
Offham Downs	565526 157342	21.08.2006	TM/06/02591/FL
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Proposal:	Retention of garden amenity building/summer house
Location:	Land South West Of 1-4 Dutts Cottages Teston Road Offham West Malling Kent
Applicant:	Mrs R Jeffrey

1. Description:

- 1.1 The application is for the retention of a building on land associated with, but detached from, The Old Oast, The Green, Offham. The structure is constructed from medium dark stained weatherboarding with a slate style roof material. The approximate footprint of the structure is 83sqm (893sqft).
- 1.2 At the time of writing the accommodation provides a kitchen area, lounge, bathroom and two bedrooms (shown as store and study on the submitted plans). The building has mains water, electricity and its own cesspool. The proposal is to remove all internal walls, fixtures and fittings apart from the bathroom which will remain with a WC and hand basin. The intended use of the building is as a garden amenity building on domestic garden land (which is detached from the main dwelling).
- 1.3 The applicant's agent has submitted some detailed arguments on the merits of the case. The key claim is that the building is within the wider planning unit of The Old Oast and therefore should be judged against policy P6/10 of TMBLP (a policy that allows for certain works of renewal within the curtilage of a dwelling to be considered acceptable in principle). He asserts that this is an acceptable proposal when judged against that policy.

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 may be legally used as domestic garden land which serves but is 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. The majority of the perimeter of the site is enclosed by a 2m close-boarded fence. The site has two vehicular accesses from Hayes Lane and a garage with direct access off the lane.
- 2.4 The site is divided by a 2m high close-boarded fence approximately 1/3 of the way across (from the east). The fence separates the building the subject of this

application, from an open parking/turning area with a large car port. There are pedestrian and vehicular gates in the dividing fence.

3. Planning History: (Most relevant)

- 3.1.1 TM/05/00058/unawks 21.09.06
Enforcement Notice served for the removal of wooden building (the subject of this application): EN takes effect on 21.12.06.
- 3.2 TM/05/03170/FL Withdrawn 01.08.2006
Temporary living accommodation ancillary to main dwelling (Retrospective).
- 3.3 TM/02/03108/FL Refused 03.12.2002
Erection of a dwelling to replace existing barn on domestic garden land.
- 3.4 TM/01/01508/LDCE Certified 05.05.2002
Lawful Development Certificate Existing: Use of agricultural land as domestic garden.
- 3.5 TM/96/01194/FL Granted with Conditions 19.11.1996
Erection of two car domestic garage.
- 3.6 TM/86/1492 Granted with Conditions 24.11.1986
Tractor Shed.
- 3.7 TM/86/1264 Prior Approval Required 15.09.1986
Tractor Shed.
- 3.8 TM/83/912 Granted with Conditions 22.11.1983
Poultry Shed.

4. Consultees:

- 4.1 PC: Further to receiving the above mentioned application, by prior arrangement with the applicant, a site inspection took place. After much consideration of all the facts and supporting statement submitted with this application the Parish Council remains strongly opposed to this retrospective application on the following grounds:
- The building is on land which is outside the confines of Offham village and is zoned Metropolitan Green Belt.
 - The building has been erected on land which, although it has a Lawful Development Certificate for existing use as domestic garden land, is totally divorced from any residential property.
 - Obviously we are not qualified to comment on the technicalities of the differences between 'curtilage' and 'planning unit' and will be interested to see TMBC's response on this point as to why 'various judgements by the Courts should set

aside in favour of a wider interpretation relating to the planning unit'. However, from a layman's point of view, whilst the applicant has used the land, as ancillary garden land there has been no objection, it always being seen as additional land owned by the applicant and not as part of the Old Oast. The objections have resulted from any inference of residential use of the land and any structure on it even if such residential use is, as stated in the applicant's supporting statement 'for the overnight accommodation for occasional visitors or relatives and not as a separate dwelling'.

- We note the offer of the applicant to remove all internal walls and kitchen fittings leaving only a toilet and hand basin. However, we still believe that such a modified structure would still be inappropriate development on land especially bearing in mind that the building has mains water, electricity and its own cesspool.
- We believe the existing structure is fundamentally different from the former agricultural building that was demolished and is therefore not in reality a 'replacement building.'
- If the land is not regarded as part of the 'planning unit' of the Old Oast then there would need to be a case made for what special circumstances would justify the proposed release of the land from its current status as Metropolitan Green Belt. Obviously no case has been made by the applicant, bearing in mind the case made by the applicant in the supporting statement regarding the fact that the land is part of the planning unit.
- Depending upon the decision of TMBC on this application, if it is to refuse permission will it be necessary for TMBC to consider the issuing of an Enforcement Notice requiring the removal of the building or will the recent Enforcement notice be applicable?

