

**PLANNING COMMITTEE – 10<sup>th</sup> October 2024****PART 3**

Report of the Head of Planning

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

<b>3.1 REFERENCE NO</b> 24/503608/PNQCLA		
<b>PROPOSAL</b> Prior notification for the change of use of a building and any land within its curtilage from agricultural to 2no. dwellinghouses and associated operation development. For its prior approval to: - Transport and Highways impacts of the development. - Noise impacts of the development. - Contamination risks on the site. - Flooding risks on the site. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change from agricultural use to C3 (dwellinghouses). - Design and external appearance impacts on the building. - Provision of adequate natural light in all habitable rooms of the dwellinghouses.		
<b>SITE LOCATION</b> 5Acres, Holywell Lane, Upchurch, Kent, ME9 7HN		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to refuse prior approval		
<b>APPLICATION TYPE</b> Prior Approval		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Called in by Cllr Christine Palmer		
<b>Case Officer</b> Megan Harris		
<b>WARD</b> Hartlip, Newington and Upchurch	<b>PARISH/TOWN COUNCIL</b> Upchurch	<b>APPLICANT</b> Mr Trevor Kenney <b>AGENT</b> Stephen Hinsley Planning Ltd
<b>DATE REGISTERED</b> 29/08/24	<b>TARGET DATE</b> 24/10/24	
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  All drawings submitted Arboricultural Statement and Tree Survey dated September 2023 Preliminary Ecological Appraisal dated 16/08/2023 Structural Feasibility Report dated May 2023 Statutory Declarations from Joanne Kenney, Trevor Kenney and Richard Stevens Statements of Truth from Amanda Scarborough, Daniel Wakeman, Lisa Grey, Mr and Mrs Peters and Robert Friend All representations received  The full suite of documents submitted pursuant to the above application are available via the link below: -		

<https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=SIXLZDTY18W00>

## 1. SITE LOCATION AND DESCRIPTION

- 1.1 5Acres is a campsite located to the west of Holywell Lane, in the countryside to the south of Upchurch. The site was previously an orchard, but roughly half of the land was cleared and fencing erected dividing the site into four areas between 1999 and 2003. The campsite is located in orderly rows in the western side of the site, with remaining orchard to the east of the site and within the narrow strip of land to the north which is also owned by the applicant.
- 1.2 The building which is the subject of this application is located in the western corner of the site. There is no planning permission for the building but it has been in situ since at least 1999 (when it is first visible on an aerial map of the site – see image below) and as such pre-dates the campsite. The building is single storey and is clad with corrugated metal sheeting, with a metal roof. The statements of truth provided as part of the application sets out the building was in agricultural use, used for storage of the orchard crop and also tools and machinery used to tend to the remaining orchard.



**Figure 1: 1999 aerial image of site**

## 2. PLANNING HISTORY

- 2.1 **24/502211/PNQCLA** – Prior Approval refused on 25.07.2024 for ‘Prior notification for change of use of a building and land within its curtilage from agricultural to 2(no) dwellinghouses and associated operational development. For its prior approval to: - Transport and Highways impacts of the development. - Noise impacts of the

development. - Contamination risks on the site. - Flooding risks on the site. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change from agricultural use to C3 (dwellinghouses). - Design and external appearance impacts on the building. - Provision of adequate natural light in all habitable rooms of the dwellinghouses.'

- 2.2 **23/503799/PNQCLA** – Application withdrawn for 'Prior notification for the change of use of existing agricultural unit into a 2no. dwellings and associated operation development. For its prior approval to: - Transport and Highways impacts of the development. - Noise impacts of the development. - Contamination risks on the site. - Flooding risks on the site. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change from agricultural use to C3 (dwellinghouses) - Design and external appearance impacts on the building. - Provision of adequate natural light in all habitable rooms of the dwellinghouses.'
- 2.3 **23/505399/PNQCLA**– Application withdrawn for 'Prior notification for the change of use of existing agricultural unit into a 2no. dwellings and associated operation development. For its prior approval to: - Transport and Highways impacts of the development. - Noise impacts of the development. - Contamination risks on the site. - Flooding risks on the site. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change from agricultural use to C3 (dwellinghouses) - Design and external appearance impacts on the building. - Provision of adequate natural light in all habitable rooms of the dwellinghouses.'
- 2.4 **SW/95/0096** – Planning permission refused on 24.03.1995 for 'Erection of steel framed agricultural building for storage of apples, implements, tractors etc'

