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<b>Ightham</b>	<b>559213 154851</b>	<b>15 June 2011</b>	<b>TM/11/01602/FL</b>
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Ightham

Proposal:	Revised application for the erection of a detached dwelling house for occupation by the Horticultural Manager of the nursery
Location:	Planet Plants Back Lane Ightham Sevenoaks Kent TN15 0NY
Applicant:	R Mckenna

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## **1. Description:**

- 1.1 The application was originally reported to APC2 on 26 October 2011 and was deferred for a Members' Site Inspection ["MSI"] which was held on 11 November 2011.
- 1.2 A number of matters and queries arose as a result of the MSI. Case officers accordingly requested clarification and further details in respect of these points from the applicant, and also requested further views from the Council's retained agricultural consultant. This clarification and additional information, together with the further response from the retained agricultural consultant, are detailed below and have been taken into account in my further consideration of the application as set out in this report. This report is an updated and consolidated version of the report presented to the 26 October 2011 APC2 meeting.
- 1.3 The application seeks planning permission to erect a two storey dwelling to provide accommodation for the manager of Planet Plants, of traditional form but with modern architectural detailing (including the window design and arrangement) at the application site. The dwelling would therefore comprise accommodation for an agricultural worker, albeit in a form which is more akin to a farmer's house than a dwelling where a worker on a horticultural or agricultural holding would reside.
- 1.4 The submitted plans indicate that the external materials to be used in the construction of the ground floor would be brick, with hanging tiles at first floor and a tiled roof.
- 1.5 The house would be located within the Planet Plants nursery site, located on a relatively flat area of grass towards the north-eastern boundary of the site, immediately to the north of the vehicular access into the site and associated parking area, and to the west of the smaller of two irrigation lagoons located on the site. The dwelling would be orientated so that the front elevation faces south-east, with the car port (see below) located on the north-easterly elevation.
- 1.6 The roof form of the proposal comprises gabled-ended and barn-hipped elements set perpendicularly to one another, with the majority of the windows to the first floor rooms located in the walls to these projections. Most first floor windows

break the eaves line. The proposed eaves heights are indicated as 4.3 – 5.3m, with the ridge heights between 7.2 and 8m. Accordingly, much of the first floor would be located within the roof space of the dwelling.

- 1.7 The submitted plans indicate a flat roofed single storey element, comprising a car port with a series of rooms indicated on the submitted plans as “nursery office”, “nursery shower room/boots cleaning” and “nursery storage” together with hallway. The overall footprint of the proposed dwelling is (including the car port of 33 sq m) 162 sq m. The applicants assert that the gross floor area of the rooms associated with the nursery office/wash room etc amounts to 37 sq m, with the gross floor area of the ground floor rooms being 92.5 sq m. The applicants calculate that the floor area of the first floor would be 105.5 sq m. The overall floor of the house and nursery office/wash rooms etc is 235 sq m.
- 1.8 A draft Unilateral Undertaking has been submitted which indicates that the dwelling would not be sold off separately from the nursery.
- 1.9 The applicant [Mr McKenna] has detailed that the application is made on the basis that it is essential for at least one worker to be on site 24 hours every day throughout the year, and that he considers that:
  - in normal circumstances it is beneficial to have two workers on site at all times so that workload can be shared and to ensure a safe working environment, and
  - in an emergency he considers that it will be very beneficial to have two workers on site immediately to allow one worker to deal with the emergency in a hands-on capacity and the other worker to contact other staff.
- 1.10 The applicant has also detailed that he considers that he and his wife [Mrs McKenna] are the most appropriate people to live on site rather than any other members of staff employed at Planet Plants as “*not only are they ultimately responsible for the business, they would not wish to incur unnecessary/additional costs which would inevitably come with someone else living on site*”.
- 1.11 The applicant himself is employed at Wyevale East Nurseries as the Nursery Director. Wyevale East Nurseries is a large cash-and-carry nursery located at Swanley which supplies nursery stock to landscape contractors, garden designers and architects. Mr McKenna advises that he works at Wyevale East Nurseries on weekdays between 08.00 – 17.00 and works at Planet Plants as the manager (he is also the owner of the nursery) “*early in the morning, in the evenings, particularly during the Spring, Summer and Autumn, and on both Saturdays and Sundays throughout the year*”. The applicant advises that Mrs McKenna “*is on site for most, if not all, of the day as well as working from home when necessary...*”. The applicant has also advised in other correspondence that Mrs McKenna’s role at

Planet Plants is as “a vital member of the management team for Planet Plants in both business development, accountancy and financial management, customer contact liaison roles as well as providing hands on support”.

**2. Reason for reporting to Committee:**

- 2.1 The application is reported to Committee following its deferment from the 26 October 2011 APC2 for a MSI. The application was reported to the 26 October 2011 APC2 at the request of Councillor Chartres as there is “considerable local support for the enterprise and the proposal”.

**3. The Site:**

- 3.1 The application site comprises a relatively small area within the wider Planet Plants nursery site. Planet Plants is a wholesale nursery, although it is understood that it is open to the public several weekends a year. The Planet Plants website indicates that orders for plants can be made over the internet and delivered, although the applicant asserts that the internet delivery side of the business is “due to start up in January/February 2012”.
- 3.2 The south eastern corner of the nursery site contains two irrigation lagoons, together with the parking area detailed above. A 24m long and 14.7m wide building is situated within the centre of the site (to the west of the proposed position of the agricultural worker’s dwelling), as approved under TM/09/00328/FL (erection of a replacement agricultural building to provide a potting shed, office and storage areas). The remainder of the site contains a number of polytunnels and glasshouses and a series of planting beds.
- 3.3 The site is accessed from Back Lane. The junction between Back Lane and the A227 Tonbridge Road is set a short distance to the south-east of the nursery.
- 3.4 The nursery site is well landscaped, with mature vegetation situated on its boundaries.
- 3.5 Although there are large detached houses located in sizeable and verdant plots located on the north-eastern side of Back Lane, there are no other residencies on the south-western side of this highway.
- 3.6 To the west of the nursery, separated by land seemingly used as paddock, is another horticultural nursery known as Ivy Hatch Nurseries/Selected Plants Nursery, accessed from Ismays Road. This horticultural nursery was formerly linked to the application site by an access to the north although it is understood that the sites were sold off separately and now operate independently.
- 3.7 There have been a number of planning applications submitted where the “red line” indicating the application site is denoted as the site known as Ivy Hatch

