

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

18 MAY 2005

Report of Chief Solicitor

Part 1- Public

Section B – For information

Delegated

1 PLANNING APPEAL DECISIONS

1.1 Site **Land known as Challops Field, Maidstone Road,
East Peckham**
Appeal **Against the refusal of permission for the creation of a farm
animal veterinary unit (re-submission)**
Appellant **Mr Eryl Davies**
Decision **Appeal dismissed**
Background papers file: PA/60/04

Contact: Cliff Cochrane
01732 876038

- 1.1.1 The Inspector considered the main issue to be whether the development would be inappropriate within the Green Belt and, if so, whether any special circumstances of sufficient weight exist to justify approving proposals, bearing in mind the effect that the development would be likely to have on the openness, character and appearance of this attractive rural location.
- 1.1.2 PPG2 makes it clear that two of the main attributes of the Green Belts are their openness and their permanence. By definition it is stated, inappropriate development is harmful to the Green Belt. Within areas so designated a presumption against inappropriate forms of development exists. PPG2 does not state that a development of this type would not be inappropriate within the Green Belt and, therefore, the Inspector considered it to be the weight of the very special circumstances advanced in this case which is the determining factor in the appeal.
- 1.1.3 The Inspector noted that the appeal site would meet a number of the criteria which are important considerations in site selection for a use of this type. These include size, good parking facilities, locational considerations, land availability and easy access to the highway network. He had no doubt that the land would be suitable for its intended use in these terms.
- 1.1.4 The Inspector was aware of the present shortcomings of the site at Paddock Wood and the difficulties being experienced in the treatment and management of large animals, especially horses, partly due to the limited space and site size. He fully acknowledged that the arrangements and size of the existing site and

buildings is hindering the development of the Practice and prejudicing its level of service to clients. If the Practice is to retain its reputation and move forward, then an additional or replacement site has to be found with more space, better access and additional parking. Whilst the Inspector attached significant weight to these conclusions he did not consider that the “special circumstances” that are claimed are “very special” within the meaning of PPG2. He was not convinced that other solutions are not possible although he noted the submissions on this point and the difficulties that have been encountered in finding a new site, possibly by way of the conversion of existing agricultural buildings.

- 1.1.5 A number of the Kent Structure Plan policies contain clear statements that development within the Green Belt and the countryside will normally be resisted, unless very special circumstances apply. These echo Government guidance set out in PPG2 and PPS7. Various policies within the Local Plan follow this approach.
- 1.1.6 The inspector did not consider that any possible exceptions apply to this case. Nor did he conclude that the special circumstances in support of the development are so exceptional or “very special” that they overcome the presumption against inappropriate forms of development contained within PPG2. He also concluded that the development has no special justification for a location within the open countryside. It would harm the character and appearance of the area because of its visual intrusion and by introducing substantial and exposed buildings and other “hard areas” into an area characterised by its rural appearance. The erection of a building to the likely scale proposed would be widely visible in the landscape and would appear incongruous and stark in this attractive setting. Coupled with the fact that the openness of the area would be seriously diminished, he found the case against the proposals as so compelling as to override all other considerations.

1.2 Site **19 High Street, Borough Green**
Appeal **Against the refusal of permission for change of use of ground floor into a hairdressing salon, keeping the first floor as residential use**
Appellant **Miss J Brehme**
Decision **Appeal allowed**
Background papers file: PA/55/04 Contact: Cliff Cochrane
01732 876038

- 1.2.1 The appeal site was formerly a tea room and is within the designated Retail Area of Borough Green. Policy P6/20 of the Local Plan identifies it as being within the Borough Green Rural Local Centre where retail uses will be permitted.
- 1.2.2 Permission was granted in 1999 for a change of use from a commercial use to a residential use, contrary to Policy P6/20, because, there were vacancies in local shops at that time, and because of the break in the run of shop frontages caused

by the driveway. The appellant seeks to return the shop to a retail use, in line with adopted policy.

