

<b>Application Number</b>	16/01804/AS	
<b>Location</b>	Oldbury, Brissenden Green Lane, Bethersden, Ashford, Kent, TN26 3BJ	
<b>Grid Reference</b>	93701/39124	
<b>Parish Council</b>	Bethersden	
<b>Ward</b>	Weald Central	
<b>Application Description</b>	Subdivision of existing AOC dwelling to form two separate dwellings (retrospective)	
<b>Applicant</b>	Mr T Button, c/o Bloomfields, 77 Commercial Road, Paddock Wood, TN12 6DS	
<b>Agent</b>	Mr G Mickelborough, Bloomfields, 77 Commercial Road, Paddock Wood, TN12 6DS	
<b>Site Area</b>	0.15 ha	
(a) 7/12R	(b) R	(c) KHS/X EHM/X

## Introduction

1. This application is reported to the Planning Committee at the request of one of the Ward Members, Councillor Pickering.

## Site and Surroundings

2. The application site comprises a detached chalet bungalow. It is set back slightly from the road and is within the countryside, outside the built confines of the village of Bethersden. The site fronts onto Brissenden Green Lane, which is an unclassified single carriageway rural lane. The site is 0.5miles from the junction of Woodchurch Road and the A28 and 1.6miles from the nearest service centre, which is Bethersden. The neighbouring yard is within the same ownership but does not form part of this application. The two dwellings benefit from their own independent vehicular access with a separate access serving the neighbouring yard.

3. The site is within the Bethersden Mixed Farmlands Landscape, Low Weald, landscape character area (LCA). The key characteristics of which is the undulating landscape, with small patterns of pastoral fields, dense native hedgerows, extensive broadleaf woodland, field ponds, a strong sense of enclosure by the well treed and undulating landscape. Modern 20<sup>th</sup> Century housing development around the village of Bethersden is also noted in the key characteristics of the landscape. The overall objective in this location is to conserve and reinforce. The immediate context is characterised by dwellings which are well separated and largely detached, these are of varying age, size and design. The application site has a large rear garden area which has open post and rail fencing leaving it fairly open with a paddock beyond, the latter of which does not form part of this application but falls within the ownership of Mr Button, the applicant. The neighbouring yard, which is within the same ownership as the application site, is being operated unlawfully and is subject to a separate planning application.
4. The site falls outside but it in close proximity to Floodzones 2 and 3 which run along the course of the River Beult.
5. When planning permission was granted 1 April 1964 for the dwelling this was subject to an agricultural occupancy condition limiting occupation to:

*“a person employed or last employed, locally in agriculture as defined in Section 221(1) of the Town and Country Planning Act, 1962 or forestry, or a dependant of such a person residing with him (but including a widow or widower of such a person)”.*
6. The reason for imposing the condition was because *“the site of the dwelling at the time was in an “uncoloured” area in the Kent Development Plan in which the Plan proposes that existing uses are intended to remain for the most part undisturbed and the development proposed would not have been permitted had it not been shown to be essential in the interests of agriculture and forestry”.* At the time the farming operation was a pig enterprise.

7. A site location plan is shown below and attached to this report as annex 1.



Figure 1 - Site Location Plan

## Proposal

8. Full planning permission is sought to subdivide the existing dwelling into 2 separate dwellings to allow for its continued occupation in breach of this condition by two separate families. The application is therefore retrospective.
9. Alterations have been made internally to the dwelling to facilitate its subdivision into two separate, independent dwellings, which did not require the benefit of planning permission. Past alterations to the footprint of the dwelling, have become lawful over time with rooflights to the side elevation and a conservatory which has been in situ since at least 2005.