4.2 KCC (Highways): Any views will be reported at the meeting.

4.3 KCC (PROW Officer): Public footpath MR259 runs behind this development. The County Council has a controlling interest in ensuring that the footpath is maintained to a level suitable for pedestrians. It is important to advise the applicant that a Public Right of Way must not be stopped up, diverted, obstructed or the surface disturbed and there must be no encroachment on the current width of the path at any time.

4.4 DHH: The proposed development is within 150m of Offham Quarry landfill site, so conditions for landfill gas risk assessment and appropriate mitigation methods are required.

4.5 EA: No objection, but would like to make the following comments: Offham Quarry landfill site lies within 250m. This landfill site is currently operational and the fill includes inert and putrescible materials. Although there is an extensive gas control system, there have been historic gas migration events from the site due to the complex natures of operational control at the site and the local geology.

A risk assessment should therefore be carried out to determine the appropriate level of protection required in the foundation of the design to comply with current building regulations, relevant guidance and the nature of the site characteristics.

- 4.6 Private Reps (30/2X/1R/1S + Press and site notices)
- 4.7 Two letters received raising no objection.
- 4.8 One letter received objecting on the following grounds: Vehicular traffic on an unadopted road and the location of the site within the Green Belt. Granting permission would open the flood gate for similar applications.
- 4.9 One letter of support has been received stating that “in comparison to the ‘monster’ building erected on the other side of Hayes Lane, behind the Methodist Church, (Mrs Jeffreys building is) very attractive and in keeping with the countryside.”

5. Determining Issues:

- 5.1 The main determining issues within this case are whether the building can be considered to be appropriate within the Metropolitan Green Belt and, if not, whether the applicant has presented a case of very special circumstances to outweigh the strong policy objections.
- 5.2 Planning Policy Guidance Note 2 allows for new buildings within the Green Belt provided they are for forestry, agriculture, essential facilities for outdoor sport and recreation or replacement dwellings, among others. The building under consideration is not for such purposes and would therefore, in my opinion, result in inappropriate development within the Metropolitan Greenbelt as outlined within PPG2 as it does not fall within any of the above categories.
- 5.3 In my view the proposals does not *prima facie* fall within any category of development that is considered to be appropriate to the Green Belt. It is therefore to be considered damaging as a matter of principle and can be allowed if there are “very special circumstances” that override the policy objection.
- 5.4 There are no plans of the original building, removed in 2004, and the applicant has provided no hard evidence or dimensions to support the contention that the new building is significantly smaller than the previous one. However photographs of the building were submitted in support of TM/01/01508/LDCE. The original building appears to be slightly longer and higher than the existing structure, though in an unkempt state. The appearance of the original building is one of a weather-boarded farm workshop/shed, not at all domestic in character.
- 5.5 The existing timber clad structure is far more domestic in character by virtue of the number, size and type of openings. The appearance of the building is therefore, in

my opinion, one of a domestic character which is not appropriate in this green belt location. PPG2 seeks to protect the amenity, character and openness of the Green Belt from new buildings which are inappropriate. The existing building is, by definition, inappropriate in the Green Belt and its appearance is alien to the open countryside within which it is located. The 'improvement' in appearance suggested by way of a justification by the applicant has, in my opinion, resulted harm to the Green Belt by resulting in a building with an inappropriately domestic character. I do not therefore consider that the appearance of the building, in comparison to the building it replaced, would constitute grounds for very special circumstances.