### 3. PROPOSED DEVELOPMENT

- 3.1 This application is seeking Prior Approval for the conversion of an existing building to two dwellings under Class Q of Part 3 of the GPDO 2015 (as amended). Class Q permits:

"Development consisting of –

- (a) *a change of use of—*  
 (i) *a building that is part of an established agricultural unit and any land within that building's curtilage, or*  
 (ii) *a former agricultural building that was (but is no longer) part of an established agricultural unit and any land within that building's curtilage,*  
*to a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order,*
- (b) *development referred to in sub-paragraph (a) together with the extension of the building referred to in sub-paragraph (a), or*
- (c) *development referred to in sub-paragraph (a) together with building operations reasonably necessary to convert the building referred to in sub-paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule or to extend that building."*

- 3.2 Class Q of the GPDO means that the principle of new homes being created from agricultural buildings in rural locations (except in locations including conservation areas

and AONBs) is approved in principle; even when Local Plan policies might otherwise restrict such conversions. The GPDO requires that all such conversions are subject to a Prior Approval process, and the current application is for Prior Approval in relation to the following required matters:

- (a) Transport and highways impacts of the development,
- (b) Noise impacts of the development
- (c) Contamination risks on site
- (d) Flooding risks on site
- (e) Whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order,
- (f) The design or external appearance of the building, and
- (g) The provision of adequate natural light in all habitable rooms of the dwellinghouses.

3.3 The development will provide two new dwellings which will be single storey. The dwellings will each have 2 bedrooms and will have a floorspace of 61sqm. The proposed block plan shows a small amenity area with parking spaces will be located to the east of the building. The existing access onto the site will be utilised by the development.

3.4 The application is supported by an Arboricultural Statement and Tree Survey, Preliminary Ecological Appraisal, structural survey, three Statutory Declarations relating to the use of the site and five statements of truth relating to the use of the building. The plans and documents provided with the application sets out the following works are proposed:

- Retention of the existing timber frame, purlins, walls, floor slab (where existing), roofing, and walling materials.
- Underdrawing of the existing roofs with insulation and an inner lining supported by the existing purlins.
- Localised repairs, where required.
- Insertion of self-supporting non-structural insulation panels.
- Insertion of localised matching materials, where required.
- New damp proof course throughout.
- Installation of new windows, doors, and rooflights, as indicated on the drawings.

3.5 The Statutory Declarations from the applicants and their neighbour sets out that part of the site was first used for camping purposes in the summer of 2013, following the issue of a license from the Camping and Caravanning Club on 22nd March 2013 (a copy of this letter has been provided with the application). The campsite never received planning permission and the agent contends there is no evidence the campsite has been operating continuously for a period of 10 years. As such the agent considers that the lawful use of the wider site is agricultural and the building has been part of an established agricultural unit for Class Q purposes since before 20<sup>th</sup> March 2013.

3.6 Three similar applications have been submitted at the site within the last few years. The first two applications were withdrawn by the applicant as it was not clear that the site formed part of an established agricultural unit. Since then, the GPDO has been updated to allow buildings that were previously located on agricultural units to be converted under the Class Q prior approval process.

