

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 2 PLANNING COMMITTEE**

**25 February 2009**

**Report of Central Services Director**

**Part 1- Public**

**Matters for Information**

**1 PLANNING APPEAL DECISIONS**

- 1.1 Site **Tinley Lodge, Hildenborough Road, Shipbourne**  
Appeal **Against the refusal to grant permission for the change of use and conversion of redundant agricultural buildings to a holiday let use and car port**  
Appellant **Insite Developments Ltd**  
Decision **Appeal allowed**  
Background papers file: PA/34/08

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The Inspector considered the main issues to be whether the proposal amounts to inappropriate development within the Green Belt, and if so, whether there are any very special circumstances sufficient to clearly outweigh the presumption against such development.

The appeal site forms part of a group of established agricultural buildings. It comprises a disused agricultural storage building fronting onto Coldharbour Lane, and an open fronted barn to the rear. It is proposed to use the storage building as holiday accommodation with the open fronted barn providing covered parking.

The storage building is of block construction with corrugated iron roofing. It is proposed to convert the building to provide holiday accommodation. The proposed alterations include the provision of insulation to comply with modern standards and the replacement of the mezzanine floor.

The Council accept that the proposal comprises the re-use of the existing buildings. Development plan policies generally support the provision of tourist accommodation and reflect the guidance in PPG2. This states that the re-use of buildings need not prejudice the openness of the Green Belts since the buildings are already there, and their re-use is not inappropriate provided it complies with four criteria specified in paragraph 3.8.

The first criterion requires that the converted building would not have a materially greater impact on the openness of the Green Belt and the purposes of including land within it than the present use. It is not proposed to extend either building,

and the open sided barn would be reduced in size. The proposed roof would increase the height of the main building by about 150mm. The Inspector considered this increase to be insignificant in terms of its impact on the openness of the Green Belt.

The Council expressed concern that the use of a small triangular area of land to the rear of the open fronted barn as a garden could domesticate the landscape and detract from the openness of the Green Belt. At the Hearing the appellant suggested that this area could be landscaped to blend with the surrounding rural countryside. The Inspector was satisfied that the detailed treatment of this area could be submitted as part of the landscaping details.

Councillors expressed concern that without this area, young children would play in the courtyard between the two buildings, where they would be at risk from manoeuvring vehicles. The courtyard area would be overlooked by the proposed holiday accommodation and the only vehicles would be those belonging to the holiday makers. In the Inspector's opinion the courtyard would provide an adequate and safe play space for the future occupants. Overall, the proposal would not have a materially greater impact on the openness of the Green Belt, or the purposes of including land within it.

Criterion (b) requires strict control to be exercised over the extension of reused buildings and the associated use of the surrounding land. It is not proposed to extend either building or the hardstanding between them, and therefore there is no conflict with this criterion.

Criterion (d) requires the form, bulk and general design of buildings to be in keeping with their surroundings. The buildings are of a domestic scale, and the Council raise no objection to this aspect of the proposal. Local residents consider the proposed tiles would contrast unfavourably with the Kent peg tiles of surrounding buildings. Whilst the appearance of the roof may differ from these other dwellings the Inspector considered it would not be unduly obtrusive within the wider landscape.

Criterion (c) requires buildings to be of permanent and substantial construction and capable of conversion without major or complete reconstruction. The appellant submitted a structural survey at the time of the application (the Bedford Report). A structural engineer's report (Hockley & Dawson) and detailed architectural drawings showing the means of construction were submitted with the appeal. There is broad agreement between the parties as to the extent of the works required to convert the building to holiday accommodation, although they disagree as to whether the proposed works amount to major reconstruction.

The open fronted barn is divided into three bays, and is located close to an oak tree outside of the appeal site. This tree is safeguarded by a recent Tree Preservation Order. The northern elevational wall has been subject to damage through ground disturbance associated with this tree, and has been shored up with timber supports. It is proposed to remove the damaged bay. This would increase the distance between the tree and building. Although some of the lower branches of the tree would need to be removed where they touch the existing roof, this is not a consequence of the appeal proposal, and would not harm the tree.

The Council do not object to the removal of this bay, and the Inspector had no reason to disagree.

The main structure of the storage building comprises the roof, foundations and walls. The building is divided into four bays, and although the building has a consistent ridge height, the floor levels within the building step downwards from north to south reflecting the slope of the land.

The existing roof covering would be removed, and an insulated tile support system would be fitted between the rafters in line with the existing roof slope. Lightweight artificial slates would be attached to timber battens. The overall height of the roof would be increased by 150mm. The Hockley & Dawson Report confirms that the suggested specification would improve the thermal performance of the roof to that required by Building Regulations.

