

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

16 August 2006

Report of the Chief Solicitor

Part 1- Public

Matters for Information

(A) **PLANNING APPEAL DECISIONS**

- 2.1 Site Application **Former Ryarsh Brickworks site, Roughetts Road, Ryarsh By Gallagher Properties Ltd for mixed use development comprising 768 sqm of business floor space (mixed A1, B1, and D1 uses) and residential development of 91 dwellings on 2.91 hectares of land plus the provision of revisions of access and 8.2 hectares of strategic open space**

Decision **Outline planning permission granted**

Background papers file: PA/24/05

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- 2.1.1 The Secretary of State agreed with the Inspector that the main issues in this called in application were:

- Accordance with development plan policies;
- Impact on the Green Belt;
- Accessibility;
- Impact on the Area of Outstanding Natural Beauty;
- Housing;
- Design;
- Accordance with PPS7; and
- Other considerations.

- 2.1.2 The Secretary of State concluded that the proposed development would accord with the aims and intent of the development plan policies for Major Development Sites in the Green Belt, and subject to the condition limiting housing and other built development to the area within the boundary of the MDS shown on the TMBLP proposals map, would not be inappropriate development. The site is in a reasonably sustainable location and would beneficially re-use previously developed land. It would have a positive impact on the countryside through the removal of the former brickworks buildings which would increase openness and significantly benefit the Kent Downs AONB, and the proposal to restore the former quarry areas to open space would enhance the landscape and biodiversity value of the site. The affordable housing proposed would help address the significant shortfall of affordable housing in the Borough and the proposed development

accords with the relevant local and national policies governing design, traffic, pollution and noise.

2.2 Site **Land rear of Swinburn, Tanglin, Clarevale and Rathgar, Teston Road, Offham**
 Appeal **Against the refusal of permission for two bungalows containing two bedrooms**
 Appellant **Mr J Simpson**
 Decision **Appeal dismissed**
 Background papers file: PA/09/06 Contact: Cliff Cochrane
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2.2.1 The Inspector considered the main issues to be :

- Whether the proposal would constitute inappropriate development harmful to the Metropolitan Green Belt and, if so, whether there are any material considerations amounting to very special circumstances sufficient to clearly outweigh the harm and:
- The effect of the proposals on the character and appearance of the area, in particular the prevailing linear form of development.

2.2.2 No evidence was produced to demonstrate that the proposed dwellings are required for works engaged in agriculture or forestry or that the development would fall into any of the categories of development which may be allowed in accordance with the advice contained within PPG2. By definition the Inspector therefore found the proposal to represent an inappropriate form of development in the Green Belt which would in itself be harmful. He also found that the proposal would be harmful to the openness of the Green Belt and in conflict with KSP policy MGB3 and policy P2/16 of the TMBLP. Given the location of the site outside the built up settlement pattern, despite the presence of some outlying development, he considered that the proposal would cause harm to the open character of the countryside and would also conflict with KSP policy RS5.

2.2.3 As the proposal would be in a back-land location to the rear of existing houses, the Inspector did not consider that it would be seen easily from the road. He was not persuaded, therefore, that the presence of new dwellings in the proposed location would result in any appreciable effect on the street scene and he found no conflict with TMBLP policy P4/11. He did not consider these factors to outweigh the harm he identified to the Green Belt.

2.3 Site **Valrosa, London Road, Addington**
 Appeal **Against an enforcement notice issued by the Council alleging without planning permission, the erection of two portable office buildings.**
 Appellant **Mr P Waddell**
 Decision **Appeal dismissed and enforcement notice upheld but varied as to the period for compliance**
 Background papers file: PA/08/06 Contact: Cliff Cochrane
 01732 876038

- 2.3.1 The appellant claimed that the buildings had been stationed on the land and were temporary portable structures. The Inspector considered that the following issues should be taken into account:
- § the degree to which the portacabin had been fixed to the ground
 - § the size of the portacabin, has it been moved and is it capable of being moved?
 - § has it been mounted on a permanent base?
 - § the degree of permanence of the structure
 - § has the stationing of the portacabin resulted in any physical change to the characteristics of the land?
- 2.3.2 The structures are not bolted to the ground but rest on specially designed concrete pillars. A metal staircase has been fixed to the ground so as to give access to the upper portacabin and this particular structure has been provided with mains drainage and electricity. It seemed therefore to the Inspector that the degree of affixation of the cabins to the land is solidly based.
- 2.3.3 Taking into account the weight and size of the portacabins the Inspector concluded that they have a high degree of permanence. From the main road the portacabins have the appearance of a large two storey flat roofed building and in the Inspector's opinion the development clearly resulted in a marked physical change in the characteristics of the land.
- 2.3.4 The appellant claimed that the portacabins have been simply placed within an existing planning unit which involves the display and sale of cars. The cabins are used for staff accommodation and in this respect they should be regarded as being ancillary to the overall use of the land.
- 2.3.5 The Inspector considered that this approach could only apply if it was concluded that the portacabins were a "use" of land rather than operational development. He had already concluded that the stationing of the structures involved a building or engineering operation and in the circumstances he considered this argument must fail and planning permission is required for the retention of the structures.
- 2.3.6 In respect of the ground (a) appeal the Inspector considered that there is one main issue, namely whether the stationing of the portacabins represents an inappropriate development in the Green Belt and, if so, whether there are any very special circumstances why the development should nevertheless be allowed.
- 2.3.7 The portacabins have the appearance of a two-storey flat roofed building and can be clearly seen. The Inspector therefore took the view that the development has resulted in a significant change to the character of this area and undoubtedly the structure has eroded the openness of the Green Belt at this point. He concluded therefore that the development is inappropriate and harmful to the Green Belt. As

to justification for the retention of the portacabins the appellant considers that they are essential to the operation of the car sales business. The Inspector considered on balance that the arguments put forward by the appellant in support of the development do not outweigh the harm caused to the Green Belt.

