

3. The Site:

- 3.1 The site is located outside the settlement confines of Platt, within the Metropolitan Green Belt and a Site of Nature Conservation Interest. The site is located within a secluded located within a cleared area within a coppiced woodland, well away from any settlement. The site is accessed via private tracks.

4. Planning History: (Most relevant)

TM/06/03316/FL Grant With Conditions 6 December 2006

Triple car port and stable with first floor storage

5. Consultees:

- 5.1 PC: We object strongly to the application. The location is within the MGB and Nature Conservation Areas and this is effectively a new dwelling within such areas that does not have any exceptional circumstances to justify it. Access to the location is along unsurfaced tracks through the woods on land not owned by the applicant and which connect to very narrow country lanes where increased traffic flows should be avoided.

We are repeatedly objecting to the inclusion of upper floor areas to garages or car ports like this as they often become residential in this manner.

- 5.2 Private Reps (including Art 8 Site Notice): 2/0X/0S/2R. The reasons for the objections are:

- The building is a fully independent dwelling house, built without planning permission in the Green Belt and a Nature Conservation Area.
- The building is large and has been built differently to the agreed specifications.
- The local infrastructure does not support this additional dwelling (water/electricity)
- The applicant has installed his own sewerage system without permission.
- The use of the footpath/bridleway should be preserved as much as possible for pedestrian/horses.
- The location of the property in the Green Belt requires special circumstances to allow dwellings to be erected.
- The applicant has no right of access for services to this property across privately owned land.

6. Determining Issues:

- 6.1 The main determining issue is the principle of the development. The applicant has described the building as containing annex residential accommodation as well as the triple bay car port. However this building, which has been erected without the benefit of planning permission, contains a generous amount of accommodation. Two bedrooms, a living room, kitchen and bathroom are all located within this building. I consider the level of accommodation to be such that the building is capable of being accommodated with no reliance on the “principal” dwelling within this site for any service. The building has been erected some 12 m to the side (south) of the principal dwelling within the site. The building shares a driveway with the principal dwelling and of course shared car parking/storage of domestic equipment also takes place within the car port. Given the level of accommodation that is provided within the building, and its distance away from the main dwelling within this site, I consider that the building provides more than what can be reasonably described as annex accommodation to 2 Keepers Cottage. It is, to all intents and purposes, a self contained dwelling in which a family of three lives independently.
- 6.2 Current Government Guidance contained within PPG 2 (Green Belts) states that there is a presumption against inappropriate development within the Green Belt and that such development should not be allowed except in very special circumstances. It also states that inappropriate development is, by definition harmful to the Green Belt and it is for the applicant to demonstrate why permission should be granted. Policy SS2 of the Kent and Medway Structure Plan 2006 and policy CP 3 of the Tonbridge and Malling Borough Core Strategy 2007 require proposals to comply with current Government guidance concerning development within the Green Belt.
- 6.3 The erection of a dwelling house does not fall within any of the categories of development listed in PPG 2 as being appropriate within the Green Belt.
- 6.4 It is also stated in PPS 7 (Sustainable Development in Rural Areas) that Local Planning Authorities should strictly control new house building within the countryside away from established settlements or from areas allocated for housing in development plans. Policies HP 5 of the Kent and Medway Structure Plan 2006 and CP 14 of the Tonbridge and Malling Core Strategy 2007 also relate to development within rural areas. Neither of these policies allows for the erection of dwelling houses outside established rural settlements and the development is, therefore, also contrary to these policies as well.
- 6.5 It therefore needs to be considered whether the putative case of very special circumstances, submitted as part of this application, is sufficient to outweigh the strong policy objection to this development.