Nurseries/Selected Plants Nursery only, a number where the application site is indicated as the Planet Plants site only and a number where the application site is indicated as the two elements of land which comprise the two nurseries together with the link between them. For completeness, I have included the planning history of the various parcels of land and indicated which application relates to which element, as indicated by a “red line”. Members are advised that at present Ivy Hatch Nurseries/Selected Plant Nursery and Planet Plants comprise and operate as separate horticultural enterprises.

- 3.8 The application site is located within the MGB and Kent Downs AONB. It also lies in an area of archaeological potential and is relatively close to several SSSIs. A PROW runs along the southern boundary of the nursery site.
- 3.9 As Members will be aware from the MSI, Planet Plants operates as a wholesale nursery specialising in growing a range of types of plants (and there is considerable species variation within each plant typology) from around the world. The applicants advise that the nursery operates by purchasing immature plants (or sourcing them from cuttings taken from more mature plants) and developing them through husbandry before selling them on (at which point the value of the plant is considerably higher): the typical husbandry period will be 4 – 5 years.
- 3.10 Whilst automated irrigation systems are used at the site, the applicant advises that it is not possible for the various plant growing parameters (including the temperature and water content) to be monitored electronically or for members of staff to be alerted by remote alarm if the environmental conditions fall outside these parameters, due to the range of growing conditions required by different types and species of plant grown.
- 3.11 The applicant advises that there are three additional members of staff employed full time at the site: two live in Tonbridge and one lives in Plaxtol.

#### **4. Planning History:**

- 4.1 As set out above, I have provided the planning history for the land denoted by the “red line” on the plans submitted as part of this application (i.e. the Planet Plants only nursery site), but have for completeness also provided the details of the planning applications made for land which was indicated within the “red line” as that referred to as Ivy Hatch Nurseries/Selected Plant Nursery, and the planning applications which have been submitted which indicate the two pieces of land and associated link within the “red line”. Members are advised that the application which was refused for an agricultural dwelling for nursery manager under reference TM/05/02374/OA was made at the site which is presently operating at Ivy Hatch Nurseries, and does not relate to the enterprise operated at Planet Plants by the applicant.

4.2 The planning history for the Planet Plants nursery site only is set out below:

TM/95/51397/FL Grant with Conditions 1 December 1995

Construction of multibay polyhouse

TM/04/03404/FL Application Withdrawn 28 October 2004

Telecommunications installation comprising 20 metre column mast accommodating 3 No. antennas and 2 No. 60mm transmission dishes with 6 No. equipment cabinets located within the same compound measuring 6m x 6m.

TM/07/03886/FL Approved 19 December 2007

2 no. replacement polytunnels

TM/09/00328/FL Approved 1 May 2009

Erection of a replacement agricultural building to provide a potting shed, office and storage areas.

TM/10/00029/RD Approved 28 April 2010

Details reserved by conditions 2, 4 and 5 of planning permission  
TM/09/00328/FL: Erection of a replacement agricultural building to provide a potting shed, office and storage areas

TM/10/02923/FL Application withdrawn 15 December 2010

Erection of a detached dwelling house for occupation by the Horticultural Manager and Partner of Planet Plants Nursery.

4.3 The following history relates to applications made at the site which comprises both the Planet Plants and Ivy Hatch Nursery sites together with the access link between them:

MK/4/59/526 Refuse 2 September 1959

Alt Ref:

TM/59/10347/OLD

Outline application for erection of agricultural dwelling.

TM/85/757 Grant with Conditions 26 July 1985

Alt Ref:

TM/85/11268/FUL

Extension to agricultural workshop and store and erection of multi-bay polythene house.

TM/88/1158                      Grant with Conditions              29 July 1988  
Alt Ref:  
TM/88/11994/FUL  
Demolition of dutch lighthouse and replacement with Robinson 6.7m type  
glasshouse.

4.4 The following history relates to applications made at just the Ivy Hatch Nursery site:

MK/4/62/614,                      Refuse                                      16 January 1963  
Alt Ref:  
TM/63/10630/OLD  
O/A Dwelling on smallholding.

MK/4/71/758                      Refuse                                      24 March 1972  
Alt Ref:  
TM/72/11610/OLD  
Erection of an agricultural worker's dwelling.

MK/4/53/335                      Application Withdrawn  
Alt Ref:  
TM/74/11511/OLD  
Outline Application for one dwelling House

TM/05/01465/FL                      Grant With Conditions              4 July 2005  
  
Agricultural/horticultural building to replace existing buildings

TM/05/02374/OA                      Refuse                                      17 January 2006  
  
Outline Application for Agricultural dwelling for Nursery Manager

TM/06/01170/FL                      Application Withdrawn              7 June 2006  
  
Installation of a radio base station comprising a 22.5m high monopole tower supporting 3 No. 2.0m antennas, 2 No. 0.6. m diameter dishes, radio equipment housing and ancillary development thereto.

