

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 2 PLANNING COMMITTEE**

**26 October 2011**

**Report of the Chief Solicitor**

**Part 1- Public**

**Matters for Information**

**1. PLANNING APPEAL DECISIONS**

1.1 Site: **St Michael's House, Roydon Hall Road, Peckham Bush**  
Appeal **Against (A) the refusal of listed building consent for part conversion and change of use of garage block to holiday accommodation and (B) the refusal of permission for part conversion and change of use of garage block to holiday accommodation**

Appellant **Kent Estates Ltd**

Decision **Appeal (A) allowed, appeal (B) dismissed**

Background Papers file : PA/14/11

Contact: Cliff Cochrane  
01732 876038

The Inspector considered the main issue for Appeal A, and the first main issue for Appeal B, to be the effect of the proposal on the special interest of the listed building. The other main issues for Appeal B are:

- whether the proposal would amount to inappropriate development in the Green Belt for the purposes of Planning Policy Guidance Note 2 *Green Belts* (PPG2);
- the effect of the proposal on the character and appearance of the Roydon Conservation Area and the visual amenities of the Green Belt;
- the effect of the proposal on the living conditions of nearby residents; and
- the effect of the proposal on protected species.

**Reasons**

*Effect on the special interest of the listed building (both appeals)*

The listing description notes that St Michael's House dates from around 1860. It has architectural interest as a good example of a country house of this period. It also has historic interest in that it was formerly the rectory to St Michael's Church, which is reached by a footpath across the intervening fields.

The former stables have been converted to residential use and these buildings add to the significance of the group as a whole. The subject building is an "L"

shaped structure constructed pursuant to a planning permission granted in 1978 for garaging and storage purposes. It is sited close to the north west corner of the main house and is linked to it by a short section of wall. Whilst the design and materials of the garage/store are sympathetic to St Michael's House, it is a modern structure which does not contribute to the significance of the listed building.

The conversion of the garage/store would not result in the loss of any historic fabric. The southern elevation of the garage/store faces the garden of St Michael's House and is close to its western elevation. There would be only minimal alterations to this elevation, with no openings formed at ground floor level and only three small rooflights arranged around existing dormer windows. Subject to appropriate details, which could be controlled by a condition, these alterations would not be harmful.

The greatest change would be to the western elevation of the garage/store, which faces the countryside. Four new arched openings would be formed here and there would be new dormers and rooflights. These alterations would be in keeping with features found elsewhere on the building. The residential function of the building would be apparent from these changes. However, given that it is currently a domestic outbuilding in close proximity to a substantial house this would not be a harmful change. On the other two elevations the changes would be limited to the infilling of existing openings with timber framed windows and the insertion of small rooflights.

The appellant is no longer proposing to form an opening in the wall which encloses the courtyard between the main house and the former stables to create an access. This change resolves one of the Council's points of concern. It is a beneficial change which retains the existing relationship between the converted stables and the main house. As noted above, this matter can be controlled by a condition. The Council suggests that the scheme drawings may need to be amended in order to secure compliance with the Building Regulations. However, if such changes had a material effect then they would be subject to listed building control.

The Inspector's overall assessment is that the proposed alterations would be sympathetic to the design of this modern outbuilding. There would be no material change in the effect of the garage/store on the setting of the principal listed building or on the setting of the converted stables. The scheme would not result in harm to the significance of the historic asset and the special interest of the listed building would be preserved. In addition, the proposal would comply with Policy CP1 of the Tonbridge and Malling Borough Core Strategy 2007 (CS), which seeks to protect the built environment, and with Policies DC1 and SQ1 of the Tonbridge and Malling Borough *Managing Development and the Environment* Development Plan Document 2010 (DPD) which seek to protect the historic or architectural character of buildings which are converted to alternative uses and to maintain

local distinctiveness. It would also comply with DPD Policy DC5 insofar as that policy relates to the re-use of buildings and the protection of local character.