- 1.2.3 The council stated that the policy context is out of date, and that the site might change in the forthcoming review of the Local Plan. However, the Inspector considered that the property looks like a shop and is plainly in the Retail Area in policy terms, an area which contains many other shops and similar uses, notwithstanding the break caused by the driveway. The Inspector considered that the use of this property as an A1 use would help to strengthen the shopping function of the area, and would provide further choice. The Council produced no evidence to support the assertion, which he considered in any case can only be afforded very little weight, as the Local Plan review process has not yet begun.
- 1.2.4 The Inspector concluded that the proposed change of use would be in character with the area, which is a mixed retail and residential area, and as a retail use it would be an appropriate use in the Rural Local Centre, in a Retail Area. In consequence it would accord with the adopted Local Plan Policies P6/20 and P4/11.

1.3 Site **Sevenoaks Hatchbacks and land rear of 2 Maidstone Road, Borough Green**
Appeal **Against the refusal of permission for demolition of Sevenoaks Hatchbacks building and use of land at rear of No. 2 Maidstone Road for erection of 5 no. 2 bed low cost houses, parking, improvements to existing vehicular access with service area.**
Appellant **Riverdale Properties**
Decision **Appeal dismissed**
Background papers file: PA/36/04
Contact: Cliff Cochrane
01732 876038

- 1.3.1 The Inspector considered the main issues in the appeal to be the effect of the proposal on the character and appearance of the surrounding area; and the living and working conditions of neighbouring occupiers, with particular reference to outlook and privacy.
- 1.3.2 The Inspector took into account the relevant planning policies and in particular had regard to Structure Plan policies RS1, which advises that all permitted development in villages and small rural towns should, amongst other things, be well designed and appropriate in scale, density and appearance to surroundings. ENV15 and S2 seek to conserve and enhance the quality of Kent's built environment. Local Plan policy P4/8 records that within Areas of Historic Character (AHC), development which is exceptionally justified will only be permitted where, amongst other things, the scale and density of the proposed development is compatible with the residential character of the area. Local Plan policy P4/11 records that development proposals must not harm the particular

character and quality of the local environment, and will only be permitted where certain requirements are met. These include that it is appropriate in terms of form, height and impact on adjoining buildings and land, is of high quality in terms of design and has regard to the principles contained in supplementary planning guidance contained in the document *Kent Design: A Guide to Sustainable Development*. As this is referred to specifically in a development plan policy, the Inspector attached substantial weight to it.

- 1.3.3 No specific objection has been raised to the pair of semi-detached dwellings and the Inspector found this part of the proposal acceptable. An existing planning permission establishes the principle of erecting 5 x 2 storey properties on the site. Accordingly in determining the appeal the Inspector focussed on the concerns expressed by the Council and others regarding the design and siting of the terraced element of the appeal proposal.
- 1.3.4 Character and appearance: The Inspector found the Quarry Hill AHC to be characterised for the most part by tightly-knit residential development, with traditional terracing playing an important role in the streetscape. The area contains a wide variety of building heights and a broad range of external materials. Close spatial relationships between buildings are common, and can also be found beyond the confines of the AHC in the vicinity of the appeal site.
- 1.3.5 The proposed terrace would be seen in public views from 2 main locations: through the site entrance in Maidstone Road and from Quarry Hill Road, between Nos 5 and 7. No. 7 although not a listed building, is a very attractive traditional cottage of some considerable architectural note, the setting of which requires careful thought. The Council's case officer had encouraged the Appellant to reduce the terrace to 1 ½ storeys and position it further away from the cottage, an objective eventually achieved with the approved scheme. However, the officer's efforts foundered in respect of the appeal scheme when the Appellant opted to maintain the eaves at full height and merely reduce the roof pitch.
- 1.3.6 The Appellant has since expressed regret that this revision was made, stating that it introduced "an alien roof pitch that is too flat and out of character with adjoining buildings". Despite the fact that the terrace would not fall inside the AHC, it would still be visible from within it. In the Inspectors judgement, the shallow roof would clash particularly with the traditional architecture of No 7 and the steeply pitched roof of No 5, and would give the new building a squat and disproportionate appearance in relation to those properties. He therefore agreed that a roof in this form would not be appropriate to its setting, and considered that the use of traditional materials would not provide sufficient mitigation. Planning Policy Statement (PPS) 1: *Delivering Sustainable Development* emphasises that design which is inappropriate in its context should not be accepted.
- 1.3.7 The Inspector did not consider that, insofar as its siting and height are concerned, the development would appear cramped or out of place in relation to the prevailing

