

Offham Downs	566166 158406	10 October 2006	TM/06/03301/FL
Proposal:	Self-build agricultural 3 no. bedroom bungalow (148 sq. metres) to replace mobile home		
Location:	Pinewood Farm Church Road Offham West Malling Kent ME19 5NY		
Applicant:	Ms Celia Simpson		

1. Description:

- 1.1 This application seeks full planning permission for a permanent agricultural dwelling. The new dwelling would be a three 3 bedroomed property with a footprint of 148 square metres and standing 6.2m high at the apex of its pitched roof. The structure would take a relatively simple 'L' shaped form featuring white painted elevations under a tiled roof. The applicant proposes to site the new dwelling at the western end of the site i.e. adjacent to Church Road and the access into Pinewood Farm.
- 1.2 Pinewood Farm is a farm principally deriving its income from the production of eggs from both hens and ducks. Typically, the farm houses over 1000-1300 hens and 1000 ducks. Additional income is derived from the sale of chickens and ducks for the table and from the sale of various goods, sundries and products (both produced at the site and imported) from a farm shop on site. The farm rears its own chickens and ducklings.
- 1.3 The application has been supported by a planning statement and various financial evidence/information relating to details of the enterprise's financial standing over the past four years. The applicant submits that this financial information clearly demonstrates that this agricultural enterprise is sustainable in economic terms. Members are invited to view this important supporting information.

2. The Site:

- 2.1 The application site comprises 5.5 hectares of land located on the eastern side of Church Road, between public right of way (PROW) MR271A and the West Malling to London Victoria railway line. Vehicular access is obtained from Church Road via a track that also forms part of the aforementioned PROW.
- 2.2 The site lies within the open countryside and Metropolitan Green Belt as shown on the Proposals Map of the adopted Tonbridge & Malling Borough Local Plan 1998. In terms of built development already on the site, there is one brown, plastisol coated, modern agricultural barn (currently being extended), a farm shop building, several wooden sheds currently used for the housing of ducks, a number of wooden arcs to house chickens and a caravan permitted on site on a temporary basis to enable the establishment of an egg farm. Permission has also been

granted for a hay storage building/workshop building. (Permitted Development entitlements for any further development under Part 6 of the Town & Country Planning (General Permitted Development) Order 1995 have been withdrawn from the site by way of an Article 4 Direction.)

3. Planning History:

TM/04/03167/FL Undetermined

Alterations to packing shed/farm shop

TM/03/03565/FL Approved 23 February 2004

Agricultural storage and workshop building (6.1m x 13.6m)

TM/03/02015/FL Appeal against non-determination withdrawn.

Agricultural storage and workshop building (6.1m x 13.6m).

TM/03/03340/FL Approved 11 December 2003

Stable block including tackroom and feedstore for private use.

TM/02/00266/FL Appeal against non-determination withdrawn.

Construction of two stable blocks.

Service of Article 4 Direction to withdraw permitted development entitlements conveyed to the land by Part 6 of the Town & Country Planning (General Permitted Development) Order 1995.

TM/01/02524/FL Refused 14 December 2001; Appeal Allowed subject to temporary restriction.

Mobile home for occupation by agricultural workers.

TM/01/02005/FL Refused 14 December 2001; Appeal dismissed.

Retrospective application for the construction of existing unauthorised buildings and their use as implement store sheds for agricultural use and duckery.

TM/01/01127/AGPN Prior approval not required 25 May 2001

Agricultural Prior Notification: Erection of packhouse.

TM/00/02960/AGPN Not permitted development; planning permission required.

Agricultural prior notification – siting of pack house.

23.08.2000. Enforcement Notices served seeking (a) the cessation of the unauthorised change in use from agricultural land to land used as a residential caravan site and (b) the removal from the land of the L shaped stable block and dog kennels and compound. Notices upheld on appeal.

TM/00/01223/FL Refused 31 July 2000; Appeal dismissed.

Provision of 'L' shaped block and sand school and the retention of one existing kennel block.

