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| 2.6 REFERENCE NO - 18/503080/FULL | | | |
| APPLICATION PROPOSAL Variation to condition 4 of application SW/10/0485 (change of use from stabling for private use to commercial stud farming and livery) to allow unrestricted overnight use of an existing caravan/mobile home by the applicant, employees and customers of the stud farm. | | | |
| ADDRESS Bell Grove Stud Farm Halstow Lane Upchurch Sittingbourne Kent ME9 7AB | | | |
| RECOMMENDATION Grant planning permission, subject to the receipt of satisfactory unilateral undertaking in respect of SAMMS payments. | | | |
| SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The applicant has submitted sufficient justification to demonstrate a financial and functional need for a permanent dwelling on the site. | | | |
| REASON FOR REFERRAL TO COMMITTEE Parish Council objection. | | | |
| WARD Hartlip, Newington And Upchurch | PARISH/TOWN Upchurch | COUNCIL | APPLICANT Mr Tye Simms AGENT Architectural Designs |
| DECISION DUE DATE 21/09/18 | PUBLICITY EXPIRY DATE 27/07/18 | | |
| RELEVANT PLANNING HISTORY | | | |
| App No | Proposal | Decision | Date |
| SW/10/0485 | Change of use of use from stabling for private use to commercial stud farming and livery to site a caravan on site for use of permanent member of staff and owners of pregnant mares for 4 nights in any week and all day time use. | Granted. | 28.05.2010 |
| <i>Summarise Reasons The proposal would be in accordance with the development plan and would not cause unacceptable harm to the amenities of the area or highway safety.</i> | | | |
| SW/13/1563 | Variation of condition 4 of SW/10/0485 to allow unrestricted overnight use of caravan/ mobile home by employees and customers of the stud farm | Refused. | 21.02.2014 |
| <i>Summarise Reasons Insufficient evidence has been submitted to demonstrate that the dwelling can be justified on the grounds that it would support a rural business and that this rural business would benefit the rural economy to the extent that the harm to the rural environment would be outweighed.</i> | | | |

MAIN REPORT**1.0 DESCRIPTION OF SITE**

- 1.01 The application site is located in open countryside on the northern side of Lower Halstow Lane between Upchurch and Lower Halstow. It comprises a roughly rectangular parcel of land with a frontage width to Lower Halstow Lane of 75m, a depth of 180m and an area of approximately 1.35 ha. The site is in equine use as a commercial stud farm and livery. There are three stable blocks and a hayloft within a

courtyard at the north-eastern corner of the site, to the west of which is an existing static caravan. The southern part of the site is sub-divided by timber post and rail fencing to form a ménage and a number of paddocks located on either side of a central drive way. The site is accessed from Lower Halstow Lane which is designated as a Rural Lane in the adopted Local Plan.

- 1.02 The surrounding area is rural in character. The site is bounded by a Travellers site to the west, open fields to the north and a riding school to the east. To the south of the site, on the opposite side of Lower Halstow Lane, is Lower Halstow cricket ground and open pasture.
- 1.03 The site lies within the Coastal Zone and the Strategic Gap between the Medway towns and Sittingbourne as designated in the Local Plan.

2.0 PROPOSAL

- 2.01 This application seeks to vary condition 4 of planning permission SW/10/0485 to allow unrestricted overnight use of a mobile home on the site, i.e. full-time residential use.

- 2.02 Condition 4 of SW/10/0485 states:

“Only one caravan/mobile home shall be stationed within the application site in the exact location shown on the approved plans and this caravan/mobile home shall not be used for residential purposes or overnight accommodation other than for a total of four nights in any one week, and this overnight accommodation shall be ancillary to the approved use only and restricted to employees and customers of the stud farm only.”

- 2.03 The applicant’s supporting statement explains:

“Planning permission was granted in 2010 (SW/10/0098) for the change of use from stabling for private use to commercial stud farming and livery to site a caravan on site for use of permanent staff and owners of pregnant mares for 4 nights in any week and all-day time use.

The business has continued to grow but is continually becoming more stifled and restricted by the imposition of only being able to stay on site for 4 nights in any week.

