

4.1 21/00694/FUL

Revised expiry date 11 June 2021

Proposal:

Creation of additional external seating area and associated footpath with hard standing base. Increase of operating business hours to Monday - Saturday 09:00 to 22:00, Sundays 10:00 to 17:00.

Location:

The Elms Nursery, Bough Beech Road, Four Elms KENT TN8 6ND

Ward(s):

Cowden & Hever

Item for decision

The application has been called to Development Control Committee by Councillor Dickins due to the potential noise impacts, specifically related to the opening hours which could result in an increase in the disturbance, to a level which would see the proposal fail to comply with policy EN7 of the Sevenoaks District Council Allocation and Development Management Plan.

RECOMMENDATION: That planning permission be GRANTED subject to the following conditions:

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

In pursuance of section 91 of the Town and Country Planning Act 1990.

2) The development hereby permitted shall be carried out in accordance with the following approved plans and details: 05 Rev 0, 02.

For the avoidance of doubt and in the interests of proper planning.

3) The materials to be used in the construction of the development shall be those indicated on the approved plan 02.

To ensure that the appearance of the development enhances the character and appearance of the area as supported by Policy EN1 of the Sevenoaks Allocations and Development Management Plan.

4) No external lighting shall be installed on the lower seating area (extended hard standing as identified on approved plan 02) without the prior written consent of the local planning authority.

To ensure the character and tranquillity of the local area in accord with policy EN6 of the Sevenoaks District Council Allocation and Development Management Plan.

5) The hereby approved lower seating area (extended hard standing as identified on approved plan 02) shall be used solely as an ancillary function of the cafe as identified on plan 02 and for no other purposes.

To ensure the character and tranquillity of the local area in accord with policy EN7 of the Sevenoaks District Council Allocation and Development Management Plan.

6) Within 3 months of the date of this decision, details of the re-landscaping of the area to the west of the lower seating area as identified on plan 02, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented and maintained as such 6 months after the date of this decision.

To ensure the character of the area in accord with policy EN1 of the Sevenoaks District Council Allocation and Development Management Plan.

7) Vehicular access to the gym and cafe shall occur only within the bounds of the red line plan 05 rev 0.

In the interest of highway safety.

8) The Cafe as identified on plan 05 rev 0 and the gym as identified to the north east of the site to the rear of the equestrian store shall only operate during the hours of Monday - Saturday 09:00 to 22:00 and Sundays 10:00 to 17:00.

In the interest of neighbouring amenity in accord with policy EN7 of the Sevenoaks District Council Allocation and Development Management Plan.

9) No sound-amplifying equipment, loudspeakers or public address system shall be installed or operated outside of the premises at any time.

In the interest of neighbouring amenity in accord with policy EN7 of the Sevenoaks District Council Allocation and Development Management Plan.

National Planning Policy Framework

In dealing with this application we have implemented the requirements in the National Planning Policy Framework to work with the applicant/agent in a positive, proactive and creative way by offering a pre-application advice service; as appropriate updating applicants/agents of any issues that may arise in the processing of their application and where possible and if applicable suggesting solutions to secure a successful outcome. We have considered the application in light of our statutory policies in our development plan as set out in the officer's report.

Description of the Site

1 The application site is located to the north east of Bough Beech Road and outside the settlement of Four Elms, Edenbridge. The site contains a garden centre (pet/equine supplier), café and gym, for which the garden centre is the primary use.

- 2 The built form is single storey with a central linear building containing the equine/nursery use, to the west the café extends on a north-south axis and to the east, the gym is located to the rear of the nursery. The car park is located to the front of the building and is directly accessed off Bough Beech Road.
- 3 The site is located in the Green Belt and the surrounding landscape is rural in character.

Description of Proposal

- 4 Creation of additional external seating area and associated footpath with hard standing base. Increase of operating business hours to Monday - Saturday 09:00 to 22:00, Sundays 10:00 to 17:00.

