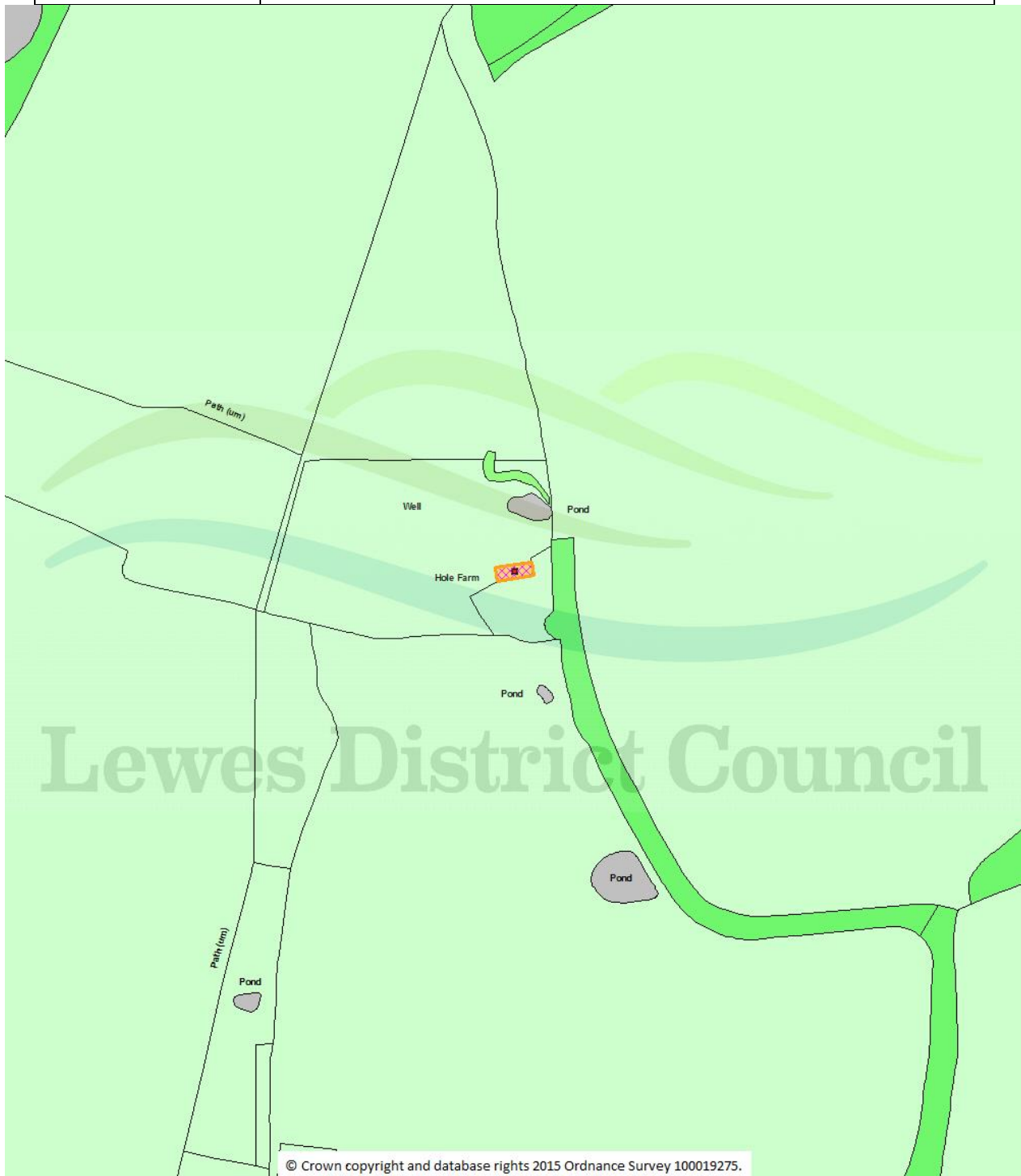


APPLICATION NUMBER:	LW/16/1002	ITEM NUMBER:	9
APPLICANTS NAME(S):	Mr J Twose	PARISH / WARD:	Wivelsfield / Chailey & Wivelsfield
PROPOSAL:	Prior Approval from AGR to Dwelling for Change of use of agricultural building (agricultural storage, tractors, farm implements and hay) to a residential dwelling house		
SITE ADDRESS:	Hole Farm Nursery Lane Wivelsfield Green East Sussex RH17 7RB		
GRID REF:	TQ 35 20		



1. SITE DESCRIPTION / PROPOSAL

1.1 Hole Farm lies to the immediate north of Wivelsfield Green approximately 0.5km beyond the planning boundary defined by the Lewes District Local Plan. Access to the site is gained along Nursery Lane which terminates at its northern end near the residential properties of Strood Farm and Clearview. The access to the site is gated at this point and follows a rough track around the edges of the intervening fields.

