

Application No: 23/1657/FH

Location of Site: 25 Dymchurch Road, St Marys Bay, Romney Marsh, TN290ET

Development: Change of use of existing outbuilding and erection of 2 Polytunnels to breeding and retail of fish (part retrospective).

Applicant: Mrs S Lane

Agent: Mr C Brian

Officer Contact: Danielle Wilkins

SUMMARY

This report considers whether planning permission should be granted for the change of use of an existing outbuilding to a commercial use, together with the erection of two no. Polytunnels for the use of breeding and selling of fish.

RECOMMENDATION:

That planning permission be refused for the reasons set out at the end of this report.

1. INTRODUCTION

1.1 The application is reported to Committee at the request of Councillor Cooper, on the grounds that the layout, density, design, appearance and materials should be considered by Members.

2. SITE AND SURROUNDINGS

2.1. The application site comprises a two storey detached, residential dwelling with several smaller outbuildings within its curtilage. The dwelling and outbuildings are finished in render and there is hardstanding to the front and side of the dwelling providing ample off-street parking.

2.2. The site is located within the settlement boundary of St Mary's Bay, within flood zones 2 and 3 as identified in the Environment Agency's Flood Risk Maps. The site is located on a main road overlooking the Dungeness, Romney Marsh and Rye Bay site of special scientific interest to the front.

2.3. The application site sits within a large plot, with a rear garden measuring approximately 55 metres in length with a width of 15 metres, narrowing to 11 metres at its northwestern end.