3.7 The third application, ref. 24/502211/PNQCLA was refused in July 2024 for the following reason:

*(1) Insufficient information has been submitted to the Local Planning Authority to demonstrate that the site formed part of an established agricultural unit on 20th March 2013 as required by Schedule 2, Part 3, Paragraph Q.1 (a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Furthermore, there is also insufficient information to demonstrate that the use of the building was linked to a trade or business in order to meet the definition of an agricultural building under Schedule 2, Part 3, Paragraph X. The application is therefore refused in accordance with Schedule 2, Part 3, Paragraph W. (3)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).*

3.8 This application seeks to overcome this reason for refusal by supplying witnessed statutory declarations which provide further information regarding the previous agricultural use of the site.

#### 4. CONSULTATION

4.1 One round of consultation with neighbours and the Parish Council has been undertaken, a site notice was also displayed at the site. The consultation period ends on the 10<sup>th</sup> October 2024, and at the time of writing the report the comments received thus far are summarised below. Members will be notified of any further comments at the committee meeting. It is being brought before the Committee prior to the consultation period ending because prior approval applications such as these receive deemed consent if they are not determined within their 8-week determination date.

4.2 Four comments from neighbours in support of the application have been received so far. Their comments are summarised below (full details of representations are available online):

Comment	Report reference
Minimal impact to the immediate area and wider parish community.	See paragraph 7.43
Applicants have always kept the site in pristine condition.	See paragraph 7.43
Permanent residential units on the site will be positive to the community along Holywell Lane from a social perspective and a security standpoint.	See paragraph 7.43

4.3 Cllr Christine Palmer, one of the Ward Members for the area, has requested that the application be determined by the Planning Committee for the following reason - *"I believe*

*it meets the requirements for development under class Q and that several, 3rd party, legally signed statements of truth should be given consideration.”*

## 5. REPRESENTATIONS

**Mid Kent Environmental Health** – Recommend the applicant be supplied with the Mid Kent Environmental Code of Practice.

## 6. RELEVANT LEGISLATION

6.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

## 7. ASSESSMENT

7.1 This application is reported to the Committee because the application has been called in by a Ward Member for the reason as set out above.

7.2 The main points to consider are whether the application complies with the relevant permitted development provisions set out within Class Q, Part 3 of Schedule 2 of the GPDO, and subsequently whether it requires prior approval or not. Class Q allows for the conversion of agricultural buildings and former agricultural buildings to dwellinghouses. In order to be converted under Class Q, the building must be, or have been, part of an established agricultural unit.

7.3 The definition of an “*established agricultural unit*” can be found in paragraph X of part 3, Schedule 2 of the GPDO which sets out the following:

*“established agricultural unit” means agricultural land occupied as a unit for the purposes of agriculture –*

*(a) For the purposes of Class R, on or before 3rd July 2012 or for 10 years before the date development begins; or*

*(b) For the purposes of Class Q or S, on or before 20th March 2013 or for 10 years before the date the development begins*

7.4 The previous application (ref. 24/502211/PNQCLA) was refused in part due to insufficient information being submitted to demonstrate that the site did form part of an agricultural unit on 20<sup>th</sup> March 2013. It was not clear when the campsite use commenced on site and insufficient evidence was provided to show that the campsite was not operating on the 20<sup>th</sup> March 2013, or to demonstrate the previous agricultural use of the land. The agent was invited to submit further information as part of the previous application, but this was not forthcoming and ultimately the application was refused.

7.5 As part of this application, the statutory declarations, which are witnessed by a solicitor, set out that the campsite use did not begin until the site received formal certification from the Camping and Caravanning Club (CCC). Certification was provided from the CCC via a letter dated 22<sup>nd</sup> March 2013 and a copy of this letter has been provided with the application.

