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**Report of 14 June 2006**

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<b>Offham Downs</b>	<b>565526 157342</b>	<b>18.10.2005</b>	<b>TM/05/03170/FL</b>
Proposal:	Temporary living accommodation ancillary to main dwelling (retrospective)		
Location:	Land South West Of 1-4 Dutts Cottages Teston Road Offham West Malling Kent		
Applicant:	Mrs R Jeffrey		

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**1. Description:**

- 1.1 The application seeks retrospective planning permission for the retention of a detached outbuilding on land associated with The Old Oast, The Green, Offham. The structure is constructed from stained weatherboarding with a slate roof. The approximate footprint of the structure is 83 sq m (893 sq ft). The accommodation provides a fully equipped kitchen, lounge, bathroom and two bedrooms (shown as store and study on the submitted plans). The building has mains water, electricity and its own cesspool.

**2. The Site:**

- 2.1 The application site lies within the Metropolitan Greenbelt and outside the village confines of Offham. The site lies on the southwestern side of the private road known locally as Hayes Lane, off Teston Road.
- 2.2 The site currently has a Lawful Development Certificate for existing use as domestic garden land, however it is physically detached from the residential premises of The Old Oast, The Green.
- 2.3 The site is screened from Hayes Lane by a thick and relatively tall line of conifer trees along the northern boundary. The site has two vehicular accesses off Hayes Lane and a garage with direct access on to the lane. The eastern third of the site is an open parking/turning area separated from the remainder of the site by a 2m high close-boarded fence. There are pedestrian and vehicular gates in the close-boarded fence.

**3. Planning History: (most relevant)**

- 3.1 TM/02/03108/FL Refused 03.12.2002  
Erection of a dwelling to replace existing barn on domestic garden land.
- 3.2 TM/01/01508/LDCE Certified 05.05.2002  
Lawful Development Certificate Existing: Use of agricultural land as domestic garden.

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- 3.3 TM/96/01194/FL Granted with Conditions 19.11.1996  
Erection of two car domestic garage.
- 3.4 TM/86/1492 Granted with Conditions 24.11.1986  
Tractor shed.
- 3.5 TM/86/1264 Prior Approval Required 15.09.1986  
Tractor shed.
- 3.6 TM/83/912 Granted with Conditions 22.11.1983  
Poultry shed.

#### **4. Consultees:**

##### 4.1 PC: The Parish Council made the following comments:

- The building has been erected on land which although is classified as domestic garden is totally divorced from any residential property and is zoned as Metropolitan Green Belt.
- The applicant has put forward no special circumstances to justify the proposed release of land from its current status as MGB.
- The land is outside the village envelope and the applicant has put no justification for revising these boundaries.
- The structure that was removed was a large 'chicken shed' and planning permission for the erection of a dwelling to replace the shed was refused in October 2002.
- We note the applicant states that the building is not intended as a permanent structure to be used as a dwelling, however the application is for new building works and they have said that they would not be prepared to accept a temporary permission.
- Should the application not be for change of use and new building works, or is the requirement for a change of use negated by the 2002 Lawful Development Certificate?
- If the building does not comply with current Building Regulations how can it be lawfully occupied, albeit on an allegedly temporary basis?
- The applicant states reasons for needing the building being to provide additional overflow accommodation to The Old Oast, a gymnasium, and to accommodate dogs. None of these reasons justify either the adjustment to the village envelope or the release of the land from its status as Metropolitan Green Belt.

- The applicant states that the building is modest in size but from the plans it is apparent that it is in effect a fairly large two bedroom bungalow.
- We believe that there is a restriction on building any structure within a certain distance of the landfill site. Does this application contravene this restriction?
- Can the council please pursue enforcement action alongside any refusal?

4.2 EA: The site is within 250m of a landfill site. The EA therefore requests measures during construction to ensure protection within the foundation of the building from gas migration to comply with current building regulations.

