

- 1.4 Appeals were lodged against both the Enforcement Notice and the refusal of planning permission. The Inspector dismissed both appeals (04 January 2010), and amended the Enforcement Notice to require the removal of a kitchen which had been installed at the building and any beds and other furniture designed for sleeping.
 - 1.5 This application seeks permission to use the building as an annexe (i.e. a supplementary/ancillary building to the main dwelling house). The application details that this use as ancillary accommodation would comprise keeping the bathroom and “utility room” at ground floor (the cooker has been removed from the ground floor) and the provision of beds in the rooms at either end of the building at first floor: meals would be prepared and eaten in 2 Keepers Cottage. The applicant’s agent has specifically detailed that the applicants would not be willing to accept a Condition which precluded having beds at first floor and are not prepared to alter the plans as submitted to remove reference to “bedrooms” or the positioning of beds in these rooms.
- 2. Reason for reporting to Committee (A) and (B):**
- 2.1 The applications are locally controversial.
- 3. The Site (A) and (B):**
- 3.1 The application site comprises a semi-detached cottage and associated curtilage. The semi-detached cottage formerly comprised part of a single dwelling (together with 1 Keepers Cottage), but this was subdivided into two in 1988 following a grant of planning permission, and has been extended considerably since in the form of a two storey rear extension (constructed of yellower bricks than those used in the original part of the dwelling) and a single storey conservatory to the south eastern corner which has a low dwarf wall of slightly different ragstone to that used in the front and side elevations of the original dwelling. There is no record of planning permission having been granted for the conservatory.
 - 3.2 A relatively large building is located approximately 12.5m to the south of the existing dwelling. At the ground floor, there is space for the parking of several vehicles, together with a kitchen area including a fridge/freezer, washing machine, bathroom (comprising a shower, basin and toilet) and staircase to the first floor. The first floor area comprises three rooms. At the time of the site visit on 03 February 2011, the central room contained a chair, settee and television, another room was brightly decorated and contained a variety of childrens’ toys and had the appearance of a childrens’ play room, whilst the other contained a table and chairs, a cot and a chest of drawers.
 - 3.3 In addition to this large building, there are domestic sheds and other outbuildings located within the curtilage of the property and a large wooden wagon is stored to the south-west of the dwelling, covered by an awning structure.

TM/08/01974/FL

Refuse

16 April 2009

Appeal against refusal and enforcement notice requiring the cessation of use as a single dwelling house:
Dismissed

04 January 2010

Retrospective application for a triple carport with annex, residential accommodation above.

TM/10/00525/FL

Refuse

28 April 2010

Change of use to Holiday Let of an existing outbuilding within the curtilage of 2 Keepers Cottage.

5. Consultees

(A) TM/10/03410/FL:

5.1 Platt Parish Council: No comment made on TM/10/03410/FL.

5.2 Private representations (1/0X/1R/0S) and Article 8 Site Notice: The representation was received objecting to TM/10/03410/FL on the grounds that the proposal will harm the character and appearance of the area and is contrary to MGB policy. Additional comments are made regarding the planning history of the site and land ownership.

(B) TM/10/03036/FL:

5.3 Platt Parish Council: "We have strong objections to this application. We trust you are aware of its planning history and we see this application as a continuation to progress the applicants' original purpose i.e. to provide a residential unit within the Green Belt. As far as we can see, the only approved permission was TM/08/01974/FL, for the retrospective construction of a car port and annex as ancillary to the main house. Since then, the applicant applied for, again retrospectively, residential use above the car port. This was refused, the applicant appealed. The appeal was dismissed with the instruction that the owner "removed the kitchen and all associated fixtures and fittings and any beds and other furniture designed for sleeping". Whilst we note the applicants' statement that he has removed the cooker and sink, what has been done to comply with the rest of the appeal Inspector's recommendations? After this, the applicant applied for a change of use to use the car port as a holiday let. This again was refused. We see this application as an attempt to revert to the original intention and ratify the use of the approved car port as a residential unit and we cannot see how any approval can be conditioned adequately to prevent its future use as a separate

unit. It appears to us that all the same objections presented for the previous applications still apply. As do the appeal Inspector's reason for dismissal. We also fail to see why this saga still continues, how many times can you apply for planning, get refused, go to appeal, lose and then apply again? We urge you to refuse this application".

