

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 2 PLANNING COMMITTEE**

**08 April 2009**

**Report of the Central Services Director**

**Part 1- Public**

**Matters for Information**

**1 PLANNING APPEAL DECISIONS**

- 1.1 Site **The Paddock, Basted Lane, Crouch, Borough Green**  
Appeal **Against the refusal of permission for the change of use of a building from a residential annexe to a residential dwelling**  
Appellant **Mr & Mrs Safdar**  
Decision **Appeal dismissed**  
Background papers file: PA/50/08

Contact: Cliff Cochrane  
01732 876038

The Inspector considered the main issues to be the effects of the proposal on:

- highway safety;
- the character and appearance of the locality; and
- living conditions.

The first issue was raised as an objection by the Council, the other two by local people.

**Reasons**

The Tonbridge and Malling Borough Council Local Development Core Strategy (CS) includes Policies CP1, CP13 and CP24. CP1 encourages adequate housing provision but requires, amongst other matters, for development to protect and enhance the natural and built environment and preserve residential amenity. Crouch is a rural settlement identified in Policy CP13 as being suited to minor development of a scale and character suited to the settlement. Policy CP24 seeks a high quality environment and, amongst other matters, calls for good design with scale, density and layout to respect the site and its surroundings and to, if possible, increase the safety of an area and not be detrimental to the functioning of a settlement.

### *Highway safety*

In the Inspector's opinion a separate dwelling would generally give rise to more vehicle movements than an annexe as there would be less likelihood and scope for shared trips. This is a long narrow driveway with very limited opportunity for passing vehicles and no provision for pedestrian separation. To his mind this is not conducive to preserving safety. More seriously, the exit onto Basted Lane offers very poor visibility, most particularly to the east, due to road alignment and tight, high, boundary treatment. The Inspector accepted that a number of properties along this lane, and, of course, those presently using the driveway, do not enjoy extensive lines of sight but he saw no reason why this situation should be added to in a form which would further decrease safety levels locally.

The Inspector carefully considered the points raised by the appellants on this matter and noted the view of the Kent Highways; however he deemed the proposal would be unacceptable in highway safety terms. A decline in highway safety does not represent good design, would lessen the well-being and functioning of the village, and would run contrary to CS Policy CP24.

### *Character and appearance*

The character of this area is one of generally large dwellings in extensive plots with a high quality, low density, appearance stemming from separation of properties and substantial landscaping. The proposal would completely miss the mark in these terms. It would bear virtually no comparison with what is around in matters such as scale, layout, siting or amenity space. The proposal for a separate dwelling in this form, with this close right angle relationship to The Paddock and the consequent uncharacteristic layout of gardens which would result, cannot be said to be respecting the character or appearance of the area. It would be quite alien.

The Inspector took into account all the points raised by the appellants on character and appearance related matters, including those submitted after the site visit in the context of the CS relevant policies, and he appreciated that the Council was satisfied under this heading. However he had serious concerns on this front. Merely because the building exists as an annexe is no reason to countenance what would effectively be poor design and layout for a new dwelling which would not respect, or reflect, its setting as, effectively, called for in the three CS policies identified above.

### *Living conditions*

A characteristic of this area is the high level of residential amenity enjoyed by local people. Houses tend to be well separated, the opportunities for disturbance are limited and in general a good degree of privacy is found within gardens. Use of the appeal building as a separate dwelling would not conform

to this norm. Overlooking from, and to, an annexe is quite acceptable, tight relationship between the buildings and close activity would be expected and a single garden area would be used. The situation would be quite different with the appeal proposals as two separate households would be in relatively quite unsatisfactory juxtaposition.

There would be direct overlooking, mutual disturbance, inadequate separation and contrived garden division leading to poor distribution of amenity space. Unsatisfactory living conditions would result for the occupiers of the appeal building and the donor property, The Paddock.

### *Conclusions*

For the reasons given above, and having regard to all matters raised, the Inspector concluded that the proposal would have unacceptable adverse effects upon:

- highway safety;
- the character and appearance of the locality; and
- living conditions.

It would be contrary to the relevant policy objectives of the CS.

Site	<b>Glebe Lodge, Maidstone Road, Platt</b>	
Appeal	<b>Against the refusal of permission for the replacement of a defective pitched and flat roof covering with pitched roof covering</b>	
Appellant	<b>Mr &amp; Mrs G Ashley</b>	
Decision	<b>Appeal dismissed</b>	
Background papers file:	PA/53/08	Contact: Cliff Cochrane 01732 876038

The Inspector considered there to be three main issues in this case:

- whether the proposal constitutes inappropriate development in the Green Belt;
- the effect of the development on the openness of the Green Belt; and
- whether, if there is harm identified by reason of inappropriateness, and any other harm, it is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

### **Reasons**

There is no dispute that the site lies within Green Belt. Only in very special circumstances should inappropriate development be approved. Inappropriate development is, by definition, harmful to the Green Belt and the onus is on any proposer to show why permission should be granted.