4.3 KCC (Highways): No objections as ample parking space is available.

4.4 DHH: To vacate the building from any of the rooms you would need to exit via the kitchen which is the most likely source of fire.

4.5 KCC PROW Officer: Public Right of Way MR259 would not be affected by the proposal.

4.6 Private Reps: (30/0X/1R/0S + 2No. Press Notices) One letter received objecting on the principle of the development within the MGB and the potential implications (if approved) the development would have on similar applications in the future.

## **5. Determining Issues:**

5.1 The site is located within the Metropolitan Green Belt where there is a general presumption against new buildings. Developments within the Green Belt are assessed against the requirements of Planning Policy Guidance Note 2. PPG2 states that the construction of new buildings inside the Green Belt is inappropriate unless it is required for the purposes of a limited number of appropriate uses such as agriculture or forestry. Development outside these provisions is inappropriate by definition. This means that planning permission should not be granted unless a case of very special circumstances can be identified which would outweigh the harm caused to the openness and functioning of the MGB.

5.2 The letter accompanying the application confirms that the land to which this application relates has a Certificate of Lawfulness for use as domestic garden and is not agricultural land. This is not disputed. However, the land is not lawfully curtilage land to The Old Oast, The Green, Offham or any other property. The land does not therefore benefit from any permitted development rights under Part 1 of Schedule 2 of the GPDO 1995 as these relate to developments within the curtilage of a dwellinghouse. The land does not therefore have any permitted development rights to erect structures on the site or indeed to replace them.

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- 5.3 The argument relating to whether a piece of land is or is not curtilage to a dwellinghouse was tested in the case **Methuen-Cambell v Walters** where it was considered that "...for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter." The judgement in that case goes on the state that, "To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole."
- 5.4 It is in light of this that I cannot consider that the land to which this application relates can reasonably be regarded as constituting one parcel of land with the actual curtilage of The Old Oast. The building in question is accessed by the applicants by exiting their front door, walking along a private lane, through an open turning and parking area and unlocking a gate, this distance is approx. 100m (328ft). The land is clearly functionally and physically separated from the actual domestic curtilage of The Old Oast.
- 5.5 The applicant has suggested that the building is a replacement for a derelict barn, has a smaller footprint than the structure removed and is more pleasing to the eye. The above does not amount to very special circumstances in my view as this argument could be repeated in many situations where rural buildings exist. Indeed, if this argument were accepted then most barns could be replaced with residential developments.
- 5.6 The applicant has stated that the building is not intended to be a permanent structure as its life span is limited and it does not meet building regulations. It is my opinion that the building is a permanent structure as it is fixed to a solid concrete slab base and is connected to mains water and electricity. The building also has its own cesspool. The structure could not in my opinion be removed and relocated easily and therefore cannot be classified as 'temporary' in planning terms.
- 5.7 The applicant argues that the main dwellinghouse is small and the outbuilding is required for additional space for the following reasons:
- a) To provide accommodation for visiting friends and family,
  - b) To be used as a gym by the applicants two sons,
  - c) To house animals when the owner looks after other peoples dogs, the applicant also inhabits the building during these times, up to 3-4 weeks per year.

The above does not constitute a case of very special circumstances as the need for additional space could be argued by any land or property owner.