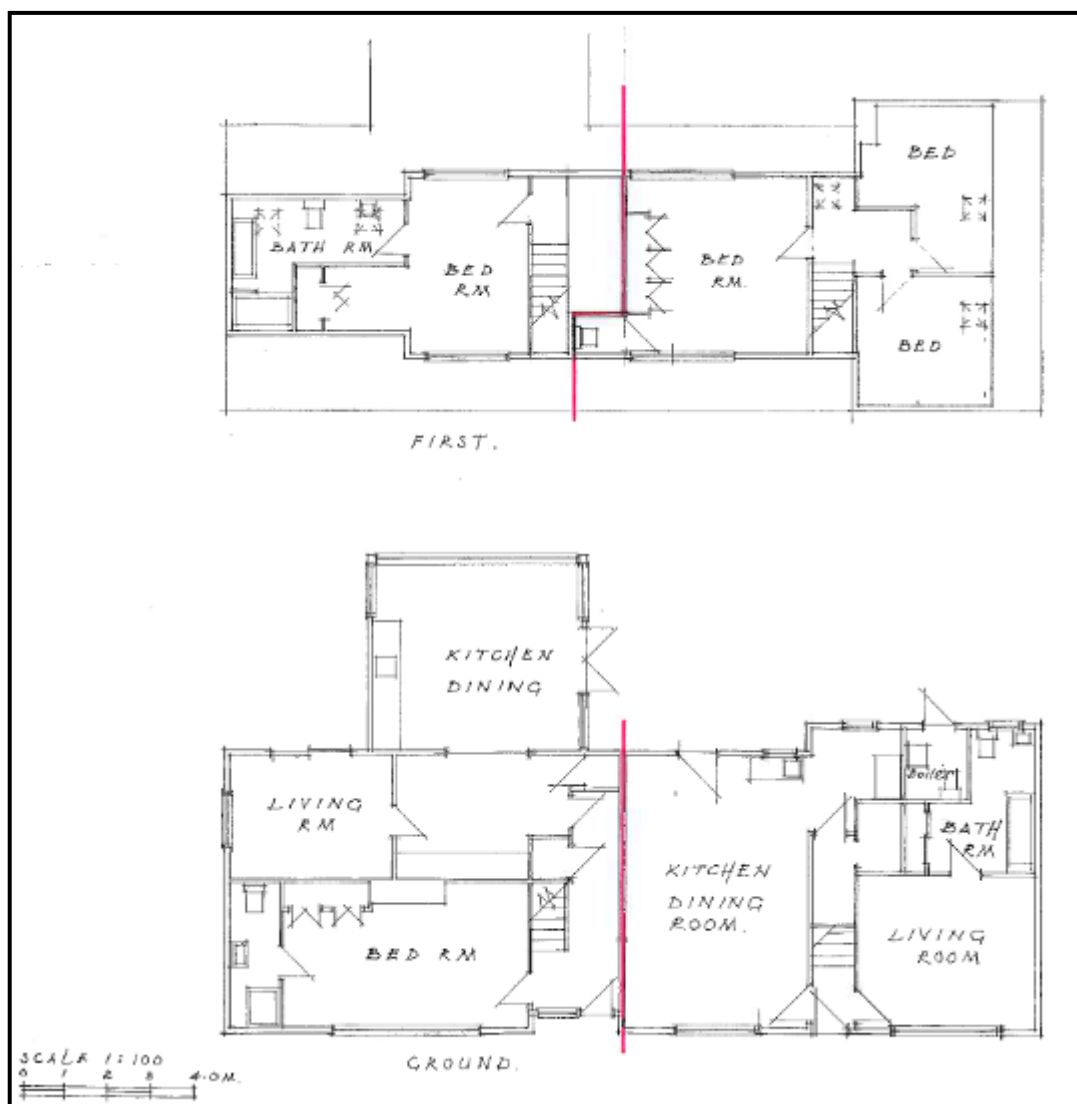


Figure 2 - Floor Layouts

10. Both dwellings have separate vehicular accesses from the main road without the need to access the adjacent commercial yard.
11. In support of the application the applicant's agent has stated the following:
  - The basis of the application is that the land to which this property was originally permitted to serve back in the 1960s can no longer be used for agricultural purposes due to its size, shape and extent of hardstanding and buildings. It is argued that the dwelling has not been occupied in compliance with the AOC condition since 2009, although the Council has no evidence to confirm this.
  - Reference is made to the occupant using the adjacent site for business and storage purposes since its acquisition in October 2013. This firm specialises in providing staff and equipment for assisting with utility installation projects at both the domestic and large commercial scale.

Major clients include local farmers. The manager of this firm is now living in one of the dwellings at Oldbury formed from the subdivision of the main house from the annex, being that dwelling to the east.

- The proposal is demonstrably sustainable. It cannot be said that there were any adverse impacts which would significantly and demonstrably (their underlining) outweigh the benefits of the application, and so should be considered to represent sustainable development.
  - The development would not harm residential amenity and meets both internal and external space standards.
  - The access and parking arrangements are sufficient and the use would not give rise to any significant increase in vehicle movements and so no material impact on highway safety.
  - Examples have been quoted of similar applications in the Borough proposing the subdivision of previously existing properties:
    - 15/01510/AS: Permission granted for removal of a condition previously restricting use of extension to ancillary annexe to allow its use as an independent dwelling at New Barn Farm, Pluckley Road, Smarden. It was not considered to be an isolated location in relation to para. 55 of the NPPF. Whilst considered to be contrary to the Development Plan, given that it was not isolated and would represent the re-use of an existing building it was considered to represent sustainable development. In the absence of a 5 year housing land supply, it is considered that the weight to be attributed to the NPPF in relation to a proposal which results in the provision of an additional unit is considered to be overriding.
    - Drawing a parallel with this permission, the subdivision of the dwelling at Oldbury does not represent one of the special circumstances set out in Policy TRS2 and para. 55 of the NPPF. However, unlike at New Barn Farm, this current proposal would be said to help facilitate the essential need for a rural worker to live at or near their place of work. The application site should also not be considered to be isolated being much closer to a number of neighbouring properties. In turn, the application relates to the subdivision of an existing building and there is therefore no increase in the amount of physical development in the countryside.
12. Further information has been submitted during the course of the application relating to the marketing of the property when it was last for sale from July 2012 to the point at which it was acquired by the current owner in October

2013 which seeks to address the loss of an agricultural workers dwelling, as follows:

- During the period of 2012 and 2013 the price for the dwelling and neighbouring site (which were sold together) was reduced due to lack of interest. It has also been argued that the dwelling would not, as a single dwelling due to its size and its resultant asking price on the open market be viable as an agricultural workers dwelling. During this period 3 viewings were made without any success.
- This situation is not dissimilar to the situation when a previous application to remove the condition was submitted in 2000 and subsequently refused by the LPA. The applicant argues since this time the building has not been occupied in compliance with the agricultural occupancy condition.
- It is also stated that the neighbouring yard no longer supports agricultural activities and that the dwelling would be too large to be affordable for a rural worker(s).
- Other applications not related to the site are also mentioned within the supporting statement, although these are not relevant to the specifics of this particular site.

