

**USE OF A BUILDING  
AS A COOKERY SCHOOL,  
WORKSHOP, GARAGE AND  
RESIDENTIAL FLAT,  
NORTH SYDMONTON HOUSE,  
NORTH SYDMONTON RG20 4UL**

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**SUPPORTING STATEMENT**

**September 2022**





**USE OF A BUILDING  
AS A COOKERY SCHOOL,  
WROKSHOP, GARAGE AND  
RESIDENTIAL FLAT,  
NORTH SYDMONTON HOUSE,  
NORTH SYDMONTON RG20 4UL**

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**SUPPORTING STATEMENT**

**September 2022**

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**Authorised By EGC 09/22**

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T: 01793 771333 Email: info@kernon.co.uk Website: www.kernon.co.uk*

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*Directors - **Tony Kernon** BSc(Hons), MRAC,, MRICS, FBIAC **Sarah Kernon**  
Chartered Surveyor – **Sam Eachus** BSc(Hons), MRICS, MBIAC  
Consultant – **Ellie Chew** BSc(Hons), – **Lauren Gaunt** BSc(Hons), – **Amy Curtis** BSc(Hons)*

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# 1 INTRODUCTION

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- 1.1 An application for a certificate of lawfulness was refused in June 2022 under reference 22/00763/LDEU. The reasons were that a 10 year period of use had not been demonstrated.
- 1.2 The buildings were built between January 2013 and February 2014, and were brought into use by August 2014. There is no dispute of these dates. Therefore the Council accepts that the buildings are immune from enforcement.
- 1.3 Therefore the buildings are lawful and will remain. However the use of the buildings has only been taking place for 8 years, and are not lawful.
- 1.4 This application seeks to resolve this oddity of the planning system, which otherwise results in lawful buildings having no lawful use. The application follows correspondence with the Council's planning and enforcement team.
- 1.5 This Supporting Statement:
- (i) describes the building and uses in section 2;
  - (ii) sets out the lawful status of the buildings in section 3;
  - (iii) sets out the relevant planning policy and considerations in section 4;
  - (iv) assess the proposals in section 5;
  - (v) ending with conclusions in section 6.
- 1.6 The correspondence that preceded this application is in **Appendix KCC1**.

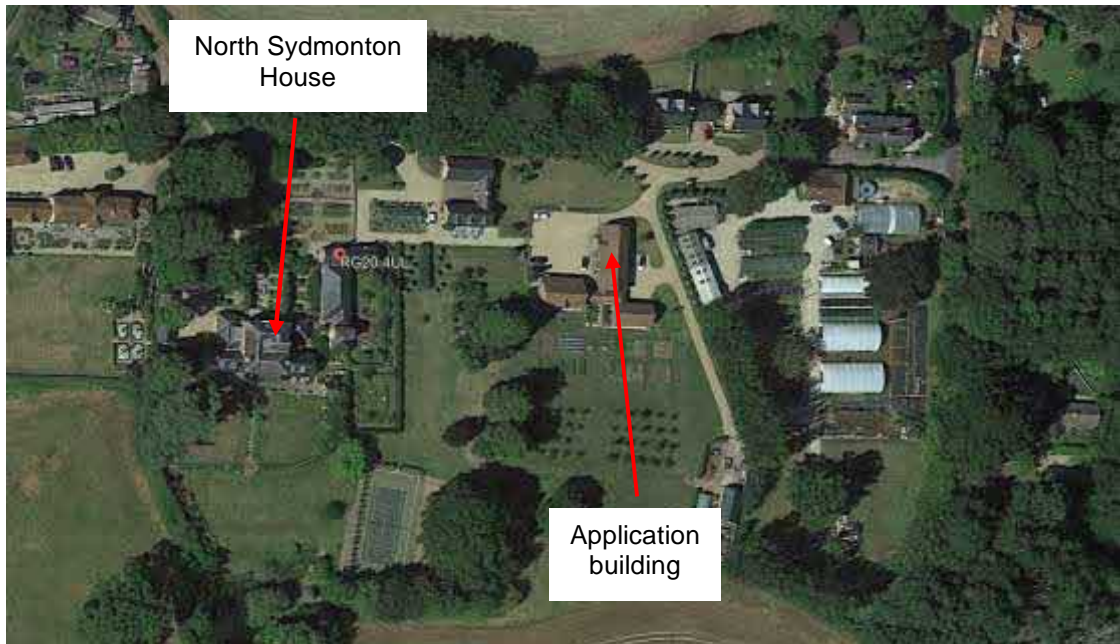
## 2 THE DEVELOPMENT

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### The Buildings

- 2.1 The buildings are shown on the Google Earth image below. North Sydmonton House is also identified.

*Insert 1: The Application Building*



- 2.2 The buildings are shown externally in the following photographs. They comprise three interlinked buildings with a connecting roof.

*Photo 1: Viewed from the North*



*Photo 2: From the West*



*Photo 3: From the South*



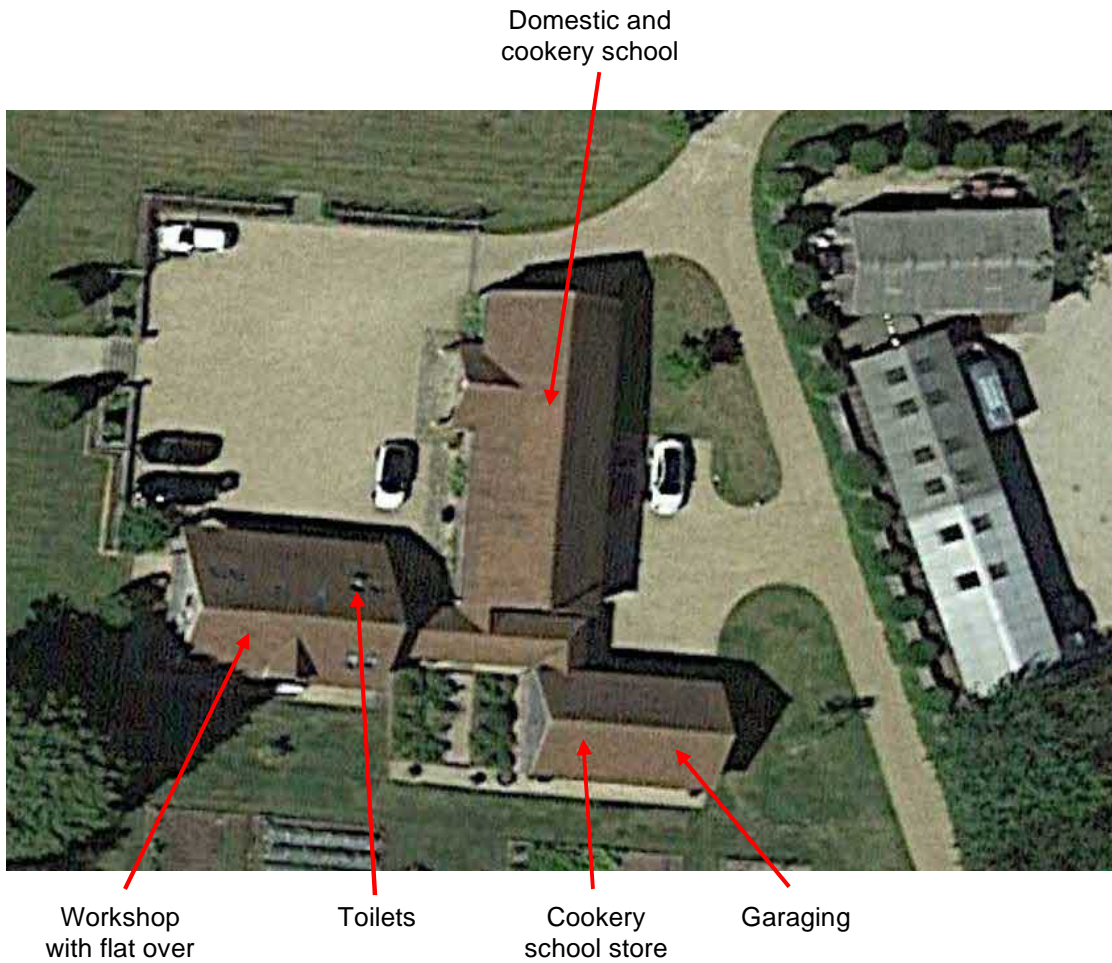
*Photo 4: From the East*



**The Uses**

2.3 The building is used as follows.

*Insert 2: The Uses Identified*



2.4 The domestic and cookery school is shown in the following photographs.

*Photos 5 – 10: The Party Barn and Cookery Area*





2.5 The workshop is shown below, with attached boiler room and store, and the ground floor toilets.

*Photos 11 - 14: The Workshop and Toilets*





2.6 The flat is accessed via a staircase from the door, as shown below.

*Photos 15: Door to Flat*



Door to flat

2.7 The flat is shown below.

*Photos 16 - 21 The Flat*





2.8 The garages and cookery store area are shown below.

*Photos 22 and 23: Garages and Cookery Store*



2.9 The flat is lived in by a housekeeper.

2.10 The workshop and toilets are used for those purposes.

2.11 The store for the cookery school use is only used as a store for that use. The garages store cars.

2.12 The main building is used for domestic uses, such as dinners and parties. It is also used for cookery school and other meetings.

### 3      **LAWFUL STATUS OF THE BUILDING**

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3.1      The buildings were permitted for equestrian purposes in 2012, and replaced two more-substantial poultry sheds. The original buildings and the original planning consent, showing that the building accorded with the design, is set out in **Appendix KCC2**.

