

PLANNING STATEMENT

ON

**THE PROPOSED CONVERSION OF THE NURSERY BARN, FORMER NURSERY
SITE, STAPLEHURST ROAD, MARDEN TN12 9BS.**

FOR

MR TOM LA DELL

BY

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MARCH 2024

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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 Nursery 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 Nursery Barn) therefore meets the requirement for being in use on 20th March 2013.

2.0 The Previous application

- 2.1 An application for the change of use of this building under Part Q was previously submitted on 4th December 2023, reference 23/505565/PNQCLA. It was duly validated and the applicant informed that the target date for a decision was to be 2nd February 2024.
- 2.2 Unfortunately, it was subsequently recognised that the wrong structural report by the consulting structural engineers Alan Baxter Partnership (ABP) had been submitted in support of the proposal. (The fact of the matter was that ABP had been instructed to produce initial reports on more than one building and the wrong one had been sent to the Council.) The appropriate version was therefore subsequently submitted. For some reason or another, the proper report was never uploaded onto the application website nor, as it was subsequently found out, considered by the Case Officer.
- 2.3 The applicant was therefore very surprised when the Council refused permission and saw what had happened - namely that the proper report, dated 23rd November 2023, had not been assessed. An email (dated 5th February 2024) was therefore sent to Tony Ryan and Rob Jarman at the Council to bring this matter to their attention and to seek advice on the best way to resolve this unfortunate situation. Indeed, that email made it clear that the applicant did not wish to appeal, as this would have resulted in time delay and costs to both parties. Instead, it was pointed out that as the proper structural engineering report made it clear that the building was of sound construction and suitable for conversion, then the best approach appeared to be that the application be resubmitted for determination. The Council officers were therefore asked to confirm this. That email dated 5th February is herewith attached, (**Appendix 1**).
- 2.4 As no response was received, a follow-up email was sent to Messrs Ryan and Jarman on the 14th February.

2.5 A response was then received later that day from Joanne Russell. It stated that, “regardless of the structural report, it was concluded that given the building is of timber construction, there is insufficient information submitted to demonstrate that it is in suitable condition to support a conversion. It was also not clear that the works required to bring it to building regulations standards would remain within the scope of conversion rather than a rebuild.”

2.6 In addition to this, Ms. Russell’s email went on to state that “In addition to the submitted (correct version) of the structural report, it would need to be demonstrated specifically that the timber structure is capable of supporting a conversion, through for example more invasive timber investigation into its integrity; along with a demonstration that the extent of works required to bring the structure in line with building regulation standards do not go beyond that of conversion.” Ms. Russell’s email is herewith attached, (**Appendix 2**).

3.0 Response to Ms. Russell’s email

3.1 It is considered that Ms. Russell’s response was deeply flawed - and hurriedly written. Indeed, it was received some hours after the chase-up email had been sent to Messrs Ryan and Jarman. Be that as it may, it is appropriate to go through her email and assess what exactly she said.

3.2 First of all, she states: “regardless of the structural report”.

3.2.1 That statement surely destroys her case. She is supposed - indeed required- to consider all of the evidence submitted in support of a planning application and especially ones of this nature wherein a structural report is widely considered to be essential. Applicants submitting Class Q applications need to show that the building in question is structurally capable of conversion as opposed to having to be re-built. It is surely, therefore,

inappropriate/ridiculous/wrong to say when assessing such an application “regardless of the structural report”.

- 3.3 Secondly, Ms. Russell then goes on to say that there was insufficient information submitted to demonstrate that the building was in a suitable condition to support a conversion.
- 3.3.1 The applicant’s response to this is twofold. First, Ms. Russell should have read the correct version of ABP’s structural report. It had, after all, been sent to the Council, although whether or not it was ever forwarded to her as the Case Officer is not known. Nevertheless, had she read the structural report, it may have provided her with the requisite information needed to determine the application. However, that appears not to have happened.
- 3.3.2 Secondly, had Ms. Russell read that report and still considered that further information was required, then that information could have been requested. Indeed, an applicant is allowed to agree to an extension of time to enable a Council to properly consider and determine an application. That certainly would have been the case here. However, no such request was made.
- 3.4 In the light of Ms. Russell’s response, James Folley, the author of the ABP report, was asked to carefully consider what Ms. Russell had said.
- 3.5 Mr. Folley was very surprised at the response of the Council and of Ms. Russell’s subsequent email. As a professionally - qualified and experienced structural engineer, Mr. Folley is fully aware of the Hibbitt case and considers that, as well as not being a comparable building to the Nursery Barn, the Council’s reasoning behind its decision to refuse is unjustified. Mr. Folley’s report is therefore submitted in support of this application.

4.0 The proposed change of use

- 4.1 The proposal is for the change of use of an existing agricultural building ("The Nursery 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 Nursery Barn comprises a mono-pitched timber building that was built over eighteen years ago and used for the production of container grown plants on the nursery and related agricultural storage. It has been constructed with a load-bearing timber structure, clad internally with plywood with timber weatherboarding fixed externally. The roof is constructed with four timber principal rafters with timber purlins spanning between, in turn supporting steel composite sheet roof panels. The building structure is itself on a ground-bearing concrete slab which has trenchfill foundations. It measures 5.8m by 13.3 m. giving a total floor area of 77.14 sq.m.