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- 5.8 The applicant has stated that they consider the building to be modest with a shallow pitched roof and that the stained weatherboarding blends in with its surroundings. It is my opinion that the building could not be classed as modest as it has a significantly larger footprint than the main dwellinghouse (83sqm compared to 37sqm approx). In any event, the external appearance and height of the structure are not the primary issues in this case as the primary matter is clearly one of principle and MGB policy, and not design.
- 5.9 The building should not be considered to be an annexe as the unit could practically and viably operate on its own if the land were sold by the owners of The Old Oast, The Green, Offham. There clearly is no significant link between the building and the occupation of the The Old Oast, and therefore any occupants of this new building, however long the occupation, would not be dependant on the main dwellinghouse.
- 5.10 The comments raised by the EA concerning gas mitigation methods refer to the method of construction. However, the building is already in place. The fact that the building has not had such safeguards, built in at the time of construction and, indeed does not conform to building regulations, has led to a potentially dangerous structure.
- 5.11 The land has a suitable parking and turning area and the proposal would not in my opinion result in harm to highway safety.
- 5.12 The PC suggests that the derelict building referred to in the agents letter was a chicken shed. Our records show that there was a tractor shed and chicken pens and from the history files it appears that the replacement building referred to was in fact the tractor shed.
- 5.13 The proposal is clearly inappropriate development and is therefore contrary to local, strategic and national green belt policies. If planning permission were to be refused, it would be necessary to consider the expediency of taking enforcement action. Any such action would need to be proportionate to the harm caused to interests of acknowledged importance. In this particular instance, it is clear that the building is not only capable of being used as an independent residential unit, but has been fitted out for that purpose. It is also pertinent to bear in mind that planning permission has recently been refused for the erection of a dwelling on this site. I therefore consider it appropriate for an Enforcement Notice to be served requiring the removal of the building.

## 6. Recommendation:

- 6.1 **Refuse Planning Permission**, as detailed in letter dated 12.10.2005 and drawing number 1052/1, for the following reasons:
1. The site lies within the Metropolitan Green Belt where there is a strong presumption against permitting inappropriate development, as defined in PPG2: Green Belts and policy MGB3 of the Kent Structure Plan 1996. The proposed development constitutes inappropriate development and is therefore contrary to policy MGB3 and also policy P2/16 of the Tonbridge and Malling Borough Local Plan 1998.
  2. The proposal is contrary to Policy RS5 of the Kent Structure Plan 1996, which states that development will not normally be permitted in rural Kent, other than at the villages and small rural towns, unless the development falls into one of the special categories listed in policy, none of which applies to the development proposed.
  3. The Local Planning Authority does not consider that there is any justification, in the circumstances of the present application for overriding the planning policy objections.
- 6.2 An Enforcement Notice **be issued** as set out below and copies **be served** on all interested parties.

The Notice to take effect not less than 28 days from the date of service, subject to:

- The concurrence of the Chief Solicitor, he being authorised to amend the wording of the Enforcement Notice as may be necessary.
- In the event of an appeal against the Notice the Secretary of State and the appellant to be advised that the Local Planning Authority is not prepared to grant planning permission for the development the subject of the Enforcement Notice.

### **Breach Of Planning Control Alleged**

Unauthorised erection of a wooden building.

### **Reasons For Issuing The Notice**

It appears to the Council that the above breach of planning control has occurred within the last 4 years.

The site lies within the Metropolitan Green Belt where there is a strong presumption against permitting inappropriate development, as defined in PPG2: Green Belts and policy MGB3 of the Kent Structure Plan 1996. The proposed

development constitutes inappropriate development and is therefore contrary to policy MGB3 and also policy P2/16 of the Tonbridge and Malling Borough Local Plan 1998.

The proposal is contrary to Policy RS5 of the Kent Structure Plan 1996, which states that development will not normally be permitted in rural Kent, other than at the villages and small rural towns, unless the development falls into one of the special categories listed in policy, none of which applies to the development proposed.

The Local Planning Authority does not consider that there is any justification, in the circumstances of the present application for overriding the planning policy objections.

The reason for taking enforcement action is to remedy the injury to amenity.

### **Requirement**

To remove the structure and all of its arisings from the site.

### **Period For Compliance**

3 calendar months from the date the Notice takes effect.

## **6.3 Further Proceedings**

In the event of the Enforcement Notice not being complied with and subject to satisfactory evidence, the Chief Solicitor **be authorised** to commence any proceedings which may be necessary under Section 179 of the Town and Country Planning Act 1990 (as amended) to secure compliance with the Enforcement Notice.

Contact: Lucy Stainton