

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

17 September 2008

Report of the Chief Solicitor

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

- 1.1 Site **The Bungalow, Hedgehogs, St Vincents Lane, Addington**
Appeal **Against the refusal of permission for the demolition of a garage and the erection of a single storey extension**
Appellant **Jane Reader**
Decision **Appeal dismissed**
Background papers file: PA/01/08

Contact: Cliff Cochrane
01732 876038

The Inspector considered the main issues to be (1) whether the proposal would be an inappropriate form of development in the Green Belt; (2) the effect of the proposal on the character and appearance of the area, the setting of Hedgehogs as a listed building, and the openness of the Green Belt; and (3) whether there are any other considerations that would clearly outweigh any harm by reason of inappropriateness, and any other harm, and thereby justify the proposal on the basis of very special circumstances.

PPG2 states that provided that it does not result in disproportionate additions over and above the size of the original building, the extension or alteration of dwellings is not inappropriate in Green Belts.

The extension would change The Bungalow from a simple linear structure to something more complex. The footprint and bulk of the building would be increased substantially. The ridge of the extension would be higher than the ridge of the existing building. On this basis the Inspector's view was that the extension would be a disproportionate addition to the original building and, therefore, an inappropriate form of development in the Green Belt.

Hedgehogs is a former farmhouse dating from the 16th Century and is listed Grade II. It sits in relatively extensive grounds. Within those grounds are a range of outbuildings of simple form that appear as structures ancillary to the main dwelling. The hierarchy in the relationship between Hedgehogs and these outbuildings is an integral part of the setting of the listed building and the character and appearance of the area.

The Bungalow, as a simple structure of modest size appears as part of that hierarchy, as does the garage. The Inspector considered that the extension proposed would complicate the form of the Bungalow and increase its size. This would make it appear less subservient and disrupt the existing hierarchy. In his view this would harm the setting of Hedgehogs and the character and appearance of the area.

The extension would, by increasing the volume of built form on the site, reduce the openness of the Green Belt. The appellant proposed to compensate for this reduction in openness through the demolition of the garage. However, the Inspector considered, firstly the garage by reason of its form and construction, to be an integral part of the overall complex and is readily identifiable as such. Its demolition would diminish the complex and thereby harm the setting of Hedgehogs and the character and appearance of the area. Secondly, the Inspector agreed with the Council's suggestion that the garage may be a listed building and demolition would therefore require listed building consent. Any demolition would be harmful to the special architectural and historic interest of the listed building. He considered that this harm would far outweigh the benefit that would flow from demolition in terms of the openness of the Green Belt.

The Inspector took into account a number of other considerations raised by the appellant but they were not sufficient to clearly outweigh the harm to the Green Belt, the setting of the listed building and the character and appearance of the area.

1.2 Site **Oakenwood Oast, 264 Red Hill, Watlington**
 Appeal **Against the refusal of permission for a detached double garage with studio above**

Appellant **Mr & Mrs Roantree**

Decision **Appeal dismissed**

Background papers file: PA/30/08

Contact: Cliff Cochrane
 01732 876038

The Inspector considered the main issue to be whether the proposal would accord with the relevant planning policies relating to development in green belts.

The proposal would be sited about 7m from the existing dwelling Oakenwood Oast. As such it would not be an extension but a separate building. In terms of green belt policy the proposal therefore represents inappropriate development, which by definition is harmful to the green belt.

The proposed building would be a substantial structure, measuring about 8.5m x 6.5m, with a height of around 6.8m plus an external staircase and balcony or landing of just under 4m x 4m. In the Inspector's opinion a new building of such height and volume would significantly detract from the openness of the surrounding green belt countryside. This loss of openness would add to the substantial harm caused to the green belt by virtue of the scheme's inappropriateness.

The Inspector took account of other matters raised, but none altered his view that the proposed scheme would cause substantial harm to the green belt due to inappropriateness and loss of openness, contrary to the planning policies.

- 1.3 Site **Littlemount, The Street, Plaxtol**
 Appeal **Against (1) the refusal of permission for the demolition of an existing bungalow and construction of two detached dwellings and (2) the refusal of conservation area consent for the demolition of an existing bungalow and construction of two detached dwellings**
- Appellant **Mr Terry Groom**
 Decision **Appeals dismissed**
 Background papers file: PA/10/08
- Contact: Cliff Cochrane
 01732 876038

The Inspector considered the main issues in the appeals to be the effect of the proposal on the special character and appearance of the area which is both a Conservation Area and an Area of Outstanding Natural Beauty and the effect of the proposal on the living conditions of neighbours.