character of the adjacent AHC or conflict with LP Policy P4/8. This however, did not outweigh his concerns regarding the design of the roof of the terrace. Accordingly he concluded that the proposal would be harmful to the character and appearance of the area for this reason alone.

- 1.3.8 Living and working conditions: The Council expressed concern that the proposed terrace would appear overbearing when viewed from the rear garden of 7 Quarry Hill Road. The latter would be screened in part from the appeal development by a single storey range at the rear of the main cottage. Nevertheless, the flank wall and roof of the dwelling proposed for plot 5 would project well above this and be clearly visible from within the neighbouring curtilage. However, impact on the outlook of the adjoining residents, although material, would not in the Inspector's judgement, be sufficient to justify dismissing the appeal.
- 1.3.9 The Inspector took into account the concerns expressed by occupiers of other neighbouring properties and considered that the privacy of No 15 The Landway would be reduced once conifers sited on the boundary have gone. However, in a built up area such as this, absolute privacy and a complete absence of visual intrusion are, in the Inspector's view unrealistic expectations. The Council has already approved a scheme with rear windows that would be only marginally further from No 15 than those now proposed, in conflict with the *Kent Design Standard*. Therefore, in his judgement, the potential impact on the living conditions of the occupiers of No. 15 does not give grounds for dismissing the appeal.
- 1.3.10 The Inspector concluded that the proposal would not result in material harm to the living and working conditions of neighbouring occupiers. Although it would not comply fully with the relevant provisions of LP Policy 4/11 and *Kent Design*, The Inspector was satisfied that a departure from these particular policies is justified in this case insofar as they relate to this issue, having regard to the existing planning permission for the site. However, notwithstanding this conclusion, he considered that the harm to the character and appearance of the area is of overriding importance and for that reason alone the development should not go ahead.

1.4 Site **White Clouds, Taylors Lane, Trottiscliffe**
Appeal **Against refusal of permission for the demolition of an existing conservatory and erection of a new rear extension and garage**

Appellant **Mr D Fincham**

Decision **Appeal allowed**

Background papers file: PA/50/04

Contact: Cliff Cochrane
01732 876038

- 1.4.1 The Inspector considered the main issue to be the effect that the development would have on the landscape of the Kent Downs Area of Outstanding Beauty.

- 1.4.2 The site is within the AONB and proposals for development, which would be inconsistent with the conservation of natural beauty, will be weighed in the light of their importance in securing the economical and social well-being of the area. These aims are echoed in Policy P3/5 of the Local Plan and also in adopted policies for Special Landscape Areas, one of which, the North Downs SLA, includes the appeal site.
- 1.4.3 The relatively modern house has been extended over the years and is now a substantial property. However, the Inspector considered that the scheme now proposed would not lead to the house appearing out of proportion. The extension would be mostly to the rear of the building and would not be prominent from Taylors Lane. The design is quite striking, with significant use of glazing, timber cladding and flat roofs, but that in itself is not a sound reason to reject the proposal. The appearance and materials would contrast with the more traditional form of the house but the Inspector did not consider that the differences would result in such a clash of styles that the visual amenity of the area would be significantly harmed.
- 1.4.4 The appeal site is on the edge of the village but the Inspector did not consider that the location is sensitive. There is good shrub and tree growth to the rear of the garden and the site is a sufficient distance from the higher public vantage points along the Kent Downs public footpath for the extension not to appear intrusive. Accordingly the Inspector concluded that the landscape of the AONB would not be adversely affected, nor would it be contrary to ENV4 and LP Policy P3/6.

