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| REFERENCE NO - 20/500442/FULL | | | |
| APPLICATION PROPOSAL Conversion of part of agricultural barn to a single dwelling with retention of part for use as an agricultural store, laying out of private garden including erection of woodstore, two car parking spaces and driveway. Installation of a solar PV array and flue on southern roof slope, two heat exchange units and landscaping (part retrospective). | | | |
| ADDRESS Little Spitzbrook Farm Haviker Street Collier Street Kent TN12 9RG | | | |
| RECOMMENDATION Application Refused | | | |
| SUMMARY OF REASONS FOR RECOMMENDATION The previous grounds of refusal have assessed the building as essentially representing a new build dwelling in the open countryside on the basis of the extent of works carried out to the former agricultural building. There is therefore no fall-back position available as set out by <i>Mansell v Tonbridge and Malling BC</i> [2018] JPL 176 to consider the merits of the current proposals against the fall-back position. On this basis, the current proposals, due to the size of the building, its location in an unsustainable location, its conflict with flooding policies and its less than substantial harm to the setting of the nearby listed properties to which there are considered to be little or no public benefits to outweigh this harm, means that the application is considered contrary to policies SS1, SP17, SP21, DM1, DM4, DM30, DM31 and DM32 of the Maidstone Borough Local Plan. | | | |
| REASON FOR REFERRAL TO COMMITTEE Cllr David Burton has requested that given the history relating to the previous applications and a request was made by members of the committee for discussions to take place, that this application should also be determined by the committee if officers are minded to recommend refusal. | | | |
| WARD Marden and Yalding | PARISH/TOWN Collier Street | COUNCIL | APPLICANT Mr & Mrs Cox AGENT IDE Planning |
| TARGET DECISION DATE 30/03/20 | | PUBLICITY EXPIRY DATE 05/03/20 | |

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

18/504086/FULL

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).

Refused Decision Date: 22.03.2019

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).

Refused Decision Date: 22.03.2019

Appeal History:

20/500029/REF

LINKED APPEAL: APP/U2235/W/19/3237237 - 18/504086/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).

Appeal in Progress but currently held in obedience by mutual consent of all parties pending the outcome of the current submission.

20/500030/REF

LINKED APPEAL: APP/U2235/W/19/3237238 - 18/504501/FULL 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).

Appeal in Progress but currently held in obedience by mutual consent of all parties pending the outcome of the current submission.

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.

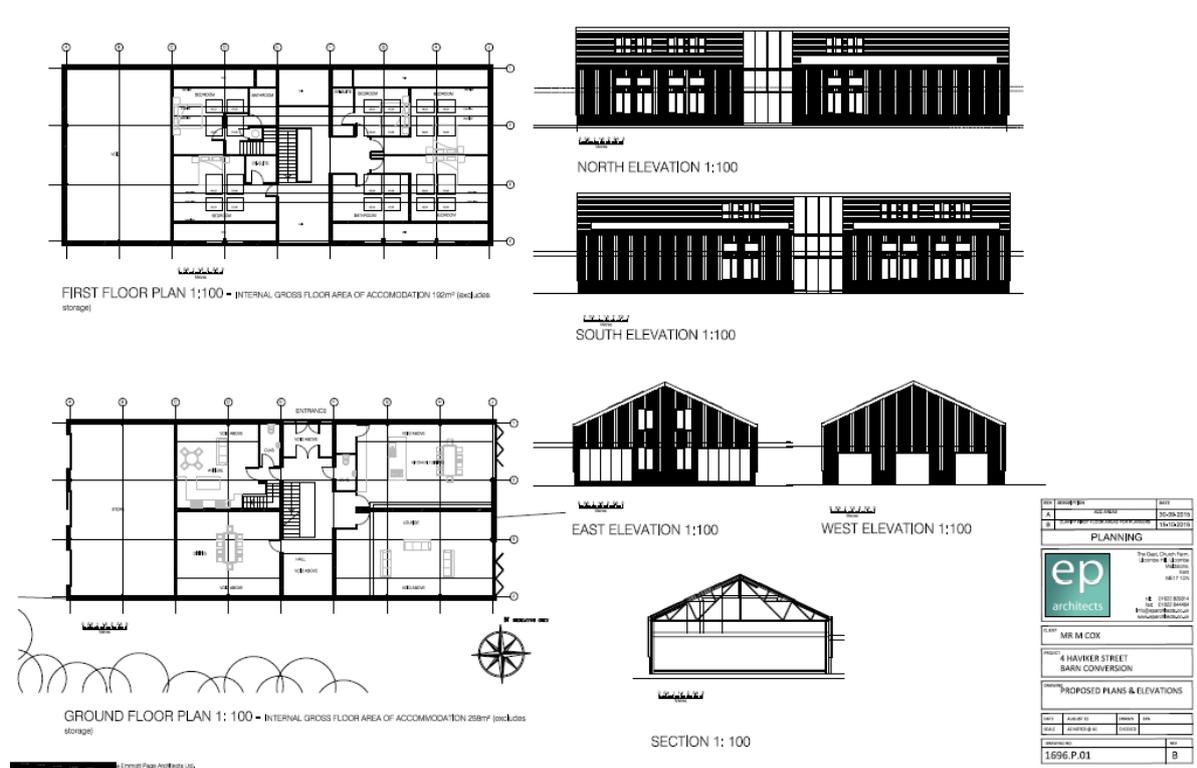
- 1.02 The main body of the site was until relatively recently occupied by a large steel portal framed agricultural building clad with corrugated iron sheeting and asbestos cement roof sheeting for which prior approval was granted on 10.12.15 for conversion to a residential dwelling.
- 1.03 It is the view of your officers and was confirmed in the previous grounds of refusal (see paragraph 6.02 below), 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.
- 1.04 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.
- 1.05 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

