

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

15 June 2005

Report of Chief Solicitor

Part 1- Public

Matters for information

1 PLANNING APPEAL DECISIONS

- 1.1 Site **Land adjacent to Kingscot, Tower Hill, Offham**
Appeal **Against the refusal of permission for the demolition of a garage and erection of a replacement garage plus new detached dwelling with garaging**

Appellant **P & P Construction**

Decision **Appeal dismissed**

Background papers file: PA/68/04

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- 1.1.1 The Inspector considered the main issue in the appeal to be the effect of the proposed development on the character and appearance of the surrounding area, part of the Offham Conservation Area and adjacent to listed buildings.
- 1.1.2 The Structure Plan policies seek to ensure the quality of new development and aim to preserve or enhance conservation areas' special character and appearance. The Local Plan Policy P4/11 expects all development proposals not to harm the particular character and quality of the local environment.
- 1.1.3 The proposed house would be of substantial size and sited away from the road, beyond a pair of hipped-roof detached double garages standing close to the break of slope above and to the rear of Kingscot, a grade II listed building of 2 storeys.
- 1.1.4 The large garages would be positioned close to Kingscot and the ridges of their roofs would be higher than that of Kingscot. The Inspector considered that their proximity, height and bulk would unduly dominate Kingscot and detract from its setting. The height and bulk of the proposed house and garages would also harm the appearance of the conservation area. Even though the area comprises a variety of ages, designs and sizes of dwellings and the proposed house design has been amended to reduce its height and depth, it would still appear excessively bulky and dominant in comparison with neighbouring properties. This would be readily seen from the opening to Tower Hill.

1.1.5 The Inspector did not consider that the proposal would cause any significant harm to the visual amenities of the Green Belt or the character and appearance of the countryside, both of which lie to the south of Kingscot. His overall view is that the proposal would result in unacceptable harm to the character and appearance of the surrounding area, failing to preserve or enhance the character or appearance of the Offham Conservation Area and harming the setting of an adjacent listed building.

1.2 Site **Station Lodge, Station Road, West Malling**
Appeal **Against the refusal of permission for an extension to provide (A3) snack bar and (A1) ticket office serving parking area**
Appellant **Mr J Moore**
Decision **Appeal allowed**
Background papers file: PA/75/04 Contact: Cliff Cochrane
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1.2.1 The Inspector considered the main issue in the appeal to be the effect of the proposal on the character and appearance of the surrounding area, including the setting of a listed building.

1.2.2 The proposed development would comprise an L –shaped extension to the side of the forward-most part of the existing, single-storey Station Lodge. Its design and materials would be in keeping with those of the existing building, and because of its separation from the listed (grade II) station building and as it would not project in front of the main 2 storey part of that building, the Inspector considered that it would not harm the setting of the listed building.

1.2.3 Although the site is in a Green Wedge, it is well outside the built-up area of West Malling and so it would not extend this. The extension's limited size and its position within the developed area of the station and car parks would not undermine the separation of urban areas and the Inspector considered the car parks do not form an attractive rural setting for West Malling, because of both their appearance and their separation from the settlement.

1.2.4 Similarly, he considered that the car parks do not make a positive contribution to the appearance of the ALLI and the design, size and siting of the proposed extension would not harm this area's landscape character.

1.3 Site **Downsview Farm, Borough Green Road, Ightham**
Appeal **Against an enforcement notice alleging without planning permission the creation of a new hard-surfaced trackway and associated access gateway**
Appellant **Mr S Franklin**
Decision **Appeal dismissed and enforcement notice upheld**
Background papers file: PA/73/04 Contact: Cliff Cochrane
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1.3.1 The Inspector considered the main issues to be firstly the effect that the development has on highway safety; and secondly, whether the development is inappropriate development in the Green Belt, and, if so, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations that would amount to very special circumstances justifying permission in this case, bearing in mind the location of the site in the Kent Downs Area of Outstanding Natural Beauty and a Special Landscape Area.

Highway Safety

1.3.2 The Haul Road is unadopted and has no legally enforceable speed limit. It is used by large haulage vehicles to gain access to the quarry, as a link road by the public, and by other commercial operators for access to other premises.

1.3.3 The junction of the trackway with the Haul Road achieves satisfactory visibility to the north west, but due to a steep hill and a bend in the road, acceptable visibility cannot be achieved to the east. Because of the large size and weight of a number of vehicles using the Haul Road, the fact that it has no speed limit, and the fact that a number of journeys from the appeal site would involve a vehicle with a trailer comparatively slowly exiting onto the Haul Road, the Inspector considered the trackway to be unacceptable in terms of highway safety. In addition the appellant does not own the land over which the visibility splays run, and there is no guarantee that the sight lines could be retained in future.

The Green Belt and Kent Downs Area of Outstanding Natural Beauty

1.3.4 Being an engineering operation, PPG2 states that the carrying out of such operations is inappropriate development in the Green Belt, unless they maintain openness, and do not conflict with the purposes of including land in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt. The Inspector considered that the trackway clearly impacts in a harmful way on the openness of the Green Belt, as it does not safeguard the countryside.

1.3.5 Furthermore the trackway is an unattractive and insensitive man-made construction, surfaced in hardcore and bricks, clearly at odds with the natural beauty of the local landscape. It fails to safeguard, preserve, or conserve the landscape and the countryside, which adds to the harm it cause to the Green Belt.