*Whether the proposal would amount to inappropriate development in the Green Belt (Appeal B)*

PPG2 advises that the re-use of existing buildings is not inappropriate development, subject to various criteria which are set out in paragraph 3.8. In this case there is no dispute that the subject building is of permanent and substantial construction and is of a form, bulk and general design which is in keeping with its surroundings. No extensions or additional areas of hardstanding are proposed. The Council is concerned that the scheme would harm the openness of the Green Belt due to the displacement of car parking, the formation of a residential curtilage and the need for additional buildings to replace the storage capacity of the appeal building.

Two garage spaces would be retained for the use of the main house. In the event that this proved to be insufficient, the Inspector saw that the house has ample hardstanding for parking vehicles and there is no reason to think that further parking areas would be needed. The courtyard in front of the building is sufficient to accommodate the parking associated with the proposed holiday accommodation. This area has historically been used for parking vehicles and is visually contained within the group of buildings. The proposals include only a very small area of curtilage which is already hard surfaced. Seen in the context of the group as a whole, the domestic use of this area would have a minimal effect on openness.

PPG2 states that it should not normally be necessary to consider whether a building which is proposed to be converted is no longer needed for its present use. That advice is pertinent to the present case. Moreover, if any such buildings were needed they would be subject to planning control. The Inspector's attention was drawn to a field shelter or store located to the south of St Michael's House which is being investigated by the Council. That is a separate matter which it was not for him to comment on.

The Inspector concluded that the proposal would not result in any material harm to the openness of the Green Belt and would not amount to inappropriate development for the purposes of PPG2.

*Effect on the conservation area and the visual amenities of the Green Belt (Appeal B)*

The conservation area is characterised by 16th to 19th century buildings dispersed within an attractive rural landscape. As a result of the omission of the previously proposed access, there would be no material change to views from Roydon Hall Road which is designated as a rural lane. In general, the proposed

alterations would be minor and would have little impact on the wider landscape. The alterations to the west elevation would be seen from a nearby footpath but, for the reasons given above, these alterations would not be harmful.

The Inspector concluded that the proposal would not be harmful to the character and appearance of the conservation area, which would be preserved. There would be no harm to the visual amenity of the Green Belt and no conflict with DPD Policy DC6 which seeks to protect rural lanes.

#### *Effect on living conditions (Appeal B)*

The proposal would be served by a shared access which currently provides access to the garaging and storage building attached to St Michael's House and two cottages within the converted stables. This area is therefore already used by vehicles. Whilst the proposal would generate some additional traffic, this is unlikely to be materially harmful to living conditions. Due to the orientation of the cottages there would be no direct overlooking of windows. There would be potential for overlooking of a garden area from a dormer window and rooflights within the proposed conversion. However this would be at an oblique angle and there would be a reasonable separation distance. The impact would not be so significant as to be materially harmful. Whilst there would also be some overlooking of the garden to St Michael's House from rooflights, only a small part of a very extensive garden area would be affected.

The Inspector concluded that there would be no conflict with CS Policies CP1 and CP24 or with DPD Policies DC1 and DC5 insofar as those policies seek to protect residential amenities.

#### *Effect on protected species (Appeal B)*

Ecological surveys have been undertaken which have shown that the building contains a well established maternity roost for brown long-eared bats. Bats are a European protected species and a license would be required before any works that would disturb their habitat could be carried out. The effect on habitat is also an important planning consideration. In this case the scheme would result in the complete loss of the breeding site. The appellant argues that adequate compensatory habitat could be secured by a planning condition.

Planning Policy Statement 9: *Biodiversity and Geological Conservation* (PPS9) advises that planning conditions or obligations should be used, where appropriate, in the interests of species protection. The accompanying *Good Practice Guide* notes that it is good practice to address biodiversity as completely as possible in the design of a proposed development, with further matters being secured through conditions or obligations.

Natural England (NE) has published standing advice regarding bats which states that, wherever possible, all efforts should be made to retain existing roosts to avoid disturbance of the bat population. If replacement roosts are proposed they need to perform the same function as that which they replace. For those species which require large open roosts, such as the long-eared, NE advises that a similarly proportioned roost size to that which is impacted will be needed. Moreover, replacement roosts should replicate features of the existing roost, such as materials and microclimate, as closely as possible. The Inspector attached significant weight to this advice.