Relevant Planning History

- 5 19/01224/FUL- Proposed extensions to existing garden centre to provide enlarge kitchen and Cafe and staff facilities - GRANT
- 6 19/02324/NMA - non-material amendment to 19/01224/FUL - APPROVED
- 7 20/01683/FUL - Proposed exercise studio to replace consolidation of existing outbuildings - GRANT

Policies

- 8 National Planning Policy Framework (NPPF)
- 9 Para 11 of the NPPF confirms that there is a presumption in favour of sustainable development, and that development proposals that accord with an up-to-date development plan should be approved without delay.
- 10 Para 11 of the NPPF also states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:
 - the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
 - Footnote 6 (see reference above) relates to policies including SSSIs, Green Belt, AONBs, designated heritage assets and locations at risk of flooding.

11 Core Strategy (CS)

- SP1 Design of New Development and Conservation
- LO1 Distribution of Development
- LO8 The Countryside and Rural Economy
- SP8 Economic Development and Land for Business
- SP11 Biodiversity

12 Allocations and Development Management (ADMP)

- EN1 Design Principles
- EN2 Amenity Protection
- EN6 Outdoor Lighting
- EN7 Noise Pollution
- T2 Vehicle Parking

13 Other

- Development in the Green Belt SPD

Constraints

14 The following constraints apply:

- Green Belt

Consultations

15 Hever Parish Council -

16 'The HPC planning committee met on 26.03.21 and voted to object to the application. The function of and relevance of the planning and licensing applications and impact of, were considered and noted.

17 There is an absence of very special circumstances in this particular case to grant planning consent and the built form has reached its limits. The formalisation of the outdoor seating area by introducing further hardstanding encroaches onto the Green Belt. National planning policy guidelines are noted but should be considered in addition to the evidence the Authority holds relating to the unique prevailing acoustic environment (including any anticipated changes to that environment from activities that are permitted but not yet commenced).

18 Historical applications in the parish e.g. music festivals, provide independent data (and experiences from over the years of Neverworld) which verifies the reported concerns of residents in the way that sound (of different types) travels across this specific landscape form and the absolute low ambient noise levels. In addition, it is noted, that as a parish, Hever village is subject to flight path noise as part of the background noise, Four Elms is not'.

- 19 Environmental Health -
- 20 'I refer to the above mentioned application. We would suggest that in order to protect residential amenity, a condition is imposed that any amplified music used in conjunction with the use of the gym or cafe should not be audible outside of the boundary of the premises'.
- 21 SDC Tree Officer - No comment.

Representations

- 22 We received 19 letters of objection to the proposal relating to:
- Area is a quite natural area
 - Hours for the café and gym would extend operations to 13 hours a day,
 - Hours would result in unacceptable noise levels and disruption to neighbours,
 - Proposal would result in a negative impact to barn owl population,
 - The additional hardstanding would result in harm to the adjacent hedgerow,
 - Licencing hearing established a 9 - 5pm, usage of the site,
 - Late night use will encourage anti-social behaviour,
 - Highway hazards would occur,
 - The site is subject to creep development over the past three years,
 - The site has been subject to development which flouts planning rules,
 - Increased road activities would result in harm to pedestrians, riders, cyclist and use of the countryside,
 - Concern with narrow Bull Lane being used to access the site,
 - Music being played outside would be harmful to neighbouring properties,
 - Listed hours differ from application form to Design and Access Statement,
 - The adjacent B road is quiet despite its classification increased hours would place un-due pressure on highway safety,
 - Only seeking to provide services to non-local people,
 - Noise, smell and disturbance from use to those in the local area,
 - Green Belt encroachment,
 - Impact to the local wildlife,
 - Wedding receptions would cause considerable disruption,
 - Harm to bat population,
 - Hours would make the café and gym non-ancillary functions to the site,
 - The more commercialised appearance of the site had changed the character of the site and its impression on the local area,
 - Development should be located outside of towns not in rural environments,
 - Light pollution would occur due to extended opening hours,
 - Impact to parking,
 - Air quality loss to traffic disturbance,
 - Increased footfall would have a negative impact on the local wildlife site,
 - Loss of tranquillity in the local environment,
 - Bunds require investigation,

- Creep development focusing towards eventual housing development,
- Affordable housing site to the north of the site,
- Character of the buildings are not in keeping with the character of the area.

Chief Planning Officer's appraisal

23 The main planning considerations are:

- Principle of development
- Impact to the Green Belt
- Impact to the character of the area
- Impact to neighbouring amenity
- Impact to highways and parking
- Other

Principle of development

24 Policy LO1 of the Core Strategy (CS) states that development will be focused within existing settlements and provides a hierarchy of settlements. The site is located outside of an existing settlement and therefore policy LO8 of the CS applies.