Other forces have also come into play with regard to security, management and personal affairs that has forced the applicant to once again seek permission to allow unrestricted overnight use of the caravan/mobile home by the applicant, employees and customers of the stud farm.

The applicant proposes to be on site permanently with his 5-year-old son during school terms and for an employee to be permanently on site the remainder of the year. This will allow the site to have 24/7 supervision all year round.

With permanent supervision, the applicant can proceed to put the business into a higher level of care resulting in attaining higher fees for both the livery and the stud business. The additional income would allow the applicant to take on more staff to help and provide additional care for the horses.

The time spent by the applicant travelling to and from Lordswood (applicant’s permanent residence) could be better utilised in attending to the horses such as providing further exercising of the horses in the 50 acres of grass land available to the north of the site.

It is proposed to replace the existing commercial caravan and replace it with a double mobile home. This will provide adequate accommodation for the applicant and his son (during term times) and allow for an employee or client to stay over as and when required.

A small welfare unit [to be applied for separately if this permission is granted] is to be erected to provide laboratory facilities and act as a welfare unit for staff, clients and the vet etc. The laboratory is to assist the inseminator (DETHRA registered) in the collection and keeping of sperm and for necessary analysis to be undertaken. The other part of the unit will provide washroom and restroom facilities."

2.04 The supporting statement also sets out the principal reasons for requiring a permanent presence on site, including:

- Loss of livery fees due to customer's concern for their horse's welfare;
- Loss of stud fees for the same reason;
- Animal welfare, particularly for sick or pregnant horses;
- Control of the stallions, who can harm themselves trying to reach an in-season mare if not under supervision;
- Site security; and
- The applicant's personal circumstances and business requirements have resulted in his young son attending Upchurch Primary School, so being able to stay at the site during the week would also help with this aspect.

3.0 PLANNING CONSTRAINTS

3.01 The eastern half of the site lies within Flood Zone 3, but the caravan the subject of this application is outside the flood zone.

4.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF):

4.01 Chapter 2 - Achieving sustainable development
 Chapter 6 - Building a strong competitive economy
 Chapter 14 - Meeting the challenge of climate change, flooding and coastal change
 Chapter 15 - Conserving and enhancing the natural environment

Bearing Fruits 2013: The Swale Borough Local Plan 2017 Policies:

4.02 ST1 Delivering sustainable development in Swale
 ST3 The Swale settlement strategy
 CP3 Delivering a wide choice of high quality homes
 CP7 Conserving and enhancing the natural environment- providing for green infrastructure
 DM3 The rural economy
 DM6 Managing transport demand and impact
 DM12 Dwellings for rural workers
 DM14 General development criteria
 DM25 The separation of settlements – Important local countryside gaps
 DM26 Rural lanes
 DM27 The keeping and grazing of horses

Supplementary Planning Documents:

- 4.03 Planning and Development Guidelines No.7- The Erection of Stables and the Keeping of Horses.

5.0 LOCAL REPRESENTATIONS

- 5.01 A total of 2 responses have been received objecting to the proposal on some or all of the following grounds:-

- Adverse effect on character of local area;
- Removal of condition would further erode space between built areas of Lower Halstow and Upchurch;
- Noise and disturbance from occupants of caravan; and,
- Goats are being kept which encourages rats and vermin;

6.0 CONSULTATIONS

- 6.01 Upchurch Parish Council objects *“as there is insufficient reasons for an onsite residence.”*

- 6.02 Lower Halstow Parish Council, the neighbouring parish, objects on the following grounds:

- “1) There is no sight line on exiting the property.*
- 2) An unacceptable increase in traffic on already busy, narrow country lanes which will include horse boxes and trailers arriving and departing at unpredictable times.*
- 3) Although this site is outside of the Lower Halstow boundary, it is just on the boundary and will adversely impact on the residents by creating disturbance and noise.*
- 4) The footpaths around this site have been illegally closed.”*

- 6.03 The Environment Agency raises no objection, commenting that the scheme is covered by their standing advice which considers residential caravans to be “highly vulnerable” but only when within defined flood zones.