1.5 Site **Windmill Gardens, Mereworth**
Appeal **Against refusal of permission for the construction of 3 chalet bungalows**
Appellant **Mr F Chapman**
Decision **Appeal dismissed**
Background papers file: PA/56/04 Contact: Cliff Cochrane
01732 876038

- 1.5.1 The Inspector considered the main issue to be whether the proposed development would be inappropriate in the Green Belt and, if so, whether there are any very special circumstances, which would justify permission being granted.
- 1.5.2 Policy MGB3 states that there is a general presumption against inappropriate development. The construction of new buildings is inappropriate unless they are for certain specific purposes. Limited infilling in existing villages, or redevelopment of major existing developed sites, may not be inappropriate, but such development has to be provided for in local plans. No claim was made by the appellant that the site is within any category or allocation in the Local Plan, which would enable the development of 3 dwellings on it.

- 1.5.3 The site is also within a rural area where Policy RS5 of the Structure Plan indicates that development will only be permitted in certain circumstances. There are no exceptions, which would enable the 3 dwellings to be allowed.
- 1.5.4 The Inspector therefore considered that the proposal constitutes inappropriate development in the Green Belt and it is for the appellant to show why permission should be granted.
- 1.5.5 The Council accepted that the site is formerly developed land. PPG3 advises that such land should be developed before greenfield sites. However, the site has not been allocated in the adopted Local Plan for development and there is no evidence to suggest that the site could perform well enough in relation to the criteria in para 31 of PPG3 to have justified its inclusion.
- 1.5.6 The Inspector saw various other commercial activities in the area, such as the builders yard adjoining the site, the industrial estate and the fruit-packing warehouse, but such land uses do not justify allowing further inappropriate development in the Green Belt.
- 1.5.7 The Inspector concluded that there have not been very special circumstances advanced, which would justify allowing the inappropriate development. Consequently the scheme would be contrary to Structure Plan Policy MGB3 and Local Plan Policy P2/16. In addition, due to its location in a rural area, the proposal would be contrary to Structure Plan Policy RS5.

1.6 Site **Little Rosewood, Common Road, Ightham**
 Appeal **Against the refusal of permission for the construction of a rear first floor extension replacing a roof terrace and a central first floor extension including a new bedroom en suite**
 Appellant **Mr C Pomeroy**
 Decision **Appeal dismissed**
 Background papers file: PA/69/04 Contact: Cliff Cochrane
01732 876038

- 1.6.1 The Inspector considered the main issue to be whether the proposed extension would constitute inappropriate development in the Green Belt and, if so, whether there are any very special circumstances, which would justify permission being granted.
- 1.6.2 The original dwelling approved in 1955 was a 2 bedroom bungalow. The property has since been extended via at least four planning permissions and is now a substantial house.
- 1.6.3 The Council stated that the current volume of the property has increased from the original by 300% and that the extension now proposed would take that increase in volume to about 390%. This was disputed by the appellant with a statement that

the floor area would increase by about 20%. Assuming the less generous estimate of increase in volume, the Inspector was in little doubt that the extensions would constitute a wholly disproportionate addition over and above the size of the original property and as such, would be inappropriate development in the Green Belt. PPG2 advises that such development is harmful to the Green Belt and the applicant must show why permission should be granted.

1.6.4 The Inspector noted the comments that the alterations would not increase the footprints of the building and that privacy of neighbouring properties would be increased. He accepted that the extensions would be barely discernible from the nearby public road or neighbouring properties, due to the large trees and other vegetation in and around the spacious plot. Moreover, he did not dispute that the massing of the house would be improved by building over its single storey part. In his opinion, none of those circumstances is very special.

1.7 Site **Paxton Farm, Tonbridge Road, Plaxtol**
Appeal **Section 73 applications to vary condition 9 of consent**
TM/03/03310/FL in part to provide double lock-up garage for
barn conversion

Appellant **Devafield Ltd**

Decision **Appeal A dismissed. Appeal B allowed and planning**
permission granted.