1.2 The site itself extends to approximately 0.14 hectares. On site is a barn and a small outbuilding/shed. The barn has a footprint of some 15 metres by 8 metres giving it a footprint of some 120sqm.

1.3 The barn has recently been the subject of some refurbishments that have seen the walls and roof re-clad and a number of new windows inserted. The footprint of the barn has also been increased. The planning department has been seeking a retrospective application for these works but none has yet been forthcoming.

1.4 The larger section of the barn is currently used for the storage of old farm machinery e.g. tractors, trailers etc. A small section of the barn is used as a shelter/welfare area for the applicant for when he is working on the land and has a small sink with a few cupboards and a seating area. Two sheep are kept on the land.

1.5 Prior approval is being sought under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, to the change of use of the building to a dwelling.

2. RELEVANT POLICIES

2.1 On the basis that this is an application seeking prior approval under the General Permitted Development Order (GPDO) it is not relevant to consider the policies of the Development Plan. However Paragraph W(10)(b) of Part 3 of Schedule 2 of the GPDO does state that Local Planning Authorities, when considering these types of applications, must have regard to the National Planning Policy Framework, so far as relevant to the subject matter of the prior approval, as if the application were a planning application

3. PLANNING HISTORY

3.1 There is no recorded planning history for the application site. It is however understood that there has historically been a dwelling on this plot. This dwelling has long since been demolished and the only evidence of it on site now are the remnants of a basement.

4. REPRESENTATIONS FROM STANDARD CONSULTEES

Wivelsfield Parish Council – To be reported

Environmental Health – The proposal is for the change of use of an agricultural building (agricultural storage, tractors, farm implements and hay) to a residential dwelling house.

Agricultural buildings may have been subject to potentially contaminative uses over time such as storage of agricultural machinery, vehicles, fuels and agro-chemicals. Associated machinery and vehicle maintenance activities may have also been carried out on-site. The

structure may include asbestos containing materials which may have been damaged over time resulting in the presence of asbestos in soils.

Paragraph 121 of the National Planning Policy Framework requires that planning decisions ensure that:

- o the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;
- o after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and
- o adequate site investigation information, prepared by a competent person, is presented.

As such, without further information available at this stage we would recommend the following...

Conditions requested- see file for detail.

5. REPRESENTATIONS FROM LOCAL RESIDENTS

5.1 None received.

6. PLANNING CONSIDERATIONS

6.1 Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, allows (a) the 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 (dwellinghouses) of the Schedule to the Use Classes Order, along with (b) building operations reasonably necessary to convert the building.

6.2 Permitted development under this Class is subject to a number of conditions which are set out at Q.1 of the GPDO. It is explicitly stated that development is not permitted by Class Q if 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.

6.3 The applicant's application form states that the building was in use on 20th March 2013 as part of a much larger agricultural unit, farming beef cattle. It is suggested that the building was used for agricultural storage for tractors, farm implements and hay.

6.4 No details have been provided in relation to the agricultural unit that the barn previously belonged to and it is not evident when the site was removed from this larger unit. Photos on the Council's files from 2012 show the barn to be empty and in a poor condition. The barn is clearly currently being used, but it no longer appears to be in use as part of an established agricultural unit (Paragraph X of Part 3 of the GPDO explains that an "established agricultural unit" means agricultural land occupied as a unit for the purposes of agriculture and "agricultural use" means use for the purposes of a trade or business). The keeping of a couple of sheep on the land now could not be described as a trade of business and is more a hobby use of the land.

6.5 On the basis of the information that has been provided and that is available on the Council's own records it is not considered that it can be reasonably assumed that the building was solely in agricultural use on 20th March 2013. Whilst it is accepted that the building may well have been used for agricultural purposes historically the current use of the building is not considered to be an agricultural use for the purposes of this Class and it is unclear when this use commenced. For this reason it is not considered that the requirement of Class Q.1(a) is met.

