

PLANNING STATEMENT
ON
THE PROPOSED CONVERSION OF THE BARN, FORMER NURSERY SITE,
STAPLEHURST ROAD, MARDEN TN12 9BS.
FOR
MR TOM LA DELL

BY
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CONTENTS

Section	Pages
1.0 Introduction	3
2.0 Site History	4
3.0 The Building.	4
4.0 Permitted Development	4-7
5.0 Prior Approval for residential use	7-8
6.0 Assessment of the current regulations	8-12
7.0 Conclusion	12

1.0 Introduction

- 1.1 Peter Court Associates have been appointed by Mr. Tom La Dell, the owner of the former Landscape Plants nursery (which was previously de Jager nurseries) site Staplehurst Road, Marden, to submit a further application for permission for the change of use of an agricultural building ("The Barn") to Use Class C3: a dwelling house. The application is for a determination as to whether prior approval is required for the proposed change of use. This Planning Statement therefore explains the proposal for which permission is sought.
- 1.2 This application is submitted under Class Q of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018 (S.I.2018 No 343). This Class of permitted development now comprises either Class Q(a) or Class Q(b). The latter of these concerns the change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Use Class C3 (dwellinghouses), together with the building or other operations reasonably necessary to convert the building to residential use. It is on this basis (i.e under Class Q(b)) that this particular request for change of use is being submitted.
- 1.3 By way of explanation, Mr. La Dell has used the property as a plant nursery as shown on Google earth historic images. It is situated on the northern side of the Staplehurst Road and accessed via an unmetalled road, which serves other barns and residential properties and covers an area of approximately 1.2ha (3 acres). Previously, it was a nursery that was used for the production of bulbs and run by the de Jager company. Since then, Mr. La Dell has used the property as a plant nursery. The building the subject of this submission, (The Barn) therefore meets the requirement for being in use on 20th March 2013.

2.0 Site History

- 2.1 Permission has recently been granted for the conversion of an agricultural building under Class Q (known as the Nursery Barn) to residential use on an adjacent piece of land within the same ownership - application reference 24/501009/PNQCLA. Permission is now being sought for the conversion under Class Q for an adjacent agricultural building to residential use - this building being known as "The Barn".

3.0 The building

- 3.1 The proposal is for the change of use of a former agricultural storage building ("The Barn") and land within its curtilage, as shown on the accompanying plan, into a residential dwelling house. The proposal also includes the building operations reasonably necessary to convert the building. The building comprises pre-cast concrete posts with duo-pitched steel lattice trusses, concrete blockwork external walls between the posts and a fibre cement clad roof. The building was most recently used for the storage of agricultural supplies. It measures 23.m in length by 5.8 m in width. It is 3.75m to eaves height and 5.0m to the underside of the ridge internally. The floorspace is therefore 133.4sq.m.
- 3.2 A more detailed description of the building is provided in the Structural Report by Alan Baxter Partnership LLP.

4.0 Permitted Development

- 4.1 Class Q permits a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouse.) In this context, an agricultural building means a building (excluding a dwellinghouse) used for agriculture (which includes horticulture) and which is so used for the purposes of trade or business. In this particular

instance the building was previously used for the production of container grown plants on the nursery and related agricultural storage.

- 4.2 Paragraph Q1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out criteria under which development is not permitted by Class Q. These are summarised as shown below.
- 4.3 First, the site was not used solely for an agricultural use as part of an established agricultural unit (i) on 20th March 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or (iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins.
- 4.4 In this instance, the Barn was part of a long-established operational agricultural holding on the 20th March 2013 and its conversion to a dwellinghouse would therefore conform with the requirements of the GPDO.
- 4.5 Secondly, limitations to the numbers of dwellings that could be created and the cumulative floorspace that could be converted to residential use under Class Q were made by Article 10 of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018 (S.I.2018 No. 343) with effect from 6th April 2018. This made a distinction between a “larger” dwellinghouse, which is defined as having more than 100 but no more than 465 square metres of floorspace and a “smaller” dwellinghouse, which is defined as having no more than 100sq.m of floorspace in use as a dwellinghouse. Whilst there are now several separate floorspace limitations, there is a limit of 465sq.m in respect of any one larger dwellinghouse.

