

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

27 October 2010

Report of the Legal Services Partnership Manager.

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

- 1.1 Site **81 West Street, Wrotham**
Appeal **Against the refusal of permission for the erection of a two storey dwelling adjoining No. 81 West Street**
Appellant **Mr & Mrs Brown**
Decision **Appeal dismissed**

Background papers file:
PA/10/10

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.

Reasons

The appeal site is the side garden of an end of terrace dwelling. It is located within a residential area characterised by short terraces of houses arranged in a regular layout. Where end of terrace units, such as the appeal property, adjoin a street corner there is a side garden providing some separation between the flank wall of the house and the back edge of the footway. These side gardens appeared to the Inspector to be a design feature of the original layout of the estate. They help to break up the built form of the estate and create a sense of spaciousness at key corner locations.

The proposed house would take up the greater part of the width of the side garden to No 81. To the Inspector's mind this would significantly erode the sense of spaciousness that currently exists. Furthermore, the flank wall of the proposed house would be uncharacteristically close to the back edge of the footway to West Street, resulting in a cramped effect. For these reasons, he considered that the proposal would result in material harm to the character and appearance of the area.

The appellant argues that the height, scale and detailed design of the proposal would match that of the adjoining houses. Whilst the inspector accepted that point, it does not outweigh the harm he identified. The appellant also pointed out

that the site is private garden land, enclosed by fencing and planting, which does not form part of any public or communal space. Even so, he considered that the appeal site makes an important contribution to the street scene, for the reasons given above.

The Inspector concluded that the proposal would conflict with Policy CP13 insofar as that policy requires that development should be appropriate to the character of the settlement. It would also be contrary to Policy CP24 which states that all development must, through its layout, siting, character and appearance, respect the site and its surroundings.

1.2 Site: **Fremlins Dell, Comp Lane, Offham**
 Appeal **Against the refusal of permission for conversion of a bungalow into a two storey building with ensuite in attic. Rebuild garage with two storey side extension, erection of single storey extension**

Appellant **Mr P Garrod**

Decision **Appeal allowed**

Background Papers file : PA/31/10

Contact: Cliff Cochrane
01732 876038

The appeal proposal follows a grant of permission on appeal in 2007 for conversion of the bungalow to a two storey house on the same footprint, and the dismissal of a second appeal in 2009 concerning proposals for an enlarged footprint. The present proposal is for a reduced enlargement in relation to the neighbouring dwelling.

The Inspector considered the main issue in this appeal to be the effect of the development on the living conditions of the neighbouring occupiers at Alexander House, with particular regard to sunlight, daylight and outlook. Core Strategy Policy CP 1 seeks to protect the built environment and Policy CP 24 requires development to respect its surroundings and amenity.

The appeal Inspector writing in 2007 found no significant effects on the occupiers of the adjoining property due to distance and orientation. The Inspector for the 2009 appeal decision found the enlargement to cause a marginal loss of sunlight, stating that the development would make a rather dark room even darker, and that this added to his concern over the proximity of the new building. That marginal loss would be reduced as now proposed and the Inspector took note of the calculation supplied by the Council in determining their view that the effect would be acceptable. He considered on balance that the alterations to the design of the extension have overcome the previous failing with regard to sunlight and daylight and that as a result the proposal would not have an unwarranted effect on the living conditions of the neighbouring occupiers.

The proposed extension would involve the re-alignment of the garage wall away from the boundary at the front, but would bring the single storey extension to the side and rear of the existing bungalow across towards the rear of Alexander House; this due to the varied alignment of the boundary. However, the change in level and intervening boundary wall would substantially avoid an adverse effect on outlook caused by this single storey part. The proposed two storey part would be set back, further from Alexander House than previously proposed, and would not project so far to the rear as the single storey part.

There would, as a result, be changes to the outlook from the nearest windows of the neighbouring house and from the various levels of the rear patio and the courtyard adjoining the boundary. However, considering the otherwise open nature of the outlook, the improvements made in the design and layout compared with that dismissed on appeal in 2009, and the nature of the comments of that Inspector, the Inspector did not consider that the effect on outlook is such as to cause serious harm to the living conditions of the neighbouring occupiers.

The site is within the Offham Conservation Area and Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The Inspector concurred with the opinion of the Council that the character and appearance would be preserved. Similarly, whilst he read of concerns over parking, he shared the view of the 2009 appeal Inspector on this being acceptable.

In conclusion, the changes made to the design of the proposal are sufficient in the Inspector's judgement to overcome the failings of the 2009 scheme and as a result the proposals would accord with the aims of Policies CP 1 and CP 24. Conditions would be required to ensure that the materials used are acceptable, particularly in view of the location within a designated area, and he considered it reasonable to restrict the insertion of further windows to the side without express consent, in order to avoid overlooking. For the same reason the rooflights on the side slope should be fitted with obscured glazing and be non-opening. With these provisions and taking account of all other matters raised, the Inspector concluded that the appeal should be allowed.