3.2      In application 22/00763/LDUE the case officer concluded as follows, in respect of the lawfulness of the built form of the buildings. The officer report is set out in **Appendix KCC3**:

**“The evidence provided by the architect and the statutory declaration confirming the building work commenced in January 2013 with the main construction phase being completed by February 2014. The aerial photographs, as described above, confirm the built form was present on-site in 2017, in what appears to be a completed state. The surrounding land around the site appears undisturbed in the 2017 aerial photograph, with the gravel parking and landscaping in place. The photographs suggest that all construction works were completed before 2017 as the site appears to match that currently experience onsite.**

**The Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, and the evidence and information provided are considered to be sufficiently precise and unambiguous as to justify that the buildings were constructed and completed 4 years prior to the submission of the application. As such, if all other matters had been acceptable, a certificate relating to the built form and their immunity from enforcement action could be issued”.**

3.3      The lawful status of the buildings has therefore been considered and accepted.

3.4      It was concluded that **“evidence has been provided to confirm that the built form is immune from enforcement action”**.

3.5      The Certificate was refused because the use had not taken place for a continuous period of 10 years.

3.6      As set out in the exchange of correspondence in **Appendix KCC1**, the judge in the Welwyn Hatfield case stated:

**“The building attracts a four year period for enforcement under subsection (1), while its use attracts, at any rate in theory, a ten year period for enforcement under subsection (3). I say in theory because there is a potential answer to this apparent**

**anomaly, one which would apply as much to a dwelling house as to any other building. It is that, once a planning authority has allowed the four year period for enforcement against the building to pass, principles of fairness and good governance could, in appropriate circumstances, preclude it from subsequently taking enforcement steps to render the building useless**

- 3.7 Without consent for the uses, the buildings have no lawful use. Therefore this application seeks consent for the uses that have been carried out for the last 8 years.

## 4 PLANNING POLICY OF RELEVANCE

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- 4.1 The application relates to an unusual situation, where an ongoing use needs to be regularised. The buildings are immune from enforcement. Therefore the policies considered are those relating to the change of use of a building.

### **National Policy**

- 4.2 Under the heading “supporting a prosperous rural economy”, paragraph 84 of the National Planning Policy Framework (July 2021) sets out that **“Planning policies and decisions should enable:**
- a) **the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings”.**

- 4.3 Paragraph 80 sets out that residential development in the countryside should be avoided unless these result from special circumstances including where **“the development would re-use redundant or disused buildings and enhance its immediate setting”.**

### **Local Policy**

- 4.4 The West Berkshire Core Strategy (2006-2026) was adopted in 2012. Policy CS10 “Rural Economy” encourages proposals to diversify the rural economy.

## 5 ASSESSMENT

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### Relevant Considerations

- 5.1 The buildings are immune from enforcement, as confirmed above. The assessment is therefore restricted to those considerations relevant to the use of the building.

### In-Principle

- 5.2 Planning policy in the NPPF (2021) requires planning decisions to enable the sustainable growth and expansion of business in rural areas through conversion of existing buildings. Policy supports the creation of homes from the re-use of existing buildings.
- 5.3 In principle the use of the building accords with planning policy. The alternative is an otherwise unused building.

### Details

- 5.4 There are no landscape or biodiversity, flooding or other considerations relevant to this application because the buildings are lawful and the use is ongoing.
- 5.5 Therefore the factors that fall to be considered are relatively limited:  
traffic generation and safety;  
noise and amenity of neighbours;  
economic and employment.
- 5.6 **Traffic.** The cookery school is used about 8 times per month. Each involves teaching 8-10 people. Most arrive by car, and as can be seen below there is parking for this number of visitors.

*Photo 24: Parking Available*



5.7 The entrance has a wide splay, as shown below.

*Photo 25: Entrance Splay*



5.8 The entrance falls within a 40mph zone. Visibility from a 2.4m setback is good to the north, but below standard to the south. The reason for the limited visibility relates to the curve of the road. Traffic coming around this corner will be travelling slower than 40mph.

*Photos 26 and 27: Visibility from 2.4m setback*



North



South

5.9 There have been no incidents of which we are aware of from the use of the entrance over the last 8 years.

5.10 **Noise and Amenity.** So far as we are aware, there has not been any complaint as a result of noise or disturbance from the cookery school, which operates periodically and in the daytime only.

5.11 **Employment and Economic Benefits.** The cookery school operates as a Trust. On cookery days part-time staff are employed. There is an economic and employment benefit for the economy, therefore.

**Conclusions**

5.12 The proposals accord with the planning policy.

5.13 There are no site-specific reasons to resist development.



**APPENDIX KCC1**  
**Correspondence July 2022**

## Kernon Countryside Consultants

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**From:** Mark Andrews <[REDACTED]>  
**Sent:** 14 July 2022 10:58  
**To:** Kernon Countryside Consultants  
**Subject:** RE: North Sydmonton House - ref: EC/21/00223/BOC3

Dear Tony

Thanks for your email.

I have reviewed the Certificate decision and note that the built form is likely immune, however none of the uses have obtained the required 10 years immunity. This includes the;

- Domestic and cookery school - Northern building;
- Cookery school store and garaging (domestic ancillary to the main dwelling of North Sydmonton House) - Southern building; and
- Workshop with housekeepers flat ancillary to the main dwelling (North Sydmonton House) - Western building.

As discussed and agreed on the phone, you indicated that your client will likely seek to regularise the uses through the submission of a retrospective planning application and indicated that you would be able to submit this within 4 weeks (by 11<sup>th</sup> August 22).

Please confirm (within 7 days) by reply to this email that the above is correct and reflect your clients intentions.

I await your response.

Kind regards, Mark

Mark Andrews  
Senior Compliance and Enforcement Officer  
Basingstoke and Deane Borough Council



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**From:** Kernon Countryside Consultants <[REDACTED]>  
**Sent:** 06 July 2022 12:58  
**To:** Mark Andrews <[REDACTED]>  
**Cc:** Eleanor Chew <[REDACTED]>; Simon Arber <[REDACTED]>  
**Subject:** RE: North Sydmonton House - ref: EC/21/00223/BOC3

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Dear Mark

Further to your recent email regarding intended action, we have not been able to contact our clients to discuss this.

The issues here relate to the buildings and uses.

The case officer has concluded, as set out in the officer's report, that the buildings have been in situ more than 4 years and are immune from enforcement. The conclusion in the officer report was that "if all other matters had been acceptable, a certificate relating to the built form and their immunity from enforcement action could be issued". The buildings are immune from enforcement, therefore.

In respect of the flat the officer report concluded that the flat is used ancillary to use of the main dwellinghouse, rather than as an independent dwelling. There is, on that analysis, no breach of planning in terms of use.

In terms of the use of the cookery school and workshop, the officer report sets out that to gain immunity the use must exist for 10 years. As the buildings are only 8 years old, they have not gained immunity.

Are you happy to accept the clear conclusion in the officer report, or do you require the Applicant to resubmit the application in respect of the building works only?

If, as I am sure you will, you accept that the buildings are immune from enforcement, the question then arises as to whether you intend to enforce against the use. I note that in the *SSCLG and others v Welwyn Hatfield Borough Council* case ([2011] UKSC 15, judgement given 6<sup>th</sup> April 2011), the judge in paragraph 17 stated:

**"The building attracts a four year period for enforcement under subsection (1), while its use attracts, at any rate in theory, a ten year period for enforcement under subsection (3). I say in theory because there is a potential answer to this apparent anomaly, one which would apply as much to a dwelling house as to any other building. It is that, once a planning authority has allowed the four year period for enforcement against the building to pass, principles of fairness and good governance could, in appropriate circumstances, preclude it from subsequently taking enforcement steps to render the building useless".**

I welcome your thoughts on how you intend to proceed as well, so that collectively we can decide on the most expedient and efficient way to resolve this issue.

Resolution may be best achieved by an application to use the buildings for the current uses.

I look forward to hearing from you.

With kind regards.

Yours sincerely

**Tony Kernon**  
BSc(Hons), MRICS, FBIAC



Kernon Countryside Consultants Ltd

REGISTERED AS A  
FIRM REGULATED BY RICS  
Firm Registration No: 023680



Registered office: Greenacres Barn, Stoke Common Lane, Purton Stoke, Swindon SN5 4LL

Under the General Data Protection Regulations (GDPR) May 2018, we are required to inform you that by agreeing to engage us to perform the above service, you are happy for us to hold your information. We do not share this with other parties except with your consent as required to ensure the service is performed appropriately.

**From:** Mark Andrews [REDACTED]  
**Sent:** 01 July 2022 09:26  
**To:** Eleanor Chew [REDACTED]  
**Subject:** North Sydmonton House - ref: EC/21/00223/BOC3

Dear Miss Chew,

**Breach of conditions 9 & 12 of BDB/75212; Change of Use to dwelling without Planning Permission; & Change of use to Cookery School without Planning Permission At The Barn, North Sydmonton House, North Sydmonton, Newbury, Hampshire, RG20 4UL – ref: EC/21/00223/BOC3**

I refer to the above.

I note that your clients certificate of lawfulness (22/00763/LDEU) was recently refused and the above breach of planning control remains. Please can you confirm (within 7 days) how your client intends to deal with this matter.

I await your response.

Kind regards, Mark

Mark Andrews  
Senior Compliance and Enforcement Officer  
Basingstoke and Deane Borough Council  
[REDACTED]

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**APPENDIX KCC2**  
**Permitted Development**

## THE PERMITTED DEVELOPMENT

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### Original Buildings

Originally there were two large poultry sheds on the site, as shown below.