1.3.6 There is an existing trackway to the A227, which the Inspector considered to be adequate to assist in the running of the appellant's business. No evidence was put to him that any of the requirements could not actually be achieved using this trackway, and the new trackway is thus not necessary to agriculture or other land essentially demanding a rural location.

Costs application by the appellant

1.3.7 The appellant submitted that he had been put in this position by the lack of communication by the Council. This could have been sorted out a long time ago, that would not have been unreasonable, but the Council took an intransigent stance. The appellant had expected service of the enforcement notice to be withheld pending discussions.

1.3.8 The Council had no record on the files of any communication with the Council prior to Mr Franklin implementing the works on site.

1.3.9 The Inspector concluded that the appellant's view seems to suggest that his discussions with the Council and what he refers to as a sensible compromise would enable him to build the trackway. However, the trackway had already been refused planning permission and dismissed at appeal. There was no prospect of adoption of the Haul Road at the time of the construction of the trackway, nor any certainty that an access would be allowed onto it by the Highway Authority. It was not in the Council's power to deal with the adoption of the road, and the appellant should not have sought to discuss adoption with them. The development is clearly contrary to policy and there was no prospect of such an unacceptable development being permitted. The application for costs was therefore refused.

Costs application by the Council

1.3.10 The Council submitted that the previous application had been refused on highway grounds and the subsequent appeal had been dismissed. There has been no material change in circumstances. The records at the Council were that the appellant had made contact only after he had carried out the work. There was no record on file of any communication.

1.3.11 The appellant responded by saying that there had been no public objections, only the Council and the Highway Authority. The previous refusal was because the application was premature in the light of the adoption of the Haul Road, and the application could prejudice the adoption. The appellant had asked the Council about the status of the Haul Road but he had received no response. The Council had been very intransigent. The other important matter was the legal requirement to remove dead animals from the land.

- 1.3.12 The Inspector was in no doubt that the appellant knew he needed planning permission for the work, as his previous application for permission was virtually the same. The adoption of the Haul Road can have no bearing on the appeal, as it is not adopted, the appellant does not own the visibility splays, and the owners have denied him access for the trackway, although a right of way exists. However, that does not justify the construction of a new trackway. Nor can the alleged lack of response by the Council, which the Council's records do not tally, support the unlawful construction of the trackway. The responsibility for adoption lies with the Highway Authority, not with the Local Planning Authority.
- 1.3.13 The need to remove dead animals cannot justify the unlawful trackway. The original trackway can be used for that purpose. In the previous appeal decision the Inspector made it plain that the development should not be allowed. The Inspector concluded that the appellant had behaved unreasonably and caused the Council to incur or waste expense unnecessarily. He therefore awarded costs to the Council.

1.4 Site **Cedar Lodge, Platt Common, Platt**
 Appeal **Against refusal of permission for a single storey extension to form ancillary accommodation, change of existing roof pitch and materials**
 Appellant **Mrs Mason**
 Decision **Appeal allowed**
 Background papers file: PA/79/04

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- 1.4.1 The Inspector considered the two main issues to be the effect of the proposed development first on the character and appearance of the area and, secondly, on highway safety and the free flow of traffic on the A25.
- 1.4.2 Cedar Lodge is a "Colt" bungalow, clad in dark stained timber shingles under a low pitched roof. As the proposal to raise the ridge to a 30 degree pitch and to re-roof with concrete tiles would give it a similar appearance to the other "Colt" bungalow nearby, the Inspector found no objection to that part of the scheme.
- 1.4.3 The new development would increase the overall length of built frontage on the site and the double garage would be more prominent in views from the road than the existing garage. However, having regard to the orientation of the bungalow and its position set back to one side off the head of the track, the Inspector did not consider that the increase in scale and height as a result of the development would have a material adverse impact on the character or appearance of the area. In comparison with its neighbours which have open frontages, Cedar Lodge is relatively secluded and well screened. From what the Inspector saw, he was satisfied that the existing balance between the buildings and their treed surroundings would be maintained and views of the mature trees on the western boundary seen over the top of the bungalow would not be altogether lost. In terms of design and appearance the Inspector was satisfied that the proposal would comply with policies P4/11 and P4/12 of the Local Plan and would not harm the character of the area.

- 1.4.4 The Council argued that there would be only a short corridor attaching the bungalow to its extension and the link could easily be removed, in effect the proposal would create two independent dwellings, arguing that this appeared to be supported by the provision of a double garage to serve the annex. An appeal decision in 1996 supports the Council's objection to ant new residential development served by Platt Common because of the increased use of the existing sub-standard access onto the A25, which is part of the primary road network.
- 1.4.5 Although the Inspector understood and supported the Council's restriction on new dwellings off Platt Common because of the increase in movements at the junction and the potential for an increased risk of accidents in conflict with Structure Plan policy T19, he did not consider that justifies the hard line being taken in this case. The proposal is for accommodation ancillary to Cedar Lodge. It might generate a similar number of movements as a new dwelling, but it also might not. That would depend on its occupation, for example by teenager children or an elderly parent, and the same could be said of any residential extension of a similar size. He concluded that the potential for increased use of the existing access onto the A25 would not be likely to be such as to justify refusing planning permission because of conflict with Structure Plan policy T19.

Duncan Robinson
Chief Solicitor