## Planning History

DC	FA	WE/9/64/111	Outline application for Farmhouse	PERM	01/04/1964
DC	FA	WE/9/64/111a	Outline application for Farmhouse	PERM	28/10/1964
DC	FA	74/01036/AS	Provision of living accommodation for elderly person by adding lounge, hall, kitchen and bathroom and using existing bedroom	PERM	20/09/1974
DC	REM	00/00300/AS	Revocation of condition IV (agricultural occupancy) attached to consent WE/9/64/111	RR	27/07/2000

DC	HAPP	81/00120/AS	Continuance of use of a dwelling house without complying with a condition subject to which planning permission was granted. WE/9/64/111	RR	23/03/1981
DC	VAR	16/01262/AS	Variation of Condition 4 of application WE/9/64/111 to vary the wording of the condition to "the occupation of the dwelling shall be limited to a person employed, or last employed, locally in agriculture as defined in Section 221 (1) of the Town and Country Planning Act 1962 or forestry, or in connection with Europoll Supply Ltd. or Ram Doctor Ltd., or a dependent of such a person residing with him (but including a widow or widower of such a person).	WITH	14/12/2016

13. The 1974 permission which granted an extension to the original dwelling approved under WE/9/64/111 allowed for the formation of an independent annex to serve the main dwelling. Condition 2 imposed on the granting of this permission imposed the following restriction:

*The extension hereby permitted shall not be sold, let or otherwise occupied as a dwelling separate from the property at present known as Oldbury.*

14. This condition has been in breach since the current owner's acquisition of the site but the Council has no information prior to this as to whether the breach has become lawful through the passage of time.

#### Related planning history – neighbouring yard

DC	FA	15/00419/AS	Erection of an office building for agricultural purposes	WITH	23/04/2015
DC	FA	16/00583/AS	Retrospective application for alterations to existing building and use of site for	RR	03/04/2017

business and storage purposes (within Classes B1(a), B2 and B8 of the Schedule to the Use Classes Order with associated landscaping and ecological enhancements

## Consultations

**Ward Members:** Neither of the Ward Members are Members of the Planning Committee and no comments have been received regarding their views on the application.

**Parish Council:** strongly opposed to this application as it affects the use of the house as one suitable for occupation by agricultural workers. The Parish Council have always been concerned that AOC dwellings are kept available in the Parish.

**KCC Highways and Transportation:** the application does not warrant the involvement of the Highways Authority

**Environmental Services:** raise no objection subject to a condition relating to the treatment of sewage following the submission of further information to prevent pollution of land or water.

**Rural Planning Ltd.:** no objection given that the wording of the condition imposed on the dwelling is less burdensome and requires a relatively low degree of agricultural employment to be satisfied. This reduces the discount off the unrestricted value of the property to reflect the existence of the condition and therefore has limited merit and purpose in planning terms. As a large dwelling of 4/5 bedrooms with 230m<sup>2</sup> gross internal area, the assumed value of the property as a result of this and the wording of the condition is unlikely to provide useful potential accommodation for a typical agricultural worker. If a new dwelling in this location would be considered acceptable in planning terms, it would be unreasonable to impose an occupancy condition which is also more burdensome than the existing condition on one or both of the dwellings. The dwelling has been dramatically increased in size over time and is of a large size (230m<sup>2</sup>) and the rooms are arranged. Whilst the purchase price in 2009 of £390,000 may be affordable for *compliant* occupiers, this value was (and remains) unlikely to be attractive to the typical agricultural worker who might fulfil the standard condition (i.e. *solely or mainly* employed locally in agriculture). The final difference between the 2009 sale price and that of 2013 is actually 28% but the more relevant comparison would be between the asking prices or sale price (20% or 19% respectively).

**7 neighbours consulted:** 13 objections received raising the following concerns:



## Principle

- The development fails to accord with the NPPF and is not sustainable development
- The site is 1.8miles from Bethersden
- The statement suggests TRS2 is not compatible with the NPPF
- We suggest that a sub-division would not normally be permitted in a rural area such as this.
- Policy HOU5 is in line with the NPPF and so can be given weight [**JDCM comment:** this policy is currently not adopted and can therefore be afforded little weight]
- Some of the Council's policies are out of date and the NPPF does not support development where significant and demonstrable harm outweigh any benefit
- It is stated there are other sites in close proximity which are considered sustainable
- The adverse impacts of one planning unit does not outweigh any benefit against the inability of the LPA to have a 5 year housing land supply
- If this was proposed and not retrospective it would fail against paragraph 55 of the NPPF
- The development at Wittersham (last year) was not a sufficient reason to support new housing [**JDCM comment:** this was a materially different application with the reasons for refusal based on other material considerations outlined under paragraph 116 of the Framework relating to major development in the AONB, good design, no exceptional circumstances to justify the development]

The statement refers to planning permission ref:15/01510/AS at New Barn Farm, Pluckley Road, Bethersden and emphasis placed on the approval of this scheme [**JDCM comment:** Reference is made to this in the proposal section of this report. Each application is determined on its own merits and it is agreed that 15/01510/AS, the assessment had to ascertain whether the site was in a sustainable location, a similar assessment will need to be made in the report which follows for this application]

## Retrospective nature of the development

- The work has already been carried out [**JCDM comment:** the retrospective nature of the application is not a material consideration).

