

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

02 March 2011

Report of the Legal Services Partnership Manager

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

- 1.1 Site **16 Leney Road, Watringbury**
Appeal **Against the refusal of permission for a two storey side extension**
Appellant **Mr S Comrie**
Decision **Appeal dismissed**

Background papers file:
PA/41/10

Contact: Cliff Cochrane
01732 876038

The Inspector considered the principal issues in this case to be:

- a) The effect of the extension upon the appearance of the street scene.
- b) The impact of the proposal upon the living conditions of existing and future residents of 15 Leney Road.

Reasons

- a) Appearance of the street scene.

The property comprises a detached house, being part of a residential estate constructed in the 1980's. There is a single garage attached to the eastern flank elevation of the property which matches a similar garage on the west flank elevation of no. 15 next door. It is proposed to erect a two storey extension to the rear of the existing garage and to provide a first floor addition above the garage.

Policy CP24 of the Tonbridge and Malling Borough Core Strategy 2007 requires all development proposals to be well designed and of a high quality. It also requires proposals to respect the site and its surroundings in terms of scale, layout, siting, character and appearance. "Saved" Policy P4/12 of the Tonbridge and Malling Borough Local Plan (1998) and Policy SQ1 of the "Managing Development and the Environment" Development Plan Document 2010 (DPD) both reflect the objectives of Policy CP24. Additionally, they require development

to respect the residential amenities of neighbouring properties and to protect, conserve and enhance the local distinctiveness and interest of the area.

The Inspector considered the extension to have been generally well designed, although as a minor criticism the hipped barn end to the southern elevation is at odds with the gable end of the northern elevation and does not reflect the roof form of other dwellings in this section of Leney Road.

Despite the overall quality of the proposal the detailed scheme before the Inspector failed, in his view, to take account of the relationship of the extension with 15 Leney Road, which is set back some 3m behind the building line of no.16. The extension fails to appear subservient to the host dwelling in that its front elevation is shown as flush with that of the main house, while the roof has a ridge height which equates to that of the main dwelling also.

The Inspector concluded that due to its siting and configuration the extension would appear as an over-dominant feature in the street scene given the large area of mostly unbroken brick wall that will be visible in front of and above the garage of no. 15. The detailed scheme before him therefore failed to respect the objectives of the Development Plan policies to which he referred above.

b) Impact upon living conditions.

The extension would be sited adjacent to the flank wall of the garage of 15 Leney Road, although a 1m gap would be retained - as existing - between the extension and the southern boundary. Given the relative siting and orientation of the extension the Inspector concluded that there will be no unacceptable impact upon the privacy of existing and future occupiers of 15 Leney Road; neither would there be any loss of daylight/sunlight arising from the proposal before him.

Notwithstanding these comments the forward projection of the two storey element of the extension, albeit marginally reduced by the barn end roof and high level window, will result in an unacceptable visual intrusion within the front garden and driveway of 15 Leney Road. As such, the proposal is contrary to the objectives of "saved" Policy P4/12 of the Tonbridge and Malling Borough Local Plan and Policy SQ1 of the DPD.

- 1.2 Site: **Brackenhill Service Station, Maidstone Road, Borough Green**
 Appeal **Against the failure to give notice within the prescribed period of a decision on an application for planning permission for the redevelopment of the existing service station**
- Appellant **Esso Petroleum Company Ltd**
 Decision **Appeal dismissed**
 Background Papers file : PA/33/10
- Contact: Cliff Cochrane
 01732 876038

The Inspector considered the main issues to be the impact of the proposed redevelopment on the living conditions of the occupants of adjoining dwellings in terms of noise and disturbance and light pollution; and the implications of the scheme for highway safety.

Reasons

There has been a decline in the number of petrol filling stations serving the motorist by about 35% over the last 10 years. The appellants consider there to be a continuing need for the service at Borough Green and seek a redevelopment which would provide upgraded and viable facilities for their customers, including a much larger retail facility and improved infrastructure such as double skin tanks. As a result the balance would change from about 45 sq ms of net tradable retail space and 12 petrol filling points to some 228 sq ms net tradable retail space and 6 petrol filling points.