*Insert 1: The Original Poultry Sheds*



### Planning Consent

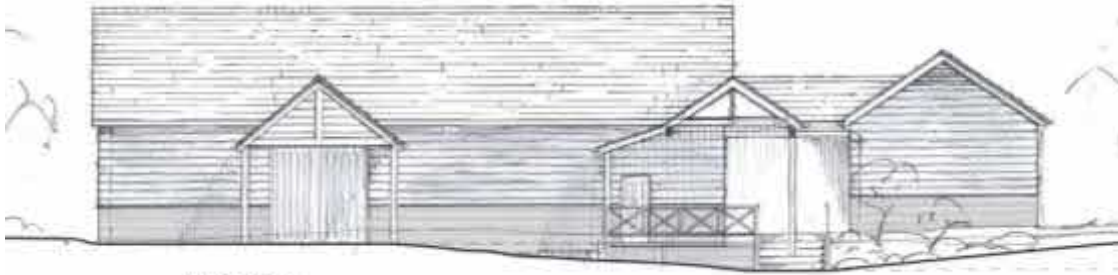
Planning consent was granted in January 2012 to “**demolish existing redundant chicken farm buildings and erect stable block, a feed/hay barn, tack room and machinery shed with ancillary staff facilities above with use of land for equestrian purposes including pony breeding**”.

The planning consent is set out in **Attachment 1**. Key plans are reproduced in **Attachment 2**.

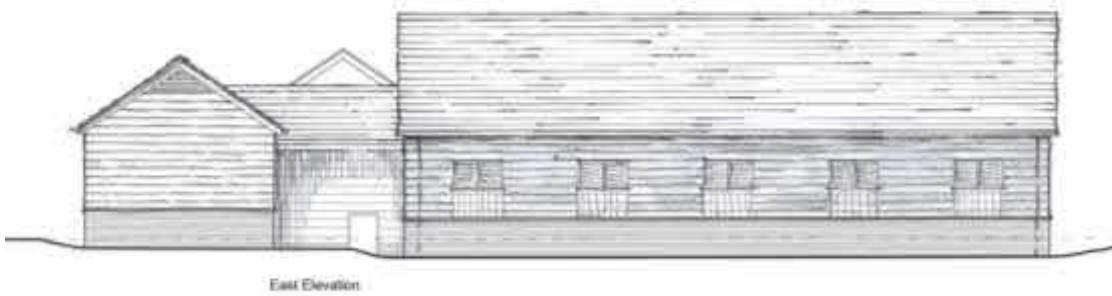
Some of the elevations are compared to the “as built” elevations below. It can be seen that, externally, the building was built very closely to the approved design.

*Insert 2 and Photo 1: West Elevation*

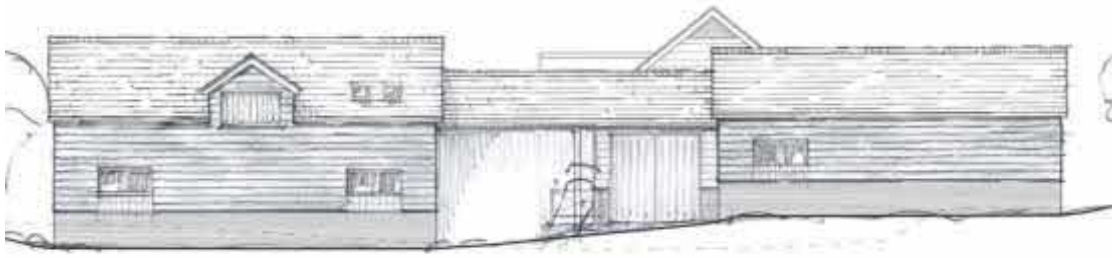
*Please note that the proximity of the building on the right to the photographer makes the perspective misleading*



*Insert 3 and Photo 2: East Elevation*



*Insert 4 and Photo 3: South Elevation*



*Insert 5 and Photo 4: North Elevation*

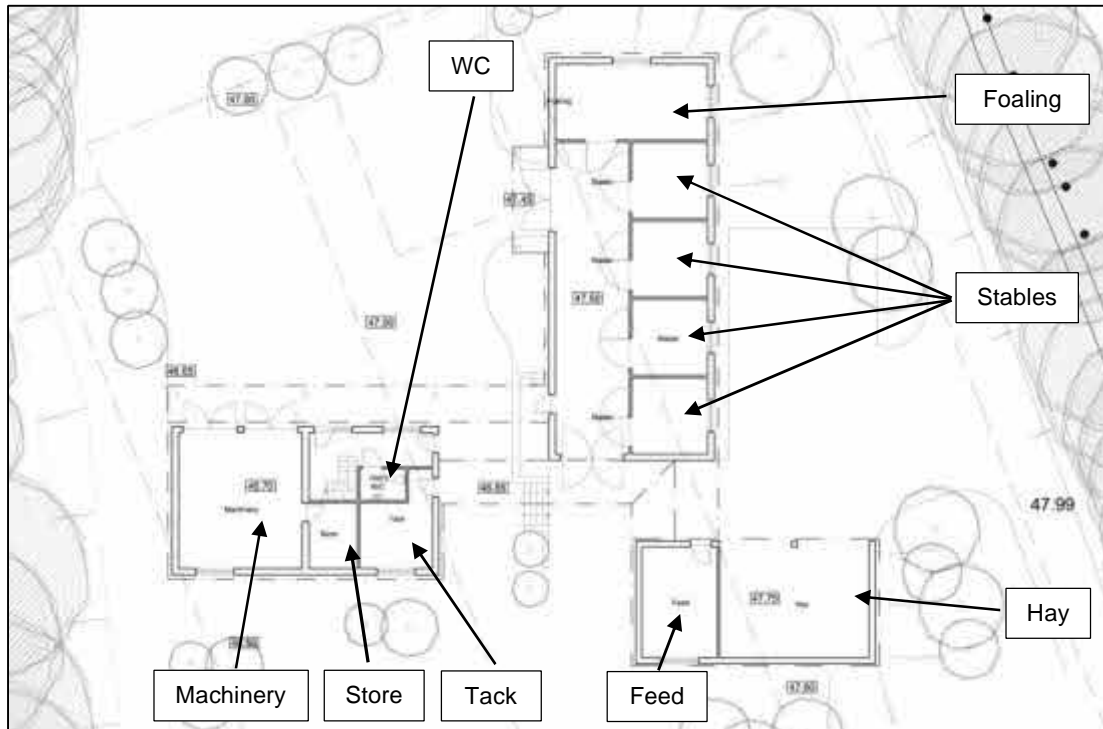




**Permitted Use**

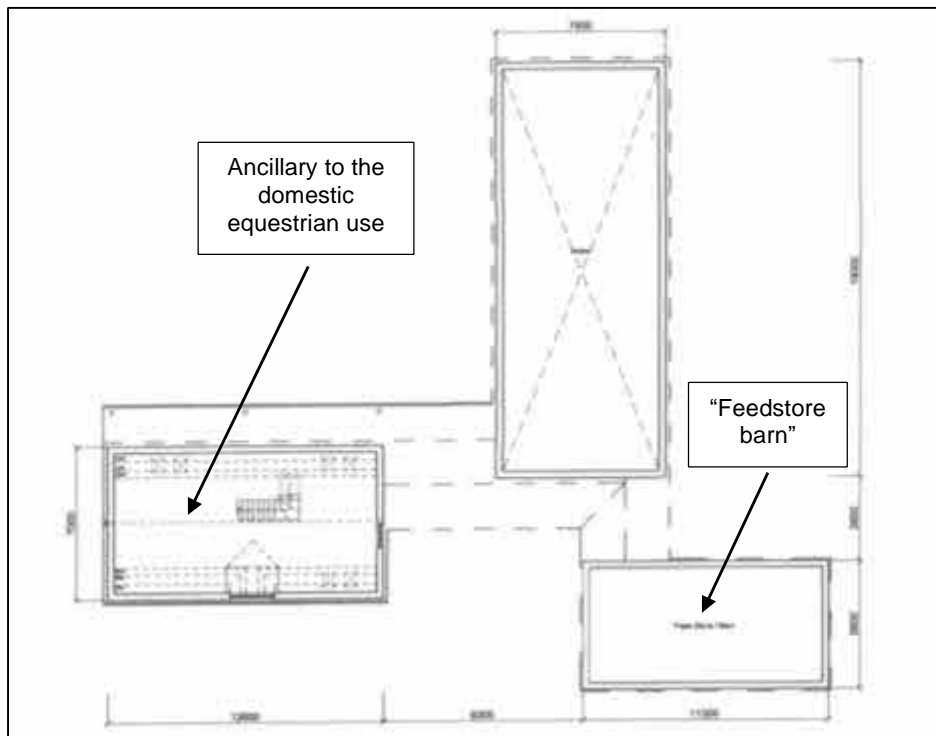
As shown on the permitted Ground Floor and First Floor plans, the permitted uses were as follows (screenshot from one of the plans then annotated for reference).

*Insert 6: Ground Floor Permitted Uses*



The first floor uses were permitted as shown below, with condition 12 of the planning consent confirming that there was to be no subdivision or separate use of the first floor.

