



Appeal Decision

Site visit made on 8 July 2025

by **L Francis BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 October 2025

Appeal Ref: APP/C1435/W/25/3363138

Perryhill Nursery, Perryhill Lane, Hartfield, East Sussex TN7 4JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant, subject to conditions, of approval under Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Lucie Latham against the decision of Wealden District Council.
 - The application Ref WD/2024/2736/P02, was granted approval by notice dated 17 February 2025 subject to conditions.
 - The development granted approval is “prior approval of proposed change of use of agricultural building (glasshouse) to a flexible commercial use (Class E)”.
 - The condition in dispute is No 6 which states that: *“The premises shall be used for Class E(d) use only, and for no other purpose including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (as amended) or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order with or without modification”*.
 - The reason given for the condition is *“To enable the Local Planning Authority to regulate and control the development of land having regard to Saved Policies TR3 and EN27 of the Wealden Local Plan 1998, coupled with requirements in the National Planning Policy Framework”*.
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Decision

1. The appeal is allowed and the prior approval Ref WD/2024/2736/P02 granted under the provisions of Article 3(1) and Schedule 2, Part 3 Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), for “prior approval of proposed change of use of agricultural building (glasshouse) to a flexible commercial use (Class E)” at Perryhill Nursery, Perryhill Lane, Hartfield, East Sussex TN7 4JP granted on 17 February 2025 by Wealden District Council, is varied by deleting conditions 1 and 6 and adding conditions 5, 6 and 7 as set out in the attached schedule.

Preliminary Matters

2. The principle of development is established by the General Permitted Development (England) Order 2015 (as amended) (GPDO), and the relevant provisions do not require regard be had to the development plan. I have only had regard to the referenced development plan policies insofar as they are material considerations relevant to the matters before me.
3. In the banner heading above, I have used the original description of development contained on the application form. Although there was reference to a yoga studio within the supporting material for the application, there was no reference to it in the specific ‘description of development’ section on the application form.

Background and Main Issue

4. Paragraph W(13) of Schedule 2, Part 3 of the General Permitted Development Order 2015 (as amended) (the GPDO) states that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
5. The Council determined that prior approval was not required for the use of the glasshouse as a flexible commercial use within Class E, pursuant to Schedule 2, Part 3, Class R of the GPDO. This was subject to various conditions, including Condition 6 which restricted the use to one within Class E(d) and for no other purpose within Class E.
6. In light of the above, the main issue is whether the condition restricting the use to one within Class E(d) is reasonable or necessary with regard to:
 - i) the restrictions and limitations set out within the GPDO,
 - ii) the living conditions of nearby residents with regard to noise, and
 - iii) highway safety.

Reasons

Limitations of Class R

7. Condition R.2(a) provides that a site which has changed use under Class R may, subject to the prior approval procedure set out under R.3, subsequently change use to another use falling within one of the use classes comprising the flexible use. However, under R.2(b), once the use has been changed under Class R, the site is to be treated as having a 'sui generis' use rather than one falling within a use class. This means therefore that once the glasshouse was used as a yoga studio (which could include other ancillary uses, for example retail sales or cafe), the use would subsequently be classed as 'sui generis'.
8. I consider that the restriction, by condition, to a specific subsection within Class E would frustrate the purposes of Class R, which is to provide flexibility for the use of former agricultural buildings, subject to the other restrictions and limitations within Class R. Paragraph R.3 requires notification to the local planning authority to determine whether prior approval would be required for any subsequent change of use to another use falling within one of the use classes comprising the flexible use. The reasonable and necessary restriction or control of the use can be achieved through the use of conditions related to the subject matter of the prior approval, as set out in paragraph W.(13).

Living Conditions

9. There are several residential properties located adjacent to the southern boundary of the former plant nursery. The building the subject of this appeal is located some distance away, towards the northern side of the large nursery site. There are intervening buildings within the nursery site between the glasshouse and the dwellings along Perryhill Lane. Nevertheless the surrounding area is quiet, particularly along the further reaches of Perryhill Lane, away from Edenbridge Road.

