

<b>West Malling</b>	<b>567295</b>	<b>(A) 13 May 2011</b>	<b>(A) TM/11/01255/OB106V</b>
West Malling And Leybourne	<b>156276</b>	<b>(B) 23 July 2010</b>	<b>(B) TM/10/01627/FL</b>

Proposal: (A) Variation of S106 Agreement relating to TM/95/00176/FL, use of land for domestic purposes  
(B) Extending domestic curtilage (retrospective)

Location: (A) Land to the rear of 1, 2 and 3 Orwell Spike, West Malling Kent ME19 4PB  
(B) 3 Orwell Spike West Malling Kent ME19 4PB

Applicant: Mr And Mrs J Thind

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**1. Description:**

(A) TM/11/01255/OB106V:

- 1.1 The proposal seeks to vary the S106 Agreement relating to the original development of Orwell Spike (TM/95/00176/FL).
- 1.2 Clause 2(b) of the S106 Agreement requires the owner and developer to retain in perpetuity the open paddocks on the land that was shown edged red on plan No 2 annexed to the agreement for the grazing or exercise of horses and/ or agricultural animals.
- 1.3 This area of open paddock land corresponds to the red line application site of application (A) and the proposal seeks to vary the S106 agreement to remove this requirement.
- 1.4 The s106 variation is intended to facilitate the creation of a garden and so the planning application (B) TM/10/01627/FL cannot be approved unless the s106 is also varied as proposed.
- 1.5 The application has been submitted by the owner of 3 Orwell Spike and notice has been served on the owners of 1 and 2 Orwell Spike who own respective sub-parcels of the land.

(B) TM/10/01627/FL:

- 1.6 The application seeks to regularise the extension of the domestic curtilage of the dwelling of 3 Orwell Spike to allow for the future creation of a tennis court. No details of the tennis court or fencing thereof have been submitted at this stage as it is the principle of the change of use that is sought to be established.

**2. Reason for reporting to Committee (A) & (B):**

- 2.1 The retrospective nature of the applications and the potential conflict with policies of countryside protection.

**3. The Site (A):**

- 3.1 The application site that is subject to the s106 variation is a grassed area of approx 1.5 ha to the rear of 1-3 Orwell Spike. This has been subdivided into separate ownerships and it appears that each part has been subsumed into the residential curtilage for each of the 3 adjacent dwellings (1, 2 and 3 Orwell Spike) without the benefit of planning permission.
- 3.2 The site lies outside the settlement confines of West Malling.

**Site (B)**

- 3.3 The site for which the change of use is sought is rear of 3 Orwell Spike and is currently laid to closely mown grass with a number of fruit trees scattered across the land. The land is no longer physically separated from the existing garden of 3 Orwell Spike.
- 3.4 The site lies outside the settlement confines of West Malling. The application (B) is a sub-area of the paddock land subject of application (A).

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

TM/53/10487/OLD      grant with conditions      23 February 1953

Use of Part of Malling Institution as Stores and Workshops.

TM/55/10659/OLD      grant with conditions      14 February 1955

Use of part of institution as Cabinet making & Woodworking workshops  
(Extension of temporary period).

TM/55/10679/OLD      grant with conditions      14 February 1955

Use of part of institution as Stores & Workshops (Extension of temporary period).

TM/60/10332/OLD      grant with conditions      20 September 1960

Erection of boilerhouse, chimney and construction of drain connection.

TM/60/10726/OLD grant with conditions 10 March 1960

Stores and Workshops.

TM/63/10281/OLD grant with conditions 29 January 1963

Development.

TM/64/10379/OLD grant with conditions 12 August 1964

Staff House.

TM/65/10599/OLD grant with conditions 5 October 1965

Conversion of casual block into four family units.

TM/69/10541/OLD grant with conditions 15 October 1969

Erection of a treble garage.

TM/73/10964/OLD grant with conditions 21 September 1973

Use of land as adventure playground.

TM/93/01590/OA refuse 9 June 1993

Outline application for roadside services. Petrol filling station, restaurant, new access, circulation road and landscaping and change of use from hostel to (a) residential care home or (b) clinic/mini hospital.