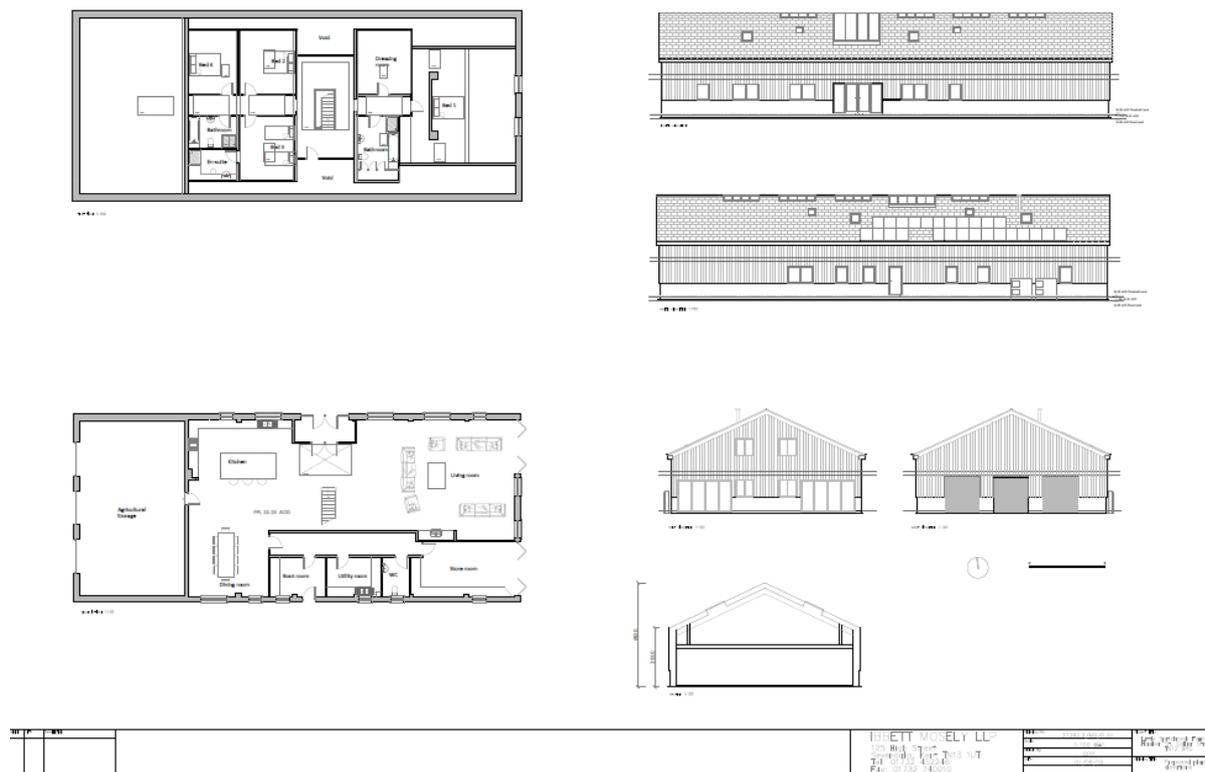
- 2.01 The application has been described by the applicant as the conversion of an agricultural barn to a single dwelling comprising open plan living space with boot room/utility room and store room on the ground floor with retention of part for use as an agricultural store and 4 bedrooms on the first floor, laying out of private garden including erection of woodstore, two car parking spaces and driveway, installation of a solar PV array (two rows) and flue on southern roof slope, two heat exchange units and landscaping (part retrospective).
- 2.02 It is your officers view, as was the officers view with the previously refused applications that the agricultural building formerly on the site has been substantially removed/demolished and a new large residential building (the subject of this application) erected on the site. This was confirmed in the previous grounds of refusal (see paragraph 6.02 below). The previous reports to committee are attached as Appendix 1.
- 2.03 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. 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 your officer's view and the view set out in the previous decision notices that the agricultural barn building was removed and rebuilt as a new building.
- 2.04 The application is supported by a suite of documents which amongst others includes a Flood Risk Assessment, Flood Warning Strategy, Heritage Statement, Phase 1 Habitat Survey and a form of Planning Statement (referred to as "Policy case in

