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**Wrotham**                                    **562750 158678**    **6 August 2010**                                    **TM/10/02151/FL**  
Wrotham

Proposal:                                    Temporary use of land and buildings for 2 year period for B1/B8 or contractors depot including open storage, siting of portacabins and parking  
Location:                                    The Poplars London Road Wrotham Sevenoaks Kent TN15 7RR  
Applicant:                                    Gallagher Properties Ltd

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**1. Description:**

- 1.1 The application is for a temporary use of the site and buildings for B1 and B8 or contractors depot. The aim of a temporary permission is to reinstate the use of the site before a more permanent use can be found, with the intended aim to redevelop the site in the future. The temporary use would include open storage on the site, the siting of portacabins and car parking.
- 1.2 The applicant is submitting the application on the basis that a B1/B8 use already exists on the site and this application is to reinstate what is claimed to be the lawful use.
- 1.3 Supporting documents include a detailed Planning Statement, Landscape Appraisal and Noise Impact Assessment.
- 1.4 The application originally included B2 (General Industry) and more extensive site coverage by portacabins but those aspects were withdrawn following representations from the PC.

**2. Reason for reporting to Committee:**

- 2.1 The controversial nature of this site due to its planning history.

**3. The Site:**

- 3.1 The site area is 0.9 ha. The entire site is in the Metropolitan Green Belt and an Area of Outstanding Natural Beauty. Most of the site, however, lies within an area allocated as a Major Developed Site in the Green Belt, subject to policy M1 (m) of the DLA DPD. The north east corner of the site is outside this allocation and within the MGB.

Save for a 9 month temporary permitted development use in 2009, as a depot used by contractors for a gas pipe installation, the majority of the site appears to have been last actively used in the early 2000's for a mixed use for B1, B2 and B8 and haulage uses with a two storey dwelling at the site frontage.

- 3.2 The whole of the site within the red line area is covered with buildings and hard standings. There is a collection of buildings and structures to the rear of the site and a free standing building between these buildings and the dwelling.
- 3.3 To the south-east there are two dwellings; to the north is open agricultural land; to the west is the Oakdene Transport Café.
- 3.4 Vehicular access to the A20, London Road is currently directly onto London Road. No change is proposed to the existing access.

**4. Planning History (selected):**

TM/55/10448/OLD Grant with conditions 24 November 1955

Fruit Packing Shed.

TM/55/10505/OLD Grant with conditions 28 October 1955

Addition of bedrooms, box room and office to 'The Poplars'.

TM/55/10516/OLD Grant with conditions 20 October 1955

Chicken/Turkey Pens.

TM/55/10691/OLD Grant with conditions 25 August 1955

Implement Shed (Extension of temporary period).

TM/64/10375/OLD Grant with conditions 9 July 1964

Bungalow and garage.

TM/64/11017/OLD Grant with conditions 10 June 1964

The erection of a dwelling.

TM/72/11095/OLD Refuse 20 July 1972

Change of use of double garage to a farm shop.

TM/05/00516/LDCE Application Withdrawn 26 April 2005

Lawful Development Certificate Existing: Mixed B1, B2 and B8 use with associated parking and outdoor storage

TM/05/03515/CR3    Application Withdrawn    18 January 2006

Regulation 3 Outline Application for demolition of existing warehousing and storage areas on the site, and the erection of an office building, garaging, salt barn and storage areas, along with associated car parking and landscaping to form a integrated Road Services Depot for Kent County Council

TM/06/02342/CR3    Application Withdrawn    2 October 2008

Redevelopment to provide integrated highway depot comprising offices, garaging, salt barn and storage areas with associated car parking and landscaping

## **5. Consultees:**

### **5.1 Parish Council ( initial comments):**

5.1.1 Site History: WPC possesses an affidavit from the site's immediate neighbours that evidences the following context. The site was used for agricultural uses up to 16 August 1994; this consisted of poultry sheds and fruit packing. The site was then purchased by Derek Nokes, a man with a criminal record, and used for some low-key business use but nothing on the scale alleged by Mr Nokes in his subsequent affidavit. In particular the number of HGV's had been greatly exaggerated and there were no night-time deliveries.

