for the following reason(s):

- 1) Given the extent of the demolition and rebuilding works which have been carried out to the original agricultural barn building on the site and the limited amount of the original structure that has been retained in the new dwelling for which retrospective planning permission is sought, the Council are of the view that the development represents a new build dwelling in an open countryside location which does not have good access to public transport and is remote from local services and facilities. The development represents unsustainable residential development where future occupants would be reliant on private cars and in the absence of any overriding justification or need for the development demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 relating to sustainable development and policies SS1 and SP17 of the Maidstone Borough Local Plan (Adopted October 2017). The application proposal is contrary to the objectives of policies SP21 and DM31 of the Maidstone Borough Local Plan (Adopted October 2017) in terms of the residential use of the building, scale and appearance of the building, and in the context of neighbouring properties and countryside landscape.

- 2) The dwelling for which retrospective planning permission is sought, by reason of its overall design, appearance, scale and massing, has a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The unsympathetic appearance, large scale and visual dominance of the dwelling in relation to the adjoining listed properties 1 and 2 Haviker Street to the south of the site and 3 and 4 Haviker Street to the north-west and the over-bearing impact has a harmful impact on the setting of the adjoining listed buildings. As such, the development is contrary to Government guidance in the NPPF 2019 and policies SS1, SP17, SP18, SP21, DM1, DM4, DM30, DM31 and DM32 of the Maidstone Borough Local Plan (Adopted October 2017).
  
- 3) The works which have been carried out in excess of those given prior approval under application ref. 15/508446/PNQCLA are likely to make a material difference to the assessment of the flood risk. The extent of the demolition and rebuilding works which have been carried out to the original barn building on the site amount to the erection of a new build dwelling within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map. as opposed to the conversion of an existing building. Government guidance in the NPPF 2019 (paras. 157, 158 and 159) seeks to steer new development to areas with the lowest risk of flooding and in the absence of any overriding justification or need for the development on the site being demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 and policy DM1 of the Maidstone Borough Local Plan (Adopted October 2017).

Case Officer: Jon Barnes