support of application in principle”) together with a supporting letter which essentially confirms that the “application proposes alterations to a converted barn at Little Spitzbrook so that it more closely matches the floorspace and external appearance of a scheme that was previously granted prior approval”.

2.05 For Members reference, the approved plans/elevations as set out below were granted prior approval in 2015 under reference 15/508446/PNQCLA.



2.06 The current application (see below for elevations/floor plans) seeks to match as closely as possible the plans as approved and shown above.



2.07 A schedule of alterations to the 'as-built' scheme i.e. that which currently exists on-site, and which are proposed as part of this current application are included as Appendix 2 to this report. These alterations seek to return the building to match as closely as possible the building that was the subject of the prior approval.

3. POLICY AND OTHER CONSIDERATIONS

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

4. LOCAL REPRESENTATIONS

Local Residents:

- 4.01 2 representations received from local residents objecting to the application and raising the following (summarised) issues
- This is new build not a conversion
 - Who will ensure no future increase in land levels - these have already been raised contrary to the recommendations of the Environment Agency?
 - Risk of flooding as site is located in a flood risk zone 3. The surrounding properties all flood and when there is an incidence, the houses are cut off from the main road. There is no evacuation route as outlined in the Herrington Consulting report. The raising of the entrance road by 200mm will also impact properties either side in terms of flooding.

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

- 5.01 This application does not meet the criteria for involvement of KCC highways as set out by the current protocol arrangements.

Environment Agency

- 5.02 No objection subject to the imposition of a number of conditions covering protection of ground water pollution and Flood Risk mitigation measures.

MBC – Environmental Protection Officer

- 5.03 No objection subject to the imposition of a number of conditions covering EV Charging points, Land Contamination, Hours of working, foul drainage and external lighting.

- 5.04 Further comments have not been sought on this application from the Conservation Officer or KCC Ecology on the basis that there is considered to be no significant change to the position as set out in previous report to committee attached as Appendix 1 to this report. Previous comments are set out below for clarity:

Conservation Officer

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 advise 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.

KCC Ecological Advice Service

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*".

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
- Whether the previous grounds of refusal have been addressed by the current submission.

6.02 **Relevant Background:**

The previous two applications, reference no' 18/504086/FULL and 18/504501/FULL were both refused planning permission on the grounds set out below:

(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).

6.03 Whilst both planning applications were refused on the grounds cited above, the minutes of the meeting held on the 14 March 2019 record at 308 in a section entitled "Note" and numbered 2. "Following determination of these applications, reference was made by the Chairman to the desire on the part of Members for further discussions to seek to achieve a solution to the situation which has arisen".

6.04 The current application is the result of discussions with the applicants agent and alterations that the owner has made in an attempt to bring forward an application which matches as closely as possible in terms of floorspace and elevations to that granted prior approval under 15/508446/PNQCLA. Improvements have also been made to the cladding of the building to help improve the aesthetic of the external appearance.

Principle:

6.05 As set out in the previous reports to committee concerning the two refused applications, 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. Whilst the current application has been submitted for the conversion of an agricultural barn building to a dwelling, your officers are of the view and this was confirmed in the grounds of refusal cited in paragraph 6.02 above, 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.

6.06 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.

