
Platt Borough Green And Long Mill	562360 156090	10 February 2009	TM/09/00136/FL
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Proposal:	Retrospective application under Section 73A of the Town and Country Planning Act 1990 for the erection of an outbuilding for the private ancillary use by the occupiers of the single dwelling within the site at Napps Farm, Long Mill Lane, Platt
Location:	Napps Farm Long Mill Lane Platt Sevenoaks Kent TN15 8QG
Applicant:	Mrs Sally Rutherford

1. Description:

- 1.1 Members will recall that this application was deferred from the previous meeting of the Area 2 Planning Committee, for Members to inspect the site which took place on 19 March 2010. It was also deferred for officers to investigate further the planning history of the site relating to permitted development rights and to investigate case law in respect of annexes and ancillary buildings (including the legal characteristics of detached buildings).
- 1.2 A copy of my previous main and supplementary reports is attached as an Annex to this report.

2. Determining Issues:

- 2.1 In this section, I shall deal with the reasons why the application was previously deferred, but also to address the queries raised by Members during the site inspection.
- 2.2 I have been asked to clarify the position generally with regard to the issue of domestic permitted development rights that are referred to in Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995; These are intact for this property which is the normal position especially where, as in this case, "the original dwellinghouse" was constructed prior to 1st July 1948 (when modern planning legislation came into play). "Permitted development" rights are those rights to carry-out "development" without the need to make a planning application to the Local Planning Authority and are granted by Parliament by the making of legal Orders. They exist in many and various guises in respect of many uses of land. In this case the relevant matters relate to residential dwellings and what may be done without a planning application.
- 2.3 Various versions of the General Permitted Development Order have existed since 1948 and they are constantly updated. Most recently the Government has made changes aimed, broadly, at extending these rights and, in particular, assisting the introduction of some forms of sustainability related installations. The range of rights gives dwelling houses various types of permitted development right, set out in a number of "Classes". For example, Class A relates to extensions or

alterations to the house itself (but excluding alterations to the roof); Classes B and C relate to alterations to the roof; Class D relates to porches; Class E relates to buildings and other structures in the curtilage of the house but not physically part of the house.

2.4 In terms of the current application Classes A – D have no direct relevance but the rights under Class E must be taken into account, for they form a datum for what may be done without needing the Council's approval. The restrictions that apply to the application of Class E that are relevant to the context of this application are:

- No outbuilding on land forward of a wall forming the principal elevation.
- Outbuildings and garages to be single storey with maximum eaves height of 2.5 metres and maximum overall height of four metres with a dual pitched roof or three metres for any other roof.
- Maximum height of 2.5 metres in the case of a building, enclosure or container within two metres of a boundary of the curtilage of the dwelling house.
- No more than half the area of land around the "original house"* would be covered by additions or other buildings.

2.5 The current planning application is required because the height of the building exceeds the 4m. limit set out above. The overall height against ground level has been rechecked and it is 4.67m (0.67m above the permitted development limit). While this permitted development height does not necessarily define what may be acceptable in a formal application, it does indicate the height of building that the Government has legislated can be erected without any further assessment. A length of the eaves (the recessed area on the southern elevation) has a level above the 2.4m generally to be found on the building. One of the key considerations in this case is whether the building is, in itself, acceptable in terms of its height and part eaves height, bearing in mind what could be done under permitted development rights.

2.6 The question has also been raised as to whether the building can be considered to be ancillary to the main dwelling. A context for this is the definition of development within section 55 of the Town and Country Planning Act 1990 (as amended). Section 55 (2) (d) excludes the following from the definition of development:

“the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwellinghouse as such”.

2.7 In effect this means that the use of buildings ancillary to the main house does not constitute a separate use from that main house. It should also be noted from paragraph 2.4 above that up to half of the curtilage of a dwelling can be covered by such ancillary buildings yet still not require a planning application (so long as all other restrictions are not breached). Whether an individual building is actually

ancillary to the main dwelling will be a matter of fact and degree in each case and I will return to this issue below. Nothing in permitted development rights would automatically prevent a collection of outbuildings larger than the main dwelling from being ancillary to that main dwelling, whether because of ground coverage or height. There is no limitation to the rights in paragraph 2.4 that arises as a result of a fence or other means of enclosure within the overall site. Fences and walls up to 2m high may be erected anywhere other than abutting a highway without the need for an application to the Council under a separate class of permitted development rights.

