

**PLANNING COMMITTEE – 29 APRIL 2021****PART 3**

Report of the Head of Planning

**PART 3**Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 20/505418/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Section 73 - Application for Removal of condition 2 (occupational restriction) pursuant to application SW/09/1330 for - Conversion of Black Oast to form dyslexic specialist unit, teaching suite and one accommodation.			
<b>ADDRESS</b> Black Oast Godfrey's Grave Butlers Hill Fostall Hernhill Faversham Kent			
<b>RECOMMENDATION - REFUSE</b>			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Parish Council Support			
<b>WARD</b>	Boughton And Courtenay	<b>PARISH/TOWN COUNCIL</b>	Hernhill
<b>APPLICANT</b>	Ms Amanda Barnes	<b>AGENT</b>	Milliken & Co. Chartered Surveyors
<b>DECISION DUE DATE</b>		<b>PUBLICITY EXPIRY DATE</b>	
14/01/21		01/01/21	

**Planning History**

20/503063/LDCEX

Lawful Development Certificate (Existing) for use as a permanent and full-time dwelling house.  
Refused Decision Date: 21.09.2020 Appeal in progress.**SW/09/1330****Conversion of black oast to form dyslexic specialist unit, teaching suite and one accommodation.****Approved Decision Date: 23.02.2010**

SW/02/1398

Change of use to two holiday units.

Approved Decision Date: 31.01.2003

SW/01/0289

Change of use and reconstruction of upper floor and square and round oasts to form office, Community Association store and dwelling.

Refused Decision Date: 22.06.2001

## 1. DESCRIPTION OF SITE & SITE HISTORY

- 1.1 Black Oast is a single storey building (once a two storey oast house with tall kilns) located in an isolated rural location outside of any built confines and within the Hernhill-Fostall conservation area. The building was originally used for processing hops, with circular and square kilns originally located to the north of the building; but these kilns and the entire roof and first floor parts of the building were destroyed during the Second World War. The building lay for many years as a derelict single storey structure, until proposals for its restoration and use as a holiday accommodation were approved.
- 1.2 Application SW/01/0289 sought to reconstruct lost parts of the building and use the building as a dwelling, office and store. That application was refused as it would have led to the creation of a wholly new building rather than the restoration and conversion of the existing structure that would have been detrimental to the character and amenities of the surrounding rural area.
- 1.3 Application SW/02/1398 for the conversion of the building into two semi-detached single storey holiday lets was approved at Planning Committee. It was decided that the building was not suitable for modern agricultural use and its conversion would encourage economic diversity. The design of the 2002 conversion was felt to be sympathetic to the surrounding area using existing openings and with sufficient landscaping. In fact, the current applicant wrote in support of the application. This approval was not implemented.
- 1.4 The current applicant purchased the building in 2007 in its run down state and submitted application SW/09/1330 for the restoration of the building as a single storey structure and for conversion of the two halves of the building into a single storey holiday let, and a dyslexic teaching unit for the applicant's work. These plans showed each half of the building having its own entrance, and there being an internal door to provide access between the two parts. This application was approved, and the restoration work was carried out. Condition (2) of planning permission SW/09/1330 states:

*(2) The holiday let hereby permitted shall be used solely for the purpose of holiday accommodation and shall not be let or occupied by any person or group of persons for a continuous period of more than 4 weeks in any calendar year.*
- 1.5 Enforcement cases were opened in both 2015 and 2017 with regards to allegations that the applicant and her husband were using the holiday let part of the building as their main permanent residence, which was in breach of the above condition. The applicant admitted that she and her husband had in fact left their long term home nearby and occupied the holiday let accommodation permanently since 2011. However, under the threat of enforcement action they moved out in July 2018, so preventing creation of immunity from enforcement action arising from a ten year breach of the planning condition; and removing the need for the Council to take formal enforcement action
- 1.6 The applicant has since submitted a Lawful Development Certificate application, claiming immunity from the planning condition, based on the following arguments:
  - That the original conversion works were not carried out strictly in accordance with the approved drawings and joinery details approved with applications SW/09/1330 and SW/09/1330/CCA (the joinery conditions submission) and that the conversion works were

therefore works carried out were other than those approved by the planning permission. This, she said, means that that no conditions of the planning permission apply to the building as converted, or can be enforced.