5.0 Permitted Development

- 5.1 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.
- 5.2 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.

- 5.3 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.
- 5.4 In this instance, the Nursery 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.
- 5.5 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.
- 5.6 As the floorspace of the Nursery Barn as existing and as to be converted is just over 77 sq.m. then it conforms with this particular requirement.
- 5.7 Thirdly, development is not permitted by Class Q if the site is occupied under an agricultural tenancy.
- 5.8 Here, Mr. La Dell has confirmed that he is the landowner and that no tenants are in occupation.

- 5.9 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).
- 5.10 In response to this, it is submitted that the building operations reasonably necessary to convert the Nursery 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 did indicate that further insulation and damp-proofing may be required, along with (possibly) some additional foundations.
- 5.11 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.”
- 5.12 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.

- 5.13 The proposed conversion of the Nursery Barn is not subject to any of these constraints.

6.0 Prior Approval for the residential use of the Nursery Barn

- 6.1 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 Nursery 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.

6.2 (i) Transport and highways impacts

- 6.2.1 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 Nursery 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 Nursery Barn and the proposed conversion will therefore have a de minimis impact in this respect.

6.3 (ii) Noise impact

6.3.1 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. The adjacent agricultural barn to the north-west is also subject to a Class Q application, while further north is an existing residential dwelling. It is therefore contended that noise will not be an issue.

6.4 (iii) Contamination

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

6.5 (iv) Flood risk

6.5.1 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.

6.6 (v) Location and siting

6.6.1 The location of the Nursery 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.

7.0 Assessment of the current regulations

7.1 The regulations covering permitted changes of use have changed over recent years, as has their interpretation by Local Planning Authorities. 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.

7.2 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.

7.3 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)

7.4 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.

- 7.5 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.
- 7.6 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 “necessary”.

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

7.8 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 where the existing building is structurally strong enough to take the loads associated with the external works to adapt the building for residential use, certain building operations will be considered to come within Class Q. The internal structural strengthening of the building is not ruled out by the prohibition on the external dimensions of the converted building exceeding the external dimensions of the existing building at any point. This prevents such strengthening from extending outside the pre-existing footprint of the building.” (Section 9.6.3).

8.0 Conclusion

- 8.1 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 Nursery Barn into a residential dwelling should be approved by the Borough Council.

APPENDICES

1. Email dated 5th February 2024 from Peter Court Associates
2. E-mail dated 14th February 2024 from Joanna Russell.

Peter Court Associates

From: Peter Court Associates
Sent: 05 February 2024 16:29
To: Tony Ryan; Rob Jarman
Subject: The Nursery Barn: 23/505565

Dear Mr. Ryan,

It appears from the Officer's Report that, in refusing this application, the correct structural report was not considered and the decision was based on the report for a different barn. The correct structural engineers report was submitted on the 10th January to Rebecca Bass - who subsequently emailed it to Joanna Russell the following day with a request that it be attached as an amendment to the amendment inbox. The number of this report is quoted in the Officer's Report despite the fact that the Report quotes from the originally submitted report. This one does not refer to the barn in the Application. The revised report has not been shown on your application website.

This is an unfortunate error as the report you did consider-and on which you based your decision-related to a draft that concerned a different building! Furthermore, whilst this was acknowledged in the officer's report, no attempt was made to contact me to discuss this discrepancy.

My client does not wish to appeal your decision to refuse as this would be time-consuming, cause delay -and be costly to both parties. Moreover, and as you will see when you do look at the correct structural engineer's report, I am sure you will agree that the structural report confirms that the barn is suitable for conversion in every way and that there is no basis for objecting to the proposal.

If you can simply confirm this we will resubmit the application for determination.

I look forward to hearing from you as soon as possible.

Kind regards,

Yours sincerely,

Peter Court.

Director.

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Please note that neither Peter Court Associates nor the sender accepts any responsibility and it is your responsibility to scan attachments (if any).

Peter Court Associates

From: Joanna Russell <JoannaRussell@Maidstone.gov.uk>
Sent: Wednesday, February 14, 2024 5:48 PM
To: Peter Court Associates <peter@petercourtassociates.co.uk>
Subject: FW: The Nursery Barn: 23/505565

Dear Peter,

Apologies for the delay in getting back to you. As you will see from the officer report, regardless of the structural report, it was concluded that given the building is of timber construction, there was insufficient information submitted to demonstrate this it is in suitable condition to support a conversion. It was also not clear that the works required to bring it to building regulations standards would remain within the scope of conversion rather than a rebuild.

In addition to the submitted (correct version) of the structural report, it would need to be demonstrated specifically that the timber structure is capable of supporting a conversion, through for example more invasive timber investigation into its integrity; along with a demonstration that the extent of works required to bring the structure in line with building regulation standards do not go beyond that of a conversion.

Kind regards

Joanna

J Russell

Principal Planning officer

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