

Alleged Unauthorised Development

Addington

09/00119/COND

565950 159444

Downs

Location:

The Willows Formerly Little Woodgate East Street Addington
West Malling Kent ME19 5DH

1. Purpose of Report:

- 1.1 To report the non-compliance with conditions 2, 4 & 8 of planning permission TM/08/03218/FL – Retrospective application for three detached 4 bedroom, 2 storey houses (with basements). Although this was a retrospective application, it was a revision to the scheme previously approved under reference TM/06/02434/FL. Planning permission TM/08/03218/FL was granted on 12 February 2009.
- 1.2 The relevant conditions say:

Condition 2

All planting, seeding and turfing comprised in the approved scheme of landscaping shown on plan no. 553/08-LD01 Rev. P7 shall be implemented during February/March 2009. 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.

Condition 4

The approved scheme for the storage and screening of refuse shall be implemented within one month of the date of approval and shall be retained at all times thereafter.

Condition 8

Details of a supplementary landscaping scheme covering land on drawing 553/09/ST01 Rev P1 north of the vehicular right of way, and the area of land hashed in green, shall be submitted to the Local Planning Authority for approval within one month of the date of this decision and shall be implemented during the first planting season following approval of the scheme by the Local Planning Authority. 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.

TM/80/11395/FUL Grant with conditions 17 April 1980

Two storey extension to provide lounge, bedroom and bathroom/toilet facilities.

TM/78/10367/FUL Grant with conditions 9 November 1978

Erection of a double freestanding garage.

TM/61/10711/OLD Refuse 16 March 1961

Outline application for residential development.

4. Alleged Unauthorised Development:

- 4.1 The non-compliance with conditions 2, 4 & 8 of planning permission TM/08/03218/FL.

5. Determining Issues:

- 5.1 Members will note that the application to which these condition relate was dealt with retrospectively. It came about because the houses had not been constructed in accordance with the previously approved plans, and the second application therefore sought to regularise this situation. The application incorporated details of (amongst other things) landscaping and refuse storage facilities. Because of the retrospective nature of the planning permission, the conditions required actions to be taken within a timescale that related to the date that the permission was granted, but taking account of the normally accepted planting season for the landscaping. Given this background, it was considered appropriate to monitor the site with regard to the compliance with the conditions. No appeal was submitted against any of the imposed conditions.
- 5.2 Following the granting of the permission on 12 February 2009, a site inspection was carried out on 18 March 2009. It was clear that condition 4 had not been complied with. We met with the owner of the site and he was made aware that another inspection would be carried out and if conditions 2, 4 & 8 had not been complied with, further enforcement action would be considered.
- 5.3 A further site visit was carried out on 2 April 2009 and it was clear that no further works had been carried out to secure compliance with these conditions since the last site visit. In addition, no details of the supplementary landscaping scheme, required by condition 8, had been submitted.
- 5.4 The owner of the site contacted me on 28 April 2009 and told me that he had not complied with these conditions due to personal financial circumstances.
- 5.5 I followed this conversation up in writing to the land owner on 1 May 2009 giving him a number of options so that a reasonable result could be reached.