- 2.3.8 The appellant suggested that the portacabins could be relocated to another part of the site, one of the cabins could be retained in its present position and the other moved elsewhere or only one of the cabins retained on the land. The Inspector agreed that the reduction in height might be an improvement in that it would make the development far less conspicuous. Nevertheless this would not resolve the problem in that the erosion of the Green Belt would still occur and thus the very strong policy objection would remain.
- 2.3.9 The Inspector considered that the one month period for compliance with the notice was too short and that 3 months should be allowed to enable the portacabins to be dismantled and transported off site. He was also conscious that this is a small business and an opportunity should be given to the appellant to find alternative accommodation for his displaced staff.

2.4 Site **The Hollies, London Road, Ryarsh**
 Appeal **Against the refusal of permission for a chalet bungalow in the existing garden area**
 Appellant **Mr & Mrs Turner**
 Decision **Appeal dismissed**
 Background papers file: PA/15/06 Contact: Cliff Cochrane
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- 2.4.1 The Inspector considered there to be two main issues. Firstly, whether the proposal amounts to inappropriate development in the Green Belt and, if so, whether there are any very special circumstances sufficient to overcome the presumption against such development. Secondly, the effect of the proposed development on the living conditions of future residents with particular regard to noise and disturbance.

Appropriateness in the Green Belt

- 2.4.2 The site comprises the eastern part of the garden of the existing house in which are a tennis court, a disused swimming pool and various domestic outbuildings. The proposal would not, in the Inspector's view, be for one of the excepted purposes of PPG2, and Structure Plan Policies MGB3 and RS5, or within the specified areas of Local Plan Policy P2/16. They would thus be inappropriate and, by definition, harmful to the Green Belt.

Effect on living condition

- 2.4.3 The Inspector agreed with the Council that in view of the potentially high level of noise on the site from road traffic, and possibly the railway, an acoustic assessment is necessary. Without such a survey it is not possible to determine the level of noise on the site, and hence the level of protection required in accordance with Local Plan Policy P3/17 and the advice of PPG24. The Inspector

concluded that the proposed development does not make sufficient provision for the protection of future residents from noise and disturbance.

Very special circumstances

- 2.4.4 The appellants stated that the proposed development would be located where a number of domestic outbuildings now stand. However, the proposed buildings would not be a replacement for an existing dwelling, but an additional dwelling and garage. These proposed buildings would significantly exceed the size of the existing outbuildings, thus impacting adversely on the openness of the Green Belt.
- 2.4.5 The appellants also drew attention to a number of other recent developments along this section of the A20, which they say are, in some cases, sporadic and not infilling. The Council stated that the examples cited were either constructed outside the Green Belt, or were conversions or replacements of existing buildings. The inspector was satisfied therefore that the circumstances of these cases differ from those of the current appeal.
- 2.4.6 The appellants indicated that, in the majority of cases, no acoustic protection was provided, and some do not even have fences. The appellants live in the Hollies facing the A20, and state that while they have double glazing they are happy living there being used to traffic noise. The Inspector did not consider that the existence of other dwellings without acoustic barriers necessarily justifies the construction of another without an appropriate assessment to determine the level of protection required.
- 2.4.7 The Inspector concluded that no favourable considerations were presented which amount to very special circumstances to outweigh the harm to the Green Belt, and thus justify the inappropriate development.

2.5 Site **5 Old Barn Road, Leybourne**
 Appeal **Against the refusal of permission for the construction of a detached garage and store**
 Appellant **Mr A Robertshaw**
 Decision **Appeal allowed**
 Background papers file: PA/21/06

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- 2.5.1 The appeal site lies at the junction of Old Barn Road and Hayfield where the two roads meet in a wide radius curve. The proposal would be constructed of traditional materials, brickwork under a tiled roof, which would harmonise with the existing building, if carefully chosen and neatly detailed. The half hipped roof structure, as proposed, would not match the existing main roof of the property, nor even the hipped roofs which are to be found in the vicinity, and in the Inspector's opinion, would be less attractive than a more conventional hipped or gabled roof, reflecting other constructions in the vicinity. Even so he did believe that it would be so out of keeping with the setting that it would jar unreasonably.
- 2.5.2 The open character of the existing front garden, would, of course be changed and a firmer architectural statement would be made at the junction itself.

Nevertheless, the Inspector was not convinced that the open frontage is of particular importance to the character of this part of the estate and he believed that a more built up character would be appropriate at the junction. At the same time he was convinced that the landscaping of the plot would be important and he accepted the Council's suggestions that conditions are required to control the details of the landscaping, as well as the materials and detailing of the proposed building itself.

Duncan Robinson

Chief Solicitor