5.1.2 Derek Nokes sold the site to George Taylor in September 2001 who used the site as a front for a drug smuggling operation conducted with a specially adapted lorry with hollow axels. George Taylor was arrested by Customs and Excise on 13 January 2003 and the site was impounded and the entrance was bunded to prevent vehicle access. Mr Taylor was subsequently convicted of drug smuggling and receivers sold the site to Stapleford Commercials on 21 April 2004.

5.1.3 Stapleford Commercials imported road scalplings and hard waste without a licence and filled the site with lorry trailers in order to make it appear to be commercially used. They then applied to TMBC planning for a Lawful Development Certificate for B1, B2 and B8 use but they withdrew the application when it became clear that it would be unsuccessful due to a lack of evidence to support their case.

5.1.4 Kent County Council purchased the site on 20/6/2005 and granted Kent Highways Services planning permission to build a 'Highways Super Depot'. CPRE judicially reviewed this decision, their legal team alleging the following:

1. Bias and predetermination
2. Insufficient regard for the protection of the AONB, lack of a national need, insufficiently rigorous search for alternative sites and a lack of exceptional circumstances to outweigh the harm to the AONB.
3. Insufficient regard for Section 85 of the Countryside and Rights of Way Act 2000 which imposes a general duty on public bodies (such as the Council)

to "have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty".

4. Insufficient regard for the harm caused to the openness of the Green Belt and a lack of special circumstances to outweigh that harm.
5. Issuing a scoping opinion that misinterpreted legislation requiring an EIA that resulted in no EIA from the applicant.

5.1.5 CPRE were advised that some aspects of these points were reversible; a new application could produce an EIA to support it for example. However primary law protects AONB's, which is inherently difficult to overcome by a new application of an inappropriate proposal. KCC only conceded that point 5 invalidated the consent but did not take the application further so in effect points 1 – 4 remained untested in law. The fact that they did not attempt to rerun the application would indicate that CPRE had made a persuasive case.

5.1.6 KCC carried out various works on the site as a result of a planning enforcement ruling by TMBC. In particular road scalplings and hardcore waste were scraped off the AONB and moved into bunds and topsoil was imported. The road scalplings and waste were left in bunds that reflected the separation of the areas covered by Policy M1 of the DLA DPD, thereby leaving areas on the site with AONB/MGB constraints but without Policy M1 constraints free of road scalplings and waste materials. Photographs taken by Planning Officer Neil Hewett and Cllr Pete Gillin can evidence this.

5.1.7 A topographical survey carried out by Jacobs Babbie on behalf of KCC as part of their Super Depot Application. It records a pond on the southern border, which is part of a drain that flows northwest to southeast across the site. Murphy's then occupied the site on a temporary licence for almost one year to install a gas pipeline under national need planning guidance, which outweighed all constraints.

5.1.8 Under the terms of Murphy's temporary consent they were obliged to leave the site as they found it but in fact they moved the bund away from the area covered by policy M1 and further into the area of AONB that is not an area of development. This appears to have resulted in the blocking of the drain and the infill of the pond. There was an open stream that flows across the rear of the Oakdene Café, Poplars, Rosador, Excel and this is now blocked off at Poplars resulting in surface flooding across imported materials.

5.1.9 Proposal: Gallagher's seeks a change of use of the site from agricultural to B1, B2 and B8 and B1a office use of the residential dwelling. The application seeks to bring an unspecified number of portacabins onto the site and the area up to the existing bund be used for open storage up to a height of 4m. There are no details as to specific areas to be utilised for 'open storage'.