TM/07/01854/FL                      Refuse                                      21 September 2007  
  
Two storey replacement offices/storage/despatch building

TM/08/02305/FL

Approved

18 September 2008

Demolition of existing office and erection of single building housing office and canteen

TM/11/00901/FL

Approved

16 September 2011

Replacement of existing agricultural buildings with the erection of a general purpose agricultural building

## **5. Consultees:**

- 5.1 Ightham PC: We supported the previous withdrawn application last November and continue to do so. This revised application makes the case for approval even more convincingly. The serious damage caused to polytunnels by the exceptional snowfall in December last could have been prevented had the McKennas been living on site. Furthermore, account has been taken of TMBC's advice and the size of the proposed house and office has been reduced.
- 5.2 DHH: General advice was provided in respect of waste management, including the position and number of bins to be provided.
- 5.3 Retained agricultural consultant: The Council's retained agricultural consultant has provided a number of comments of relevance to the proposal:
- comments made in relation to application TM/11/00901/FL (dated 8 December 2010) – Annex 1;
  - comments made in relation to the documentation originally submitted as part of this application (dated 25 July 2011) – Annex 2;
  - comments made (dated 8 September 2011) following the submission of a report by the applicants responding to the retained consultants comments – Annex 3;
  - comments made following a request for further information made by case officers on specific issues which arose from the MSI (dated 7 December 2011) – Annex 4.
- 5.4 A summary of the retained agricultural consultant's comments is set out below. In respect of the report that was presented to 26 October 2011 APC2, the applicant expressed concern that certain factual statements in the Report were incorrect or had altered since the submission of the application. Some of these related to comments made by the retained agricultural consultant – I have, where

appropriate, qualified the comments with which the applicants had concern. I have also indicated which parts of the agricultural consultant's comments relate to which test set out in Annex A of PPS7 (please refer to paragraph 6.4 of this report):

- Background:
  - the site was part of a larger nursery (Ivy Hatch Nurseries);
  - the applicants have invested significantly in renovating the site and the nursery is being developed mainly as a specialist grower of medium to large/specimen sized shrubs, with plants sold wholesale to trade outlets, an on-line retail sales outlet is being developed and there are occasional open weekends for the public [the applicant advises that the internet delivery business is due to commence in January/February 2012] ;
  - Mr McKenna is an experienced grower who, as well as being involved in establishing Planet Plants Nursery, is currently engaged as manager of the large cash-and-carry nursery at Swanley;
  - Mrs McKenna is becoming involved in the management of Planet Plants but also has day-day care of their young children [the applicant advises that Mrs McKenna has both a management and "hands on" role];
  - the family live in Tonbridge but propose selling their house to finance the construction of the proposed dwelling;
  - there are an additional one no. full-time worker and three no. part-time workers at Planet Plants [the applicant advises that there are three full-time workers at the nursery];
- Annex A of PPS7 functional test (PPS7 tests i) and ii)): on-site accommodation is warranted in principle under the functional test of Annex A of PPS7, based on the following:
  - *"the test is what accommodation, in terms of enabling workers to be "readily available" at most times, is necessary for the enterprise to operate properly; the test is not the minimum provision necessary for it to operate at all"*;
  - the proper care of the plants, particularly when weather conditions are adverse through summer heat or winter cold;
  - the site is difficult to access when there is heavy snow and with someone resident on site it should be possible to take prompt action to help minimise damage through snow or frost;
  - residency would assist general husbandry tasks (such as spraying and vermin control);



- residency should assist in limiting damage or theft;
  - it is far preferable, in terms of the accuracy of monitoring varying conditions relating to different plants, and in terms of immediate response and checking the position on site day and night, if the monitoring is directly linked to on-site accommodation;
  - it is unrealistic to suggest a responsible manager, living remotely, could temporarily move into overnight accommodation on the site to try and anticipate adverse weather problems (wind, heavy rain, frost/ice or snow);
  - when all the factors are taken together, *“there is an essential need for accommodation at, or very close to, the nursery, in order for it to function properly”*;
  - the proper operation of the nursery requires at least one responsible full-time owner/manager and *“between them Mr and Mrs McKenna provide this role, and are understood to be the only employees suitably qualified/experienced to do so”*.
- (PPS7 test iv)): there is no residential accommodation on the site or elsewhere locally that would be suitable and available for meeting the functional needs which have been arising;
  - Annex A of PPS7 financial test iii):
    - whether the unit and activity concerned has been established for at least three years: this has been achieved as trading has commenced since May 2007;
    - whether it has been profitable for at least one year: The submitted accounts indicate that whilst sales have increased, any profit on the submitted accounts indicate that much is due to net stock valuation increases in 2009/10 and 2010/11 (the latter of which was greater than the sales figures) – accordingly the accounts to date demonstrate no net cash profits but significant net cash outflows from the business despite trading for 4 years. Accordingly, the net profits are notional, on the basis of a large accumulating stock level: producing stock is one thing, achieving actual sales of that stock is another;
    - whether it is currently financially sound and has a clear prospect of remaining so: Due to the reliance to date on the large valuation changes compared to actual sales income, it is concluded that this particular business is still very much in the course of being established, rather than being “well established” as required in Annex A of PPS7;

- § the full accounts for the business for all years have not been provided and it is accordingly not possible to see exactly how the reduction in long-term liabilities of the business year-on-year have been achieved, it is presumed that this must have been achieved through the introduction of outside (non-loan) capital rather than any net profits from within the business itself. This may indicate that there has been a lot of further capital input to help support the business, which is not the same thing as the business being inherently well-established and financially sound;
- the net stock valuation increases reflect the increase in value of stock associated with the maturation of plants until their sale after 4 – 5 years. It is unsound to place so much reliance on stock valuations pending actual sales;
- the case for a permanent dwelling should at least await the full trading accounts for the current financial year ending 31 March 2012.
- whether the proposed dwelling is of a size commensurate with the established functional requirement and not unusually large in relation to the agricultural needs of the unit; the size of the dwelling as proposed (198 sq m of just residential accommodation proposed or 235 sq m including the business space) appears to be unusually large in relation to the needs of the unit, which is the relevant test, rather than the personal needs of the family. The nursery already has approved office/cloakroom facilities in the new permitted building;
- whether the proposed dwelling is unusually expensive to construct in relation to the income the enterprise can sustain in the long-term: the cost of constructing the dwelling is a range of £180,000 – £200,000. The applicants have indicated that the cost of the dwelling is expected to be broadly covered by the sale of the applicant's existing house, and whilst no doubt Mr McKenna could also help to support the dwelling from the income gained from his current position at the cash-and-carry nursery, Annex A of PPS7 requires that the cost should be sustainable only from the income the agricultural unit can provide. The applicants assume that a mortgage of £100,000 would a) suffice and b) be obtainable. This relies respectively on outside capital for the balance of the cost, rather than the cost being sustainable by the unit (which PPS7 requires), and on a mortgage being obtainable in a situation where the business has yet to generate any net cash returns. The costs of the dwelling proposed would be a fair degree greater than what the business itself could reasonably afford;