- 1.3 Site: **The Granary, Stilstead Farm, Tonbridge Road, East Peckham**
 Appeal **Against the refusal of permission for the erection of a white uPVC conservatory**
 Appellant **Mr Dixon**
 Decision **Appeal dismissed**
 Background Papers file : PA/30/10
- Contact: Cliff Cochrane
01732 876038

Preliminary Matters

The Inspector was advised that the appeal property is within the Metropolitan Green Belt. However, the Council has taken the view that the development would not be inappropriate and would not have a detrimental impact on the Green Belt or the open countryside. The Inspector had no reason to come to a different view on this aspect of the appeal.

The Inspector considered the main issues in this appeal are whether the proposed extension would be in keeping with the existing dwelling and the locality and, secondly whether it would accord with development plan policies relating to the extension of rural buildings previously converted to a dwelling.

In determining this appeal the Inspector is required by Section 38 (6) of the Planning and Compulsory Purchase Act 2004 to make his decision in accordance with the provisions of the development plan unless material considerations indicate otherwise. He was referred by the Council to a number of policies, including Saved Policy P4/12 of the Tonbridge and Malling Borough Council Local Plan 1998, and Policy CP24 of the Council's Core Strategy adopted in 2007. From the Council's Managing Development and the Environment Development Plan Document (DPD) it refers to Policies SQ1 and DC1 in the refusal of planning permission. The former indicates that proposed developments will be required to reflect local distinctiveness, and sensitivity to change, of the local character areas as defined in the Character Area Appraisals SPD. The Inspector was not provided with a copy of this SPD, or an indication of its status, so he was unable to afford this particular policy significant weight in his decision.

Policies P4/12 and CP24 seek to ensure that development will be well designed and respect a site and its surroundings, in such as their character, appearance and materials. Policy DC1 specifically relates to the re-use of rural buildings, with paragraph 3 stating that proposals to extend such buildings will not normally be granted. It was submitted on behalf of the appellant that the proposed conservatory would not be an extension, being of a temporary nature, and consequently not subject to this policy. Whilst this may be the approach of the Council's Building Control Department this is under a different legislative code and has no bearing on the interpretation of planning policy. In the Inspector's view the proposal would clearly constitute an extension to the dwelling and would contravene the policy presumption against such extensions.

The appeal property is a converted farm building with a simple form, brick to the ground floor with tile hanging above. It is situated at the end of a long drive within a group of converted barns and equestrian buildings. Whilst the extension would not be visible from the road it would be seen from adjoining properties and land. It would be of uPVC construction on a brick base and have a hipped roof. Its roof form and materials would contrast markedly with the style of the existing property and, in the Inspector's judgement, it would appear as an isolated addition wholly unrelated in its design to the main house. This would be accentuated by the creation of a flat roofed valley between the back slope of the conservatory and the

existing dwelling. Whilst the design may have been chosen to match others in the area he was not provided any further details of these.

Whilst the Inspector found the locality and design of nearby buildings to be somewhat mixed in their character he shared the Council's concern that the proposed building would not be in keeping with the traditional materials, character or form of the existing dwelling. It would have an adverse impact on the appearance of the property. Not only would it conflict with Saved Local Plan Policy P4/12 and Core Strategy Policy CP24 in this regard but, he concluded, would also conflict with DPD Policy DC1 in relation to extensions to converted rural buildings and be unacceptable.

- 1.4 Site: **Oakwood Poultry Farm, Vigo Road, Fairseat**
 Appeal **Against the refusal of permission for the demolition of 981 sq m of floorspace, change of use of 3 poultry buildings and barn to light industrial (B1c) uses and associated landscaping**
 Appellant **Messrs P, K & R Durrant**
 Decision **Appeal allowed**
 Background Papers file : PA/11/10 Contact: Cliff Cochrane
01732 876038

The Inspector considered the main issue to be whether or not the appeal proposal would prove unsustainable in terms of transportation considerations.

The appeal proposal stems from the Appellants' decision to cease egg production at the appeal site owing to pending EU and UK legislation governing the keeping of poultry, which would render the commercial operation unviable from 2011. The Appellants have expressed the desire to relocate to a site to be found elsewhere in order to recommence their enterprise, which of necessity would be funded by sale of the appeal site. The extent of funds generated by this sale would depend on the use allowed in this countryside location, and planning permission for various uses has been sought.