The Tonbridge and Malling Borough Council Local Development Core Strategy (CS) includes Policy CP14 which reflects PPG2 regarding the need for any

inappropriate development to be justified by very special circumstances.

### *Inappropriate development in the Green Belt*

PPG2 indicates that new buildings inside a Green Belt would generally be inappropriate but makes an exception of, amongst other development, limited extension or alteration of existing dwellings. It then goes on to refer to acceptable extensions or alterations using the test of them being a not disproportionate addition over and above the size of the original dwelling. Having seen the site, assessed the form of the property and considered the cases put by the appellant and the Council the Inspector was of the opinion that this new roof proposal would represent a very significant and sizeable extension in volume and that in relative terms it would be a disproportionate addition over and above the size of the original dwelling. Using PPG2 exceptions and definitions he concluded that the appeal proposal would be inappropriate development in the Green Belt and harmful in that regard.

### *Openness*

The new roof proposed would in the Inspector's opinion impact upon the openness of the area. It would be a sizeable addition to the dwelling as a whole which sits in a dominant elevated position relative to Maidstone Road. There would be a loss of open skyline from certain angles and the overall bulk and prominence of the home would increase substantially. Whilst not altering footprint, the roof would significantly increase the degree of built form on the site, and would unavoidably reduce openness causing harm to the most important attribute of Green Belt.

### *Other considerations*

The appellants underline a number of factors perceived as positive aspects of the scheme, which include, amongst other matters:

- the current roof comprising an incongruous mix of forms;
- problems encountered with this poorly performing unsustainable roof structure;
- visual enhancement generally;
- gains in insulation and sustainability;
- the use of a well-designed characteristic barn roof style approach;
- careful selection of materials including plain clay tiles;
- the countryside setting with its distance from the main road;
- other roofs in the area; and
- the argument generally of planning policy compliance.

The Inspector considered all matters raised. He agreed that the present roof appears an unsatisfactory mix of forms and he appreciated that it requires maintenance or replacement, that it is poorly performing and that there is a

reasonable wish on behalf of the appellants to improve matters visually and in heat retention terms. He understood the selection of materials and the design approach which has been taken and why this might appear appropriate to the appellants who also point to other large roofs nearby, which he noted at the site visit. He acknowledges that views of this dwelling are restricted from a number of directions.

Notwithstanding all these points the Inspector was greatly concerned that the design of this roof is simply too tall and bulky, and would have significant gable walling, such that it would over-impinge upon openness. He was not satisfied that other options for re-roofing in a more low key form which might be deemed acceptable have been fully explored by the appellants. He noted the appellants' criticism of the Council's alternative sketch scheme but considered that perhaps some common ground could be found in the future; though clearly other proposals would have to be determined afresh on their own merits. He carefully considered the planning policy position which has been put on behalf of the appellants, and his conclusion as above on policy matters stands. In summary he did not find the appellants' promotional points to be particularly compelling reasons for this development.

*Very special circumstances*

For the presumption against inappropriate development, and the other harm to the Green Belt the Inspector identified, to be fully countered, very special circumstances must exist whereby this substantial harm is, to use the phrase in PPG2, 'clearly outweighed by other considerations'. In assessing all the factors he was in no doubt that there are no very special circumstances to shift the balance to this development being justified and allowed within its Green Belt setting.

Site **2 Hale Street, East Peckham,**  
 Appeal **Against an enforcement notice alleging a breach of planning control namely a material change of use of the land from a petrol filling station with associated uses for the purpose of providing a car wash service to the general public**  
 Appellant **Mr P Lekaj**  
 Decision **Appeal dismissed and enforcement notice upheld**  
 Background papers file: PA/43/08 Contact: Cliff Cochrane  
 01732 876038

The appeal was made under grounds (a), (c), (e) and (g) of section 174(2) of the Town and Country Planning Act 1990.

**Ground (e)**

The appellant complained that the notice was not properly served since it was only served on the sub-tenant and not on the owner and principal tenant. A copy of the notice is required to be served on the owner and any person having an interest in the land. The Council pointed out that when a planning application was made for the use the appellant indicated he was the owner and that nobody else had an interest in the land. A later requisition for information was made but the appellant did not provide full details and a follow up letter was not replied to. The Inspector considered that the Council had taken reasonable steps to ascertain those with an interest in the land but the appellant had failed to provide the required information, and he was in the best position to give it. In addition to the copy served on the appellant a further copy was posted on site addressed to "The Owner", which is, in the circumstances, an appropriate action. However, the Inspector considered it of greater significance that the appellant provided no explanation as to how those not served had been substantially prejudiced by that failure. There is no evidence that those not served would have appealed the notice and no evidence to suggest a real risk that they might have been substantially prejudiced. In these circumstances the Inspector disregarded the fact that they were not served and the appeal on ground (e) failed.