Living Conditions of neighbours

The front elevation of the ruined bungalow on site is closely overlooked from the top floor of The Oast House to the south east. The front elevation of the proposed house on plot 1 would be located in a similar position and be overlooked but, having a first floor, would reciprocate the overlooking. The window of bedroom 3 would directly face the windows of the top bedroom of The Oast House at a distance less than that which would provide privacy. The window to bedroom 4 of the house proposed on plot 2 would be even closer. Although plot 2 would be less elevated than plot 1, the upper floor windows would be on a level comparable to the top floor of The Oast House, so privacy would be compromised. Any screening on the boundary would have to be exceptionally tall and dense to be effective, itself having an oppressive effect on living conditions, so in the Inspector's view would not adequately ameliorate the situation.

The windows of bedroom 4 on plot 1 and of bedroom 1 on plot 2 would also be close to habitable room windows in the upper floors of The Rectory and Daltons Farm respectively. In both these cases the relationship would be at such an angle that privacy would not be unacceptably compromised but in the case of The Oast House the mutual overlooking would be direct and so, not acceptable.

The Inspector therefore concluded that the proposal would have an unacceptable effect on the living conditions of neighbours. It would be contrary to policy QL1(iii)(d) of the Kent and Medway Structure Plan which seeks to protect the amenity of residents. Government policy, set out in Planning Policy Statement 3

(PPS3) Housing, is to encourage housing development but not at the expense of people's quality of life. For this reason alone, the Inspector considered the appeal must be dismissed.

Character and appearance

As noted in the Plaxtol Parish Design Statement, the village has a linear character with distinct areas. In the area which includes the site, between the village Post Office and the Papermakers Arms public house, there is a great variety of built form with some dwellings set back from The Street behind a screen of walls and hedges whilst others sit close to the road boundary. Within this variety can be found examples of existing development which sit back in tandem behind the general run of linear development, which have comparable bulk, are closely spaced with limited gaps between them, are in elevated positions and have a substantial proportion of their frontages laid out for car parking or are otherwise comparable with the proposal.

The Inspector therefore concluded that the proposal would be consistent with, and therefore preserve, the special character and appearance of the Plaxtol Conservation Area and the AONB. It would comply with Structure Plan policies EN4, QL6 and those parts of QL1 which are intended to protect the character and appearance of an area. It would also comply with the Tonbridge and Malling Borough Council Local Development Framework Core Strategy policies CP6, CP7, CP13 and CP24 which have a similar intent. However, this does not override the harm to living conditions which he identified earlier.

Application for an award of costs by the appellant

The Submissions for the appellant

The application was for a full award of costs on the grounds of the Council's unreasonable behaviour in refusing these applications, failing to provide evidence to substantiate the reason for refusing planning permission and failing to take account of relevant policy statements. The appellant believes that the local planning authority lacked discipline in refusing these applications. Their own professional officers, in a full written report, had highlighted all the material considerations involved in the determination of the applications and found no planning grounds for refusal. The authority's decision, amplified by their statement of case, fails to demonstrate adequately the reasoning for rejection.

The appellant had given prior notice of an intention to apply for costs and made every attempt to avoid the need for the hearing to take place by inviting the authority to review its decisions. The authority chose not to. The appellant

believes the Council behaved unreasonably and prevented development which meets all development plan and development control criteria.

The appellant highlighted government advice relevant to this appeal in his pre-hearing statement. It all supports his case and is not even referred to by the local planning authority in its refusal notices, statement of case, or final comments on the appellant's case. The local planning authority has failed to show proper discipline by ignoring all government advice (highlighted as being important material considerations in the officer's report to committee).

The appellant's statement of case explains how the local planning authority's own policies are not breached. The specific reasons for refusal highlight siting, size, height, bulk and design. At the hearing there was no objective paperwork or conservation area appraisal to distinguish what should be preserved or enhanced. The appellant has given examples of similar developments approved using the same policy criteria and development control standards. The appeal scheme mirrors the same issues and satisfies the same criteria yet gets rejected. Members have ignored the advice of their own planning officer who negotiated closely with the appellant's architect, well versed in such matters and familiar with the development control criteria of the five specific issues identified.

