

MC/22/0065

Date Received: 12 January 2022  
Location: Dalham Barn Cooling Road  
High Halstow Rochester  
Proposal: Prior notification of a proposed change of use of an agricultural barn into a dwellinghouse (Class C3)  
Applicant: Provectus Developments Ltd  
Mr James Daughtry  
Agent: Consilium Planning  
Mr Andrew Street  
Northdown House  
Lower Street  
Maidstone  
ME17 1RJ  
Ward: Peninsula Ward  
Case Officer: Nick Roberts  
Contact Number: 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 6th April 2022.**

**Recommendation - Prior Approval Required - Approved**

1 Notwithstanding the details indicated on the approved plans, no works to the agricultural building shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority.

- Details of box profile metal roof sheeting
- Details of grey timber weatherboarding
- Details of windows and doors
- Details of rainwater goods, soil and vent pipe flues
- Details of boundary treatments
- Details of external lighting
- Details of all landscaping and surfacing materials

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Received on 3 March 2022.

P02 21034 REV B - Proposed Plan and Elevations  
P03 21034 REV B - Proposed Site Plan

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

- 3 The proposed dwelling shall not be occupied until the area shown on the submitted layout as vehicle parking spaces have been provided, surfaced and drained in accordance with details submitted to and approved in writing by the Local Planning Authority. Thereafter it shall be kept available for such and no development whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), shall be carried out on the land so shown or in such a position as to preclude vehicular access to these reserved parking spaces.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on street parking and in accordance with Policy T13 of the Medway Local Plan 2003.

- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no development shall be carried out within Schedule 2, Part 2, Classes Class A (gates, fences, walls etc) or Class C (exterior painting) of that Order unless planning permission has been granted on an application relating thereto.

Reason: To enable the Local Planning Authority to control such development in the interests of visual amenity in accordance with Policy BNE1 of the Medway Local Plan 2003.

**For the reasons for this recommendation please see Planning Appraisal Section and Conclusions at the end of this report.**

## **Recommendation**

Prior approval required – Approved

## **Proposal**

This is an application for prior approval for the change of use of an agricultural building into one dwelling with associated building operations made under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

The footprint and height of the converted barn will match that of the existing building, and it will consist of an open plan kitchen/living/dining area, study, utility, bathroom

and 4 bedrooms (each with en-suites). The red line site plan also incorporates land to the front, rear and side of the building.

### Relevant Planning History

MC/21/0087	Construction of a detached Four bed dwelling house with associated landscaping and parking - Demolition of existing agricultural barn. Decision: Refused Decided: 26 March 2021
MC/20/2310	Prior notification of a proposed change of use of an agricultural building into 1 dwellinghouse (Class C3). Decision: Refused Decided: 16 November 2020

### Representations

The application has been advertised on site and by individual neighbour notification letters to the owners and occupiers of neighbouring properties. High Halstow Parish Council and the Dickens Country Protection Society have also been consulted. This also included a period of re-consultation following the submission of amended plans.

**High Halstow Parish Council** has objected to the application for the following reasons.

- The proposed development is not a conversion but a rebuild. Reference made to decision of Mr Justice Green in *Hibbitt v Secretary of State and Rushcliffe B.C.* [2016] EWHC 2853.
- The curtilage highlighted within the application should be subject to a separate change of use application.
- The transport and highways impact and the dwelling's location would be impractical/undesirable (unsustainable location).
- Its impact on protected sites/special landscape areas and the setting of 2 x Grade II listed buildings (Dalham and Buckhole Farm).
- Ecological/Environmental impacts.

The **Dickens Country Protection Society** has objected to the application for the following reasons.

- The site is in an isolated location.
- The NPPF excludes land that was last occupied by agricultural or forestry building from the definition of previously developed land.

### Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this

application have been assessed against the National Planning Policy Framework 2021 (the NPPF) and are considered to conform.