**Ground (c)**

The appellant argued that there had been no material change of use because the car washing service is associated with the previous use of the site for car related services. The Inspector considered this to be misplaced since it ignores well established planning law principles of primary and ancillary uses. The lawful use of the site was a petrol filling station, including shop, used car sales, car hire, car valeting and minor mechanical repairs. The car valeting was an ancillary activity. The business that operated that mixed use has ceased; car sales no longer take place and the pumps have been removed. The use alleged has now ceased but from the evidence it appears that it was wholly concerned with car washing and people brought their cars to the site for that purpose alone. That was the primary use of the land and amounted to a material change of use.

**Ground (a)**

The site has provided car related services historically and the residential environment of the houses that adjoin it need to be judged in that context. The Council had taken action under the Environmental Protection Act because of a statutory noise nuisance and car washing equipment was seized. The business no longer operates and so the Inspector was not able to judge for himself the level of noise created but he considered that the evidence that it was excessive and inappropriate in this location is compelling. The assertion in the grounds of appeal that it does not have a negative impact upon the amenity of neighbouring residential properties is unsupported.

The Inspector could not grant conditional permission for the use confident in the knowledge that the past problems would be adequately overcome by those conditions.

### **Ground (g)**

The use has now ceased and the reason in support of extending the compliance period given when the appeal was made no longer apply.

Site **Wateringbury Place, 50 Canon Lane, Wateringbury**  
 Appeal **Against the refusal of permission for an all weather  
 helicopter landing pad and associated earthworks and  
 lighting**

Appellant **Wateringbury Place Holdings SA**

Decision **Appeal allowed**

Background papers file: PA/51/08

Contact: Cliff Cochrane  
 01732 876038

The Inspector considered the main issue to be the effect of the proposal on the character of Wateringbury Conservation Area.

During the inquiry the Council withdrew its objection to the proposed development, subject to the amended conditions which were agreed between the parties during the inquiry. In reaching her decision, the Inspector had regard to the fact that the Council and the three interested parties who presented evidence at the inquiry no longer objected to the proposal.

Wateringbury Place is a II\* listed building situated in Wateringbury Conservation Area. The Inspector noted the Council's view that the general ambience of a conservation area can contribute towards its character and in this case she considered that the peaceful, tranquil character of the parkland does indeed contribute to the character of the Wateringbury Conservation Area.

The helipad would be situated in the centre of the parkland. Physical changes to create a paved landing area by cut and fill would be low key and have no significant impact on the landscape, but the Inspector recognised that the frequent use of the helipad could disturb the quiet, tranquil character of the surrounding area. However, conditions were suggested to limit the times and frequency of use. A condition agreed by the main parties would restrict the overall number of flights to 48 per year, with each flight comprising two "movements", landing and take off. This would equate to 96 "movements" a year. A further agreed condition would restrict flights to a maximum of one per day at weekends and bank holidays and three per day on other working weekdays.

Estimations of the duration of helicopter noise, set out in the statement of common ground, indicate that noise associated with each movement would last for less

than 10 minutes. On this basis the Inspector considered that the use of the helipad, taking place less than once a week on average, would undermine the tranquillity of the surrounding area. Subject to the conditions, the Inspector was satisfied that the proposal would preserve the character of the conservation area and be consistent with the objectives of Policy QL6 of the Kent and Medway Structure Plan 2006 and advice in PPG15.

It was common ground that flights could take place from a number of locations on the appellant's land without planning permission. Such use would be allowed either under section 55 (2)(d) of the Town and Country Planning Act 1990 or, for 28 days per year on each planning unit owned by the appellant under the GPDO. Flights taking place under these fall back positions would be largely unrestricted. However, a condition was suggested to prevent helicopters landing and taking off from anywhere on the appellant's land except the proposed helipad. This would allow strict control over the number and frequency of helicopter flights to be imposed through conditions attached to the proposed development.

Further conditions were suggested to restrict the hours during which flights would take place, to control ground level lighting, to restrict refuelling operations to the helipad site and to limit use of the helipad to the current owner of Watringbury Place. The Inspector considered that all of these conditions, together with restrictions on the frequency of flights would protect local residents from the noise disturbance of frequent night time flights. In order to protect the appearance of the surrounding area the Inspector attached a condition to secure the removal of the helipad when it is no longer required.

**Julie Beilby**  
Central Services Director