

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

AMENDED RECOMMENDATION:

Conditions:

- 4. Delete words “other than with the express written approval of the Local Planning Authority”.**
- 5. No kitchen or food preparation facilities shall be installed in the building.**

Reason: To ensure that the building remains ancillary to the main dwelling house.

TM/79/1152 Grant with conditions 15 November 1979

Extension to side front and rear to form 2 bedrooms, porch and utility room.

TM/99/00052/LDCP Certifies 14 June 1999

Lawful Development Certificate Proposed: siting of mobile home as ancillary accommodation

TM/99/02035/FL Section 73A Approved 22 May 2000

Application under s.73A: continued use as livery yard and provision of 48m x 18m sandschool

TM/03/01594/FL Application Withdrawn 14 July 2003

Replacement dwelling

TM/04/00895/FL Grant With Conditions 19 July 2004

Replacement dwelling (resubmission of application TM/03/01594/FL)

5. Consultees:

- 5.1 PC: Initial comments overtaken by the revised proposal and further comments received following the change to the description of the development: No objection.
- 5.2 DHH: No comments as to its use as an outbuilding as opposed to a stable as previously
- 5.3 Private reps (including responses to public notices): 7/0S/0X/8R. The eight letters that have been received, from 3 households, objecting to the development, do so for the following reasons:

Original submission (stable):

- The building is materially larger than the stable it replaced.
- The application, if passed, will set an undesirable precedent for others to follow suit.
- The building does not have the design of a stable building, but is more akin to an office or a dwelling.

- 5.3.2 The building has been erected without planning permission within the Green Belt and is contrary to Green Belt policy.

Comments received following the change to the description of the development:

- It is to be let out as a holiday cottage and was never intended to be used as a stable.
- The use of the building as a holiday let will increase traffic flow along the surrounding roads.
- The building is materially larger than the main dwelling within this site and towers over it.
- The building is noticeable from both Long Mill Lane and The Old Saw Mill

6. Determining Issues:

- 6.1 The main issues relating to this development relate to the principle and the impact of the building upon the character of the rural locality.
- 6.2 The stated use of the building has changed since the application was first submitted in February 2009. Originally, the application sought retrospective planning permission to use this building as a stable. Planning permission is now sought for the building and for its use ancillary to the primary residential use of the dwelling, including as a home office and/or a games room. It is on this latter basis that the merits of the development must now be assessed.
- 6.3 Current Government advice contained within PPG 2 (Green Belts) seeks to control development within the Green Belt. It states that there is a general presumption against inappropriate development which, by definition, is harmful to the Green Belt. PPG 2 also states that inappropriate development should not be allowed except in very special circumstances. Policy CP 3 of the TMBCS states that National Green Belt policy will be applied to developments within the Green Belt
- 6.4 The erection of a building within the Green Belt is inappropriate development unless it would fall within one of a number of categories of development listed in paragraph 3.4 of PPG 2. One of these categories allows for the extension of residential dwellings. Whilst this is not an extension *per se* to the residential dwelling within this site, detached ancillary residential outbuildings are commonly considered to be “domestic adjuncts” which have been found to be akin to an extension to a dwelling house for the purpose of applying Green Belt policy. The most common examples are the erection of garages, sheds, greenhouses and domestic workshops. The building would be located within the residential curtilage of this property. This type of built solution is not unusual in the Green Belt. I am, therefore, satisfied that the principle of erecting an outbuilding within the residential curtilage of this property is acceptable in broad policy terms and complies with the underlying aims of PPG 2 and adopted policy CP 3.

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- 6.5 Policy CP 24 of the TMBCS requires all development to be well designed and of a high quality in terms of detailing and use of materials. Development must also, through scale, layout, siting, character and appearance be designed to respect the site and its surroundings.
- 6.6 The building itself has a similar footprint to one that previously stood in the same location within this site. The former building, believed to be a stable, was demolished in 2008. An aerial photograph of the site submitted by the applicant shows a stable building located in the approximate location of the current building. The photograph also shows a mobile home and another stable building located within this site, which have since been demolished/removed from site.
- 6.7 The building as erected stands 4.6m high which is taller (by approximately 1 metre) than the building that it replaced. It is also some 3m longer and 1.5m wider than the former stable building. There is some additional bulk in the current building and this is accounted for by the use of a more traditional and steeper roof pitch of 35°.
- 6.8 The building is a timber framed structure standing on a brick plinth and the walls are principally clad with weatherboarding stained black in colour. The roof is clad with reclaimed plain clay tiles. In terms of its form and design, its appearance suits the character of the rural locality. Whilst the building is larger than the stable building it replaced, I do not consider it to be out of keeping with this particular property or intrusive in the rural area.
- 6.9 Consideration must also be given to the fact that an outbuilding could be erected under permitted development rights within the lawful garden curtilage in this site without needing to be the subject of a planning application. Whilst the height limit for erecting such a building is 4m (0.6m lower than the building the subject of this application), such a building could have a footprint similar to (or potentially larger than) the building the subject of this application.
- 6.10 I also consider that the building in terms of its form, design and use of external materials does not detract from the character of the site or the wider rural locality. I therefore consider that this proposal complies with policy CP 24 of the TMBCS.
- 6.11 Some making representations fear that the building will be used as a separate residential dwelling/office or would be used for such purposes in the future. The application, as revised, seeks permission to use the building for purposes that are ancillary to the residential use of the property, which is acceptable in broad policy terms. It is an established principle in planning decision making that an element of business use can take place at a dwelling without a separate grant of planning permission being required.
- 6.12 The use of this building for purposes ancillary to the residential use would not cause any detriment to the amenity of nearby residential properties nor upon highway safety, in my opinion.