In order to accommodate the redevelopment of the site, the development area would be enlarged to include the garden land of 3 Crouch Lane which lies to the rear of the existing petrol filling station. It is this rear extension of the site which would bring the commercial development and activities within the site closer to the rear gardens of Fairseat House and dwellings in Normanhurst Road. In accordance with Policies CP1 and CP24 of the Tonbridge & Malling Borough Core Strategy the need for the development requires to be balanced against the need to protect and enhance the built environment and the quality of the residential amenity of the occupants of these neighbouring houses.

A noise survey has been undertaken on behalf of the appellants, to determine the extent to which noise experienced by nearby residents would alter as a result of the redevelopment. The rear gardens of Fairseat House and of the properties in Normanhurst Road are clearly subject to a significant level of background noise from traffic using the A25, and the residents of these dwellings also experience noise from the use of the existing site. The noise assessment does not predict significant increases in the noise experienced by the residents of adjoining properties, such that the Council's own Environmental Health criterion would not be materially breached.

However, Fairseat House currently has the petrol filling station use adjacent to the flank wall of the house. With the proposed extension of the site, activities such as

the movement of delivery vehicles and cars accessing the site and parking would take place adjacent to the rear garden of the house. For the houses in Normanhurst Road, the existing garden of 3 Crouch Lane provides a buffer between the rear gardens and the activities within the petrol filling station. That buffer would be lost, and as a result all activities associated with the commercial use of the site would take place at the end of these relatively short rear gardens. Furthermore, the service yard for the new store would be very close to the dwelling remaining at 3 Crouch Lane which would be left with very little amenity space.

The redevelopment would provide for changes in ground levels with retaining walls and new close boarded timber fencing which would provide some noise protection for the occupants of the houses in Normanhurst Road, for 3 Crouch Lane, and for users of the rear garden of Fairseat House. From the results of the noise survey, any change in the noise environment experienced by nearby residents would be unlikely to constitute a statutory nuisance. Nevertheless, the scheme would introduce vehicle movements, car parking, deliveries of retail goods and fuel, the movement of delivery roll cages and the general activity of staff and visitors into the former garden of 3 Crouch Lane. In view of the relatively modest rear gardens which would then abut the site, the Inspector considered that activities associated with the petrol filling station would be likely to result in an increase in noise and disturbance experienced to the rear of the adjoining houses. He therefore found that the living conditions of the occupants of the adjoining dwellings are likely to be harmed.

Furthermore, new floodlights would be introduced into what is currently an unlit area to the rear of the neighbouring properties. The Inspector noted that these could be replaced by bollard lighting to reduce impact on neighbouring properties, and accepted that careful siting and design would minimise the impact of the lighting. However, whilst it may not be sufficient reason on its own to refuse planning permission, it is inevitable that the adjoining residents would experience some increase in the level of light pollution to their dwellings.

The Inspector therefore concluded that the harm to the living conditions of adjoining residents which would result from the proposed redevelopment outweighs the need for the petrol filling station which the appellant identifies. The proposal would therefore conflict with Policies CP1 and CP24 of the TMBCS.

Whilst there is no objection to the scheme on highway grounds from the highway authority, the Council commissioned consultants to consider the highway impacts of the proposal, resulting in an amended reason for contesting the appeal. The Council's consultants disagree with the appellant's assessment of trip rates which would be generated by the scheme, and identify a consequent increase in right turning movements from the A25. Other issues are also identified. However, there is no evidence that the level of traffic increase assessed by the Council's consultants would cause traffic hazards; the impact on pedestrians crossing the

site access and egress could be mitigated; the manoeuvring of a fuel tanker could be facilitated through closure of some of the parking spaces within the site; and the Inspector was satisfied that the configuration of the 6 petrol dispensing positions would be unlikely to result in a dangerous tailback of vehicles across the access to the site. He concluded that the redevelopment would be unlikely to result in increased hazards to road safety.

