

fluid planning

**Hallborough
Penshurst
TN11 8AL**

**Forestry and Wood Workers Workshop
Planning Statement
0408**

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1. Introduction

- 1.1 The Town and Country Planning (General Permitted Development) (England) Order 2015, Part 6 Agriculture and forestry ('GPDO'), Class E forestry developments (a) allows for the "*erection, extension or alteration of a building*" and part (d) allows for "*other operations*" so long as they are reasonably necessary for the purposes of forestry, including afforestation.
- 1.2 Decision notice reference 23/00563/AGRNOT ('*the Prior Approval*') dated 28 March 2023 confirmed a forestry barn did not require prior approval. The implication being that the proposal can proceed without further regulatory procedures so long as the development is constructed strictly in accordance with the details provided.
- 1.3 The officer report ('OR') to the Prior Approval considered the need for the forestry barn and impact on setting, both of which were acceptable. On setting, the OR states:

"10. In terms of the siting and design, the portal-framed building would be sited in an enclosed position within site, would within (...) long-range views within the AONB. Its design and appearance would harmonise [and] appear utilitarian in its appearance and buildings of this size and form are common features within the locality. The building itself would be clad in timber together with timber shingles. The proposal would therefore not adversely affect the landscape or scenic beauty of the AONB.

..." [emphasis added]

- 1.4 Then on noise impact, the OR found the impact activities associated with the operation of the building might have on sensitive residential receptors acceptable:

"11. The proposal is for the erection of a forestry building and the evidence indicates that this is the proposed use. It is considered that some noise maybe generated from the building when in use however it would not be unduly noisy or over such a period of time as to consequently give rise to unacceptable disturbance, notwithstanding the proposed building's proximity to Barnfield which is sited approximately 200m to the east of the proposed building. Therefore the siting of the proposed building would not be unacceptably harmful to the living conditions of the occupiers of Barnfield [sic]" [emphasis added]

- 1.5 During determination of the Prior Approval, the officer made checks on the type and nature of machinery required on Site to ensure the scale of the barn was appropriate. The provided schedule is appended at Appendix A. The proposed machinery is mainly for the management of the land, to create the woodland. But additionally, did include a sawmill and some space for the storage of timber, and work benches.
- 1.6 This revised proposal is for the same barn benefiting from Prior Approval with three modifications to allow for: hardstanding around the forestry barn; solar arrays to the south roof slope; and, one additional sliding door to the north elevation. Again, the barn is to allow for the management and afforestation of the land in respect of Hallborough, Penshurst, Kent, TN11 8AL (*'the Land'*). The applicant still retains around 9 hectares (*'ha'*) of land as demonstrated on drawing fp0401.1 Location and block plan. Afforestation will extend to 4.6 ha of land initially, planted as native broad leaf woodland to the north and eastern sections of the Land.
- 1.7 In addition to building modifications, the other reason for this permission is to allow the applicant to source higher grade timber off site and carry out a limited amount of processing of that timber to produce plank wood, veneer and for the manufacture of wood products and furniture items to maximise use of natural resources. What this means is that while the woodland establishes, some ancillary forestry and timber related manufacture can take place within the barn and for it to operate as a small carpentry and timber processing workshop to allow wood working.

Design of the woodland served by the barn

- 1.8 For broadleaved forestry, timber from thinning operations might be ready to be harvested from 30 years, and clear-felling operations might able to be carried out from 60 years. Thinning operations are typically undertaken to remove weaker trees every seven to ten years; the trees removed will be used for firewood as they are too small for timber or furniture. Mixed planting means that the time from planting to felling will vary, dependent on the species. The land is pasture and this requires a minimum radius of 500mm free of vegetation around each planting point. This will be carried out by either using mulching material, as specified in British Standard 5837:2005. This process, of reducing grass cover, planting trees and allowing trees to establish is labour intensive and requires machinery. At present, the applicant is reliant on a contract farmer, but will purchased and store equipment on site.
- 1.9 Trees will be planted at a density of 1,000 - 1,100 trees per ha, as explained in the

ABC for broad leaf woodland. The planting and spacing of trees will be roughly one every 3m x 3m, to achieve the planting density. Initially, planting the trees in rows is required because it is easier to see the planted whips and to weed them, especially using mechanical weeding and mowing. This means trees will be planted in a 'chequerboard' pattern, with alternating groups of 9-16 trees of alternating. This pattern should appear more natural and reduces problems of inter-species competition. A chequerboard pattern is easier to manage than intermixed rows, and look more aesthetically appealing than bands of species. When planting, the varying micro climates across the site will be considered. Hardier trees will be planted on north-facing slopes and more tender trees on south-facing slopes. Pioneer and nursery trees will be positioned such that they can protect tender tree species.

