

APPLICATION: MA/13/1021 Date: 4 June 2013 Received: 14 June 2013

APPLICANT: Mr Derek Eagle

LOCATION: HAVEN FARM, NORTH STREET, SUTTON VALENCE, MAIDSTONE,  
KENT, ME17 3HS

PARISH: Sutton Valence

PROPOSAL: Application to remove conditions 1, 2 and 3 of application MA/06/0085 and to vary condition 5 of MA/06/0085 to 'no retail sales to the public shall be carried out outside of the hours of 08:00-18:00 Mondays to Saturdays and between 10:00 and 16:00 on Sundays, Bank or Public Holidays' as shown on application form received 05/06/13 & applicant's e-mail received 14/06/13.

AGENDA DATE: 29 August 2013

CASE OFFICER: Kathryn Altieri

The recommendation for this application is being reported to Committee for decision because:

- It is a departure from the Development Plan.

## **1. POLICIES**

- Maidstone Borough-Wide Local Plan 2000: ENV28, R12
- Government Policy: National Planning Policy Framework

## **2. HISTORY**

- MA/06/0085 - Retrospective application for the change of use of existing farm shed from fruit and vegetable packing shed to farm shop outlet, including external works and cladding to the building, plus continued stationing of a caravan for staff room and storage – approved/granted with conditions

## **3. CONSULTATIONS**

3.1 **Sutton Valence Parish Council:** Wish to see this application approved but does not wish to go to Committee.

3.2 **Agricultural Advisor:**

- 3.2.1 *"Haven Farm is understood still to be owned by Mr I.T Lynch who obtained the 2006 consent. Haven Farm was an established fruit holding extending to some 20 acres (8 ha) farmed wholly by Mr Lynch up to about 2004, when he decided to semi-retire. He let out the majority of the land (some 16 acres) on a 10 year farm business tenancy to Winterwood Farm, Sutton Valence and there was an arrangement with Mr Fleck, a neighbouring farmer, to grow raspberries on that land. Mr Lynch continued to grow vegetables on two plots of about 0.25 acres each, and under 2 polytunnels, sold through the farm shop along with cob nuts from the adjoining 2 acre plantation. The shop was originally a packing shed when Mr Lynch initially sold his own fruit from a covered area by his house near the roadside, but he subsequently converted the shop as a more convenient sales point, and then started supplementing his own produce with bought-in local fruit and vegetables and honey. When he semi-retired, however, he let the shop out, and as well as fresh fruit and vegetables (produced by Mr Lynch, Mr Fleck and Winterwood Farm), the range of produce grew to include items such as locally sourced preserves, bread, cakes, cream, cheeses, hams, sausages, potted plants, and bird food.*
- 3.2.2 *However the 2006 planning consent prevented the sale of any imported produce after 1<sup>st</sup> December 2008 (to allow the Council to review the position at that time), required at least 67% of the annual sales turnover to be fresh produce grown on Haven Farm, and limited sales of non-fresh produce to no more than 10% of the annual sales turnover. These conditions were derived from Local Plan Policy R12 (which is now a "saved" policy) which seeks to restrict retail sales outside defined urban areas and village boundaries mainly to a farm's own fresh produce, for reasons of countryside protection, and sustainability, and to support the viability of rural local centres and village shops. The conditions also referred to the aim of aiding farm diversification.*
- 3.2.3 *The appropriateness of a shop of this sort, here, is a matter for you but the range of products clearly goes well beyond what would be seen as simply a diversification of Haven Farm's own output, whilst the general sale of produce, albeit mainly sourced from Kent, appears to be counter to the aims and concerns set out in policy R12. Moreover the current application effectively seeks to lift any conditions relating to what may be sold from the farm shop, of whatever nature or source."*
- 3.3 **KCC Highways Officer:** Raises no objections.
- 3.4 **Environmental Health Officer:** Raises no objections;
- 3.4.1 *"Only condition 5 has any bearing on Environmental Health issues, and I can find no record of any complaints relating to noise/loss of amenity relating to this site on Environmental Health's and Enforcement's complaints system. I also note that the site is adjacent to the busy A274 and that the residences are approximately 100m away from the farm buildings concerned. I therefore consider it unlikely that removing the restriction of hours for either of the above mentioned applications would be likely to significantly & negatively impact on local residents."*