- temporary accommodation: the application is not for temporary accommodation. Nevertheless, if such an application were to be made, it is likely that the relevant tests would be satisfied. Mobile homes and log cabins are available upto 120 sqm.
  - Conclusion: the case for a permanent dwelling on this site, and particularly one of the large size and cost proposed, remains premature as matters stand.
- 5.5 KHS: No objection subject to conditions regarding disposal of surface water, parking and turning of operatives' vehicles and retention of parking and turning areas indicated on the approved plans.
- 5.6 KCC PROW unit had no objection to the proposal.
- 5.7 Private Reps (12/0X/1R/10S): Of the ten letters received supporting the application, four of these have been received from neighbouring properties. Specific reference is made to the need for on-site accommodation to ensure improved security and allow the applicants to deal with the effects of adverse weather. Four letters of support were also received from employees of Planet Plants including the applicant's wife.
- 5.8 A letter has also been received from the Dartford Farmers and North West Kent Growers National Farmers Union group supporting the proposal and detailing that it is considered that the reason why the enterprise may have undergone any financial hardship is due to the losses associated with the damage caused by snowfall last winter. A representation has also been submitted representing the International Plant Propagators Society and the UK Ornamental Plant Growing Industry supporting the application.
- 5.9 Since the 26 October 2011 APC2 an anonymous letter has been received which details that the contributor considers that the applicant and his wife have full time jobs away from the nursery and have no day-to-day hands on activity at the nursery, and that the contributor has not witnessed any horticultural activity when walking the roads which surround the site at weekends. As the letter is anonymous, I have attached reduced weight to the representation. Nevertheless, the issues raised in the representation have been considered as part of my consideration of the application.

## **6. Determining Issues:**

- 6.1 The chief determining issues are a) whether the proposal satisfies the tests for a permanent agricultural dwelling as set out in Annex A of PPS7, b) if the proposal does not satisfy this test then whether it comprises inappropriate development in the MGB, and c) the effect of the development on the character of the landscape and rural area, amenities of the MGB and the landscape quality of the AONB.

6.2 The planning policy which needs to be taken into account in the consideration of this application includes:

- National planning guidance: the Draft National Planning Policy Framework [“NPPF”] was subject to a period of consultation from 25 July 2011 – 17 October 2011. The NPPF is a consultation document and is capable of being a material consideration: it is for the decision making authority to determine how much weight is to be attached to the draft Framework. The draft NPPF sets out that sustainable economic growth in rural areas should be supported by taking a positive approach to new development, planning strategies should support the sustainable growth of rural business and that an essential need for a rural worker to live permanently at or near their place of work in the countryside can represent special circumstances to overcome the general policy of avoiding isolated homes in the countryside. This reflects the present advice as set out in PPS4 and PPS7, albeit the draft Framework does not contain any of the detailed tests against which such proposals should be assessed. Accordingly, given the draft status of the Framework, the national planning guidance relevant to this application is considered to be that contained in PPS1, PPG2, PPS3, PPS7 and PPG13;
- TMBCS: Policies CP1, CP3, CP6, CP7, CP14, CP15 and CP24;
- MDE DPD: Policies NE3, SQ1 and SQ8.

6.3 In respect of the South East Plan, the Localism Act 2011 has been granted Royal Assent, and consultation is currently being undertaken on reports which assess the implications of the abolition or revocation of the various Regional Spatial Strategies, after which orders will be prepared to formally abolish the RSSs, which are likely to take effect in Spring 2012. The Courts have held that the intention to revoke the RSSs (including the SEP) remains a material consideration in the determination of applications. Notwithstanding this, in light of the strategic nature of the SEP there are no policies of direct relevance to the proposal.

#### Principle of Development

6.4 Paragraph 2 of Annex A of PPS7 details that it is essential for planning applications for new occupational dwellings to be scrutinised thoroughly and that in particular it will be important to establish whether, *inter alia*, the farming practice requires one or more persons engaged to live near-by and whether the enterprise is capable of being sustainable for a reasonable period of time. Paragraph 3 sets out that “*new permanent dwellings should only be allowed to support existing agricultural activities on well-established agricultural units*” providing a series of tests and criteria are satisfied:

- (i) there is a clearly established existing functional need;

- (ii) the need relates to a full-time worker, or one who is primarily employed in agriculture and does not relate to a part-time requirement;
- (iii)
  - the unit and the agricultural activity concerned have been established for at least three years;
  - the unit and the agricultural activity has been profitable for at least one of the three years;
  - the unit and the agricultural activity is currently financially sound;
  - the unit and the agricultural activity has a clear prospect of remaining financially sound;
- (iv) the functional need could not be fulfilled by another existing dwelling on the unit or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned;
- (v) other planning requirements, e.g. in relation to access, or impact on the countryside, are satisfied.

6.5 Paragraph 12 of Annex A of PPS7 states that *“if a new dwelling is essential to support a new farming activity, whether on a newly-created agricultural unit or an established one, it should normally, for the first three years, be provided by a caravan, a wooden structure which can be easily dismantled, or other temporary accommodation”*.

6.6 Planet Plants has been operating since May 2007 and therefore comprises a relatively new farming activity. The enterprise has been set up and operated for four years without such on-site accommodation. The applicants have explained that accommodation was not required on site previously as *“there was no need to live on-site for the first two years whilst the derelict nursery was restored and stock was built up”* but it was *“realised that there was a need to live on site early in 2010 and as soon as they realised they started to work on proposals which would allow them to live at the nursery”*. However, they did not seek permission for temporary accommodation as they *“could clearly see that by the time the application was submitted the three year period [as set out in Annex A of PPS7] would have been achieved and they were confident that the tests would have been met...in a nut shell there was no point in applying for temporary accommodation particularly bearing in mind the difficulties which would result in terms of impact on the family life”*.