- The speed of unlawful development and change allowed unchecked by Ashford Borough Council is alarming
- The granny annex has been disregarded by the current owners

### **Application inaccuracies**

- The description is incorrect [**JDCM comment:** the LPA are content that the description reflects the proposed development]
- The date the works were completed is incorrect as the property was acquired on the 4<sup>th</sup> October 2013 and it states the works were completed on 31<sup>st</sup> October 2013, we question the timeline for the works [**JDCM comment:** the date the works were completed is largely in line with the date of purchase by the current owners]

### **Visual Impact**

- The development has resulted in serious visual decline
- The dwelling is not in keeping with the rural lane
- The site is an eyesore
- A lack of consideration of the rural landscape
- The site is within a Special Landscape Area and afforded protection above all other planning considerations
- The proposal fails to meet the criteria of policy CS9 [**JDCM comment:** Policy CS9 was not an adopted policy at the time of considering these additions and those which are executed under the permitted development rights afforded to dwellinghouses by central government]
- Conversion to two dwellings is contrary to the countryside location

### **Residential Amenity**

- ABC should take a stand against Oldbury due to the impact on the neighbours [**JDCM comment:** the application will be assessed in relation to the relevant planning policies which are contained within the report which follows]
- Fails to comply with space standards
- The applicant and agent are well aware of the impact on the neighbours

- The conversion works have detrimentally impacted upon neighbours and their quiet enjoyment through an acceleration of unwanted activities

### **Agricultural Occupancy (AOC) condition**

- If the current AOC dwelling is not viable how would two dwellings work?
- The AOC will be removed by stealth
- No employment or supporting details are provided relating to the AOC or for the occupiers who work at the adjacent site and the current occupants do not comply with the condition
- The justification that the hardstanding on the neighbouring site means agricultural related activity is not relevant to the AOC and was done without the benefit of planning permission
- The lifting of the AOC will result in the loss of agricultural housing stock
- The AOC is not addressed in the application and no supporting information is provided [**JDCM comment:** this is addressed in the additional information submitted by the applicant's agent]
- The application states that the Manager of Europoll lives in one of the dwellings but this is incorrect [**JDCM comment:** this is not relevant to the consideration of the application]
- Conditions restricting the use of the AOC and the annexe are material considerations, any permission granted would infer lifting these conditions [**JDCM comment:** the current occupation of the dwelling is in breach of both the agricultural workers (AOC) condition and the condition restricting the use of the annexe]
- The Parish council are against removal of AOC conditions
- No lawful use is given for the occupation of the two dwellings to overcome the non-compliance with the AOC
- If the granting of the application for the yard would be permitted, it would make the AOC easier to lift
- ABC invited the application and it is unclear why [**JDCM comment:** ABC required a period of compliance with the AOC condition and the return of the dwelling to a single dwelling. Instead, the applicant submitted this planning application of their own fruition]

- The information relating to the marketing exercise for the dwelling would have been very useful when building context for our last submission.
- We disagree this now represents a sizeable dwelling as it assumes the alterations were made lawfully.
- The bungalow and yard were purchased together in 2013. The letter provided refers to the bungalow being valued between £525-499,000, including the horticultural unit.
- If discounted, a 2 bed bungalow with 1 bed annexe would fall around the accepted purchase tolerance for AOC dwellings, rendering it affordable.
- The fact that the selling agents stated no potential purchasers came forward who could comply with the restriction does not render the AOC null and void especially given the significant increase in value attributed to the property between 2009-12, representing a 65% increase in the asking price. This suggests the price was too high, as the final purchase price in 2013 proves.
- The applicants have tried to secure a business use to support their occupation of the dwelling and failed to do so. There is no further justification for the occupants to remain in-situ following the refusal of this application.
- It would seem unreasonable to permit the application for the removal of the AOC given that without the business use being approved there are only two outcomes according to Richard Lloyd-Hughes; to refuse the application or allow the currently unlawful subdivision without imposing any occupancy restriction on either unit.
- I find it interesting that the Council felt the need to seek further advice with respect to this application as the original recommendation for the house is clear.
- The land registry title plan clearly shows a smaller dwelling and garden and therefore the land would be classed as agricultural and would require a material change of use [**JDCM comment:** this land has been in use as garden and through the passage of time has become lawful].
- The approach to the application must be materially conflicted until such point as the application against the yard is fully consolidated [**JDCM comment:** the applications are being considered separately and the yard application does not impact upon the consideration of the merits of this application]
- The land and dwelling purchase price are implicitly related.