- 2.8 When determining planning application TM/04/00895/FL, for a replacement dwelling at the site, the Council accepted an area of residential curtilage which included the land where the outbuilding the subject of the current planning application is located. That view was taken notwithstanding the fact that a brick wall stands between the dwelling house within the site and the building the subject of this application. I cannot offer a date as to when this wall was erected. An aerial photograph dating from 1999 shows a shadow line cast by a structure in the location of this wall. From the condition and weathering of the brickwork, I would estimate that it has stood in situ for quite some time before 1999 and looks, on the basis of one aerial photograph, to possibly be the remaining residual wall of an earlier building, retained following the demolition of that building. While the 2004 permission has not been implemented, I am aware of no changes in circumstances that would lead to a different approach to that adopted in that case.
- 2.9 It is apparent from case law and appeal decisions that the Courts and the Secretary of State consider that the term “incidental to the enjoyment of a dwelling house” *does not include primary living accommodation* in its own right. Members may recall a recent case concerning the use of an ancillary building elsewhere within the ward at 2 Keepers Cottages, Mereworth Woods. Here the Borough Council refused permission for the erection of a building that contained garaging, a kitchen, 2 bedrooms and a living room that was occupied by the son of the site owner, as well as the son’s wife and their child. It was considered that this amounted to the erection of an independent dwelling house in the Green Belt, which was unacceptable in principle. An Inspector agreed with the Borough Council and dismissed the applicant’s appeal against the decision to refuse permission and upheld the Enforcement Notice that was also served requiring the cessation of the use of this building as a dwelling house.
- 2.10 Case law does not clearly define what size an outbuilding can be in order for it to be regarded as being “incidental to the enjoyment of the dwelling house as such”, but instead, as with many planning judgements, it is a matter of fact and degree bearing in mind the proposed or existing use of the building concerned. A home office, games room, garage and the storage of domestic equipment are all uses that can be “incidental to the enjoyment of the dwellinghouse as such”. In this respect, the size of the outbuilding is not unreasonable in terms of the intended uses, especially bearing in mind Part E permitted development rights.

2.11 With the exception of the height limitation, the exercise of permitted development rights could enable a building with a larger footprint than that of the building the subject of this application to be erected within the residential curtilage of this property.

The site inspection and related matters

2.12 A number of Members attended the site inspection accompanied by a member of the Parish Council. Committee Members were joined by the applicant, who was accompanied by Cllr Chartres and her builder, who was currently carrying out works to the main dwelling, when the inspection party visited the application site itself.

2.13 The Committee Members initially viewed the site from the road adjoining the site, the private road up to the nearby housing scheme and then from the public right of way which runs west from the lane serving the property to a high point above the site. From the latter the site could be viewed through the path-side vegetation. The site is within the Green Belt and views of it can be gained from the access leading to the site and this public right of way (MR275) that runs in an east-west direction to the south of the application site. With this in mind, should the Committee be inclined to grant planning permission, there would be a justifiable reason to restrict the future erection of domestic outbuildings within this site by removing the opportunity to exercise further permitted development rights within Class E by a condition.

2.14 A question was raised as to whether the building can be considered to be a single storey building. The site inspection clearly demonstrated two factors in this regard. Firstly, the building has walls only at ground floor level and not above that. Secondly it was clearly demonstrated, by a member of Planning Services staff who climbed to the upper area of the building, that while a person of height of 1.68m. (5' 6") could stand immediately below the exposed internal ridgeboard, it was not possible for that person to move around the roof space without stooping. Moreover it is not uncommon for single storey domestic outbuildings, many times garages, with pitched roofs to have loft areas used for storage. This in itself does not constitute a two storey building.