2.4. A site location plan is attached to this report as **Appendix 1**.

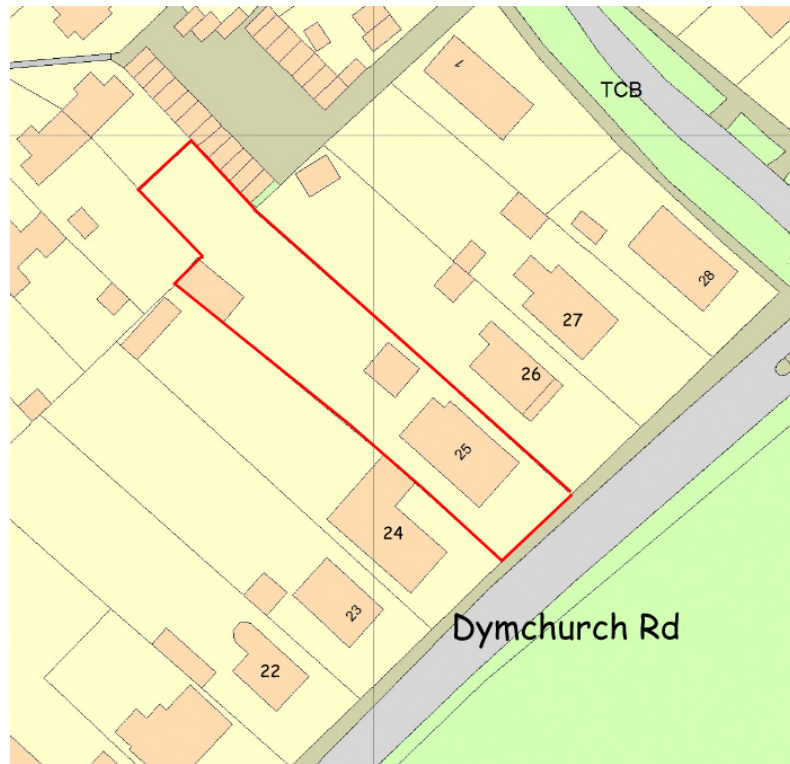


Figure 1 - Site Location Plan

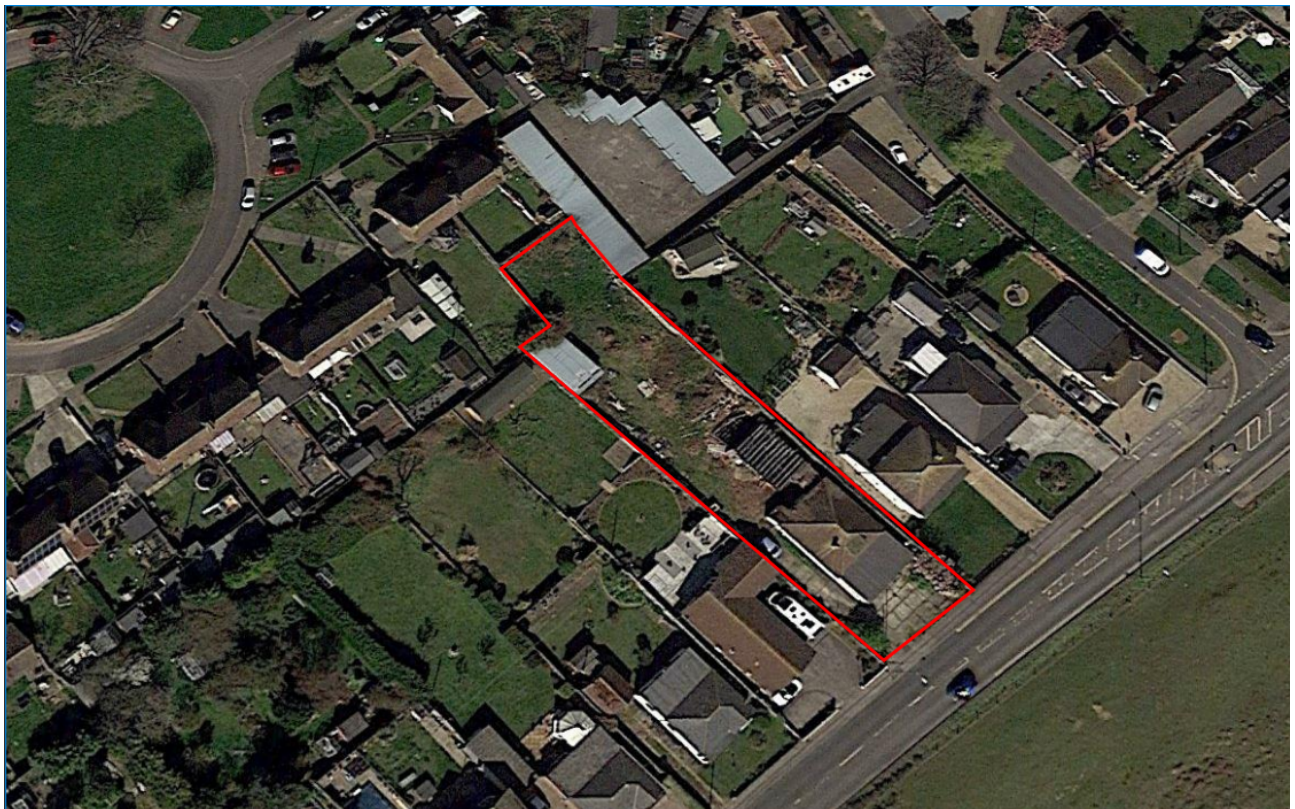


Figure 2 - aerial photo

3. PROPOSAL

- 3.1 Full planning permission is sought for the change of use of the existing outbuilding to a commercial use, together with the erection of two no. Polytunnels for the breeding

and retail of fish. The change of use of the outbuilding is retrospective with commercial operations taking place on site.