- As such, the applicant claims that the conversion works were all unlawful at the time and that as a consequence the use of the resultant conversion as a single dwellinghouse is covered by the 4 year enforcement immunity rule for use of a building as a single dwellinghouse, rather than the 10 year rule for a breach of condition; meaning that full time residential use is not a breach of condition (2) of the planning permission.
- It was also argued that the unauthorised permanent residential use here would have become lawful in April 2015 i.e. four years after the building was first occupied for residential purposes.

I refused the Lawful Development Certificate application under delegated powers based on my conclusion that the differences between the approved and completed works are very minor, and do not represent a wholly unauthorised conversion. The applicant is appealing that decision, and the current application has been submitted alongside that appeal, which has not yet been determined.

## **2. PROPOSAL**

2.1 The current application is seeking the removal of condition (2) of application SW/09/1330 to allow for the permanent residential use of Black Oast rather than its use as short term holiday accommodation. The application is supported by a Planning Statement and Viability Reports from which I have taken the following information:

- The applicant moved in to the building in 2011 as their sole place of residence
- The applicant was forced to vacate the property after the serving of a Planning Contravention Notice in 2017 effectively rendering them homeless
- The property has been marketed both national and local agencies for holiday let use since 2018
- Since April 2011 the separate teaching suite has been used on a continuous basis – the applicant's daughter also specialises in this area of teaching and will likely make use of this in the future
- Only 55% of the floorspace would be lost to permanent residential use whilst the dyslexia unit would remain resulting in no loss of existing local service/employment space in the rural area
- The applicants could still use the building as a holiday let as it would also have a C3 residential use class but without the restricted occupancy condition if permission is granted
- A holiday let use falls within the same category as Class C3 residential use and there is no basis for resisting removal of the occupancy condition on the grounds that permanent residential use would have an unacceptable physical impact on the area

- A non-viable holiday let use could result in Black Oast becoming underused and falling into disrepair which would be detrimental to its standing as a 19<sup>th</sup> Century non-designated heritage asset
- The holiday let use does not sit well alongside the existing specialist teaching use in terms of latent noise and disturbance issues and the need to share a single point of entrance in to the building
- The Council should be seeking to protect the specialist teaching unit which provides an important social function within the local community
- Specialist needs children could become upset by the frequent comings and goings of holiday let use
- The building would not be suited to conversion of an employment use such as offices and there would also not be enough on site parking to accommodate this use
- The Council is not meeting its 5 year housing land supply requirements and relevant policies relating to supply of housing land are out of date and should be afforded limited weight including policy ST3 and DM3
- Using a tilted balance, the presumption in favour of residential development overrides any material harm arising as a result of allowing the holiday let to be used to permanent residential use
- There has been a substantial growth in demand for holiday cottages since 2010 both from the domestic market and international market
- Many property owners have converted redundant buildings to holiday lettings to meet the increased demand which has resulted in an oversupply in some areas
- There are over 1000 holiday cottages sleeping two people within a seven mile radius of Black Oast
- The property was marketed for holiday letting from August 2018 offering holiday accommodation for 2-4 people on three online portals including tripadvisor.com; independentcottages.co.uk and Faversham.org
- The property was marketed for sale from May 2018 for 14 months as a holiday let with ancillary D1 use at an asking price of £400,000 with no viewings and no offers
- Between the beginning of August 2018 and the end of May 2019 the holiday let was rented out on six occasions covering eight weeks (56 nights), providing an income of more than £3,400. This compared to fixed costs (those that would not change even if numbers of bookings increased/decreased) of just less than £3,500
- In the year from September 2019 to October 2020 (which includes the initial coronavirus lockdown period when the accommodation was closed from 23<sup>rd</sup> March to 30<sup>th</sup> June) the holiday let was rented out 13 times comprising one 9 night stay, six 7 night stays, three 3 night stays and one 2 night stay. This equates to 64 nights, producing an income of just over £5,400

### 3. PLANNING CONSTRAINTS

#### 3.1 Conservation Area Fostall

### 4. POLICY AND CONSIDERATIONS

#### 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:

ST3 (Swale settlement strategy)

DM3 (The rural economy)

