

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

24 June 2009

Report of the Chief Solicitor

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

- .1 Site **Kings Cottage, Crowhurst Lane, Plaxtol**
Appeal **Against the refusal of permission for a conservatory**
Appellant **Mr & Mrs R Cousins**
Decision **Appeal dismissed**
Background papers file: PA/60/08

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The Inspector considered the main issues to be whether (a) the conservatory is inappropriate development in the Green Belt, (b) there would be any other harm to the Green Belt; and (c) if inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development.

Kings Cottage is a detached house within a large plot on land that rises steeply from Crowhurst Lane. The property is in an isolated rural area where there are only a few houses and farms. In 1983 planning permission was granted for a ground and part first floor extension and a detached double garage. The existing building at that time was a pair of cottages, described by the Council as derelict. This permission has been implemented and the house has not been extended since.

Planning Policy Guidance 2 (PPG2) sets out a presumption against inappropriate development in the Green Belt. The construction of new buildings in the Green Belt is inappropriate unless it is for purposes listed in paragraph 3.4, which includes the limited extension of existing dwellings. Paragraph 3.6 states that provided it does not result in disproportionate additions over and above the size of the *original* building, the extension of dwellings is not inappropriate. Policy CP3 of the Tonbridge and Malling Core Strategy applies national policy to the Green Belt of the Borough.

The Inspector considered that the pair of cottages that existed in 1983 constitutes the original building for the purposes of applying national and local policy. The fact

that these cottages were no more than a ruin did not persuade him that he should not regard them as a building. The 1983 planning application is clearly described as extensions to an existing house. The house that currently exists cannot be regarded as the starting point. The focus on the *original* building means that the cumulative effect of additions must be taken into account.

The Council state that 1983 development increased the footprint of the original building by about 189%. The appellants have not disputed this figure, but irrespective of the precise calculation, the Inspector could see from the 1983 plans that the existing small pair of cottages was very considerably increased in scale. Whilst most of the additional floorspace was at ground floor level, the works resulted in a considerably higher ridge and bulkier roof. The pair of cottages has been subsumed into a much larger building. The double garage is also a substantial additional building which, given its proximity to the house and matching materials, is analogous to an additional extension.

The proposed conservatory would be 6m by 4m with a ridged roof. In the context of the *existing* building it would be a modest addition. But in the context of the *original* building the proposal would exacerbate the extent to which it has already been the subject of disproportionate additions. Accordingly, the Inspector considered that the proposed conservatory does not amount to a limited extension as defined in PPG2 and is inappropriate development. PPG2 advises in paragraph 3.2 that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be attached to this harm.

The conservatory would result in a loss of openness since it is the erection of a building where there is no building at present. However, in the practical circumstances of this site, the Inspector considered that this results in little additional harm. The conservatory would be between the rear of the house and a steep bank. The natural ground level of the top of the bank would be at the roof level of the proposed conservatory. The conservatory would not be seen in public views. Dense woodland surrounds the garden of Kings Cottage and this would preclude views from adjoining private land. There would be no material conflict with the purposes of the Green Belt. But these facts do not alter the Inspector's assessment that the proposal is inappropriate development.

The appellants emphasise the hidden nature of the site and the absence, in their view, of any practical harm to the Green Belt. The Inspector took this into account in considering the effecting on openness. He accepted that the conservatory would be an attractive and practical addition to the house and add to the amenity of present and future occupiers.

On balance, the considerations in favour of the appeal do not clearly outweigh the significant harm arising from its inappropriateness. Very special circumstances to justify the development do not exist and accordingly the

Inspector dismissed the appeal.