Species description and benefits

1.10 The species mix proposed is:

- Oak - Oak is a demanding species and the use of good quality soils will enable them to thrive. Oak is slow-growing but will provide a source of high-quality and high-value timber.
- Scots pine - A small component of Scots pine, an evergreen conifer, native to the UK will be planted. It is fast-growing and produces one of the strongest softwoods available.
- Wild Cherry - Trees can live for up to 60 years and the timber is used for veneers and furniture. The spring flowers provide nectar for bees and the fruit is eaten by birds and mammals. The foliage is beneficial for caterpillars of many species of moth.
- Common beech - This species is native to the UK and has benefits to wildlife and its dense canopy provides habitat for rare plant species and butterflies. The timber is used for fuel, furniture, cooking utensils and other uses.
- Birch trees - The open canopy provides conditions for grasses, mosses, lichens, bluebells and others to grow, whilst providing habitat and food for insects and mammals. Birch is used for furniture, handles and toys.
- Aspen trees - These provide habitat for a wide variety of insects and woodpeckers. The wood is lightweight and can be used for making surgical splints, oars and paddles.

1.11 Incrementally, over time, the harvested timber will be sold for fire wood, planking and for barn building.

The barn

- 1.12 The approximately 1,100 planted trees per ha require frequent management to establish the tree stock and keep the land clear of unwanted growth. The process of creating the wood is labour intensive and involves machinery. A barn for the safe storage and maintenance of machinery and for drying processed products is required. The barn may also accommodate a small sawmill for the splitting of logs and the processing of juvenile timber yielded from the thinning process. The intended on-site machinery will include a tractor, trailer, chipper, mower and small mobile sawmill. The machinery must be stored securely to protect the financial investment. Storage for hand tools and other paraphernalia associated with maintaining the woodland is also required. The barn will provide storage of harvested timber, at first resulting from cleared timber from small tracts of existing trees. Machinery and timber will be processed, sorted and stored indoors to keep them dry. Wood chip will be stored on site and recycled back into the wood to help control unwanted plant growth.
- 1.13 The barn will be sited near to the southern vehicular access point and for security south of a residential property. The barn will extend to just 168m² gross internal floorspace. The design allows for a central bay to accommodate machinery comfortably and allow manoeuvring space, with two side bays for storage of timber, workbenches and hand tools either side. Overall, the proposed barn is considered small, and it will replace the existing 40m² barn on site which is too small to allow for the needs of this enterprise or secure.
- 1.14 On the additional use within the barn, the processing of timber and making of wood items will take place within the same footprint and will operate at a hobby scale. The implication is that timber sourcing and import to Site will be rare isolated occasions each year. And imported timber will be of a size deliverable by smaller flat bed commercial vehicles to ensure the building is able to accommodate them. This additional milling and manufacture element will not require staff and daily vehicle movements.

2. Planning assessment

- 2.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires the decision maker to take account of (a) the provisions of the development plan, (b) local finance considerations, and (c) any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act requires determination of applications to be in accordance with the plan unless material considerations indicate otherwise. The National Planning Policy Framework 2021 (*'Framework'*) is a material consideration in planning decisions.
- 2.2 Local policy is contained within the Sevenoaks Core Strategy 2011 (*'the Core Strategy'*) and the Allocations and development Management Plan 2015 (*'the ADMP'*). There is also a Development in the Green Belt Supplementary Planning Document (*'The Green Belt SPD'*) 2015. Reference is made to specific policies below as necessary.
- 2.3 The main issues are:
- (a) whether the proposal would constitute inappropriate development in the Green Belt;
 - (b) the effect of the proposal on the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty (*'AONB'*); and,
 - (c) impact on ecology.