- 5.6 I have had no further contact with the land owner and it is clear from the site inspections that the breaches of planning control are still occurring. Condition 2 relates to a detailed landscaping scheme that was approved as part of the planning permission. This includes extensive tree planting along the western, northern and eastern edges of the site, and hedgerows in the north-eastern part of the site. Although some of the boundary fences and a wall have been erected, no significant elements of the planted landscaping have been undertaken. The condition was imposed in order to protect and enhance the character and appearance of the site and locality. Condition 8 relates to two pieces of land that lie within the “red line” application site boundary but for which no detailed landscaping scheme was submitted. The reasons cited for imposing this condition are the same as for condition 2.
- 5.7 Members will note from what is said above that the site lies within the Green Belt and an AONB. The erection of new dwellings in the Green Belt is considered to be “inappropriate development”, but with this application and its forerunner, permission was granted on the basis of the case of “very special circumstances” advanced by the applicant, namely that the historic use of the site would cease and that there would be an overall improvement in the appearance of the site and its impact on the surrounding landscape would be reduced. The inclusion of extensive planted landscaping was a key consideration that led to that conclusion. The site is in a relatively exposed location that is seen across open countryside from a number of directions, and the landscaping was also considered to have the potential to soften the edges of the development. In the absence of these trees and hedgerows, the desired amelioration of the overall visual impact has not been achieved, and the development has a consequentially harmful impact on the rural character of the area. The full benefits of those elements of the proposal that underpinned the case of “very special circumstances” have not been realised. Therefore I feel it is expedient to take enforcement action to seek the compliance of conditions 2 and 8 and as the development currently stands, it is harmful to the openness of the Metropolitan Green Belt and an injury to the rural amenity of the area.
- 5.8 With regard to condition 2, the original requirement was for the approved landscaping scheme to be carried out during February and March 2009, this being the period following the granting of the permission, but recognising the generally accepted planting season for work of this nature. Clearly that time has passed. I consider it appropriate and reasonable to now require the approved landscaping to be carried out during the early part of the forthcoming planting season, is during the Autumn of 2009. This would recognise that such planting can only be undertaken with a reasonable chance of success at certain time of the year, but also secure it as soon as possible.
- 5.9 With regard to condition 8, the original requirement was to submit a scheme for approval within one month of the date of the planning permission (ie by 12 March 2009) and then to carry out the approved scheme in the next available planting

season. As no scheme has been submitted for the Council's consideration, the appropriate way forward would be for the Council to itself to draw up a detailed scheme of landscaping and for this to be embodied in the Enforcement Notice. Given that, under the terms of the condition as imposed, it is unlikely that approval would have been achieved for a scheme in time for it to be undertaken during the Spring 2009 planting season, such a scheme would most likely have had to be carried out during the 2009/2010 planting season. I therefore consider it appropriate and reasonable to require that the scheme to be included in this Notice should be carried out prior to 31 March 2010.

5.10 Condition 4 requires the provision of a paved area, close to the entrance to the site, where bins are to be placed awaiting collection/emptying. The condition was imposed in order to facilitate the collection of refuse and preserve visual amenity. In the absence of this clearly identifiable collection facility, it is likely that bins will be presented for collection haphazardly, and this would be not only visually intrusive, but also disadvantageous to the ready operation of collection operations. The condition originally required that the scheme should be implemented within one month of that date of the planning permission (ie by 12 March 2009). I therefore consider that it would be reasonable and appropriate to require it to be provided within a period of 28 days from the date that the Enforcement Notice takes effect.

6. Recommendation:

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

The Notice(s) 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(s) 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(s).

Breach Of Planning Control Alleged

On the 12 February 2009 retrospective permission was granted for three 4 bedroom, 2 storey houses (with basements) as a revision to the approved scheme TM/06/02434/FL. There were a number of conditions attached. Condition 2 required planting, seeding and turfing, as shown on the approved plans, should be implemented during February/March 2009. This has not been carried out. Condition 4 required that the approved scheme of storage and screening of refuse should be implemented within one month of the date of the approval. This has not been carried out. Condition 8 required details of a supplementary landscaping scheme to be submitted for approval within one month of the date of this decision and implemented

during the first planting season following approval. No details have been submitted and therefore the scheme has not been implemented.

Reasons For Issuing The Notice

It appears to the Council that the above breach of planning control has occurred within the last 10 years.

A detailed statement of reasons for serving the Enforcement Notice(s) will be prepared, to reflect the issues discussed at paragraphs 4.6 – 4.10 of this Report. This will include reference to appropriate policies, including those relating to development in the Green Belt, and policy CP24 of the Tonbridge and Malling Borough Core Strategy 2007.

Requirement

- (a) To complete the approved scheme of landscaping, as referred to in condition 2 of planning permission TM/08/03218/FL.
- (b) To carry out the approved scheme for the screening and storage of refuse, as referred to in condition 4 of planning permission TM/08/03218/FL
- (c) To implement the landscaping scheme to be attached to the Notice regarding the area referred to in condition 8 of planning permission TM/08/03218/FL

Period For Compliance

- (a) By 30 November 2009.
- (b) Within 28 days of the date that the Notice takes effect.
- (c) By 31 March 2010.

Contact: Lesley Wetherill