TM/00/00766/FL Refused 31 July 2000; Appeal dismissed.

Change of use from agricultural to residential to station a mobile home for agricultural worker.

TM/89/0037 Approved 20 March 1989

Lean-to extension (agricultural hay store).

TM/84/0588FL Approved 22 June 1984

Detached barn for storage of agricultural machines, feed and agricultural produce.

4. Consultees:

- 4.1 PC: Further to receiving notification of the cancellation of the Inquiry scheduled for the 7th November 2006, we were very surprised to receive details of a virtually identical planning application. However, the Case

Officer, Kevin Wise, has explained to us the reasoning behind the cancellation of the Inquiry and the new planning application is that the Inquiry would have been dealing with historic information and that within the intervening period the applicant has been able to submit additional information in terms of a further year's accounts seeking to justify the financial viability of the holding. However, this does seem to us to be a little strange in that additional information can be considered at an Inquiry and wonder if the sequence of events is more a reflection of a change of mind by TMBC towards the application itself, especially bearing in mind the Appeal was on the grounds of non-determination.

However, we have carefully considered this new planning application and the history of the development of the site to date. In the light of the Appeal decision dated 22nd August 2002, when permission was granted for a mobile home for agricultural use, there seems to us to be two overriding issues to be considered, firstly the financial viability of the agricultural unit and secondly that there is an "essential agricultural need" for a permanent dwelling.

In terms of the financial viability of the agricultural unit, it is quite clear that the applicant and her partner have indeed built up a significant poultry business over the past 4/5 years and we would not seek to challenge the financial evidence submitted in terms of accounts and financial forecasts. However, we would have preferred to comment on this point subsequent to seeing TMBC's agricultural consultant's report, as we understand that he did previously have concerns with the financial viability of the business. The Appeal decision previously mentioned referred to a figure of £12,000 as being "a reasonable guide for achieving a livelihood from the agricultural activities at the site", however we do not believe that achieving, or indeed exceeding this figure, is necessarily the key to justifying the "essential agricultural need" for a permanent dwelling on site. The fact is that the applicant and her partner have established a poultry farm on site and are deriving an income from this and various other sources, such as the farm shop, that is sufficient for their lifestyle.

Our main concern is whether or not such a business results in a "need" for a permanent dwelling on the site and more importantly will this "need" remain in the future. On this issue we believe the case is not at all clear cut. The Inspector in the previously mentioned Appeal believed that on the evidence supplied that there was a "functional need for a worker to be readily available at most times", based essentially it would seem on the basis of the rearing of pullets in the barn. However, this very fact causes us great concern in that it would seem to suggest that it is only the rearing of the pullets that provides the justification for "need" and not the whole of the poultry business itself. Therefore, there is an argument to

say that if pullets were not reared on site there would be no "need" as such for residency on site and the poultry business could still continue to flourish. It may well be that the applicant and her partner have every intention of continuing with pullet rearing but it seems to us to be an extremely questionable reason for justifying consent for a permanent dwelling as the reason for its existence could disappear at any time.

Mr Watson, on behalf of the applicant, attended our Parish Council Meeting on the 7th November when we discussed this application and he suggested that he could produce other examples of poultry farms of a similar or indeed smaller size where the need for a dwelling on site had been successfully proven. In this instance, as we are very concerned on this point, we would very much welcome this additional information and the opportunity to comment on it prior to TMBC making a decision on this planning application.

