

REFERENCE NO - 14/500986/AMRCON			
APPLICATION PROPOSAL Removal of condition 1 of approved SW/13/0409 to allow for the permanent use of the meat preparation premises in accordance with condition 7 of approved SW/13/0409.			
ADDRESS Brogdale Farm Brogdale Road Ospringe Kent ME13 8XU			
RECOMMENDATION- Approval subject to outstanding comments from the Council's Economic Development Officer.			
SUMMARY OF REASONS FOR RECOMMENDATION The permanent use of the meat preparation premises in accordance with condition 7 of planning permission SW/13/0409 would not have a detrimental impact on the surrounding residential amenity.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection/concern.			
WARD East Downs Ward	PARISH/TOWN COUNCIL Ospringe	APPLICANT Mr Leroy Moore AGENT Eric Przyjemski	
DECISION DUE DATE 19/08/14	PUBLICITY EXPIRY DATE 19/08/14	OFFICER SITE VISIT DATE January 2015	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/11/1560	Change of use, extension and alterations to part of former cold store building to ground floor Class B2 use for meat preparation and a separate first floor Class B1 business use approved.	Approved	3 rd February 2012.
<i>Summarise Reasons; In line with Local plan policy guidance and no significant impact on the surrounding area.</i>			
SW/13/0409	Variation to condition 5 of approved SW/11/1560 to the following: 'The use hereby permitted shall be restricted to the hours of 5am to 6pm Mondays to Fridays including deliveries and dispatches and 7am to 2pm on any other day'.	Approved-temporary permission.	22 nd July 2013
<i>Summarise Reasons: Temporary 1 year permission granted to enable assessment of the extended hours of use and the resulting impact on the surrounding residential amenity.</i>			

1.0 DESCRIPTION OF SITE

- 1.01 The site is located south of Faversham and the M2 motorway, within a Special Landscape Area and the countryside. The frontage of Brogdale Farm is surrounded by residential properties to the north west and south west boundaries of the site. To the north east lies Brogdale Farm House, and to the north east open countryside.
- 1.02 The unit which is the subject of this application forms part of a former cold store building and is located to the rear of the site. The unit is located within the designated employment area under Policy B26 of the Swale Borough Local Plan 2008 .

- 1.03 The site has a long and varied planning history. The most recent and relevant history, including the 2 cases above also include the following:
- SW/12/1409- Change of use to use as demonstration gardens with incidental buildings and associated parking- (Withdrawn)
- SW/10/0036 – change of use, conversion and extension of existing cold store to provide business use (Approved)
- SW/08/0271 – change of use of existing cold store to catering use (food preparations) and/or B1 use and minor alterations to the external appearance of the building – (Approved)
- SW/08/0194 – change of use and alterations to chemical store to plant display and sale use with ancillary office and store, outdoor plant display area, new canopy, erection of glazed link between existing glasshouses and creation of additional craft/retail unit (Approved)
- SW/07/0189 – change of use and alterations to part of existing cold store to form offices and labs (B1) (Approved)

2.0 PROPOSAL

- 2.01 The proposal is for the removal of condition 1 of approved SW/13/0409. For clarification the application was approved in July 2013 for one year, under condition 1, whilst condition 7 permitted the same original hours of use except in relation to food preparation which allowed a 5am start on weekdays/Saturdays. Various new conditions regarding vehicle parking and deliveries were imposed for the one year trial period.
- 2.02 The proposal is now to remove the one year restriction as set out by condition 1 of SW/13/0409 making the new arrangements permanent, including the additional conditions
- 2.03 However, condition 7 (now condition 6) is also proposed to be amended to remove an ambiguity in the trial period conditions, and would it therefore now state the following;
6. The uses hereby permitted shall be restricted to the hours of 8am to 6pm on any day except only for that part of the ground floor of the premises used for the preparation of food in which case that use shall be restricted to the hours of 5am to 6pm on any weekdays and Saturdays, and to 8am to 6pm on any Sunday or Bank Holiday.
- 2.04 All other conditions as set out under approved SW/13/0409 would remain the same, but with revised numbering, conditions i.e. 2-6 and 8-10 of SW/13/0409 would now be conditions 1-5 and 7-9 of the new permanent permission. The only exception here is an amendment to new condition 9 to refer to new condition 5, see below.