Relevance of Appeal Decision at The Nursery, Taylor's Lane, Trottiscliffe

- 6.7 Members may recall planning application TM/11/00658/FL at The Nursery, Taylor's Lane, Trottiscliffe, which sought retrospective planning permission for a temporary agricultural worker's dwelling and was considered at APC2 on 25 May 2011. An appeal in respect of the refusal of permission for this development was determined by the Planning Inspectorate. The decision notice is provided at Annex 5.
- 6.8 In determining that application, the Borough Council had regard to the comments made by both the Council's retained agricultural consultant and the agricultural consultant instructed by that applicant. Both consultants considered that, in that instance, the tests as set out in Annex A of PPS7 were satisfied. However, the Borough Council reached a different conclusion, having regard to a wider knowledge of the availability of alternative available and suitable housing in the area around the application site, and refused planning permission. In determining the appeal, the Planning Inspector had regard to the comments of the two agricultural consultants, but agreed with the conclusions of the Council in respect of whether the tests for an agricultural worker's dwelling had been satisfied – and dismissed the appeal.
- 6.9 The Inspector reached conclusions in determining that appeal which could have general relevance to applications for agricultural worker's accommodation at horticultural nurseries. These conclusions include:
- that an on-site presence is not necessary *in principle* providing there are appropriate technological arrangements (sensitive on-site monitoring equipment linked to remote alarms) and persons are sufficiently close to the site to be able to respond within an effective time frame;
  - that an appropriate "area" of search for available and suitable alternative accommodation would be villages surrounding the application site (up to 8 minutes drive time to the site) and that such journeys by car would be of sufficient swiftness to respond to emergencies without damage to plants;
  - that the likelihood of local roads being blocked by extremely adverse weather conditions would be "*a very occasional occurrence*", that meteorological information of impending situations of this kind is highly likely to be available in advance of such weather and "*this would permit a temporary overnight stay at the unit to be considered in order to deal with any problems which might emanate from such an event and threaten the wellbeing of the plants being grown*".
- 6.10 In my report to 26 October 2011 APC2 I acknowledged that there were considerable differences between The Trottiscliffe Nursery site, enterprise and proposal and that at Planet Plants, but also that it was my consideration that substantial weight should be attached to these conclusions in respect of the

current application at Planet Plants. In light of the further information obtained from the applicant following the MSI and the review of those matters by the retained agricultural consultant, I now consider that while the principles of the Trottiscliffe Inspector's conclusions can frequently be material considerations in the determination of applications for agricultural worker's dwellings, the specific nature of the enterprise operated at Planet Plants (namely growing a range of types of plants with considerable species variation within each plant typology) leads me to conclude that the use of sensitive on-site monitoring equipment linked to remote alarms would not be realistically practicable at the site due to the considerable variation in growing and environmental conditions which the various plants require.

- 6.11 As a result of this further information, my conclusion as to whether the proposal satisfies the tests as set out in PPS7 has altered since my earlier report.

*The Functional Test*

*Criteria (i) and (ii): the functional need for a full time worker*

- 6.12 In respect of criterion (i) of the test for a new permanent agricultural worker's dwelling in PPS7, paragraphs 4 and 5 of Annex A of PPS7 set out that a functional requirement might arise if a worker(s) is needed to be on hand day and night to provide essential care at short notice or to deal quickly with emergencies that could otherwise cause serious loss of crops or products, for example, by frost damage or the failure of automatic systems. Paragraph 6 of this Annex explains that the protection of livestock from theft or injury by intruders "*may contribute on animal welfare grounds to the need for a new agricultural dwelling, although it will not by itself be sufficient to justify one*" (an agricultural dwelling): no reference is made to security concerns related to other agricultural enterprises such as horticulture.

- 6.13 The applicant's case that the functional need is met as set out in the submitted application can be summarised as:

- *changes in weather can lead to a loss of stock from drought (in the event of the failure of the irrigation system) or waterlogging due to the need to modify the automated timing system on the irrigation system in times of excessive rainfall;*
- *a need to deal with ice, slush, or snow on polytunnels and glasshouses;*
- *in times of severe cold weather (particularly in anticipation of early morning frosts) it is necessary to cover plants with fleecing material to prevent leaf damage and root death which can lead to loss of stock;*
- *on-site accommodation will assist in protection from rabbit damage;*
- *on-site accommodation would deter vandalism and theft;*

- *there is a general requirement for an on-site presence in order to facilitate the proper husbandry of the various plants being grown on-site;*
- *“the nature and characteristics of the plant stock at the nursery does not lend itself to automatic climate control because the different types and species would require a wide variety of different environment and this would make it too expensive to provide such systems”.*

6.14 As detailed above, the Council’s retained agricultural consultant’s assessment is that he considers that on-site accommodation is warranted, in principle, in accordance with criterion (i).

6.15 In considering whether it is essential for the proper functioning of the enterprise for one or more workers to be readily available at most times, PPS7 advises that it is necessary to consider whether on-site accommodation is warranted due to one particular reason, or as a result of the combination of a number of reasons. Having received further information from the applicant and the Council’s retained agricultural consultant, several of the individual reasons put forward in the application could be argued to be not sufficient *in their own right* to make it essential for the proper functioning of the enterprise for one or more workers to be readily available at most times, although as explained in paragraph 6.16 below, they do when considered cumulatively satisfy this test. For the sake of clarity, I detail these below:

- meteorological information of impending adverse weather conditions including ground frosts or extreme conditions such as heavy snow is available in advance which would allow the applicants to prepare in advance. In any event, such extreme meteorological conditions which would render the roads to the application site impassable are very rare events;
- whilst an on-site presence may assist in limiting damage or theft, and evidence has been provided that indicates that the nursery has been subject to such incidences in the past, PPS7 states that this would not in its own right warrant sufficient justification for an on-site residential presence;
- it is apparent that much of the fencing at the site (either around the site boundaries or around particular growing beds) is not rabbit proof.