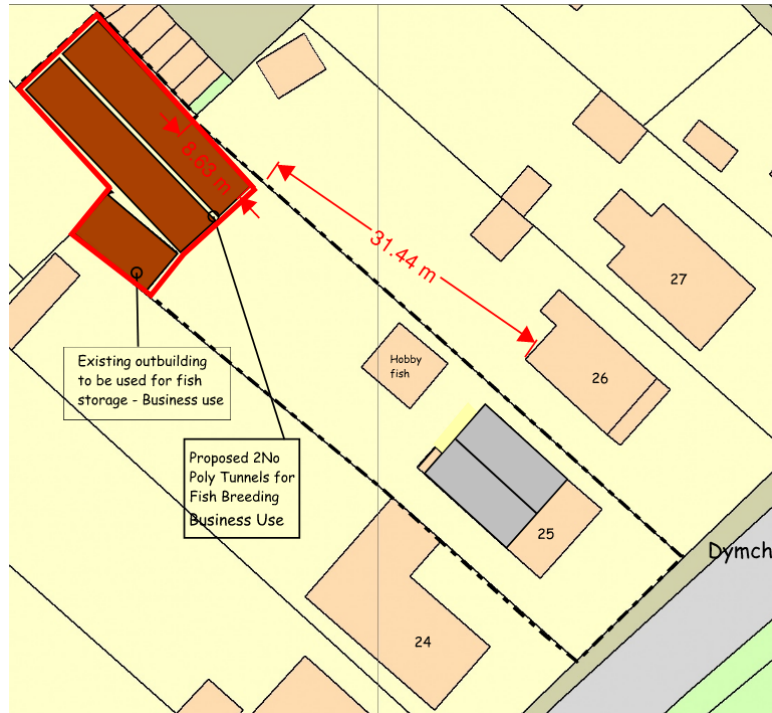


Figure 3 - proposed block plan

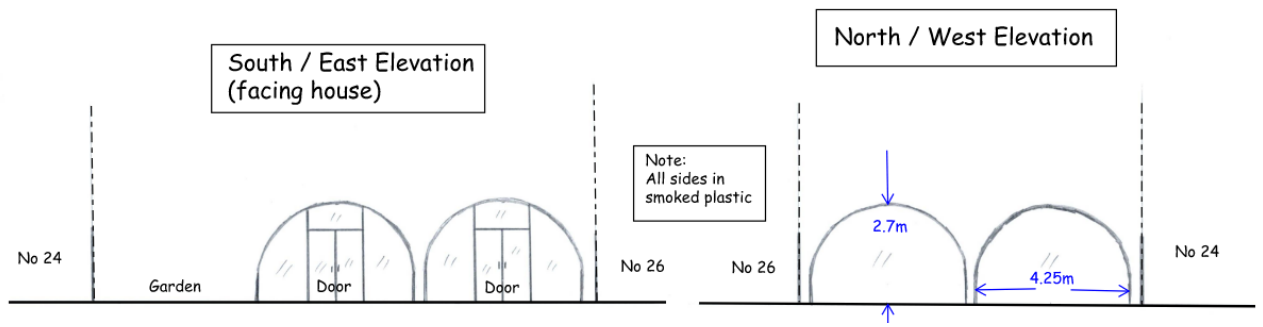


Figure 4 - proposed southeast and northwest elevations

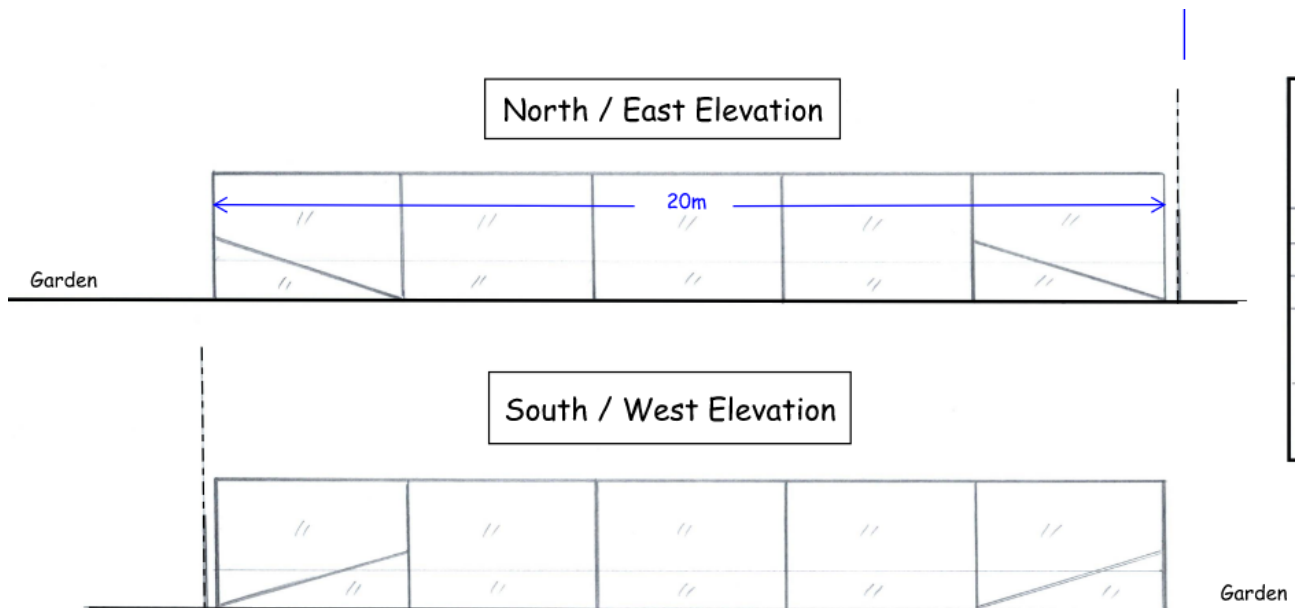


Figure 5 - proposed northeast and southwest elevations

3.2 The following reports were submitted by the applicant in support of the proposals:

Planning Statement

3.3 The planning statement confirms that the business operates solely online, that there will be no visiting public, staff or customers. The planning statement also states that the polytunnels are required to protect the fish from Seagulls, sea air elements and in order to maintain a stable temperature.

4. RELEVANT PLANNING HISTORY

4.1 The relevant planning history for the site is as follows:

23/0558/FH	First floor extension with Juliet balcony to front, raised roof with new windows and adding gable ends. Repositioning of front and rear doors at ground level	Approved with conditions
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5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

St Mary in the Marsh Parish Council:

Neither support nor object. The Parish recommended that the application be called-in as a number of applications have been made in short succession and they should be considered collectively.

Natural England:

No objection

Environment Agency:

No objections. The application is covered by Flood Risk Standing Advice

Environmental Protection Officer:

No objection subject to the following conditions to safeguard residential amenity:

- All windows and doors within the existing outbuilding to be fitted with black out blinds or curtains.
- All external mechanical plant and lighting to be installed to serve the outbuilding must first be approved by the LPA.
- No lighting is to be fixed within the Polytunnels
- Combined noise emissions from all plant/machinery must be designed to achieve a rating of 5 decibels below the typical background level at the nearest noise sensitive locations.

Local Residents Comments