25 Policy LO8 of the CS states that the extent of the Green Belt will be maintained, landscape conserved and development that supports the maintenance and diversification of the rural economy, including small scale business development will be supported.

26 Paragraph 83 (a) of the National Planning Policy Framework states 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;’

27 The proposal would allow a modest extension to the café provision in allowing outdoor seating and some further covers. The expanded operational hours of the café and gym would also allow a greater opportunity for business outside the hours of the site in general. The proposal would therefore offer an opportunity to expand on the sites contribution to the rural economy with staff required in connection with the use.

28 The proposal is located in the Green Belt and in a rural area and these matters will be considered below. While the proposal would meet with the aims and objectives of the NPPF and LO8 of the CS in regard to the rural economy, the principle can only be established through consideration of the impact to the area and Green Belt assessed below.

Impact on the Green Belt

- 29 As set out in paragraph 145 of the NPPF, new buildings in the Green Belt are inappropriate development, there are some exceptions. Paragraph 143 states that where a proposal is inappropriate development in the Green Belt, it is by definition harmful and should not be approved except in very special circumstances.
- 30 Paragraph 144 of the NPPF advises we should give substantial weight to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations. Therefore, the harm in principal to the Green Belt remains even if there is no further harm to openness because of the development.
- 31 Openness is an essential characteristic of the Green Belt and is different from visual impact. Openness is about freedom from built form. Even if there is absence of harm to openness, there can be harm in principal to the Green Belt from inappropriate development.
- 32 Assessment against policy and impact on openness:
- 33 The National Planning Policy Framework defines Previously Developed Land as:

‘Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure...’
- 34 The site is subject to existing structures and is considered to represent previously developed land. To the west of the café a small area of land extends to the highway. The confined nature of this land would be considered to represent previously developed land, while land which lies to the east of the site would not.
- 35 Paragraph 145 (g) of the National Planning Policy Framework states that:

‘limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
– not have a greater impact on the openness of the Green Belt than the existing development; ...’.
- 36 The proposed extended hardstanding would sit against the length of the previously approved decking and a fairly modest depth. The path and base would also be fairly modest in comparison with the scale of the site. The overall height of the hardstanding would be approximately 0.59m, against the back drop of the existing decking.
- 37 The proposed hardstanding would be low lying and sit against existing development. The land has a commercial association and the overall impact volumetrically and visually would be limited to the openness of the Green

Belt. While the area would be used for additional seating the paraphernalia associated is not fixed to the ground and sits in the setting of sites use.

- 38 The proposal could see a small increase in activity associated with the café use. Policy LO8 does seek to maintain the extent of the Green Belt and also supports the maintenance and diversification of the rural economy. The proposal for the hardstanding is considered to maintain the extent of the Green Belt and would not materially harm the open character.
- 39 The proposal is considered to comply with policy LO8 of the Core Strategy and paragraph 145(g) of the NPPF.
- 40 Very special circumstances
- 41 The applicant has not made a claim for very special circumstances. In this case there are no material considerations that may amount to or contribute to a case for very special circumstances. This issue is considered in more detail in this report.

Design and impact on the character of the area

- 42 Policy SP1 of the Core Strategy and Policy EN1 of the ADMP state that all new development should be designed to a high quality and should respond to and respect the character of the area in which it is situated.
- 43 The Elms site is located adjacent to Bough Beech Road and Homewood Road extends to the western boundary of the site. The site is located outside of the settlement of Four Elms and the general character of the area is rural interspersed with commercial and residential development.
- 44 The hardstanding low lying bulk and massing is a dominant feature of the area. The hardstanding is seen against the bulk and mass of the premises already located on the site. The car park and other areas directly to the rear of nursery are subject to hardstanding and paraphernalia and other items that are characteristic of the site.
- 45 The area is characterised by a rural landscape, to ensure the area retains the rural qualities, external lighting would be restricted on the outdoor eating area. Further, the outdoor area will be secured to be utilised in connection with the café use only.
- 46 The proposal would maintain the character of the site and its impression on the area. The proposal would be considered to comply with policy EN1 of the ADMP and LO8 of the Core Strategy.