6.16 However, having regard to the particular husbandry requirements associated with the production of the range of plants grown at Planet Plants, together with the fact that an on-site presence would serve to minimise any loss of plants in extreme weather events if the site is not accessible by road and the fact that such an on-site presence would be likely to reduce theft from the nursery, I am of the opinion that (in combination) it is essential for the proper functioning of the enterprise for one full-time worker to be readily available at most times at the site, or in very close proximity to it. This view reflects the assessment of the retained agricultural consultant.



6.17 In respect of criterion ii), I have some concerns that, due to the applicant's full-time employment at another nursery some 17 miles distance from the application site, he alone would not be able to satisfy the above need. However, the retained agricultural consultant is of the opinion that between the applicant and his wife they are able to provide the role in order to facilitate the proper functioning of the enterprise, and are understood to be the only employees suitably qualified/experienced to do so. I have no reason to disagree with the retained consultant's assessment and accordingly I consider that the proposal satisfies criterion ii).

*Criterion (iv): Alternative suitable and available accommodation on-site or in area*

6.18 There is no other existing accommodation on the site. There is also no alternative existing accommodation in the area which is suitable and available for occupation by an agricultural worker given the size and cost of dwellings within relatively close walking distance of the application site. I therefore consider that criterion iv) is satisfied.

6.19 In the event that sensitive monitoring equipment and remote alarms are suitable for use at a particular horticultural enterprise, the "area" in which alternative accommodation could be located would be considerably widened.

*Criterion (iii): Financial test*

6.20 Paragraph 8 of Annex A of PPS7 details that a financial test is necessary as new permanent accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable. The matters to be assessed in the determination of the financial test are detailed at criterion (iii) of paragraph 3 of Annex A of PPS7. In reaching my conclusions as to how the agricultural enterprise performs in respect of the criteria, I have had regard to the comments of the retained agricultural consultant, who has reviewed in detail all the financial information submitted in support of both applications, together with the information and supporting statement from the applicant's agricultural consultant provided throughout the course of the application. Therefore, the comments specifically address the applicant's assertion at the MSI that the stocks of mature plants which had been accumulated at the site should lead to increased sales in the coming years.

6.21 The enterprise has been operating and established for at least three years: trading commenced at the beginning of May 2007. In respect of whether the enterprise has been profitable for one of these years, the submitted accounts indicate significant losses in the first two years whilst stocks were built up, followed by a small profit (£2285) for 2009/2010 and a larger profit of £24,886 for 2010/2011. However, the retained agricultural consultant advises that the net profits are as a result of significant net stock valuation increases in 2009/2010 and 2010/2011. Whilst it is understood that stock will increase in value as specimen plants mature

and overall stock levels increase (to a level of £700,000 in April 2011) sales are still relatively low (only £77,318 in 2010/2011). Therefore, whilst the submitted accounts indicate that the enterprise has been profitable, there are concerns, as expressed by the agricultural consultant, in respect of the large increases in stock valuation and relatively low sales figures.

6.22 In respect of the final two parts of the financial test, the applicants have indicated that they consider the enterprise to be financially sound based on the fact that the assets associated with the enterprise far exceed the long-term liabilities, with a considerable stock of plants to be sold (approximately £700,000). However, the retained agricultural consultant advises that it appears from the accounts which are available that the long-term liabilities of the business have been reducing (from £305,844 loans at 31 March 2008 to £82,000 at 31 March 2011) through the introduction of outside (i.e. non-loan) capital rather than from profits generated through the enterprise itself. Therefore, whilst there has been a considerable amount of capital input to support the business, I agree with the agricultural consultant that this is not the same as the business being inherently well-established and financially sound. Similarly, although the indicated figure of stock of £712,155 at March 2011 is considerable and could potentially lead to significantly higher sales figures in 2011/2012, until such sales have actually been achieved (given the relatively low level of sales in 2010/2011 compared to stock levels, even taking into account the poor winter weather) it *may* be premature to conclude that the enterprise is currently well established and financially sound as reflected by the tests of PPS7. It must also be recognised that this is not a nursery enterprise of the type where plants are reared over one or two years and sold on with an immediate income arising – the financial pattern is inevitably affected by the pattern of cultivation that brings on plants over a longer period but ultimately significantly enhances the stock value when it is in an appropriate condition to be sold on. In this sense the project seems to be advancing well.

6.23 Therefore, whilst the applicant's intentions to develop the enterprise are most apparent, it is very difficult to align that view with the requirements of the PPS7 test.

*Criterion (v): Other planning requirements*

6.24 Criterion (v) of the test for permanent agricultural dwellings requires that all other planning requirements are satisfied. My conclusions in respect of all other material considerations are provided in more detail below (paragraphs 6.41 – 6.48): in summary I am of the opinion that the proposal satisfies all other planning requirements. If the agricultural justification were to be proven then this proposal would be appropriate to the MGB.

6.25 Paragraph 9 of Annex A of PPS7 details that agricultural dwellings should be of a size commensurate with the established functional requirement and those which are unusually large in relation to the agricultural needs of the unit, or unusually

expensive to construct in relation to the income it can sustain in the long-term, should not be permitted. It also states that *“it is the requirements of the enterprise, rather than those of the owner or occupier, that are relevant in determining the size of the dwelling that is appropriate to a particular holding”* and that the personal preferences or circumstances of any of the individuals involved are not the determining factors for agricultural worker’s dwelling.

6.26 The size of dwelling and cost of construction relative to the income generated by the enterprise are of importance, as explained at paragraph 10 of Annex A of PPS7, as these can affect the long-term use of the dwelling for its originally intended purposes (i.e. an occupational dwelling) through:

- resulting in a dwelling whose size exceeds what could be justified by the functional requirement, or;
- affecting the viability of maintaining the dwelling for its intended use given the income that the agricultural unit can sustain.