### Highway Safety & Parking

- Physical alterations made to the access
- New vehicle crossovers have been provided or certification [**JDCM comment:** the crossovers are a matter for KCC Highways and Transportation]
- Increase in vehicle traffic associated with yard which sometimes park at the dwelling
- Pot holes on the road, damage to the verge and ditches has been caused
- Front garden now used for parking with additional hardstanding laid which is not lawful [**JDCM comment:** The additional hardstanding which has been laid would not have required the benefit of planning permission]

### Flooding

- The River Beult is an SSSI further down its course
- The EA should be consulted on the application as the site is adjacent to a floodzone

### Sewage/Drainage

- Disposal of sewage is unknown [**JDCM comment:** this has subsequently been addressed following a request for clarification by the Local Planning Authority]

### Ecology

- No ecological survey work has been carried out
- The hedgerow to the front of the site has been removed [**JDCM comment:** the removal of the hedge does not require the benefit of planning permission]

### Other issues

- The previous application was withdrawn following a request by the LPA as it did not address the subdivision of the dwelling
- The applicant has complete disregard for the planning and building regulations
- Previous applications for the site has not acknowledged the relationship between the applicant/agent and an officer of the Council, this fact is admitted in section 8, we question the validity of all previous and current applications because this declaration is made when submitting in section 26. [**JDCM comment:** the

applicant's agent is related to an officer of the Council's Legal Services Department, who has had no involvement in the application. In any event, there is no requirement for an agent to declare their relationship to a member of staff].

- The initial bungalow was perfectly adequate for the purpose intended
- This is the 4th retrospective application at this site [**JDCM comment:** this is the 3<sup>rd</sup> application for the site, the first application relates to the use of the adjacent yard and has been determined and refused by the Council and the second was withdrawn by the applicant as it did not address the subdivision of the dwelling into two separate units]
- The sales particulars state 3 bedrooms but the application states more.[**JDCM comment:** these were the original sales particulars when the dwelling was last sold in 2013, physical internal alterations have been made since this time and do not require the benefit of planning permission]
- The owner lives 35 miles away
- The site does not deal with the rear paddock [**JDCM comment:** this is not part of the garden of the dwelling, it is paddock within their ownership but does not form part of the curtilage]
- The two applications should be refused and the site returned to its original state
- The development does not meet the criteria for TRS10 for new employment premises in the countryside [**JDCM comment:** this policy is not relevant to this application]
- No details have been provided about the changes made to the property.
- A decision on this site is long overdue given the impact on local residents with much of the recent dialogue seems to be in conflict with the recommendation report CO/15/00110 which considered the yard and buildings as one single application.

## Planning Policy

15. The Development Plan comprises the saved policies in the adopted Ashford Borough Local Plan 2000, the adopted LDF Core Strategy 2008, the adopted Ashford Town Centre Action Area Plan 2010, the Tenterden & Rural Sites DPD 2010, the Urban Sites and Infrastructure DPD 2012, the Chilmington Green AAP 2013 and the Wye Neighbourhood Plan 2015-30. On 9 June 2016 the Council approved a consultation version of the Local Plan to 2030. Consultation commenced on 15 June 2016 and is now closed. At present the policies in this emerging plan can be accorded little or no weight.

16. The relevant policies from the Development Plan relating to this application are as follows:-

**Ashford Borough Local Plan 2000**

**GP12** – Protecting the Countryside and Managing Change

**RE14** – Removal of Agricultural Occupancy Conditions

**Local Development Framework Core Strategy 2008**

**CS1** – Guiding Principles

**CS6** – Rural Settlement Hierarchy

**CS9** – Design Quality

**CS20** – Sustainable Drainage

**Tenterden & Rural Sites DPD 2010**

**TRS1** – Minor residential development or infilling

**TRS2** – New residential development elsewhere

**TRS17** – Landscape character and design

**Local Plan to 2030**

**SP1** – Strategic Objectives

**SP6** – Promoting High Quality Design

**HOU5** – Residential windfall development in the countryside

**HOU12** – Residential Space standards internal

**HOU13** – Homes suitable for family occupation

**HOU15** – Private external open space

**TRA3a** – Parking Standards for Residential Development

**ENV3** – Landscape Character and Design

**ENV9** – Sustainable Drainage

17. The following are also material to the determination of this application:-

**Supplementary Planning Guidance/Documents**

Landscape Character Assessment SPD 2011

Residential Space and Layout SPD 2011 (now external space only)

Residential Parking and Design SPD 2010

Sustainable Drainage SPD 2010

**Government Advice**

National Planning Policy Framework (NPPF) 2012

18. Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF are relevant to this application:
19. Paragraph 14 states that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For plan-making this means that:
- Local planning authorities should positively seek opportunities to meet the development needs of their area;
  - Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
    - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
    - specific policies in this Framework indicate development should be restricted

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and



- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (my underlining); or
  - specific policies in this Framework indicate development should be restricted.
  
- 20. Para. 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
  
- 21. Paragraph 55 of the NPPF outlines the promotion of sustainable development in rural areas, stating that, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
  - the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
  - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
  - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
  - the exceptional quality or innovative nature of the design of the dwelling.
  
- 22. National Planning Policy Guidance (NPPG)

## **Assessment**

- 23. The main issues for consideration for the development are:
  - Loss of agricultural workers dwelling in the locality
  - Principle & 5-Year housing land supply Visual Amenity

- Residential Amenity
- Highway Safety & Parking
- Other issues

### **Loss agricultural workers dwelling in the locality**

24. The agricultural occupancy condition was originally imposed because it related to a new dwelling in the countryside that was only justified to serve the agricultural business on the adjacent site. At the time of the application this was a pig enterprise that in later years was built up by a different owner as a specialist fuchsia and pelargonium nursery. The Council has resisted in the past both in 1981 and 2000 the removal of the AOC on the basis that at that time it had not been demonstrated that the dwelling was not required to meet an agricultural need either on the site itself or in the locality.