5.3.1 Response dated 21 March 2011 (following additional information from the applicants detailing that they would not be prepared to accept a Condition preventing the provision of sleeping accommodation at first floor): "We see no reasons to alter our original objections to this application by virtue of the additional information. The Appeal Inspector clearly stated that "any beds and other furniture designed for sleeping" be removed. We cannot see why this ruling should not be adhered to".

5.4 Private representations (2/0X/2R/0S) and Article 13 Site Notice: One representation objects on the grounds that it comprises inappropriate development in the MGB and would not conform with the requirements of the amended Enforcement Notice. The second representation did not specifically address the planning merits of the proposal but made a number of points regarding land ownership, water supply and the applicant's use of the land and access surrounding the property. Copies of previous correspondence with the Borough Council were also provided.

6. Determining Issues (A) and (B):

6.1 The planning policy which needs to be taken into account in the consideration of these applications include:

- National planning guidance: PPS1, PPG2, PPS3, PPS7 and PPS9;
- TMBCS: Policies CP1, CP3, CP6, CP14 and CP24;
- TMB MDE DPD: Policies SQ1 and NE1;
- TMBLP: saved Policy P4/12.

6.2 The Government has announced its intention to revoke Regional Spatial Strategies and the Courts have recently held that this is a material planning consideration to which regard must be had in determining planning applications. Notwithstanding this, due to the strategic nature of the policies in the SEP, there are none directly of relevance to these two applications.

(A) TM/10/03410/FL:

6.3 The site lies in the MGB. TMBCS Policy CP3 details that national MGB policy will be applied generally to parts of the Borough designated as such. Paras. 3.4 and 3.6 of PPG2 detail that the limited extension of existing dwellings can be

appropriate development, provided that the extension “does not result in a disproportionate addition over and above the size of the original building”.

- 6.4 The “original building” was formed following the sub-division of a single cottage in 1988, following the grant of planning permission under reference TM/88/176. The plans submitted as part of permission TM/88/871 (two storey rear extension) indicate that the original floor area of the dwelling was the frontage section of the house which runs from north to south (and is annotated as a living room at ground floor and bedroom, dressing room and landing at first floor on submitted plan Dwg. No. 014-1042-31A).
- 6.5 The degree to which the dwelling on site has been extended above its original size is demonstrated by the difference in floor area:
- The floor area of the original dwelling on sub-division was 70.2 square metres [“sq m”];
 - The floor area of the dwelling prior to the demolition of the small structure referred to as a utility room was 149.5 sq m, which represents an increase of 113% above the original floor area.
- 6.6 The proposed ground floor extension would increase the size of the dwelling further, both in terms of floor area and volume, above that of the dwelling with the attached “utility room” (which has since been demolished). To demonstrate the extent of this increase, the proposed extension would increase the floor area of the dwelling to 168.14 sq m, which represents an increase of 139.5% above the floor area of the original dwelling house. The proposed extension is of much greater volume than the structure to the side of the building which has been demolished, as demonstrated by the larger footprint and considerably greater eaves and ridge heights.
- 6.7 The extension, when taken together with the previous extensions to the original dwelling, amounts to a disproportionate addition above the original building. It therefore comprises inappropriate development which is, by definition, harmful to the openness of the MGB. Paragraph 3.2 of PPG2 sets out that it is “for the applicant to show why permission should be granted” and that “very special circumstances [“VSC”] to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations”. The applicants have put forward a very limited case of VSC: that the proposal would comply with the parameters for side extensions to be undertaken under permitted development. However, as the subdivision of the property was itself contrary to policy, it was clearly appropriate to remove permitted development rights for extensions to the dwelling at the time that planning permission was granted for the subdivision of the original cottage into two dwellings (Condition 4 of planning permission reference TM/88/0176). Otherwise, two sets of permitted development rights would have been available, rather than

the one set in the pre-subdivision scenario. This “double permitted development” scenario would have had an adverse impact on the Green Belt. I do not, therefore, consider that, simply because the proposed extension would have fallen within the previous permitted development right parameters, this now amounts to VSCs.