- 7.6 The two declarations from the applicant and his wife set out that the site was fenced off into four pens to graze sheep in 2003. The pens allowed the flock to be rotated and also ensured they did not graze in the orchard to the east of the pens. A signed and witnessed declaration is provided by a neighbour, Mr Richard Stevens, who sets out that he grazed his flock of sheep on the site at various times between 2003 and 2013.
- 7.7 The declarations from the applicant and his wife go on to set out that no further information relating to the previous agricultural use of the land can be provided, as the owner of the land during that time, (the applicant's father) is deceased and all records associated with the agricultural use have been destroyed.
- 7.8 When compared to the previous prior approval applications at the site, this application provides additional information in the form of statutory declarations which provide information about the previous agricultural use of the site. These declarations should be given significant weight when taking into account they have been formally witnessed by a solicitor, and the Council has no evidence that disputes the details contained within the declarations. Furthermore aerial images of the site from 2007 appear to show sheep grazing in the pens, which supports the declaration provided by Mr Stevens who sets out that he grazed sheep on the site between 2003 and 2013. On this basis, it is considered that the application site was part of an established agricultural unit on the 20<sup>th</sup> March 2013.
- 7.9 The second part of the reason for refusal on the previous application for prior approval at the site related to the use of the building itself. In order to comply with the legislation, it must either be an agricultural building, or a former agricultural building which has not been used for any non-agricultural purpose.
- 7.10 Within Part 3 and paragraph X of the Order, "agricultural building" is defined as a building (excluding a dwelling house) used for agriculture and which is so used for the purposes of a trade or business. The five statements of truth provided with the application all set out that the building has been in use to store the orchard crop and associated tools and machinery from the small areas of orchard owned by the applicant, and there is no evidence to contradict this. However, in order to meet the definition of an agricultural building as defined by the GPDO, the building must have been used for the purpose of a trade or business. There was no evidence provided in the original submission as part of the application or within the original statements that suggest that the building has been used for an agricultural trade or business, and given the limited scale of the orchard that remains at the applicants site, it is considered it is highly unlikely that the building is or was in use as part of an agricultural business.
- 7.11 The agent was contacted during the course of the application and asked if any additional information or evidence can be provided to demonstrate that the building was used as part of an agricultural business. A statement of truth (this is not a statutory declaration) was provided from the applicant that sets out that the apples that were stored in the building were sold at local markets, however there is no evidence to verify this given all business records associated with the business no longer exist. As such, the application fails to provide sufficient information to overcome the second part of the previous reason for refusal, which regards the use of the building. On this basis, the existing building does not meet the definition of an agricultural building as defined by paragraph X of the GPDO.

- 7.12 In accordance with Paragraph W.(3)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) the Local Planning Authority is able to refuse an application where in the opinion of the authority – the developer has provided insufficient information to enable the authority to establish whether the proposed development complied with any conditions, limitations or restrictions specified in this Part as being applicable to the development in question. Whilst the statutory declarations and supporting aerial images address the first part of the reason for refusal, insufficient information or evidence has been submitted with the application to confirm that the building is or has been used for an agricultural trade or business.
- 7.13 Notwithstanding this, a full assessment of whether the development accords with the remaining provisions of Class Q is carried out below. Paragraph Q.1 sets out a list of parameters, from (a) to (p), whereby development is not permitted.

### **Q.1(a) or (b)**

*Q1. Development is not permitted by Class Q if—*

*(a) in the case of a site that is part of an established agricultural unit, the site was not part of the established agricultural unit—*

*(i) on 24th July 2023, or*

*(ii) where the site became part of the established agricultural unit after 24th July 2023, for a period of at least 10 years before the date development under Class Q begins,*

*(b) in the case of a site that was (but is no longer) part of an established agricultural unit—*

*(i) the site was part of an established agricultural unit on 24th July 2023,*

*(ii) where the site ceased to be part of an established agricultural unit after 24th July 2023, the site has not been part of the established agricultural unit for a period of at least 10 years before the date development under Class Q begins, or*

*(iii) since ceasing to be part of an established agricultural unit, the site has been used for any non-agricultural purpose*

- 7.14 Q.1(a) is relevant for sites that are part of an established agricultural unit, whilst Q.1(b) is relevant for sites which were (but are no longer) part of an established agricultural unit. In this instance, Q.1(b) is relevant as the application seeks to demonstrate that the site was (but is no longer) part of an established agricultural unit. From the evidence provided it is considered that there would be no conflict with Q.1(b)(i) and Q.1(b)(iii). Q.1(b)(ii) is not applicable to this application as the agricultural unit ceased to operate in 2013 when the campsite use began. It is important to note here that ‘established agricultural unit’ and ‘agricultural building’ are defined separately and therefore the assessment of Q.1(b) remains consistent with the reason for refusal of the application as set out above.