We are very conscious of two very recent cases in our Parish whereby agricultural occupancy conditions have been lifted following a ten year period when the relevant properties were not occupied by persons deriving their principal income from agriculture, in both instances the size of the agricultural holdings being quoted as of an unviable size to generate a sufficient living. In both instances, the agricultural holdings were/are considerably larger than in the case of Pinewood Farm, which amounts to only 5.3 hectares (13.1 acres). Whilst the applicant and her partner may be able to generate a sufficient income from the holding, recent evidence would suggest that if at any time the farm was sold with the benefit of a permanent dwelling, or indeed the applicant herself was to cease poultry farming, then the size of the holding is very small, in terms of modern day agriculture, for another agricultural use to continue and in due course there could be an application for any agricultural occupancy condition to be lifted. Whilst we fully appreciate that all such concerns are purely speculative, we believe that in this instance they are relevant particularly bearing in mind that it is not the poultry farm itself that justifies the need for the residency on site but simply the fact of the pullet rearing which in itself is not absolutely essential for the business to operate, it is simply one way of operating a poultry farm.

Finally, we would like to raise one further issue raised in the relevant Appeal decision being that the Inspector considered that "no other suitable accommodation available to fulfil the functional need". Over the past 4/5 years a number of properties in Church Road, immediately opposite the site, have been on the market and this fact can easily be verified by a simple Land Registry check. Furthermore, at least two of the properties have been/are rented out. We presume that the fact that the applicant's financial position to enable such alternative properties to be affordable is not a sole justification for permitting a permanent dwelling to be built on

site. In any event, the applicant's financial position has, from the financial information submitted, improved considerably over the last few years.

It should be remembered that the applicant purchased the site in 1999/2000 when it was a field used for many years solely for the grazing of cattle with one large agricultural storage building on site. The applicant purchased in the knowledge that there was no residential accommodation on site but, at the same time as setting up various businesses uses on the site, also occupied the site in the form of a mobile home.

The proposed location of the new dwelling is totally separate from the existing farm buildings and does not therefore comply with policy guidance to 'consolidate' agricultural buildings. Presumably this location has been selected as this would minimise costs of connecting to existing services in Church Road, but if granted consent, unless rigidly conditioned, could easily in time become divorced from the farm buildings and land and sold on as a stand alone residential dwelling. In relation to this particular point, we would query the amount of land within the applicant's control that is included within this application. As this application is for an 'agricultural dwelling', should not the whole of the agricultural holding be included within the red line as presumably it is the whole of the holding that supports the 'need' for an agricultural dwelling on the site?

Furthermore, in the Appeal decision to which the applicant refers, the Inspector comments in paragraph 17 on the positioning of the mobile home in terms of its proximity specifically to the barn, the applicant having made a case of need to be on site in order to provide 24 hour care for young birds in the barn itself. The proposed dwelling is nowhere near the barn or indeed other agricultural buildings.

The second half of the above-mentioned appeal, which was dismissed, concerned a structure in a similar position to that of the proposed dwelling. Paragraph 39 is significant in which the Inspector refers to the fact that the structure that was there 'occupies an area that was previously undeveloped. The fundamental aim of Green Belt policy is to keep land permanently open but the proposal reduces its openness'. Presumably the same comment can be made in relation to the proposed dwelling.

Mr Watson confirmed that on this particular issue the applicant was willing to enter into a Section 106 Agreement in order to bind the house and the land together to prevent a disposal of any part. Obviously if TMBC are minded to grant consent then we would welcome this proposal.

In summary, therefore, whilst we would not wish to seek to discourage acceptable forms of rural enterprise we do have very serious concerns regarding the "need" as opposed to the convenience, for the provision of a permanent dwelling on site, albeit with an agricultural occupancy restriction. The location of the proposed dwelling is of secondary importance if the first is satisfied. In the light of recent successful applications for the lifting of agricultural occupancy conditions, we would respectfully ask TMBC to allow the applicant to supply further justification of the need for the dwelling based on factors other than the amount of income generated before the application is determined. Without this additional information, for the reasons outlined above, we have no choice but to remain opposed to this application.

4.2 KCC Highways: No objections.

4.3 DHH: No objections.

4.4 Private Reps: 12 + Art 8 Site Notice /0R/0X/0S

5. Determining Issues:

5.1 As the description and planning history sections above indicate, a temporary planning permission has been granted on this site for the stationing of a mobile home to support an agricultural enterprise. This application seeks planning permission to replace that temporary agricultural dwelling permitted on appeal with a permanent agricultural workers dwelling.