5.1.10 Comments: Wrotham Parish Council objects to the proposal as follows. The existing consents are agricultural and an application for an LDC to regularise B1, B2 and B8 was previously withdrawn. WPC has ample evidence that a subsequent

application would founder. Belleville is a NHS care home and is immediately adjacent to and partially enclosed by the site and other residential properties are adjacent to it. TMBC has just consented an expansion of the NHS Care Home with an annexe close to the boundary. In this situation it is not appropriate to grant B2 and B8 uses, as it would cause noise, dust and loss of residential amenity.

- 5.1.11 WPC questions the need for additional temporary portacabin accommodation, as there is a significant amount of built development on the site, which is unutilised and newly refurbished by Murphy's. Unnecessary temporary accommodation increases the built development in the AONB and would set an unfortunate precedent for future uses on the site. The applicant has not specified the amount of Portacabins, their size, or justified the need over and above the existing built development in an Area of Outstanding Natural Beauty.
- 5.1.12 The applicant specifies open storage and if granted this could cover the complete site in physical bulk up to a height of 4m. This is within the MGB and would massively impact on the openness and no special circumstances have been advanced to overcome the harm. In addition and more importantly a consent that allows bulk storage over a significant area of AONB would detract from the quality of the environment of the AONB and cause significant harm both to the AONB and to views from the long distance footpaths along the North Downs, completely contrary to Policy M1. We note that the applicant has not provided any evidence regarding the visual impact of their proposals on the AONB and from the North Downs Scarp and long distance footpaths.
- 5.1.13 It is impossible to know what uses have occurred on the site or the potential for contamination but we have evidence that large amounts of waste material have been imported onto the site in an unregulated manner. It is therefore essential that a full contamination survey be completed before any further use, temporary or permanent, is consented.
- 5.1.14 The area of the site exceeds the area covered by Policy M1. The applicant is therefore proposing development in an AONB and MGB where there is no history of development and no established use. The application is therefore inappropriate and special circumstances need to be advanced to overcome the harm to the MGB and AONB and alternative sites should be investigated or the proposed area revised
- 5.1.15 A previously open drainage stream and pond is now infilled by a large bund of possibly contaminated materials, which were imported without permission. There is ample evidence of the open drainage stream by looking at the properties either side of Poplars. The drainage stream is now blocked resulting in surface flooding across the Poplars site.
- 5.1.16 The Environment Agency urgently need to assess this blockage, particularly as the passage of water through the drain passes over materials that were imported without regulation. This area is approximately 600 metres from the Trottiscliffe

water extraction point and hence the utility responsible for the provision of drinking water should also be advised and consulted.

5.1.17 In addition a natural pond, fed by the fresh water drain and recorded on OS maps, has been in filled within the Kent Downs AONB without any authority or consent. Have the Kent Downs AONB Unit been consulted? The greater area and in particular land adjacent to the site is water meadow, owned by the National Trust. The applicant has not provided an ecological scoping survey to determine whether protected species utilise the site and its buildings. WPC is of the opinion that conditioning on any future consent should reinstate the open culvert and pond.

5.1.18 PC (comments on additional information):

The amended information had been considered but our comments are unchanged.

However, in the event that the LPA is minded to consent temporary use WPC suggests the following conditioning.

1. An open culvert and pond is reinstated. Reason: This was the situation before Murphy's temporary use and to block or enclose a culvert can only be carried out with Environment Agency approval.
2. The proposed car parking area is AONB and MGB and not part of the area with M1 constraints. If it is to be used for car parking then the applicant should clear the area of road scalplings and install cellular ground reinforcement with topsoil and grass seed. Reason: To overcome the harm to the AONB.
3. Portacabins should be limited to 6 at ground level, no stacking. Reason: To protect long distance views from the downs.
4. Temporary use should be limited to 2 years. Reason: To encourage the applicant to bring forward a permanent scheme to improve the site.
5. The applicant brings forward a scheme to landscape the area to the north west of the existing bund that includes removal of the bund. Before temporary use begins the scheme should be implemented. Reason: Trees and landscape mitigation take years to properly establish and this will then enhance the Kent Downs area of Outstanding Natural Beauty.