6.27 The dwelling as indicated includes a nursery office/wash room. Although such facilities are provided in the existing building which has been constructed on site, the applicants assert that the current arrangement is not ideal when customers attend the site. The applicant’s case for the size of the dwelling proposed is that the business makes use of extended family for labour at several times of the year, who travel from elsewhere in the country and need to stay at the site.

6.28 Following the withdrawal of the previous application (TM/10/02923/FL) the applicants engaged in pre-application discussions with case officers: advice was provided as to how the applicants could seek to reduce the size of the dwelling (for example through internal layout and room sizes) but the applicants were advised throughout this process of the requirements of paragraph 9 of Annex A to PPS7, and that it would not be possible to determine whether the construction cost was commensurate with the long-term income of the enterprise until the submission of an application.

6.29 The agricultural consultant considers the size of the dwelling (198 sq m (or 235 sq m including the business space) appears to be unusually large in relation to the needs of the horticultural unit.

6.30 The applicants have three children, and I accept that the requirements of paragraph 9 of Annex A of PPS7 need to be balanced against the need to provide family accommodation at the site. It must also be borne in mind that the particular form of accommodation sought (to be occupied by the horticultural manager rather than an agricultural worker), together with the finance and operation of this enterprise relies on the applicant and his wife being on site, rather than an employee, and therefore inevitably the family needs have more bearing in this case than might generally be the case for agricultural worker’s dwellings.

- 6.31 Nevertheless, I have some concerns that the dwelling itself is still somewhat larger than is commensurate with the functional need for a horticultural manager's family house: Members may agree that there is scope for a reduction in the size of the ground floor living accommodation and sizes of the individual bedrooms.
- 6.32 In terms of construction costs, PPS7 reads that the judgement should be made on the income generated by the enterprise rather than whether the construction can be financed by external capital available to the applicant, for example in terms of equity from another property. However, it is also necessary to consider that if such external capital was not utilised in the construction costs of the house then it could potentially be invested in the farming enterprise itself, particularly in such a case as at this site where the applicant is the nursery owner and manager. For this reason, I am the opinion that it is relevant, in this particular instance, to take into account any external capital that the applicant may have to balance the construction cost of the house.
- 6.33 The applicants advise that it is anticipated that the dwelling will cost between £180,000 and £200,000 to construct, to be financed by a mortgage of £100,000 with the remainder being provided by outside capital (including equity from the sale of their present property). The applicant's agricultural consultant has set out that a standard repayment mortgage on £100,000 plus a £2,000 arrangement fee would cost £585 per month, or £7,000 per year. The applicant's agricultural consultant also details that, on the stated profit for the year 2010 – 2011 of £24,886, this would allow for the payment of the mortgage whilst still leaving c. £18,000.
- 6.34 However, the Council's retained agricultural consultant has stated concerns that the cost of constructing the dwelling is considerably greater than the cost which is sustainable from the enterprise *based on any profits generated so far*, and would require a considerable amount of outside capital for the balance of the cost.
- 6.35 Having regard to the financial position of the enterprise as detailed earlier in this report, and particularly the considerable stock value compared to the relative low sales achieved so far, it is my opinion that the enterprise *may* be able to achieve sufficient income in the long-term. However, this is dependent on the actual level of sales which are achieved: at this stage such sales have not been achieved and it remains to be seen whether they will be. Therefore, it is my consideration that it *may* also be premature to conclude *at this stage* that the nursery can generate sufficient income relative to the cost of constructing the dwelling. Members may agree that it is necessary that the applicant is able to demonstrate that the present stock levels have resulted in the significant level of sales which the applicant anticipates (and associated profit) before concluding that the construction costs of the dwelling as proposed are acceptable. This reflects my considerations that the financial test for a permanent dwelling has not yet been fully and literally satisfied.

*Conclusion in respect of PPS7 tests for permanent agricultural dwelling*

- 6.36 The conclusions in respect of how the proposal performs against the test for a permanent agricultural dwelling are that the functional test (i.e. that it is essential for the proper functioning of the enterprise for one full-time worker to be readily available at most times) has been satisfied, and that there is no suitable alternative family housing which is presently available on the site or in such close proximity to allow the applicants to walk to the site. However, it has not been conclusively demonstrated that the financial test has been satisfied nor that the size and cost of the dwelling proposed is necessary having regard to the functional need nor could this cost be sustained by the enterprise.
- 6.37 Therefore, applying those tests, it would be premature to grant planning permission for a permanent dwelling at the site at present given the concerns regarding the financial soundness of the enterprise.
- 6.38 The usual practice (following the advice in PPS7) when an agricultural enterprise is being established, where an applicant considers that there is a functional need for on-site accommodation to be provided which cannot be met by alternative accommodation, is for permission to be sought for a temporary agricultural dwelling. At the MSI, Members specifically requested advice as to whether it was considered acceptable for children to reside in such temporary accommodation. Whilst this application does not seek consent for temporary accommodation, it would be my usual advice that, given the size of caravans/mobile homes and the facilities which they contain, such accommodation can be suitable for family accommodation for a temporary period, albeit it is accepted that the living conditions would be more cramped than would be provided in a dwelling. Indeed, there are a number of examples across the Borough where families reside in such accommodation both temporarily and permanently.

Metropolitan Green Belt (CS Policy CP3) and Open Countryside (CP14)

- 6.39 If it is concluded on the PPS7 tests that the agricultural need/justification is not proven then it follows that the erection of a new building as detailed would not fall within one of the purposes detailed at paragraph 3.4 of PPG2 for which the erection of new buildings is considered appropriate development in the MGB. Given my above considerations, the proposal would comprise inappropriate development and causes actual and definitional harmful to the openness of the MGB. I do not consider that the justification expressed by the applicant in the submission amounts to very special circumstances to overcome this harm, for the reasons detailed above. Accordingly, I am of the opinion that the proposal is contrary to CS Policy CS3.
- 6.40 Similarly, if it is concluded that the development is not essential housing for a farm worker(s), the proposal is contrary to CS Policy CP14.