5.2 In the light of this fact, the important determining issues are whether or not the "trial period" has been successful and has enabled the applicant to establish their enterprise and to demonstrate that the venture is a viable proposition capable of supporting a permanent agricultural dwelling to the satisfaction of the relevant tests set out within PPS7 and the provisions Policy P6/8 of the TMBLP.

5.3 Although I can understand the PC's concerns relating to whether or not any functional need to reside on site will remain in the long term future, the fact is that PPS7 does not require an applicant to commit to a certain agriculture crop or produce, let alone a particular activity or process, for the long term. The test is whether or not the business can sustain a permanent dwelling.

5.4 It is an inescapable fact that the applicant has invested heavily into the business and it is also inescapable that the Inspector who determined the appeal for the temporary unit accepted that there was an established need for a dwelling on the site to serve the agricultural enterprise being carried out by the applicant. Accordingly, again I sympathise with PC's views but have to disagree with its assertion that the functional test needs to be re-examined in these circumstances. (Otherwise the Inspector would have refused planning permission for a temporary

dwelling in the first place on the basis that there was adequate alternative accommodation available to the applicant and/or that there was no demonstrable need for the applicant to reside on site.)

- 5.5 The principal issues to consider in my view therefore relate to whether or not the business is financially viable and successful to the point of being capable of supporting the proposed dwelling and, if so, whether the siting of the new dwelling would be acceptable in visual and residential amenity terms.
- 5.6 Dealing first with the issue of viability, I have commissioned an expert agricultural consultant to advise me on the financial aspects of the applicant's case. I have yet to receive the consultant's further comments on the latest batch of financial information submitted. However, I believe that he is likely to conclude that the farm is a sustainable and profitable unit that is capable of supporting the permanent dwelling now proposed.
- 5.7 Significantly, a three year test period is normally considered but, because there is an outstanding appeal relating to this site which has been in progress for some time, the business now has four years worth of accounts that can be assessed.
- 5.8 Turning now to siting issues, the bungalow would be sited in a position that is a logistically sensible location for the farm and also one which addresses the road as one would expect for a highway such as Church Road that has a strong linear character. The PC has rightly commented that this location was found to be harmful by an Inspector for an earlier stable building that was required to be removed pursuant to an enforcement notice. However, that building found to be harmful by an Inspector – partly on siting grounds – was ultimately found to be a form of development that was deemed to be an unjustified and 'inappropriate' form of development within the MGB, whereas an agricultural dwelling is deemed to be an appropriate form of development if it is acceptable under the functional and financial tests. In all of these circumstances, my view is that this location is an acceptable one in visual terms. Moreover, I also consider that the building would be sited far enough away from any other dwelling to avoid any harm to residential amenities.

6. Recommendation:

- 6.1 **Grant Planning Permission** as detailed in plans and documents date stamped 23.10.06. subject to:
- The completion of a S106 agreement to tie the related agricultural land to the new agricultural dwelling
 - 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 all 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 occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry, or a dependant of such a person residing with him or her, or a widow or widower of such a person.

Reason: The site of the dwelling is outside any area in which development would normally be permitted if it were not required for occupation by a person employed locally in agriculture or in forestry.

- 4 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.

- 5 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 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 parking space.

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

- 6 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 shall be carried out within Classes A, B, C, D and E of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and to ensure that the dwelling remains of a size and value commensurate with the associated agricultural land holding.

- 7 Upon first occupation of the new dwelling hereby permitted, the existing mobile home shall be removed from the site, if not demolished previously, and all arisings therefrom shall be removed from the site.

Reason: To prevent the erection of an additional dwelling in an area where it would not normally be permitted.

Informatives

- 1 The applicant is advised to contact the Chief Solicitor, Tonbridge & Malling Borough Council, at an early stage to discuss the appropriate road (naming and) numbering regime for the development hereby permitted. (Q035)

Contact: Kevin Wise