

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

31 March 2010

Report of the Legal Services Partnership Manager

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

1.1 Site **Sunnyview, Green Lane, Trottiscliffe**
Appeal **Against the refusal of permission for the demolition of an existing bungalow and erection of a replacement house with detached garage**

Appellant **Mrs K Fincham**

Decision **Appeal allowed**

Background papers file:
PA/29/09

Contact: Cliff Cochrane
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The Inspector considered the main issue to be the effect of the proposal on the character and appearance of the surrounding area, including the setting of the Trottiscliffe Conservation Area.

Reasons

The appeal site is currently occupied by a small detached bungalow, which is one in a small row of dwellings which front onto the western part of Green Lane, a private road which leads from Taylors Lane, the main road through Trottiscliffe. The boundary of the conservation area lies to the south of the site.

The proposed dwelling would be significantly larger than the existing bungalow. That by itself is not indicative of harm. It would be higher than the houses on either side, but only marginally so, and amongst the small group of houses in Green Lane there are some marked disparities in height between neighbours. Moreover, there would exist what the Inspector considers to be clear gaps between the proposed house and The Haven to the east and The Downs House to the west, so that the variation in roof height would not stand out, or appear overly dominant.

The proposal would be noticeably nearer to the lane than the existing bungalow, and would be closer to it than The Haven. On the other hand, The Downs House and others further to the west are also close to the lane, and the Inspector

considered that the siting of the proposed dwelling would relate satisfactorily to its neighbours.

The Council alleged that the house would appear cramped, but there would be a gap of more than 3m to the boundary on the eastern side of the house, and a smaller gap on the other side. The form of the house would be broken up into different elements, utilising hipped roofs, so that its bulk would not appear as imposing, with additional space in the adjoining gardens providing breaks between the proposed house and its neighbours. The Inspector considered that this relationship would be sufficient to ensure that the proposal would not appear cramped.

It is proposed to site a garage/garden room at the rear of the proposed house, towards the centre of the plot with access obtained along the side of the dwelling. The Haven has a small garage in a backland position, but the Inspector accepted that it is not comparable in scale with that proposed here. Even so, the plot is a large one and could readily accommodate an outbuilding of this size. In his view, neither the position nor the scale of the proposed outbuilding would be prominent, incongruous or otherwise harmful to the diverse local character.

The boundary of the Trottiscliffe Conservation Area runs along Green Lane, bordering the appeal site. The proposal would not block important views into or out of the conservation area, and the design of the dwelling would be of notably higher quality than the bungalow that currently exists on the site. The Inspector saw no reason why it would harm the setting of the conservation area, or conflict with the advice in Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15). He had regard to the position of the dwelling on the fringe of the village and within the AONB, but neither of these considerations altered his findings.

On the main issue therefore, he concluded that the proposal would not harm the character and appearance of the surrounding area, or conflict with Policy CC6 of the South East Plan, which, amongst other things, seeks to achieve sustainable and distinctive communities and to ensure that the implementation of local policies respects, and where appropriate enhances, the character and distinctiveness of settlements. He also found no conflict with Tonbridge and Malling Borough Core Strategy Policies CP13 and CP24 which respectively deal with development within named villages including Trottiscliffe, and with quality of development.

The Inspector noted that a first floor terrace is proposed, but subject to the provision of a screen as suggested in the appellant's Planning Statement, he was satisfied that the privacy of the occupiers of The Haven would be adequately safeguarded. Whilst the dwelling would be larger than the existing one, he considered that the change in the intensity of use would not be material. He also had regard to other concerns expressed by local residents, including those relating to highway safety, road maintenance, noise, outlook and parking, but

none of these matters, either on their own or cumulatively was sufficient to alter his conclusions.

Site: **King Street Motor Services, 40 King Street, West Malling**
 Appeal **Against the refusal of permission for the demolition of existing buildings and erection of 4 no. residential dwellings and associated landscaping**
 Appellant **Executors of Peter James Viner (deceased)**
 Decision **Appeal allowed and costs application allowed**
 Background Papers file : PA/21/09 Contact: Cliff Cochrane
 01732 876038

The application was amended prior to its determination by the Council, most notably to reduce the number of dwellings proposed to three. The Inspector took the amended plans into account in his decision.

