



**3. The Site:**

- 3.1 The application sites lie within the Metropolitan Green Belt and outside the rural settlement confines of Offham. Part of the application site is in a Site of Nature Conservation Interest; principally the part the existing access road cuts through.
- 3.2 The site lies to the south of Offham and is accessed off Comp Lane, close to its junction with Public Right of Way MR267. Comp Lane is a designated Quiet Lane.
- 3.3 The main part of the site lies some distance along a tarmac access road from Comp Lane.
- 3.4 To the west of the sites lies Offham Wood (SNCI), to the east lie stables in different ownership and a paddock. To the north lies the Fre Mel Farm bungalow and the main gated entrance.

**4. Planning History:**

MK/4/54/100                      Grant with conditions                      3 June 1954

Bungalow, agricultural.

MK/4/65/390                      Refuse    21 July 1965

Outline application for a bungalow.

TM/76/647                      Grant with conditions                      11 August 1976

Temporary siting of a caravan.

TM/88/0199/FL                      Grant with conditions                      8 July 1988

Erection of stable buildings for livery purposes and use of land as paddock.

TM/94/0511LDCE                      Lawful development                      5 July 1994  
certifies

Application for Certificate for Existing Lawful Development: use for storage and dismantling of vehicles and use of workshops for repair and maintenance of vehicles.

TM/95/0489FL                      Grant with conditions                      6 July 1995

Motor vehicle storage building

TM/98/1729/LDCE Refuse 8 June 1999

Lawful Development Certificate Existing: Use of land as a skip hire yard, including sorting of skipped materials

TM/01/03153/FL Refuse 22 January 2002

Change of use of land for parking and storage of cement mixer vehicles (5 No.)

TM03/01002/FL Appeal dismissed 1 September 2005

Cessation of existing industrial and commercial uses and redevelopment of site by erection of 10 new dwellings with associated access, garaging and ancillary works

TM/03/03862/FL Grant With Conditions 13 February 2004

Erection of dutch barn to give weather protection to car breaking equipment

TM/07/01987/FL Refuse 1 November 2007

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

TM/07/01990/FL Application Withdrawn 10 October 2007

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 vehicle repairs with the erection of a workshop and a section of 2.4m high security fencing

TM/08/00153/LDP Pending Consideration

Application for Certificate of Lawful Development of Proposed Use: Storage of vehicles and the inspection of vehicles by prospective buyers (No administration of sales occurring on site)

## **5. Consultees:**

- 5.1 EA: no objections but site lies over a major aquifer and care needed to avoid pollution of groundwater with suggested conditions. The site is also near Offham landfill and past uses are such that a contamination condition is needed.
- 5.2 KCC (Highways): The parking layout shows angled parking which is not normally ideal but is acceptable in this location.

- 5.3 PC: Offham Parish Council meeting was attended by a number of concerned residents there was a unanimous opinion for the Parish Council to object to the proposed development. The main differences between the two applications appear to be: Change in the site area so that the application is no longer for a change of use ; Consequent change in the description of the application; Deletion of inclusion of 2.4m security fencing; Increase in the size of the replacement workshop from 235 sq m. to 363 sq m; Height remains the same at 7 metres; Demolition of 5 existing workshops; Existing vehicle store remains as before.
- 5.3.1 If the applicant was simply intending to use the original workshops for a similar type of use then obviously he could rely on the Certificate of Lawfulness and would not require planning permission. We accept that this would enable the applicant to carry on a business for “the repair and maintenance of vehicles” obviously generating a certain amount of traffic and activity. However, the proposed use is of such a different scale that it requires this new application and it is this significant increase in commercial activity and its consequential impact on the residents of Comp Lane and Offham Village to which we object.
- 5.3.2 Given the history of the whole of the Fre-Mel Farm site, it is pertinent that consideration is given to the recent refusal of TM/07/01987/FL - 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. The reasons for refusal were “The proposed development is inappropriate in the Green Belt and rural area and very special circumstances have not been demonstrated such as to justify granting planning permission. The proposal is therefore contrary to PPG2 (Green Belts), PPS7 (Sustainable Development In Rural Areas), Policies SS1, SS2, SS8, EN1 and EP7 of the Kent and Medway Structure Plan 2006 and Policies CP1, CP3 and CP14 of the Tonbridge and Malling Core Strategy 2007.”
- 5.3.3 As with the application for the commercial vehicle sales, the land that forms part of this application lies within the Metropolitan Green Belt, a Special Landscape Area and outside the rural settlement confines of Offham. Furthermore part of the application site is a Site of Nature Conservation Interest. On this basis alone the proposed uses are non-sustainable and inappropriate development. However, it is also recognised that part of the site is included within the Certificate of Lawful Use dated 5<sup>th</sup> July 1994. When comparing the plan that forms part of that Certificate and the proposed site plan the site boundaries are not identical. Consequently the area of land included within this application is a mix in terms of existing planning status: Part of the land is included within the Certificate of Lawful Use for the storage and dismantling of vehicles; 5 workshops were also included within this Certificate and were designated for the repair and maintenance of vehicles; a small part of the proposed site area is not included within the Certificate of Lawful Use and therefore a change of use would be required as it is currently used as grazing land; The motor vehicle storage building was granted planning permission on the 6<sup>th</sup> July 1995 (TM/95/0489/FL);