DM14 (General development criteria)

DM24 (Valued landscapes)

DM33 (Conservation areas)

#### 4.2 The site lies outside any Local Plan defined built-up area boundary and in terms of policy ST3 the following part is relevant:

*‘At locations in the open countryside, outside the built-up area boundaries development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities’*

#### 4.3 Policy DM3 is also of particular relevance as follows (with my **boldening**) :

*Planning permission will be granted for the sustainable growth and expansion of business and enterprise in the rural area. **Planning permission for residential development will not be permitted where this would reduce the potential for rural employment and/or community facilities unless the site/building(s) is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable.***

*Development proposals for rural based employment will:*

##### *1. For all proposals:*

- a. in the case of larger scales of development, be located at the rural local service centres and urban areas as defined by Policy ST 3 and in accordance with Policy CP 1;*
- b. firstly consider the appropriate re-use of existing buildings or the development of other previously developed land, unless such sites are not available or it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management of the countryside;*
- c. retain or enhance the rural services available to local communities and visitors without undermining or resulting in the loss of existing services unless demonstrated to be unviable for the existing use or other employment/community use;*
- d. for new buildings and ancillary facilities, the design and layout will need to be sympathetic to the rural location and appropriate to their context;*

- e. *result in no significant harm to the historical, architectural, biodiversity, landscape or rural character of the area; and*
- f. *avoid scales of traffic generation incompatible with the rural character of the area, having regard to Policy DM 6 and Policy DM 26.*

**2. For tourism and leisure:**

- a. *in the case of green/sustainable tourism proposals, be demonstrated by reference to their principals;*
- b. provide for an expansion of tourist and visitor facilities in appropriate locations where identified needs are not being met by existing facilities in the locality or where able to increase facilities available to local communities as well as visitors; and**
- c. *where relating to holiday parks, proposals are also in accordance with Policy DM4*

- 4.4 The National Planning Policy Framework (NPPF) paragraphs 8 (dimensions to sustainable development), 11 (presumption in favour of sustainable development), 78 (vitality of rural communities) and 83 (supporting a prosperous rural economy). Paragraph 78 of the NPPF states:

*78. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.*

Paragraph 83 states:

*83. Planning policies and decisions should enable:*

- (a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;*
- (b) the development and diversification of agricultural and other land-based rural businesses;*
- (c) sustainable rural tourism and leisure developments which respect the character of the countryside; and*
- (d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.*

## 5. LOCAL REPRESENTATIONS

- 5.1 Fourteen letters of support have been received from residential addresses within Hernhill, Boughton and Canterbury. These can be summarised as follows:

- Delighted when Black Oast was rebuilt and inhabited again, making good use of an existing building
- Can see no reason not to allow the owners both to live and work there
- Residential permission rather than rental seems sensible

- The village needs more permanent residences
- The proposed dwelling is detached and fairly remote there will be no negative impact on the local community
- The building does not overlook any other property
- Mr and Mrs Barnes have lived in the village for 40 years, and Mrs Barnes has operated her dyslexia service from her home in the Fostal for 30 years prior to buying the oast
- The dyslexia unit is a valuable resource used by many local children to avoid them travelling further afield for diagnosis and specialist teaching
- The use of a dyslexia teaching unit and holiday let are not compatible
- Someone who has lived in the village for most of their lives and provided such a valuable service should be able to both live and work there
- As an adjoining land user I would rather have one family live there rather than to be used as a holiday let as it has a tight access
- It is a shame that an existing building cannot be lived in and a house stands empty and will decay

## 6. CONSULTATIONS

### 6.1 Hernhill Parish Council commented as follows:

*“The Parish Council agree to support the applications for reasons relating to the incompatibility of use of the dyslexia unit and the remaining building used as a holiday let. The council values the specialist teaching unit which provides a key service to the local area.”*

### 6.2 Natural England state that a SAMMS payment should be requested. However, the relevant part of the building is already in residential use albeit with a restricted occupancy condition, so removal of the occupancy condition will not result in a net increase in residential units that would warrant a SAMMS payment.