*Insert 7: First Floor Permitted Uses*



**Attachment 1**  
**BDB/75212 Planning Consent**



**Basingstoke  
and Deane**

Ms K Bayley  
DGG Planning Limited  
13 Fennel Close  
Chineham  
Basingstoke  
Hampshire  
RG24 8XF

Basingstoke & Deane Borough Council  
Civic Offices London Road  
Basingstoke Hampshire RG21 4AH  
Telephone (01256) 844844  
Britdoc Code DX3008  
Facsimile (01256) 845200  
www.basingstoke.gov.uk  
Ref: BDB/75212

## **NOTICE OF APPROVAL**

**Town & Country Planning Act 1990**

**Town & Country Planning (Development Management Procedure) (England) Order 2010**

In pursuance of its powers under the abovementioned Act, the Council as Local Planning Authority hereby GRANTS planning permission for the:

- Proposal:** Demolish existing redundant chicken farm buildings and erect stable block, a feed/ hay barn, tack room and machinery shed with ancillary staff facilities above with use of land for equestrian purposes including pony breeding
- Location** North Sydmonton Poultry Farm, Adbury Road, North Sydmonton, Newbury, RG20 4UL
- Applicant:** Mr Arber

in accordance with your application, plans and particulars unless otherwise agreed in writing with the Local Planning Authority, for the following reasons:

- 1 The proposed development would be of an appropriate design and relates to surrounding development in a sympathetic manner and as such complies with Planning Policy Statement 1: Delivering Sustainable Development; Planning Policy Statement 7: Sustainable Development in Rural Areas, Saved Policy E1 and E6 of the Basingstoke and Deane Borough Local Plan 1996-2011; and Appendix 14 of the Design and Sustainability Supplementary Planning Document.
- 2 The redevelopment and change of use of the land for private equestrian purposes linked to the occupation of the adjacent dwelling North Sydmonton House is considered to be an acceptable use in this location and consistent with the provisions of Planning Policy Statement 7: Sustainable Development in Rural Areas and Saved Policies E1 and E6 of the Basingstoke and Deane Borough Local Plan 1996-2011

**and subject to compliance with the following conditions:**

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans unless otherwise agreed in writing with the Local Planning Authority:

Location Plan at 1:2500	Plan No. 543WW61 /LPO4C received on 16 December 2011
Site Plan proposed at 1:500	Plan No. 543WW61/SPO1C received on 14 December 2011
Ground Floor Plan at 1:200	Plan No. 543WW61/150A received on 14 December 2011
First Floor Plan at 1:200	Plan No. 543WW61/151B received on 14 December 2011

Roof Plan at 1:200                      Plan No. 543WW61/152B received on 14 December 2011  
South Elevation at 1:100              Plan No. 543WW61/155A received on 14 December 2011  
North Site Section and East Elevations at 1:100      Plan No. 543WW61/154B received on 14  
December 2011  
West Site Section and North and WEst Elevations at 1:100      Plan No. 543WW61/153A  
received on 14 December 2011

**REASON:** For the avoidance of doubt and in the interests of proper planning.

- 2 The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.

**REASON:** To comply with Section 51 of the Planning and Compulsory Purchase Act 2004 and to prevent an accumulation of unimplemented planning permissions.

- 3 No development shall commence on site until a schedule of materials and finishes to be used for the external walls and roof(s) of the proposed building(s) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter maintained in accordance with the details so approved unless otherwise agreed in writing by the Local Planning Authority.

**REASON:** In the interests of the visual amenities of the area and in accordance with Saved Policy E1 of the Basingstoke and Deane Borough Local Plan 1996-2011.

- 4 No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping which shall specify species, planting sizes, spacing and numbers of trees/shrubs to be planted (including replacement trees where appropriate). The works approved shall be carried out in the first planting and seeding seasons following the first occupation of the building(s) or when the use hereby permitted is commenced. In addition, a maintenance programme detailing all operations to be carried out in order to allow successful establishment of planting, shall be submitted to and approved in writing by the Local Planning Authority before development commences. Any trees or plants which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, to be agreed in writing by the Local Planning Authority.

**REASON:** To improve the appearance of the site in the interests of visual amenity in accordance with Saved Policies E1 (ii) and E6 of the Basingstoke and Deane Borough Local Plan 1996-2011.

- 5 If during development works any contamination of the land is encountered or suspected then this shall be fully assessed in accordance with the Contaminated Land Guidance for Developers Leaflet on the BDBC website

<http://www.basingstoke.gov.uk/services/envhealth/contaminatedland.htm>.

The developer must contact the Local Planning Authority as soon as possible and any action should be agreed in writing by the Local Planning Authority.

**REASON:** To ensure any soil, gas or water contamination on the site is remediated to protect the occupiers of the application site and/or adjacent land and in accordance with Saved Policy E1 of the Basingstoke and Deane Borough Local Plan 1996-2011.

- 6 No work relating to the construction of the development hereby approved, including works of demolition or preparation prior to operations, or internal painting or fitting out, shall take place before the hours of 0730 nor after 1800 Monday to Friday, before the hours of 0800 nor after 1300 Saturdays nor on Sundays or recognised public holidays, unless otherwise agreed in writing by the Local Planning Authority.

**REASON:** To protect the amenities of the occupiers of nearby properties during the construction period and in accordance Saved Policy E1 of the Basingstoke and Deane Borough Local Plan 1996-2011.

7. No deliveries of construction materials or plant and machinery and no removal of any spoil from the site shall take place before the hours of 0730 nor after 1800 Monday to Friday, before the hours of 0800 nor after 1300 Saturdays nor on Sundays or recognised public holidays, unless otherwise agreed in writing by the Local Planning Authority.  
REASON: To protect the amenities of the occupiers of nearby properties during the construction period and in accordance Saved Policy E1 of the Basingstoke and Deane Borough Local Plan 1996-2011.
8. The development hereby permitted shall not be occupied or the use commence, whichever is the sooner, until provision for turning (enter, turn and leave in a forward gear), loading and unloading of vehicles and the parking of one 7.5 tonne horse box capable of transporting up to four horses at any one time and three cars have been made within the curtilage of the development and the areas of land so provided shall not be used for any purposes other than the turning, loading and unloading of vehicles and the parking of the 7.5 tonne horse box and cars, unless otherwise agreed in writing by the Local Planning Authority.  
REASON: In the interests of highway safety and in accordance with Saved Policies E1 and A1 of the Basingstoke and Deane Borough Local Plan 1996-2011.
9. The application site area and stables and ancillary accommodation hereby permitted shall be only used for private recreational equestrian purposes by the occupiers of the adjoining property North Sydmonton House and shall not be used for any other purpose including commercial riding, livery or training purposes.  
REASON: In the interests of highway safety, residential amenity and because the site may not be suitable for an independent equestrian use in accordance with Saved Policy E1 of the Basingstoke and Deane Borough Local Plan 1996-2011.
10. No development shall commence on site until details of the materials to be used for hard and paved surfacing have been submitted to and approved in writing by the Local Planning Authority. The approved surfacing shall be completed before the adjoining buildings are first occupied and thereafter maintained unless otherwise agreed in writing by the Local Planning Authority.  
REASON: In the interests of visual amenity and in accordance with Saved Policy E1 of the Basingstoke and Deane Borough Local Plan 1996-2011.
11. The stables hereby permitted shall be occupied solely by horses within the management and control of the occupiers of North Sydmonton House and shall not be sold off or sublet separately from this property.  
REASON: To ensure that the safety and comfort of the animals is not endangered by the lack of residential supervision on the site.
12. The first floor accommodation to the machinery store and tack room shall not be used other than as ancillary to the domestic equestrian use of the site. No sub-division or separate use of this space shall be permitted without the prior approval in writing of the Local Planning Authority.  
REASON: As the intensification or domestic use of the buildings hereby approved would be inconsistent with the principles of sustainable development in the countryside and the creation of a separate unit of accommodation has not been justified through this planning application on this site.

#### Notes to Applicant

1. 1.1 The applicant's attention is drawn to the fact that the above conditions (if any), must be complied with in full, failure to do so may result in enforcement action being instigated.

- 1.2 This permission may contain pre-commencement conditions which require specific matters to be submitted and approved in writing by the Local Planning Authority before a specified stage in the development occurs. This means that a lawful commencement of the approved development CANNOT be made until the particular requirements of the pre-commencement conditions have been met.
- 1.3 The applicant's attention is drawn to the fact that the Local Planning Authority has a period of up to eight weeks to determine details submitted in respect of a condition or limitation attached to a grant of planning permission. It is likely that in most cases the determination period will be shorter than eight weeks, however, the applicant is advised to schedule this time period into any programme of works. A fee will be required for requests for discharge of any consent, agreement, or approval required by a planning condition. The fee chargeable is £85 per request or £25 where the related permission was for extending or altering a dwelling house or other development in the curtilage of a dwelling house. A fee is payable for each submission made regardless of the number of conditions for which approval is sought. Requests must be made using the standard application form (available online) or set out in writing clearly identifying the relevant planning application and condition(s) which they are seeking approval for.
2. Although the risk of bats being affected is considered by the Local Planning Authority to be low, the applicant is advised that this remains a possibility. Therefore, if at any time during the proposed works, bats, or signs of bats (eg. droppings) are found then all works must stop and advice should be sought from Natural England before any further work proceeds. All bats and their roost sites are protected under the Wildlife and Countryside Act 1981 and The Conservation Habitats & Species Regulations 2010 from disturbance and harm.
3. The applicant's attention is drawn to the provisions of the Wildlife and Countryside Act 1981 (as amended) which makes it an offence to kill or harm birds or damage or destroy their eggs. To avoid contravening these provisions it would be advisable to avoid carrying out any work that might damage an active nest during the bird breeding season (March to August inclusive). A guide, Wild birds and the law – A plain guide to bird protection today, can be downloaded from the RSPB's website: [http://www.rspb.org.uk/Images/WBATL\\_tcm9-132998.pdf](http://www.rspb.org.uk/Images/WBATL_tcm9-132998.pdf)



