

**Offham  
Downs**

**565367 156839**

**2 July 2007**

**TM/07/01987/FL**

Proposal: Change of use of part of yard used for the storage and dismantling of scrap vehicles for re-sale, including the removal of existing buildings, to use for the sale of commercial vehicles with ancillary office portacabin

Location: Fre Mel Farm Comp Lane Offham West Malling Kent ME19 5PP

Applicant: Mr W Paternoster

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## **1. Description:**

1.1 Members will recall that this application was deferred from the Area 2 committee meeting of 12 September for the following reasons:

- Applicant to submit a Transport Impact Assessment (and obtain KCC Highways comments upon it).
- Caseworker to clarify the issue of whether the site is Brownfield land.
- Caseworker to check whether the car breaking could still be operated under the current regulations relating to such use.
- Consideration of suitability of further conditions etc to ensure adequate control is exercised over future use and operation of the site.

1.2 The related application (TM/07/01990/FL) that was also deferred (car repair workshop for use of the applicant) has been withdrawn; the applicant intends to resubmit this proposal on a different part of the site.

1.3 A Transport Statement has been submitted in relation to the sales of commercial vehicles and the comments of KCC (Highways) have been sought. The PC and neighbours have also been consulted on the Statement. It concludes that:

- *The accesses to Comp Lane by the Bungalow and by Alexander House are both restricted in terms of turns in and out from the west.*
- *A survey undertaken in 2002 showed that on a daily average from 0700 to 1700, there were 82 arrivals and 80 departures (including 13 HGV arrivals and 15 HGV departures).*
- *Northgate plc wishes to have deliveries of vehicles using trade plates or transporters, up to 6 vehicle size.*
- *Northgate plc wishes for sold vehicles to leave using transporters, up to 6 vehicle size or occasionally on trade plates.*

- *There will be 10 full time staff.*
- *Drivers of trade plated vehicles will need to be collected.*
- *Customer vehicle movements will be 7 arrivals and departures per day.*
- *In conclusion, there will be 46 arrivals and 36 departures per day which compares favourably with the figures from 2002.*
- *The applicant has submitted photographs of the 6-vehicle transporters which Northgate PLC wish to use from the site on occasion.*

1.4 The previous report is annexed. For information, policy P2/16 of the TMBLP has been superseded for the purposes of the current proposal by Core Strategy Policies CP3, CP11 and CP14. These policies all give long term protection to rural areas. Development outside existing urban areas, rural service centres and other identified strategic housing areas will not be permitted unless there is an identified need or local justification and there are not suitable sites within urban areas or built confines, with priority to be given to previously developed land adjoining urban areas or rural service centres.

1.5 Policy P4/11 of the Tonbridge and Malling Borough Local Plan 1998 has been superseded by Tonbridge and Malling Borough Core Strategy Policy CP24. Policy CP24 sets out the general criteria for all new development including a provision that development must respect the site and its surroundings and that it will not be permitted where it would be detrimental to the built environment and amenity of a settlement

## **2. The Site:**

2.1 This is as previously described.

## **3. Planning History:**

3.1 This is as previously described.

## **4. Consultees:**

4.1 Any additional comments received will be included in a supplementary report.

## **5. Determining Issues:**

5.1 There are some concerns with the Transport Statement as it is probable that the 2002 figures include some vehicle use of the access from Comp Lane connected with the car repair workshops and the 9 livery stables etc.

- 5.2 Notwithstanding the doubts over the comparability of the 2002 figures, I am of the view that the figures for the sales of commercial vehicles are unlikely to be significantly greater than for the car breaking use.
- 5.3 However, the concern over the size of vehicle transporters is not resolved. I remain of the view that a legal agreement is needed to ensure that no large vehicle transporters are used in connection with this use on this site due to the constraints imposed by the accesses to Comp Lane, which will necessitate them travelling through the village of Offham due to difficulties in turning onto Comp Lane to and from the west.
- 5.4 Members are advised that there is no restriction on the size of vehicles that could access the car breakers site under the LDCE. However, there is no evidence that transporters carrying 6 vehicles did regularly access the site nor indeed that the use would regularly attract this type of vehicle. Members may agree that in practical terms, any resumption of car breaking at this site would not involve the frequency of use of 6 vehicle car transporters as is proposed by this application.
- 5.5 Moreover, if no restriction on such large vehicles were imposed, it is highly likely that there would be a future request for improvements to be made to the junction at Comp Lane in order to accommodate the large radius of turns of this size of vehicle. An “engineered” appearance to this access would be detrimental to the lane’s rural character and in any event, this would be contrary to Policy 6/19 of the TMBLP.
- 5.6 Brownfield land (Previously Developed Land) is defined in PPS3 as: land is that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. In this case, the site was occupied by some permanent buildings, including a workshop, storage and a Dutch barn to give all weather protection to car breaking equipment.
- 5.7 In the Inspector’s decision notice on application TM/03/01002, he said that the land at that time was “previously developed land” and this conclusion was accepted by the Council at that time.
- 5.8 Whilst most of the site area was given over to the open storage of cars etc, I am of the view that this area can be considered as the curtilage to the buildings in situ described above. I therefore consider that the land is still brownfield/PDL.
- 5.9 In terms of the re-use of the site for car breaking, this enjoys a Lawful Development Certificate. Whilst it is the case that the site has been cleared and tidied, the car breaking use would still be lawful and could be restarted from a planning point of view, unless it is the case that the use has been “abandoned”. Case law has established that abandonment may occur where there has been a deliberate intention to cease a use, a) by reason of leaving premises vacant for a considerable period or by allowing the building/s on which the use relies to

deteriorate to the extent that re-use would involve what would be tantamount to rebuilding b) by the introduction of a different use (whether with or without planning permission) supplanting that which went before.