6.6 Whilst looking at the interpretations given at paragraph X it is also clear that the proposed curtilage of the dwelling being sought by this application exceeds that permitted by Class Q. At paragraph X it is stated:

"curtilage" means, for the purposes of Class Q, R or S only—

(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or

(b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building,

whichever is the lesser;

6.7 The plan indicating the proposed extent of the curtilage indicates an area substantially larger than the area occupied by the building and therefore this change of use would not be permitted under Class Q.

6.8 The works that have already taken place at the site also complicate matters further. As noted above the building has recently been re-clad, re-roofed and the footprint extended. It is the officer's opinion that these works do not amount to permitted development and therefore should have been the subject of a planning application. Whilst a retrospective application for these works has been sought, no application has been received. The building as enlarged is not therefore lawful and to allow conversion of an unconsented structure would be perverse, especially as the provisions of Class Q do not allow the "external dimensions of the building extending beyond the external dimensions of the existing building at any given point."

6.9 Whilst arguably the works now sought by the applicant do not extend the external dimensions of the existing building i.e. as it stands today, had these works not been carried out already without consent, the proposals would fall foul of condition Q(1)(g) by virtue of the enlargement of the building.

6.10 Class Q(b) does allow building operations reasonably necessary to convert the building and Q.1(i) states:

"the development under Class Q(b) 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(i)(i)"

6.11 Further guidance at paragraph 105 Reference ID: 13-105-20150305 of the National Planning Practice Guidance (NPPG) states:

"It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right."

6.12 The barn in question is a timber framed structure and appears to be fairly sound. Whilst no detailed plans of the proposed conversion works have been provided, it is noted that the applicants propose to remove that existing cladding, to add a waterproof membrane and insulation, along with double glazed windows, chimneys and a tiled roof. No structural survey has been provided to demonstrate that the existing building is structurally strong enough to take the loading that will come from these elements. Insufficient information has therefore been provided to demonstrate that the proposed works reasonably necessary.

6.13 For all of the above reasons it is not considered that the proposed change of use and building operations are permitted by Class Q of the GPDO.

6.14 Had it been accepted that the proposals amounted to permitted development, the authority would have been required to determine whether prior approval is required as to:

- (a) transport and highways impacts of the development,
- (b) noise impacts of the development,
- (c) contamination risks on the site,
- (d) flooding risks on the site, or
- (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 the Schedule to the Use Classes Order,
- (f) the design and external appearance of the building.

TRANSPORT AND HIGHWAYS IMPACTS

6.15 As set out above access to the site is via Nursery Lane and then along a track crossing a number of fields. Nursery Lane itself is a quiet, narrow lane serving a small number of dwellings. It is not considered that the additional traffic associated with a single dwelling would significantly add to the traffic using this lane to amount to a reason to object to this proposal. The associated transport and highway impacts are therefore considered acceptable.

NOISE IMPACTS

6.16 The residential use of the site is unlikely to cause any significant noise and in any case the site is distant from the closest residential properties. The surrounding land uses are agricultural fields and therefore future occupiers are unlikely to experience poor living environments.

CONTAMINATION RISKS ON THE SITE

6.17 No information has been provided in relation to any potential contamination risks on site.

6.18 The Council's Contaminated Land Officer has considered the submitted proposal and states:

"Agricultural buildings may have been subject to potentially contaminative uses over time such as storage of agricultural machinery, vehicles, fuels and agrochemicals. Associated machinery and vehicle maintenance activities may have also been carried out on-site. The structure may include asbestos containing materials which may have been damaged over time resulting in the presence of asbestos in soils.

Paragraph 121 of the National Planning Policy Framework requires that planning decisions ensure that:

o the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;
o after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and
o adequate site investigation information, prepared by a competent person, is presented.

As such, without further information available at this stage we would recommend the following..."

6.19 A condition requiring the submission of a scheme to deal with the risks associated with contamination of the site has been recommended.

6.20 In relation to the contamination risks on the site, Part W (10)(c) of Part 3 of the GPDO states that the Local Planning Authority must:

"(i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(c), and
(ii) if they determine that the site will be contaminated land, refuse to give prior approval."

6.21 Whilst a condition could be attached requiring appropriate survey work and potential mitigation to be carried out prior to the commencement of development, it appears to be the apparent intent of the Order to establish the risk of contamination (and mitigation measures required) prior to determining the acceptability of the proposal and approving permission rather than after. Furthermore, it is not entirely certain that a condition could ensure that the harm would be overcome, as the level of harm is presently unidentified.