- 1.2 Site **Walnut Tree Farm, Addington Lane, Trottiscliffe**
 Appeal **Against the refusal of permission for the conversion and extension of outbuilding to create a small detached dwelling, one and a half storey high, with parking and turning facilities.**
 Appellant **Mr & Mrs Venis**
 Decision **Appeal dismissed**
 Background papers file PA/58/08 Contact: Cliff Cochrane
 01732 876038

The Inspector considered the main issue in the appeal to be the effect of the development on the character and appearance of the area, having regard to its location within Trottiscliffe Conservation Area and the Kent Downs Area of Outstanding Natural Beauty, and its proximity to the Green Belt. The Inspector also had regard to s.72 of the Planning (Listed building and Conservation Area) Act 1990 which requires special regard to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

The outbuilding at the rear of the farmhouse which it is proposed to convert and extend into a new dwelling is a relatively small, single storey structure, under a shallow, mono-pitched roof. Its eastern flank wall is a continuation of the farmhouse's long ragstone garden wall bordering Addington Lane. This wall is identified as an important feature of the south-eastern entry into the village in the Conservation Area Study, which the Inspector considered a material consideration in the appeal.

Due to its low height relative to the boundary wall and the continuity of materials, the Inspector considered the visual impact of the existing outbuilding to be low key when viewed at close quarters from Addington Lane. For the same reason, its impact on longer views out of the village into the open countryside is minimal. Consequently she considered that the existing structure does not intrude visually into the space between Walnut Tree Farmhouse and the open land to the south when viewed from the public domain. In its present form therefore she considered that it helps to preserve the sharp demarcation between built development within the confines of the village and the open countryside beyond.

Due to its small size, simple utilitarian design and agricultural storage use, the building is subservient to Walnut Tree Farmhouse and preserves the visual and functional connection between the farmhouse and the land to the south, which is part of the agricultural holding.

The Inspector considered that the visual and functional relationships she had identified would change dramatically as a result of the proposal. The footprint of the existing building would be enlarged by extensions to the side and front, including a large gabled bay on the south east elevation. The provision of

accommodation at first floor level under a steep pitched roof and raised eaves would significantly increase the overall height of the structure, and make its volume, bulk and mass far greater than at present.

The proposed dwelling would be particularly noticeable in views from Addington Lane due to its increased height, bulk and mass. Viewed from within the village, the proposed building would project forward of the existing farmhouse on the return frontage to Addington Lane, thereby compromising views of the open countryside to the south of Walnut Tree Farm. Longer views of Walnut Tree Farmhouse on the approach to the village from the south would be obscured by the steep pitched roof of the new dwelling with its large gable set at right angles to the lane.

The asymmetrical gable rising to a height of over 7m where it abuts the narrow grass verge and carriageway in Addington Lane would be a dominant feature in close views along the lane in both directions. Due to its siting, height and bulk, the proposed dwelling would undermine the visual dominance of the distinctive ragstone boundary wall which runs along the return frontage to the lane.

As proposed to be altered, enlarged and extended, the Inspector considered that the existing structure would no longer look like a functional farm building, but would have the appearance of an independent dwelling, competing visually with, rather than being subservient to, the existing farmhouse. Furthermore, the subdivision of land and physical separation of the existing farmhouse from the new dwelling and the remainder of the farm as proposed would literally cut off the farmhouse from the agricultural holding to the south and bring to an end the historic spatial and functional relationship between farmhouse and farmland.

For the reasons given the Inspector considered that the proposed development would intrude into views in and out of the historic core of the village, compromise the clear break between the built-up part of the settlement and the open countryside and undermine the visual and functional relationship between Walnut Tree Farmhouse and the agricultural holding. In these respects she considered that it would harm some of the key features of the Conservation Area which the Council is seeking to preserve and enhance.

The appeal scheme would result in a much larger building than existing, sited hard up against the boundary of, and conspicuous from, the Green Belt. It would also increase the amount of built development at a sensitive location on the edge of the village, where it would be prominent in views from the countryside. These considerations added weight to the Inspector's concerns about the proposal's impact on the Conservation Area.

For all these reasons the Inspector concluded that the proposal would harm the character and appearance of the area, having regard to its location in the Trottscliffe Conservation Area and the Kent Downs AONB, and its proximity to the

Metropolitan Green Belt. In these respects it would conflict with saved Local Plan Policies P6/14 and P6/15, Core Strategy Policies CP13 and CP24 and PPG15 *Planning and Historic Environment*.