5.10 The site still contains buildings on which the car breaking use depends.

5.11 In terms of other regulations, the EA would require a building in which “depollution” activities could occur and the provision of an impermeable surface with sealed drainage for polluted cars to allow fluids to drain out. As with the 2003 planning permission for the Dutch barn, such buildings would be inappropriate in the Green Belt but the existence of the EU regulations would be a very special circumstance which would need to be considered.

5.12 I am therefore of the view that there are no regulations that would prevent the car breaking use.

5.13 My recommendation is unchanged. Conditions 3 and 4 (operating and delivery hours) have been amended to reflect those of the LDCE. A new condition has been suggested to specify that vehicular access shall be from the most direct access to Comp Lane, as shown on the application drawings and a condition has been amended to control the types and sizes of commercial vehicles that can be sold from the site.

## **6. Recommendation:**

6.1 **Grant Planning Permission** as detailed by Letter ADB/725 dated 08.06.2007, Letter ADB/725 dated 19.06.2007, Design and Access Statement dated 19.06.2007, Location Plan dated 08.06.2007, Site Plan 725/1 dated 08.06.2007, Letter dated 02.07.2007, Certificate B dated 02.07.2007, Transport Statement dated 8.10.2007 subject to:

- A Section 106 planning obligation in which:

1. the owner and any successors in title agree to cause vehicles to be delivered to the property by being driven on the public road by virtue of trade plates or by single/double vehicle transporters only
2. the change of use to commercial vehicle sales shall be implemented over the whole application site and shall not be implemented in conjunction with the car breakers use certified under TM/94/0898/LDCE

- 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 be commenced until:

(a) a site investigation has been undertaken to determine the nature and extent of any contamination, and

(b) the results of the investigation, together with an assessment by a competent person and details of a scheme to contain, treat or remove any contamination, as appropriate, have been submitted to and approved by the Local Planning Authority. The assessment and scheme shall have regard to the need to ensure that contaminants do not escape from the site to cause air and water pollution or pollution of adjoining land.

The scheme submitted pursuant to (b) shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking of the development hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority of the presence of any such unforeseen contamination.

Prior to the first occupation of the development or any part of the development hereby permitted

(c) the approved remediation scheme shall be fully implemented insofar as it relates to that part of the development which is to be occupied, and

(d) a Certificate shall be provided to the Local Planning Authority by a responsible person stating that remediation has been completed and the site is suitable for the permitted end use.

Thereafter, no works shall take place within the site such as to prejudice the effectiveness of the approved scheme of remediation.

Reason: In the interests of amenity and public safety.

3 The business shall not be carried on outside the hours of 0800 to 1730 Mondays to Saturdays or outside the hours of 0800 to 1300 on Sundays or Public and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority. (I003)

Reason: To avoid unreasonable disturbance outside normal working hours to nearby residential properties.

4 There shall be no deliveries outside the hours of 0800 to 2000 Mondays to Fridays or outside the hours of 0800 to 1730 on Saturdays or outside the hours of 0800 to 1300 on Sundays or Public and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority. (I003\*)

Reason: To avoid unreasonable disturbance to nearby residential properties.

- 5 No development shall take place until details of security lighting have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details. (D008)

Reason: To ensure that the development does not harm the visual amenity of the locality.

- 6 No development shall take place until details of foul and surface water drainage have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details. (D008)

Reason: In the interests of pollution prevention.

- 7 No development shall take place until details of on site parking and turning for staff, customers and delivery vehicles have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details and so reserved thereafter. (D008\*)

Reason: In the interests of highway safety and amenity.

- 8 There shall be no more than 1 portacabin stationed on the site of maximum size 6m by 15m as shown on drawing 72511 hereby approved and no other chattels unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of the openness and amenities of the Green Belt.

- 9 The site shall be used for sales of commercial vehicles only as detailed in the Transport Statement hereby approved. (T006\*)

Reason: To accord with the terms of the application and in the interests of highway safety and amenity.

- 10 The use hereby permitted shall only use access to Comp Lane by vehicles as indicated on the site location plan hereby approved.

Reason: To accord with the terms of the application and in the interests of highway safety and amenity.

### **Informatives**

- 1 You are advised to contact the Environment Agency with regard to appropriate methods of surface water and foul drainage on this site which lies over a major aquifer.

- 2 You are recommended to take full account of the advice given in PPS 23 Planning and Pollution Control. You should note that this Council, acting as Local Planning Authority, has determined the application on the basis of the information available to it – this does not mean that the land is free from contamination. (Q047\*)
  
- 6.2 Should the applicant not enter into a S106 planning obligation as set out at paragraph 6.1 above, within six months of being invited so to do, **Refuse Planning Permission** for the following reason:
  - 1 The proposed use, involving regular and frequent access to and egress from the site by large HGVs, potentially giving rise to the need for alterations to the access to accommodate such vehicles, would be likely to be harmful to the rural amenity of the locality, including the rural character of Comp Lane which is designated as a “Quiet Lane”, and to highway safety. As such, it would be contrary to policies CP2 and CP24 of the Tonbridge and Malling Local Development Framework Core Strategy 2007, policy P6/19 of the Tonbridge and Malling Borough Local Plan, and policy EN14 of the Kent Medway Structure Plan.

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