Head of Planning and Transport

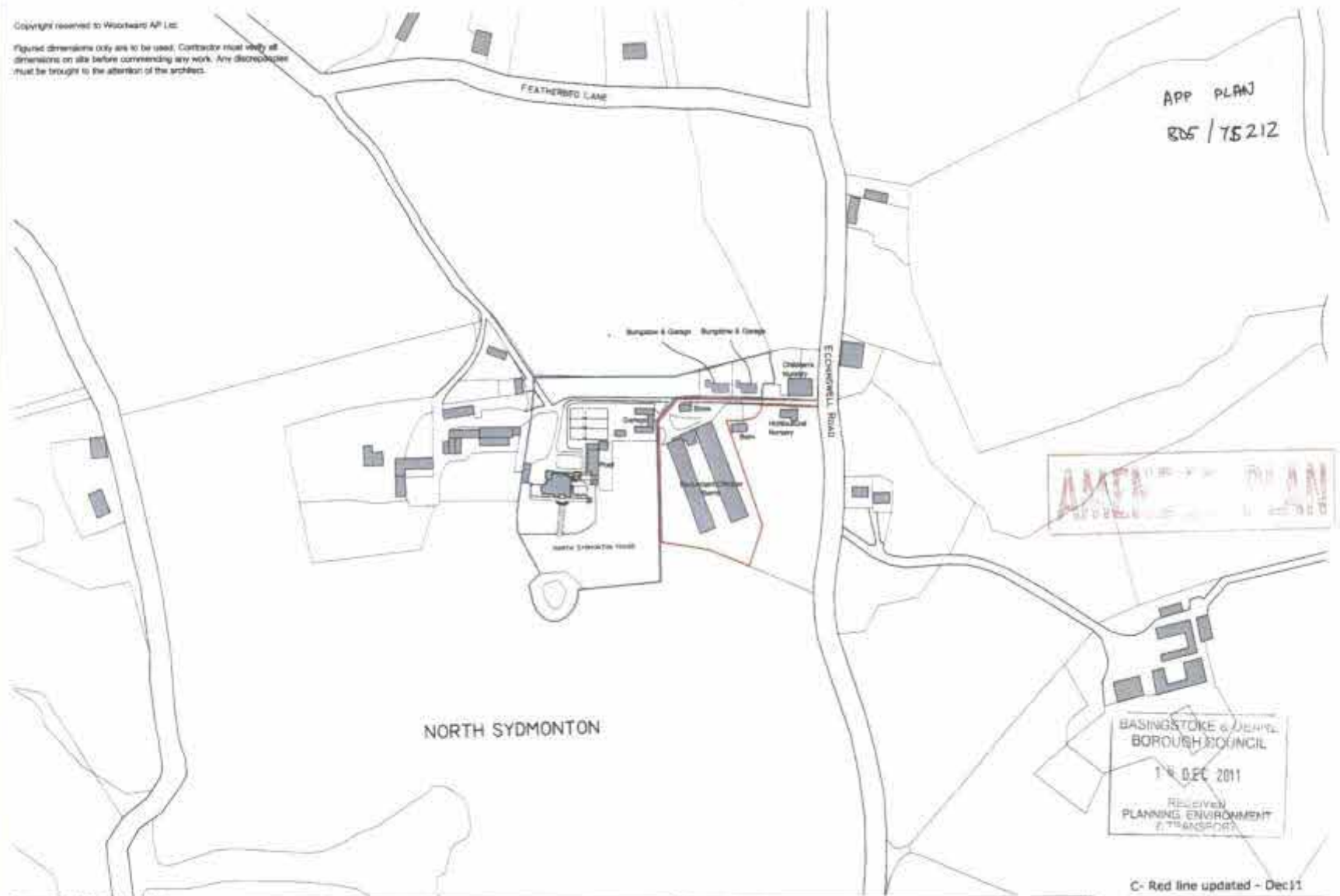
Date: 11/01/2012

It is important that you read the notes overleaf

**Attachment 2**  
**Key Plans**

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APP PLAN  
RDG / 75212

AMPA

BASINGSTOKE & DEANE  
BOROUGH COUNCIL  
14 DEC 2011  
RECEIVED  
PLANNING ENVIRONMENT  
& TRANSPORT

C- Red line updated - Dec 11

**WOODWARD  
ARCHITECTURAL  
PRACTICE**  
Tel: 0117 975 9440 Fax: 0117 975 9441

June 11

**Redundant Chicken Farm - New Barns**  
North Sydmonton House

**Location Plan**  
Existing

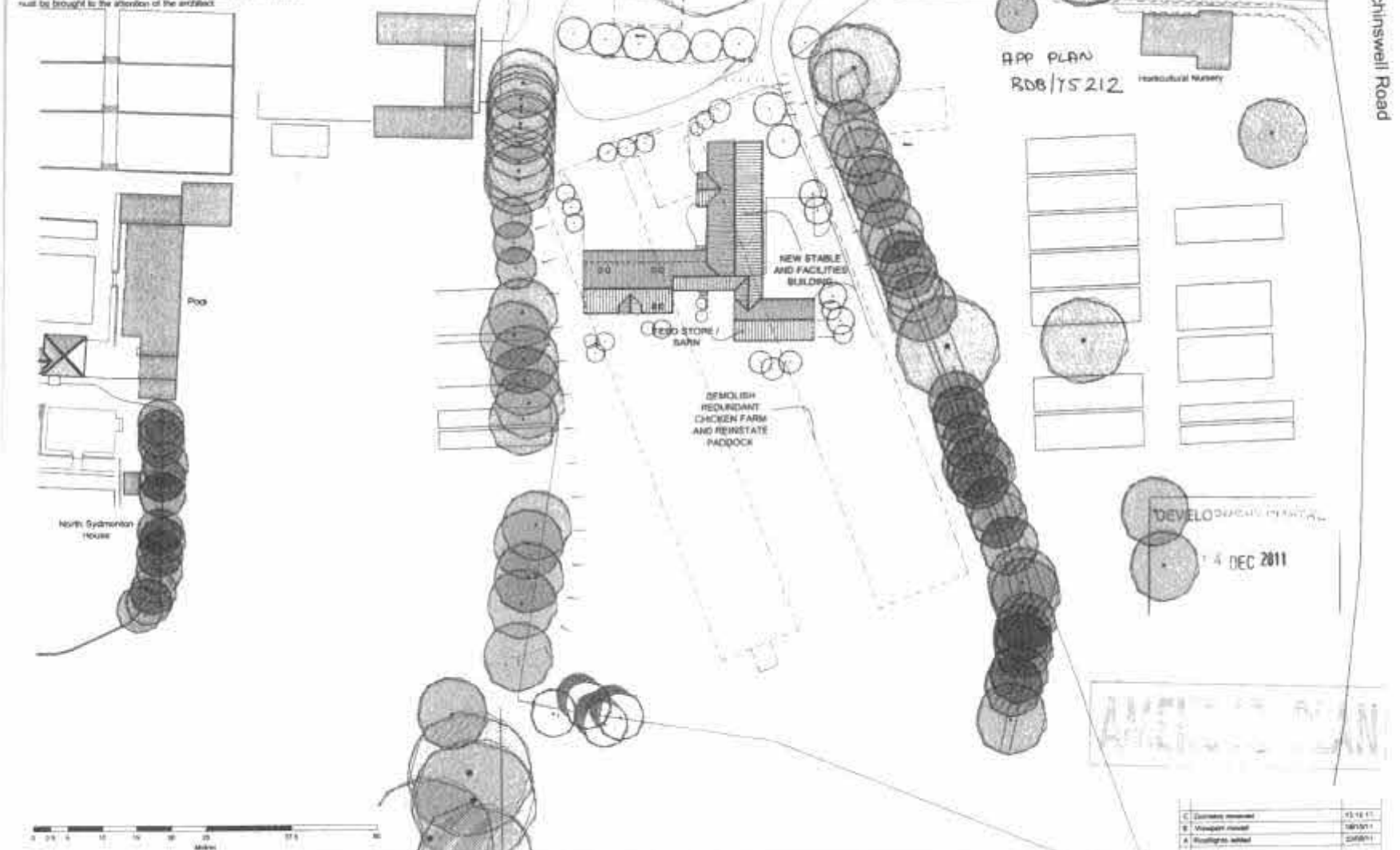
1:2500

543WW61 / LP04C



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DEVELOPMENT PERMITTED  
 14 DEC 2011