Sustainability of location

6.41 At the MSI, Members requested that my considerations regarding the location of dwellings in close proximity to places of work be addressed. Whilst planning policy encourages reductions in the number and length of journeys undertaken by private vehicles, I consider that, due to the need for private vehicles to travel to shopping, education, health and community facilities within surrounding settlements from the application site, any benefit in terms of a reduction in private vehicle trips associated with journeys to the site would be marginal, particularly as the applicant travels to and from Swanley as part of his work at Wyevale East Nurseries.

Design and landscape impact

6.42 CS Policy CP7 requires that development which would be detrimental to the natural beauty and quiet enjoyment of the AONBs will not be permitted, other than in exceptional circumstances, including development which is essential to meet local social or economic needs. If there are exceptional circumstances, such development must have regard to local distinctiveness and landscape character and use sympathetic materials and appropriate design. Paragraph 21 of PPS7 details that AONBs have the highest status of protection in relation to landscape and scenic beauty.

6.43 In terms of the impact on the scenic beauty of the AONB, the site is well screened by mature vegetation which serves to restrict and filter views from Back Lane and the PROW in the vicinity of the site. Paragraphs 35 and 36 of PPS1 (Delivering Sustainable Development) and paragraph 16 of PPS3 (Housing) set out matters which should be considered when assessing design quality. I am of the opinion that the proposed dwelling, which is of a traditional form but incorporates modern features such as double height and angular glazed elements at first floor, performs positively against a number of these matters and is well designed in its own right. The area is characterised by large detached dwellings in substantial plots located on the north-eastern side of Back Lane, with no dwellings located on the south-western side. I am of the opinion that the proposal will introduce a building of residential appearance and domestic structures/paraphernalia within this location. However, having regard to the design of the proposal and the screening afforded by vegetation at the site, together with the fact that the dwelling would be seen as part of the wider nursery site, I consider that the proposal will not harm either long or short distances vistas within the Kent Downs AONB or the character of the rural area and accordingly is in conformity with CS Policy CP7 and the relevant design and character policies in the CS and MDE DPD, including CS Policies CP1 and CP24 and MDE DPD Policy SQ1.

6.44 In the event that planning permission were to be granted, it would be possible by the use of conditions to control the erection of outbuildings and define the extent of curtilage to confine any domestic paraphernalia to particular parts of the wider site.

Living Conditions

- 6.45 Due to the location of the site away from other dwellings, the proposal will not harm the living conditions which occupiers of neighbouring properties can expect to enjoy by means of overshadowing or loss of privacy.

Highways

- 6.46 It is proposed to use the existing access to the site, which allows for vehicles to pull off the highway whilst the gates at the front are opened. The proposal would make provision for adequate parking: I consider that it accords with Policy SQ8 of the MDE DPD.

Ecology

- 6.47 The application is supported by ecological surveys which determine that the presence of great crested newts or reptiles was considered highly unlikely at the site, the site supports habitats which are common and wide-spread and, subject to the use of appropriate mitigation measures, the erection of a dwelling would not materially harm protected species or biodiversity. It is considered that the proposal accords with MDE Policy NE3.

Contamination

- 6.48 The application is accompanied by a contaminated land assessment which concludes that there is a low risk of land contamination. DHH has no objection to the proposed development.

Conclusion

- 6.49 This application undoubtedly raises some issues that are inherently difficult to balance. On the one hand there should be support for the enterprise demonstrated by the applicant in establishing and seeking to invest in a business in this rural area. On the other hand the Committee will be well aware that the tests to be applied in granting permission for a new dwelling in such a location must be taken most seriously in planning policy terms. The analysis to be carried out in a case such as this must necessarily take the tests set out in PPS7 as the starting point. These are set out to provide a common and stringent basis for making such judgements although it is recognised that, at least in part, they are subject to judgements as to matters such as the performance of the business.
- 6.50 The applicants have demonstrated a very positive commitment to establishing this rather specialist nursery and a number of the tests and requirements in Annex A of PPS7 for permanent agricultural dwellings are clearly satisfied. However, in terms of the financial background, the enterprise is not yet as advanced as the PPS7 anticipates should be the case for the grant of a permanent permission. Consequentially, on balance, the proposal currently represents development in the

MGB and open countryside which is contrary to adopted Development Plan policy and national guidance. Accordingly, I recommend that planning permission be refused for the reason as detailed below.

6.51 However, Members may wish to consider if a more appropriate approach would be for the application to be deferred until the verified accounts for the financial year ending March 2012 have been submitted to the Council in order that it can be assessed whether the increased stock levels have resulted in an increased levels of sales, and whether officers should be instructed to further negotiate a revised design which is commensurate with the functional requirements of the enterprise (whilst still providing family accommodation) and income which it can sustain in the long-term.

## **7. Recommendation:**

7.1 **Refuse Planning Permission** for the following reasons:

1. The Local Planning Authority is not satisfied that the applicant has demonstrated that the financial test for permanent agricultural dwellings as set out in Annex A of PPS7: Sustainable Development in Rural Areas has been satisfied. Furthermore, the Local Planning Authority is not satisfied that the applicant has demonstrated that the size of the dwelling is appropriate having regard to the requirements of the horticultural enterprise, nor that the cost involved in its construction is appropriate relative to the income that the enterprise can sustain in the long-term. The proposal therefore comprises inappropriate development which is harmful to the openness of the Metropolitan Green Belt and is therefore contrary to Tonbridge and Malling Borough Core Strategy Policy CP3: Green Belts and the guidance detailed in PPG2 (Green Belts). The proposal is also contrary to Tonbridge and Malling Borough Council Policy CP14 and the guidance detailed in PPS7 (Sustainable Development in Rural Areas).

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