- 6.8 If the wall which has been constructed at the site around the approximate position of the extension were not in place, the proposed extension would be visible from the bridleway which runs along the western boundary of the site. Subject to the use of ragstone with red brick surrounds which matches the materials used in the main dwelling itself, as proposed, the proposed extension would not harm the character or appearance of the main dwelling or the rural area: its form and architectural details reflect those of the main dwelling. The extension would be located on the southern side of the dwelling, away from 1 Keepers Cottage and accordingly would not have any effect on the living conditions which the occupiers of this property can expect to enjoy.
- 6.9 The proposed extension and wall as constructed are within an established residential curtilage and comprises relatively small scale residential development which will not harm or affect any features of wildlife importance.
- 6.10 Permitted development rights exist for the construction of walls and fences at the property. However, the height of the wall as constructed at its greatest height is 2.03m and therefore requires planning permission. As stated previously, the majority of the wall has facing materials of sandstone. Many of the irregularly shaped individual sandstone blocks are covered in a form of algae or coating which has given these particular stones a green appearance. Since the submission of the application, further walls have been installed that appear, on the face of it, to replicate the walls of the extension (albeit without the window opening shown on the submitted plans). Investigations are still in hand with regard to this combination of wall features and I shall report further at the meeting

(B) TM/10/03036/FL:

- 6.11 The appeal Inspector determined at paragraph 10 of the decision notice that there is no justification for the use of the building located to the south of the main dwelling for residential purposes that are not incidental to the use of 2 Keepers Cottage, and accordingly dismissed the section 78 appeal against the refusal of planning permission.
- 6.12 In reaching this decision and his conclusions regarding the Enforcement Notice, the Inspector considered that there is a clear relationship between the provision of the kitchen, bathroom and beds within the building and its use as a self-contained residential unit.
- Paragraph 7 of the decision notice details that the fully-equipped modern kitchen and bathroom and two bedrooms off a large living area “gives the

overall appearance of [the building] being a self-contained residential unit”, and;

- Paragraph 11 details that the minimum steps necessary to prevent the continued use of the accommodation as a separate unit of residential accommodation were the “removal of the kitchen and its fittings, which duplicate facilities in the main house, and the removal of beds and similar items of furniture, which would reduce the likelihood of the building being occupied overnight”.

6.13 Therefore, the existence of the kitchen, bathroom and beds were considered to bring the use of the building outside that which could be considered to be ancillary to the use of the main dwelling at the site. It should also be noted that the DCLG “Technical Guidance for permitted development for householders” indicates that in the authors’ view a “purpose incidental to a dwelling house would not cover normal residential uses, such as self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen”. This Guidance is increasingly being referred to by Inspectors in appeal decisions concerning buildings in the curtilage of a dwelling which contain such accommodation and represents a material consideration in the determination of this application.

6.14 I am therefore of the opinion that, in light of the Inspector’s comments, the building cannot be used as an annexe (i.e. as a building which is ancillary to 2 Keepers Cottage) when it contains such primary living accommodation as a kitchen or bedrooms. Given that the applicant is not willing to accept a Condition precluding the location of beds within the building and has specifically indicated this in the submitted plans and supporting supporting documentation, the proposed use cannot be considered to be ancillary to the main use of the dwelling, which has already been found to be unacceptable in MGB terms by an Inspector. I share the view that the proposed use as the submitted application would comprise inappropriate development. No case of VSC has been put forward by the applicant or their agents. It is therefore recommended that planning permission be refused.

7. Recommendation:

(A) TM/10/03410/FL:

7.1 Refuse Planning Permission for the following reasons:

- 1 The proposed extension, taken together with previous extensions to the property, will result in a disproportionate addition over and above the size of the original building. The proposed development will therefore constitute inappropriate development within the Green Belt, which is contrary to Policy CP3 of the Tonbridge and Malling Borough Core Strategy, and the advice offered in PPG2: Green Belts.

(B) TM/10/03036/FL:

7.2 Refuse Planning Permission for the following reason:

- 1 The proposed use of the building as shown on the submitted plans and supporting information would include the provision of primary accommodation. The Local Planning Authority considers that this proposed use would not be for a purpose which is genuinely incidental and ancillary to the enjoyment of the dwellinghouse and therefore comprises inappropriate development in the Metropolitan Green Belt which is contrary to Policy CP3 of the Tonbridge and Malling Borough Core Strategy, and PPG2: Green Belts.

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