- 1.3 Site **Otford Tool and Gauge Company, Maidstone Road, Platt**
 Appeal **Against the refusal of permission for the erection of a single storey machine workshop as an extension to the existing 'mill', a two storey building with car parking and archive storage above and a terrace of 4 No. 2 ½ storey, 3 bedroom houses following the demolition of an existing workshop and outbuildings including parking**
- Appellant **OTG Holdings Ltd**
 Decision **Appeal allowed**
 Background papers file: PA/01/09
- Contact: Cliff Cochrane
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The Inspector considered the main issues to be the effect of the proposal on:

- (a) the character and appearance of the surrounding area; and
- (b) highway safety.

It is proposed to construct an extension at the back of the principal existing manufacturing building, known as 'the Mill', to accommodate new and larger machinery required to ensure the continuation of the business.

It is also intended to demolish a subsidiary building on the northern part of the site and replace it with a terrace of four houses and to build a two storey structure along part of the Maidstone Road frontage of the site, providing covered parking at ground floor level and storage space above. The Council's objection to the scheme so far as its effect on the character and appearance of the area are concerned, related to this last building and, the Inspector agreed that the other elements of the scheme would be visually acceptable. Indeed, he considered that the removal of the rather utilitarian subsidiary building would be of benefit to the appearance of the site as a whole.

The parking/storage building would be on the same building line as the mill but with a substantially lower eaves level to the street as it would have a half-hipped, catslide roof rising to a ridge well back from the frontage. The finishes to the building would broadly reflect the mill and the Inspector considered they would represent a significant improvement on the somewhat utilitarian buildings elsewhere on site which it is proposed to demolish.

Whilst the parking/storage building would be a substantial structure in its own right, its impact on the street scene would be moderate, principally because of its low eaves. Also, although it would be located at the back of the footway, Maidstone Road is relatively wide at this point to accommodate a bus stop lay-by,

thus further reducing the potential for the building to dominate those around it. Given the large variety of building types and styles in this part of Maidstone Road, the Inspector did not consider it would be out of place.

The Inspector took into account the potential for views from the Area of Outstanding Natural Beauty to be affected by the scheme but he did not consider that there would be any material impact.

It seemed to the Inspector that the proposal would improve both the appearance of the settlement and, by facilitating the development of the business, its functioning, thus meeting one of the criteria in Policy CP13 of the Core Strategy. The scheme would also represent high quality development as required by policy CP24. On this consideration the Inspector concluded that the proposal would not harm the character or appearance of the surrounding area.

In respect of the second issue the Council's concern were essentially that the amount of car parking provided for the industrial element of the proposal would be insufficient to prevent overspill parking on nearby streets with consequential highway safety hazards. As the application specified that there would be no change in employee numbers but a significant reduction in parking spaces, there is at least a theoretical possibility that off-site parking could occur.

The Inspector considered that there was no evidence that significant overspill parking takes place at present. Given the high traffic volumes and relative narrowness of Maidstone Road, parking on the road immediately outside the site would be unlikely to occur. There are some opportunities for on-street parking in nearby roads, principally in Long Mill Lane, but if overspill parking did occur, the Inspector did not consider that it would be likely to be on such a scale as to result in undue hazard or inconvenience. The Inspector therefore concluded that the proposal would not result in material highway safety hazards or conflicts with national guidance on such matters.

Application for costs by the appellant against the Council

Submissions by the appellant

The application was made in two parts, relating separately to the matters covered by each of the Council's reasons for refusal of the application.

The proposal which is the subject of this appeal was recommended for approval by the Council's officers. Although members are not bound to adopt the professional or technical advice given by their officers, or that received from statutory bodies or consultees, planning authorities are expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and should be able to produce relevant evidence to support their decision

in all respects. In this instance advice was provided by the Council's own officers and by Kent County Council as highway authority.

The first ground of refusal asserted that the proposed parking/storage building would, by reason of its siting, design, scale, form and bulk, be detrimental to the visual amenities and rural character of the settlement. The Council's appeal statement deals with the matter only very briefly but the officers' report sets out the nature of the proposal and concludes that it would not be out of keeping with the character of this site or the wider locality and would accord with the relevant policies. The officers' conclusions cannot simply be contradicted by a brief statement which does not draw on further examples or more detailed analysis. It is also pertinent that the design evolved from negotiations between the appellants' architect and Council officers. Further, regard should be had to paragraph 14 of Annex 3 to Circular 8/93 which discourages local planning authorities from seeking to control the detailed design of buildings unless they are to be located in particularly sensitive areas, which the appeal site is not. Form and bulk are matters which can be measured to a degree and the impact of the building on the locality has to be judged with regard to the particular context of the site. The Council has not substantiated this ground of refusal and an award of costs is justified.