Responses to consultation on the planning application have expressed concern that the new retail store would have a harmful impact on the existing shops within the shopping centre of the village. However, the Council commissioned a retail consultant to provide advice which indicates that the village shopping centre is healthy, with a diversity of uses, and that the main convenience store is trading well and likely to continue to attract passing trade from the train station. As a result the consultants conclude that the impact from the proposed new store would be unlikely to materially harm the viability or vitality of Borough Green District Centre. Having considered the matter the Inspector had no reason to disagree with this conclusion, such that there would be no conflict with Policy CP22 of the Tonbridge and Malling Borough Core Strategy (TMBCS).

Application by the appellant's for an award of costs against the Council

The Inspector considered that the Council's delay in the issue of a decision has not resulted in unnecessary or wasted expense as described in Circular 03/2009. No award of costs was therefore justified.

- 1.3 Site: **Napps Farm, Long Mill Lane, Platt**
 Appeal **Against (i) an enforcement notice issued by the Council alleging a breach of planning control, namely the erection of a building within the curtilage of Napps Farm, and (ii) the refusal of planning permission for the erection of an outbuilding for private ancillary use by the occupiers of the single dwelling within the site at Napps Farm.**

Appellant **Ms S Rutherford**

Decision **Appeals dismissed, enforcement notice upheld with a variation**

Background Papers file : PA/29/10

Contact: Cliff Cochrane
01732 876038

The Inspector considered the main issues to be

- (i) whether the building would be inappropriate development in the Green Belt;
- (ii) whether there would be any other harm to the Green Belt; and
- (iii) if it is inappropriate development, whether the harm by reason of inappropriateness, and

any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Issue (i): Inappropriateness

Policy CP3 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy (CS) and its supporting text reflects the aims of national planning guidance in Planning Policy Guidance 2: *Green Belts* (PPG2) in keeping land in the Green Belt primarily open in character and free from building development.

Paragraphs 3.1 and 3.2 of PPG2 explain that there is a general presumption against inappropriate development in the Green Belt which is, by definition, harmful. Paragraph 3.2 states that *"It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development"*.

Paragraph 3.4 of PPG2 lists categories of built development that are not inappropriate in the Green Belt. Amongst other matters these include the limited extension, alteration or replacement of existing dwellings.

The appeal scheme is a new outbuilding approximately 15m from the original dwelling. It is not a replacement of an existing "dwelling" and in view of the substantial distance of the proposed site of the building from the dwelling the proposed scheme cannot in practical terms be regarded as an extension or alteration of the existing dwelling. Since it is a free standing building as such, and it does not fall into that category of development (limited extension, alteration or replacement of an existing dwelling) which is not inappropriate. The building is therefore inappropriate development in the Green Belt and conflicts with CS policy CP3 and with paragraph 3.4 of PPG2. The intention to use the building as ancillary accommodation for the main house does not affect this finding. The appeal scheme would run counter to one of the purposes of including land in Green Belts (set out at paragraph 1.5 of PPG2) of safeguarding the countryside from encroachment.

Issue (ii): Any other harm

PPG2 makes it clear that the most important attribute of Green Belts is their openness. The appeal outbuilding is substantial and due to its scale and height it reduces the openness of the area to the south of the dwelling in conflict with the aims of PPG2.

The appellant contends that the new building would not have a materially greater effect on the openness of the Green Belt than did the stable building and some other outbuildings which have been removed. The Inspector did not have full details of the other buildings that were removed. However, the evidence before him indicates that the outbuilding has a larger footprint, height and volume than the former stable building at the site. Although the amount of increase is disputed both parties accept that the original floor slab of the stable building was increased to accommodate the new building. The stable building appears of modest proportions in photographs and had an overhanging low pitched roof. The building now at the site has a steeper pitch with a hipped end facing Long Mill Lane. Taking these factors into account the Inspector was of the view that the appeal building would have a greater impact on openness than the previous stable building. Notwithstanding the above, the previous modest stable building, unlike the present building, was not likely to have been inappropriate development in the Green Belt.