6.07 It is however acknowledged that the current application seeks to amend the design and internal layout so that it is as close as possible to that approved by the prior approval ref. 15/508446/PNQCLA and generally meets the requests as set out by minute 308 – Note: 2) of the planning committee meeting of the 14 March 2019. However, an application of this nature needs to be considered against the requirements of Section 38(6) of the Planning and Compulsory Act 2004 i.e. determination must be made in accordance with the development plan unless material considerations indicate otherwise. In this regard, there has been no change in the principle of development since the previous refusals.

6.08 As set out in paragraph 6.02 above, the previous grounds of refusal related to the principle of development and the fact this amounted to a new build dwelling in an unsustainable location. As established by *R and Elmbridge Borough Council (2019) EWHC 1409 (Admin)* consistency in decision making is very important and members will need to take into account their previous decision when considering whether this ground has now been overcome with the current application. Your officers view is that it has not.

Relevant development plan policies:

6.09 As set out in the previous refusals and reports to committee, attached as Appendix 1, similar considerations apply to the current proposals as they did to the previous applications in terms of development plan policies and size of building. However, as set out in 6.02 above, as the Council has already determined that the development proposals for the previously refused applications amounted to a new build dwelling in the countryside. Accordingly, the same consideration should apply to the current proposals as essentially it is only cosmetic changes that are proposed to the building as part of the current application. It is therefore your officers view that DM31 does not apply to the current application. For the sake of clarity, and only on the basis that the applicant is still claiming that the proposals relate to a change of use of the former agricultural building will I set out the conflict with DM31, as was set out by the previous reports to committee.

6.10 As a new build dwelling in the open countryside, policies SS1 and SP17 of the Local Plan are 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 the open countryside location in this case does not represent a sustainable site 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.

6.11 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.

6.12 The size and massing of the residential building for which part 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.

- 6.13 The applicant maintains the stance as set out for the previously refused applications (contained in Statement - Annex F – Policy case in support of application in principle) that the application is compliant with policy DM31 of the Maidstone Local Plan as it has been submitted for the conversion of an existing agricultural building. However, as previously set out above and as confirmed by the grounds of refusal cited in paragraph 6.02 which confirms the Council’s view that the building is a new built dwelling in the open countryside, your officers disagree with this and DM31 does not apply.
- 6.14 Whilst it is considered that DM31 does not apply to the current proposals taking account of the previous grounds of refusal, an assessment of conformity has been included within this report for completeness. However, members will need to bear in mind the need for consistency (as set out in paragraph 6.08 above) in the decision making process and the significant weight that should be attached to the previous grounds of refusal which established the Council’s view that the building represents a new build dwelling in the countryside.

- 6.15 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.

- 6.16 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. It is acknowledged that changes are proposed to the external cladding of the building as part of the current proposals which will replace the cement weatherboarding with dark stained timber cladding and minor changes to the fenestration and existing balcony. These are clearly seen as positive changes as part of this application. 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.
- 6.17 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-ambule 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, your officers are of the view that the works amount to major reconstruction. Again, it is acknowledged that the current application seeks changes to the building (as set out in Appendix 2) which are considered to be an overall improvement to the appearance to the building from that currently constructed on site. However, these changes do not fundamentally change the concept of whether the proposals comply with policy DM31.
- 6.18 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 supporting information for the current application does state that the applicant did make an enquiry to the Council regarding possible use of the building as holiday homes and was advised that such a proposal was not likely to be looked on favourably. However, it states that the applicant's intention is first to pursue a residential use. The policy is clear that " every reasonable attempt has been made to secure a suitable business re-use" Notwithstanding this, 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.
- 6.19 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.
- 6.20 As noted in the comments from the Conservation Officer for the previously refused applications which are still relevant to the current application, 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.

- 6.21 The applicant seeks to explain conformity with this part of the policy on the basis that the building does "fit a pattern of dispersed farm-related development that is characteristic of the locality, and it once served the fruit industry". I do not, however, consider that a building of this size and design meets the high threshold set by this part of the policy. 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 current application, which is not agreed, 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.
- 6.22 The previous applications were refused on the basis of conflict with policy DM31 of the Local Plan but clarity was given in the grounds of refusal that the building represented a new building dwelling in the open countryside and whilst it is acknowledged that changes have been made to the overall design, appearance and internal layout of the building, the fundamental principles of the conflict with policy remain. As has been set out above, notwithstanding the conflict with policy, it is not considered that DM31 is relevant to the current application based on the previous grounds of refusal.

