

TM/07/01902/CA Application Withdrawn 6 September 2007

Conservation Area Consent: Demolition of existing bungalow and construction of two detached dwellings.

TM/07/03561/FL Refuse 14 December 2007
 Appeal Dismissed 8 August 2008

Demolition of existing bungalow and construction of 2no. detached dwellings (resubmission of 07/01900/FL).

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Conservation Area Consent: Demolition of existing bungalow and construction of 2no. detached dwellings (resubmission of 07/01902/CA).

5. Consultees:

5.1 No additional representations have been received.

6. Determining Issues:

6.1 The Inspector concluded that the previous scheme would comply with KMSP policies EN4, QL6, and those parts of QL1 that are intended to protect the character and appearance of the area, and with policies CP6, CP7, CP13 and CP24 of the TMBCS, which have a similar intent. The Inspector did not agree with the Council's arguments on the impact of the proposal upon the character and appearance of the Conservation Area.

6.2 The appeal was dismissed by the Inspector on the grounds that:

- The window of bedroom 3, plot 1, would directly face the window of the top bedroom of The Oast House at a distance less than that which would provide privacy;
- The window of bedroom 4, plot 2, would compromise privacy of The Oast House.

6.3 Therefore, the Inspector concluded that the proposal was contrary to policy QL1 (iii)(d) of the Kent and Medway Structure Plan 2006 and PPS3 (Housing).

6.4 The following changes have been made to the scheme from the previous application:

- The first floor front projecting bay window to bedroom 3 in plot 1 has been removed and a window flush with the front wall of the dwelling is now proposed;

- The first floor front dormer window to the ensuite bathroom serving bedroom 1 in plot 2 has been amended to be a two storey front gable;
- The siting of the proposed dwellings has been amended. The dwellings have been moved further back within the site. Plot 2 is 6.75m further back within the site and plot 1 is 1m further back within the plot;
- Plot 1 has been reorientated (rotated), so that the direct outlook from the front elevation now faces further away from The Oast House.

- 6.5 As a result of these alterations bedroom 3 of plot 1 would be 21.5m from The Oast House. In the appeal scheme the distance was 19m, and the bedroom window was a bay window, allowing views over a wider arc. This proposal has also reorientated the dwelling, to face further away from The Oast House.
- 6.6 Bedroom 4, plot 2 was 16m from The Oast House in the appeal scheme. The amendments made to the positioning of plot 2 would result in a distance of 22.5m between the two windows.
- 6.7 The Inspector concluded that the windows of bedroom 4 on plot 1 and of bedroom 1 on plot 2 would also be close to habitable windows in the upper floors of The Rectory and Daltons Farm, but that in both cases the relationship would be at such an angle that privacy would not be unacceptably compromised.
- 6.8 The amendments proposed through this current scheme will not, in my opinion, have a significant impact upon the privacy of The Rectory or Daltons Farm. Plot 1 has been rotated to face towards The Rectory more. However, I do not consider that this rotation will impact any more upon the direct privacy of The Rectory given the positioning of The Rectory with plot 1. The design of plot 1 has been altered to remove a first floor projecting bay window to bedroom 3, and to propose a window flush with the wall. The first floor windows in plot 1 will not provide any direct overlooking to the first floor windows in The Rectory.
- 6.9 Plot 2 has been positioned 6.75m further back within the plot, and therefore the window of bedroom 1, in the side elevation, would sit 6.75m further back into the plot. In light of the Inspector's comments with respect to the impact of bedroom 1, plot 2 on Daltons Farm in the previous proposal, I do not consider that bedroom 1 can have more of an impact on Daltons Farm, either in terms of the privacy directly between windows, or to the private garden area of Daltons Farm. The Inspector found the previous arrangement to be acceptable, and that now proposed is no worse.
- 6.10 With respect to the impact on The Oast House, bedroom 3 of plot 1 would be 21.5m from The Oast House, and bedroom 4 of plot 2 would be 22.5m from The Oast House. Both these distances are over and above the minimum recommended distance in Saved Policy Annex PA4/14 of the TMBLP, and

therefore I am of the opinion that the applicant has resited the proposed dwellings sufficiently to address the Inspector's concerns.

6.11 Consideration needs to be given as to whether resiting the dwellings in this current proposal has resulted in any additional issues that did not arise in respect of the appeal scheme. The Inspector did not consider the appeal scheme to harm the MGB. Whilst plot 2 has been repositioned further back within the site, closer to the MGB, I do not consider the overall impact to be any more significant. Plot 2 is no closer to the Green Belt than plot 1, and as a result I do not consider that it can be argued to result in additional overall harm to the MGB.