## **Planning Appraisal**

### *Background*

The site has been subject to a previous prior approval application for the change of use of an agricultural building into a dwellinghouse under planning reference MC/20/2310. The application was refused on the basis that the area of curtilage defined within the proposal exceeded the relevant provisions as defined by Part 3 Paragraph X (b) of the GPDO. The application also failed to demonstrate that the proposal was reasonably capable of conversion in accordance with Class Q.1(i) of Part 3 of Schedule 2 of the GPDO. This application seeks to address these previous refusal reasons by amending the red line site plan. In addition, the application also includes a structural engineering report.

### *Permitted Development Assessment*

The relevant permitted development rights are given in Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

#### *Permitted development*

##### *Q. Development consisting of—*

*(a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; or*

*b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.*

The interpretation of Part 3 of the GPDO confirms that for the purposes of Class Q, curtilage means, as defined by Part 3 Paragraph X of the GPDO:

(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or

(b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser.

The red line site plan would indicate that the area of curtilage for the proposal would not exceed the relevant provisions as defined by Part 3 Paragraph X (b) of the GPDO and the curtilage would depict an area no larger than the area occupied by the existing agricultural building.

*b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.*

*Development not Permitted*

*Q.1 Development is not permitted by Class Q if—*

*(a) the site was not used solely for an agricultural use as part of an established agricultural unit—*

*(i) on 20th March 2013, or*

*(ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or*

*(iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins.*

It is stated that the building was used solely for agriculture as part of an established agricultural unit on (or before) 20 March 2013.

*(b) in the case of—*

*(i) a larger dwellinghouse, within an established agricultural unit—*

*(aa) the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or*

*(bb) the cumulative floor space of the existing building or buildings changing use to a larger dwellinghouse or dwellinghouses under Class Q exceeds 465 square metres.*

*(ba) the floor space of any dwellinghouse developed under Class Q having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 465 square metres.*

There would be one dwelling and it would be a 'larger' dwellinghouse due to its floor space, being approximately 294sqm. The cumulative floor space would not exceed 465sqm.

*(c) in the case of—*

*(i) a smaller dwellinghouse, within an established agricultural unit—*

*(aa) the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or*

*(bb) the floor space of any one separate smaller dwellinghouse having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 100 square metres.*

Not relevant, for the purposes of Class Q the dwelling would be a 'larger' dwellinghouse as it would exceed 100sqm.

*(d) the development under Class Q (together with any previous development under Class Q) within an established agricultural unit would result in either or both of the following—*

*(i) a larger dwellinghouse or larger dwellinghouses having more than 465 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.*

*(ii) the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeding 5.*

These would not be exceeded.

*(e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained.*

It is stated that there is no agricultural tenancy.

*(f) less than 1 year before the date development begins—*

*(i) an agricultural tenancy over the site has been terminated, and*

*(ii) the termination was for the purpose of carrying out development under Class Q, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use.*

The applicant has answered no to this.

*(g) development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit—*

*(i) since 20th March 2013; or*

*(ii) where development under Class Q begins after 20th March 2023, during the period which is 10 years before the date development under Class Q begins.*

No such development has been carried out since 20 March 2013.

*(h) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.*

This would not be the case.

*(i) the development under Class Q(b) would consist of building operations other than—*

*(i) the installation or replacement of—*

*(aa) windows, doors, roofs, or exterior walls, or*

*(bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and*

*(ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i).*

The application is accompanied by a Structural Engineers Report (Ref; IR/P869) undertaken by Ian Richards (Chartered Engineer and member of The Institute of Structural Engineers) on behalf of the Alan Baxter Partnership LLP signed and dated 17<sup>th</sup> December 2021.