- 5.6 The applicant argues that Policy P6/10 of the TMBLP is relevant to the application. Policy P6/10 relates to Householder Development in Rural Areas and allows for the rebuilding, alteration or extension of dwellings or curtilage buildings.
- 5.7 However, in my view, the building under consideration could not be considered to be a curtilage building as the land is not, lawfully, curtilage land to The Old Oast, The Green, Offham or any other property.
- 5.8 The argument as 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 case goes on to state that, "To the extent that it is reasonable to regard them as constituting one message or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole."
- 5.9 It is in light of this that I cannot agree that the land to which this application relates can reasonably be regarded as constituting one parcel of land of 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. Therefore policy P6/10 of the TMBLP does not apply to this application or amount to a case of very special circumstances.
- 5.10 In addition, applicant has put forward a case that the domestic garden land outside the settlement confines and The Old Oast and its curtilage represent a single planning unit. The applicant uses this argument to suggest that the replacement building is appropriate under policy P6/10 of the TMBLP, which relates to curtilage buildings, as outlined above. The applicant quotes the following paragraph from The Encyclopaedia of Planning Law and Practice (P55.55, p2-3180/4):

"The fact that a use which is ancillary to the dwellinghouse use is undertaken on land not forming the same curtilage need not mean that it requires separate

permission, since the planning unit and the curtilage need not be identical and the unit of occupation may be greater than the curtilage.”

- 5.11 The applicant has not stated why she considers this paragraph to directly relate to this application, nor cited any case law which supports this case. I would interpret the above paragraph to mean that the unit of occupation (The Old Oast and its curtilage) may have ancillary uses carried out within it, i.e. uses incidental to the enjoyment of the dwellinghouse. The ‘unit of occupation’ refers to the ‘most convenient starting point in identifying the planning unit’ (P55.45, p2-3177).
- 5.12 The paragraph quoted by the applicant indicates that a unit of occupation may be greater than a curtilage, thereby clearly differentiating between curtilage and unit of occupation (which may also be the planning unit). A unit of occupation can be greater than the curtilage, but it does not normally include land which is functionally and physically separate from the curtilage, as is the case here. P55.48 of the encyclopaedia states that ‘Although the planning unit may comprise more than one site or building, any material physical separation would make it difficult to categorise the distinct components as a single unit’. This seems to me to be the position in this case.
- 5.13 It is my opinion therefore that the paragraph quoted by the applicant argues against the domestic garden land beyond the settlement confines being curtilage, therefore the policies which relate to replacement domestic curtilage buildings cannot apply in this case, nor justify overriding the strong policy objections.
- 5.14 Even if the applicant were to attempt to justify the retention of the building as acceptable by virtue of Policy P6/14 of the TMBLP, it is not relevant as it allows for the reuse of existing rural buildings for commercial, industrial, recreational or tourist development, in principal, which are of a permanent, substantial and sound construction, capable of conversion without major or complete reconstruction. As the original structure has been demolished and a new building erected, policy P6/14 cannot apply.
- 5.15 The current application proposes to remove all internal walls (except the bathroom and water tank) and all fixtures and fittings, including the kitchen area and bath. The internal structure would therefore have one open plan space to be used as a garden amenity building, with a large WC with hand basin. The internal works proposed are aimed at restricting the potential use of the building as living accommodation, however, the principle and appearance of the new building is itself inappropriate, as outlined above. Limiting the potential use to prevent use as an independent dwelling could reduce harmful effects on amenity, such as traffic movements; but it does not represent a case of very special circumstances for the retention of the building, in my view.
- 5.16 The applicant has offered to enter in to a Section 106 Agreement to guarantee that the building would not be used as living accommodation. Although such an agreement could deal with some of the specific objections raised, it would not

address the inappropriateness and ultimate harm of the building in the Green Belt, nor override the policy objections to the retention of the building.

- 5.17 I do not consider that the justifications put forward constitute a case of very special circumstances worthy of overriding the strong policy objection to this replacement building. This building is an alien feature in the Green Belt not compliant with policy and intrusive in the Green Belt.
- 5.18 If the building under consideration was not *in situ*, the issue of landfill gas mitigation could be dealt with by way of the Building Regulations. With the building on the land it would fall to planning controls to deal with this issue, if permission were recommended. In light of the recommendation this matter has not been put to the applicant. It would be revealed to the Inspector in any appeal.
- 5.19 Members are reminded that an Enforcement Notice has been served for the removal of the building within 3 months and the Recommendation within this report is consistent with the justifications for the issue of that notice. The grant of planning permission for the proposal under consideration would override the Enforcement Notice which would no longer have effect.
- 6. Recommendation: Refuse Planning Permission**, as detailed within letters dated 04.08.06 and 16.08.06, site plan dated 21.08.06, statement of support dated August 2006 and drawing number 1052/2/1.
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. The proposed development constitutes inappropriate development and 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 proposal is therefore contrary to Planning Policy Guidance Note 2 (Green Belts) and policy P2/16 of the Tonbridge and Malling Borough Local Plan 1998.

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