To facilitate the use of the mezzanine floor, one of the existing purlins would be removed and repositioned in the northern bay. A steel ridge beam and additional purlins would be provided in this area. With the exception of the northern wall, the existing external walls would remain unaltered other than by the addition of external cladding and internal insulation. It is not proposed to form any additional windows or enlarge any of the existing windows.

The northern elevation comprises a timber frame with corrugated metal cladding, and it is open to the front. The roof structure is also less substantial than the remainder of the building, and it is proposed to strengthen it using a purlin from the southern end of the building. At the Hearing it was confirmed that this wall could either be rebuilt in masonry or the existing frame could be strengthened internally by an adjacent timber wall.

The reports submitted by the appellant state that the existing foundations are adequate for their purpose and do not need strengthening. The Council submitted no evidence to the contrary. It is proposed to build a low retaining wall adjacent to the south west corner where the foundations are exposed due to the erosion of the ground. This wall would also be necessary to provide ramped access to the parking areas.

The proposal involves a number of internal alterations to the agricultural storage building, including insulation to the walls, floor and roof and the provision of a staircase to the mezzanine floor. Conversions generally involve a degree of additional structural fabric to comply with Building Regulation requirements. The majority of the original building would remain. In the Inspector's view, these alterations are typical of many conversions.

A survey submitted by a local resident (The Shefford Report) states that the existing roof and walls would need to be rebuilt in order to comply with Building Regulations. No evidence was put forward to support this view. In the light of the appellant's extensive technical evidence, the Inspector was satisfied that the existing wall and roof structure shown on the submitted plans is sound and capable of accepting the proposed alterations.

Although the northern bay would require a significant amount of building work to convert it to habitable accommodation, taken as a whole, the majority of the existing roof structure, external walls and foundations would be unchanged. The Inspector concluded that the building is of permanent and substantial construction and capable of conversion without major reconstruction. The appellant referred the Inspector to a number of other conversions within the area where the Council determined that works of a similar scale were not considered to be major rebuilding. Taking account of all of these factors, the Inspector concluded that the proposal would comply with criterion (c) of paragraph 3.8.

The Inspector therefore concluded that the proposal would not constitute inappropriate development within the Green Belt, and would comply with policies 6/14 and 6/15 of the Tonbridge and Malling Local Plan, policy CP3 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy, policies SS2, SS8 and EP12 of the Kent & Medway Structure Plan and the guidance in PPG2. The Inspector found that the proposal does not amount to inappropriate development within the Green Belt, therefore it was not necessary for her to consider whether there are any very special circumstances that would justify the proposal.

*Application by the Appellant's for an award of costs*

### **The Submissions for the Appellant**

Annex 1 Paragraph 1 of Circular 8/93 makes it clear that costs are only awarded where unreasonable behaviour is held to have occurred. Paragraph 8 of Annex 3 states that the Planning Authority will be expected to produce evidence to substantiate each reason for refusal by reference to the development plan and all other material considerations.

The Council's case relies on their view that the proposal constitutes major reconstruction of the building. No technical evidence was produced in support.

The application was accompanied by a scheme of drawings and a Design & Access statement. The Bedford Report looked at the structure of the building and was submitted during the course of the application. In preparation for this appeal a second structural survey was undertaken by Hockley & Dawson. This was informed by ground investigation and almost full working drawings from Peter Yangiou Associates. The proposed scheme was also sent to Stroud District Council for an independent view of the proposal. The only contrary evidence was a report by Mr Treliving of Sheffords Surveyors, based on an external inspection of the building from his client's land and some photographs his client had in his possession.

All of this information demonstrated that the building could be converted without major or substantial reconstruction. In the absence of any contradictory evidence the Council's approach to this case is inconsistent with other recent cases. This inconsistency and failure to provide any sound technical evidence amounts to unreasonable behaviour.

## **The Response by the Council**

Costs can be awarded if unreasonable behaviour has occurred. The issue is whether the extent of the works amount to major or substantial reconstruction. The reason for refusal expressed doubt on the practicality of converting the building without major or substantial reconstruction.

There is no dispute as to the extent of the works required, but Members felt the extent of the works were major. Members took account of all factors. The fact that amendments made to the scheme following the refusal confirm that Members' doubts were correct. The advice from the Chief Building Control Officer at Stroud was not informed by calculations. There are a number of differences between the Bedford Report and the Hockley & Dawson Report. If the scheme were to be built in accordance with the proposal, the building would be substantially rebuilt. Retaining walls are necessary to protect the foundations. Bay 1 has inadequate footings but two storeys of accommodation are proposed. The Hockley & Dawson report does not mention foundations and the plan showing the foundations was not submitted until 14 October. The Council did behave reasonably and had evidence to support their doubt.