6.22 Therefore in the absence of an appropriate assessment as to whether the land is contaminated or not, and whether any risks exist for future human occupants, prior approval should be refused in accordance with W(3)(b).

FLOODING RISKS

6.23 The application site falls within Flood Zone 1 where the risk of flooding is at its lowest. On this basis there are not deemed to be any flooding risks as a result of this proposal.

LOCATION AND SITING

6.24 When considering the location and siting of the building National Planning Practice Guidance produced in March 2015 confirms that:

"The permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house."

6.25 The guidance goes on to explain:

"Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable".

When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval.

There may, however, be circumstances where the impact cannot be mitigated. Therefore, when looking at location, local planning authorities may, for example, consider that because an agricultural building on the top of a hill with no road access, power source or other services its conversion is impractical. Additionally the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.

When a local authority considers location and siting it should not therefore be applying tests from the National Planning Policy Framework except to the extent these are relevant to the subject matter of the prior approval. So, for example, factors such as whether the property is for a rural worker, or whether the design is of exceptional quality or innovative, are unlikely to be relevant."

6.26 Taking the above into consideration is it not considered that the location or siting of the building makes the change of use impractical or undesirable. Whilst the building is in a particularly isolated position and is prominent from views from nearby public footpaths, access is available as are essential services (water and electricity). For these reasons the location and siting is considered acceptable.

DESIGN AND EXTERNAL APPEARANCE

6.27 As noted above, very little information has been provided in relation to the proposed design and external appearance of the dwelling. No floor plans are provided to illustrate how the building is to be converted and no elevation drawings are provided to

illustrate how the external appearance of the building will change. It is not therefore considered possible to come to any conclusion on this matter.

CONCLUSION

6.28 It is not considered that the proposed change of use of the existing building to residential and associated building operations comply with the terms of Class Q of the GPDO.

6.29 The proposed curtilage to serve the dwelling is larger than is permitted by Class Q, and insufficient evidence has been provided to confirm that the building was solely in an agricultural use as part of an established agricultural unit on 20th March 2013. In addition, it is unclear whether the existing building is structurally strong enough to take the loading that will come from the proposed building works and that therefore the required works would be reasonably necessary. Without details of how the building is to be converted it is not possible to form any conclusion on whether the design and external appearance of the resultant dwelling would be acceptable.

6.30 Finally, in the absence of an appropriate assessment as to whether the land is contaminated or not, and whether any risks exist for future human occupants, prior approval should be refused in accordance with W(3)(b).

7. RECOMMENDATION

7.1 Recommend that prior approval is refused for the following reasons:

Reason(s) for Refusal:

1. The proposal to convert the existing building to a use falling within Class C3 (dwellinghouse) does not comply with Class Q, of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the following reasons:

- o The proposed curtilage is larger than the land area occupied by the agricultural building.
- o It has not been satisfactorily demonstrated that the building was solely in agricultural use on 20th March 2013, when the building was last in use, or for a period of 10 years before the date development under Class Q would begin.
- o Insufficient information has been provided to demonstrate that the extent of works proposed is reasonably necessary.
- o The conversion would encompass unlawful additions to the barn, effectively extending the building beyond the external dimensions of the existing (lawful) building. Planning permission is therefore required for the change of use of the building to Class C3 (dwellinghouse).

2. Insufficient information has been submitted to demonstrate that there will be no potential risks from contamination that may impact the occupiers of the proposed dwellings as required Class W (10)(c) of the GPDO.

3. Insufficient information has been submitted to demonstrate that the design and external appearance of the proposed dwelling is acceptable

INFORMATIVE(S)

1. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application

within a timely manner, clearly setting out the reason(s) for refusal, thereby allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied as part of a revised scheme. The Local Planning Authority is willing to provide pre-application advice and advise on the best course of action in respect of any future application for a revised development.

This decision is based on the following submitted plans/documents:

<u>PLAN TYPE</u>	<u>DATE RECEIVED</u>	<u>REFERENCE</u>
Existing Floor Plan(s)	19 December 2016	GROUND LEVEL
Existing Floor Plan(s)	19 December 2016	FIRST FLOOR
Proposed Floor Plan(s)	19 December 2016	FIRST FLOOR
Location Plan	28 November 2016	1:2500
Proposed Layout Plan	28 November 2016	BARN AND CURTILAGE
Proposed Floor Plan(s)	28 November 2016	NOT TO SCALE
Photographs	28 November 2016	2 X INTERIOR
Photographs	28 November 2016	4 X ELEVATIONS