- 6.04 Natural England has no objection subject to the standards SAMMS considerations for all new residential development.

- 6.05 KCC Highways have no comments as the proposal falls below their protocol response threshold.

- 6.06 KCC Public Rights of Way note local footpaths, but have no objection to the proposal as it would not in itself affect their function.

- 6.07 The Council's Environmental Health Manager has no objections.

- 6.08 The Council's rural planning consultant has examined the submitted financial information and considers the proposal for a permanent dwelling on site to be justified , concluding that **(my emphasis in bold)**:

“The submitted financial data indicates that the business has been profitable each year since 2010, albeit not at a level that would provide a sufficient income for a full-time owner or manager. The accounts suggest that sales to date have been limited to the livery income, rather than the sort of breeding income originally outlined.

The submissions on the applicant’s behalf refer to difficulties in further expansion of the business without the ability to have potential occupation of the caravan for 7 nights a week.

The submission include cash flows for the business for the coming years (up to the end of 2021) which assume a very large increase in sales receipts and labour, with up to 3 full-time employees being supported.

This additional income appears to be mainly predicated on the introduction of horse breeding and a riding tuition service, however there are no detailed breakdowns or further explanations to demonstrate exactly how the assumed figures are likely to be achieved. It is difficult, therefore, to put too much reliance on the submitted projections, and the ability to expand the business to this much greater level, as matters stand.

*That said, it appears that it would not require too much further expansion to warrant the employment of at least one full-time person, and **I would agree that, in functional terms, such further expansion is likely to be hampered if some form of residential attendance, week-round, cannot be provided**, for all the reasons outlined in the submitted statement.”*

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 The submission documents include a Planning Statement and Business Plan with associated accounts.

8.0 APPRAISAL

- 8.01 The main considerations in the determination of this application are:-

- The principle of the development;
- The impact on the character and visual amenity of the area;
- The effect on the amenities of neighbouring occupiers
- Highways; and,
- Ecology

Principle of Development

- 9.01 The National Planning Policy Framework (NPPF) seeks to promote the sustainable growth and expansion of all types of business in rural area and goes on to indicate that the development of isolated homes in the countryside should be avoided except in special circumstances, such as the need for a rural worker to live permanently at or near their place of work.
- 9.02 The Local Plan reflects these aims and objectives and of particular relevance is Policy DM12 which states that *‘Planning permission will be granted for new permanent, rural worker dwellings in the countryside subject to a number of criteria, inter alia:-*

- *There being a clearly established, existing, essential need for the proper functioning of the enterprise for a full-time worker to be readily available at most times.*

9.03 The application site has a long and well established history of equine use. In 2010 planning permission was granted for a change of use from private stabling to a commercial stud and livery (SW/10/0485). The application also included the siting of a caravan on the site which was subject to the following condition:-

'Only one caravan/mobile home shall be stationed within the application site in the exact location shown on the approved plans and this caravan/mobile home shall not be used for residential purposes or overnight accommodation other than for a total of four nights in any one week, and this overnight accommodation shall be ancillary to the approved use only and restricted to employees and customers of the stud farm only.'

9.04 In February 2014 an application (Ref SW/13/1563) to vary the above condition to allow the unrestricted overnight use of the caravan by employees and customers of the stud farm was refused on the grounds that *'Insufficient evidence has been submitted to demonstrate that the dwelling can be justified on the grounds that it would support the rural economy to the extent that the harm to the rural environment would be outweighed.'*

9.05 In the current submission the applicant has now submitted a convincing business case to indicate that the stud and livery business has been hampered by the lack of a permanent overnight owner/ employee presence on the site. I would refer Members to paragraphs 2.03 and 2.04 of this report with this regard.

9.06 The Council's rural planning consultant has assessed the submission and has concurred that the successful long term functioning of the business is predicated on a week- round residential presence on the site.

9.07 Therefore, it is considered that there is no objection in principle to the variation of the condition to allow full time residential occupancy of the caravan. Notwithstanding this, it is recommended that a condition be imposed to ensure that the residential use is ancillary to the approved commercial use and that the occupancy is limited solely to the owner, employees or customers.