8.

**Q.1. (c), (d)**

**Q1.** *Development is not permitted by Class Q if—*

*(c)the floor space of any dwellinghouse developed under Class Q having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeds 150 square metres,*

*(d)the development under Class Q, together with any previous development under Class Q, within the original limits of an established agricultural unit (see paragraph Q.3(2) of this Part) would result in—*

*(i)the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeding 10, or*

*(ii)the cumulative floor space of dwellinghouses having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeding 1,000 square metres,*

8.1 The application proposes two dwellinghouses which are no more than 150m<sup>2</sup> in footprint and do not exceed 1000m<sup>2</sup> in cumulative footprint. There have been no previous applications approved at the site for the conversion of buildings into residential use under the Class Q process and the total number of dwellings converted under the Class Q process will not exceed ten.

**Q.1. (e), (f)**

**Q1.** *Development is not permitted by Class Q if—*

*(e)the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained,*

*(f)less than 1 year before the date development begins—*

*(i)an agricultural tenancy over the site has been terminated, and*

*(ii)the termination was for the purpose of carrying out development under Class Q, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use,*

8.2 The application form confirms that the site is not subject to an agricultural tenancy, nor was it the subject to an agricultural tenancy within the past year.

**Q.1. (g)**

**Q1.** *Development is not permitted by Class Q if—*

*(g)development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit during the period which is 10 years before the date development under Class Q begins,*

8.3 No works have been carried out on the Site under Classes A or B of Part 6 within the last 10 years.

**Q.1. (h)**

**Q1.** *Development is not permitted by Class Q if—*

*(h)the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point, other than—*

*(i)extension of the building allowed by paragraph Q.1(i);*

*(ii)protrusions of up to 0.2 metres to accommodate building operations allowed by paragraph Q.1(j)(i),*

8.4 The development will not exceed the external dimensions of the existing building.

**Q.1. (i)**

**Q1.** *Development is not permitted by Class Q if—*

*(i)the development under Class Q(b) would result in an extension that—*

*(i)has more than one storey,*

*(ii)is sited anywhere other than to the rear of the existing building,*

*(iii)extends beyond the rear wall of the existing building by more than 4 metres,*

*(iv)has eaves the height of which exceed the height of the eaves of the existing building,*

*(v)is higher than whichever is the lower of—*

*(aa)the highest part of the roof of the existing building, or*

*(bb)a height of 4 metres above the ground,*

*(vi)extends beyond a wall that forms a side or principal elevation of the existing building,  
or*

*(vii)would be sited on land that, before the development under Class Q(b), is not covered by a hard surface that was provided on the land by virtue of any development, and—*

*(aa)the hard surface was not provided on the land on or before 24th July 2023, or*

*(bb)where the hard surface was provided on the land after 24th July 2023, the hard surface has not been situated on the land for a period of at least 10 years before the date development under Class Q(b) begins,*

8.5 The development will not involve an extension and as such this paragraph is not relevant.

**Q.1 (j)**

**Q1.** *Development is not permitted by Class Q if—*

*(j) the development under Class Q(c) would consist of building operations other than—*  
*(i) the installation or replacement of—*  
*(aa) windows, doors, roofs, or exterior walls, or*  
*(bb) water, drainage, electricity, gas or other services,*  
*to the extent reasonably necessary for the building to function as a dwellinghouse, and*  
*(ii) partial demolition to the extent reasonably necessary to carry out building operations*  
*allowed by paragraph Q.1(j)(i),*

- 8.6 The building operations set out in the proposal section above amount to conversion works, with the existing cladding and roofing on the building remaining. As such, the proposed works are reasonably necessary for the conversion of the building.