10. The former plant nursery was a commercial use, directly adjacent to the dwellings on Perryhill Lane. It would have produced some noise during the course of its operation, although I note from interested parties that it did not operate during the evenings.
11. I acknowledge the concerns of neighbouring residents regarding the potential for noise disturbance from an unrestricted Class E use, which could potentially include retail, café/restaurant, financial and professional services, medical services, a creche/nursery, offices and research uses as well as the permitted indoor sport/recreation use. No external alterations are proposed, beyond the replacement of the glass with an alternative transparent material.
12. Due to its form, location and materials, the glasshouse would be unlikely to lend itself in practical terms to the full range of uses within Class E due to the potential alterations required to facilitate uses such as a creche or medical facilities. I do not consider the range of uses within Class E to be fundamentally incompatible with residential uses. Nevertheless, the building has a substantial footprint and could accommodate a large number of people. The evidence provided with the appeal provides limited detail regarding soundproofing or noise management. This is particularly pertinent during the evening, which is likely to be a quieter time where there would be greater potential for noise disturbance to nearby residents.
13. There are conditions attached to the prior approval decision which have the purpose of ensuring acceptable living conditions for nearby residents. Specifically, condition 7 restricts both deliveries and the hours of operation of the use to between 7.30am and 10pm. Condition 8 prohibits any amplified music outside the hours of 9am to 6pm Monday to Friday and 10am to 4pm on Saturday, Sunday and Bank and Public holidays.
14. Taken together, the location of the glasshouse relative to nearby dwellings, along with the former commercial use of the site and the nature of the potential uses within Class E, does not lead me to conclude that it would be necessary to retain the condition restricting the use as a Class E(d) yoga studio in the interests of protecting the living conditions of neighbouring residents. However, given the potential for noise disturbance to arise from any potential Class E use during the evening, it would be reasonable and necessary to restrict the hours of operation of any additional use within Class E to between 7.30am and 7pm. Similarly, it would be reasonable to restrict deliveries to these hours to protect the living conditions of nearby residents.
15. My attention has been drawn to the officer's delegated report which specified 7am as the opening time for the proposed yoga studio, though this was changed to 7.30am in the decision letter. As the Council specifically restricted the opening to 7.30am in the interests of protecting the amenity of neighbouring residential properties, there is a risk that an earlier opening time may result in additional noise disturbance to nearby residents. As the appeal is specifically for the removal of the restriction to within Class E(d), and interested parties would have been notified on that basis and not on the basis of an extension of any approved operating hours, I shall not extend the approved operating hours of the Class E(d) use under this appeal.
16. Subject to the additional and modified conditions described above, the proposal would be acceptable in line with Policy EN27 of the Wealden Local Plan 1998 insofar as it is a consideration. Amongst other things, the policy aims to prevent an unacceptable impact on the amenities of residents arising from matters including noise and traffic.

Highway Safety

17. Condition 3 requires that the parking area is provided prior to the occupation of the permitted use, restricting it to the parking of motor vehicles and specifying the dimensions of spaces. Condition 4 requires the provision of a turning space for vehicles, details of which are to be submitted and approved by the local planning authority. Condition 5 requires the provision of specific visibility splays at the junction with the highway. These conditions are necessary in the interests of maintaining highway safety.
18. Subject to the visibility splays condition, there is no evidence before me which would lead me to conclude that vehicular access to the appeal site would be unsafe, irrespective of the specific type of Class E use which might occupy it. The parking and manoeuvring area is also restricted due to the footprint of the appeal site, along with the conditions referred to above. Therefore, should a future Class E use on site not be capable of operating within those restrictions, the conditions would need to be removed or varied through a further application for planning permission or enforced against. A restriction to Class E(d) use in this case would not be necessary in the interests of maintaining highway safety, since the conditions described above already serve this purpose.

Other Matters

19. My attention has been drawn to an appeal decision, reference APP/C1435/W/24/3336763 which dismissed an appeal against a refusal of planning permission for a B8 storage and distribution use on the south side of the nursery site. I note that the site was far closer to dwellings along Perryhill Lane than the current appeal site and also included a large area of outdoor storage. I consider the circumstances of the current appeal are materially different to the appeal in relation to the B8 storage use, and are not directly comparable.
20. I note the concerns of interested parties regarding the effect of the proposal on the High Weald National Landscape and nearby ancient woodland and other matters including drainage and hygiene. There are no physical alterations proposed which would lead me to conclude that there would be a material effect upon the HWNL or ancient woodland above and beyond the effect of the former nursery. Matters including appropriate drainage and hygiene arrangements are controlled through other legislative regimes.

Conditions

21. Any prior approval granted for the type of development proposed under Article 3(1) and Schedule 2, Part 3, Class R is permitted subject to a condition under Paragraph R.3.(2) which states that the development must begin within a period of 3 years starting with the prior approval date. Accordingly, the Council's commencement condition is not necessary.
22. Following my reasoning above, I shall vary the condition restricting the hours of use of the Class E(d) use by removing the delivery restriction. I shall add a condition allowing other class E uses between 7.30am and 7pm. I shall also add a condition restricting all deliveries to between 7.30am and 7pm. The remaining conditions are retained as they are necessary and reasonable in the interests of protecting the living conditions of nearby residents and maintaining highway safety.

Conclusion

23. For the reasons given above I conclude that the appeal should be allowed, and I shall vary the prior approval by deleting conditions 1 and 6 and adding conditions 5, 6 and 7 (my numbering) and reinstating the remaining relevant conditions.

L Francis

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans - TQRQM22303171734560
2. The development shall not be occupied until the parking area has been provided in accordance with plan TQRQM22303171734560 date stamped 17 January 2025, and the area shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles. The proposed parking spaces shall measure at least 2.5m by 5m (add an extra 50cm where spaces abut walls or fences).
3. The development shall not be occupied until a turning space for vehicles has been provided and constructed in accordance with plans which shall have been submitted to and approved in writing by the local planning authority in consultation with the highway authority and the turning space shall thereafter be retained for that use and shall not be used for any other purpose.
4. The access shall not be used for this approved use until visibility splays of 2.4m by 210m are provided in both directions and maintained thereafter.
5. The Class E(d) yoga studio use may be carried out between the hours of 07.30am to 10.00pm.
6. Class E (a, b, c, e, f, g) uses may be carried out between the hours of 07.30am to 7.00pm.
7. No deliveries shall be taken or dispatched from the site outside the hours of 07.30am to 7.00pm.
8. There shall be no amplified or percussive music of any form within the use hereby approved or within the building as shown edged red on drawing no. TQRQM22303171734560 date stamped 17 January 2025, outside of the following hours:
 - 0900 - 1800 - Monday to Fridays
 - 1000 - 1600 - Weekends, Bank and Public Holidays