Visual Impact

- 6.23 As set out in the previous officer reports to committee (attached as Appendix 1), 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 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.
- 6.24 The current proposals now being considered seek to make changes to the 'as built' building along the lines set out in Appendix 2 of this report. Essentially, and as set out by the applicant they relate to:
1. no increase in the footprint or height of the barn;
 2. to reduce the residential floorspace to 450sq.m. by re-creating the void at first floor level above the agricultural store;
 3. to remove a first floor balcony with the east elevation restored;
 4. to remove first floor windows on the west elevation;
 5. to replace the reconstituted cement weatherboarding that was permitted on all elevations as part of the prior approval with dark stained timber weatherboarding;
 6. to reduce the size of the permitted openings, including the central glazing feature that would extend from the ground to the roof ridge, so making them less dominant when set against the new cladding - the original barn had no window openings instead being lit by a panel of roof lights and sliding doors; what was permitted in the grant of prior approval would make little, if any, reference to adjoining buildings;
 7. to improve upon the energy performance of the permitted development by retaining solar PV panels - two air source heat exchange units would also be kept
- 6.25 The application is accompanied by a set of measurements (Annex G) of the supporting documentation which either establishes indicative measurements from

the relevant drawings of the original building and those measured from the plans of the prior approval and the as built building. None of the measurements however tie up and it appears no measurements have been supplied of the as constructed building i.e without being taken off the plans.

- 6.26 However, the current proposals seek changes as already set out which will bring the building more in line with what was approved in the prior approval application. This will involve some considerable cost to the applicant, and it is recognised that this has been put forward to seek a resolution of this matter. It also seeks to address some of those concerns which were voiced by members of the committee when the previous applications were heard.
- 6.27 However, and notwithstanding this, what members are considering in the current application is the conformity of a substantial former agricultural building being proposed to be converted to residential, which has little architectural merit or key historical links to the rural landscape for instance such as characteristics former agricultural buildings such as Oast houses or other characteristic farm buildings.
- 6.28 The resultant building in the current proposals, whilst much improved from that currently constructed onsite, will still result in a hybrid form of a building which has little association or connection with its former use or character. As such, and given the associated domestication of this substantial building, its increased curtilage and taking into account the previous grounds of refusal which accept the building amounts to a new built dwelling, it will have an increased visual impact in this open countryside location.
- 6.29 In addition, the Maidstone Landscape Character Assessment (LCA) comments that within the character area that the site falls, 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. It states 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 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 and the same impact will arise from the proposed altered design.
- 6.30 The proposals forming the current application, 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. It is however, recognised that the changes now proposed, whilst still conflicting with the development plan are an improvement on the existing building currently on site.
- 6.31 The current proposals have not addressed the previous grounds of refusal which remain as relevant to the current application as it did to the previously refused applications.

Residential amenity

- 6.32 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.

- 6.33 No objections were raised on the previously refused applications regarding loss of amenity, outlook, overbearing nature or overlooking. The same can be said for the current proposals. The changes now proposed return the western elevation i.e. that facing towards the rear of properties at Little Spitzbrook Barn, to the same as that approved as part of the Prior Approval application. There are now no first floor windows proposed to that elevation (due to the internal changes proposed by having the agricultural storage room vaulted and removing the currently installed first floor over this area).
- 6.34 No other windows or rooflights overlook adjoining properties and no objections have been raised from the Council's EHO officer regarding potential noise from the heat exchange units. No objections are raised from vehicular or pedestrian movements to/from the site.

Traffic and parking

- 6.35 Sufficient parking is provided on site to accommodate the needs of the new dwelling. Whilst the application includes the provision of two parking spaces, significantly more can be accommodated on site. There are no concerns raised regarding highway safety and none were raised in the previously refused applications.

Setting of listed buildings

- 6.36 The neighboring 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.
- 6.37 The Conservation Officer previously commented on the refused applications that what he was considering was an 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. This has now been changed as part of the current proposals to dark stained timber weatherboarding.
- 6.38 The Conservation Officer further commented at that time that the building was 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 commented that it was this large scale and visual dominance of the new dwelling and the over-bearing aspect that was so damaging to the setting of the adjacent listed buildings.
- 6.39 Whilst the current proposal has led to some improved design changes, a key one being the change in cladding and removal of the balcony to the east elevation, the principle concerns that the Conservation Officer raised remain in terms of the size and scale of the building.
- 6.40 Whilst the partly retrospective application is considered to be damaging to the setting of the adjacent Grade II listed buildings, it is considered that the development will lead 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. This is the balancing exercise and will be considered in the overall conclusion on the proposals.

