

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 2 PLANNING COMMITTEE**

**5 December 2007**

**Report of the Chief Solicitor**

**Part 1- Public**

**Matters for Information**

**1 PLANNING APPEAL DECISIONS**

1.1 Site **Land east of St Lawrence Church, The Street, Mereworth**  
Appeal **Against the refusal of permission for the demolition of  
existing office buildings. Erection of new office buildings and  
associated outbuildings**  
Appellant **Mr A Pallant**  
Decision **Appeal dismissed**  
Background papers file: PA/31/07

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- 1.1.1 The Inspector considered the main issues to be firstly, whether the development would be appropriate in the Green Belt and, if not, whether there are any very special circumstances sufficient to outweigh the presumption against such development and secondly, the effect of the development on the setting of nearby listed buildings and the setting of the conservation area.
- 1.1.2 In respect of the first issue the Inspector had particular regard to Government policy on Green Belts set out in PPG2. This makes it clear that the most important attribute of Green Belts is their openness. PPG2 advises that the construction of new buildings in the Green Belt is inappropriate unless it is for one of the purposes set out in paragraph 3.4 of PPG2. The development proposed does not fall into any of the five categories listed and is therefore inappropriate.
- 1.1.3 PPG2 makes provision for the re-use, with safeguards, of buildings in the Green Belt provided that the openness of the Green Belt is not prejudiced. That appears to be the basis upon which an Inspector allowed a previous appeal. The proposal would provide 610 square metres of offices and 130 square metres of storage floorspace. As a total that represents a substantial increase over and above the amount of built development presently on site. The visual impact of the replacement buildings would in the Inspector's opinion be materially greater than the existing buildings. Furthermore, the appeal scheme would consolidate built development to an extent that would reduce the openness of land that forms an integral part of the Green Belt, thereby causing harm to its appearance and undermining the essential purposes of Green Belt designation.

- 1.1.4 The Inspector considered that the existing buildings, while not especially attractive, do not look out of place in a rural situation. He accepted that some people might find the proposed buildings more attractive, but he did not consider that provides the very special circumstances needed for planning permission to be granted. Accordingly he concluded that the development proposed would, contrary to the objectives of SP policy SS2 and LP policy P2/16 cause harm to the Green Belt by reason of inappropriateness and by reason of adverse impact on the openness of the Green Belt. He found nothing in representations to convince him that there are very special circumstances to justify a grant of planning permission.
- 1.1.5 With regard to the second issue, while the visual impact of the appeal scheme on its surroundings would almost certainly be greater than the scheme for which planning permission has been granted, the Inspector was satisfied that neither the setting of St Lawrence Church nor that of the pair of Grade II listed buildings to the east would be harmed. He also saw no reason why the appeal proposal should have an adverse effect on the setting of Mereworth Conservation Area. Accordingly he found no serious conflict with the aim of SP policies QL6 or QL8, or with LP policies P4/1 and P4/4.
- 1.1.6 The Inspector did not consider the appeal site to be in a sustainable location for economic development purposes or that any improvement that might be achieved in landscape quality would be sufficient to outweigh the impact of additional built development on the appeal site's appearance and on its rural setting.

1.2 Site **Grimalkin Place, 37 Barming Road, Watringbury**  
 Appeal **Against the refusal of permission for the removal of a single storey dwelling, cattery buildings and store, and erection of two dwellings**

Appellant **Mr & Mrs Mace**

Decision **Appeal dismissed**

Background papers file: PA/06/07

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- 1.2.1 The Inspector considered the main issue to be whether a departure from policy CP14 is justified, taking into account the visual impact on the rural character of the area and matters relating to sustainable development.
- 1.2.2 There is a ribbon of development in the area, with some backland additions, along Watringbury Road, extending along Barming Road to beyond the appeal site. Although the North Pole pub is nearby there are no other services and the area does not have the character of a village. Policy CP14 applies and in some respects the character of the area makes a strict application of the policy more important, in that it is vulnerable to becoming more urbanised by a creeping process of consolidation. There is pressure for development arising from proximity to Kings Hill, the Leybourne/Ditton area and Maidstone.

