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**Report of 11 January 2006**

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**West Malling**                      **567957 158325**                      **08.08.2005**                      **TM/05/02490/FL**  
West Malling And  
Leybourne

Proposal:                      Construction of 2 no. detached houses with garage  
Location:                      249 London Road West Malling Kent ME19 5AD  
Applicant:                      Millwood Designer Homes Ltd

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**1. Description:**

- 1.1 The proposed two houses would be situated towards the front of the site in between nos. 245 and 249 London Road. Each house would contain 6 bedrooms and 4 reception rooms. Whilst the houses differ in design/form from one another, they do have a similar architectural style. The houses would utilise the roof void for bedrooms and bathrooms at second floor level.
- 1.2 Plot 1 (adjacent to 249 London Road) would measure 14.5m wide x 10m, extending to 15.5m taking into account the integral garage forward projection. The building would stand 5m in height to eaves and 9m high to ridge level. Plot 2 (adjacent to 245 London Road) would measure 14.5 m in width. Its depth would vary from between 9m and 17m due to the presence of both forward and rear projections. This house would stand 5m high at eaves level and 8.5m high to ridge level.

**2. The Site:**

- 2.1 The site lies within the settlement confines of West Malling, within a low density residential area as defined on the proposals map accompanying the TMBLP. The site fronts onto London Road and currently contains one detached dwelling (No. 249) within a wide plot measuring approx 55m in width for the majority of the site, although it widens out at the rear to approx 73m. The resultant 3 unit layout density (including 249) is 6.4 dph. The density of the new development area will be 7.4 dph.
- 2.2 The site (and the neighbouring properties 245 & 251 London Road) is subject to Tree Preservation Order 12-10-29. Many individual trees including Beech, Horse Chestnut and Sycamore within the application site are protected as are two small groups, which include Willow, Beech, Copper Beech and False Acacia.

**3. Planning History:**

- 3.1 TM/04/00225/FL      Refused 18.03.2005; Appeal Dismissed 09.09.2005  
Proposed 5 no. detached houses with garaging and alterations to existing access.

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#### 4. Consultees:

4.1 PC: No objections.

4.2 DHH: The site is affected by traffic noise from the A20. The applicant should undertake an acoustic appraisal, having regard to the local plan policy P3/17. Pending receipt of the appraisal, I must enter a holding objection.

4.3 KCC (Highways): The potential traffic generation from the site will be acceptable. The site has the benefit of two existing entrances onto the London Road and it is proposed to use the second entrance as shared access to the new dwellings. The access to be protected by suitable pedestrian visibility splays, that should be maintained. I would recommend that the driveway be widened to 4.8m for the first 6m to allow vehicles to pass. The new houses have integral double garages of suitable size and additional curtilage parking and turning is shown and accords with current standards. The proposed surfacing of the driveway is shown with permeable paving, which is acceptable. However, the site rises from the highway and suitable additional measures may be necessary to prevent surface water from flowing from the larger paved area onto the highway.

4.4 Private reps (including Art 8 Site Notice): 14/OX/0S/10R. The letters object on the following grounds:

- The proposal is seeking to build two large houses on a plot of land suitable only for 1 additional house and as such the proposed dwellings would look overcrowded.
- The development does not respect the existing building line. The existing properties in the locality have a distinct linear character, which the proposal does not respect.
- The proposal is contrary to policy P4/9 of the Local Plan.
- The height and design would permit some overlooking on 245 London Road.
- The application shows no consideration for surrounding properties and adjacent Conservation Area.
- The proposal is contrary to policy regarding infilling as the space between dwellings is not similar to the space between existing houses. Other properties in the vicinity have much wider spaces between them.
- The loss of the protected Sycamore tree (T.9).
- The proposal will result in road safety hazard due to increase number of vehicle movements.

- Loss of sunlight to no.245 London Road as previously identified by the Inspector when determining the appeal regarding application TM/05/00225/FL.
- The proposal due to the garages fronting the development would be at complete variance with the neighbouring houses and would harm the street scene.
- Concern at the inevitable loss of hedge fronting the site as it is not protected.
- The minor changes to the design and siting to plot 2 do not overcome the previous concerns regarding loss of sunlight/overshadowing to the neighbouring property (or those identified by the appeal Inspector in relation to the previous scheme).
- The developer's statement regarding a reduction in the size of parts of the building in plot 2 are incorrect.