The barn is a single storey steel framed building with concrete walls, and corrugated cement external gable ends and roof panels. Aerial photography would indicate that the barn has been in situ since at least the 1940's. Following an inspection by Alan Baxter Partnership LLP the report concludes that the primary structure of the barn is composed of steel trusses supported on steel columns, partially imbedded in concrete. Generally, the steelwork is considered to be in reasonable condition with some minor corrosion (as stated within the report). The steel trusses then support timber purlins which in turn support the corrugated roofing, parts of which are missing. The concrete walls which are in place are also identified as being significantly cracked (in some

places) and severely weathered in others. The report states that there is no evidence to suggest differential foundation movement.

The report also states that its conversion to residential use, from a structural perspective, would be possible and the foundations appear to have functioned satisfactorily to date. In addition, the report maintains that the primary steel structure can remain unaltered, with some secondary fixings to support new ceilings and insulation. Furthermore, the report confirms that the introduction of a new inner skin to the external walls and various new internal walls will enhance the lateral stability of the building.

The report concludes that the building is in a reasonable structural condition considering its age, type and minimal recent maintenance and its conversion to a residential use appears structurally feasible. However, the report acknowledges that the external concrete walls may need to be removed due to their poor condition.

Within the context of this prior approval application paragraph Q (b) specifies that the building operations reasonably necessary to convert the building to a dwellinghouse use would be permitted development, whilst paragraph Q.1.(i) provides further detail as to what such building operations would be. These include the installation or replacement of windows, doors, roofs or exterior walls, or water, drainage, electricity, gas, or other services, to the extent reasonably necessary for the building to function as a dwellinghouse.

The letter of representation received from High Halstow Parish Council has drawn attention to the case of *Hibbitt & another v SSCLG & Rushcliffe Borough Council* [2016] EWHC 2853 (Admin) (the Hibbitt case). The Hibbitt case concerns a Class Q proposal and, amongst other things, explores the distinction between works required for the conversion of an existing agricultural structure or building to a dwellinghouse, and works amounting to its rebuilding or, in effect, the creation of a new building. The barn to which the Hibbitt judgement relates was largely open on three sides. In contrast the barn subject to this application has a good degree of enclosure on four sides albeit with some openings. In this regard the circumstances relevant to the proposal in the Hibbitt judgement are not directly comparable.

In addition, Planning Practice Guidance (PPG) has been updated in relation to Class Q of the GPDO since the Hibbitt case, but still advises that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. It also states that it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. This is a matter of fact and degree and requires an element of judgement. The PPG also states that internal works are not generally development, and for the building to function as a dwelling it may be appropriate to undertake internal structural works, including internal walls, which are not prohibited by Class Q of the GPDO.

The survey submitted states that the primary steel structure can remain unaltered, albeit with some secondary support to facilitate the internal ceilings and insulation, and there is no evidence in the building to suggest significant differential foundation movement that would need strengthening or underpinning. In essence, the existing

frame would play a structural and functional role in the development by supporting any existing and proposed walls, windows, doors and roof and therefore would be suitable for conversion. As a result, the primary works required would consist of the installation of new windows and doors, new block work to exterior walls and a new roof all of which fall under the building operations listed under paragraph Q.1.(i). Therefore, and whilst these works may be significant, particularly as the survey identifies that existing walls would be replaced, the building would be suitable for conversion, and as such it can be argued that they would be reasonably necessary in order to protect future occupants from the weather. Furthermore, the new external walls would follow the location and profile of the existing external concrete walls that would need to be removed due to their condition.

In view of the above, and on balance, the Council are satisfied that the structural integrity of the building is suitable, and it is not considered that the proposed works would cumulatively be so significant that the scheme should be considered tantamount to a rebuilding of the barn. Therefore, and as the building is capable of functioning as a residential use, these works would be reasonably necessary. In addition, the demolition that would be involved, mainly the removal of external walls and the roof would also be considered of an extent that is reasonably necessary to facilitate its conversion to a dwelling.

*(j) the site is on article 2(3) land.*

The site is not on article 2(3) land.

*(k) the site is, or forms part of—*

*(i) a site of special scientific interest.*

*(ii) a safety hazard area.*

*(iii) a military explosives storage area.*

The site is not any of these specified areas.