3.0 PLANNING CONSTRAINTS

- 3.01 Brogdale Farm house lies to the north east and is Grade II listed. The site lies within the open countryside and falls under Policy B26 of the Swale Borough Local Plan 2008.

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The policies most relevant to this application are saved policies E1 (General Development Criteria), E6 (The Countryside), E9 (relating to Special Landscape Areas), B1 (Supporting and Retaining Existing Employment Land and Businesses), RC1 (Helping to Revitalise the Rural Economy) and B26 (Brogdale National Fruit Centre) of the Swale Borough Local Plan 2008.

Policy B26 states (in relation only to the built up part of the farm) that:

“In order to help safeguard the continuation of the National Fruit Collection at Brogdale National Fruit Centre, the Borough Council will grant planning permission for a range of research, commercial, tourism and educational use. Development proposals will:

1. *be of a scale and character appropriate to the rural setting of the site;*
2. *clearly demonstrate that the proposed uses will both relate to the existing functions of the Brogdale National Fruit Centre, and make a significant contribution to the long term viability of the National Fruit Collection;*
3. *be the subject of a satisfactory transport impact assessment; and*
4. *be limited in extent to the area identified on the proposals map.”*

- 4.02 The National Planning Policy Framework is also a material consideration in determining this application. In terms of “Supporting a prosperous rural economy”, it states at paragraph 28 that:

“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”*

5.0 LOCAL REPRESENTATIONS

- 5.01 Seven letters of objections have been received making the following summarised comments:

- Applicant is already ignoring the originally agreed hours with impunity
- The existing hours should not be changed- no deliveries should be allowed before 7am and no dispatches before 7.30am
- Neighbours will continue to be disturbed by noise created by allowing extended hours
- Loss of the quiet rural setting
- Disturbed by vehicles entering and leaving the site at all hours
- Brogdale is not an industrial site, it is a fruit farm
- Most of the residents bought their properties when Brogdale was a proper fruit farm and acknowledged that there would be a certain amount of farm machinery in use during normal working hours and occasional (during harvest time) outside of normal working hours for a limited time

- The current owners and businesses do not seem to have regard to the disturbance caused to the local residents
- Excessive noise from Brogdale, in excess of what which would be expected from a working fruit farm
- Alternative premises should be found if the business needs to expand
- The amenity of the village needs to be protected
- Owner has been on site when he should be- specific dates have been provided (Members should note that the agent has responded to these allegations and explained the circumstances surrounding these apparent breaches)

5.02 Countryside Under Threat (CUT) make the following summarised comments in relation to this application:

- No more development should be allowed at Brogdale until a full appraisal has been carried out
- The butcher is using the Market Place to receive meat and also to load delivery vehicles from 6.45am
- The butcher has shown blatant disregard for neighbours, their amenity
- The butcher is about to open another shop in Whitstable- his activities at Brogdale Farm can only increase
- The butcher and staff park in the main car park next to Brogdale Farmhouse- they do not use the land east of the buildings
- Aware of these movement for the period of the temporary permission- it is not a one off scenario
- Processing of meat appears to still be taking place in the shop
- Light concerns
- Site is creeping towards 'industrialisation in the middle of a residential area'

5.03 In response to an objector letter stating use outside of the agreed hours the agent has responded and confirms the following:

'Since the grant of the temporary consent on 22/7/2013 there have been six reported incidents to the Landlord of breach of conditions. These have been investigated with the CCTV on site. One of these involved early access by a supplier vehicle to the butcher who responded immediately to reinforce the delivery protocol to all their suppliers. No further incidents have been reported. Four of the reports have been regarding isolated lorry movements three of which have been refuse lorries collecting from the different tenants on site. The landlords acknowledge this as an on-going problem and are now taking direct action to intervene and restrict the number of contractors who this service can be arranged with. These events were unconnected with the butcher. The final incident on 15th September 2014 was in response to an emergency on site where there was a breakdown in one of the butchers large storage fridges.'