Mar '11

Redundant Chicken Farm - New Barns  
North Sydmonon House

Site Plan  
Proposed

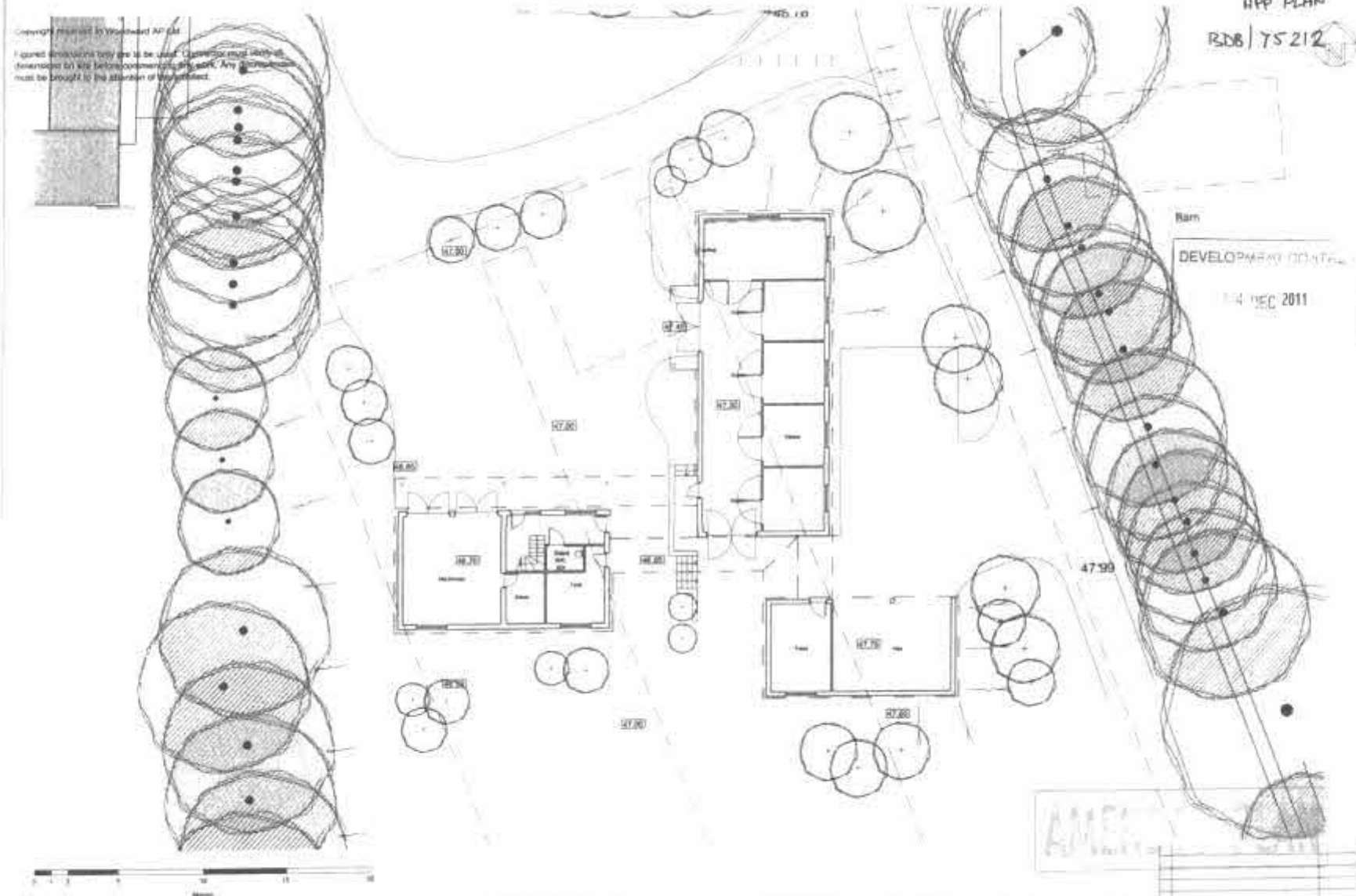
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C	Contractor reviewed	13.12.11
M	Manager reviewed	14.01.11
A	Architect approved	14.01.11

543WW61 / SP01C

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APP PLAN  
 RDB/75212



Barn  
 DEVELOPMENT CONTROL  
 14 DEC 2011

**WOODWARD**  
 ARCHITECTURAL  
 PRACTICE  
 Tel: 01753 8090 Fax: 01753 8091

Apr '11

Redundant Chicken Farm - New Barns  
 North Sydmonton House

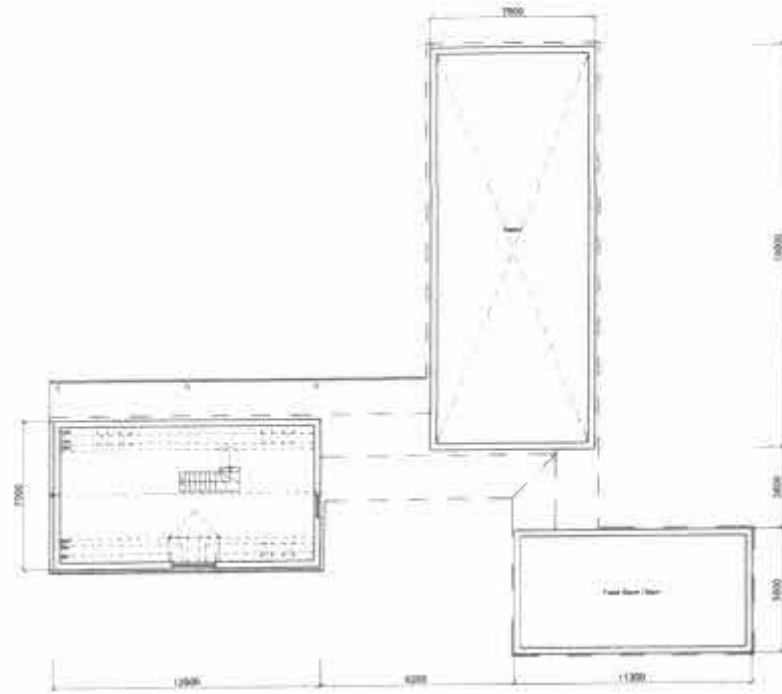
Ground Floor Plan  
 Proposed

1:200

543WW61 /150 A

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APP PLAN  
 BDB/75212



DEVELOPMENT CONTROL  
 14 DEC 2011

AMENDMENT PLAN



**WOODWARD ARCHITECTURAL PRACTICE**  
 Tel: 011 777 6007 Fax: 011 770 5300

Apr '11

Redundant Chicken Farm - New Barns  
 North Sydmonton House

First Floor Plan  
 Proposed

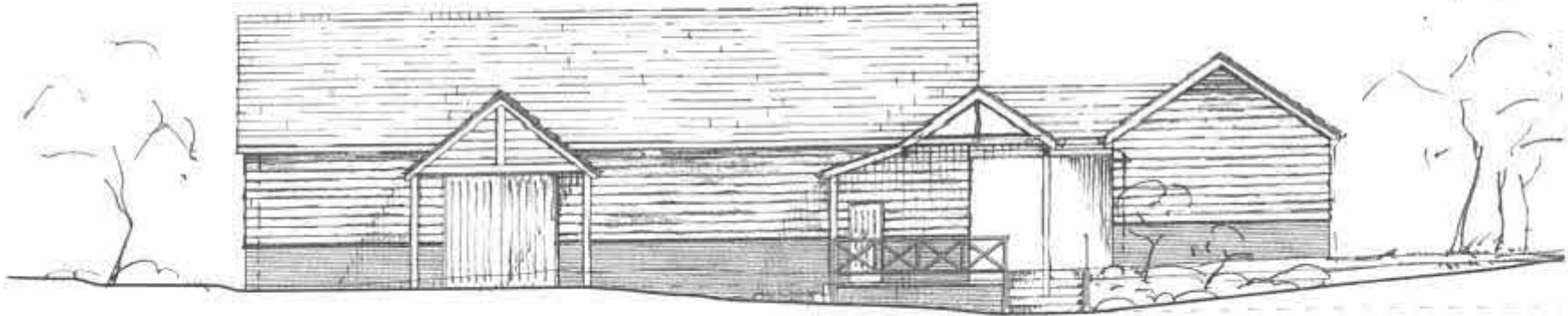
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Project No.	543WW61 / 151B
Client	
Architect	
Date	14/12/11
Scale	1:200

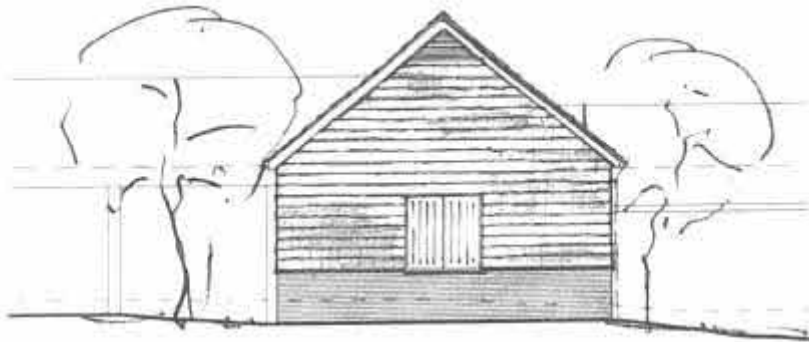
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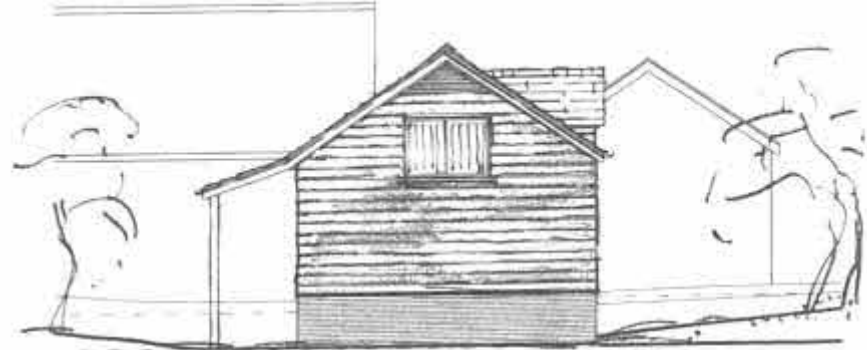
APP PLAN  
BDB / 75 212