Background papers file: PA/86/04

Contact: Cliff Cochrane
01732 876038

1.7.1 Appeal A follows an application for the retention of part of an existing building that was required to be demolished by virtue of condition 9 of permission granted under reference TM/03/03310/FL. The second application (appeal B) was made in similar terms but proposed a totally new building.

1.7.2 The condition in dispute states "The dwelling shall not be occupied until the existing outbuildings shown to be removed on the submitted plans have been demolished and all arisings removed from the site."

1.7.3 The Inspector considered the main issues to be the likely impact of either of the proposals upon the character and appearance of the surrounding area given the policy objections to the development within such designated locations.

1.7.4 The Inspector took into account the relevant Structure Plan and Local Plan policies and in particular considered local policy P4/11 to be pertinent, given its overall objectives of ensuring that alterations and extensions to residential properties should not harm the particular qualities of the local environment, whilst being appropriate in terms of form, height, siting and mass and built to a high quality of design. Criterion 5 of that policy requires proposals to provide adequate personal and vehicle security. He also took into account the guidance in the recently issued PPS7 (Sustainable Development in Rural Areas), specifically those paragraphs under the headings "*Countryside Protection and Development*

in the Countryside”, “*Re-use of Buildings in the Countryside*” and “*Nationally Designated Areas*”. He also had regard to the advice contained in Circular 5/94 (Planning Out Crime) to which is attention was drawn on behalf of the appellant company.

- 1.7.5 In the Inspector’s judgement condition 9 of the permission granted on 4 February 20/04 meets the tests of Circular 11/95 in that it seeks to ensure that the residential amenities of future occupiers of the converted barn and the adjacent replacement dwelling would not be adversely affected by the unsightly buildings. The condition would also meet the wider needs of the surrounding area by ensuring the removal of buildings that are clearly out of context within this protected landscape. For these reasons he concluded that appeal A should be dismissed and the grounds of refusal are well founded.
- 1.7.6 The second application (appeal B) seeks to address concerns set out in the first refusal by proposing a purpose- built garage of identical proportions to that for which permission already exists next door (the replacement dwelling) whilst utilising materials appropriate to their landscape setting.
- 1.7.7 Condition 6 of the permission removes Permitted Development rights such that it would not be possible to erect a garage, shed or other buildings to house machinery to maintain the extensive curtilage of the converted barn. Moreover, the new dwelling created by the conversion is of restricted dimensions, such that it would not be possible to utilise part of that building for garden machinery or other equipment necessary to maintain grounds.
- 1.7.8 Guidance in PPG2 allows for some limited extensions of existing dwellings. The Inspector concluded that the benefits associated with the provision of secure garaging for two cars, and possibly for a limited amount of garden machinery, outweigh any potential harm to the openness of the Green Belt. The proposal would accord with the objectives of Policies P3/5 and P3/6 of the Local Plan. Similarly, he concluded that the detailed design of the building would not result in any adverse impact on the character of the site, its setting or the wider rural landscape.

Costs application by the appellant

- 1.7.9 The appellant company submitted a full application for costs on the grounds that the Local Authority had not provided compelling or convincing evidence to support reasons for refusal. It further contended that the appeals could have been avoided had the applications been referred to the Committee rather than being determined under delegated authority.
- 1.7.10 The Local Authority had failed to take into account the emerging Kent and Medway Town Structure Plan and recent Government guidance, together with

advice in Circular 5/94. The Council had quoted policies that do not apply and it has brought no substantial evidence to support its grounds of refusal.