## 7. BACKGROUND PAPERS AND PLANS

### 7.1 All plans and documents related to 20/505418/FULL

## 8. APPRAISAL

### 8.1 For the purposes of this report I am assuming that condition (2) of the original planning permission remain in effect. That is after all the premise of the application, notwithstanding the applicant’s outstanding Lawful Development Certificate appeal. As such, the key considerations in the determination of this application is whether the removal of the holiday occupancy condition complies with the aims of the Local Plan, and whether the applicant has demonstrated that the use of the building as a holiday let is no longer viable, and that its use as an independent residential unit is now the only viable or appropriate use open to the applicants.

#### Principle

### 8.2 The original conversion approved under application SW/09/1330 was in line with the Council’s Local Plan policies to re-use existing buildings for holiday accommodation in the rural area in locations where unrestricted residential use would not normally have been

approved; policies which have effectively been continued by policies ST3 and DM3 of the new Local Plan Bearing Fruits 2031. The building was, and remains, outside of any Local Plan defined built-up area boundary and the condition was (and remains) necessary to prevent the use becoming a full time residential use in an unsustainable rural location where a new unrestricted residential use would not have been approved.

- 8.3 The Planning Statement makes reference to paragraph 11 of the NPPF and the “tilted balance”. However, the Council has always maintained a clear position that sites which are located outside of any defined built up area boundary and in the designated countryside are covered by both national and local planning policies which restrict development in the countryside including independent residential accommodation which is supported by a number of recent appeal decisions in the Borough. As the Council can demonstrate a 4.6 year housing land supply paragraph 11(d) of the NPPF is triggered. This means that where there are no relevant development plan policies, or were the policies which are most important for determining the application are out of date, granting permission unless, according to paragraph 11:

*“11.d) i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*11.d) ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

However, also within this paragraph 11.d)i footnote 6 states that exemptions include conflict with policies designed to protect amongst others “*designated heritage assets*” and given that the location here is within the Fostall conservation area, it is clear that the “tilted balance” presumption in paragraph 11.d (ii) must not be applied here. Even if the tilted balance were to be applied, the conflict with Development Plan policy would outweigh the slight benefit of one additional residential unit to the local stock.

#### Viability

- 8.4 Analysis of the applicant’s viability evidence shows that in the first year of trading the applicant almost covered her fixed costs from just six lets over eight weeks. In the second year, all these costs were met from only 64 nights of lettings during a period when the property had to be closed temporarily due to coronavirus restrictions. This appears to show great potential for more lettings (including repeat stays) once the business becomes established and life returns to normal.
- 8.5 In this case the applicant is not saying that the business is not viable due to lack of demand, but due to oversupply of holiday accommodation locally. However, that is a competition matter, and may not be solved by raising prices. Competitive pricing and more extensive marketing, together with a more established business, experience, and a real willingness to make the business work seem likely to reap greater rewards, and the demand the Council is seeing for the creation new holiday lettings nearby indicates that this location close to Canterbury and the coast is very well placed to serve this growing market. Recent applications for holiday let conversions nearby include:

19/504625/FULL – Elm Tree Cottage, Dargate - Demolition of existing garage and erection of replacement garage building (as approved under 17/501081/FULL but with minor

amendments) and associated car parking. First floor to be used as holiday accommodation – Refused – Appeal in Progress

19/503518/FULL & 18/504141/FULL – The Barns, Fostall - Demolition of existing buildings and erection of a single storey building to be used as a self-contained holiday accommodation with associated parking – Approved

18/502654/FULL Myrtle Farm, Hernhill - Change of use of existing outbuilding (stable) to holiday let unit – Approved

18/506195/FULL Cairo Lodge, Dargate - Conversion of detached store and garage to a self-contained holiday let – Approved

17/503255/FULL The Red Lion, Hernhill - Change of use of managers accommodation into holiday let unit ancillary to use of the public house - no building works – Approved

8.6 Applications 18/504141/FULL & 19/503518/FULL at The Barns, Fostall (a site just a few hundred metres from the current application site) were supported with a Planning Statement and lengthy visitor pack outlining why this location within the Borough provides a great base for holiday letters with attractions nearby such as Mount Ephraim, local pubs/restaurants, golf, fishing etc. The applicant's viability statement does not disagree with the fact that this is a good location for a holiday let.