West Site Section



North Elevation



West Elevation



Apr '11

Redundant Chicken Farm - New Barns  
North Sydmonton House

West Site Section & North & West  
Elevations, Proposed

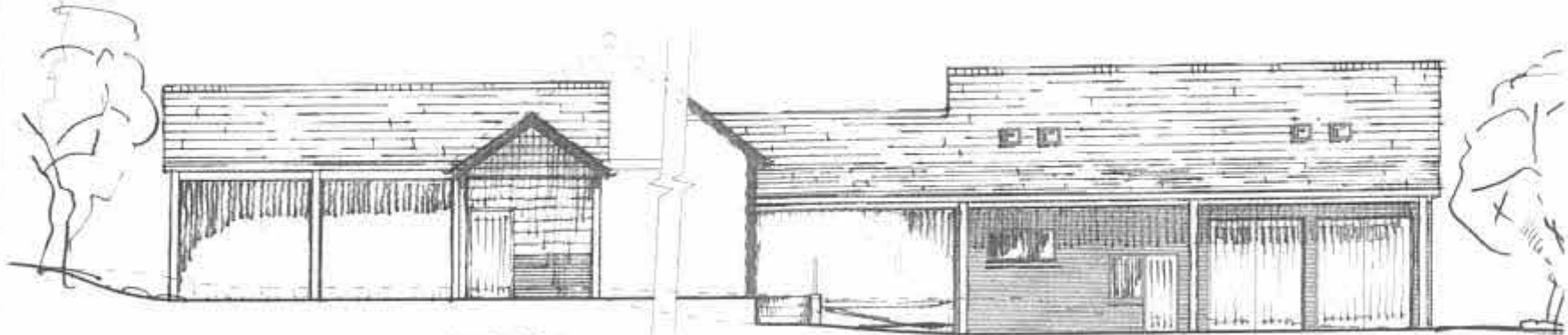
1:100



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APP PLAN  
BDB / 75212



North Site Section



East Elevation

DEVELOPER'S COPY  
J. J. DEC 2011



WOODWARD  
ARCHITECTURAL  
PRACTICE  
141 GILBERT ROAD, WILLOWBROOK

Apr '11

Redundant Chicken Farm - New Barns  
North Sydmonton House

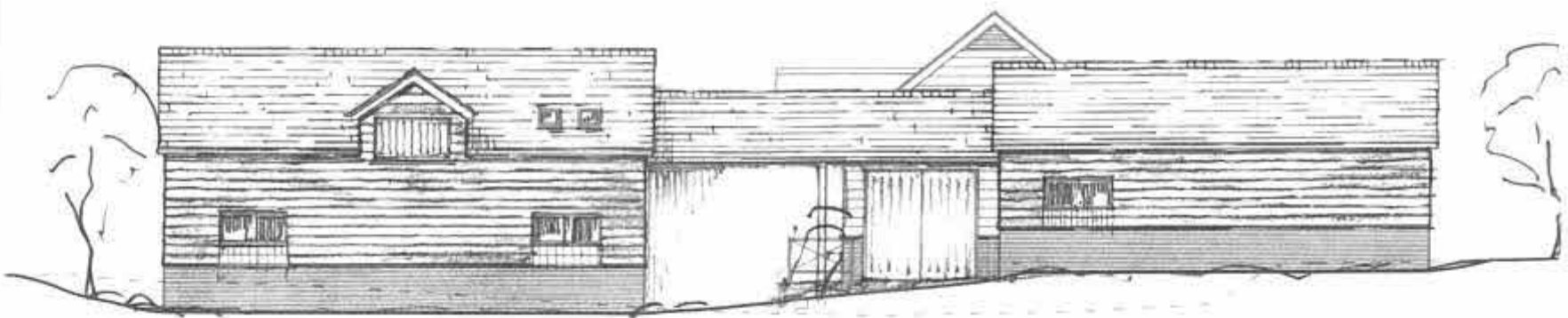
North Site Section & East Elevation  
Proposed

1:100

DESIGNER	12/11
ARCHITECT	12/11
DATE	
543WW61 / 154 B	

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must be brought to the attention of the architect.

APP PLAN  
BDB / TS 212



DEVELOPMENT CONTROL  
14 DEC 2011

AMENDMENT PLAN



**WOODWARD  
ARCHITECTURAL  
PRACTICE**  
Tel: 01753 549100 Fax: 01753 549101

Apr '11

Redundant Chicken Farm - New Barns  
North Sydmonton House

South Elevation  
Proposed

1:100

Architect: Woodward  
Revision: 1/2/11  
543WW61 / 155 A

**APPENDIX KCC3**  
**Officer Report – 22/00763/LDEU**

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**Application 22/00763/LDEU**

<b>Details of Application:</b>	Cert of Lawful Dev't-extng use/condition Certificate of Lawfulness for the existing mixed use development comprising 3 no. linked barns used as ancillary workshop and plant room, toilets, self-contained first floor residential flat, ancillary residential uses together with periodic cookery classes with function room and associated storage, garage and vehicle workshop. Date Registered 25 March 2022 (Subject to three year condition)
--------------------------------	--

<b>Location:</b>	<b>Address:</b> North Sydmonton House North Sydmonton Newbury Hampshire RG20 4UL
	<b>Ward:</b> Evingar
	<b>Parish:</b> ECCHINSWELL AND SYDMONTON CP
	<b>OS:</b> 449889 162158

<b>Applicant:</b>	Mr Simon Arber
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<b>Case Officer:</b>	Luke Benjamin 01256 845340
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It is RECOMMENDED that the application be REFUSED

**Reasons for REFUSAL**

1. The applicant's evidence is not sufficiently precise and unambiguous to demonstrate on the balance of probability that the northern building has been used as a cookery school for a continuous period of 10 years prior to the date of submission as set out in Section 171B (3) of the Act.
2. The applicant's evidence is not sufficiently precise and unambiguous to demonstrate on the balance of probability that the upper floor of the western building has been used as a separate and independent dwelling from North Sydmonton House and the estate for a continuous period of 4 years prior to the date of submission as set out in Section 171 B of the Act.
3. The applicant's evidence is not sufficiently precise and unambiguous to demonstrate on the balance of probability that the southern, western and northern buildings have been used for ancillary domestic purposes to the main dwelling, North Sydmonton House, for a continuous period of 10 years prior to the date of submission as set out in Section 171B (3) of the Act for a material change of use to have occurred.

**Description of Site**

The application site is located to the south of North Sydmonton and is within the setting of North Sydmonton House. The application site contains three linked buildings, located pointing north, south and west. To the west of the buildings is an allocated gravel parking area, with the site access to the north. The remaining land is grassed and planted.

The current use of the buildings has different land-use classifications including residential/domestic and commercial uses.

## **Proposal**

Planning permission (BDB/75212) was granted in 2012 to "demolish existing redundant chicken farm buildings and erect stable block, a feed/hay barn, tack room and machinery shed with ancillary staff facilities above with use of land for equestrian purposes including pony breeding".

However, the built form (internal and external) and their uses as-built do not accord with the approved plans. As such, the built form and operation of the site is in breach of planning control and subject to potential enforcement action. This certificate seeks the issue of a Certificate of Lawfulness to confirm the built form and their uses, including the operation of a cookery school, residential flat, and ancillary domestic storage/garaging are immune from enforcement action as they have been erected and used for the requisite periods of time as set out in section 171B of The Town and Country Planning Act 1990.

The built form in question comprises of three linked buildings. The application sets out that the most northerly building within the application site has been used in part for domestic purposes in association with the host dwelling, North Sydmonton House, and a cookery school. The southern building is used for domestic storage, garaging and cookery school storage and the western building is being used as a workshop and storage in association with the host property with a separate residential flat at first-floor level.

## **Supporting evidence**

Section 191(1) of the Town and Country Planning Act enables any person to apply for a decision as to whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes. At the site in question, the key issue is whether sufficient evidence has been submitted to demonstrate that, on the balance of probability, that:

- The built form (northern, southern and western buildings) have been erected for more than the relevant timeframe (4 years) to benefit from the immunity from enforcement action, as set out in Section 171B (1) of the Act.
- The use of the northern building has been continuously used as a cookery school for a period of at least ten years as determined by Section 171B (3) of the Act and for domestic purposes in association with North Sydmonton House for a period of 10 years as determined by Section 171B (3) of the Act.
- The use of the southern building has been continuously used for domestic garaging and cookery school storage for a period of 10 years as determined by Section 171B (3) of the Act.
- The use of the western building at ground floor level as a workshop in association with North Sydmonton House and the first floor level of the building as a separate and independent residential flat for a period of at least 4 years as determined by Section 171 B of the Act.

The onus is upon the applicant to provide sufficient evidence to this effect.

The Applicant presented the following with their application as evidence:

- Planning statement
- BDB/75212 Planning Consent
- Key Plans

- Council's Letter of 8th December 2021
- Email from WH Architects
- Statement of Simon Arber - Signed Statutory declarations by owners of the building and site and previous occupants
- Extracts from Cookery School Website
- Emails from agent

The submitted location plan outlines the three connected buildings and the access to the site, with the wider site outlined by a blue edge.

The signed declaration from the owner of the site, confirms North Sydmonton House was bought in 1996 where the applicant has lived since the dwelling was purchased. The adjoining site, which housed the old chicken sheds, was purchased in 2007 with planning permission being obtained in January 2012 for a block of stables approved under application reference BDB/75212. The land to which the horses were going to use in association with the stables was not available, and as such they were subsequently moved to an equestrian facility 1 mile away. Building works onsite commenced in January 2013 and the main building work was completed by February 2014 with the buildings kitted out and ready for occupation by August 2014. On first occupation the uses were as follows:

- Northern building – Domestic and cookery school
- Southern building – Cookery school store and garaging
- Western building – Workshop with flat over

It is confirmed that the use at the site has remained unchanged since September 2014 and that externally, other than repairs, there have been no external alterations to the buildings since it was completed and fitted out in 2014.

The emails from the Architect set out that the foundations for the building were poured on the 23<sup>rd</sup> of January 2013 and the buildings were completed on the 18<sup>th</sup> of February 2014. Copies of building regulation drawing checks have also been supplied, these are dated 27<sup>th</sup> September 2012.

A screenshot from the cookery school website has been provided, this details the site address and that the cookery school was established in 2014.

Copies of the planning application drawings, the planning permission decision notice and a letter sent from the Council's Compliance and Enforcement Team have been provided.