Whilst there are other buildings nearby, there is no evidence that any of these have roof spaces which would be suitable and available for use as a replacement roost. The alternative would be a new structure but, similarly, there is no evidence that this would be achievable. The Inspector considered that there is an unacceptably high degree of uncertainty as to whether or not suitable compensatory habitat could be provided and, in these circumstances, it would not be appropriate to rely on a planning condition to prevent or mitigate disturbance to the bat population.

The Inspector concluded that the proposal would result in unacceptable harm to the breeding site of a protected species. This would be contrary to DPD Policy NE3 which states that development that would adversely affect the value of wildlife habitats will only be permitted if appropriate mitigation and/or compensation measures are provided which would result in overall enhancement. This is a fundamental objection to the appeal scheme.

### *Conclusions*

For the reasons given above, Appeal A should be allowed. For Appeal B, The Inspector did not identify harm in relation to effect on the listed building, Green Belt, the conservation area or the living conditions of nearby residents. However, the adverse effect on a protected species is a fundamental objection which outweighs these factors. The appeal should not therefore be allowed.

- 1.2 Site **2 Keepers Cottage, Hurst Wood, Platt**  
 Appeal **Against the failure to give notice within the prescribed period of a decision on an application for planning permission for the use of part ground floor and first floor of existing detached building as an annexe**  
 Appellant **Mr & Mrs Williams**  
 Decision **Appeal dismissed**  
 Background papers file: PA/18/11 Contact: Cliff Cochrane  
 01732 876038

The Inspector considered the main issue to be the use of the building in relation to the Green Belt as follows:

- Whether the proposal would be inappropriate development within the Green Belt for the purposes of PPG2 and development plan policy;
- The effect of the proposed use on the openness and visual amenities of the Green Belt;
- If the development is inappropriate, 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

The appeal site lies within the Metropolitan Green Belt and comprises a semi detached cottage set in a large plot that has largely been laid to grass, surrounded by woodland. It is in a remote, rural location with its only access being along an unmade track over 0.5 miles in length. In addition to the house itself, which has already been extended, there is a large outbuilding and a number of smaller ancillary structures including two summer houses and a multiplicity of domestic artefacts including a washing line, a trampoline, children's play equipment and two sets of outdoor tables and chairs. A long wall connects the house to the outbuilding and appears to enclose a further single storey side extension. Permission for the wall and a single storey side extension, Ref: TM/10/03410/FUL was refused on 13 April 2011.

The appeal relates to the use of part of the ground floor and the first floor of the existing detached outbuilding. This building was granted planning permission in 2006 (TM/06/03316/FUL) but its use as a separate residential unit was dismissed on appeal following refusal of a retrospective application and the upholding of an enforcement notice: In upholding the enforcement notice the Inspector specifically required the removal of the kitchen and all associated fixtures and fittings and any beds and other furniture designed for sleeping, in order to reduce the likelihood of the building being occupied overnight.

The appeal proposal seeks to amend the use of this building so that it can be used as an annexe to the main dwelling. The appellants contend that such a use of the building, including sleeping accommodation, would be incidental to the occupation of the main dwelling. A number of cases were referred to from the Journal of Planning & Environment Law in support of this contention. However, in view of the previous Inspector's decision seeking to restrict the occupation of the building overnight the proposal would, in the Inspector's view, constitute a material change since it would significantly add to the amount of primary residential accommodation on the site. He dealt with the appeal on that basis.

*Whether the proposed use of the building would be inappropriate development*

*within the Green Belt for the purposes of PPG2 and development plan policy*

2 Keepers Cottage is within the Metropolitan Green Belt where there is a general presumption against inappropriate development. In his consideration of the use of the ancillary building for residential purposes, the previous Inspector concluded that any use that is not incidental to the enjoyment of the main dwelling would constitute inappropriate development. The current Inspector saw no reason to take a different view.

In order to continue to comply with the enforcement notice it is not proposed that the annexe would have cooking facilities. It would not, therefore, function as an independent dwelling.