- 5.3.4 We object fundamentally to any increase in the size of site for any form of commercial use and would respectfully suggest that there can be no possible justification of special circumstances to support the release of the land, however small in proportion to the rest of the site, from the MGB. If the 5 workshops on site, are not already demolished, there is an established use for vehicle repairs and maintenance. Whilst Fre-Mel Farm operated as a car breakers, the workshops, which have been empty for some time now, attracted small “one man band” type operators due to the low quality of the buildings, their respective limited size and remote location. The proposed user, W P Commercials, is a very different type of operator in terms of both types of vehicle and size and scale of business. This is confirmed by the fact that the applicant is seeking to erect a significantly larger and bulkier building, both in terms of floor space and height than those existing. It is significant that the Certificate of Lawful Use does not include the word “commercial” in terms of the implication on the types of vehicle likely to access the site. The height the vehicles likely to use the site are going to be considerably larger than any visiting the site in the past.
- 5.3.5 Bearing in mind that planning permission has recently been refused for a change of use of the adjoining land to use for the sale of commercial vehicles on the grounds of inappropriate development, and for an extension to the existing livery yard, this proposal also amounts to facilitating a “substantial additional commercial development that is inappropriate development in the Green Belt” and for which the existence of the Certificate of Lawful Use is insufficient justification of very special circumstances. The type of premises proposed and the existing nature of the applicant’s business, which he proposes to re-locate to this site, is sufficiently different in scale from the type of businesses previously occupying the original workshops as to warrant it being considered on its own merits and not relying on the Certificate of Lawful Use.
- 5.3.6 As already stated the application is not sustainable in its own right and is inappropriate development in the Green Belt. Currently the original workshops only have the benefit of the Certificate of Lawful Use restricting the type of use to solely the “repair and maintenance of vehicles”. If planning permission were to be granted, unless restricted, this could give this part of the Fre-Mel Farm site a B1/B2 category use. This obviously changes the whole nature of the site from one of non-conforming uses with the benefit of a Certificate of Lawful Use to an authorised commercial use with consequent huge implications for the remainder of the site and great potential for expanding the scale of operations in the future – either short or long term.
- 5.3.7 Once again we raise the issue of traffic generation and the consequential implications that this application has on both Comp Lane, which is designated a Quiet Lane, and Offham village in general. We totally reject KCC’s argument in relation to the application for the change of use for the car breakers yard that they raised no highways objections to the application simply on the grounds that the proposed use was not necessarily any worse in terms of traffic generation than the

potential vehicle movements if the site was to operate as a car breakers within the terms of its Certificate of Lawful Use: The site is not being used as a car breakers by the current owner and applicant; The previous owners had ceased trading for some time before the site was sold to the current applicant and for some years previous to this had not been operating the site at full capacity; Our research to date has indicated that it is extremely unlikely that the site will operate as a car breakers again due to the current “end of life” obligations now on car manufacturers and the increasingly onerous operating legislation in terms of best practice. There are no traffic statistics available for when the site was operating as a car breakers so figures quoted are best guess estimates. Furthermore it is several years or more since the site was last running at full capacity.