The Inspector noted at his visit that the appeal building is not dissimilar in scale and height to Napps Farm house. It has a domestic appearance with a series of windows and a door in its north elevation. A window in the east elevation is within the roof space. There are no windows in either the south or west elevations.

The upper part and roof of the building is visible viewed from Long Mill Lane on approach from either direction but most prominently from the south where it is seen above a boundary fence which provides some screening. He also noted that glimpses of the building are gained through shrubs which adjoin the road to the south-west of the site although he accepted that such glimpses may be reduced when the shrubs are in full growth. Due to its roof height and location the building has a harmful effect on the character and appearance of the rural locality in conflict with the aims of policy DC23 of Managing Development and the Environment - Development Plan Document and CS policies CP1, CP14 and CP24.

In addition to the harm through inappropriateness, to which the Inspector attributed substantial weight, he also concluded that the development causes significant harm to openness and has a harmful effect on the character and appearance of the area.

Issue (iii) Other considerations

Some other considerations were brought to the Inspector's attention by the appellant. He was mindful that there was a previous stable building on the site in the past but there is no indication within either CS policy CP3 or PPG2 that such an assessment should outweigh the effect of a new and inappropriate outbuilding on the openness of the Green Belt. Consequently, he did not attach significant weight to the appellant's claims in that respect.

It is contended that there is a “fall-back” position provided by permitted development provisions within Class E, Part 2 of Schedule 2 to the GPDO4. The appellant considers that the disputed building could be reduced in height to fit within the limitations imposed by Class E or alternatively a building of the same or larger dimensions (other than roof height) could be built at the site. The appellant considers her view on this matter is supported by the Council’s decision to grant planning permission in 2004 for a scheme for a replacement dwelling at Napps Farm which included within the application site boundary the land upon which the disputed building is sited.

Amongst other matters, Class E allows for the provision within the curtilage of the dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure. The Council accepts that the building is within the curtilage of the dwellinghouse.

However, the Inspector had reservations regarding such an assessment. The stable building is clearly shown on an aerial photograph 5 dated 2008 as being outside of a brick wall which at that time appears to provide enclosure to a piece of ground attached to the dwelling. The plan attached to the enforcement notice also appears to indicate the line of a wall in broadly the same position. The existence of the wall is referred to in the officer’s report to the Area 2 Planning Committee on the application dated 31 March 2010 where it is indicated it was most likely in place “some time before 1999”. In addition, an interested party notes the previous existence of the wall. Whilst the Inspector noted the previous planning permission referred to by the appellant he did not consider that factor alone would be the determining factor in establishing the curtilage of the existing dwelling. It would be a matter of fact and degree.

The Inspector noticed at his visit that the framework of some internal walls of the building is in place but the walling is not completed. The scheme drawings provide an internal layout of the building. These indicate that the ground floor would contain an office and two storage areas with a sizeable WC. The central part of the ground floor of the building (amounting to about a third of the width) does not have a stated use and would be open. Some additional storage space would be provided in the loft. Whilst these uses may, as the appellant contends, be incidental to the enjoyment of the dwellinghouse as such it is not clear from the evidence why a building of these dimensions is reasonably required for such purposes in this case.

Taking the above factors into account, whilst the Inspector considered that the appellant’s contentions in this regard provide material considerations in the determination of the appeals, he considered that there are considerable doubts whether a building of a broadly similar scale to the disputed building could be provided within the conditions and limitations of Class E in this position at the site and this greatly reduces the weight he attached to these matters.

Conclusions

None of the other considerations put forward by the appellant either individually or cumulatively amount to very special considerations that clearly outweigh the harm to the Green Belt and other harm the Inspector identified to the character and appearance of the rural locality.

Accordingly the appeal under ground (a) and the s78 appeal fail.

The appeal on ground (f)

The appellant contends that the requirements of the notice are excessive and lesser steps could be implemented which would remedy the breach of planning control.