TM/95/00551/FL grant with conditions 27 November 1995

(Alternative Ref  
TM/95/0176/FL)

residential development of 5 no. detached  
houses with garaging and paddocks

TM/96/01474/RD Grant 19 November 1996

details of external materials submitted pursuant to condition 2 attached to  
consent TM/95/0176/FL (construction of 5 houses)

TM/96/01475/RD

Grant

26 November 1996

details of landscaping and boundary treatment submitted pursuant to condition 4 attached to consent TM/95/0176/FL (construction of 5 houses)

TM/97/00271/RD

Grant

7 April 1997

details of a scheme for the storage and screening of refuse submitted pursuant to condition 14 of consent ref: TM/95/00176 (erection of 5 dwellings)

**5. Consultees:**

(A) TM/11/01255/OB106V:

5.1 PC: Members objected to this proposed variation the S106 Agreement as they wished this land to remain as open space.

5.2 Private Reps + Site Notice: 10/0R/0S/0X: No response.

(B) TM/10/01627/FL:

5.3 PC: No response.

5.4 Private Reps + Site Notice: 10/0R/0S/0X: No response.

**6. Determining Issues:**

(A) TM/11/01255/OB106V:

6.1 Within the original planning application for the erection of 5 dwellings, forming Orwell Spike, the area to the rear of the residential curtilages of 1-3 Orwell Spike was shown to be retained as a single paddock. It is the subject of clause 2(b) of the Section 106 Agreement relating to planning application TM/95/00176/FL concerning the Orwell Spike residential development. It does not form part of the approved garden area for the applicant's property nor for those of 1 and 2 Orwell Spike.

6.2 The paddock was shown on the approved plans to be clearly segregated from the rear gardens of nos 1-3 Orwell Spike by way of a post and rail fence and hedge and to be used agriculturally or for the grazing or exercising of horses/ agricultural animals.

6.3 The application is retrospective and aerial photographs indicate that 1-3 Orwell Spike appear to have been using this land as extended domestic gardens for some time.

- 6.4 The southern and eastern boundaries of the paddock area are screened by dense hedgerow and trees, and beyond that lies the A228. Therefore, whilst the site lies outside the settlement confines and within the open countryside, I am of the opinion that the removal of this clause of the S106 Agreement with the result that agricultural or grazing use is not expressly **required** would not be significantly detrimental to the character or appearance of the open countryside.
- 6.5 As such, I am of the opinion that the non-agricultural use of this land will not significantly erode the separate identity of settlements nor harm the setting or character of West Malling or Kings Hill when viewed from areas of the surrounding countryside within the public domain. Therefore, on balance, I am of the opinion that the proposal is not contrary to Policy CP6 of the Tonbridge and Malling Borough Core Strategy 2007 and should be supported.

**(B) TM/10/01627/FL:**

- 6.6 The main issues are the location of the site in the countryside and the effect on neighbouring residential amenity. PPS7 (Sustainable Development In Rural Areas) is national policy and policy CP14 is a relevant TMBCS policy relating to countryside development, and Policies CP1 and CP24 relate to residential amenity protection. Policy CP6 of the TMBCS states that development will not be permitted within the countryside where it might unduly erode the separate identity of settlements or harm the setting or character of a settlement when viewed from the countryside.
- 6.7 The rear of the paddock area is screened by thick hedgerow and trees, and beyond that lies the A228. Therefore, whilst the site lies outside the settlement confines and within the open countryside I am of the opinion that the change of use of the land to residential curtilage will not be significantly detrimental to the character and appearance of the open countryside.
- 6.8 Clearly acceptance of this recommendation is subject to Members' prior approval of application (A) above. In the event that application (A) is approved and Members are also minded to approve this application, as it is a relatively large area and to avoid undue clutter and intrusion into the countryside of built development, I would recommend the imposition of a condition removing permitted development rights for Classes E and F (outbuildings and hardstandings), Part 1 and Class A, Part 2 permitted development rights for changes to boundary treatments.
- 6.9 That will mean that the mooted tennis court and any fencing thereof will be required to be dealt with through an application for planning permission.
- 6.10 Members are advised that an investigation into the need for planning permission for garden enlargements at 1 and 2 Orwell Spike has been held in abeyance pending determination of these applications.

6.11 Planning permission will also be required for any changes of use within the wider area covered by application (A), but not within application (B). However, it is envisaged that any such applications might be dealt with similarly to application (B). The need for planning applications for garden enlargements at 1 and 2 Orwell Spike has been held in abeyance pending determination of these applications.

**7. Recommendation:**

(A) TM/11/01255/OB106V:

7.1 **Approve** in accordance with the following submitted details: Location Plan dated 09.05.2011.

(B) TM/10/01627/FL:

7.2 **Grant Planning Permission** in accordance with the following submitted details: Site Plan 1 dated 23.07.2010, Site Layout 2 dated 23.07.2010, subject to:

**Conditions**

1 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class E, F of Part 1; or Class A of Part 2 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of openness and visual amenity.

Contact: Glenda Egerton