- 4.6 As the floorspace of the Barn as existing and as to be converted is just over 133sq.m then it conforms with this particular requirement.
- 4.7 Thirdly, development is not permitted by Class Q if the site is occupied under an agricultural tenancy.
- 4.8 Here, Mr. La Dell has confirmed that he is the landowner and that no tenants are in occupation.
- 4.9 Fourthly, development under Class Q is not permitted if it would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point. In addition to this, development is also not permitted if it would consist of building operations other than (i) the installation or replacement of windows, doors, roofs, exterior walls or water, drainage, electricity, gas or other services to the extent necessary for the building to function as a dwellinghouse. It should also be added that partial demolition to the extent reasonably necessary to carry out the building operations allowed by paragraph Q.1 (i) (i).
- 4.10 In response to this, it is submitted that the building operations reasonably necessary to convert the Barn would not be required to incorporate any operational development that would extend the external dimensions of the existing building. Indeed, the conclusion of the consultant structural engineers (The Alan Baxter Partnership) is that the building is in good condition and was found to be structurally sound and stable, with no obvious structural barriers to prevent its conversion to a dwelling under Class Q. Nevertheless, the report does indicate that further insulation and damp-proofing may be required, along with (possibly) some additional foundations.
- 4.11 Against this assessment it needs to be pointed out that the National Planning Policy Guidance states (under “Are any building works allowed when changing

to residential use?”) that the permitted development right under Class Q “recognises that for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted.”

4.12 Finally, development under Class Q is not permitted if the site lies within (a) a conservation area, (b) and Area of Outstanding Natural Beauty; (c) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981; (d) the Broads, (e) a National Park, (f) a World Heritage Site, (g) a site of special scientific interest, (h) a safety hazard area, (i) a military storage area, (j) if it contains a scheduled monument or, finally, (k) if the building is listed.

4.13 The proposed conversion of the Barn is not subject to any of these constraints.

5.0 Prior Approval for the residential use of the Barn

5.1 As it is considered that the proposal would constitute permitted development, the Borough Council now has to decide whether its prior approval is required as to the (i) transport and highways impacts of the development; (ii) noise impacts; (iii) contamination risks on site; (iv) flooding risks on the site and (v) whether the location or siting of the Barn make it otherwise impractical or undesirable for the building to change from agricultural use to a dwellinghouse. The relevant information on these matters is set out below.

5.2 (i) Transport and highways impacts

5.2.1 There is a right of access to the site over the access to Staplehurst Road, adjacent to the western corner of the site. There are excellent visibility splays on to the Staplehurst Road. The proposed use of the Barn as a single dwelling will not amount to any material increase in traffic. Indeed, it is contended that it would be less than that generated by an alternative proposal for a

commercial use. The existing vehicular access from the Staplehurst Road is to be retained and utilised and is considered suitable to serve the proposed change of use. At present, there are virtually no vehicle movements to and from the Barn and the proposed conversion will therefore have a de minimis impact in this respect.

5.3 (ii) Noise impact

5.3.1 It is submitted that there will be no noise impacts from the proposed change of use, nor will the resultant dwelling be adversely affected by noise as there are very few other dwellings in the vicinity. It is therefore contended that noise will not be an issue.

5.4 (iii) Contamination

5.4.1 As the Barn has been used for the production of container grown plants and storage it is not considered that contamination will be an issue.

5.5 (iv) Flood risk

5.5.1 As the site lies with Flood Zone 1 as shown on the Environment Agency's Flood Map it is considered that the risk of flooding is minimal and that no Flood Risk Assessment is required in support of this application.

5.6 (v) Location and siting

5.6.1 The location of the Barn is such that there is no reason to believe that it poses a problem to or is adversely affected by any other buildings or operations.

6.0 Assessment of the current regulations

6.1 The regulations covering permitted changes of use have changed over recent years, as has their interpretation by Local Planning Authorities. Moreover, additional changes providing greater flexibility were introduced on the 21st May 2024. Indeed there have now been three Guides (or "Bibles" as they are

known by those operating within the profession) published on this subject since 2015, the latter two updating the original publication. It is therefore appropriate to set out the latest advice and assessment on how the regulations should be interpreted. The following points have therefore been taken from the third edition of “A Practical Guide to Permitted Changes of Use” by Martin Goodall that was published in October 2019.

