

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 2 PLANNING COMMITTEE**

**09 December 2009**

**Report of the Chief Solicitor**

**Part 1- Public**

**Matters for Information**

**1 PLANNING APPEAL DECISIONS**

- 1.1 Site **Woodside, Teston Road, Offham**  
Appeal **Against condition 4 of planning permission TM/07/01479/FL**  
Appellant **Mr V Norris**  
Decision **Appeal dismissed**  
Background papers file: PA/10/09

Contact: Cliff Cochrane  
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The condition (4) in dispute states: "The windows within the dormer extension to the northwest roof slope shall be fitted with obscured glazing to a level no less than 1.6m when measured internally from the finished floor level and shall, apart from any window specifically required under the Building Regulations to provide a suitable means of escape, be limited in its opening to no greater than 30 degrees. This work shall be effected before the rooms are occupied and shall be retained thus at all times thereafter."

The reason given for the condition is "to minimise the effect of overlooking onto adjoining property."

The Inspector considered the main issue to be the effect of the proposal on the privacy and outlook of the neighbouring residential property.

The dormer in question contains two windows, currently clear glazed, and was constructed as part of a remodelling of the chalet-style dwelling under planning permission TM/07/01479/FL. The dormer is on the northwest elevation, facing the side of the neighbouring bungalow, The Beeches. The dormer replaced three separate clear glazed dormer windows constructed following planning permission in 1989. The new dormer windows have been constructed about 1.7m closer to The Beeches, though the cill level is about 280mm higher than the previous windows.

The view from the windows into the rear garden of The Beeches is largely obscured by a high hedge and, because of the acute angle, there is no direct view into the bathroom of that property as claimed by the neighbours. However, both

windows directly overlook the side garden of the bungalow, though most of that space is hard standing for cars, and any activities taking place in that area would be in direct view. Even though the cills might be higher, the dormer windows are significantly closer than previously and the overlooking is more immediate.

There are two high-level bedroom windows in the side of the bungalow and the neighbours claim that there would be direct views into these rooms. At the time of the Inspector's visit about noon, the bright sunshine and reflection somewhat restricted any view into these rooms. The fact that the windows are at a high level will naturally limit the views that can be obtained, but he was not able to say how much of a view might be had at other times of the day or in different conditions.

The closer positioning of the dormer windows makes them more obvious than before and clearly increases the possibility of overlooking and, for the neighbours, the perception of being overlooked, whether inside or outside their property. The neighbours point to the fact that there are clear views of the dormer windows from both their bedrooms and from outside. Though views might be restricted to those parts of the Woodside bedrooms within a few feet of the windows, the proximity of these windows would clearly affect not only the outlook and privacy of the neighbours, but also the privacy of the occupiers of Woodside.

The appellant says that the removal of the third dormer has improved the situation with regard to overlooking of the rear garden of The Beeches, and that the overlooking of the rest of the property is no different from when the previous dormer windows were in place. He also questioned the consistency of the decision in terms of how similar dormer windows were treated on each side. The clear glazing of the dormer windows on the southeast side was deemed to be acceptable, despite one of the windows having a view into the rear garden of Ashendens, the neighbouring property on that side.

The Council points out that the new windows on the southeast side are no nearer than before and that the difference in treatment is due to the repositioning of the windows on the northwest side closer to the neighbouring property. To the Inspector's mind the Council was correct in considering whether the new development would materially affect the amenities of the neighbouring property. The Council was justified in considering the potential harm arising from this development and in the use of a condition to overcome its objection, and in the Inspector's view the condition meets the tests in Circular 11/95.

In the Inspector's opinion, the clear glazing of the dormer windows adversely affects the privacy and outlook of the neighbours, which the Council's condition was intended to avoid. He accepted that obscure glazing is to be avoided if at all possible in habitable rooms; nevertheless he thought that partial obscure glazing and limited opening of the windows as set out in the condition, does, as the Council suggests, strike "an acceptable balance between protecting the amenity of

the neighbouring property and not being unduly restrictive to the occupiers of the dwelling in question.” Without the condition, the application would have conflicted with Policy P4/12 of the Tonbridge & Malling Borough Local Plan, which aims, amongst other things, to protect the residential amenity of neighbouring properties when considering proposals for residential extension.

- 1.2 Site **Boundary Oast, Fen Pond Road, Ightham**  
 Appeal **Against the refusal of planning permission for a first floor side extension**  
 Appellant **Mr B Sales**  
 Decision **Appeal dismissed**  
 Background papers file PA/17/09 Contact: Cliff Cochrane  
01732 876038

The Inspector considered the main issues are firstly, whether the proposal amounts to inappropriate development in the Green Belt and secondly, whether it would harm the openness of the Green Belt. Subject to his conclusions on those issues, it may be necessary to consider whether any very special circumstances exist to outweigh any harm identified. A further issue is whether the design of the proposed extension would be in keeping with the character of the existing building.