- 1.7.11 The Council response to the reference to misquoted policies was that the Council's statement was produced in time to address this error. Policies MGB3 and RS5 of the Kent Structure Plan and Policies P6/14 and P6/15 of the Local Plan set out criteria for the conversion of buildings and the restriction on further extensions. The Local Authority had made out a good case as to why this proposal has not addressed these policies. In particular, both proposals fail to meet the criteria set out in Policy P4/11, which seeks a high quality of design. The application was properly considered under delegated powers and there is no evidence that a different decision would have been reached had it been reported to Committee.
- 1.7.12 The Inspector concluded that the condition of the building, the subject of the first appeal, its appearance and design were below the high standard required in such a sensitive location and the Local Authority were justified in refusing permission.
- 1.7.13 The Appellant's agent in his letter of 2 September 20/04 set out the basis of the second application, which was to address the Council's concerns with regard to design issues. It also highlighted the need for the garage in terms of advice of the Kent County Constabulary and the Co-ordinator of Neighbourhood Watch. At the time of the second application the earlier refusal had been the subject of an appeal, with a hearing date for March 2005. The letter warned of a possible costs application and also requested that the application be referred to the Committee for decision. The letter implied that the appeal would be withdrawn if the second application was allowed.
- 1.7.14 In the Inspector's opinion the local Authority had acted unreasonably. It had failed to adequately balance the minimal harm caused by the erection of a well designed double garage against the advice in Circular 5/94 and, indeed, in Criterion (5) of their own policy P4/11. He also noted that an almost identical garage had been erected on the adjacent site, where permission was granted for a replacement dwelling. He heard no convincing evidence to support the Council's concerns as to the impact of the proposal upon the openness of the Green Belt or the character or appearance of the designated landscape within which the site is located. Given the contents of the letter of 2 September 20/04, this is a matter which should have been put before the Committee so that the Appellant had a fair opportunity of putting forward arguments in support of the proposal.
- 1.7.15 The Inspector found that unreasonable behaviour resulting in unnecessary expense as described in Circular 8/93 had been demonstrated. He therefore concluded that an award of costs was justified.

1.8 Site **Unit 13 Garden Shop, Mill Yard, Swan Street, West Malling**
Appeal **Against refusal of permission for the demolition of the existing glasshouse and erection of 5 No. one bedroom flats, 2 No. two bedroom flats and a commercial unit (Class A1) with parking, revised access and associated works**

Appellant **Bedlar Holdings Ltd**

Decision **Appeal dismissed**

Background papers file: PA/83/04

Contact: Cliff Cochrane
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1.8.1 A revised scheme was proposed by the appellant to provide 4 dwellings and one commercial unit, together with other amendments, including alteration to the profile of the proposed building and additional car parking provision. This scheme was formally considered by the Council and forms the subject of the appeal.

1.8.2 The Inspector considered the main issues to be whether or not the appeal proposal would: firstly, result in development that would fail to respect its surroundings; and secondly, give rise to development with inadequate parking and vehicular manoeuvring facilities. In consideration of the first issue he also took into account the impact of the proposed development on the conservation area. He also considered whether or not the proposed development would: thirdly, erode the residential amenities of the occupiers of any neighbouring dwelling; and fourthly, compromise the comprehensive development of land comprising the appeal site together with adjoining land.

First issue

1.8.3 The proposed building would stand close to certain of the site boundaries being less than 0.5m and 1.5m from the common boundaries with the houses in the abbey grounds to the north and east respectively, and within 1.0m of the south site boundary.

1.8.4 The Inspector considered that the form, design and layout of the appeal proposal, maintaining the present informal series of linked courts, appropriately preserves the character of the conservation area. This led him to the conclusion that the proposal accords with those development plan policies that provide for the protection of the environment, including the policies concerning the preservation or enhancement of conservation areas. He was also satisfied that the proposed development aligns with the Governments housing policy contained in PPG3 "Housing", including the guidance on the density of development proposals, and as such he found the allegations of over intensive development made by the Council and third parties unfounded.