The appellant suggested a number of lesser steps put forward which she claims would reduce the effect of the breach of planning control. However, the requirements of the notice are not excessive as the only way to remedy the breach of planning control that is attacked is to remove the development. No lesser steps would achieve that purpose. Consequently, it was not open to the Inspector to consider lesser measures that would not remedy the breach. Notwithstanding the above the Council has power under s173A(1)(b) of the Act to waive or relax any requirement of the notice.

The appellant makes a further point that the outbuilding utilises the same foundation slab and lighting supply as the previous stable building and considers it unreasonable that those items be removed. The Council confirms that it has no objection to the retention of those matters and the Inspector can vary the notice to that effect without injustice.

To the limited extent described above the appeal under ground (f) succeeds.

The appeal on ground (g)

The appeal under ground (g), simply put, is that the period allowed for compliance with the notice is too short. The appellant requests a period of compliance of 9 months.

Subject to the variation outlined above in respect of the original slab foundation and lighting supply the requirements of the notice are clear, which is the demolition of the building and the removal of all arisings from the site. The period specified for compliance with the requirements is reasonable. The appeal under ground (g) fails.

- 1.4 Site: **The Well Springs, Rectory Lane, Ightham**
 Appeal **Against the refusal of planning permission for an extension to the rear of the property and removal of existing door to be replaced by a window; removal of two trees**
 Appellant **Mr Geir Sagemo**
 Decision **Appeal dismissed in respect of the proposed extension but allowed in respect of the proposed replacement window**
 Background Papers file : PA/43/10 Contact: Cliff Cochrane
 01732 876038

The Inspector considered that the main issue in the appeal to be whether the proposed development represents inappropriate development in the Green Belt and, if it does, whether the harm to the Green Belt is clearly outweighed by other considerations, thereby justifying the proposal on the basis of very special circumstances.

Reasons

The proposed extension

Planning permission was granted for a substantial two-storey side extension in 1988 and this has been built. Proposed now is a single-storey extension to the side and rear of the two-storey extension. The Council's evidence is that there has already been a cumulative increase in floor area of the order of 116% and that, if the extension now proposed were built, the cumulative increase in floor area would be 162%. The appellant's floor area figures both for the existing dwelling and the proposed extension are lower than the Council's figures. However, the differences are not dramatic. To the Inspector's mind the proposed extension would plainly result in disproportionate additions over and above the size of the original building. As a consequence, the proposed extension must be regarded as inappropriate development in the Green Belt.

Paragraph 3.1 of PPG2 states that there is a general presumption against inappropriate development within Green Belts, which should not be approved except in very special circumstances. Paragraph 3.2 states that inappropriate development is, by definition, harmful to the Green Belt and that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Given the extent to which the dwelling has already been extended, the Inspector considered that the harm in this case is not merely theoretical.

The Inspector accepted the point that the extension meets the two tests set out in saved policy P4/12 of the Tonbridge and Malling Borough Local Plan 1998 (there should be no adverse impact on the character of the building or the street scene; there should be no adverse impact on residential amenity). However, absence of harm in these respects does not lessen the harm to the Green Belt.

The Inspector had regard to whether there were any considerations in this case which clearly outweigh the harm to the Green Belt. The appellant argued, first, that the dwelling sits in a hollow and cannot be viewed from any public vantage point – the extension would therefore have no visual impact on the Green Belt; and, second, that the extension would have a unifying effect on the dwelling, reducing the dominant impact of the previously constructed extension, thus enhancing the dwelling and the Green Belt. The appellant points out also that there have been no objections from the Parish Council or from neighbours.

Whether or not development in the Green Belt would be visible is not normally a primary determinant of its acceptability. In any case part of the extension would be clearly visible at fairly close quarters from Rectory Lane. While it is true that the previously constructed extension is somewhat dominant, the Inspector was not persuaded that the proposed extension, though designed to the high standards necessary to secure listed building consent, would significantly reduce the dominance of the earlier extension. The fact that there has been no opposition locally to the extension is a factor to which the Inspector attached only limited weight.