## **5. Determining Issues:**

- 5.1 The main issues with this application are the impact of the proposed development upon the character of the streetscene and the residential amenity of the neighbouring properties.
- 5.2 The site lies within the settlement confines of West Malling, where under policy P6/3 of the TMBLP minor residential development is acceptable in principle subject to proposals conserving and enhancing the special character of the locality.
- 5.3 The site is also located within a low density residential area, to which policy P4/9 of the TMBLP relates. This policy states that development will not be permitted where it would damage the character and amenity of the established residential areas in terms of the density of built development, the mass, scale, form and design of the proposed development and its relationship with adjoining properties. The proposal would retain the existing house at 249 and add two further houses next to it. The resulting plot widths would be approx. 20 m (for 249), 17m and 18m respectively. The length of each plot would be approx. 40m. The plot size and density of the proposed development would be very much in keeping with size of plots in the vicinity of the application site. Much concern has been expressed regarding the size of the proposed houses. The size, form and siting of the proposed houses has been altered through the course of this application. Some local residents have referred to the houses as being 3 storeys and of such a large size that they would be out of keeping with neighbouring properties. However, the houses are of two storey appearance, with the accommodation in the roof at second floor level being served generally by dormers and rooflights. They have conventional eaves and ridge heights for modern dwellings (i.e. 5m and 8.5 - 9m respectively). Whilst the proposed dwellings would stand taller than the existing house at 245 London Road, they would not "tower above" it and indeed would be

of a similar height to other houses in this locality, including 249. The applicant has submitted a street elevation drawing of the proposed houses in relation to the existing houses at 245 and 249 London Road. In terms of their scale, size and height, they would not, in my opinion, appear out of keeping with the existing houses in this part of London Road. Similarly, whilst concerns have been expressed by local residents concerning the size of the houses in relation to their plots, I do not consider that they would look unduly cramped when compared to the general spacing between dwellings in this part of London Road. With regard to the form and design of the houses, these would take a different architectural style to the existing properties in the locality. However, there is already a broad mix of styles in this part of London Road, including large Victorian and Edwardian villas, Georgian houses and chalet bungalows. I do not consider that the architectural style of the buildings would detract from the character of this part of West Malling. As such, I believe that the proposal would not be contrary to policies P4/9 or P6/3 of the TMBLP. I also consider that the proposal complies with policy P4/11 of the TMBLP which requires development proposals not to harm the particular character and quality of the local environment.

- 5.4 The application site lies approx. 150m west of the CA in West Malling. In light of the appropriate nature of the proposed development in terms of its built form and the distance between the edge of the CA & application site, I do not consider that the proposal would detract from the setting of the CA or views into or out of it.
- 5.5 Local residents also consider that the proposal would not be in keeping with the existing building line in this part of London Road. The local residents feel that the main part of the dwellings would be set too far back into the site. However, the building lines of the proposed dwellings, which contain the garaging at ground floor level, are very similar to those of the adjacent dwellings. The proposal, does, in my opinion, respect the linear pattern of development that is present in this part of London Road.
- 5.6 Concerns have also been expressed concerning the impact of the building within plot 2 upon the residential amenity of 245 London Road in terms of loss of sunlight and overshadowing of the rear garden. In his decision letter concerning the previous scheme for development on this site (TM/05/00225/FL), the Inspector concluded that the proposed house on this plot would, by virtue of its size and siting, overshadow the rear of no 245 in the afternoon. Therefore, the current application has to be compared with the previous proposal for this part of the site to see if the Inspector's comments regarding this particular matter have been overcome. The current occupiers of 245 London Road do not believe that the current proposal has adequately addressed the Inspector's concerns regarding this matter.
- 5.7 In assessing the issue of overshadowing, the relevant part of the "obstructing" building to look at is the first floor eaves height (for a two storey building). Unless a building would have a very steeply pitched roof (over 45°), the eaves height is