The Inspector considered the main issue to be whether the proposal would result in the loss of a community facility that contributes to the character of West Malling as a Regional Service Centre.

Reasons

The appeal site is occupied by an L-shaped range of buildings used for car repairs and servicing, and associated stores and offices. It is located off a narrow street parallel with a main shopping street, and borders commercial uses on one side and a three storey block of flats on the other. The garage specialises in the repair of Morris Minors, and a variety of these models was present on the yard on the Inspector's visit.

There is no dispute between the main parties that the proposal would not conflict with Tonbridge and Malling Borough Council Core Strategy (CS) Policy CP21, which deals with the protection of employment sites. Policy RE3 of the South East Plan (SEP) says that accessible and well-located industrial and commercial sites should be retained where there is a good prospect of employment use. In the Inspector's view, the site is constrained by a poor access, and the close proximity to residential properties means that it is not well located. The principle of the proposal would also accord with CS Policy CP12, which allows for redevelopment of defined rural service centres, including West Malling.

CS Policy CP26 deals with "Community Services, Transport and Infrastructure". The policy provides that proposals for development that would result in the loss in whole or part of sites and premises currently or last used for the provision of community services or recreation, leisure or cultural facilities will only be permitted if certain criteria are met. The explanatory text to the policy says that community services include schools and other education provision, social services, adult education, libraries, community and youth services, health, culture, places of

worship, police and emergency services, recreation and amenity space, sport, local shopping, public utilities and transport.

The definition of community services referred to in the explanatory text includes specified services, and the use of the word “includes” means that such services are not restricted to those listed. The normal rule of interpretation would limit its application to other services of the same type. However, the explanatory text to the policy continues to make it clear that it is intended to include facilities such as shops, petrol filling stations and public houses, particularly where these might be the only such facilities in a village. These are commercial uses which differ from most of those listed in the text.

Whilst a car repair garage is not in the same use class category as shops, petrol filling stations and public houses, the Inspector did not regard that as being especially relevant. It seemed to him that the important factor is the social role that those businesses might play. Thus a shop or petrol filling station might provide the only shopping facilities in a settlement that could be used by people without access to a car. A public house may be the only place in a village where people could meet socially.

In this case, the Inspector could not see a car repair garage playing the same social role. Car users, other than in the case of breakdowns, are able to travel to alternative facilities. People do not meet to socialise in such locations. He recognised that the business is obviously valued by customers and some neighbours. But that is not the same as providing an important role in the social infrastructure of the area, which is what the policy aims to do.

He also recognised that customers would be likely to make mixed use trips, using shops and other facilities in the town centre. However, this is not what Policy CP26 aims to secure. Moreover, it is not the only car repair facility in or around West Malling. Whilst these other facilities may not share the same characteristics as the current business they nevertheless offer places where cars can be serviced and repaired. Thus he did not consider that the existing use constitutes a community facility of the type envisaged by Policy CP26, and it follows that he found no conflict with this policy.

The Council argued that the use adds to the character of the town as a Regional Service Centre. SEP Policy BE4 deals with the role of small market towns, and amongst other things, it requires planning authorities to protect and enhance the character and appearance of individual small rural towns. The Inspector agreed that the location of a small repair garage close to the town centre amongst a mix of uses, adds to the diversity and interest of the town centre. Some of that interest is, to his mind, associated with the current business’s specialism of repairing and servicing Morris Minors, which, as classic cars of an earlier era, are held in affection by many, but this could change in the future. Moreover, the buildings on the site are utilitarian in appearance, and do not make a positive contribution to

the area. The proposed dwellings, would in his view improve the appearance of this part of King Street, and thus taken in the round, he found that the proposal would not harm the character or appearance of West Malling as a market town, or conflict with SEP Policy BE4.

The Inspector had regard to the other concerns referred to in representations made on the proposal. He noted that the existing business has not been able to find alternative premises, and that the proposal could threaten the existing jobs on the site. Whilst he gave serious consideration to the economic and personal consequences that might flow from this, in the absence of any development plan policy which affords protection to such businesses, he did not find this to be a compelling reason to dismiss the appeal.