Whether the proposal would constitute inappropriate development in the Green Belt

- 2.4 In *R (Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404; [2016] Env. L.R. 30 the Court of Appeal noted (on what was formerly paragraph 89 of the Framework and now paragraph 145) that:

“19 The category of exception in para.89 with which we are concerned, “buildings for agriculture and forestry”, is entirely unqualified. All such buildings are, in principle, appropriate development in the Green Belt, regardless of their effect on the openness of the Green Belt and the purposes of including land in the Green Belt, and regardless of their size and location.

20. *Implicit in the policy in para.89 of the NPPF is a recognition that agriculture and forestry can only be carried on, and buildings for those activities will have to be constructed, in the countryside, including countryside in the Green Belt. Of course, as a matter of fact, the construction of such buildings in the Green Belt will reduce the amount of Green Belt land without built development upon it. But under NPPF policy, the physical presence of such buildings in the Green Belt is not, in itself, regarded as harmful to the openness of the Green Belt or to the purposes of including land in the Green Belt. This is not a matter of planning judgment. It is simply a matter of policy. Where the development proposed is an agricultural building, neither its status as appropriate development nor the deemed absence of harm to the openness of the Green Belt and to the purposes of including land in the Green Belt depends on the judgment of the decision-maker. Both are inherent in the policy...* [emphasis added]

2.5 In that case, the development under consideration was a very large glasshouse (92,000 square metres in area) to be used for the growing of tomatoes and peppers. The court found at paragraph 32 that:

“It is not in dispute that the officer was right to advise the committee that the proposed development, a building required for horticulture, was appropriate development in the Green Belt, both under national policy and under policy GB2A, and therefore did not have to be justified by “very special circumstances”.

2.6 The Court therefore found that “*horticulture*”, though not explicitly mentioned in paragraph 149(a) of the Framework (though it was in the local policy) fell within the ambit of “agriculture” for the purposes of paragraph 149(a). The applicant suggests that “manufacture of timber products with associated milling” should similarly be taken to fall within the ambit of “*forestry*”.

2.7 Paragraph 149(a) of the Framework states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt, but that an exception to this is buildings for agriculture and forestry. The ADMP is largely silent on forestry development, mentioning it only in supporting text and confirming the use class falls within an exemption to inappropriate development in the Green Belt. The Green Belt SPD does however, confirm at paragraph 8.1 that forestry buildings are appropriate development in the Green Belt. In this case, determination of this Proposal pivots on the detailed policy at paragraph 149(a) to the Framework, but the ADMP and Green Belt SPD are consistent with the Framework.

- 2.8 Paragraph 149(a) states subject to exceptions that the construction of new buildings should be regarded as inappropriate in the Green Belt. Exception (a) relates to “buildings for agriculture and forestry”. The applicant has explained that the building would be used for forestry purposes in association with the forestry use of the site and for some further processing and manufacture of the better quality timbers and veneers into built furniture and products. Case law in the R (Lee Valley Regional Park Authority) v Epping Forest DC [2016] EWCA Civ 404; [2016] Env. L.R. 30. judgement confirms for this exception to inappropriate development that there are no restrictions relating to the size or location of the building.
- 2.9 The main consideration here is the use of the proposed building in relation to the lawful forestry use of the site, not the breadth of ancillary services activities or a small degree of off site import. That is to say, that introducing the ability to lawfully import timber sourced from outside the holding, and processing and manufacture of that timber does not take the building beyond the definition of forestry. The definition of forestry by analogy, will always include a degree of processing into products for sale or higher value (wood chip, green oak for timber framing, singles, veneer, and so on).
- 2.10 It is the applicant’s opinion, and one supported by precedent, that the proposed forestry barn, to be used both for on site forestry and off site forestry, and for the manufacture of timber into products is exempt from the definition of inappropriate development within the Green Belt. If the Council is minded to conclude the barn is inappropriate, by reason of the insertion of an off site forestry operation and or the proposed uses within an already approved barn, Very Special Circumstances are presented.
- If it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances*
- 2.11 If the proposed building is considered to not be for forestry and therefore not appropriate development, Very Special Circumstances exist to that outweigh the very minimal level of harm that the building would cause.
- 2.12 To qualify as ‘very special’, circumstances do not have to be other than ‘commonplace’, i.e. they do not have to be rarely occurring as judged in R (Wildie) v Wakefield MDC [2013] EWHC 2769 (Admin) at [29]. A number of factors combined can together amount to very special circumstances, and the weight to be given to each

factor is a matter for the decision-maker. The planning balance will be considered qualitatively rather than quantitatively, as a value judgment made by the decision-maker.