5.2 KCC Highways: No objection subject to conditions.

5.3 DHH: The use of The Poplars as an office for the duration of the temporary consent is noted, however there are other residential properties in the vicinity, and I understand the long term plan is to return The Poplars to residential use. As such the applicant should submit a noise impact assessment of the proposed use. In determining the noise impact, regard shall be given to the relevant standards such as BS4142 (1997) Method for Rating Industrial Noise affecting Mixed use Residential and Industrial Areas.

5.3.1 Following additional information: The noise impact report gives current noise levels on the site, but does not predict levels when the proposed usage is up and running. Instead it is recommended that noise from the development shall be at least 5db below the existing background noise level at the site boundary ( in line with BS4142). I would agree with this, however the developer needs to be confident the operator will be able to achieve this. If there is any doubt I would suggest imposing conditions to mitigate noise disturbance, such as those recommended in section 4.13 of the MRL report.

5.4 Environment Agency: We have no objection to the application providing the following condition is attached to any permission granted.

Condition: If during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted to, and obtained written approval from, the LPA for an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: The site lies on the edge of a Source Protection Zone 3 covering the Trosley public water supply and has had a history of commercial uses which have the potential to have caused ground contamination.

5.4.1 Land contamination: The document submitted with the application is a commercial search and does not meet the requirements of a preliminary risk assessment as required by PPS23. Due to the history of commercial use at the site there is a significant possibility of ground contamination and prior to any permanent development of the site, it will be necessary to prepare and submit a preliminary risk assessment with such a planning application.

5.4.2 Drainage: Soakaways are only acceptable for the disposal of clean uncontaminated water. Appropriate pollution control methods (such as trapped gullies and interceptors) should be used for drainage from access roads and car parking areas to prevent hydrocarbons from entering the surface water system. Roof drainage should drain directly to the surface water system. There must be no discharge into made ground, land impacted by contamination or land previously identified as being contaminated.

5.4.3 The applicant should be aware that the use of a septic tank may require an Environmental Permit. Such approval may be withheld, particularly if the discharge point from the septic tank places the aquifer below the site at risk. Approval may also be withheld due to the proximity of the site to a public foul sewer. An acceptable alternative to a septic tank (on a temporary basis) for the site would be the use of a sealed tank (cesspool) which would be emptied periodically of sewerage for treatment and disposal off-site.

5.4.4 Storage of fuels/chemicals: Care should be taken during and after construction to ensure that all fuels, oils and any other potentially contaminating materials should be stored so as to prevent accidental/unauthorised discharge to ground. The areas for storage should not drain to any surface water system. Where it is proposed to store more than 200 litres of any type of oil on site it must be stored in accordance with the Control of Pollution Regulations 2001.

5.5 Private Representations (7/0S/0X/0R) plus Departure press advert and Art 8 Site Notice: No responses received to date.

## **6. Determining Issues:**

6.1 The majority of the site is allocated under the Major Developed Sites (MDS) Policy M1 of the DLA DPD that allows for infill development *or* redevelopment. The rear north east corner of the site is outside of the MDS area and also lies within the MGB. The proposal is therefore partly, by definition, inappropriate development in the MGB and a Departure from the Development Plan. If the scheme is to be approved, very special circumstances must be demonstrated. PPG2: Green Belts and policy CP3 of the TMBCS also therefore apply. Other relevant policies are policy CP7 which relates to Areas of Outstanding Natural Beauty and policy CP14 Development in the Countryside of the TMBCS.

6.2 Policy M1 of the DLA DPD identifies most of this site as a Major Developed Site in the Green Belt (MDS), which notwithstanding a Green Belt location confirms this site as one where infill development or redevelopment will be permitted in principle. It derives from a national planning objective in PPG2 (Green Belts) to achieve environmental benefits from encouraging reasonably beneficial uses for such previously developed land.