Neighbouring Amenity

- 47 Policy EN2 of the ADMP requires proposals to provide adequate residential amenities for existing and future occupiers of the development. The Residential Extensions SPD recommends that a 45 degree test is undertaken for a loss of light to neighbouring dwellings, based on BRE guidance.

- 48 The proposal to extend the hardstanding would not result in bulk or mass that would result in a loss of daylight/sunlight to neighbouring properties. Again due to the limited bulk and massing of the hardstanding significant visual intrusion would not occur. The hours would not impact matters pertaining to light and visual intrusion.
- 49 As a general rule a distance of 21m is considered sufficient to prevent a significant loss of privacy. The distance from the hardstanding and built form to the surrounding properties exceeds 21m. The hardstanding would not be so elevated as to provide a significant platform. The distance would prevent a significant loss of privacy to neighbouring properties.
- 50 The proposed development would see increased hours to the café and gym. Permission currently exists for a gym, however this relates to the internal areas of the building and not externally. Any grant of consent would relate to the internal parts of the gym. It should be noted that operational hours are not development under the definition of section 55 of the Town and Country Planning Act as amended.
- 51 The site is located a fair distance from neighbouring properties. The Environmental Health Officer was consulted on the application in regard to noise implications. The Officer has not objected to the proposed opening hours of 09:00 to 22:00 Monday to Saturday and Sundays 10:00 to 17:00. The Officer has identified that a condition would need to be imposed to prevent any amplified music outside of the gym and café and that it should not exceed the built premises.
- 52 The restriction to contain the noise within the buildings during these hours would be considered necessary to prevent disturbance to the rural environment. Further, impacts to the wider environment would be monitored by Environmental Health legislation.
- 53 Some confusion has been born out of the discrepancy between the Design and Access Statement and the application forms depiction of hours. The local authority is not required to accept amendments and the application form is the formal declaration of the proposal. The hours considered are those identified in the proposal description.
- 54 Overall, subject to condition the proposal would be considered acceptable in regard to amenity impacts. The proposal would be considered to comply with policies EN2 and EN7.

Parking and Highways Impact

- 55 Policy EN1 and T2 states that all new development should provide satisfactory means of access for vehicles and pedestrians and provide adequate parking.
- 56 The red line plan includes an existing access and parking site which is located to the front of the building. Paragraph 109 of the NPPF states that:

‘Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe’.

- 57 The proposed extension to the hardstanding would not be considered to increase the activity on site to such a degree that a severe impact to the highway would occur, particularly given the scale of the front car park. The proposal would be considered to comply with parking and highway policy.
- 58 The red line contains the front access and car park along Bough Beech Road, the red line does not include the access that runs to the north east of the site (Bull Lane). The local authority cannot control the use of publically maintained highway. A condition could secure access through the main access, however it would be difficult to enforce given the monitoring that would need to be conducted to identify a breach and the limited control planning legislation would hold over the use of existing accesses.
- 59 The hours may allow vehicles to access the site for an extended period. However, the car park to the front contains a number of spaces and the degree of those accessing the site is dependent upon the time and purposes of visiting the site.
- 60 The proposal would be considered to comply with highway and parking policy.

Trees and Landscaping

- 61 The proposed extension of hardstanding would not necessitate the removal of trees which represent valuable visual amenity. The Tree Officer has no objection to the proposal. The proposal adds additional planting within the planters. A condition could be secured to ensure the area beside the extended hardstanding is returned to grass.

Biodiversity

- 62 Policy SP11 of the Core Strategy states that the biodiversity of the District will be conserved and opportunities sought for enhancements to ensure no net loss of biodiversity.
- 63 The area of land subject to the hardstanding has been subject to low level maintained grass. Such an area would hold limited ecological value. The hedging is not proposed to be altered. Lighting restrictions could be conditioned to prevent disturbance to foraging bats and owls.

Other issues

- 64 Licensing:

Licensing represents a separate process to planning legislation and is not a material planning consideration.

65 Air Quality:

The site is not located in an Air Quality Management Area. The site is bounded by a classified road and the increased activity is not considered to result in a significant impact to the local air quality.

66 Affordable Housing project:

As the site in question is not subject to an application for affordable housing provision, such matters are not material planning considerations in regard to the current proposal.

67 Bunds:

The bunds are not under consideration as part of this application.