#### **4. REPRESENTATIONS**

4.1 No neighbour representations have been received.

#### **5. CONSIDERATIONS**

##### **5.1 Site description**

5.1.1 Haven farm shop is sited opposite an existing café (recently granted permission under MA/13/0517), and is accessed by way of an existing track some 125m in length from North Street (A274). There are a couple of other small buildings to the west of the shop which are not relevant to this permission, and there is farm land to the west beyond these buildings and polytunnels to the south. The site does have parking facilities for approximately ten cars.

5.1.2 There are residential properties fronting onto North Street either side of the access; with a recreation field and the village hall opposite. The site's access from North Street is some 165m from the edge of the defined village boundary to Sutton Valence village; and a short walk from Sutton Valence County Primary School and Sutton Valence School (all to the south of the cafe). Sutton Valence High Street is some 500m to the south of the application site; and a public footpath does run parallel to North Street from the application site into the village. The application site is within the countryside as shown by the Maidstone Borough-Wide Local Plan 2000 (MBWLP).

##### **5.2 Background information**

5.2.1 The applicant took over Haven farm shop in December 2012 and has confirmed that at this time, the shop was in breach of the restrictive conditions imposed under MA/06/0085. It is unclear for how long the shop has been run without adhering to the conditions imposed under MA/06/0085.

5.2.2 The applicant runs Haven farm shop as a local organic shop, championing local produce. They are currently sourcing from a range of organic farms across the county as well as from conventional local farms; and states that there is a demand from the local community to purchase more environmentally friendly products. At the time of my site visit, the shop was selling fruit and vegetables from across Kent; there were three cabinet freezers with frozen food and meat from Kentish suppliers; other dry food and preserves; some local handicrafts for sale; and a fridge with local milk/cheeses and meat amongst other produce.

##### **5.3 Proposal**

5.3.1 This application is to remove conditions 1, 2 and 3 of application MA/06/0085. MA/06/0085 was a retrospective application for the change of use of the existing farm shed from a fruit and vegetable packing shed to a farm shop outlet. The conditions imposed state the following;

Condition 1

*The sale of any imported produce and goods from the farm shop shall be discontinued on or before 1 December 2008.*

*Reason: To enable the Local Planning Authority to review the special circumstances under which this permission is granted in accordance with Policy R12 of the Maidstone Borough-Wide Local Plan 2000.*

Condition 2

*A minimum of 67% of the total annual sales turnover shall consist of fresh produce grown on land currently known as Haven Farm and shown edged in blue on the approved plans.*

*Reason: In order to safeguard the character of the countryside and in the general interests of sustainability whilst still aiding farm diversification in accordance with Policy R12 of the Maidstone Borough-Wide Local Plan 2000.*

Condition 3

*The amount of non-fresh produce sold at the application site, as a percentage of total annual sales turnover, shall be limited to no more than 10%.*

*Reason: In order to safeguard the retail hierarchy and in the general interests of sustainability whilst still aiding farm diversification in accordance with Policy R12 of the Maidstone Borough-Wide Local Plan 2000.*

5.3.2 This application is also to vary condition 5 of MA/06/0085. This condition states;

Condition 5

*No retail sales to the public shall be carried out outside of the hours of **08:30-17:00** Mondays to Saturdays and between 10:00 and 16:00 on Sundays, Bank or Public Holidays;*

*Reason: To safeguard the enjoyment of their properties by adjoining residential occupiers in accordance with Policy ENV28 of the Maidstone Borough-Wide Local Plan.*

5.3.3 The applicant wants this condition varied to;

*"No retail sales to the public shall be carried out outside of the hours of **08:00-18:00** Mondays to Saturdays and between 10:00 and 16:00 on Sundays, Bank or Public Holidays."*

## 5.4 Relevant policy and guidance

5.4.1 Conditions 1, 2, and 3 of MA/06/0085 were imposed to restrict retail sales outside defined urban areas and village boundaries mainly to a farm's own fresh produce, for reasons of countryside protection; sustainability; and to support the viability of rural local centres and village shops. These conditions were derived from MBWLP policy R12 which is a saved policy. To permit this retrospective application would result in it being a departure from the MBWLP.