**Q.1 (k)**

**Q1.** *Development is not permitted by Class Q if—*  
*(k) the site is on article 2(3) land,*

- 8.7 The site is not located on article 2(3) land.

**Q.1 (l)**

**Q1.** *Development is not permitted by Class Q if—*  
*(l) the site is, or forms part of—*  
*(i) a site of special scientific interest;*  
*(ii) a safety hazard area;*  
*(iii) a military explosives storage area,*

- 8.8 The site is not, and does not, form part of a site of special scientific interest, nor a safety hazard or military explosives storage area.

**Q.1 (m)**

**Q1.** *Development is not permitted by Class Q if—*  
*(m) the site is, or contains, a scheduled monument,*

- 8.9 The site is not, and does not, contain a scheduled monument.

**Q.1 (n)**

**Q1.** *Development is not permitted by Class Q if—*  
*(n) the building is a listed building,*

- 8.10 The site is not a listed building, nor is it within the curtilage of a listed building.

**Q.1 (o)**

**Q1.** *Development is not permitted by Class Q if—*

*(o) the existing building, excluding any proposed extension under Class Q(b) but including any proposed building operations under Class Q(c), would not be capable of complying with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015 as read with the notes dated 19th May 2016 which apply to it,*

8.11 The floorspace of the dwellings comply with the National Space Standards.

**Q.1 (p)**

*Q1. Development is not permitted by Class Q if—*

*(p) the building does not have suitable existing access to a public highway.*

8.12 The building has a suitable existing access onto the public highway, Holywell Lane.

**Q.2 – Conditions**

8.13 Q.2 sets out the conditions of the permitted development under Class Q. Paragraphs (1), (2) and (3) set out the matters the local planning authority would need to determine as to whether the prior approval of the authority will be required. If the Committee were minded to determine that the proposed development is permitted by Class Q, the Committee would then need to determine if it agrees with the officer's assessment set out below as to whether prior approval would then be required.

8.14 Condition (4) requires that the development be completed within a period of 3 years starting with the prior approval date.

Transport and Highways Impacts of the Development

8.15 The creation of two new dwellings is unlikely to give rise to significant numbers of additional vehicle movements to cause harm to the wider highway network sufficient to require the Council's prior approval.

8.16 Sufficient access, parking and turning is available within the site and it is not considered that this would require prior approval. On the basis of the above, prior approval would not be required in respect of highways and transport impacts.

Noise Impacts of the Development

8.17 Residential use of the building would not give rise to such substantial noise or disturbance so as to require the Council's prior approval. A certain degree of noise is to be expected during conversion works, but this would be short-lived and is a factor of development in general. On the basis of the above, prior approval would not be required in respect of noise impacts.

Contamination Risks on the Site

8.18 The Council's Environmental Health team have been consulted regarding the risk of contamination on the site who confirm that they have no concerns from a contamination perspective. On the basis of the above, prior approval would not be required in respect of contamination risks.

### Flooding Risks on the Site

- 8.19 The site is within Flood Zone 1 which has a low risk of flooding, and the Council's prior approval would therefore not be required in this regard.

### Location or Siting

- 8.20 Consideration would be required as to whether the location or siting of a building makes it impractical or undesirable for the building to change from agricultural use to a residential use. Case law demonstrates that the surrounding land uses and the impact this will have upon the amenity of future occupiers of the development can be taken into account here. An example of this is a dismissed appeal at Wimborne (East Dorset District Council) in November 2018 [PINS ref. 3205818] which proposed the conversion of part of an agricultural building to a dwelling. In this case, the Inspector concluded that the use of the remaining part of the agricultural building could cause noise and disturbance to occupiers of the new dwelling. The dwelling would also be in close proximity to an adjoining hay barn and the farm track and the Inspector noted that it is reasonable to consider that the passage of agricultural vehicles along the track, on a potentially regular basis at certain times of the year, would further compound the issue of noise and disturbance. The location of the development was therefore undesirable due to the harmful impacts to the amenity of future occupiers and the appeal was dismissed on this basis.
- 8.21 The proposed new dwellings would be located within a campsite. Whilst this would be an unusual location for new dwellings and there would be a degree of noise and disturbance to future occupiers from the use of the campsite, this is not considered to be significantly harmful to the amenity of future occupiers. As such, it would not require prior approval for this matter.