*(l) the site is, or contains, a scheduled monument; or*

There is no scheduled monument on or in the vicinity of the site.

*(m) the building is a listed building.*

The building is not listed.

## **Conditions**

**Q.2— (1) Where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—**

**(a) transport and highways impact of the development,**

**(b) noise impacts of the development,**

**(c) contamination risks on the site,**

- (d) flooding risks on the site,*
- (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order,*
- (f) the design or external appearance of the building, and*
- (g) the provision of adequate natural light in all habitable rooms of the dwellinghouses,*

*and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.*

*(2) Where the development proposed is development under Class Q(a) only, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the items referred to in sub-paragraphs (1)(a) to (e) and (g), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.*

*(3) Development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date.*

*Assessment under condition Q.2(1)*

#### ***(a) Transport and highways impact of the development***

The site is located along a rural lane approximately 500 metres from the urban settlement boundary and village of High Halstow. The application intends to use the existing access that serves this parcel of land and there would be sufficient off-street parking provided for 2 vehicle parking spaces, which would meet the Medway Interim Parking Standards. In these circumstances, and when considering the application would only result in one additional dwelling it is not considered that the development would result in significant hazards to highway safety or amenity.

Subject to a condition requiring the submission of further details with respect to driveway surfacing and drainage there are no objections with regard to Policies T1, T2 and T13 of the Local Plan and paragraph 111 of the NPPF.

#### ***(b) Noise impacts of the development***

It is not considered that the conversion of the building from agriculture to a residential use would result in any adverse noise impacts. The nearest property is to the east, but by virtue of the intervening distance and the nature of this proposed residential use this would not be harmful to occupants of the adjacent properties. There are no objections in respect of noise from the development including with regard to Policy BNE2 of the Local Plan and paragraph 185 of the NPPF.

#### ***(c) Contamination risks on the site***

Given the nature of the proposal and following consultation with the Councils Environmental Protection Team there is no objection with regard to the potential

contamination risk, including with reference to Policy BNE23 of the Local Plan and paragraph 183 of the NPPF.

**(d) Flooding risks on the site**

The site is located within Flood Zone 1 and is not identified as an area to be at risk of flooding. In addition, the site is not within a sensitive drainage area as confirmed by Medway Council's strategic flood risk assessment. In view of this there are no objections to this proposal on the grounds of flood risk including with regard to paragraph 167 of the NPPF.

**(e) Whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order**

The assessment here is whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwellinghouse.

The Planning Practice Guidance (PPG) has clarified that Sustainability is not a factor in this assessment, it states: *'The permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house.'*

The PPG has therefore clarified what is meant by the term impractical or undesirable: *'Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable".'*

*When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval.*

*When a local authority considers location and siting it should not therefore be applying tests from the NPPF except to the extent these are relevant to the subject matter of the prior approval.*

The proposed development would utilise an existing access onto Cooling Road and the building is within close proximity to existing utilities serving the neighbouring units. The building is also located adjacent to open farmland and existing residential properties, rather than close to other forms of more intensive agriculture which may be incompatible with adjacent residential occupation. As such this is not considered to

be an impractical and undesirable location for a new residential development with respect to Q.2 (1) of Class Q.

In view of the above the location and siting are not considered to be impractical or undesirable for the permitted change of use, including with regard to Policies BNE2 and BNE25 of the Local Plan and paragraph 111, 130, 183 and 185 of the NPPF.

***(f) The design or external appearance of the building***

To function as a new dwelling, it is inevitable that there would need to be a degree of change to the design and external appearance of the building which would change its visual appearance. At present the barn consists of concrete walls and corrugated cement panels to the roof and gable ends. The existing roof would be replaced with corrugated metal roof sheeting with the addition of vertical grey weatherboarding cladding to all elevations.