5.2 8 neighbours directly consulted. 1 letters of objection, 0 letters of support received and 0 letters neither supporting nor objecting to the application.

5.3 I have read all of the letters received. The key issues are summarised below:

Objections

- The size of the proposed Polytunnels are that typically used by retail nurseries and cannot be classed as domestic
- The proposed structures would be detrimental to the residential environment, would not respect the existing pattern of development or the scale and proportions of neighbouring buildings
- The proposal would be out of character and detrimental to the area
- The main dwelling has already seen a considerable roof extension, this further alteration would not be in keeping with the area and would not adhere to the landscape character.
- The proposed structures would result in a loss of sunlight and privacy, specifically within the rear garden
- Concern has been raised with regards to noise from additional equipment and aromas from the tanks, to the storage of chemicals and food and with regard to the discharge of waste water
- The planning statement contradicts information available on the applicants website.
- The proposal would be better suited to a retail/industrial environment
- Concern raised in regard to property value **[CPO comment – Members will be aware that this is not a material planning consideration]**

5.4 Ward Member

The Ward Member, Cllr T Cooper, requested that the application be called-in on the grounds that the layout, density, design, appearance and materials should be considered by Members.

5.5 Responses are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Review Local Plan 2022.

6.2 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

HB1 – Quality places through design

Core Strategy Review (2022)

SS1 – District Spatial Strategy

6.3 The following are also material considerations to the determination of this application.

Government Advice

National Planning Policy Framework (NPPF) 2023

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF are relevant to this application:-

Paragraph 11 - Presumption in favour of sustainable development.