The appeal site lies in the Metropolitan Green Belt, but the Council's refusal of planning permission is silent on the matter of development in the Green Belt. However, this has been considered by the Council and it has been found that the appeal proposal, like previous applications, is not inappropriate development in the Green Belt that warrants rejection by the application of Green Belt policy. Although the Inspector agreed that the proposed development cannot be seen as farm diversification, having regard to the content of paragraph 3.8 of PPG2 "*Green Belts*", and recognising that substantial demolition is proposed he concurred that the appeal proposal does not offend against Green Belt policy.

The Appellants made an application for planning permission in 2006 for partial demolition and the use of 2 of the poultry buildings for a combination of Use

Classes B1 and B8 (light industrial and storage and distribution uses). This was approved by the Council. A later application in 2007 for planning permission to change the use of 4 of the poultry buildings to Use Class B1c (light industrial use) was refused. In response to an application submitted in 2008 the Council granted planning permission to convert 4 of the poultry buildings to provide 8 live/work units. The last planning permission granted by the Council would clearly have provided a fall-back position had the appeal been dismissed or still provides a fall back position if the Appellants decide not to implement the planning permission now granted on appeal.

As part of the normal consultation procedure all the applications, including the application, the subject of the appeal, were appraised by Kent County Council as the highway authority. A material consideration of substantial weight is the fact that the highway authority raised no objection to the appeal proposal subject to various conditions being imposed on the grant of planning permission. The basis of the highway authority's assessment is that it accepted the level of traffic generation by the existing use at over 500 potential vehicle movements per week exceeds the predicted traffic flows that would be generated by the proposed development, as based on acceptable presumptions.

The Council provides no statistical evidence to counter the matters raised in the highway authority's consultation document prepared by a specialist Officer. Nevertheless it alludes to the countryside location of the appeal site as being remote from any local service centre and in essence it alleges that the site is not well related to public transport facilities. Although differing in size and type to the previous schemes approved by the Council, like those proposals the proposed development is commercial in nature, but the criticisms now relied on by the Council did not militate against the earlier proposals.

Local residents support the Council's decision and point to the rural nature of the road serving the appeal site, not least its limited width denying vehicles the ability to pass one another and the absence of footways. Despite these limitations the Inspector did not find that these criticisms take precedence over the predicted fall in traffic movements attributable to the appeal proposal, which must be seen as a more favourable situation than traffic flows that could be generated by resumption of full agricultural operations at the site.

In the light of the above matters the Inspector was not persuaded that the Council has justified its decision to refuse planning permission which it has based on the alleged unsustainable nature of the appeal proposal. Neither was he convinced that the proposal runs counter to national policy in PPS7 or any of the development plan policies cited in the Council's decision notice. Moreover, he did not accept that the third party representations or the Council's preference to see the planning permission for the live/work units implemented introduce any matters that would justify dismissal of the appeal.

- 1.5 Site **Land to rear of 21 High Street, Borough Green**
 Appeal **Against the refusal of permission for the demolition of a building to the rear of 21 High Street and its replacement with a building incorporating a double garage and three apartments with associated infrastructure**
- Appellant **Mr Michael Churchman**
 Decision **Appeal dismissed**
 Background papers file: PA/08/10
- Contact: Cliff Cochrane
 01732 876038

The Inspector considered there to be two main issues in this appeal. The first is whether the proposal would constitute overdevelopment having regard to its location and relationship with surrounding land, and the nature of the proposed access arrangements. The second is the effect of the development on the living conditions of adjoining residents with particular regard to overlooking and loss of privacy.

The Inspector was referred to the Tonbridge and Malling Borough Core Strategy 2007. Policy CP1 sets the context for securing sustainable development in the Borough with a number of criteria for assessing planning applications. These acknowledge that mixed use development will be promoted where appropriate in town and rural service centres. To that extent there is support in principle for new dwellings in the area, as illustrated by the small adjacent development at nos. 19a and 19b High Street. There was no doubt in the Inspector's mind that this is a sustainable location having regard to accessibility to public transport and local services. Development would be consistent with the aims of Planning Policy Statement 3 *Housing* (PPS3) to make efficient use of land. However, PPS3 also aims to achieve high quality housing of good design, creating or enhancing a distinctive character that relates well to the surroundings. Core Strategy Policy CP24 takes this forward at the local level requiring all development to be well designed and of high quality, with scale, layout, siting, character and appearance respecting a site and its surroundings.

Site Constraints

The appeal site comprises an existing garage and storage building in a mixed use rural centre location, to the rear of undertaker's premises on High Street. It has storage on the first floor, access to which is gained by an external staircase. Sole access to the site is along a private access drive from Western Road, this being shared with other commercial properties on both frontages. The new residential development would essentially be accessed through a rear service yard to these premises. The High Street frontage is three storeys in height from no. 21 onwards, with two storey dwellings beyond the gated access drive that runs alongside this property to new dwellings at the rear. The dwellings on High Street, from where the Inspector received representations, have small enclosed rear gardens behind screen fences. The existing building on the appeal site is of brick and weatherboard construction with a plain windowless elevation to this drive.