## **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 proposal was originally deferred by the Committee in order that further information could be provided as to the structural integrity of the buildings and their suitability for conversion. Subsequently, a structural appraisal (the Bedford Report) was submitted. It proposed the removal of the northern bay of the three bay carport. The roof, enclosing walls and floor of the main building were found to be in a sound and satisfactory condition and required little additional repair or strengthening work.

A further report to Committee expressed uncertainties about the ability of the foundations to accept any additional load and whether the Building Regulation requirements for thermal insulation would impact on the cladding to the building. The application was refused and an appeal lodged.

The appeal was held in abeyance whilst a second application was considered by the Council. This was almost identical to the appeal proposal, but included detailed architectural drawings, an assessment by Hockley & Dawson Structural Engineers and a letter from the Chief Building Control Officer at Stroud District Council, confirming that there was sufficient information to comply with Building Regulation requirements. The committee report in relation to the second application advised that the additional information had been reviewed by the Council Engineers and Building Inspectors, and they endorsed the appellant's assessment. This application was also refused, and as a result the current appeal was not withdrawn.

Paragraph 9 of Annex 3 to Circular 8/93 makes it clear that the failure of Planning Authorities to adopt, or include as part of their case, professional or technical advice given by their own officers is not a reason in itself for an award of costs to be made. However, in such cases they will be expected to show that they had reasonable planning grounds for taking such a decision contrary to such advice and they were able to produce relevant evidence to support their decision in all respects.

The Inspector acknowledged there could have been some doubt in relation to the suitability of the foundations at the time that the first application was considered by the Council. Nevertheless, the information subsequently submitted both in respect of this appeal and the more recent application provided extensive information in relation to the extent of the works required. These findings were endorsed by Council Officers. The committee report also advised that the extent of works proposed were not unusual where building are to be converted, and the proposed structural alterations would not be major, or conflict with planning policy. Planning decisions in respect of the conversion of other rural buildings lend support to this view. This information was available to the Council for some considerable time before the Hearing, and they produced no technical evidence or other evidence to the contrary.

In the Inspector's opinion the Council submitted insufficient evidence to support the reason for refusal, and acted against the advice of their Officers without sound reason, resulting in unnecessary expense. The Inspector concluded that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated, and a full award of costs is justified.

- 1.2 Site **Brookside Farm, Bourne Lane, Yopps Green, Plaxtol**  
 Appeal **Against a grant of planning permission subject to conditions (the renewal of planning permission TM/02/01355/FL for the erection of a replacement dwelling)**  
 Appellant **Mr M Otto & Mrs J Holdsworth**  
 Decision **Appeal allowed**  
 Background papers file: PA/56/08 Contact: Cliff Cochrane  
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The condition in dispute is No. 7 which states that: The existing caravans/mobile homes on the site shall be removed within one month of the first occupation of the new dwelling hereby permitted with the land reinstated to its former condition and no further caravans shall thereafter be brought onto the site for additional living accommodation without the prior written approval of the Local Planning Authority.

The disputed condition was not on the permission granted in 2003 for the erection of the replacement dwelling. It was an additional condition on the renewal permission. The Inspector considered the main issue to be whether the condition No. 7 would pass the tests in Circular 11/95 on the imposition of conditions.

There are 2 mobile homes /caravans on site. Work on the replacement dwelling has not commenced and the old fire-damaged structure remains in place. A S106 Obligation requiring the developer to clear the site of scrap metal, abandoned vehicles and the like was linked with the earlier permission but a replacement Obligation was not sought for the renewal application because the necessary works had been carried out. This Obligation made no reference to any requirement to remove caravans.

The Inspector recognised that there is provision in the GPDO for the occupation of a caravan on site for the accommodation of a person or persons employed in connection with permitted building operations, subject to the use being discontinued and the caravan being removed when the circumstances (i.e the building works) cease to exist. However, there are no building works in this case. Furthermore, there is no evidence that the caravans were brought to the site in connection with the proposed building works. But, even if they were, any permitted development for the caravan site would end with the completion of the works such that any condition imposed by the Council to secure the same result would be unnecessary.

No link has been shown to exist between the stationing of caravans and the dwelling for which planning permission has been granted. But, the effect of condition No. 7 is that, if the caravans were to remain in place after completion of the new dwelling, the Council could seek to enforce the condition to secure removal of the caravans by way of a Breach of Conditions Notice, against which there would be no appeal.

There has been no planning application for the caravans because none has been requested and no application for a Lawful Development Certificate. The Inspector considered that the condition No. 7 to be an opportunistic attempt to secure the removal of the caravans that side-steps normal enforcement procedures. The condition fails to pass the tests of being necessary for the permission for the dwelling; of relevance to the development permitted; and of reasonableness. Accordingly the Inspector allowed the appeal.

**Julie Beilby**  
Central Services Director