25. Saved policy RE14 of the Local Plan 2000 relating to the removal of agricultural occupancy conditions, says the following:

*“The removal of agricultural occupancy conditions will not be permitted unless a strong and well researched case can be made that there is no likely long term need for the housing by people in the locality employed, or last employed, in agriculture”.*

26. The preamble text says that an assessment would need to be made as to whether or not there is likely to be a long term need, not only on the farm itself, but in the surrounding area. Evidence will be needed that the property has been widely advertised for sale for at least six months at a price which reflects the occupancy restriction.

27. This policy is broadly consistent with the first point of para. 55 of the NPPF referring to new isolated dwellings in the countryside being avoided unless there are special circumstances such as the *“essential need for a rural worker to live permanently at or near their place of work in the countryside”*.

28. Marketing information has now been submitted together with a supporting statement to outline why the agricultural occupancy restrictions on the dwelling are no longer justified.

29. Firstly, the agricultural occupancy condition imposed was less burdensome with reference to the occupant only having to be “employed or last employed in agriculture”. There was no reference to the more burdensome wording of a modern condition being that would say that the occupant would have to be “solely/mainly” employed in agriculture. This more modern worded condition would therefore require a greater degree of employment in agriculture than

the current condition requires. It has therefore been confirmed by the Council's Rural Planning consultant that the current condition could be fulfilled with a relatively low degree of agricultural employment as there is no reference to "solely or mainly employed in agriculture" so in effect the occupant could be earning their main income completely unrelated to agriculture. This has an impact on the usual discount of the value of the property which would be reflect the existence of such a condition. Given the size of the dwelling and the reduced discount applied if the property were to be sold, it would be unlikely to be viable for an agricultural worker. This is borne out in the marketing information from when the property and neighbouring yard were last sold in 2013. Given the wording of the condition, the size of the dwelling and the assumed value, it is unlikely to serve a long term purpose as a dwelling for an agricultural worker. The development would therefore comply with saved policy RE14 of the Local Plan.

30. Turning to the subdivision of the dwelling, the imposition of a condition relating to the use of either of the dwellings as an AOC dwelling would only be reasonable if it were considered necessary to comply with current planning policies contained within the NPPF and the current adopted Development Plan. Given the requirements of the para. 14 and 55 of the NPPF it is therefore necessary to consider the development within the context of a presumption in favour of sustainable development.

### **31. Principle & 5-Year housing land supply**

32. Given the assessment above, in essence, planning permission is sought for a new dwelling in the countryside. Policy TRS1 outlines where development in the rural area is accepted in principle. Whilst Bethersden is one of the villages which is considered acceptable for development as a tier 3 settlement under policy CS6 of the Core Strategy, the site lies outside of the built confines of Bethersden. For the purposes of this policy, the built confines are defined as being 'the limits of continuous and contiguous development forming the existing built up area of the settlement, excluding any curtilage beyond the built footprint of the buildings on the site'.

33. Policy TRS2 outlines the criteria against which new dwellings are assessed where they fall outside of the built confines of a village outlined under policy TRS1. It says new residential development outside the built-up confines of Tenterden or the villages listed in Policy TRS1 will not be permitted unless it constitutes one of the following:

- a) it is an agricultural dwelling, justified under PPS7, or,
- b) it is a re-use or adaptation of an existing rural building of architectural or historic interest, justified under policy TRS3, or

- c) it is a replacement dwelling that is justified under Policy TRS3, or
  - d) it is a 'local needs' scheme on an exception site justified under Policies TRS4 or TRS5. None of the other criterion listed above apply in this instance as an agricultural dwelling is not being considered, instead two unencumbered dwellings.
34. Given that the proposal fails to meet either Policy TRS1 or TRS2, in principle it would not be considered an acceptable site for residential development against the current adopted development plan policies in relation to housing supply.
35. Paragraph 14 of the NPPF advises that planning permission should be granted without delay where the proposal accords with the development plan but where the plan is either:
- a) absent,
  - b) silent, or
  - c) out of date, and
  - d) where there are no adverse impacts which would significantly and demonstrably outweigh the benefits of the development.

Planning permission should be granted unless any adverse impacts of doing so which would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole or specific policies in this Framework indicate development should be restricted.

36. Paragraph 49 of the NPPF defines 'up to date' as equating to being able to demonstrate a five year supply of deliverable housing sites in the Borough.
37. The 2016 Tilden Gill planning appeal decision (reference APO/E2205/W/15/3032575) is an important material consideration in the assessment of whether the council can demonstrate a deliverable 5-year housing land supply. The appeal relates to a site in the rural area for up to 100 dwellings. The appeal tested the Council's current position regarding its 5-year land supply. In allowing the appeal, the Inspector appointed by the Secretary of State to assess the appeal concluded that:

*'64. Against the requirements set in the development plans, the Council cannot demonstrate a five-year land supply. Consequently, according to the advice in paragraph 49 of the NPPF, the relevant policies for the supply of housing should not be considered up-to-date.'*