5.4.2 This application is also subject to the normal constraints of development in the countryside under policy ENV28 of the MBWLP.

5.4.3 At the heart of the National Planning Policy Framework (NPPF) is a "*presumption in favour of sustainable development*", which should be seen as a golden thread running through both plan-making and decision-taking. In terms of supporting a prosperous rural economy, the NPPF states (para 28);

*Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:*

- *Support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;*
- *Promote the development and diversification of agricultural and other land-based rural businesses;*
- *Promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.*

5.4.4 It is accepted that the goods now sold at Haven farm shop goes beyond 'diversification', but the NPPF also seeks to promote the general development and retention of sustainable rural businesses.

5.4.5 The recent changes to the General Permitted Development Order are also relevant, as this clearly echoes the sentiment of the NPPF in attempting to support the prosperity of the rural economy. Indeed, under the *Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013, Schedule 2, Part 4, Class D* it is permitted development for a building to go from a use falling within Classes A1, A2, A3, A4, A5, D1 and D2, to a flexible use (2 years) falling within either Classes A1, A2, A3 or B1. This is on the proviso that the floor space of the building does not exceed 150m<sup>2</sup>.

5.4.6 This is to say that Haven farm shop, which does not exceed 150m<sup>2</sup> in floor space, would now be able to flexibly change use as set out above, without

needing planning permission were it not for the conditions imposed under MA/06/0085. The GPDO will also now allow small-scale retail use across the borough, including in more remote countryside locations.

- 5.4.7 Policy R12 of the MBWLP is a saved policy and does still hold weight, and in particular this policy is important in resisting larger retail development in the countryside that falls outside the permitted development changes. However, since the Development Plan's introduction in 2000, the NPPF (introduced March 2012) and the GPDO changes (introduced 30<sup>th</sup> May 2013) have come into force and must be considered as strong material planning considerations in the determination of this application.
- 5.4.8 So whilst the NPPF and the GPDO changes are strong material planning considerations, I still consider it important to assess the three key concerns in establishing whether or not the principle for this development is acceptable. The key issues are sustainability; its impact on the countryside; and its impact on the viability of Sutton Valence village centre. All of the issues will now be assessed in the remainder of this report.

## **5.5 Sustainability**

- 5.5.1 Whilst outside the defined village boundary, I do not consider the application site to be in such an isolated and unsustainable location, enough to justify refusal. Indeed, the site is set behind a row of houses, within walking distance of Sutton Valence village centre and its facilities/amenities; and the site can be safely accessed by way of a public footpath from Sutton Valence village. Moreover, putting it into context, I do not see the catchment area of people using this small shop to be much beyond those that live in Sutton Valence village (which is in walking distance); or by those that have already made a car trip to the village for other reasons, such as dropping children off at the local schools, or using the village hall and recreation ground that are directly opposite the site, or the café sited immediately opposite the shop; or by those already driving through the village along the A274 who happen to see the shop's signage.
- 5.5.2 With this considered, I cannot argue that this shop is in an isolated location; and its continual use is important in helping to promote the rural economy, albeit on a small scale. In terms of sustainability, I therefore take the view that this use is not contrary to the sentiment of the NPPF.

## **5.6 Impact on the character and setting of countryside**

- 5.6.1 This is a retrospective application, with the shop being in full operation for a number of years; and no further building works or new advertisements are for consideration. Furthermore, the number of car movements to and from this

small-scale shop does not result in significant harm to the character of the countryside; the site is not significantly visible from any public vantage point; and the site is close to existing built development, including polytunnels to the south and west, a row of houses to the east, and a pavilion and sports field to the north.

5.6.2 With this considered, it is difficult to argue that the use as it stands causes significant adverse harm to the character and setting of the countryside, given its small scale, location and retrospective nature.