commonly the part of the building with the greatest potential to cause loss of light to neighbouring houses. In this instance neither of the two houses has a roof pitch of greater than 45°. In this case, the flank wall of the previously refused house would have stood 5m to the west of the boundary with 245 London Road. Its rear wall would have projected 5m behind the rear most part of the dwelling within 245 London Road. The eaves height of both of these walls is 5.1m. The house now proposed on this part of the site is harder to describe due to its design. However, the 5.1m eaves line on its flank wall would be located 6m to the west of the common boundary with 245 London Road. Part of the rear elevation of the proposed house (nearest to No. 245) is also 1m further forward (north) than the rear wall of the refused house would have been. The two storey element of the proposed house has therefore moved 1m in each direction away from the rear of no 245 London Road. Whilst this is a relatively minor change in the siting of this building, this has produced significant changes in terms of overshadowing the rear garden of 245 London Road. The Building Research Establishment document "Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice" includes a test for assessing the amount of overshadowing a proposed building or other structure would have on adjacent land (known as the sun on ground test) on March 21<sup>st</sup>. Having applied this test to both schemes, it shows that the house refused on appeal would have caused some overshadowing to the rear garden of 245 London Road in the late afternoon. This test correlates with the Inspector's conclusions on this matter. However, the test, when applied to the current proposal shows that it would not cause any overshadowing to the property at 245 London Road. Therefore, whilst the siting of the proposed house is not very different to that of the previously refused building in this part of the site, it is, in my opinion, sufficiently different to overcome the Inspector's previous concerns regarding the issue of overshadowing to the existing property at 245 London Road.

- 5.8 It is noted that the design of the proposed house is such that a catslide roof element is incorporated into the east flank side which means that single storey structure is located closer to no.245 (3m) than its first floor eaves height. Whilst the neighbours have referred to this, this part of the building does not project beyond the rear elevation of 245 London Road. It would also be north west of the rear garden of 245 London Road. Due to these factors, this part of the building would not cause any demonstrable overshadowing of the rear garden of no 245 London Road, in my opinion.
- 5.9 The proposal would also not cause a loss of daylight or sunlight to windows serving habitable rooms within this neighbouring property as it passes the 45° test specified in Policy Annex PA4/12 of the TMBLP when applied to the rear windows of 245 London Road. Similarly, no windows situated within the proposed dwellings would directly overlook windows or private garden areas of neighbouring residential properties.

- 5.10 The neighbours at 245 London Road are also concerned with the visual impact of the proposed dwelling within plot 2 upon their amenity. In determining the previous application, the Inspector considered that the proposed development of five houses would be highly prominent from neighbouring properties. Having regard to the size, siting and separation distances between the plots, the Inspector considered that the development would dominate the outlook from the rear garden of 245 London Road. However, this was for a scheme of five houses, 3 of which would have been located in the rear garden of 249, on land that is significantly higher than the position of the house at 245 London Road. The current proposal is, as has been stated above, situated in a similar alignment to Nos. 245 and 249 London Road. There would be no “backland” development associated with this proposal. In light of the current position and design of the proposed dwellings, I do not consider that they would dominate the outlook from the rear garden of No. 245, but would rather appear as part of the existing row of houses along this part of London Road.
- 5.11 The proposed development would entail removing one protected Sycamore tree. Whilst it is generally desirable to retain protected trees, I do not consider that its removal would cause detriment to the character of the locality. The submitted application plans show that a Silver Birch would replace the Sycamore tree, which would not be an unreasonable substitute, in my opinion.
- 5.12 I note the concerns of the DHH with regard to the issue of road noise harming the amenity of occupiers of the proposed dwellings. However, in his decision letter concerning the previous application, the Inspector stated at paragraph 16:
- “In my opinion noise arising from London Road is likely to be predominantly transport related. Nevertheless, whether or not Policy P3/17 is applicable, I consider that in view of the set back of the buildings from the road, any adverse effects of noise are likely to be minimised by appropriate detailed design.”*
- The Inspector therefore considered that housing in a similar position to that currently proposed was acceptable and an acceptable aural environment could be achieved through the design process. In light of the Inspector’s comments on this issue, I consider that a suitably worded condition could be used to protect the aural environment of any future occupiers of the proposed dwellings.
- 5.13 The Inspector, in considering the previous appeal for the development of five additional houses on this site did not consider that the increased traffic generated by that scheme would be significant. In light of this, the additional traffic movements generated by the current proposal for two houses is considered to be entirely acceptable. Kent Highways has not objected to this proposal.
- 5.14 I note the comments of the local resident concerning the alleged inaccuracies in the way the applicants have described of the current plans the proposed house in plot 2. It is fair to say that the rear part of the building (the family room and study)

have been reduced by 1m rather than the 1.3m specified in the applicant's letter. However, the breakfast room does indeed appear to have been reduced by 1m as specified by the applicant. However, it is the plans of the proposed house that

need to be used to assess the impact of the proposed development, rather than a written comment describing the differences between a current and previous iteration of the scheme.