- 6.6 The case seeking to demonstrate very special circumstances put forward by the applicant centres on his ill health (a history of heart attacks) that has left him short of breath and with chest pain. He is unable to carry out certain maintenance works within his property. The applicant considers it necessary for his son and his family to live on site to help with the maintenance of this property and to assist in case of emergency (e.g. if the applicant needs to travel to get medical attention - the applicant's wife does not drive and the site is located within an isolated area).
- 6.7 Whilst the applicant's ill health is a concern, I do not consider that it is necessary for a dwelling to be located within this Green Belt site to house family members to help with the maintenance of the property. Garden maintenance can be undertaken either by family members visiting the site on a regular/occasional basis or by employing the services of a landscape gardener. Similarly, whilst it is desirable to have members of the family around in case of emergency or to help with other routine matters, I do not consider, in the circumstances of this particular case, that this justifies erecting a dwelling house within this Green Belt site. In light of the above, I do not consider that the case of very special circumstances put forward by the application outweighs the principal policy objection to this development. Moreover, Government guidance says that personal circumstances such as those claimed here will not normally be a material planning consideration.
- 6.8 As this is a retrospective application, if permission is refused for this unauthorised development, it will be necessary to consider the necessity/expediency of taking enforcement action to regularise the situation. Several factors need to be taken into consideration in this regard.
- 6.9 Planning permission was granted for a similar structure under ref. TM/06/03316/FL. This permission related to a triple car port and stable with first floor storage (tack room and a hobby area). The approved building measured 13.5m x 6.5m x 5.5m high to ridge. This building is very similar in terms of size, form and design to the building the subject of the current application. The approved building would have been located 5 metres away from the dwelling house within this site.
- 6.10 The building the subject of the current application has a very similar impact upon its immediate environment and the residential amenity of the neighbouring property as the previously approved building due to its similar location, size, form and design. Its relocation 7 metres to the south did not require the removal of any trees or habitat within the Site of Nature Conservation Interest as it is still located within the residential curtilage of this property. Therefore, I consider it to be unreasonable to seek the demolition of this building as its physical characteristics are acceptable in planning terms. However, I do not consider it appropriate for this building to have been erected for use as a single family dwelling house and I therefore consider it would be appropriate to take enforcement action against the use of the building, but not against the erection of the building. I therefore

recommend that an Enforcement Notice is served to require the cessation of the use of this building as a dwelling house and to require it to be used only for purposes ancillary to the use of the existing “principal” dwelling house.

- 6.11 This course of action would in all likelihood make the applicant’s son and his family homeless. Accordingly, a reasonable amount of time would need to be stipulated on an Enforcement Notice to comply with its requirements to enable the occupiers to find alternative accommodation. I would suggest a period of six months.
- 6.12 A fundamental issue in this type of case is the European Convention on Human Rights as applied by the Human Rights Act 1998. Article 8 of the European Convention on human Rights requires that “everyone has the right to respect for his private and family life, his home”. In terms of a refusal of planning permission and any subsequent enforcement action, the Courts have set a test to be applied: whether planning measures taken by a Local Planning Authority are necessary and proportionate, having regard to both the potential harm to the environment and the personal circumstances of the applicants.
- 6.13 In this case the unauthorised development is inappropriate development within the Green Belt and contrary to established Green Belt and countryside protection policies and Government guidance. The case of Very Special Circumstances is not considered to outweigh the principal policy objection to the development. Furthermore, no information has been submitted as to why the applicant’s son could not find accommodation elsewhere in the locality. In these circumstances, and having taken due account of the Human Rights issues, I consider the proposal enforcement action to be both necessary and proportionate.
- 6.14 In light of the above I recommend that permission be refused and an Enforcement Notice be served.

7. Recommendation:

7.1 Refuse Planning Permission for the following reasons:

- 1 The Local Planning Authority considers that the development entails the erection of a dwelling house within the Metropolitan Green Belt and rural area, rather than a residential annex. The erection of a dwelling house within this site is inappropriate and, therefore, contrary to current Government guidance contained in PPG 2 and PPS 7, policies SS 2 and HP 5 of the Kent and Medway Structure Plan 2006 and policies CP 3 and CP 14 of the Tonbridge and Malling Borough Core Strategy 2007.
- 2 The Local Planning Authority does not consider that there is any justification, in the circumstances of the present application for overriding the planning policy objections.

7.2 An Enforcement Notice **be issued** as set out below and copies **be served** on all interested parties.

The Notice to take effect not less than 28 days from the date of service, subject to:

- The concurrence of the Chief Solicitor, he being authorised to amend the wording of the Enforcement Notice as may be necessary.
- In the event of an appeal against the Notice the Secretary of State and the appellant to be advised that the Local Planning Authority is not prepared to grant planning permission for the development the subject of the Enforcement Notice.

Breach of Planning Control Alleged

Without planning permission, the erection of a single family dwelling house.

Reasons for Issuing The Notice

The site is located within the Metropolitan Green Belt and rural area where current Government guidance contained within PPG 2 and PPS 7 presumes against the erection of new dwellings. The erection of a dwelling house in this rural, Green Belt location is inappropriate in terms of the advice in PPG2 and contrary to policies SS 2 and HP 5 of the Kent and Medway Structure Plan 2006 and CP 3 and CP 14 of the Tonbridge and Malling Bore Core Strategy 2007.

Requirement

To cease the use of the building as a single family dwelling house and to use the building only for purposes ancillary to the use of the dwelling house known as 2 Keepers Cottages.

Period for Compliance

Six months from the date the Enforcement Notice takes effect.

7.3 Further Proceedings

In the event of the Enforcement Notice not being complied with and subject to satisfactory evidence, the Chief Solicitor **be authorised** to commence any proceedings which may be necessary under Section 179 of the Town and Country Planning Act 1990 (as amended) to secure compliance with the Enforcement Notice.

Contact: Matthew Broome