8.7 Application 19/504625/FULL, albeit for a new build and one that was refused for that reason, attracted considerable local support in the following terms (relevant points taken for the original committee report):

*Twelve letters of support were received from across the parish and can be summarised as follows:*

*Small scale business ventures such as this should be encouraged*

*The application will support the Council's commitment to a 5 year visitors' economy framework*

*The proposed holiday let will support The Dove PH which is a short walk and the pub struggles to attract people from further afield*

8.8 I acknowledge that with the growth of AirBnb there is now potentially more competition when the market returns to normal but, as travel restrictions are lifted, staycations and places away from it all are expected to benefit at least in the short term as consumers' confidence that it is safe to travel gradually returns to pre-pandemic levels. In my view, the evidence does not point in one way, and it is far too early to conclude that the property cannot viably be run as a holiday let. It has not been tried for very long, and much of this has been in very adverse circumstances. Evidence of demand is strong here, and this is not the sort of case where viability for such a use might normally be seen to be lacking.

8.9 With regards to the marketing of the building for sale in holiday let and D1 use, I do not see this as evidence that a holiday let is undesirable and unviable in this location. As stated above the holiday let comfortably covered its fixed costs in its second year even with the partial closure during the pandemic. The statement mentions that a buyer was interested in

the building as a holiday let but would have preferred it to be two bedrooms without the dyslexia use. The applicant's statement says the planning permission was unsuitable, but the Council may have supported the change of use of the dyslexia element to an additional bedroom for the holiday let if the buyer or applicant had approached the Council for advice.

#### Incompatibility

- 8.10 The applicant's Planning Statement and local letters of support make reference to the holiday let use not being compatible with the dyslexia teaching use, However, this is the combination of uses that the applicant originally applied and was granted planning permission for in 2009; a scheme which she then built. The Design and Access Statement submitted with the original application SW/09/1330 states:

*2.4 The majority of the converted oast is given over to the provision of a one bedroomed holiday unit, which will be available for rental by visitors and tourists to the area. My client intends to market the holiday unit for this purpose, and will act as local manager to service and clean the unit between lettings because she lives in the locality.*

*2.5 The teaching suite is a specialist facility which will allow my client to continue here career as a specialist assessor of dyslexic pupils....This is an independent, private business that is currently run from the applicant's home and where space is limited. Mrs Barnes has found that her services are in great demand by local schools and she is in need of additional space, which the Black Oast offers... In light of the need for additional space the Black Oast was purchased with the specific requirement of providing specialist dyslexia teaching facility whilst retaining the additional floor area as a unit of holiday accommodation.*

- 8.11 Both uses were provided with separate entrances, and it is somewhat surprising to me now that as these were the uses applied for, their compatibility within the same building would not have been considered by the applicant.

- 8.12 The applicant's current Planning Statement also states that both the holiday let and the teaching unit have to use the same entrance door, as the entrance door for the holiday let approved under SW/09/1330 was replaced with a fixed glazed window. However, there is a set of patio doors within the holiday let that could be used as an entrance door if the applicant did not want a shared access for both uses. Alternatively one of the full height fixed glazed panels on the side elevation could be replaced with an additional door to access the holiday let separately from the teaching unit; as approved under the 2009 permission.

## **9. CONCLUSION**

- 9.1 The removal of condition (2) of application SW/09/1330 would permit unrestricted residential use of the approved holiday let, creating a new permanent dwelling in this isolated and unsustainable location, whilst also removing the economic benefits of the approved tourist accommodation. These changes would both be contrary to Local Plan policies which aim to restrict residential development outside of the defined built-up area boundaries, and to boost the rural economy. The applicant's viability evidence shows that the holiday let met its running costs between September 2019 to September 2020 and does not show that the holiday let is unviable or inappropriate in this area.

**10. RECOMMENDATION - REFUSE** for the following reason:

- (1) Insufficient information has been submitted as part of this application to demonstrate why the buildings use as a holiday let is no longer viable or appropriate. The removal of the restrictive condition to allow the building to be used as an independent residential dwelling would result in an uncontrolled unit of residential accommodation in an unsustainable rural location with no mitigating economic benefits, in a manner contrary to policies ST3 and DM3 of Bearing Fruits 2031 and paragraphs 78 and 83 of the NPPF.

**The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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.