- 5.3.8 If KCC is going to apply the same logic to this application then again we would refute this stance. The “existing” number of vehicles per day visiting the site of “30 estimated” cars and light goods vehicles is we suggest a figure simply “plucked out of the air”. There is no explanation given in the application as to how this figure has been determined. The original tenants vacated the workshops some time ago and bearing in mind that sole traders occupied them all we would contend that they generated very low vehicle movements and certainly nothing like the current number of vehicles that are now travelling to and from the Fre-Mel Farm site on a daily basis. The “20” proposed vehicles per day is we suggest a gross under-estimation of the likely number of vehicle movements when one takes into account customers travelling to and from the site, staff movements, deliveries and servicing and delivery and collection of vehicles for repair and maintenance.
- 5.3.9 The type of vehicle likely to visit the proposed workshop is likely to be very different from those that used to visit the workshops judging by the vehicles that are currently accessing the site and visit The Retreat, the current location of the business. This is further substantiated by the height of the proposed building and the two roller shutter doors. KCC’s suggestion that large vehicles, such as refuse lorries currently access the site and use Comp Lane does not in our opinion establish the fact that Comp Lane is suitable to accommodate such vehicles. The refuse lorry for example only drives along Comp Lane once a week and when it does no cars can pass in either direction usually resulting in a queue of cars following it up or down Comp Lane and several cars having to reverse into field entrances in order for it to pass them. Imagine the problems that will be encountered with large vehicles using Comp Lane regularly every day of the week!
- 5.3.10 The applicant has only indicated the use of one access from Comp Lane adjacent to a property known as The Bungalow. However the second access, nearer to the Village Green, is currently being used on a regular basis and indeed there has been a considerable increase in traffic movements, to and from the site in recent months. The angle of the junction of both access ways into the site from Comp Lane makes it very difficult/impossible for large vehicles to turn onto or from Comp Lane when travelling to and from the west. Limiting the size of vehicle permitted to access the site would help address but not fully resolve this problem

and we predict that larger vehicles accessing the site, whether permitted or not, if they access the site from the west will then find they have a problem, drive on up to the Village Green, use the Green as a roundabout, turn around and drive back down Comp Lane and access the site at the easier angle.

5.3.11 Regardless of which access route into the site is used, it is reasonable to assume that whilst some of the traffic might access the site via Seven Mile Lane and Comp Lane, equally traffic is just as likely to enter the site from Teston Road, especially as it is so much easier to turn into the site travelling from this direction. Whilst it is acknowledged that the proposed use of the track adjacent to Alexander House is not popular, the use of the access track, although currently the main access in and out of the site, adjacent to The Bungalow is equally inappropriate in terms of a significant increase in traffic movement in close proximity to a number of residential houses. The residents that live along Comp Lane from The Bungalow down to Seven Mile Lane, are fewer in number but just as important as those that live on and around the Village Green and around the junction of the track and Comp Lane. Comp Lane itself is a designated Quiet Lane, of restricted width and of limited visibility. Indeed in the Transport Assessment which accompanied the planning application for the 10 houses they stated that "... Comp Lane cannot be regarded as having a suitable width or alignment to serve medium or heavy goods vehicles. Comp Lane, which is designated a Quiet lane, is generally 4m-5m wide which is insufficient in places for two lorries to pass each other". Comp Lane itself is of restricted width and in several places between Seven Mile Lane and the Village Green it is insufficiently wide for two cars to pass let alone larger vehicles.

5.3.12 The detrimental effects from the increase in traffic by "rat-running" are clearly evident as the once grassy banks are being constantly eroded away and the speed of many of the vehicles are a danger to other road users – cyclists, horses and pedestrians – the latter of which there are many in the summer months as the agricultural students walk to and from Orchard Place Farm. A previous planning application for 10 houses proposed a range of improvements to the existing access from Comp Lane in terms of widening it/creating passing bays; improvements to the junction with Comp Lane to facilitate visibility splays etc., albeit it that all additional land required to carry out such improvements was owned by third parties. As nothing is mentioned of any similar works in this application we presume that none are proposed. However, we note that any proposals to improve either of the access ways would involve third party landowners. The site is in a rural location and accessed from a Quiet Lane of very restricted width and visibility. Whilst we acknowledge that a small amount of traffic was generated by the original workshops this is significantly different in terms of both size of vehicles and vehicle flows as to result in an intensification of use that is totally unacceptable.

5.3.13 Whilst the site has the benefit of a Certificate of Lawful Use this does not mean that the site is suitable of supporting a significant intensification of use. The use of the site for commercial vehicle repairs and maintenance is unsustainable. It is

located in a remote rural setting with no immediate access to any major roads. All staff and visitors to the site would have to access the site by private car unless they lived in very close proximity to the site and were able to walk or cycle. There are no facilities for staff or visitors to the site in Offham Village other than the local pub, The Kings Arms. The nearest destination for any services is West Malling.