- 1.2.3 In the Inspector's view the proposed 2 dwellings would not be justified by the removal of the cattery pens and store. Whilst the dwellings would be designed to have a low profile, they would still be 2 storey buildings and there would be a significant increase in bulk of development. He considered the cattery pens to be relatively insubstantial and have a more rural appearance. The proposed houses would make the site look more built-up, and even if boundary screening were retained the intensification of development would be evident from outside the site, such as near the entrance. The fact of the site being previously developed land does not overcome this point, given the rural setting.
- 1.2.4 The Inspector found the arguments about sustainability unconvincing. He considered it was to the appellant's credit that a high quality of design is proposed, which would facilitate the inclusion of features like solar panels, geothermal heat exchange, rainwater harvesting and grey water storage. But houses do not have to be built in the rural area to achieve these benefits.
- 1.2.5 Despite the appellant's evidence about proximity to shops and services at Teston, Wateringbury and Kings Hill, it was evident to the Inspector that the site is not within practicable walking distance of such facilities for everyday purposes. Apart from the distances the routes are unlit and the country lanes mostly do not have footways. He noted the information provided about possible future bus and cycle links to Kings Hill, but it did not convince him that people living here would not be mostly dependant on a car for transport. The appellants provided evidence about the vehicle mileage incurred by the existing use, driven by customers to the cattery, but it was not clear that the mileage would be saved by closure of the cattery. Customers would presumably have to look elsewhere and to do so might travel less but equally might travel further than they do now.

- 1.3 Site **Beechin Wood Farm, Beechin Wood Lane, Platt**  
 Appeal **Against the grant of planning permission subject to conditions**  
 Appellant **Mr W Terry**  
 Decision **Appeal allowed subject the deletion of conditions 4, 6 and 10 and the substitution of a new condition 4**  
 Background papers file: PA/05/07 Contact: Cliff Cochrane  
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- 1.3.1 The permission was for the use of land for the practice of archery for not more than 28 days in total in any calendar year. The conditions in dispute were:
2. restriction of the use of the site for the applicants own private and recreational and practice purposes in accordance with details supplied by his agent,
4. no targets, catch fencing or similar items or archery equipment to be sited or stored on the land save during those times that archery is in progress,
6. no archery activities after sunset or outside the hours of 1000 hours on weekdays or 1000 hours to 1800 hours on Sundays and Bank and other public holidays whichever is the earlier,

7. details of safety catch netting to be submitted and approved before archery commences,

10. log book to be maintained and kept by the landowner containing details of the dates and times that archery shooting takes place at the site and the number of persons in attendance during the times of shooting. Log book to be made available for inspection by the LPA.

- 1.3.2 The Inspector considered the main issue in the appeal to be whether the conditions in dispute are reasonable and necessary having regard to the nature of the development proposed, the advice in Circular 11/95 and the considerations of residential amenity, the free and safe flow of traffic on local roads, public safety and openness and rural amenity of the Green Belt in accordance with the policies identified by the Council.

*Condition 2*

- 1.3.3 The Council explained at the hearing that it was happy to interpret the participation of eight archers or thereabouts as being in compliance with its terms. It seemed to the Inspector that with this degree of flexibility this condition is reasonable, albeit that it does no more than reflect the details given in the application letter and inevitably involves a degree of imprecision. It is also necessary because of the potential for problems on the local roads which have a limited capacity.
- 1.3.4 At the hearing it was explained that the capacity of the site was one of five targets which would limit participation to 20 archers. Provided that other attendees (spectators and tournament officials) do not add to this number the Inspector considered it reasonable to vary the condition. He recognised though that tournaments and events do have the potential to be substantially different in their effect on the locality from the private use previously applied for and granted permission. He therefore agreed with the Council that this type of use should be the subject of a separate application.