- 6.41 The previous applications were refused on harm to the setting of the adjacent listed buildings and the current proposals have not addressed this harm. As such, the previous grounds of refusal have not been overcome.

Flooding

- 6.42 The same Flood Risk Assessment and Flood Warning Strategy has been submitted with the current application as was submitted and considered for the previously refused applications. The site falls within the same flood risk categorisation as was previously considered.

- 6.43 The previous grounds of refusal as noted in paragraph 6.02 above referred to a material difference to the assessment of flood risk from that approved under the prior approval application and concluded that the proposals were contrary to the NPPF and policy DM1 of the Local Plan. No further justification, other than those mentioned above, asserts how the current proposals overcome the previous grounds of refusal.

- 6.44 The Environment Agency continue to raise no objection to the application with regards to flood risk however, as was previously set out, 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.

- 6.45 For the sake of brevity, I will not repeat all what was previously set out in the officers reports for the two refused applications (which are appended to this report as Appendix 1) in relation to flood risk. The information contained in these reports is as relevant to the current application as it was to the refused applications, principally on the basis that they rely on the same information submitted.

- 6.46 However, for the assessment of the current submission, the Council have confirmed, by reasons of the first ground of refusal cited in 6.02 above, that they consider the building represents a new build dwelling in the countryside. On this basis, the sequential and exception tests need to be passed, which the current proposals fail to meet. As such, the proposals are contrary to the advice in the NPPF on flood risk.

- 6.47 Based on the above assessment and having duly considered the approach adopted by the officer in his report to the two previously refused applications, the previous grounds of refusal have not been overcome by the current submission.

Ecology

- 6.48 The Phase 1 Habitat Survey is the same as was submitted for the two previously refused applications, however no grounds of objection were raised on ecology grounds. The same applies to the current proposals and it is considered that the suggested site enhancements as recommended by the Habitat Survey could be secured by conditions.

Other Matters

- 6.49 As with the previous applications, the applicant continues to maintain that the prior approval granted by 15/508446/PNQCLA is a relevant material consideration to this application. As with the previous officers report to committee on this matter, your officers agreed 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.

- 6.50 However, following the refusal of both applications, it was confirmed in the decision notices that the Council considered that due to the works which had been carried out to the original agricultural barn building on the site, that the development represented a new build dwelling in the open countryside. As such it was contrary to development plan policies SS1, SP17 and the objectives of policies SP21 and DM31.
- 6.51 Based on this, there is no fall-back position because the previous agricultural building no longer exists. This position is reached on the analysis of *Hibbitt v Secretary of State for Communities and Local Government and Rushcliffe Borough Council* and *Graham Oates v Secretary of State for Communities and Local Government and Canterbury City Council*.
- 6.52 An analysis of the judgements is set out in paragraphs 6.40 – 6.43 of the earlier report (as attached as Appendix 1 to this report).
- 6.53 An alternative view was offered in the previous report to committee as set out in paragraph 6.47, which confirmed that if the committee did not accept the officer's view that the building was in effect a new build dwelling in the countryside and that the works carried out did amount to a conversion, then what could be built under PD (of which the prior approval was an illustration) can and should be given weight as a relevant fallback position (in that the Committee should consider the relative merits of an application proposal against the alternative under PD rights).
- 6.54 It would now be difficult for the committee to reach an opposing view from the previously refused schemes which confirmed the development proposals represented a new build dwelling in the open countryside, especially in the light of the judgement I refer to in paragraph 6.08 in this report above and the weight to be attached to previous decisions. However, it is accepted that the current proposals are an improvement on the existing as built building and could be said to be similar to the prior approval application with the significant improvement to the external cladding material in the form of dark stained timber weatherboarding as opposed to the cement weatherboarding which was approved for the prior approval building.

PUBLIC SECTOR EQUALITY DUTY

- 6.55 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 The previous grounds of refusal have assessed the building as essentially representing a new build dwelling in the countryside on the basis of the extent of works carried out to the former agricultural building. There is therefore no fall back position available as set out by *Mansell v Tonbridge and Malling BC* [2018] JPL 176 to consider the merits of the current proposals against the fall back position.
- 7.02 On this basis, the current proposals, due to the size of the building, its location in an unsustainable location, its conflict with flooding policies and its less than substantial harm to the setting of the nearby listed properties to which there are considered to be little or no public benefits to outweigh this harm, means that the application is considered contrary to policies SS1, SP17, SP21, DM1, DM4, DM30, DM31 and DM32 of the Maidstone Borough Local Plan.

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: James Bailey