- 5.3.14 There is no justification for any commercial activity on this site other than that permitted by the Certificate of Lawfulness. Therefore if the workshops are to be retained then any use should be restricted to that which is equivalent to what currently exists, or existed when the site operated as a car breakers: the relevant site boundaries should not be increased at all to incorporate any additional land; the total square footage of any new structure(s) should not exceed the total existing floor space; the height of any new structure(s) should not exceed the height of the existing workshops; amalgamation of the existing floor space needs to be carefully considered in relation to the type of occupier such a building would be likely to attract and the consequent implications on types of vehicles accessing the site; the opportunity should be taken to reduce the hours of trading to 0800 to 1730 Monday to Friday and 0800 to 1200 Saturday with no vehicle movements outside of these times whether for deliveries, trading or any other purpose; The need for de-contamination of the site needs to be verified; Materials for any new structures should blend in with its surroundings.
- 5.3.15 In conclusion therefore we believe that this application should not be granted planning permission as it is an intensification of the commercial use of the site and considerably widening the scope for additional development in due course. This application is seeking to change the nature of legitimised activities from those permitted by the Certificate of Lawfulness to those within certain use classes with enormous implications for the remainder of Fre-Mel Farm. The proposed use is significantly different in terms of scale of commercial activity proposed so that the existence of the Certificate of Lawfulness is no longer relevant in terms of demonstrating the special circumstances required to justify the grant of planning permission and release of the land from the MGB.
- 5.3.16 Additional PC comments on the revised size and siting: there was a unanimous agreement for the Parish Council to repeat its strong objections to the proposals. Before dealing with the detail of the amendments we would like to raise a query regarding consultation on this application. As far as we are aware only one village resident received notification of the amendments and indeed it was only via this resident that we, the Parish Council, were made aware of the new plans. We understand that the Parish Council notification got "lost" in the post but why have none of the villagers who have written in to object to the original application been contacted? Furthermore we note that there are currently no site notices posted on the highway in relation to either the original application or these latest amendments and would also query why this is the case?

- 5.3.17 Traffic flows remain a very big issue for the Village. We note that the application still shows the use of only the one access from Comp Lane, next to the property called The Bungalow. However we still maintain that due to the angle of the access with Comp Lane large vehicles will not be able to turn right into the site or left out of the site without considerably difficulty or damaging adjoining land. Therefore the majority of the traffic generated by this application will use the track that connects to Comp Lane adjacent to Alexander House, yet this access route does not form part of the application. Prior to the applicant acquiring this site the volume of traffic using this track was minimal. It has now increased significantly from early morning and throughout the day to the detriment of adjacent properties immediately around the junction with Comp Lane.
- 5.3.18 Whilst we fully appreciate that there are five existing workshops on site and that these themselves attract vehicles both in and out of the site the traffic flow to and from them in the past has attracted nothing like the current volume of traffic accessing the site or indeed that likely to be generated by the proposed replacement workshop capable of accommodating significantly larger vehicles. The sensitivity of Offham village to commercial traffic was considered sufficiently important for all HGV's accessing both the landfill site in the Village and Blaise Farm Quarry to be banned from travelling through the Village. How therefore can the intensification of commercial activity at Fre-Mel Farm be considered a possibility generating traffic banned from these other two commercial enterprises? Bearing in mind that traffic is such an important issue for the Village we do not consider it sufficient for the application to simply state that the existing number of vehicles per day is "30 estimated" and that there is a proposed reduction to 20. This issue is sufficiently important for significantly more detail to be submitted.
- 5.3.19 Furthermore this application can not be considered as a stand alone application as the traffic impact on the Village is a cumulative effect of what is proposed on this part of the site and what is proposed on the remainder. As we have already stated local residents have all reported a significant increase not only in the daily traffic movements in and out of the site but also in the size of vehicles and it is the combination of both these facts that is having a negative impact on individual properties, the immediate local environment and the core of the Village itself. Residents estimate that currently at least 10 large lorries (large vehicle transporters, large low loaders, large grabber lorries, large trucks, refuse lorries and skip lorries) and 20 other vehicles access the site on a daily basis. In our original objections to this application we raised a number of traffic related issues and objections and we stand by these comments as they remain unaffected by the proposed amendments. As these were somewhat lengthy rather than repeat them again in this response please refer to our original letter of objection.
- 5.3.20 The "Existing Vehicle Store" is now an "Existing Vehicle Workshop". Is this change in description significant and if so does this application include by inference a change of use from the designated consent for this building as a motor vehicle storage building (1995)? Even if in planning terms there is no significant

difference our overriding concern is the total volume of workshop space on the site and the consequent direct impact on vehicle movements.