The appellants suggest that the use of the rooms on the upper floor as bedrooms could be considered as incidental since this additional accommodation would be subordinate to that within 2 Keepers Cottage itself. However, such a use would be contrary to the express aim of reducing the likelihood of the building's occupation overnight, which the previous Inspector sought to secure by requiring the removal of items such as beds. Furthermore, in functional terms the use of the upper rooms for sleeping and part of the ground floor as a bathroom and utility room would be equivalent to implementing a substantial extension to the main house.

Planning Policy Guidance 2: Green Belts (PPG2) notes that the limited extension of existing dwellings may not be inappropriate, but states that such additions should not be disproportionate over and above the size of the original building. Policy CP3 of the Tonbridge and Malling Borough Council Core Strategy reflects government guidance and reiterates the presumption against inappropriate development within the Green Belt. 2 Keepers Cottage has already been extended following its subdivision into two dwellings in 1988. The existing house is therefore already significantly larger than the dwelling created at the time of the sub-division.

In this context the use of the rooms in the upper part of the ancillary building as primary habitable rooms would, when taken cumulatively with other alterations and extensions that have already taken place, result in a disproportionate increase in the overall space available for use as living accommodation. This would be compounded by the use of part of the ground floor as a bathroom and utility room. The Inspector considered this to be the case irrespective of whether or not they are used by members of the appellants' family. The proposed use would therefore be inappropriate development that would be, by definition, harmful to the Green Belt.

*The effect of the proposed use on the openness and visual amenities of the Green Belt*

By providing additional sleeping accommodation within the ancillary building Green Belt openness would be harmed as a result of additional vehicular movements in the area and the tendency to increase the amount of domestic paraphernalia in the area, evidence of which was clearly seen on the Inspector's site visit. The increased intensity of use of the site would therefore be harmful to the openness and visual amenities of the Green Belt.

#### *Other considerations*

The appellants wish to make use of the additional rooms as living accommodation for members of their extended family. On his site visit the Inspector was shown the cramped nature of the existing sleeping arrangements to accommodate four adults and two young children within 2 Keepers Cottage, including a mattress on the landing. However, no other reasons were given to justify why the extended family had to live either together or on this site. He gave this matter little weight in his consideration of the proposal.

#### *The Green Belt Balance*

Inappropriate development is, by definition, harmful to the Green Belt. It is for the appellants 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 this case there are no considerations in favour of the proposal that clearly outweigh the presumption against inappropriate development, and the substantial weight that PPG2 requires to be attached to such harm. The very special circumstances necessary to justify the proposal do not, therefore, exist.

For the reasons set out above and having regard to all other matters raised the Inspector concluded that the appeal should be dismissed.

- 1.3 Site **Pine Ridge, Common Road, Ightham**  
 Appeal **Against the refusal of permission for a replacement garage**  
 Appellant **Mr Robert Drummond**  
 Decision **Appeal dismissed**

Background papers file: PA/25/11

Contact: Cliff Cochrane  
 01732 876038

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

- a) Whether the proposed garage would be inappropriate development for the purposes of PPG 21 and Development Plan policy.
- b) If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations to as to amount to the very special circumstances necessary

to justify the development.

## **Reasons**

### *a) Inappropriate development.*

Pine Ridge is located in a low density residential area which is within the Green Belt. The scheme before the Inspector proposes the replacement of an existing timber garage with a two storey structure constructed of brick and tile to match the principal dwelling.

National guidance in PPG 2 sets out a general presumption against inappropriate development within Green Belts. Such development should not be approved, except in very special circumstances.

The construction of new buildings inside a Green Belt is inappropriate unless it is for one of the purposes clearly specified in the guidance, including the limited extension, alteration or replacement of existing dwellings (paragraph 3.4). This exception is further defined in paragraph 3.6, which states: *“Provided that it does not result in disproportionate additions over and above the size of the original building, the extension or alteration of dwellings is not inappropriate in Green Belts.”*

The Development Plan comprises the Council’s Core Strategy<sup>2</sup> adopted in 2007. Policy CP14 relates to development in the countryside and permits the appropriate extension of existing dwellings. However, within the Green Belt inappropriate development which is otherwise acceptable will still need to be justified by very special circumstances.