The proposal would provide 5 car parking spaces for the three proposed dwellings, which the Inspector consider would be ample in a town centre location. He noted the relationship between the site and the nearby public WC and a public house, and whilst he recognised that there may be some disturbance experienced by occupiers of the proposed houses, their set back position would provide a degree of protection, bearing in mind that people who choose to live in town centre locations would be unlikely to expect the same degree of tranquillity that might be expected in a suburb.

Whilst the appellants have referred to other benefits that would arise from the proposal, as the Inspector found that it would not result in any material harm as alleged by the Council or the third parties who have made representations on the appeal, he did not need to assess these or weigh them in the balance.

Application by the appellants for an award of costs

The Inspector considered this application for costs in the light of Circular 03/09 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.

The application was refused against the advice of the Council's officers. In such cases, the advice in paragraph B20 of the Annex is that the Council will need to show reasonable planning grounds for doing so, and to produce relevant evidence. Paragraph B16 of the Annex requires local planning authorities to produce evidence in support of its reasons for refusal which provides a respectable basis for its stance. In relying on Tonbridge and Malling Core Strategy Policy CP26, the Council needed to provide substantial evidence to show that the existing garage use is a community facility.

The Inspector accepted the Council's contention that Policy CP26 is not limited in its application to the definition of infrastructure contained within the South East Plan. However, the garage use is not a use listed as one of the community services referred to in the text of the policy. Whilst certain commercial uses are noted in the explanatory text as being subject to this policy, again, car repair and servicing uses are not included. He accepted that the services referred to in the policy and its explanatory text are not exhaustive, and others may be capable of being treated as community services. However, in order to include other uses within the ambit of a policy which specifies numerous uses, albeit not exhaustive ones, the onus is on the Council to explain why this should be the case.

The explanatory text notes that the policy is intended to include facilities such as shops, petrol filling stations and public houses particularly where these might be the only ones in the village. The Inspector found that these commercial uses are ones that may serve as social role, and in his view, the Council has not adequately explained how the garage use serves an equivalent role. Moreover, the garage is not the only one in West Malling, and in such circumstances, the Council has not adequately explained why the alleged community needs could not be served by these other facilities.

Whilst the Inspector recognised that there is some flexibility in the manner in which Policy CP26 can be interpreted, the Inspector considered that the Council was unreasonable in trying to protect an existing business which manifestly does not provide the kind of community services which the policy aims to protect. He considered this to amount to unreasonable behaviour which has led to the appellants incurring unnecessary costs in bringing the appeal. It followed that he did not need to examine the Council's assessment of the criterion 3 a) of Policy CP26, as the matter falls at the first hurdle.

Site: **65 Annetts Hall, Borough Green**
 Appeal **Against the refusal of permission for the division of existing garden at 65 Annetts Hall and construction of a detached bungalow**

Appellant **Mr John Tyler**
 Decision **Appeal allowed**

Background Papers file : PA/36/09

Contact: Cliff Cochrane
 01732 876038

The Inspector considered the main issue to be the effect of the proposal on the character and appearance of the area.

The relationship between the proposed bungalow and the neighbouring properties would be broadly compatible with the general pattern and type of development in the surrounding area, which comprises a mixture of houses and bungalows with

modest front gardens and varying spaces between blocks. Unlike other properties on corners, it would stand squarely within its plot. Nevertheless, it would be well-separated from No 64 to the north and have a low profile in relation to the existing house at No 65, derived from the difference in ground levels and the single storey design of the proposal. The Inspector therefore did not consider that the proposed layout would appear cramped or incompatible with the regular and moderately spacious setting of the existing houses and bungalows nearby.

Though the rear amenity area of the host house would be limited in size, the Inspector formed the view during the site visit that it would provide future occupants with an acceptable area for outdoor relaxation. Its restricted size would not be especially apparent from public areas. Even when seen from surrounding properties, its visual function in contributing to the setting of the house No 65 would remain.

The Inspector concluded that the proposed development, with suitable external finishes and detailing, appropriate landscaping and adequate car parking, would not harm the character and appearance of the area, and that it would therefore comply with Policy CP24 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy (LDF CS).

Adrian Stanfield

Legal Services Partnership Manager