Community Infrastructure Levy (CIL)

68 This proposal is not CIL liable.

Conclusion

69 The proposed hard standing and opening hours are considered acceptable against policy requirements. The proposal would support the rural economy and would be conditioned to ensure the tranquillity of the rural environment is maintained.

Recommendation

70 It is therefore recommended that this application is granted, subject to condition.

Background papers

Site and block plan

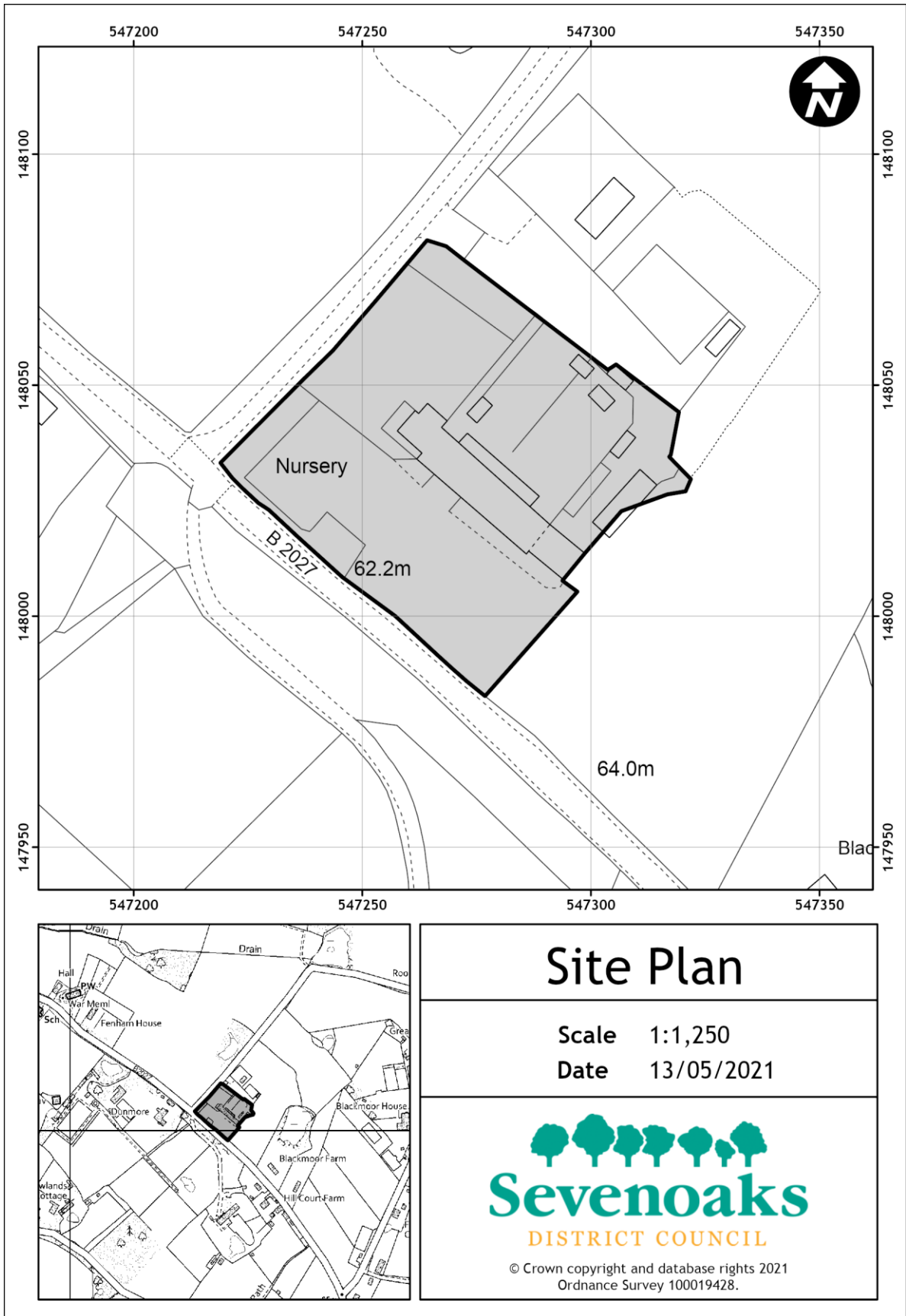
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[Link to application details:](#)

[Link to associated documents:](#)



BLOCK PLAN