6.2 First, he explains that the words “reasonably necessary” appear on several occasions. In applying general legal principles, this term does not mean that the works in question must be absolutely necessary. Instead, they are works that a reasonable person might choose.

6.3 Goodall then goes on to discuss the limits on building operations. Given the importance of this matter, it is appropriate to quote what he has written.

“The restrictions on operational development under Class Q have caused considerable practical difficulties, resulting in litigation and at least two changes of mind on the part of government, as expressed in the government’s online Planning Practice Guidance. However, the government has not seen fit to amend the wording of Class Q in order to clarify the acceptable limits on operational development under this class of permitted development. The practical limits to such building operations therefore remain uncertain to a degree, and can only be divined from a few judicial authorities and from any general trends that may be discernible in planning appeal decisions.” (Section 9.6)

6.4 The distinction between a conversion (which is permitted by Class Q) and a rebuild (which is not) was most notably tested in *Hibbitt v SSCLG* (2016) EWHC 2853 (Admin). This did no more (in Goodall’s view) than to re-iterate the general principle that permission to convert an agricultural building to residential use under the GPDO extends only to the change of use itself

together with such building operations as are necessary to bring about that change of use, but it does not authorise operations that amount to rebuilding so as to create what is in effect a new building. Indeed, it is understood that in the Hibbitt case, the building had only two sides and was substantially open to the elements. In Goodall's opinion this case should not be - but has-been over-interpreted by LPAs who are anxious to resist conversions.

- 6.5 There has been considerable uncertainty as to the legitimate scope of building operations permitted first by Class MB(b) and now by Class Q (b). Initially, the restrictive approach was expressed in an amendment to the online Planning Practice Guidance in March 2015 explaining that it was not the intention to permit the construction of new structural elements for the building. Accordingly, it was asserted that it was only where the existing building was structurally strong enough to take the loading associated with the external works to adapt the building for residential use that certain building operations would be considered to come within Class MB (b) /Q(b). Appeal decisions at that time made it clear that applicants could be reasonably expected to provide evidence such as a structural survey in order to demonstrate that the existing structure was capable of bearing the additional loading of a new roof or roof covering and/or new wall cladding, where these were proposed.
- 6.6 This advice, in paragraph 105 of the online PPG, was changed in 2018. The current version of the guidance repeats that the PD right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. This phrase is considered by Goodall as meaning that the building as it stands must be capable of conversion. If it requires such substantial building operations that what is proposed amounts to the construction of a new building, then this would fall outside the scope of Class Q. However, he then states that the statement that the existing building must be "already suitable for conversion to residential use" and must already be "capable of functioning as a dwelling" should not be taken as requiring that the existing building should in

all respects be capable of functioning as a dwelling in its present form. Goodall therefore states that Class Q clearly envisages that building operations may well be necessary in order to convert the building for residential use. Nevertheless, Class Q (as explained in para.105 of the PPG) limits the extent of such building operations to what is “reasonably necessary” for that purpose. As stated above, “reasonably necessary” does not mean “absolutely necessary”.

6.7 The crucial consideration in many submissions under Class Q concern the vexed matter of structural alterations. Indeed, LPAs have adopted the stance that structural alterations fall outside what is permitted under Class Q. In Goodall’s interpretation of the regulations there is nothing in the wording of Class Q(b) or in the restrictions on permissible building operations set out in paragraph Q.1(i) that distinguishes in any way between structural and non-structural works. These provisions make no distinction between various types of building operations depending on whether the relevant works are structural or not.

6.8 Given the importance of this issue it is appropriate to quote precisely what Goodall has to say about it.

“Furthermore, it is significant that there is no longer any reference in the Planning Practice Guidance to a prohibition on the construction of new structural elements for the building. Nor is it any longer asserted that it is only where the existing building is structurally strong enough to take the loading associated with the external works to adapt the building for residential use that certain building operations will be considered to come within Class Q. Thus internal structural strengthening of the building is not ruled out, although prohibition on the external dimensions of the converted building extending beyond the external dimensions of the existing building at any given point

prevents such strengthening from extending outside the pre-existing envelope of the building.” (Section 9.6.3).

7.0 Conclusion

- 7.1 In light of the regulations as explained above, together with the drawings and technical documents submitted in support of the proposal, it is contended that the application to convert the Barn into a residential dwelling should be approved by the Borough Council.