5.15 In light of the above, I believe that the scheme now proposed is acceptable in planning terms and therefore recommend that planning permission be granted.

## **6. Recommendation:**

6.1 **Grant Planning Permission** as detailed in letter dated 17.08.2005, Arboricultural report dated 05.08.2005 and plan nos. P95/S3/121 rev A, 211, 221 rev A, 501 rev A, M201, subject to the following conditions:

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2 No development shall take place until details and samples of materials to be used externally have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or the visual amenity of the locality.

3 The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

4 The garage(s) shown on the submitted plan shall be kept available at all times for the parking of private motor vehicles.

Reason: Development without the provision of adequate vehicle parking space is likely to lead to hazardous on-street parking.

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- 5 No building shall be occupied until the area shown on the submitted plan as turning area has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995

(or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved turning area.

Reason: Development without provision of adequate turning facilities is likely to give rise to hazardous conditions in the public highway.

- 6 The access drive shall be constructed no steeper than 1 in 14.3 for the first 4.5 metres from the edge of the highway and no steeper than 1 in 8 on any other part.

Reason: To ensure the safe and free flow of traffic.

- 7 Any gateway to the access shall be set back 5.0 metres from the edge of the highway.

Reason: To enable vehicles to stand off the highway whilst any gates are being operated.

- 8 The access shall not be used until vision splays of 2m x 2m x 45° between the driveway and the back of the footway have been provided. The area of land within these vision splays shall be reduced in level as necessary and cleared of any obstruction exceeding a height of 0.6m above the level of the nearest part of the carriageway. The vision splays so created shall be retained at all times thereafter.

Reason: In the interests of highway safety.

- 9 No development shall take place until details of the proposed permeable paving and edging to be used on the proposed driveway have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the existing protected trees within the site.

- 10 No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of

planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

- 11 The development hereby approved shall be carried out in such a manner as to avoid damage to the existing trees, including their root system, or other planting to be retained as part of the landscaping scheme by observing the following:
- (a) All trees to be preserved shall be marked on site and protected during any operation on site by a fence erected at 0.5 metres beyond the canopy spread (or as otherwise agreed in writing by the Local Planning Authority).
  - (b) No fires shall be lit within the spread of the branches of the trees.
  - (c) No materials or equipment shall be stored within the spread of the branches of the trees.
  - (d) Any damage to trees shall be made good with a coating of fungicidal sealant.
  - (e) No roots over 50mm diameter shall be cut and unless expressly authorised by this permission no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches of the trees.
  - (f) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, except as may be otherwise agreed in writing by the Local Planning Authority.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

- 12 The existing trees and shrubs shown on the approved plan, other than any specifically shown to be removed, shall not be lopped, topped, felled, uprooted or wilfully destroyed without the prior written consent of the Local Planning Authority, and any planting removed with or without such consent shall be replaced within 12 months with suitable stock, adequately staked and tied and shall thereafter be maintained for a period of ten years.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

- 13 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in the east (flank) elevation of the building within plot 2 other than as hereby approved, without the prior written consent of the Local Planning Authority.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining property.

- 14 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in the roof of the buildings other than as shown on the approved plans without the prior written consent of the Local Planning Authority.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of the amenity and privacy of adjoining property.

- 15 No development shall be commenced until full details of a scheme of acoustic protection of habitable rooms having windows that will be exposed to a level of road traffic noise in Noise Exposure Category B, C or D as set out in Policy P3/17 of the Tonbridge and Malling Borough Local Plan have been submitted to and approved in writing by the Local Planning Authority. The scheme of acoustic protection shall be sufficient to secure internal noise levels no greater than 30 LAeq dB in bedrooms and 40 LAeq dB in living rooms with windows closed. Additionally, where the internal noise level will exceed 40 LAeq dB in bedrooms or 48 LAeq dB in living rooms with windows open the scheme for acoustic protection should incorporate appropriate acoustically screened mechanical ventilation. Mechanical ventilation should also be provided to bedrooms having openings onto facades that will be exposed to a level of road traffic noise in excess of 78 LAmax (slow) time weighting.

The approved scheme shall be implemented prior to the first occupation of the dwelling to which it relates.

Reason: To safeguard the aural amenity of the occupiers of the dwelling hereby approved.

- 16 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development, with respect to the eastern most plot (Plot 2), shall be carried out within Class A & B of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto. (R001)

Reason: In order to protect the amenities of neighbouring residential properties.

Contact: Matthew Broome