- 5.3.21 Reduced the size of the new workshop so that its footprint is now replacing the existing workshops. However the application site boundaries have not been amended therefore the application still includes land that is outside the boundaries of the 1994 Certificate of Lawful Use and is designated MGB. There is no justification for increasing the size of the site beyond the boundaries of the LDU. Not only is the land zoned Metropolitan Green Belt, it lies within a Special Landscape Area, it is outside the rural settlement confines of Offham and part of the application sites is a Site of Nature Conservation Interest. Any extension to the site boundaries is non-sustainable and inappropriate development.
- 5.3.22 We are delighted to note the reduction in the footprint of the replacement workshop from 363 sq m. to 210 sq m. but wonder if the 153 sq m. reduction is accommodated for within the former existing vehicle store for which no details are given?
- 5.3.23 We are also pleased to note the reduction in height from a ridge height of 7 metres (4.75 metres eaves) to 5.4 metres ridge height (4 metres eaves) and note the justification on the grounds of "health and safety". However, our main concerns return to the types of vehicles accessing the site and the volume of traffic. It must be a fair assumption that a building with a significant increase in the eaves height (average eaves height of existing workshops – 2.63) and ridge height (average ridge height of existing workshops – 3.67 metres) is going to result in an increase in the size of vehicles accessing the site.
- 5.3.24 In making this application, the applicant is seeking to strengthen the planning status of this part of the site from having the benefit of a fairly restrictive Certificate of Lawful Use to a full planning permission with the benefit of a use class categorisation. Presumably the proposed development would fall within either B1 Class III (light industrial) or B2 (general industrial) and just as the TMBC Planning Committee were very concerned as to what could legitimately evolve from the granting of a consent within a use class for the corporate entertaining venture at Ashtree Farm, we are equally concerned as to what could evolve on this site as a result of the significant change in planning status.
- 5.3.25 We are only all far too well aware of the shortcomings of relying on conditions within a planning permission seeking to place restrictions on a site. Furthermore once consent is granted it will be very difficult to prevent an intensification of this type of use, or indeed other commercial operations. If the site is deemed suitable for one type of commercial operation how can others deemed not to be? It should be remembered that the Certificate of Lawfulness was granted not because the site was suitable for the type of commercial activity that had been established but simply because sufficient time has passed without any direct action being taken to stop the non-conforming uses. The Certificate of Lawfulness does not mean that

the uses have become “acceptable” in planning terms but simply that their existence is legitimised. A planning consent would change the sites status to one of acceptability and would therefore significantly weaken any case against additional development in the future.

- 5.3.26 Whilst it is recognised that each application has to be judged on its own merits, given the history of the whole of the Fre-Mel Farm site, of which this application forms part, it is pertinent that consideration is given to the planning history. Apart from the Certificate of Lawful Use, the application for the vehicle store and for a Dutch Barn on the former car breakers yard, all other planning applications have been refused on the grounds of unsuitability of the site/inappropriate development in the Green Belt: Change of use for cement mixers; Change of use for residential development – 10 houses; recent refusal to grant planning permission for application TM/07/01987/FL - 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; extension to the existing livery yard.
- 5.3.27 We would suggest that as in the case of the stables this proposals also amounts to facilitating a “substantial additional commercial development that is inappropriate development in the Green Belt” and for which the existence of the Certificate of Lawful Use is insufficient justification of very special circumstances. Whilst the proposed use is described as a “workshop for the repair of commercial vehicles” the type of premises proposed and the existing nature of the applicant’s business, which he proposes to re-locate/has re-located to this site, is sufficiently different in scale from the type of businesses previously occupying the original workshops as to warrant it being considered on its own merits and not relying on the Certificate of Lawful Use. As already stated the application is not sustainable in its own right and is inappropriate development in the Green Belt.
- 5.3.28 Our objections on the grounds of sustainability remain as before. Whilst the site has the benefit of a Certificate of Lawful Use this does not mean that the site is suitable of supporting a significant intensification of use. The use of the site for commercial vehicle repairs and maintenance is unsustainable. It is located in a remote rural setting with no immediate access to any major roads. All staff and visitors to the site would have to access the site by private car unless they lived in very close proximity to the site and were able to walk or cycle. There are no facilities for staff or visitors to the site in Offham Village other than the local pub, The Kings Arms. The nearest destination for any services is West Malling. There is no justification for any commercial activity on this site other than that permitted by the Certificate of Lawfulness. Therefore if the workshops are to be retained then any use should be restricted to that which is equivalent to what currently exists, or existed when the site operated as a car breakers: the relevant site boundaries should not be increased at all to incorporate any additional land; the height of any new structure(s) should not exceed the height of the existing workshops; amalgamation of the existing floor space needs to be carefully

considered in relation to the type of occupier such a building would be likely to attract and the consequent implications on types of vehicles accessing the site; the opportunity should be taken to reduce the hours of trading to 0800 to 1730 Monday to Friday and 0800 to 1200 Saturday with no vehicle movements outside of these times whether for deliveries, trading or any other purpose; the need for de-contamination of the site needs to be verified; Materials for any new structures should blend in with its surroundings.