Supplementary emails have also been supplied by the planning agent, these set out:

- The flat was fitted out and residential use, as a separate dwellinghouse, started later in 2014.
- This is both physical and in terms of occupation/use.
- The flat is owned by the owner of North Sydmonton House.
- The flat is lived in by an employee of the owner of North Sydmonton House. She is a housekeeper and works for the Applicant.
- The flat is entirely contained. It has bedrooms, a kitchen, a sitting room and a bathroom. It is a residential flat. It is normally used whenever the owners of North Sydmonton House are away, and is kept furnished and has clothes, food etc at all times because this could be at short notice. Its occupation is no different from a second home, or a house occupied by a person who works away a lot. It is a dwellinghouse, lived in when it suits or needs to be lived in.
- The occupier of the flat uses this as her private dwelling when she is working at the house, and whilst she tends not to sleep there when the owners are not away, she still uses the flat. The owner cannot simply walk in without asking, and the occupier

does not use or need to use any of the facilities in the main house. The flat is a separate, private dwelling.

- The flat is provided as part of the employment, it is understood that no separate utility bills are produced for the occupier.
- It does not have its own garden and car parking is in the parking area for the cookery school.

#### **Site Visit**

At the time of the Officer's site visit on 05.04.2022, the built form was completed and the buildings were furnished as described in the planning statement. The cookery school was not in operation, but the site appeared to be set out for its intended purpose. The residential flat was occupied, with the flat being equipped with general day to day items.

#### **Public Observations**

None received

**Parish Council** – No comment to make as the application has gone through and it is too late.

#### **Aerial Photographs**

The officer has utilised aerial historic imagery. This imagery does not provide any evidence confirming or contradicting the evidence submitted in relation to the use of the buildings, however, the photographs confirm the presence and timings of the built form.

The aerial photos, dated 2017, 2018, 2020 and 2022, depict the existing arrangement experience on-site during the case officer's site visit. The three buildings are present and appear to be completed, with the addition of the gravel parking area, site access and associated landscaping.

#### **Onus of Proof**

The onus of proof in a Lawful Development Certificate (LDC) application is firmly on the applicant. While the Local Planning Authority (LPA) should always co-operate with an applicant seeking information they may hold about the planning status of the land, by making records available, they need not go to great lengths to show that the use, operations, or failure to comply with a condition, specified in the application, is or is not lawful. While LPA's are statutorily required to maintain the planning register, this is not a complete record of the planning status of all land in their area. In many cases, the applicant for a certificate will be best placed to produce information about the present, and any previous, activities taking place on the land, including a copy of any planning permissions. Some information, especially about the history of any unauthorised activity on the land, will be peculiarly within the Applicant's knowledge.

The fact that an LDC may be refused because the onus of proof is not discharged by the applicant does not preclude the submission of a further application if better evidence is subsequently available. A refusal to issue an LDC is therefore not necessarily conclusive that something is not lawful; it may merely mean that, so far, insufficient evidence has been presented to satisfy the LPA that the use, operation or activity is lawful.

The Courts have held that the relevant test of evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, an LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt".

Moreover, the Court has held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA has no evidence of their own, or from others, to contradict or otherwise make the Applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability". The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

**Planning History**

BDB/75212	Demolish existing redundant chicken farm buildings and erect stable block, a feed/ hay barn, tack room and machinery shed with ancillary staff facilities above with use of land for equestrian purposes including pony breeding	Granted	10.01.2012
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**Assessment**

The applicant needs to show, on the balance of probabilities, that the whole of the land within the red line (application site) has been continually used for office purposes for the requisite 10 year period.

Built form

Section 171B (1) controls the relevant timeframe for the immunity from enforcement action, which means development without planning permission of a building becomes immune from enforcement action after 4 years and as such the development becomes lawful.

The only planning consideration is whether sufficient evidence exists to demonstrate that, on the balance of probability, the built form on-site, the 3 no. linked barns, were completed four years prior to the date of this application.

The evidence provided by the architect and the statutory declaration confirming the building work commenced in January 2013 with the main construction phase being completed by February 2014. The aerial photographs, as described above, confirm the built form was present on-site in 2017, in what appears to be a completed state. The surrounding land around the site appears undisturbed in the 2017 aerial photograph, with the gravel parking and landscaping in place. The photographs suggest that all construction works were completed before 2017 as the site appears to match that currently experience onsite.

The Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, and the evidence and information provided are considered to be sufficiently precise and unambiguous as to justify that the buildings were constructed and completed 4 years prior to the submission of the application. As such, if all other matters had been acceptable, a certificate relating to the built form and their immunity from enforcement action could be issued.

Change of use

Case law has established that a material change of use (MCU) can arise when a planning

unit is subdivided to form separate planning units. The concept of a MCU is not defined in any statute or statutory instrument; it is a question of fact and degree in each individual case. The concept of the planning unit has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land or building. The tests for determining the planning unit are well established, and starting with the unit of occupation turn on the concept of physical and functional separation

In order to ascertain whether or not a separate planning unit has been created, the evidence provided would need to clearly demonstrate that two separate planning units had been formed with a physically and functionally separation. The *Burdle v Secretary of State for the Environment* (1972) decision set out three criteria to resolve this matter:

1. Where the occupier pursues a single main purpose to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered to be the planning unit.
2. Where there are a variety of activities none of which are incidental or ancillary to another and which are not confined within separate and physically distinct areas of land, again the whole unit of occupation should normally be the planning unit. (This is usually said to be a composite use.)
3. Where within a single unit of occupation there are two or more physically separate and distinct areas occupied for substantially different and unrelated purposes, each area (together with its incidental and ancillary activities) should be a separate planning unit.

As a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. Therefore, in order to demonstrate that the material change of use, involving the subdivision of the planning unit to create two independent planning units is lawful, it would need to be demonstrated that the division was physically and functionally separate for the required period of time as stipulated within Section 171 B of the Town and Country Planning Act 1990.

Below are the assessments for the two material changes of uses proposed within this certificate, the cookery school and the residential flat.

#### Cookery School

The only planning consideration is whether sufficient evidence exists to demonstrate that, on the balance of probability, the cookery school located within the northern building on the submitted location plan and the storage element within the southern building, used for storage purposes in association with the cookery school, have been used for the requisite period of time and therefore a material change of use of the site has occurred.

Section 171B (3) controls the relevant timeframe for the immunity from enforcement action, which means development for change of use becomes immune from enforcement action after 10 years and as such the development becomes lawful.

The application sets out that the cookery school commenced operations in 2014, as described within the application planning statement which is also confirmed by the webpage screenshot and within the statutory declaration. Therefore, the relevant period of time (10 years) has not passed for the use of the building as a cookery school to be immune from enforcement action.

The use of the buildings as a cookery school with its associated storage area would amount to a material change of use. The evidence provided does not demonstrate, on the balance of

probability, that the buildings have been used for the requisite period of time as a cookery school and the application falls short of discharging the burden of proof. For this reason, the Certificate of Lawful Existing Use as applied for should not be issued.

#### Flat – residential use

The only planning consideration is whether sufficient evidence exists to demonstrate that, on the balance of probability, the residential flat on the first floor of the western building has been used as a separate dwelling to North Sydmonton House and the surrounding uses for the requisite period of time and therefore a material change of use of the site has occurred.

Section 171B (2) controls the relevant timeframe for the immunity from enforcement action, which means development for change of use becomes immune from enforcement action after 4 years and as such the development becomes lawful.

The evidence supporting this application has failed to demonstrate that the flat should be considered as a separate planning unit from the surrounding uses.

From the site visit and from the information presented it is noted that the first floor of the western building has been physically altered to provide a self-contained unit which contains all the necessary facilities for independent living. It is understood that the housekeeper would use the flat for daily living needs when the owner of North Sydmonton House is away. The information provided by the agent refers to the use of the flat being similar to a person owning a second home. Furthermore, the agent confirms that the flat is used whilst the housekeeper is working at the house and tends not to sleep there unless the owner is away. Furthermore, it is confirmed that the flat is provided to the occupant as part of the employment agreement.

The application site has no demarcation between the flat and the surrounding site, and the flat is under the same ownership as that of North Sydmonton House. Whilst the flat has all the services of a separate dwelling, and as such is self-contained in the physical sense, it is understood that all the services such as electricity, water and Council Tax are subordinate to the host property.

It would appear from the evidence provided that the use of the flat has a functional link to the main dwelling and the operation of the estate. Although there has been a change to the nature of the building, when compared to the permitted scheme, it does not appear to have resulted in a division or separation from the wider planning unit as a whole. From the information provided, the use appears to be ancillary and is strongly linked to the employment of the housekeeper and the care of the wider estate. Whilst the two dwellings (the flat and North Sydmonton House) may not be linked socially, there is evidence to suggest that the ties are related to employment and the functional operation of the dwelling is reliant on the applicant. Based on the information currently provided, insufficient evidence has been provided to indicate how the residential flat, North Sydmonton House and the wider estate have been used independently from one another for the requisite period of time, four years, for the building to now be considered as an independent residential dwelling contained within its own planning unit.

It is not considered that application has demonstrated that occupation of the flat is for a single main purpose, but rather it appears to be a secondary feature which is ancillary to the existing planning unit of occupation.

The application has not clearly demonstrated that a material change of use has occurred and the flat is a separate planning unit in its own right. The use of the flat is not considered to be physically and functionally separate from that of North Sydmonton House. The evidence provided does not clearly demonstrate, on the balance of probability, that the residential flat has been used as an independent dwelling for the required period, and the application falls





Date: 10.06.2022

Y CIL checked

Signed: LMS

Name: Lisa Souden APM

Date: 14/06/2022



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*Telephone: 01793 771333 • Email: [info@kernon.co.uk](mailto:info@kernon.co.uk) • Website: [www.kernon.co.uk](http://www.kernon.co.uk)*