Second issue

- 1.8.5 The Council made reference to the Kent County Council Vehicle Parking Standards (KCCVPS) which are operated by the Council but acknowledged that application of current Government parking standards to the proposed development would produce a need for 6 parking spaces to serve the residential content of the development plus the parking requirement generated by the commercial element of the proposal. The Inspector considered it appropriate to consider the appeal proposal against national standards.
- 1.8.6 In his opinion the parking provision included in the appeal proposal complies with Government policy. 6 parking spaces would be provided for the proposed dwellings. No dedicated car parking space would be provided for the commercial unit but in view of the guidance at paragraph 53 of PPG13, it is his view that dedicated parking space for the unit is not required.
- 1.8.7 The proposed development would displace 6 parking spaces provided pursuant to an extant planning permission relating to other premises in Mill Yard. This has been catered for by the provision of 5 car parking spaces and a space for a motor cycle on land within 10m of the main part of the appeal site, to which vehicular access would be gained from the public car park that lies to the south of the site. The Council criticised this arrangement, and also questioned its convenience in view of the fact that the pedestrian link to the site is not a public right of way.
- 1.8.8 In the Inspector's opinion the passage between the appeal site and the area that would accommodate the displaced car parking is not a matter of concern. Of more concern is the fact that these arrangements do not provide for the totality of the displaced parking, and of even greater concern is the matter of terms of the lease relating to the land.
- 1.8.9 The Appellant referred to the lease as "long term", but the Inspector questioned this description as it would expire in August 2018. The proposal, if constructed would undoubtedly remain after the lease had expired. The lease could be renegotiated, but failure in this respect could have implications for on-street car parking in West Malling, which the Inspector noted was in substantial demand. This aspect of the appeal militates against the grant of planning permission, being in conflict with that part of Structure Plan Policy RS1.

Third issue

- 1.8.10 Concern was expressed regarding the effect of the proposed development on the amenity of the dwellings in the abbey grounds that stand to the north and east of the appeal site, namely Nos 32, 34 and 36 Swan Street. The Appellants drew attention to the assessment of Council officers in their committee report that there would be no windows in the north wall of the proposed dwellings and that there would be no direct views towards the dwellings in the abbey grounds from the

windows in the east elevation of the proposed dwellings owing to the screening afforded by projecting wings. In the light of this the Appellants contended that the proposal would preserve local residential amenity.

1.8.11 The Inspector did not agree with these assessments. In his opinion there would be direct and close overlooking of the private rear garden of the adjoining dwelling from the first floor windows. Furthermore, the north elevation of the proposed building would stand less than 0.5m from the rear boundary wall of 32 Swan Street. From the back garden of 32 Swan Street the proposed development would be seen as a dominant and unneighbourly form of development. The proposal would result in the substantial overshadowing of the back garden of 32 Swan Street, particularly in the winter months, and to a lesser extent the back gardens of the 2 related houses would be similarly affected.

1.8.12 In recognition of these effects the Inspector considered the appeal proposal would unacceptably erode the residential amenities that the occupiers of these adjoining dwellings might reasonably expect to enjoy and place it in conflict with those parts of the Structure Plan Policies RS1 and ENV15 that provide for the preservation and enhancement of the amenity of settlements in the plan area and militate against development detrimental to the amenity or functioning of a settlement.

Fourth issue

1.8.13 It was suggested that dismissal of the appeal would enable consideration to be given to the comprehensive redevelopment of land comprising the appeal site together with the land at the rear of 71 and 73 High Street. The Inspector considered that might be difficult to achieve owing to the existence of the line of trees between these 2 parcels of land, to which the Council expressed a commitment to preserve. He was not convinced that in itself this suggestion by a third party is of sufficient weight to warrant dismissal of the appeal. However, as the Inspector intended to dismiss the appeal for other reasons he considered that this presents an opportunity to examine the merits of the comprehensive redevelopment of these areas of land.

1.9 Site **Beechin Wood Farm, Beechin Wood Lane, Platt**
 Appeal **Against an enforcement notice alleging the construction of**
 walls
 Appellant **Mr W Terry**
 Decision **Enforcement notice quashed**
 Background papers file: PA/3304

Contact: Cliff Cochrane
01732 876038

1.9.1 I reported to this Committee in December 2004 that the Inspector appointed by the First Secretary of State had decided to quash the enforcement notice in this appeal. The appellant also made a claim for costs against the Council, and this has now been determined.