5.3.29 In conclusion therefore we believe that this application should not be granted planning permission as it is an intensification of the commercial use of the site and considerably widening the scope for additional development in due course. This application is seeking to change the nature of legitimised activities from those permitted by the Certificate of Lawfulness to those within certain use classes with enormous implications for the remainder of Fre-Mel Farm. The proposed use is significantly different in terms of scale of commercial activity proposed so that the existence of the Certificate of Lawfulness is no longer relevant in terms of demonstrating the special circumstances required to justify the grant of planning permission and release of the land from the MGB.

5.4 DHH: standard land contamination condition is needed and in order to avoid disturbance to the bungalow at Fre Mel, the hours of use and the number of vehicles visiting needs to be considered, matching those established on the site with the exclusion of any working on Sundays and Public Holidays.

5.5 Private reps (76/29R/0X/0S) + site notice: Twenty nine letters of objection have been received, summarised as follows:

- Offham is a small peaceful country village, we have no street lighting and not all the roads have pavements, the idea of allowing a repair shop for commercial vehicles on the Fre Mel Farm site is, in my opinion, very dangerous as it would mean a considerable increase in traffic using Comp Lane a designated Quiet Lane which is a lane that has very few places where two vehicles are able to pass.
- The site and approach is in no way suitable for such a business which, if allowed, will no doubt soon get out of hand be a thorn in the side of the Offham residents and TMBC for a long time to come.
- A brown-field site would be more suitable for such activities.
- Offham is a delightful village in a designated conservation area and as such merits protection from any proposal that will result in an increase in commercial vehicle traffic movements.
- There is activity at present using both the entrances off of Comp Lane. This is both noisy and hazardous to nearby residents and all road users of this designated Quiet Lane.

- This proposal should not be allowed for a site which is in the Metropolitan Green Belt and which will result in further increases in the volume of large commercial vehicle traffic through the village.
- Within a designated area of Green Belt this is totally inappropriate development for such an area. The applicant chooses, at present, to ignore the existing Committee ruling concerning his last application No. TM/07/01987/FL which was refused and has commenced using the track to the side of my home as an access/exit point for his business activities. A substantial number of Lorries, Large Car Transporters, Trucks, Skip Lorries and Vans have started to drive through Offham Village and then travel up and down the unsuitable and unsafe dirt track, some at tremendous speeds. These vehicle movements are taking place from as early as 6.00am until late in the evening, this not only causes a major noise issue but is an accident waiting to happen.
- The track is accessed/exited off a 'Quiet Lane' via the Village Green which is a Conservation Area with a Nationally Significant Landmark. In addition, adjacent to the track is a Site of Nature Conservation Interest. The track is used by members of the public for walking their dogs to Mereworth Woods and has two private gated access/exits, one being for my own home and the other for the small wood yard business operating next door. We would also draw your attention to the fact that the applicant does not own the track, nor we believe does he have a legal right of way over this track. We would therefore suggest that for the safety of the general public and the existing lawful users of the track, a permanent structure such as concrete bollards be inserted to prevent all unauthorised vehicle movements to and from the applicant's property via the Village Green.
- The proposed workshop is totally different in size and scale and the intensification of commercial activity is totally inappropriate.
- No justification for the traffic figures given, there will also be a change in the type and size of vehicles.
- Inadequate access for large commercial vehicles, just as with the recently refused car sales.
- Large lorries unfamiliar with the village have been getting lost and carrying out dangerous manoeuvres in restricted space, especially causing damage to the Green.
- Unsustainable location.
- The workshops referred to in the LDCE were related to the car breaking, not separate businesses. EU regulations mean car breakers sites such as this are now unviable.

- HGVs use Comp Lane as early as 5.30 am in relation to this site.
- The LDCE came about from abuse of planning control and the Conservation Area should be protected from further abuses.
- WP Commercials operates illegally from the Retreat.
- Hammond's Metals, a skip hire firm operates from the site.

5.6 There has been a reconsultation following the receipt of the revised drawings and any further comments will be included in a supplementary report.