6.3 Policy M1 includes a number of criteria to be applied when considering applications for redevelopment. These include:

- It does not lead to any greater impact on the openness of the Green Belt and the purposes of including land within it;
- It leads to an overall improvement in the environment, does not harm the landscape setting, includes provision for maintenance of landscaped areas and appropriately integrates within its surroundings;
- Any changes to traffic generated can be satisfactorily accommodated without conflict with rural amenity and without conflict with rural amenity and without prejudice to highway safety;
- It does not exceed the height of existing buildings;
- For infill development, it does not result in an extension to the currently developed extent of the site; and



- For redevelopment, the proposed coverage of the site by buildings is no larger than the ground floor extent of the original buildings.

6.4 In addition there are also site specific caveats in respect of Nepicar Area East, London Road, Wrotham. These are:

- Respecting the setting of the site within the AONB;
- Integration of development into the area;
- Inclusion of a high quality roofscape to protect long distance views;
- Provision of satisfactory access to the A20;
- Achievement of a satisfactory climate in accordance with Policy SQ6 having regard to the proximity of the A20 and the M20 and M26 motorways;
- Investigation and remediation of any land contamination; and
- Any necessary mitigation measures identified as a result of an archaeological assessment.

6.5 The application submitted is for the use of the buildings and land, rather than any new building works and is also for a temporary two year period, therefore a number of the above criteria do not apply to this proposal, as limited ground works appear to be proposed.

6.6 Both a Landscape Appraisal and a Noise Impact Assessment have been submitted with the application. The Noise Assessment identifies that noise from the site will not give rise to an unsatisfactory noise environment for adjoining properties due to the existing level of background noise from the major roads nearby. This should be ensured by use of a planning condition as mentioned by DHH in his comments.

6.7 The Landscape Appraisal identifies in some detail that the site is seen in limited views from the adjoining AONB and open countryside and is largely obscured from view by the topography of the area. Consequently the proposed development has a very limited impact on the surrounding landscape and there is no impact on the AONB from any public viewpoint.

6.8 Consequently, in terms of the MDS part of the site, I am of the opinion that the proposed change of use will not worsen the existing impact on the landscape character of the AONB and the proposed use on the MDS is therefore well integrated into the surrounding area. The application in relation to the MDS does not therefore harm the landscape setting and consequently does not lead to any greater impact on the openness of the Green Belt. Notwithstanding that conclusion, I see no reason why an appropriate landscaping scheme for the site

should not be implemented, even for a temporary permission, which would ensure the site integrates into the local landscape further and enhances the overall character of the site. A condition requiring a landscaping scheme has therefore been suggested. Therefore the development complies with policy CP7 of the Tonbridge and Malling Borough Core Strategy 2007.

- 6.9 In terms of the proposed introduction of a car parking use on the non- MDS part of the application site, in the light of the conclusion of the Landscape Appraisal, the proposed change of use will not worsen the existing impact on the wider landscape character of the AONB, notwithstanding an inevitable localised landscape impact which would be dealt with by a condition.
- 6.10 In terms of the part of the application site outside the MDS, normal Green Belt policy constraint applies. Although technically, by definition, this part of the development is inappropriate development, the impact on the visual openness and also any other harm caused by this inappropriateness is relatively limited on this occasion.
- 6.11 The shape of the application site gives a more logical physical configuration to the application site which, in my view, is understandable in terms of facilitating a viable commercial reuse of the site. Therefore, although use of a small part of the overall application site would be a departure from the Development Plan, I am of the opinion that this is acceptable on this occasion, in the context of the wider proposal which will bring an otherwise derelict site back into an appropriate active use. Members may agree that the need to reinstate a use on this site and thereby give scope for an improvement the appearance of the site and locality as a result is, on balance, of sufficient weight for allowing this development as proposed on this site.
- 6.12 In respect of highway issues, the existing arrangements are to be retained as this proposal is for a reinstatement of the last use. KHS raises no objections but recommends some conditions. Any detailed conditions required in addition to those set out below will be in a Supplementary Report. They are likely to include such factors as provision of parking; loading, off-loading and turning areas; use of appropriate surfacing and adequate control of surface water to prevent flooding onto the highway.
- 6.13 The proposed 4 metre high open storage is in line with the height of the existing buildings on the site and therefore complies with the relevant policy criteria. A condition should be applied to ensure the height does not exceed 4 metres.
- 6.14 I can entirely understand the concerns expressed by the Parish Council, for this site has been the subject both a complex and somewhat elusive planning history and also a variety of applications in the past. Much of what the PC says in its initial comments relate to this history and does not directly bear on the current proposal bearing in mind that much of the site comprises an MDS. However, it is of course essential that nothing in the form of this current proposal should be allowed to