38. In light of the appeal decision, some of the development plan policies relating to the supply of housing discussed above, which would normally restrict residential development outside the built confines of rural settlements, are, in the absence of a deliverable 5 year land supply, now considered to be not up to date. Since the Tilden Gill appeal decision the 5 year land supply position has not improved.
39. As such, it should be accepted that the presumption in favour of sustainable development reflected in paragraph 14 of the NPPF should be the principal consideration for the determination of this application.
40. This being the case, I do not consider that it is open to the Council to refuse the application simply because the site lies outside the settlement boundary. The application must instead be assessed to consider whether the proposal would generate harm and adverse impacts. These impacts would have to result in significant and demonstrable harm to warrant refusal and the benefit of the development should outweigh any harm identified. This is addressed in the report which follows.
41. In relation to whether the site can be considered to be “non-isolated” as per Para. 55 of the NPPF, the site is within close proximity to the junction of Woodchurch Road and the A28 (0.5miles) where there is bus stop and regular service towards both Ashford Town and Bethersden. Bethersden latter of which has a range of day to day services available and is 4 miles from Woodchurch which has doctors surgery. Public rights of way run from Brissenden Green Lane to the north towards the village of Bethersden which is approximately 1.5 miles from the site.
42. In light of the above, I do not consider that the site can be considered physically isolated and trips generated by car would be short and considered to be sustainable in this instance.
43. The existing dwelling is of substantial and permanent construction. The dwelling can be easily integrated into the immediate area without the need for additional service provision and would not meet the criteria for planning obligations in accordance with the guidance contained within the NPPG.
44. Concerns have been raised that the development fails to accord with the development plan and the NPPF, this has been addressed above. Examples of other sites which have been considered recently by the Local Planning Authority have been raised by neighbours, however, no one site is the same and the contexts are significantly different. The example of a recent appeal decision in Wittersham, which is in an Area of Outstanding Natural Beauty (AONB) concluded that whilst it would contribute to the 5 year housing land supply, under paragraph 116 of the NPPF, there was no overriding

justification for the level of harm caused to the designated landscape by the development of new housing.

### **Visual Amenity**

45. The existing dwelling has been physically altered externally over time, however, none of these physical works were carried out in order to divide the dwelling into 2 separate dwellings. The dwelling therefore retains the same physical presence within the street scene and landscape as before. The reuse of the existing dwelling to form two separate planning units, accommodating two separate families, can therefore be considered to represent a sustainable form of development without detriment to the character and appearance of the countryside where the objective is to conserve and reinforce.
46. Neighbours have also raised concerns regarding the removal of the hedgerow and the extent of hardstanding to the front of the site which pre-dates the current owners of the site. This would not have required the benefit of planning permission. Notwithstanding this, whilst there has been a visual change there is no harm to the character and appearance of the countryside.

### **Residential Amenity**

47. The proposal is situated within a large plot with the neighbouring yard, which falls within the same ownership immediately adjacent to the east. The next nearest neighbour to the west being approximately 25 metres from the shared boundary. Given these distances, I do not consider there would be any harm caused by the net increase of one dwelling on the site as a result of noise and disturbance and loss of privacy. A condition can be imposed preventing further additions to the dwelling in the interests of both visual amenity and the residential amenity of the occupiers of the neighbouring dwellings. Concerns have been raised by neighbours regarding the impact of the development on the enjoyment of their dwellinghouses. Given that the use of the site is residential, the noise and disturbance associated with the use would be limited
48. The internal and external layout would comply with the relevant National and Local requirements without detriment to the current or future occupiers of the two dwellings.
49. Concerns have been raised that there is no compliance with building regulations, however, the internal works have been in place for a period in excess of 2 years. The Council's Head of Building Control has confirmed that due to this time period the development is immune from enforcement action by Building Control.

### **Highway Safety & Parking**

50. There is parking provision at the site for at least 2 vehicles for each dwelling. This meets the requirements set out in the Council's Residential Parking Standards. Whilst concerns have been raised regarding an increase in traffic, the associated vehicle movements associated with a net increase of one dwelling are limited and would not give rise to highway safety issues.

### **Other issues**

51. There have been a number of additional concerns raised by neighbours regarding the development. Firstly, that the site is in close proximity to a Floodzone. Whilst this is correct, the site is not within the floodzone, which is located approximately 70 metres to the north of the site and the footprint of the building is not proposed to be altered. Therefore, there is no increased risk of flooding as a result of the proposed development.
52. The River Beult which runs to the north of the site is designated as a Site of Special Scientific Interest (SSSI) further down its course. Concern has been raised regarding the treatment of effluent from the site and drainage into the river. The Environment Agency are not a statutory consultee on the application but have visited the application site and the neighbouring yard and are content that there are no issues with pollution. Furthermore, Environmental Health has been consulted on the method of effluent disposal from the two dwellings, which the agent has confirmed is via a sealed cesspit. It is worth noting that Environmental Health have confirmed a suitable condition can be imposed to prevent any potential for the cesspit to discharge into the River and that the EA have found no evidence of this to date.
53. One neighbour is concerned that no ecology report has been provided. There is no such requirement given that there are no physical works being carried out to the site and in any event the site is of low ecological value given that it is developed land.
54. Many of the objections to this application relate to the neighbouring yard. Whilst this is within the same ownership as the application site, it does not form part of this application. Whilst the dwelling was originally granted planning permission in 1964 and included a large area of land, including the neighbouring yard, this does not mean that the applicant cannot submit an application which encompasses only part of the site. The Local Planning Authority has a statutory duty to determine the application as submitted. The granting of this application does not in any way compromise the assessment of the acceptability of the neighbouring yard. Each application is determined on its own merits.