Impact on the Character and Visual Amenity of the Area

9.08 One of the main aims of Local Plan Policies DM3, DM12, DM14 and DM28 is to ensure that development proposals conserve or enhance the character and visual amenities of rural areas.

9.09 The existing caravan/ mobile home was granted planning permission in 2010 and has been in situ for a number of years. It is located towards the rear of the site close to the stable buildings some 160m back from the public highway. Although visible from Lower Halstow Lane, it is viewed against the backdrop of a substantial row of trees with equine paraphernalia in the foreground and therefore has limited or no detrimental impacts on the character or visual amenities of the area.

9.10 There is an extant planning condition on the site which limits the number of horses to *'no more than two mares and one stallion at any one time in association with the stud farm business and no more than two full time and two part time livery stables shall be occupied at the site at any one time in association with the livery business.'* In view of this restriction, it is considered that the proposed variation of condition 4 of

SW/10/0485, will not result in an intensification of the use of the site to an extent that would compromise the rural character of the area.

Residential Amenity

- 9.11 The nearest residential property (i.e. a mobile home) is located some 60m to the south-west of the caravan/ mobile home at Jack Russel Place. Given this separation distance it is not considered that the occupation of the mobile home on the application site on a full time basis ancillary to the commercial use of the site would have a detrimental impact on the amenities of the nearby occupiers.

Highways

- 9.12 Lower Halstow Lane is a designated Rural Lane which is used as a connecting route between Upchurch and Lower Halstow and is relatively busy. However, given that the level of commercial activity on the site is already limited by condition (see paragraph 9.10), it is not considered that the proposed variation of condition would result in a level of traffic generation above and beyond what was previously considered acceptable.

Impact on SPA and Ramsar Sites

- 9.13 I have for completeness set out a Habitat Regulations Assessment below. Since this application will result in a net increase in residential accommodation impacts to the SPA and Ramsar sites may result from increased recreational disturbance. Due to the scale of the development there is no scope to provide on site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £239.61 per dwelling. The applicant has provided written confirmation that he would be willing to make a financial contribution of £239.61 to be secured by way of a unilateral undertaking.

Other Matters

- 9.14 The concerns of Upchurch Parish Council, Lower Halstow Parish Council and neighbouring occupiers with regard to the lack of evidence to justify an on site residence, traffic generation, highway safety and residential amenity have been addressed above.
- 9.15 The concerns raised with regard to the illegal closure of footpaths around the site have been noted and forwarded to KCC Public Rights of Way for further investigation. The neighbour objection with regard to noise from late night parties and problems with vermin have been noted. However, these issues fall within the remit of Environmental Health legislation rather than the Town and Country Planning Act.

10.0 CONCLUSION

- 10.01 The proposed variation of condition is acceptable in principle. It would support and enhance the rural economy without detriment to the character or visual amenities of the countryside or harm to residential amenity, highway safety and convenience. Therefore, it is recommended for approval subject to condition.

11.0 RECOMMENDATION – GRANT subject to the following condition:

1. Only one caravan/ mobile home shall be stationed within the application site, and only in the exact location shown on the approved plans. This caravan/ mobile home shall not be occupied at any time other than for residential purposes ancillary to the

approved use and restricted to the owner, employees and customers of the stud farm only.

Reason: In the interests of rural amenity and in pursuance of Policies ST3, CP7, DM3 and DM12 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

INFORMATIVES

The applicant is advised that other than condition No.4, the use of the site for commercial stud farming and livery must be fully compliant with the conditions attached to planning permission reference SW/10/0485.

Council's Approach to this Application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 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 a pre-application advice 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 applicant/agent was:

- Advised of additional information required and this was submitted.
- The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

If your decision includes conditions, there is a separate application process to discharge them. You can apply online at, or download forms from, www.planningportal.co.uk (search for 'discharge of conditions').

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *“it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.”* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwellings are occupied.

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (to be secured by either s106 agreement or unilateral undertaking on all qualifying developments) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others (<https://birdwise.org.uk/>).

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.