## **6. Determining Issues:**

- 6.1 In relation to the concerns over the consultation regarding the revised plans, a total of 75 letters were issued to inform objectors of the changes. It is a concern if indeed only one person received the letter advising of revisions as advised by the PC. Accordingly, a fresh round of reconsultation on the amendments has been carried out. Members are advised that there is no statutory duty to consult on amendments although it is the Council's practice to do so. A new site notice was not displayed in relation to the revision as this is not part of normal practice and indeed is not required by statute.
- 6.2 The site is outside a rural settlement and is in the Green Belt and the main issue is whether a vehicle repair workshop in this location is inappropriate development in the Green Belt and if so, whether there are any very special circumstances or other material considerations that would presume in favour of the proposals. Relevant national policies are PPG2, PPS7, strategic policies SS1, SS2, SS8, EN1; EP7 of the Kent and Medway Structure Plan 2006 and policy CP1 and CP3 of the TMBCS 2007.
- 6.3 A second issue is the environmental sustainability of the location: relevant policies are SS1 and TP3 of the Kent and Medway Structure Plan 2006 and CP2 of the TMBCS 2007. The impact on highway safety and impact on rural or residential amenity are issues, relevant policies being QL1 of the Kent and Medway Structure Plan 2006 and CP24 of the TMBCS 2007.
- 6.4 The impact of the proposal on the nature conservation interest of Offham Woods SNCI, involves consideration of PPS9 and policies EN7 of the Kent and Medway Structure Plan 2006 and saved policy P3/2 of the Tonbridge and Malling Borough Local Plan 1998.
- 6.5 The lawful use of the site is as a breakers yard/vehicle repair workshop and Members will also note from the history that there were other unauthorised uses from time to time such as skip hire and the storage of cement mixers.

- 6.6 The Lawful Development Certificate TM/94/0898/LDCE allows, inter alia, the following:
- Use of 5 workshops for the repair and maintenance of vehicles, hours 0800 to 1730 Mon to Sat and 0800 to 13.30 Sundays plus associated parking.
- 6.7 Whilst it is true that the 5 workshops on the application site are not all currently occupied, vehicle repair in accordance with the LDCE could be continued. Members will note that one objector claims that the vehicle repairs in the LDCE can only occur in conjunction with the car breaking. I am of the view that is an incorrect interpretation of the Certificate- in my view, it is clearly separated into 2 elements, one being vehicle storage and dismantling, the second being repair of vehicles.
- 6.8 In countryside and Green Belt terms, the replacement building is inappropriate and in an unsustainable location. The **use** is not considered to be inappropriate as it is the same in planning terms as the existing lawful use, there is no greater impact on the openness of the Green Belt and the purposes of including land in the Green Belt. The lawful development certificate therefore provides a meaningful “fall-back” position in my view, both in terms of the use of the site, and the existence of the five existing workshop buildings.
- 6.9 Offham PC is concerned that the red line of the application site includes some land outside the LDCE. The agent has been asked to amend this to avoid doubt as to the associated land that should be used ancillary to the workshop.
- 6.10 It is undeniably the case that the use is environmentally unsustainable being remote from a rural service centre.
- 6.11 However, I am of the view that the LDCE that covers the application site represents a sufficient case of very special circumstances such as to justify granting planning permission for what is now proposed. The new building is smaller in footprint and volume than the existing buildings on the site. The use is the same. Whilst this application is explicit that the primary market is the repair of commercial vehicles, there is nothing in the LDCE that would prevent commercial vehicles being repaired **in principle**, other than a physical limitation on the height of the vehicles being repaired inside the workshops in situ. The LDCE would allow repair of commercial vehicles inside the 5 workshops and of large commercial vehicles outside the 5 workshops.
- 6.12 Similarly, in highways terms, KCC (Highways) is satisfied that the use of the site for commercial vehicle repairs will not have a significantly worse impact in terms of highways safety than the use which is lawful.
- 6.13 The hours of use of the retained 5 vehicle repair shops is established by the LDCE and includes working 0800 to 1300 hours on Sundays and Public Holidays. I note the comments of DHH regarding restricting working on Sundays and Public

Holidays but in my view, the use of the new proposed car repair workshop for identical hours will not worsen amenities significantly, particularly as the new workshop has more scope to carry out repairs inside the building than is the case for the 5 lawful car repair workshops. The working hours can be the subject of a condition.