- 2.13 The Prior Approval allows for the erection of a barn for forestry purposes. This means a building can lawfully be erected. The law on the materiality of fallback positions was summarised in *Mansell v Tonbridge And Malling Borough Council* [2017] EWCA Civ 1314 at [27]. The fallback position of a particular site will be a material consideration where there is a possibility of implementation: this is a lower bar than a 'probability' or 'likelihood'. Fall-back cases will be fact-specific, and the role of planning judgment is vital. Consideration is an exercise of broad planning discretion based on the individual circumstances of each case.
- 2.14 It follows that in assessing the impact on openness of the green belt, it is necessary to compare use with the impact on openness which would be allowed under otherwise lawful use of the site (*Sharma v SoS HCLG* [2018] EWHC 2355 (Admin) at [52]). The applicant's previous successful application is clear evidence of the intention to implement permitted development on the Site. The prospects of implementation are particularly high and this is shown by the effort and investment made in submissions to the Council.
- 2.15 In this case, the relative impact on openness of the proposed development and the full fallback position should be weighed in the balance as a key planning consideration. Trading the fallback Prior Approval forestry barn for one of the same size and with the main and only difference limited to import of timber from off-site sources and processing and manufacturing of timber to products has zero impact on openness of the Green Belt. This holistic use of timber and craftsmanship aligns with rural skills and re wilding of the land. The relationship with the fallback position should therefore be accorded great weight in the planning balance.
- 2.16 If the Council is minded to consider impact on openness of the Green Belt, weighing heavily in favour of planning permission is the OR to the Prior Approval confirming significant comfort that the siting was wholly sensible and sensitive. As such, the proposed development would not contradict the fundamental aim of Green Belt policy, which is to prevent urban sprawl (Paragraph 137 Framework). Nor would it play any role in allowing neighbouring towns to merge. This judgement is case law driven.
- 2.17 The courts have provided legal guidance on how planning judgment should be

exercised in this context. In *Euro Garages Ltd v SoS CLG* [2018] EWHC 1753 (Admin), the High Court said:

“21 “Openness” is not a defined term but, in my view, it is clear in this context that it is openness of the Green Belt that must be considered not the site as such...

23 ...in the context of the exceptions under paragraph 89 [now 149], for there to be a greater impact on the openness of the Green Belt there must be something more than just some change to the environment. In each of the instances under the bullet points, it is contemplated that there will be some change to what is presently there. But, despite that change, the openness of the Green Belt will be preserved (bullet point [2]) and/or there will not be a “disproportionate” addition or something “materially larger”: bullet points [3] and [4]...Whether or not there is a greater impact is a matter of judgment.

24 I would not wish to decide, for all purposes, that the concepts of not having a greater impact on the openness of the Green Belt and of preserving the openness of the Green Belt are identical. Having said that, there is an obvious reason why the wording in different paragraphs and bullet points differs. Where there is no existing development, consideration must be given to whether the development preserves the openness of the Green Belt. Where there is some existing development, the openness of the Green Belt has not been wholly preserved and there will necessarily have been some impact on the openness of the Green Belt already...

29 ...a mere change in the current build is not sufficient to establish that there is a greater impact on the openness of the Green Belt. Put another way, whether the openness of the Green Belt is preserved, or conversely harmed, is not simply a question of whether something, which by definition has a spatial impact, is to be built. Further, the question of whether the openness of the Green Belt is preserved will generally involve an assessment of the visual or perceived impact” (emphasis added).

2.18 In *John Turner v SoS CLG* [2016] EWCA Civ 466 the Court of Appeal held that:

“14. The concept of “openness of the Green Belt” is not narrowly limited [...]The word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is

now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents”. (emphasis added)

2.19 The Supreme Court ruled authoritatively on meaning and application of the concept of “openness” within the Green Belt, in *R (Samuel Smith Old Brewery) v North Yorkshire County Council* [2020] UKSC 3. The case law confirms that:

- The visual quality of the landscape is not in itself an essential part of the openness for which the Green Belt is protected (paragraph 5).
- Rather, openness is the counterpart of urban sprawl, linked to the purposes of the Green Belt, and not necessarily a statement about the about the visual qualities of the land. Applying this broad policy concept is a matter of planning judgment, not law (paragraph 22).
- Nor does openness imply freedom from any form of development (paragraph 22).
- The concept of openness means the state of being free from buildings. It is open textured and a number of factors are capable of being relevant (paragraph 25).