The considerations to which the appellant drew to the Inspector's attention, including the care which has gone into the design, did not in his view clearly outweigh the harm that the proposed extension would cause to the Green Belt. It follows that the very special circumstances necessary to justify the proposed development have not been demonstrated, bringing the proposal into conflict with national Green Belt policy as set out in PPG2.

The proposed window to replace a door

The Council raised no objection to the removal of a door and its replacement by a window. The Inspector considered that this alteration did not represent inappropriate development in the Green Belt and would not be visually harmful.

Conservation area considerations

The Inspector concurred with the Council's view that the proposed development would preserve the character and appearance of the Ightham Conservation Area.

Overall Conclusions

The Inspector concluded that the appeal in respect of the extension should not succeed. However, he allowed the appeal in respect of the proposed removal of an existing door and its replacement by a window, imposing the Council's suggested condition requiring matching external materials to ensure a satisfactory appearance to the development.

- 1.5 Site: **Birling House West, 19 Ryarsh Road, Birling**
 Appeal **Against the failure to give notice within the prescribed period of a decision on an application for permission for a new vehicle access entrance for Birling House West**
- Appellant **Mr Graham Sullivan**
 Decision **Appeal allowed**
 Background Papers file : PA/36/10
- Contact: Cliff Cochrane
 01732 876038

The Inspector considered the main issue in this case to be whether the proposed vehicular access would preserve or enhance the character or appearance of the Birling Conservation Area and its rural setting.

Reasons

The Birling Conservation Area includes, as well as the historic core of the village, a linear area along Ryarsh Road. This linear part of the conservation area is mainly restricted to the southern side of the road, where most of the development fronting the road is located.

The appeal site itself fronts the southern side of Ryarsh Road fairly near the historic core of the village, Birling House West being a now independent part of a former large house set back from the road. The remainder of this large house is called Birling House. This latter dwelling has a garden to the east. In front of this garden there is a driveway, exiting onto The Close, serving not only Birling House and Birling House West, but also another dwelling known as Birling House Cottage.

As a consequence of these arrangements, this part of Ryarsh Road, lying between Birling House West and The Close, is not so obviously developed as other parts of Ryarsh Road and is without any points of access onto the road. The frontage is defined by a bank on which there is a collapsing ivy-covered corrugated metal fence. There are some trees behind the fence, but these are mainly concentrated at the eastern end of the frontage. The appellant proposes to provide a vehicular access for Birling House West (and Birling House Cottage) directly onto this part of Ryarsh Road, thus obviating the need for these properties to share an access with Birling House. It is the visual impact of the proposed access on the appearance of this part of Ryarsh Road that is essentially at issue in this appeal.

In the immediate vicinity of the proposed access there were formerly a number of small trees. These trees have recently been removed, the appellant having first notified the Council of his intention to remove them (under the provisions of the Town and Country Planning Act 1990 relating to trees in conservation areas). The Council was content for the trees to be removed. Consequently, at the time of Inspector's site visit all that could be seen, at the point of the proposed access,

was the bank, having a height of approximately 1 metre, and the ivy covered fencing.

Although this part of the Ryarsh Road frontage (lying between Birling House West and The Close) differs in appearance from the remainder of the southern side of the road, in the light of what the Inspector saw he was not persuaded that it makes a contribution to the character and appearance of the conservation area of such significance that no change can be countenanced to it.

There is a bank and hedge on the opposite side of the road which certainly contribute positively to the character and appearance of the conservation area. However, the proposed access would not affect these.

The Inspector noted that the Council raised no objection to the design of the proposed access, including the walls, piers and gates.

Taking all matters into account the Inspector concluded that the proposed vehicular access would preserve the character and appearance of the Birling Conservation Area and its rural setting. He further considered that the access would not be in conflict with policies CP1 or CP24 of the Council's Core Strategy or policy SQ1 of the Council's Managing Development and the Environment Development Plan Document, which together seek development to a high standard of design, respectful of the natural and built environment. The appeal therefore succeeded.

Adrian Stanfield

Legal Services Partnership Manager