2.15 The facts of the difference in size between the previous building on this part of the site and the current building are set out in my earlier report.

2.16 Inspection of the building on site revealed that, while completed externally, the building is only partly finished internally, with the walls framed but not fully finished. Nothing in what was seen, and bearing in mind 2.14 above, leads to a conclusion that there is any evidence available at present that this building is not ancillary to the main dwelling. The applicant did indicate, orally at the site inspection, that the "garden wall" between the main dwelling and this building may well be removed.

- 2.17 As was recognised in the earlier report there is some disquiet that the building may ultimately be used as an independent dwelling or for holiday lets. In either case there would be a need for planning permission to lawfully enable such a use to take place. However, the Parish Council and others have encouraged the use of a condition to prevent a use of the building other than as a residential ancillary building. Members sought clarification on this matter and, on balance, the application of such a condition would be appropriate to avoid any ambiguity as to future use rights.
- 2.18 One of the other key matters revealed from the site inspection is the relative ridge level of the main dwelling house. As the land within the site rises to the south so the building stands, at its base, above the main dwelling. When viewed from surrounding viewpoints as mentioned above, and indeed from the private land adjoining the site (as shown in a photograph supplied to the Council), the appearance is that the ridge line is at a higher level than that of the main dwelling. While I cannot share the judgement, put forward by some, that the roof “towers” over the main dwelling there is no doubt that in some circumstances the building has some visual prominence over the main dwelling.
- 2.19 Since the last report was drafted the Planning and Transportation Advisory Board has recommended to the Cabinet and Council that the Inspector’s Report on the Managing Development and Environment DPD should be adopted. Policy DC2 deals with replacement of buildings in the countryside. It reads:

Policy DC1 1. *A replacement building in the countryside will be permitted subject to meeting all of the following criteria:*

 (a) *it would not be materially larger than the existing building and it would be appropriate in scale and design to its setting and any neighbouring buildings and to the character of the area within which it is located as defined in the Character Area Appraisals SPD;*

The Character Appraisal SPD referred to here will not be available for some time. Cabinet will consider this Recommendation on 30 March and I will update the meeting on this matter in a Supplementary Report.

- 2.20 Bearing in mind all the factors surrounding this new building; its appearance and size, both in itself and when compared with the previous building on this part of the land and those removed elsewhere on the site, there is an element of subjective judgement to be applied in reaching a decision, balancing all the factors set out in this report and the previous reports. This includes the permitted development ‘fall back’ position explained in this report. Members will need to consider all of the above matters in the context of their now identified intention to adopt Policy DC2 (which is scheduled to legally occur at Council in mid April).
- 2.21 In light of all of the above, I would recommend that permission be granted.

3. Recommendation:

- 3.1 **Grant Planning Permission** as detailed by: Design and Access Statement dated 11.12.2009, Elevations NAPPS/002 A dated 11.12.2009, Elevations NAPPS/003 A dated 11.12.2009, Floor Plan NAPPS/004 A dated 11.12.2009, Letter dated 26.03.2009, Photograph dated 11.12.2009, Location Plan NAPPS/001 C dated 11.12.2009, subject to the following:

Conditions / Reasons

- 1 At no time shall any external lighting be installed on the building, the subject of this application, except with the prior written approval of the Local Planning Authority.

Reason: In the interests of the visual and rural amenities of the locality.

- 2 The outbuilding shall be used only for purposes incidental to the enjoyment of the related dwellinghouse and no trade or business shall be carried out therefrom.

Reason: To safeguard the amenities and interests of the occupants of other property in this residential area.

- 3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class E of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto. (R001)

Reason: In order to enable the Local Planning Authority to assess the impact of such development in the future upon the openness of the Green belt and the rural character of the locality.

- 4 The building shall be used solely as a residential annex, subservient to the dwelling known as Napps Farm and shown on plan NF1 attached to this Decision Notice, and shall not be used for other purposes such as holiday lettings other than with the express written approval of the Local Planning Authority.

Reason: In the interests of protecting the amenity of the area and the Green Belt.

Contact: Steve Humphrey/Lindsay Pearson