6.12 As the applicant has appealed for non-determination, it is not therefore open to the Council to determine the application. However, the Council still needs to reach a view as to what decisions it would have reached had it been in a position so to do. In this respect the advice given in the Part 2 report to be provided by the Chief Solicitor remains pertinent as the Council's finally resolved position will need to be conveyed to PINS.

7. Recommendation:

The Planning Inspectorate **BE INFORMED** that the Council would have:

(A) TM/08/02749/FL:

7.1 **Granted Planning Permission** in accordance with the following submitted details: Street Scenes 101 B dated 15.10.2008, Drawing 101 D dated 15.10.2008, Drawing 102 D dated 15.10.2008, Drawing 103 B dated 15.10.2008, Letter dated 15.10.2008, Design and Access Statement dated 05.09.2008, Drawing 100 dated 05.09.2008, Planning Statement dated 17.09.2008, Historic Decision Notice dated 17.09.2008, subject to the following:

Conditions / Reason

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission. (Z013)

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2 No development shall take place until details and samples of all materials to be used externally have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details. (D001)

Reason: To ensure that the development does not harm the character and appearance of the existing building or the visual amenity of the locality.

- 3 No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate. (L003)

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

- 4 The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space. (P004)

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

- 5 No building shall be occupied until the area shown on the submitted plan as a turning area has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved turning area. (P011)

Reason: Development without provision of adequate turning facilities is likely to give rise to hazardous conditions in the public highway.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class A, B, C and E of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto. (R001*)

Reason: In the interest of maintaining the openness of the countryside and Green Belt and residential amenity.

- 7 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in the first floor west (flank) elevation of Plot 1 other than as hereby approved, without the prior written consent of the Local Planning Authority. (D013*)

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining property.

- 8 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in the first floor east (flank) elevation of Plot 2 other than as hereby approved, without the prior written consent of the Local Planning Authority. (D013*)

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining property.

- 9 The window on the first floor (east) flank elevation of Plot 2 serving an en-suite shall be fitted with obscured glass and, apart from any top-hung light shall be non-opening. This work shall be effected before the room is occupied and shall be retained thereafter. (R003)

Reason: To minimise the effect of overlooking onto adjoining property.

- 10 The window in the gable of the first floor front elevation on Plot 2 shall be fitted with obscured glass and, apart from any top-hung light shall be non-opening. This work shall be effected before the room is occupied and shall be retained thereafter. (R003)

Reason: To minimise the effect of overlooking onto adjoining property.

- 11 The westernmost window at first floor level on the front elevation of Plot 1 shall be fitted with obscured glass and, apart from any top-hung light shall be non-opening. This work shall be effected before the room is occupied and shall be retained thereafter. (R003)

Reason: To minimise the effect of overlooking onto adjoining property.

- 12 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)

- 13 No development shall commence until details of the ground floor slab level of all the proposed buildings have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with these approved details.

Reason: In the interests of amenity.

Informatives

1. With regard to the construction of the pavement crossing, the applicant is asked to consult The Community Delivery Manager, Kent County Council, Kent Highway Services, Double Day House, St Michaels Close, Aylesford Tel: 08458 247 800.
2. Surface water from private areas is not to discharge onto public highway.
3. The proposed development is within a road which does not have a formal street numbering and, if built, the new property/ies will require new name(s), which are required to be approved by the Borough Council. To discuss suitable house names you are asked to write to the Chief Solicitor, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ or telephone Trevor Bowen, Principal Legal Officer, on 01732 876039. To avoid difficulties, you are advised to do this as soon as possible and, in any

event, not less than one month before the new properties are ready for occupation. (Q049)

4. The applicant is advised to not allow bonfires on the site during demolition and construction works as this would result in a nuisance to adjacent residents and is contrary to Waste Management Legislation.

(B) TM/08/02750/CA:

- 7.2 **Granted Conservation Area Consent**, subject to the following condition:

1. The demolition hereby permitted shall not be undertaken before a contract for the carrying out of the works of redevelopment of the site has been made and planning permission has been granted for the redevelopment which the contract provides.

Reason: To ensure that the demolition is carried out as a continuous operation with the redevelopment of the site, in the interests of visual amenity.

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