*Condition 10*

- 1.3.5 The Inspector saw no reason why this was necessary for private use and with approximately eight or fewer participants.

*Condition 4*

- 1.3.6 The Inspector considered this to be unnecessary and in part impractical. The only equipment likely to be clearly seen from any public vantage point or private residence is the catch netting and its supporting structure. From his observations of the site from Potash Lane he considered that when drawn across the poles the catch safety netting is mildly intrusive in the private and public visual amenity of the area, at least until trees in the extensive overshoot area grow sufficiently to provide a complete screen. He therefore varied the condition to ensure that the netting is drawn back to the poles between archery sessions.

*Condition 6*

- 1.3.7 The Inspector considered this condition to be unnecessary. The Council accepted that archery is a quiet sport and in terms of disturbance is worried mainly about noise from the gathering of spectators and from large numbers of vehicles. However, the fact that condition 2 restricts activity to private use with a maximum of eight participants means that neither of those factors should be an issue.

*Condition 7*

- 1.3.8 The Inspector considered there to be an arguable case that this is unnecessary given the requirement in condition 8 for archery to be practised in strict accordance with the safety standards and requirements of the Grand National Archery Society. He saw on his site visit that the catch netting and its support system had been erected in a professional manner, is robust and has the appearance of being entirely fit for purpose. Subject the netting being drawn back when not in use, there is not a significant impact on either private or public visual amenity.

**Application by the appellant for an award of costs against the Council**

- 1.3.9 The appellant submitted that he had asked for the appeal to be dealt with by written representations and the Council had requested a hearing and in so doing must have recognised it would be laying itself open to an application for costs for its failure to have regard to the advice in Circular 11/95. The committee reports had been entirely silent on the implications of the Circular and in the pre hearing statement the Council only made casual reference to it. Each of the disputed conditions fails one or more of the six tests in paragraph 14 of the Circular. The Council has imposed abnormal, stringent and onerous conditions and therefore the onus is on it to demonstrate explicitly that regard was had to the Circular. The vitriol and antagonism from local residents is clear to see and the conditions were imposed to assuage the intense opposition of the residents rather than for any good planning reasons. Thus the conditions are there for fundamentally the wrong reasons rather than because the Council had taken a conscious decision as to their reasonableness and necessity as required under the guidance of the Circular.
- 1.3.10 The Council responded by stating that if the appeal is allowed it does not necessarily follow that it acted unreasonably in imposing conditions. It had requested a hearing because of the extent of public interest in the appeal. Either of the main parties has a right to be heard and it is not the fact that the hearing was held that constitutes unreasonable behaviour. The council agreed that there was strong feeling but this is clearly on both sides and in any event it was not the Council's motives for imposing the conditions. The Council had demonstrated that it had legitimate planning related concerns for imposing the conditions but even if it is decided on appeal that a condition should not have been imposed then this in itself does not necessarily mean that unreasonable behaviour has occurred. The Council did have regard to the Circular and it is not normal to set out this fact in a committee report or a recommendation.

- 1.3.11 The Inspector concluded that the Council have a right to be heard at a hearing and given the intensity of public interest in this case he considered this choice of procedure to be reasonable. On the issue of a lack of reference to Circular 11/95 in the Committee report and the hearing statement, the more important consideration is whether the conditions were imposed in clear disregard of its advice. The committee reports advising Members of appropriate conditions were professional and logical and in the Inspector's view not so influenced by the strong feelings of the residents to the point of unreasonableness. The Members' addition of condition 10, although in his view unnecessary, was also not unreasonable.
- 1.3.12 In respect of paragraph 42 of the Circular the Inspector considered that the Council were entitled to have regard to the nature of the use as described by the appellant and impose conditions accordingly. But it was essentially the lack of necessity for some of the conditions that has led the Inspector to allow the appeal in part rather than any inherent unreasonableness.

**Duncan Robinson**  
Chief Solicitor