inadvertently commit land outside the MDS to long term development and in this I share the view of the PC that this matter must be controlled. A detailed condition will be set out in the Supplementary Report to deal with this matter as will a condition requiring no B2 use (as offered by the applicant).

6.15 The present application does not affect the land or the ground water regime as currently exists. However if potential contamination should be revealed during the set-up or use of the site then this must be required to be notified to the Council and a condition will be attached to that end (detailed drafting in Supplementary Report). Quite separately we will discuss with the applicant over the longer-term the future restoration of the pond and associated drainage features.

6.16 This application represents an acceptable temporary solution to the future of this site while a longer term future, as envisaged in LDF policies, is considered and emerges. I can therefore recommend approval on a temporary basis, subject to appropriate conditions.

## **7. Recommendation:**

7.1 **Grant Planning Permission** in accordance with the following submitted details: Letter dated 15.11.2010, Acoustic Assessment dated 15.11.2010, Drawing DHA/7610/21 dated 15.11.2010, Landscape Statement dated 15.11.2010, Letter dated 22.09.2010, Site Layout DHA/7610/20 A dated 22.09.2010, Letter dated 06.08.2010, Validation Checklist dated 04.08.2010, Contaminated Land Assessment dated 04.08.2010, Site Plan DHA/7610/01 A dated 04.08.2010, subject to:

- No further contrary representations raising additional matters received relating to the Departure Press and Site Notice and
- Conditions:

1 The use hereby permitted shall be discontinued and the land restored to its former condition on or before 31 January 2013.

Reason: This permission is issued on a temporary basis only.

2 The business shall not be carried on outside the hours of 07.30 to 18.00 Mondays to Fridays and 08.00 to 13.00 on Saturdays with no working on Sundays or Public and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.

Reason: To avoid unreasonable disturbance outside normal working hours to nearby residential properties.

3 There shall be no open storage of materials, plant or equipment outside the area shown for such use on the approved plans, and the height of open storage shall

not exceed 4 metres above ground level.

Reason: To ensure the character and appearance of the development and the locality is not significantly harmed.

- 4 No further external lighting shall be erected on the site without the prior written approval of the Local Planning Authority.

Reason: The protection of the locality from light pollution.

- 5 No development shall take place until details of the number, layout, surfacing and draining of the vehicle parking area have been submitted to and approved by the Local Planning Authority. The works shall be carried out in accordance with the approved details before the parking area is brought into use and shall be so retained at all times thereafter.

Reason: To ensure a finish to the parking area consistent with the character and appearance of the locality.

- 6 The site shall not be occupied until details of the vehicles loading, off-loading and turning area have been submitted to and approved by the Local Planning Authority. The vehicle loading and turning areas shall be provided, surfaced and drained in accordance with these details as approved. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved turning area.

Reason: Development without provision of adequate turning facilities is likely to give rise to hazardous conditions in the public highway.

- 7 No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

- 8 Further conditions to be set out in the Supplementary Report dealing with other matters raised in the Report.

**Informatives:**

- 1 Please note that any scheme for redevelopment of the site will require an Archaeological Survey, Land contamination report in line with PPS23: Planning and Pollution Control and a comprehensive drainage scheme for the site which includes the reinstatement of the open culvert and pond.

Contact: Lucinda Green