- 1.9.2 In his decision letter, the Secretary of State cites paragraph 22 of Annex 3 to the Costs Circular (8/93), which says that "when using their discretionary enforcement powers, planning authorities will be expected to exercise care to ensure that their decision to issue an enforcement notice takes full account of relevant judicial authority..." and warns that an local planning authority are at risk of an award of costs in a case where a notice is subsequently quashed on appeal because it has been incorrectly drafted or is so technically defective that it cannot be corrected or varied under planning legislation.
- 1.9.3 The Secretary of State is of the opinion that the Council's failure to draft a notice with a clear accompanying plan that could be appropriately varied on appeal was crucial in this case and it resulted in a quashed notice and abortive expense on the part of the appellants.
- 1.9.4 Accordingly, the Secretary of State has decided that a full award of costs against the Council, on grounds of unreasonable behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances of the case.
- 1.9.5 I estimate that the claim for costs in this case is unlikely to exceed £5,000.

2 FORTHCOMING PUBLIC INQUIRIES AND HEARINGS

This list includes forthcoming public inquiries and hearings for all three Areas which have now been arranged. Unless otherwise indicated, they will be held in the Civic Suite at the Gibson Building and will last one day. All hearings and inquiries commence at 1000 hours on the first day.

It will be noted that this list includes hearing dates as far ahead as February 2006. There are also a number of other outstanding hearings and appeals for which dates have not yet been allocated. It is now the practice of the Planning Inspectorate not to list new cases for hearing more than three months in advance.

- 1.1 Site **Former Frantschach site, New Hythe Lane, Larkfield**
 Details **Appeal against non-determination of application for erection of 370 dwellings, including 30% affordable housing, with associated parking, landscaping and highways, following the demolition of the existing buildings.**
 Date: **Inquiry: 12, 13 and 14 April and 20 May 2005**
 Venue **East Malling Conference Centre**
 Background papers file: **PA/30/04**
- 1.2 Site **Land south-east of Hazeldene Bungalow, Old Lane, Ightham**
 Details **Appeal against refusal of planning permission for change of use of land for the stationing of one residential caravan**
 Date: **Hearing: 28 June 2005**
 Background papers file: **PA/78/04**

- 1.3 Site **Land at Fre Mel Farm, Comp Lane, Offham**
Details **Appeal against refusal of planning permission for cessation of existing industrial and commercial uses and redevelopment of site by erection of ten new dwellings with associated access, garaging and ancillary works**
Date: **Hearing: 16 August 2005**
Venue **Offham Village Hall**
Background papers file: **PA/52/04**
- 1.4 Site **Hop Farm Country Park, Branbridges Road, Beltring**
Details **Called-in application for 64 holiday let units and associated works**
Date: **Inquiry: 20 September 2005 (3 days)**
Venue **Tonbridge Castle**
Background papers file: **PA/65/04**
- 1.5 Site **Platt CE (Aided) Primary School, land opposite The Ferns, Maidstone Road, and the Playing Fields, Grange Road, Platt**
Details **Appeal against refusal of planning permission for replacement primary school with attached playing field, replacement Memorial Hall, twenty affordable houses, sixteen private houses and public open space**
Date: **Inquiry: 4 October 2005 (2 days)**
Venue **East Malling Conference Centre**
Background papers file: **PA/67/04**
- 1.6 Site **Tonbridge Grammar School for Girls**
Details **Appeal against refusal of planning permission for construction of 117 dwellings**
Venue **Tonbridge Grammar School for Girls (TBC)**
Date: **Inquiry: 25 October 2005 (2 days)**
Background papers file: **PA/61/04**
- 1.7 Site **Beechin Wood Farm, Beechin Wood Lane, Platt**
Details **Appeal against non-determination of application for retention of engineering works relating to land re-grading**
Date: **Inquiry: ~~28 February 2006~~ Adjourned to a date to be fixed**
Background papers file: **PA/09/05**

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