Turning to the second reason for refusal, detailed advice was sought from the highway authority about the parking implications of the scheme and it was concluded that appropriate provision would be made, as set out in the officers' report. The Council's appeal statement attempted to support the reason for refusal but does not contain adequate evidence to override the clear view of the highway authority that there would be no adverse effect on road safety. Parking provision is a straightforward, non-subjective judgement and the core element of government guidance in Policy Guidance Note 13 – Transport is that only a maximum level should be defined.

The High Court case referred to by the Council was not relevant as it related to a different test to that set out in Circular 8/93. It is long established that the weight to be ascribed to material considerations is a matter for the decision maker. However, the onus is on the local planning authority to support its view with evidence and that is clearly not the case here.

Although the Council indicated that the Parish Council's views on the parking issue were important to its decision, it produced no evidence on the matter and did not re-consult the highway authority. Had it done so and established that there was no basis for the reason for refusal, that reason could have been withdrawn. As it was not, an award of costs is justified.

Council's response

Circular 8/93 makes it clear that members are entitled to overturn the advice of their officers. In this case members had concerns over the impact of the design, specifically the siting, scale, form and bulk of the parking/storage building on the site frontage. They also considered that the loss of parking on the site would be harmful.

The criteria against which these judgements were made are qualitative rather than quantitative. The provisions of the development plan are critical in each case. Local members have detailed knowledge of the parking situation and came to the view that loss of parking on the site would lead to added pressure on the present on-street parking facilities. This in turn would lead to disturbance and hazards. Their doubts were reinforced by officers' site notes.

The ability of the site to function as proposed cannot be evidenced on any quantitative data. The application stated that 20 staff would continue to be employed, the present level, but it is clear that the number of parking spaces would be reduced. The views of the highway authority are a material consideration and were taken into account but it is up to the local planning authority to decide what weight to give the various considerations. There is case law which firmly establishes this point. The Council is entitled to take into account other views, including those expressed by local residents, and the highway authority is, ultimately, only one consultee.

Inspector's 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.

So far as the first reason for refusal is concerned, the appellants' Design and Access Statement (DAS) submitted with the application sets out the rationale for the proposed appearance of the parking/storage building and indicates the reasons for the location of the building, its size, shape and finishes. The Council's appeal statement says that the location of the building, at the back of the footway, is out of character, but acknowledges that the adjoining mill is similarly located. The statement goes on to assert that the building's size, bulk and mass would make the building appear discordant with the character and pattern of the locality but includes no indication of the size, bulk and mass of nearby buildings and does not mention at all the substantial community hall building which has been permitted on adjacent land, albeit set back from and

below Maidstone Road. Whilst the Inspector acknowledged that design is to a considerable extent a subjective matter, any judgements have to be informed by a proper assessment. In this case the appellants produced such an assessment in the DAS but the Council's response amounted to little more than a statement of opinion.

Turning to the parking and highway safety matter, the Inspector could only attach limited weight to either the photographic evidence produced by the appellants of recent parking patterns at the site or the less recent informal counts carried out by the Parish Council. However, the appellants were able to demonstrate that the proposal would meet the highway authority's current standards, both for the industrial and residential elements of the proposal. Although the Inspector did not find that the public transport facilities available in the area are especially useful, he was not provided with any evidence of substance to indicate that there would either be significant overspill parking on nearby streets or, even if that were to occur, that any material hazard would arise. Even having refused the application on the basis of local information, it was open to the Council to obtain other professional advice or to seek further information, but it chose to do neither.

Paragraph 15 of Annex 3 to Circular 8/93 makes it clear that a planning authority must take into account the views of local residents when determining applications but any refusal of such an application should be 'founded on valid planning reasons which are supported by substantial evidence'. In this case the Inspector concluded that neither reason for refusal was properly supported by such evidence and thus a full award of costs is justified.

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