The original dwelling has been the subject of a number of extensions and alterations since 1948. The cumulative effect of these structures has resulted in an increase in floor area over and above that of the “original” dwelling of some 108 per cent. This figure is already in excess of the definition of a “limited extension” as set out in paragraph 3.4 of PPG 2.

The replacement garage would have a total floor area, including the first floor studio, of 84m<sup>2</sup> as compared with the existing double garage (32m<sup>2</sup>), thereby adding to the built development on site.

The new structure would closely adjoin the principal dwelling. Its ridge height would exceed that of the adjacent extension to Pine Ridge, while the roof configuration would be at odds with that of the host building. It would represent an over-dominant structure that would be out of character with and detrimental to the setting of the host building.

For all of these reasons the proposal represents inappropriate development. This, by definition, is harmful to the Green Belt and substantial weight must be attached to that harm.

*b) Other considerations.*

The Design and Access Statement submitted with the application includes a number of reasons in support of the proposal. It is claimed that these, in combination, provide the very special circumstances necessary to justify the development.

It is stated that the garage would be screened from view and would not result in undue disturbance to neighbours. These factors, either individually or cumulatively, do not outweigh the totality of harm that would be caused by reason of inappropriateness and do not comprise the very special circumstances necessary to justify the development.

The Inspector was provided with a detailed arboricultural report given that the proposal would impact upon trees the subject of a Tree Preservation Order. He accepted that the removal of two silver birch trees would be no particular loss. He further accepted that the re-designed and re-positioned garage may well benefit the long-term health of a pine tree (T4), subject to any construction and foundations being carried out under appropriate supervision to an approved design.

**Conclusion**

Having found that the proposal is inappropriate development and that no very special circumstances exist to outweigh the harm to the Green Belt by reason of inappropriateness, the Inspector concluded that the appeal should be dismissed.

- 1.4 Site: **28 and 30 Sandown Road, West Malling**  
 Appeal **Against the refusal of permission for the creation of a pitched roof above a pair of semi-detached properties (including additional accommodation to number 28)**  
 Appellant **Mr David Clayton and Mr Arthur Chamberlain**  
 Decision **Appeal allowed**  
 Background Papers file : PA/27/11 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.

The appeal properties are a pair of semi-detached, 2-storey dwellings set within a residential estate comprising properties of a similar age but of mixed design and appearance. They form part of a small enclave of dwellings all designed with shallow, mono-pitched roofs. The majority of these are grouped around a turning head located on the outside of a sharp bend along Sandown Road. However, the appeal properties, together with the neighbouring pair at Nos 24 and 26, and a

nearby isolated similar example on the corner of Sandown Road with Epsom Close, all occupy more conventional positions within the street frontages. As such, these are all viewed within a much wider context that displays the range of property types in the estate, including those with more traditional pitched roofs. Consequently, the Inspector found that the creation of pitched roofs over the appeal properties would merely reflect the mix of house types in the area in a way that would protect and conserve the overall character of the estate.

Notwithstanding the space that would be created within the roofs, the resulting dwellings would appear as well proportioned properties that would reflect the scale and appearance of the significant majority of others in the locality. Whilst the proposal would inevitably alter the appearance of the building, the Inspector saw no particular merit to the retention of its original design.

For these reasons The Inspector conclude that the proposal would not be harmful to the character or appearance of the area. As such, there would be no conflict with Policy P4/12 of the Tonbridge and Malling Borough Local Plan (1998), Policy CP24 of the Council's Local Development Framework (LDF) Core Strategy (2007), or Policy SQ1 of the LDF Managing Development and the Environment Development Plan Document (2010), all of which seek to secure a high quality of design that reflects the character of the area.