## **5.7 Impact on the viability of Sutton Valence village centre**

5.7.1 There is a small Post Office in the village centre of Sutton Valence that generally sells cards, drinks, confectionary and cigarettes. As it stands, there is not a strong crossover of products on sale by the Post Office and Haven Farm shop and so I have no concern that the farm shop, which is a modest business that does not generate significant activity, has negatively impacted upon the viability of the Post Office.

5.7.2 The removal of these restrictive conditions would allow for all types of retail on the site in the future. However, I am satisfied that its small floor space would constrain any use so as to not have a direct harmful impact on the Post Office in Sutton Valence. I therefore consider it difficult to refuse this application on the grounds that it would have an adverse impact on the viability of Sutton Valence village centre, or the wider area of the Maidstone borough.

5.7.3 I will remove the unit's permitted development rights, to ensure that the Council can control and fully assess any future expansions or extensions.

## **5.8 Residential Amenity**

5.8.1 No residential property is within 80m of the shop and I am satisfied that the nature of the existing use and the small scale of the unit, together with this separation distance does ensure that there is no significant impact on the amenity of local residents. I am also of the view that the modest extension of the shop's opening hours would not adversely affect the amenity of local residents. Controlling the proposed business hours by way of condition will further ensure the amenity of surrounding residents.

5.8.2 In addition, the unrestricted use has already been in operation for a period of time, and customers have always used the vehicle access from North Street that passes by residential properties. Given the nature and limited size of this business, I am satisfied that this use does not create a level of traffic that causes undue disturbance and harm to the occupants of these properties.

## **5.9 Highway safety implications**

5.9.1 I am satisfied that the existing vehicle access and the A274 does safely accommodate the traffic created by this use, without causing detrimental harm to the countryside; and that the existing parking area is sufficient for a shop of this scale. KCC Highways have also confirmed that having looked at the crash record for this stretch of the A274 (North Street), no highway safety concerns have been identified. I am therefore of the opinion that this use does not generate significant further need for parking provision and does not have an adverse impact on highway safety.

## **5.10 Other Matters**

5.10.1 Given the retrospective nature of the development and location of Haven Farm shop, I am satisfied that no further details are necessary in terms of ecological and arboricultural issues.

## **6. CONCLUSION**

6.1 Whilst the use of this shop is a departure from policy R12 of the MBWLP, the policy still holds weight; but the NPPF is the most up to date and relevant guidance. The NPPF is clear in its stance that sustainable development that supports economic growth in rural areas should be supported. This site has its own special individual circumstances and in this instance, I am satisfied that the unrestricted use of Haven Farm shop is sustainable; it does not have an adverse impact on the character of the countryside; it does not adversely harm the viability of Sutton Valence village; and does not cause significant harm to local residents or highway safety. I therefore accept the principle of this use at this location and recommend it for conditional approval.

## **7. RECOMMENDATION**

GRANT PLANNING PERMISSION subject to the following conditions:

1. No retail sales to the public shall be carried out outside of the hours of 08:00-18:00 Mondays to Saturdays and between 10:00 and 16:00 on Sundays, Bank or Public Holidays;

Reason: To safeguard the enjoyment of their properties by adjoining residential occupiers.

2. Only the farm shop area measuring 13metres x 5.75 metres as shown on the approved drawings shall be used for retail sales and no other land shall be used



for sales purposes;

Reason: In the interests of visual and rural amenity.

Note to Applicant

In accordance with paragraphs 186 and 187 of the NPPF, Maidstone Borough Council (MBC) takes a positive and proactive approach to development proposals focused on solutions. MBC works with applicants/agents in a positive and proactive manner by:

Offering a pre-application advice and duty desk service.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was acceptable as submitted and no further assistance was required.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.

The proposed development is not in accordance with Development Plan policy. However in this specific case, the proposed change of use would not represent an unjustified form of sustainable development that would cause unacceptable harm to the character and appearance of the countryside, or the viability of Sutton Valence village centre. For the reasons set out, it is considered to represent circumstances that can outweigh the existing policies in the Development Plan and there are no overriding material considerations to indicate a refusal of planning consent.