The appeal decision cited by the applicant, together with the subsequent approval of extensions, clearly demonstrates the development control standards which have to be met. Those are met in this appeal – siting (space between buildings), size (yes – larger), height (no higher than adjoining properties), bulk (spread across site and to rear) and design (present scheme incorporates Kentish features). The appellant accepts the principle of precedent; that each case must be treated on its own merits, but consistency of decision making is the hallmark of good and sound planning. The local planning authority has failed to justify with sustainable evidence why the current applications should be refused.

The appellant fully accepts the principle that officers recommend but members decide. Nevertheless, government advice is that local planning authorities will be expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and that they are able to produce relevant evidence to support their decision in all respects. The committee report assesses the matters set out in the refusal notice – siting, size, height, bulk and design. The planning officer is obviously fully aware of the policy background and the normal development control standards applied in assessing applications against these policies and found no reasonable planning grounds to recommend refusal. The local planning authority's evidence offers no sustainable arguments to reject that advice. That is unreasonable behaviour.

A planning authority will be at risk of an award of costs against them if they refuse an application which accords with material policies or proposals in the development plan and they are unable to show that there are any other

material considerations supporting such a refusal. The proposal accords with the development plan. There are no other overriding material considerations.

The appellant is drawn to the inevitable conclusion that the local planning authority has been influenced by the views of local residents. That may well be denied. While the planning authority will need to consider the substance of any local opposition to the proposal, their duty is to decide a case on its planning merits. The appellant feels that the authority abrogated this duty and was swayed by other considerations.

The Response by the Council

Many of the examples (of allegedly precedent decisions) referred to are outside the conservation area. Many issues are subjective. The applications were dealt with in accordance with policy. Pre-application advice is just that. Members have the right to overturn a recommendation. Evidence to support that decision is provided through the Council's statement. It believes that advice in PPG15, PPS3 and 1 is relevant and Local Plan policies are relevant. The applications were fully considered in the light of these considerations.

Conclusions

The Inspector considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

The Inspector considered that many issues concerning character and appearance are matters of judgment. However, a degree of analysis is usually possible, which can inform judgment. In the present case, there is no conservation area appraisal, only a very brief report describing, rather than analysing, the extension to the conservation area, in which the proposal would be sited. There is a slightly greater degree of analysis in the Plaxtol Parish Design Statement, produced by the local community, but this did not form part of the Council's evidence. Indeed, it rather tends to support the appellant's case, as indicated in his decision. Furthermore, on the site visit, the Inspector found clear examples of existing development in the village and in the conservation area which are so much at odds with the Council's assessment of character and appearance that the Council's decision goes beyond a mere matter of judgment and is unreasonable.

However, a full award of costs is not justified because, without the Council's decision, the appeal would not have taken place and the unacceptable effects of the proposal on the living conditions of neighbours would have been overlooked.

For that reason the Inspector made a partial award of costs limited to challenging the Council's reason for refusal of the planning application.

1.4 Site **Land at London Road, Addington**
 Appeal **Against the refusal of permission for the construction of a 2 storey office building and associated external areas**
 Appellant **Tremain Construction Ltd**
 Decision **Appeal dismissed**
 Background papers file: PA/24/08 Contact: Cliff Cochrane
01732 876038

The Inspector considered the main issue to be whether the development would accord with the relevant planning policies relating to development in the Green Belt, including those concerning major development sites in the Green Belt.

Inappropriate development within green belts is defined in PPG2 and includes the construction of new buildings other than some limited exceptions. Development which is inappropriate in green belt terms is regarded as harmful by definition, and in such cases the onus is on the applicant to show why permission should be granted.

The introduction of a new office building into this part of the Major Development Site would significantly extend the area of built development, increasing the site coverage and overall impact. Consequently the openness of this part of the Green Belt would be reduced, and its purpose compromised. In this respect the proposal would conflict with Policy M1 and with the related Annex C to PPG2.

Whilst the proposed development would help to secure the removal from the site of redundant items and accumulated debris, this would, in the Inspector's view be offset by the loss of most of the existing vegetation. Despite its unmanaged state, this undergrowth helps to provide screening for the other buildings and activities within the MDS, and its loss would harm the Green Belt's visual amenity. There was also no evidence as to whether the boundary trees could be successfully retained. Overall, the Inspector did not consider that any environmental benefit would result from the development. He concluded that the scheme fails to meet the criteria applied within major developed sites. As such, the development would fall outside any of the types allowed by paragraph 3.4 of PPG2 and thus would be inappropriate in Green Belt terms.

Wendi Batteson
 Chief Solicitor