The building is a former oast house that was converted into a dwelling in the early 1970s and which has since been extended with a two-storey side extension and two single-storey extensions. The site is located outside the settlement of Ightham and is within the Metropolitan Green Belt and the Kent Downs AONB.

Policy CP3 of the Tonbridge & Malling Borough Core Strategy 2007 requires development proposals to accord with national Green Belt policy. This is set out in PPG2, which states that the limited extension of an existing dwelling is not inappropriate provided that it would not result in a disproportionate addition over and above the size of the original dwelling.

New building is very strictly controlled in the Green Belt. The original building has already been more than doubled in size in terms of its volume and floorspace. Although the proposed first floor extension would not increase the footprint of the dwelling, it would further increase the size, mass and bulk of the dwelling and the cumulative result would clearly go beyond what could be considered to be a limited extension of, or a proportionate addition to, the original dwelling. The proposal must therefore be considered to amount to inappropriate development in the Green Belt.

Boundary Oast is part of a small cluster of properties, well screened by trees and hedges, and the proposed extension would not be visible from the road or from any public footpaths. In this respect, there would be no significant impact on the openness or visual amenities of the Green Belt. Nevertheless, the proposal amounts to inappropriate development, which by definition is harmful to the Green

Belt, and conflicts with local and national policies for the protection of the Green Belt.

The Inspector appreciated the appellant's desire to provide additional accommodation, but that does not amount to the very special circumstances needed to outweigh the harm that would result from inappropriate development in the Green Belt. The appellant pointed to extensions that had been constructed at two neighbouring properties, but these did not seem to the Inspector to be entirely comparable and he did, in any event, consider this case on its own merits.

He agreed with the Council that the extension would appear as an awkward and clumsy addition, a bland brick box with none of the traditional character or proportions of the oast or earlier two-storey extension. The suggested alternative of tile hanging to the first floor would introduce another facing material and not significantly improve the design. The proposed extension would be out of keeping with the character and appearance of the existing building and would therefore be contrary to Core Strategy Policy CP24 and saved Local Plan Policy P4/12, which seek to ensure the design of any new building or extension respects the site and surroundings.

- 1.3 Site **Fremlins Dell, Comp Lane, Offham**  
 Appeal **Against the refusal of planning permission for conversion of an attic, rebuilding of garage with double-storey roof extension, rear single-storey extension.**  
 Appellant **Mr P Garrod**  
 Decision **Appeal dismissed**  
 Background papers file: PA/19/09 Contact: Cliff Cochrane  
01732 876038

The Inspector considered the main issue to be the effect of the proposal on the amenities of the neighbouring residential property.

Fremlins Dell is a small bungalow set at a lower level than Comp Lane and between two two-storey houses, Maple Court and Alexander House. Access to the site is by a private drive, shared by all three properties. The building lies within the Offham Conservation Area, but the Inspector agreed with the Council that the proposal would have no material effect on the character or appearance of the Conservation Area.

A previous application (TM/07/00349/FL) to create a two-storey, four-bedroom house was granted on appeal in December 2007. The current proposal involves a substantial remodelling of the bungalow to provide a five-bedroom two-storey house, with accommodation in the roof space.

The new building would extend over the site of the existing garage and be within 1m of the side boundary wall of Alexander House. The wall encloses a small courtyard entrance at the side of Alexander House, where there are windows serving the kitchen and utility room on the ground floor. The gap between the two properties at first floor level would be reduced to no more than 5m, and in the Inspector's view the bulk of the new building would be intrusive and overbearing on the outlook from those windows. It would also overshadow the side of Alexander House in the early part of the morning.

Because the kitchen windows face northeast, the Council calculates that they receive only 27% of the available sunlight, which is only 2% above the BRE recommended minimum for a habitable room. BRE guidelines say that if the resulting level of sunlight would be 0.8 times its former value, then the occupiers of the affected dwelling are unlikely to notice any change in the level of sunlight received. In this case the Council calculates that the resulting level would be 0.77 and 0.79 of the existing. Although the reduction in sunlight might be marginal, it would make a rather dark room even darker and this added to the Inspector's concern that the new building would be too close to Alexander House. The utility room would not usually be regarded as a habitable room, but in this case it can be considered to be operationally part of the kitchen, and the loss of light would be similar.

The two-storey addition would not only be markedly closer to Alexander House, but would also extend beyond the rear, where it would be visually prominent and overbearing when viewed from the private terraced area of Alexander House.

Concerns have been raised about the level of car parking and the restricted nature the turning access and turning area. However, the Inspector noted that the car parking accords with the Kent Vehicle Parking Standards and, whilst turning within the site is somewhat restricted, the proposal is acceptable to the Kent Highway Services. In the circumstances, the Inspector was satisfied that the proposed development is acceptable in terms of highway safety.

However, the Inspector found that the proposal would have an unacceptable impact on the amenities of the neighbouring property and conflict with policy CP24 of the Tonbridge & Malling Borough Core Strategy, which requires developments to respect their surroundings, be well designed and not harm residential amenity.

**Ian Henderson**  
Chief Solicitor