6.13 In light of the above, I recommend that planning permission be granted for this development.

7. Recommendation:

7.1 **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:

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.

Contact: Matthew Broome

SUPPLEMENTARY REPORTS

AREA 2 PLANNING COMMITTEE

DATED 24 February 2010

Platt **TM/09/00136/FL**
Borough Green And
Long Mill

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 at Napps Farm Long Mill Lane Platt Sevenoaks Kent TN15 8QG for Mrs Sally Rutherford

PC: Platt Parish Council raised no objection to the revised application for the above location. It appeared that the original intended use of the building was not for stables and we were presented with a fait accompli. The Parish Council had, it seems, wrongly assumed that there would be conditions attached if planning permission was granted.

We are very surprised to read in the committee report that the only condition relates to external lighting. In view of the concerns raised by local residents regarding the possible use of this building and the fact that a condition is often attached to planning permissions specifying usage, we would urge the committee to consider adding a condition that specifies that the building is ancillary to the use of the residents of Napps Farm but not for residential purposes. This would eliminate any protracted enforcement proceedings in the future thus saving time and money for the Borough Council.

This would also seem to a very sensible approach to this application in view of the fact that the applicant is a partner of a member of the Area 2 Planning Committee.

Private Reps: Two further representations have been received from local residents. It is understood that these emails have been sent to Members of the Area 2 Planning Committee. They question some of the commentary in the Determining Issues section of the main report regarding the merits of this application. They raise matters concerning the principle of the development and the size of the building (particularly when comparing it to the former stable building that this building replaced) suggesting the enlargement of the building envelope has been under estimated. They also reiterate the point that they consider this retrospective development to be setting a precedent for similar developments in the future and claim that the main report fails to convey the strength of objections that have been received to this application. It had been expected that the letters of objection. It had been expected to be attached to my main report.

DPTL: I note the PC's comments regarding the fact that the intended use of the building has changed since this application was received in February 2009. I would refer Members to paragraphs 1.2 and 6.2 of my main report which relate to this matter.

Regarding the issue of conditions, Members will be aware that when considering whether to attach conditions to planning permissions, regard must be had to the tests

prescribed in Government advice. Each case and its background will need to be treated on its merits.

The plan of the application site attached at the end of my main report is inaccurate, as it shows a larger site area than is shown on the site location plan submitted as part of this application. An amended plan is, therefore, attached within this supplementary report. For the avoidance of doubt the site location plan submitted with the application is accurate and drawn to the scale specified on that plan.

Regarding the comments made by the neighbours, I would respond as follows:

Members are advised that the local residents object strongly to this development for the reasons set out above and in my main report. The individual letters of objection to a planning application, as Members are aware, do not get attached to the committee report, but are available for viewing by any person from the date that they are received and on the website (all but the most recent with regard this case, including one received earlier today) are available to view.

As I indicated in the main report the building is located within the accepted residential curtilage of the dwelling at Napps Farm. The curtilage of the property has been the subject of discussion whilst a previous planning application for a replacement dwelling within this site was being considered (TM/04/00895/FL). The erection of buildings within the residential curtilage of dwellings within rural, Green Belt areas has long been established as being broadly acceptable under Green Belt Policy for the reasons discussed in my main report.

I have referred in paragraph 6.6 of my main report to the building having a “similar” footprint to that of the stable building that previously stood within the site. As indicated the footprint of the building is 3 m longer and 1.5 m wider than the former stable building. The footprint of the building the subject of this application is, therefore approximately 35 sq metres (or 67%) larger than that of the former stable building. My comment in my report that it is similar was in the context of the building being 3m longer than the former stable that was 11.4 metres in length and 1.5 metres wider than it, which was 4.6m wide. Therefore, I do not consider that the building the subject of this application would cover a significantly larger area of application site than the former stable building. I accept that the term “not significantly larger” could be substituted for the word “similar” when referring to the size of the footprint of the building compared to that of the former stable building.

My main report acknowledges that the building the subject of this application is larger in terms of size, mass and bulk than the former stable building. However I accept that the difference in the bulk and mass of the building compared to that of the former stable building is not just derived from the increase in height, but also from the enlarged length and width as well. The height of the building is 4.6m to ridge level, which (according to our records of this property) is the same height as the bungalow within this site. Notwithstanding this, I do not consider that this building dominates the site or the principal dwelling within it. The height of the building is not unusually high for domestic outbuildings located within rural or Green Belt locations.

The acceptability (or otherwise) of this scheme does not, in my opinion, depend solely upon comparing the size of the building the subject of this application to the size of the former stable building, but upon consideration of all the relevant issues as has been set out in my main report and in this supplementary report.

I would re-iterate that if this application is granted planning permission, I can see no precedent that would arise for future planning applications in this area. As I have stated in my main report, any future planning application for development will need to be assessed on its individual merits against the relevant planning policies and other material considerations.

RECOMMENDATION REMAINS UNCHANGED