Paragraph 47 - Applications for planning permission be determined in accordance with the development plan.

National Planning Policy Guidance (NPPG) 2021

National Design Guide October 2019

7. APPRAISAL

7.1 In light of the above the main issues for consideration are:

- a) Principle of development
- b) Design/layout/visual amenity
- c) Residential amenity
- d) Parking and highway safety
- e) Other issues

a) Principle of development

7.2 The proposal includes for the conversion of an existing outbuilding, together with the erection of two no. Polytunnels to the very rear of the application site for the breeding and selling of Goldfish. This would introduce a business use within the site, which currently comprises a residential dwelling set within the context of a residential area. Concern has been raised with regard to the conversion of the outbuilding and the erection of the Polytunnels and their suitability within a residential area.

7.3 However, small-scale home businesses can be acceptable, providing that they do not result in material planning harm to (amongst other things) residential amenity or highway safety. These detailed matters are assessed in the relevant sections of the appraisal below.

7.4 As such, it is considered that the proposed breeding and selling of fish is acceptable as a matter of principle.

b) Design/layout/visual amenity

7.5 The conversion of the existing outbuilding within the rear amenity space would not result in any external changes to the building.

7.6 The proposed polytunnels would be located within the northernmost section of the rear garden, set further back than the existing outbuilding. These would each measure approximately 20 metres in depth, 4.25 metres in width and 2.7 metres in height, the erection of polytunnels of this size would fall within the limits of the GDPO had they been for personal use only, however their use in association with the business removes the permitted development rights.

7.7 The polytunnels would have a lightweight metal frame, with smoked plastic sheeting to encase the tunnels.

7.8 The polytunnels would be located to the far end of the rear garden, abutting the boundaries with the garages to the north, nos. 8 and 9 Newlands to the north/northwest and no. 26 Dymchurch Road to the northeast. Due to the proposed positioning views into this section of the site are limited to private amenity spaces only with limited views available of the site from the public realm.

7.9 Notwithstanding the limited visibility of the proposed polytunnels, their size, depth, bulk and mass is considered to represent a commercial form of development in a residential area. This is considered to be out of keeping with the prevailing pattern and form of development, and the polytunnels would therefore amount to incongruous structures, harmful to the character and appearance of the area, despite their limited visibility.

7.10 In addition, while the applicant has confirmed that no fixed lighting would be installed within the proposed polytunnels, this cannot reasonably be controlled by condition, and if lighting should be installed in the future this would further increase the prominence of the polytunnels given their size and materiality, particularly at night.

7.11 It is considered that the proposed polytunnels would, for the reasons set out above, amount to incongruous structures, harmful to the character and appearance of the area, and contrary to Policy HB1 of the Places and Policies Local Plan 2020. This amounts to a reason for refusal.

c) Residential amenity

7.12 As mentioned above, the proposed location of the polytunnels would be located to the far end of the rear garden, abutting the boundaries with the garages to the north, nos. 8 and 9 Newlands to the north/northwest and no. 26 Dymchurch Road to the northeast.