- 6.14 Bearing in mind that there is no material change of use of the application site, I am satisfied that the overall impact of the proposed vehicle repair workshop is no worse in residential or rural amenity terms. The height difference is 5.4m (proposed) compared to a range of 3.2 to 4m for the workshops in situ. The comparison of bulk is a reduction of 6% according to the figures provided by the agent.
- 6.15 There is no net change in site area proposed in these applications compared to the previous use that would impact on the nature conservation interest of the SNCI in my opinion.
- 6.16 The representations from the Environment Agency and DHH relate to the possibility of contamination and the need for a careful consideration of drainage in order to prevent pollution of the groundwater environment and to ensure end users are protected from contamination. I therefore suggest relevant conditions to deal with these issues.
- 6.17 In response to some of the additional points raised by objectors, the LDCE already defines this site as a “Brownfield” site and establishes the principle of industrial and commercial use although any uses materially different to the ones described in the LDCE need planning permission in the normal way.
- 6.18 The PC is critical of the advice of KCC Highways in terms of whether the level of traffic is acceptable on a Quiet Lane such as Comp Lane. The approach taken by KCC highways is to look at the acceptability of the material difference between the use being proposed and the (lawful) use being replaced. I have no reason to question that this is the correct assessment and that the representation of KCC is robust. I take this view as I would reiterate that there is no material change in use, notwithstanding that the proposed use is more explicitly for repairing of commercial vehicles rather than privately owned vehicles.
- 6.19 The PC and local objectors dispute the accuracy of the traffic figures given by the agent as a gross underestimate. The traffic figures have not been disputed by KCC (Highways). They are given as 20 vehicles per day in the new workshop and an estimate of 30 vehicles per day in total for the 5 workshops in situ. In the light of the proposal being a replacement of 5 individual vehicle repair businesses by a single one, I concur with KCC that there is no reason to dispute the figures given as unrealistic.

- 6.20 In terms of sustainability, I agree with the PC and local residents that this is not a suitable site for a use such as vehicles repairs. However, in the light of the fallback position established by the LDCE, I do not think that would warrant refusal as there is no worsening of environmental sustainability.
- 6.21 The PC and objectors are concerned that this building would be the start of a rural industrial estate. However, it is the case that this application for a building is a replacement of existing lawful buildings and therefore no precedent would be set for additional buildings which are not replacements. A condition can be imposed restricting the use of the new workshop to that applied for on the basis of the very special circumstances submitted in support by the agent.
- 6.22 Access is as established and the application does not include use of the access track direct to the Village Green (that passes Alexander House). The concerns of the PC and objectors on the apparent changes in traffic type and number since the applicant purchased the site are noted but it is not clear that this is directly related to the application being determined. These complaints are the subject of enforcement investigations but no breaches beyond the terms of the LDCE have been identified at the time of writing this report.
- 6.23 In conclusion, I would advise Members that the use proposed is not materially different in impact from a planning point of view compared to that established by the LDCE. The new vehicle repair workshop will be slightly lower in overall bulk than the 5 buildings being demolished notwithstanding a greater overall height. On balance, I am of the view that the proposal is not harmful to the amenities or openness of the Green Belt.

## **7. Recommendation:**

7.1 **Grant Planning Permission** as detailed by Certificate B dated 08.11.2007, Design and Access Statement dated 08.11.2007, Location Plan dated 08.11.2007, Letter ADB/725 dated 24.01.2008, Drawing 27.139.4A dated 24.01.2008 subject to 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 The premises shall be used for vehicle repairs and for no other purpose (including any other purpose in Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument amending, revoking and re-enacting that Order). (T006)

Reason: The development is justified by the existence of a Lawful Development Certificate for vehicle repairs.

3 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. (N015)

4 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.

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 On site parking as shown on drawing 27.139.4a shall be carried out in strict accordance with those details and so reserved thereafter.

Reason: In the interests of highway safety and amenity.

- 8 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. (D001)

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

- 9 All vehicle repair work shall be carried out within the workshop, the doors of which shall be kept closed, except when required to be open for the purpose of access. (N005)

Reason: To protect the aural environment of nearby dwellings.

- 10 No materials, plant or other equipment of any description shall be kept or stored in the open other than in areas and to such heights as may be approved in writing beforehand by the Local Planning Authority. (I006)

Reason: To avoid obstruction of vehicle parking/manoeuvring areas and to ensure the character and appearance of the development and the locality is not significantly harmed.

- 11 The existing workshops shown to be demolished on drawing 27.139.4A shall be demolished prior to the commencement of the development hereby permitted, if not demolished previously, and all arisings therefrom shall be removed from the site.

Reason: To prevent overdevelopment of the site.

**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\*)

Contact: Marion Geary