2.20 It follows from the above authorities that the task in a case like this is to consider the ‘marginal’ impact on the openness of the Green Belt of the proposed development in relation to the existing use of the land and Prior Approval barn, rather than the total impact on openness of the proposed development because the openness of the Green Belt can already, to some extent, be harmed by the existence of the Prior Approval building. Logically, there can be no greater harm on openness of the Green Belt.

The effect of the proposal on the landscape and scenic beauty of the High Weald of AONB

2.21 Policy EN5 on Landscape within the ADMP confirms the special status of protected landscapes, mirroring the Framework closely. EN5 goes on to explain that:

“Proposals that affect the landscape throughout the District will be permitted where they would:

a) conserve the character of the landscape, including areas of tranquillity; and

b) where feasible help secure enhancements in accordance with landscape actions in accordance with the Sevenoaks Countryside Assessment SPD.”

2.22 The fallback position described carries significant weight against the requirements of policy EN5. That said, the reforestation of land cannot credibly be concluded to conflict with limb a) to the policy; to conserve the character of the landscape, given the patchwork of planted and ancient woodland the AONB is characterised by. Similarly, the requirement of limb b) is satisfied by reason of the reforestation element, but also the ability for rural activities and craftsmanship to drive the sustainable and holistic use of timber within the AONB. The proposal meets the requirements in Policy EN5, by reason of the barn respecting the scale, height and proportions and materials of the surrounding environment and the planting strategy adding to the landscape character and biodiversity of the AONB.

Ecology

2.23 The commentary on the applicant's fallback position carries significant weight on matters of ecology. Clearly, the land is pasture and likely to be of low value ecologically speaking. The Prior Approval barn can be built without further recourse to planning. This proposal relates more to broadening uses within the barn. While a preliminary ecological appraisal is not considered necessary, the applicant is keen to take a precautionary approach to avoid harm to protected species. A planning condition for a qualified ecologist to over see the stripping of grass from the site is an appropriate compromise in this instance to check for species on the ground. Mitigatory controls to protect bats can also be conditioned to ensure nearby roosts are not negatively impacted. This is a proportionate response given the barn can be built.

3. Summary

3.1 The proposal would not be inappropriate development in the Green Belt and would not adversely affect the landscape character and scenic beauty of the High Weald AONB. The Prior Approval barn represents a materially powerful fallback position and should the Council disagree this revised proposal falls outside the exception to inappropriate development, the fallback position is meets the threshold of a Very Special Circumstance justifying the grant of planning permission.

Appendix A

Machinery and spatial requirements

Existing barn (will be demolished)	40m2
Proposed barn	168m2
Net Gain	128m2
Proposed floor space	94.49
30% manouvering space	28.35
Total space	122.84

Machine	Make	Model	Length (m)	Width (m)	Area (m2)
Outfront Mower	Kubota	F3890	3	1.5	4.50
50 hp tractor	Kubota	M5000	3.3	1.7	5.61
Mobile Sawmill	TBC	TBC	3.34	1.07	3.57
Chipper	TP	175P	4.013	1.416	5.68
Splitter	TBC	TBC	2.12	0.96	2.04
Accessories					
Roller mower	Kubota	TBC	2.6	1.8	4.68
Flail mower	Mateng	185	1.8	1.2	2.16
Small tipping trailer	TBC	TBC	2.9	1.3	3.77
4 tonne tipping trailer	Marshalls		4.7	2.4	11.28
Hedgecutter	Mconnel	PA4330	4	1.8	7.20
Hand tools (chainstore, work bench, strimmers etc)	n/a	n/a	4	2	8.00

Wood storage					
Logs	n/a	n/a	10	2	20.00
Planks wood 50x50mm up to 300x300mm at 4m lengths max	n/a	n/a	4	4	16.00

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