6.0 CONSULTATIONS

6.01 Ospringe Parish Council is concerned that the current temporary condition for operating hours has not been met by the tenant. Ospringe Parish Council would like to see a new replacement condition for SW/13/0409 condition 1 stipulating that no inward deliveries are allowed before 7am. If this is not possible then they would seek to extend the current temporary condition 1 for a further year. Although they recognise that this may be considered unusual practice they say that the applicant has failed to demonstrate that he is able to keep to the current temporary planning

condition and so accordingly they would like Swale Planning to recommend this further temporary extension of one year. We would also wish to see all other 9 conditions of SW/13/0409 kept in place and unchanged.

6.02 The Council's Environmental Health Manager has confirmed that he has not received any noise complaints concerning the use of the premises since the granting of the temporary permission. Therefore there has been no investigation into the likelihood of the proposed activities being a Statutory Nuisance. In the absence of any evidence that the temporary use has impacted on residential amenity and in view of the proposed conditions relating to vehicle movements/parking and deliveries he has no objection to this proposal.

6.03 I am awaiting comments from the Council's Economic Development Officer and will update Members at the meeting.

6.04 Kent Highway Services raise no objection.

7.0 BACKGROUND PAPERS AND PLANS

7.01 Planning application form and Planning Statement June 2014.

8.0 APPRAISAL

8.01 Members will note that there have been several objections to this application which raise concerns in relation to the running of and the uses located at Brogdale Farm as a whole and it is clearly a contentious issue locally. However, Members should note that planning permission has already been granted for the use and that this application is simply for the deletion of condition 1 of SW/13/0409 which gave a one year temporary permission for the extension of the hours of operation in relation to the meat preparation premises. All that can be considered in determining this application is the impacts above and beyond the approved use and hours of operation; the Council cannot seek to control the existing permission through this application.

8.02 Therefore, the main considerations in the determination of this application remain the same which are the potential increase in vehicular movements, particularly early in the mornings, and whether the proposed increased in operational hours would have a significantly detrimental impact on the amenity of neighbouring residents. These factors should be considered against the potential benefits of the proposal to the local economy in continuing to support this local business and ensuring the future viability of this small scale business. The previous application under SW/13/0409 assessed the impact of the increased hours and at that time Members voted to approve, on a temporary one year basis.

8.03 The temporary nature of the previous approval has given officers the chance to fully assess the impact on the residential amenity of the surrounding neighbouring properties. It is worth noting that officers have received a survey from a neighbour outlining some potential breaches to the planning conditions, specifically providing dates and times of the alleged breaches. Subsequently the landowner of the site has checked the on-site CCTV footage and has confirmed that of the six alleged breaches, one was the arrival of a supplier and that the owner of the business has reinforced the delivery protocol to all their suppliers. Four of the alleged breaches have been confirmed to be three refuse lorry movements. The final incident reported which took place on 15th September 2014 was clearly in response to a fire alarm indicating system failure, which has been confirmed by the landowner and

applicant. This did indeed result in a number of early movements to and from the site and the shop located in Market Place. However, this was clearly necessary to move the meat from the broken fridge and I consider this to be an isolated incident.

- 8.04 Whilst the site lies within the land zoned by policy B26 of the Local Plan, that policy really seeks to offer flexibility for novel development at Brogdale to support the National Fruit Collection (see policy wording above) over and above normal rural development policies such as E1, E6 and RC1. These were the policies relied on in approving the use in the first place, and I consider that these are the ones that should be focussed on now. I also consider that the proposed change of hours is in principle capable of meeting the objectives of policy RC1 of the Local Plan which looks to provide rural jobs provided the proposal is in scale with its locality with no detriment to landscape character, biodiversity or countryside conservation; and providing it does not lead to a significant increase in traffic or unsustainable travel patterns. However, it is the issue of the impact on the amenities of the nearest dwellings (policy E1) that remains at the heart of the issue now and was the case under the previous application
- 8.05 Neighbouring residents are particularly concerned about amenity issues in respect of vehicular movements at the entrance of the site before usual business hours. Whilst I fully consider and sympathise with the argument put forward by local residents that this is a residential area I am of the view that the premises is reasonably small, detached from neighbours, and does not have a large workforce, which reduces the impact on the wider residential amenity.
- 8.06 Having taken into consideration the impact on residential amenity I am on the view that these isolated incidences, four of which are not related to the applicant's business, is not significant enough to warrant a further time restricted temporary permission. In my opinion the conditions recommended adequately restrict the movements to and from the site to reduce any impact on the residential amenity of the surrounding area. The stringent nature of the conditions ensures a great reduction in the potential impact on the most immediate residential property, especially Brogdale Farm House and its owners. The Council's Environmental Health Manager does not raise an objection to the proposal subject to the attached conditions. In addition, he has confirmed that there have been no noise complaints made during the temporary period of the planning permission.
- 8.07 The stringent conditions recommended in this report restrict the parking of staff vehicles to the rear of the site; deliveries of fresh meat shall not place before 6.30am Monday to Saturday with no deliveries on Sundays or Bank Holidays; no vehicles associated with the food preparation business within the premises shall be parked, loaded or unloaded in the main or overflow car park at any time. Furthermore, the hours of use have been strictly controlled by a condition.
- 8.08 With regards to the potential highway implications, I am of the view that the vehicular movements will not be significantly greater than under the approved hours of operation. In addition, the site has good access and a good surrounding road network. I have consulted Kent Highway Services who do not consider there to be any highway implications as a result of the removal of condition 1. Furthermore, highway impact was not considered a significant consideration under the previous application.