- 7.13 Concern has been raised by the adjoining neighbour to the northeast that the proposed polytunnels would result in a loss of light and privacy within their rear garden, the proposed polytunnels would be located within the rear portion of the application site, which has a garden longer than the neighbours and therefore only 8.3 metres of the polytunnels would abut the boundary with this neighbour. Due to the curved nature of the polytunnels the bulk of the structure would be angled away from the boundary, which consists of a close boarded timber fence of approximately 1.8 metres in height. In addition this affected area of garden is in excess of 30 metres from the rear wall of the neighbouring dwelling, in area where some loss of light and/or privacy is to be expected.
- 7.14 No concern has been raised by any other adjoining neighbour, however, owing the lightweight nature of the polytunnels, together with the height of around 2.7 metres, it is unlikely that they would result in any significant neighbouring amenity concerns, such as loss of light/privacy.
- 7.15 Concern has also been raised with regard to noise from the existing and proposed equipment associated with the breeding and keeping of fish, together the potential to install generators etc. It was evident on site that no noise was audible from either of the outbuildings, one the subject of this application, and another situated much closer to the house which contains the applicant's 'hobby' fish and is not related to this application. Some noise was apparent when the doors to the outbuildings were open, however no machinery and or equipment could be heard over the sound of water aerating the existing tanks. The agent and applicant have confirmed that no plant or machinery is proposed or required to run the tanks.
- 7.16 Further to the above, while confirmation was received regarding the expected noise that may emit from the proposed development, I have concerns the additional noise from the aeration of the commercial tanks proposed within the polytunnels combined with their close proximity of the development to the neighbouring residents to the rear and the inherently lightweight structure of the polytunnels themselves, that the development would give rise to additional noise and disturbance which would negatively impact this neighbour, particularly due to the shorter garden length of the dwelling directly to the rear. Further, no noise impact assessment has been undertaken or submitted with the application. It was observed that onsite the noise currently emitting is minimal however all occupied tanks are within solid structures as opposed to the polytunnels proposed here.
- 7.17 One proposed collection by van per week is proposed which is not considered to result in any significant amenity impacts to neighbouring residents and the additional comings and goings would not result in any significant level of noise or disruption that would cause harm to the amenity of neighbouring residents.
- 7.18 In the absence of a noise impact assessment, it has not been demonstrated that the proposal would not give rise to significant harm to the residential amenity of neighbouring occupiers by way of additional noise and disturbance as a result the use of the proposed polytunnels.

d) Parking and highway safety

- 7.19 The application site benefits from hardstanding to the front and side of the dwelling providing an ample level of off-street parking.

- 7.20 The applicant/agent has confirmed via email and a supporting letter that one delivery van attends the property once per week to collect fish that have been sold online to deliver elsewhere. It has also been confirmed that customers cannot visit the property and no fish are sold onsite. The vehicle movements are therefore considered negligible. In addition there is adequate off-street parking onsite to ensure that the delivery/collection vehicle would not result in any harm to highway safety.
- 7.21 It is therefore considered that the proposed business use would not result in any significant increase in vehicle movements or traffic to and from the site and would not result in any highway safety concerns.

e) Other issues

- 7.22 Concern has been raised by a neighbour on a number of issues, including; the storage of chemicals and food, the discharge of waste water and the impact to property values. The applicant has confirmed that water wastage is kept to a minimum due to the existing filtration system which re-uses the existing water from within the tanks and that all chemicals and food will be stored in the existing, secure outbuilding.

Environmental Impact Assessment

- 7.23 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

- 7.24 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy. There is no CIL requirement for this development.

Human Rights

- 7.25 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

Public Sector Equality Duty

- 7.26 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

7.27 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8. CONCLUSION

8.1 The proposal is considered to be unacceptable in terms of visual and residential amenity. It is considered that the proposed polytunnels would result in harm to the visual amenities of the area by virtue of the proposed size, siting, depth, bulk, mass and design of the proposed polytunnels. In addition, the proposed use of the polytunnels is considered to result in significant harm to the residential amenity of neighbouring residents by virtue of the increase in noise and disturbance,

9. BACKGROUND DOCUMENTS

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

That planning permission be refused/for the following reason(s):

Reasons:

1. The proposed polytunnels, by virtue of their size, depth, mass, bulk, siting and design, would represent a commercial form of development in a residential area that would appear incongruous with the character and appearance of its surroundings and would give rise to significant harm to the visual amenities of the area. The visual harm would be further emphasised should the buildings be internally illuminated in the future given their size and materials proposed. It is therefore considered that the development fails to comply with policy HB1 of the adopted Places and Policies Local Plan 2020.

2. It has not been demonstrated by way of a noise impact assessment that the proposed polytunnels combined with their siting in close proximity to neighbouring properties to the rear of the application site, would not give rise to increased noise and disturbance, which would detrimentally impact on the residential amenities of the occupiers of these

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properties. The application is therefore contrary to policy HB1 of the adopted Places and Policies Local Plan 2020.