Although there would be extensive full height glazing along the north-western elevation, which would be particularly prominent from Cooling Road, there are already six existing openings along this elevation which the application is seeking to replicate, albeit on a larger scale. Notwithstanding this, and when taken as a whole, it is considered the design and external appearance would result in a sympathetic conversion, and the use of grey weatherboard cladding and metal sheet roofing would create a modern but unassuming design which responds well with the countryside surroundings and the neighbouring properties.

In view of the above and subject to a condition requiring samples of the external materials that will be used, including landscaping and surfacing materials and boundary treatments there are no objections with regards to Policy BNE1 of the Local Plan and paragraphs 126 and 130 of the NPPF.

Whilst concerns have been raised in the letters of representation received regarding its curtilage. The amount of outdoor space that can be provided for dwellings created under Class Q is specifically limited by paragraph X of the GPDO. The area of curtilage for the proposal would not exceed the relevant provisions as defined by Part 3 Paragraph X (b) of the GPDO. In addition, the boundary treatments adjacent to the access and bordering the adjacent agricultural field would consist of post and rail fencing which would maintain a degree of openness and would be more sympathetic to its countryside surroundings. In recognising the importance of ensuring appropriate boundary treatments are maintained in the future, a condition has been imposed removing permitted development rights in this regard. Similarly, a condition has also been imposed removing permitted development rights with respect to exterior painting. Although not in the Councils administrative boundary, this is consistent with conditions imposed on an appeal decision for the change of use of an agricultural barn to a dwelling last year (APP/A2335/W/20/3264905).

***(g) The provision of adequate natural light in all habitable rooms of the dwellinghouses,***

The submitted plans indicate that all habitable rooms would be served by at least one window. Although it is noted that three of the bedroom windows along the south-

eastern elevation would be in close proximity to the boundary, and adjacent tree line, which would have some negative effect on outlook and the amount of light that would reach these rooms, in recognising that the main living areas would be provided with an expanse of natural light from the windows and patio doors located on the north-eastern and north-western elevations no objections would be raised. Consequently, the proposal would provide adequate natural light in accordance with Policy BNE2 of the Local Plan and paragraph 130 of the NPPF.

### *Bird Mitigation*

As the application site is within 6km of the North Kent Marshes SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in combination, on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest. Natural England has advised that an appropriate tariff of £253.83 per dwelling (excluding legal and monitoring officer's costs, which separately total £550) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries. The strategic measures are in the process of being developed but are likely to be in accordance with the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014. The interim tariff stated above should be collected for new dwellings, either as new builds or conversions (which includes HMOs and student accommodation), in anticipation of:

- An administrative body being identified to manage the strategic tariff collected by the local authorities.
- A memorandum of understanding or legal agreement between the local authorities and administrative body to underpin the strategic approach.
- Ensure that a delivery mechanism for the agreed SAMM measures is secured and the SAMM strategy is being implemented from the first occupation of the dwellings, proportionate to the level of the housing development.

The applicant has submitted a SAMMs Mitigation Contribution Agreement and payment and therefore no objection is raised under Policies S6 and BNE35 of the Local Plan and paragraphs 180 and 181 of the NPPF.

### **Conclusions and Reasons for Approval**

The development is considered to be permitted under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and the transport and highways, noise, contamination, flooding, location/siting, design and external appearance and amenity impacts so far relevant to Class Q of Part 3, are considered to be acceptable subject to conditions. In addition, bird disturbance mitigation has been achieved via a SAMMs contribution. It is therefore recommended that prior approval is required and granted subject to conditions including with regard to Policies S6, BNE1, BNE2, BNE23, BNE35, T1, T2, T13 of the Local Plan and paragraphs 111, 126, 130, 167, 180, 181, 183 and 185 of the NPPF.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the number of representations received expressing a view contrary to the officer's recommendation.

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## **Background Papers**

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection on Medway Council's Website  
<https://publicaccess1.medway.gov.uk/online-applications/>