9.0 CONCLUSION

- 9.01 I am of the view that the suggested conditions relating to parking and access arrangements and the hours of use overcome the potential impact on the residential amenity and that any limited impact is not sufficient to warrant a refusal of this application.
- 9.02 The one year temporary permission has enabled officers to fully assess the impact on the residential amenity and except for a few isolated cases (in one instance to access the site to deal with a freezer emergency) the applicant has complied with the conditions thus limiting the impact on the residential amenity. As such I see no reason to refuse this application or to suggest a further temporary permission.
- 9.03 Therefore after careful consideration I consider this proposal acceptable, subject to conditions and outstanding comments from the Council's Economic Development Officer.

10.0 RECOMMENDATION – GRANT Subject to the following conditions:**CONDITIONS**

1. The use hereby be permitted shall be restricted to the preparation of food or for any uses within Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) only.

Reasons: In order to prevent the development having an adverse impact on the amenities of the area.

2. No cooking of food shall take place within the area hereby approved for food preparation until details of a ventilation system have been submitted to and approved by the Local Planning Authority and upon approval the system shall be installed prior to any cooking of food, and thereafter maintained and operated in a manner which prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Reasons: In the interests of residential amenity.

3. No external refrigeration or air conditioning unit shall be installed other than in accordance with details which shall be submitted to and approved by the Local Planning Authority and upon approval the unit shall be installed, maintained and operated in a manner which prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Reasons: In the interests of residential amenity.

4. The parking of vehicles used by staff associated with the use of this premises shall be restricted to land to the east of the Market Place at Brogdale between the hours of 6pm on any day and 7.30am on the following day.

Reasons: In the interests of residential amenity.

5. Deliveries of fresh meat to the premises shall not take place before 6.30am on Monday to Saturdays with no deliveries on Sundays and Bank Holidays and no delivery vehicles shall park or unload in the main car park or overflow car park at Brogdale at any time

Reasons: In the interests of residential amenity.

6. The uses hereby permitted shall be restricted to the hours of 8am to 6pm on any day except only for that part of the ground floor of the premises used for the preparation of food in which case that use shall be restricted to the hours of 5am to 6pm on any weekdays and Saturdays, and to 8am to 6pm on any Sunday or Bank Holiday

Reasons: In the interests of residential amenity.

7. No vehicles associated with the food preparation business carried on within the premises shall be parked, loaded or unloaded in the main or overflow car park at any time.

Reasons: In the interests of residential amenity.

8. The use of the site hereby approved for food preparation will cease if refrigerated lorries and/or vans, used in connection with the business, park or wait in the established main or overspill vehicle parking areas at Brogdale Farm. All such waiting vehicles shall park beside the unit.

Reasons: In the interests of residential amenity.

9. No deliveries (other than as provided for by condition 5 above) and despatches to or from the premises, including deliveries or dispatches to or from any unit with the Market Place at Brogdale, shall take place before 7.30am or after 6pm on any day.

Reasons: In the interests of residential amenity.

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

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

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.