It is submitted, on behalf of the appellant, that the proposed building is to replace outdated premises that are surplus to requirements. Several parties state that the premises would remain in use by the appellant for garaging, with the conclusion that they are not surplus. The redevelopment would though provide better direct access to the offices at no. 21, and the Inspector regarded this as a distinct benefit that provides some support for the development, making the premises more efficient and lending support to a local business. The appellant does point out that the footprint would largely be as existing, although its height would be greater. Nevertheless, there are a number of other factors that led the Inspector to endorse the Council's concerns at the extent of development that is being proposed on a very constrained site.

The first of these relates to the access track from Western Road. Currently the site has garaging for hearses, with storage above, which the Inspector was advised generates relatively little traffic, being for the storage of the Council's Christmas decorations. He acknowledged that more intensive use of that storage facility could be a possibility, but that is a matter over which planning control could not be exercised. He was told that hearses already have to reverse out of the access drive onto Western Road. At the time of his visit this drive, even without the presence of any hearses, was totally congested with delivery and other vehicles, to the extent that it was virtually nonnegotiable even by pedestrians.

Whilst the submissions demonstrate the tracking of vehicles into and out of the parking spaces for the apartments they assume a clear run. Although he noted that no objection was raised by the Highways Authority congestion within the access drive, as noted on his visit, could have repercussions on the busy classified A227 Western Road where there are a number of other parking areas adjacent to the drive, as well as a pedestrian crossing. Whilst he noted the assertion that residents may not be car dependant this may equally not be the case. The addition of three apartments to this mix of uses would potentially contribute to a significantly intensified use of the access, even in such a sustainable location.

Although occupying a similar footprint to the existing building the proposed replacement would introduce changes to the external elevations. The existing building has windows on the south west and north west elevations but these are boarded up. Even if not boarded up they would just serve storage accommodation. The appeal proposal, on the other hand, would introduce new windows to these elevations. They would serve habitable rooms albeit the first floor window on the north west elevation to the kitchen/living area would be secondary and obscure glazed. These windows would be physically located along these two site boundaries. Unless fixed lights they would open over land not included within the appeal site, and not evidently within the control of the appellant, a situation that the Inspector found unsatisfactory. To provide such rooms with mechanical ventilation as an alternative would be unacceptable and is a consequence, in his opinion, of seeking to secure more accommodation within

the footprint than it is capable of satisfactorily providing. This, combined with the somewhat unprepossessing environment that would adjoin the proposed residential accommodation in the rear service area, led him to the view that the site, notwithstanding its sustainable location, is not well placed to provide a high quality environment for new two bedroomed dwellings capable of family occupation.

Although PPS3 seeks to make efficient use of land it does so with the aim of securing high quality housing of good design in a satisfactory environment. The Inspector's conclusion is that this development would not do so. It would, having regard to its location, its relationship with surrounding land, and the nature of the proposed access arrangements constitute overdevelopment and be unacceptable, contrary to Core Strategy Policy CP24.

Neighbours' amenity

Turning to the second main issue the Inspector noted the relationship of the proposed development to adjoining dwellings and note the range of matters raised. The main concern, in his view, relates to the first floor bedroom windows on the south west elevation and the perception of overlooking and loss of privacy to adjoining occupiers. These windows would be on the boundary of the site adjoining the drive to nos. 19a and 19b High Street. He accepted, as stated by the appellant, that the angles between these windows and those in adjoining properties would be acute, and that there would not be a significant loss of privacy through direct view window to window.

It is not, however, just a matter of window to window relationships. These windows would overlook the drive and courtyard to the front of nos.19a and 19b where the occupiers of these dwellings have enjoyed a measure of privacy. Direct overlooking of this area would intrude into the privacy of these occupiers to a greater degree than overlooking from the dwellings on the High Street frontage, nos. 13-19.

The Inspector also noted that the windows would overlook, at a less acute angle the presently private rear gardens of these properties. Whilst he gave little weight to the other several grounds of objection raised by adjoining residents, including the height of the proposal, which he did not find unacceptable in itself, and impact of building works, this would be sufficiently serious and adverse to amenity to justify the refusal of planning permission on this ground. It has been suggested, on behalf of the appellant, that these new windows also could be obscure glazed to overcome overlooking. However, it would not be satisfactory, in his judgement, to permit a development where habitable room windows have to be provided with such glazing to avoid overlooking of adjacent property, indicating that too many units are being put forward for a site of limited capacity, resulting in an unsatisfactorily cramped form of development.

The Inspector concluded that there would be an unacceptably adverse impact on the living conditions of adjoining residents with particular regard to overlooking and loss of privacy, contrary to Core Strategy Policy CP24.

Adrian Stanfield

Legal Services Partnership Manager