55. It has been argued that the granting of this application would result in an increase in development on the site (as whole). If planning permission is required for any future development, this would be considered at the time and given that the Council can control future permitted development by condition. The Council can only determine what is proposed under this application.
56. Residents are very concerned about the approach that the Council has taken regarding the current breach of planning control in relation to the subdivision of the dwelling and its occupation without complying with the AOC. Following investigation officers sought to negotiate compliance with the breach and reversion of the dwelling back to single dwelling within a specified timeframe in accordance with Central Government Guidance. The owner subsequently submitted this application which seeks to regularise the breaches of planning control. The Council has a duty to consider the application and the outcome will determine any future course of action.

## **Human Rights Issues**

57. I have also taken into account the human rights issues relevant to this application. In my view, the "Assessment" section above and the Recommendation below represent an appropriate balance between the interests and rights of the applicant (to enjoy their land subject only to reasonable and proportionate controls by a public authority) and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties).

## **Working with the applicant**

58. In accordance with paragraphs 186 and 187 of the NPPF, Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner as explained in the note to the applicant included in the recommendation below.

## **Conclusion**

59. The proposed development would result in the loss of an agricultural dwelling within the locality. However, it has been demonstrated that its loss would be acceptable as the dwelling could no longer serve the agricultural rural community due to the nature of the occupancy condition governing it and the development would therefore comply with Policy RE14. Whilst the site lies outside of the built confines of the village of Bethersden and is therefore identified as being within the countryside and a departure from the development plan, the site is not considered to be isolated. However, in the light of the Tilden Gill appeal decision and the consequential advice in the NPPF regarding the Council's housing supply policies, the Council needs to



consider the application in the light of the NPPF's presumption in favour of sustainable development.

60. The NPPF advises that planning permission should only be granted against the Development Plan where the plan is absent, silent or out of date and where any adverse impacts would be significantly and demonstrably outweighed by the benefits of development. In arriving at my recommendation, I have taken into account the provisions within the NPPF where the provision of new housing is a material consideration that must be afforded significant weight in the planning balance. There is no material significant harm caused by the development given that the site is within a sustainable location and re-uses an existing building without the need for re-building or additional works to facilitate the use of it as two separate planning units.
61. The development would not negatively impact upon the natural environment nor would it have a detrimental impact on the amenity of the occupiers of the neighbouring dwellings or significant harm to highway safety. Therefore, in light of this and given that the Council is unable to demonstrate a deliverable 5 year housing land supply, the presumption in favour of sustainable development leads to the development being acceptable when assessed against the NPPF and other relevant Development Plan policies.

## Recommendation

### Permit

Subject to the following conditions and notes:

1. The two dwellings hereby permitted shall be occupied as single C3 dwellinghouses and not for any other purpose whether or not in the same use class of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or any subsequent Order revoking or re-enacting that Order, or whether the alternative use is permitted by virtue of Article 3 and Schedule 2 Part 3 of the Town and Country Planning (General Permitted Development) Order 2015 or any Order revoking or re-enacting that Order.

**Reason:** In order to preserve the amenity of the locality.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no development shall be carried out within Classes A-B & E; of Part 1 of Schedule 2 of that Order (or any Order revoking and re-enacting that Order), without prior approval of the Local Planning Authority.

**Reason:** In the interests of protecting the character and amenities of the locality

3. Within 2 months of this permission, the cesspit system shall be inspected by a suitably qualified drainage engineer and a report submitted to and approved in writing to the Local Planning Authority to confirm whether there are any discharge/overflow points from the cesspit to the land or watercourses.

In the event any discharge/overflow points are found, the above report shall include a scheme of works which outlines how the discharge/overflow point(s) will be sealed. The works shall be carried out in strict accordance with these approved details within 1 month of the approval of the details and shall be maintained in perpetuity thereafter.

**Reason:** To prevent pollution of the water environment.

4. The development shall be carried out in accordance with the plans listed in the section of this decision notice headed Plans/Documents Approved by this decision, unless otherwise agreed by the Local Planning Authority.

**Reason:** To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

5. The development approved shall be made available for inspection, at a reasonable time, by the local Planning authority to ascertain whether a breach of planning control may have occurred on the land (as a result of departure from the plans hereby approved and the specific terms of this permission/consent/approval).

**Reason:** In the interests of ensuring the proper planning of the locality, the protection of amenity and the environment, securing high quality development through adherence to the terms of planning approvals and to ensure community confidence in the operation of the planning system.

### Notes to Applicant

1. Working with the Applicant

In accordance with paragraphs 186 and 187 of the NPPF Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner by;

- offering a pre-application advice service,
- as appropriate updating applicants/agents of any issues that may arise in the processing of their application
- where possible suggesting solutions to secure a successful outcome,

- informing applicants/agents of any likely recommendation of refusal prior to a decision and,
- by adhering to the requirements of the Development Management Customer Charter.

In this instance

- the applicant/agent was updated of any issues after the initial site visit,
  - the applicant/ agent responded by submitting additional information relating to foul drainage, which was found to be acceptable
  - The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.
2. It is the responsibility of the applicant to ensure, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at: <http://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land>. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works.

## Background Papers

All papers referred to in this report are currently published on the Ashford Borough Council web site ([www.ashford.gov.uk](http://www.ashford.gov.uk)). Those papers relating specifically to this application may be found on the [View applications on line](#) pages under planning application reference 16/01804/AS.

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Annex 1



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