### Design or External Appearance of the Building

- 8.22 The appearance of the building will change through the insertion of new windows and doors. However, it is considered that this would not be harmful to the character or appearance of the site or wider countryside, given the general appearance of the building would remain the same through the retention of the existing cladding and roofing materials. As such, it would not require prior approval for this matter.

### Provision of Adequate Natural Light in all Habitable Rooms

- 8.23 The habitable rooms within the proposed dwellings are all served by sufficiently sized clear glazed windows which would provide adequate natural light to the rooms. As such, it would not require prior approval for this matter.

### **HRA Impacts**

- 8.24 Article 3 of the GPDO sets out that subject to the provisions of this order and the Conservation of Habitats and Species Regulations 2017 (HRA), that planning permission is granted for development in Schedule 2 of the Order.
- 8.25 Regulations 75-78 of the HRA set out that any development likely to have a significant effect on a European site must not be begun until the developer has received written

notification of the approval of the LPA under Regulation 77. S77 sets out the application process required. In accordance with the adopted Bird Wise North Kent Mitigation Strategy, a tariff payment for each new unit of residential accommodation will be required as part of the above process to mitigate the effects of increased recreational disturbance arising from new residential development. The current tariff is £328.27 per dwelling.

- 8.26 If the development was acceptable, an informative could be imposed to advise the applicant that such an application is required in light of the proximity of the development within the Thames, Swale and Medway Estuary Special Protection Areas.

### **Curtilage**

- 8.27 Paragraph Q.3. (1) of the GDPO 2024 defines curtilage as:

*“(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the building on an established agricultural unit or former agricultural building (as the case may be), closely associated with and serving the purposes of that building, and*

*(b) an area of land immediately beside or around the building on an established agricultural unit or former agricultural building (as the case may be) no larger than the land area occupied by that building.”*

- 8.28 The land highlighted in red on the site location plan is no larger than the area of land occupied by the agricultural building and as such the scale of the curtilage accords with the provisions of paragraph Q.3. (1).

### **Other Matters**

- 8.29 The letters of support received from neighbours at the time of writing this report have been duly considered. However, there are only a limited amount of considerations that can be taken into account as part of prior approval applications, which are dictated by the Class Q legalisation in this case. The points raised in support of the development are not considered to be relevant to the proposal's compliance with Class Q or the prior approval matters set out in Q2. As such, there is no further comment to make in this regard.

### **Conclusion**

- 8.30 The statutory declarations provided as part of the application set out that the site formed part of an established agricultural unit on 20<sup>th</sup> March 2013 as required by paragraph Q.1 (a) and (b) and without evidence to the contrary, these statements are given significant weight. The details contained within the statements are supported by aerial images of the site, and as such, this aspect of the previous refusal is resolved. However, the application still fails to demonstrate that the use of the building was/is linked to a trade or business, and as such the use of the building does not meet the paragraph X definition of an agricultural building. The agent has been approached and offered the opportunity to provide additional evidence, however sufficient additional evidence was not provided. Therefore, it is recommended that the application should be refused in line with Paragraph W. (3)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the following reason:

- (1) Insufficient information has been submitted to demonstrate that the use of the building was linked to a trade or business in order to meet the definition of an agricultural building under Schedule 2, Part 3, Paragraph X. The application is therefore refused in accordance with Schedule 2, Part 3, Paragraph W. (3)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF) 2023, 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 will be considered by the Planning Committee where the applicant/agent will have the opportunity to speak to the Committee and promote the application.