#### Other Matters

The Inspector carefully considered other comments raised by nearby occupiers. There is no evidence to suggest that there is any planning condition that requires the appeal properties to maintain flat roofs or that the proposal would have any unacceptable impact upon water pressure in the area. It is suggested that allowing this appeal would set a precedent for other similar proposals. However, each application and appeal must be considered on its own merits, and in this case he found no conflict with current development plan policies.

The properties would retain their position and spacing in relation to adjoining properties, including the bungalows to the rear at Offham Road. Given this, and the acceptable scale and height of the proposal, the Inspector was satisfied that there would be no significant loss of light, overshadowing, overbearing impact or loss of outlook that would materially affect the living conditions of any neighbouring or nearby occupiers. The proposed windows to each flank of the building could be obscurely glazed and fixed shut, with the exception of any top-hung lights. This would avoid any unacceptable levels of overlooking to adjoining properties and could be secured by condition.

- 1.5 Site: **The Nursery, Taylors Lane, Trottiscliffe**  
 Appeal **Against the refusal of permission for a retrospective application for the retention of a residential caravan ancillary**

**to the nursery business**

Appellant **Mrs P Valler**  
 Decision **Appeal dismissed**  
 Background Papers file : PA/24/11

Contact: Cliff Cochrane  
 01732 876038

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

- i) Whether the proposal satisfies the tests set out in PPS7 regarding the provision of temporary agricultural workers dwellings; and
- ii) The effect of the proposal on the openness of the Green Belt and the landscape quality of the North Downs Area of Outstanding Natural Beauty (AONB), if necessary taking account of whether any adverse impact in this regard is offset by other positive planning considerations.

### **Reasons**

The site is roughly square in shape and is located on the western side of Taylors Lane within the village of Trottiscliffe. The site is within the Green Belt and the AONB. It had a former horticultural use which the Appellant has revived in recent times following a successful planning application for a workshop and office, together with polytunnels and new access and parking arrangements.

For various reasons, which are personal as well relating to the recent enforcement action, progress on bringing the business forward has slipped as the Inspector's colleague recognised in the enforcement appeal which was determined in June of this year.

However since then, and notwithstanding the uncertainty concerning the caravan, which had been brought onto the site at an earlier time to accommodate the Appellant and her family, progress has been made as the Inspector saw on his site visit in that the two polytunnels are now in place and various plants have also been brought onto the site and are being grown on for future sale.

### ***The PPS7 tests***

The Inspector considered it was clear to all parties that proposals for the provision of agricultural workers dwellings within the countryside, either in a permanent or temporary form, must satisfy a range of tests if they are to succeed. These are set out clearly within PPS7 and in his view represent the central issue in this case.

The first test requires clear evidence of a firm intention to develop the enterprise. Notwithstanding the hesitant start described above, the Inspector believed that there is now clear intention to implement the consent and develop the business. The approved works are now substantially complete and plants are on the site.

This has involved considerable investment by the Appellant and the work has been undertaken to a professional standard. This test is met.

The functional need for a dwelling on site is more problematic. The business is not yet established but the Inspector believed that there is a will to do so. The Appellant argued that there is a functional need for a dwelling on the site in order to enable positive and quick action in response to primarily equipment failure or severely adverse weather conditions which might threaten the wellbeing of the plants being grown. In addition, an on site presence would have the additional advantage of acting as a deterrent to criminal activity which has been known to affect businesses of this kind within the countryside.

However, the Inspector heard that appropriate technology is available via sensitive on site monitoring equipment linked to telephone numbers, that can alert persons to equipment failure, or when temperatures drop to critical levels so that speedy remedial action is required. This of course implies that persons are sufficiently close to the site to be able to respond within an effective time frame.

When questioned the representatives of the Appellant confirmed that providing there was an arrangement of this kind, there was no essential need for an on site presence. Despite the availability of such technology its use does not appear to have been contemplated in this case. This works against the credibility of the functional need argument.

Whilst the Inspector accepted that it would be convenient and desirable for the owners of the business to live on site he was not convinced in these circumstances that there is a clear functional need for this for the reasons outlined above. With regard to financial considerations, the Council confirmed that despite the absence of any data relating to the economic performance of the horticultural operation, on the basis of the business and financial plans submitted by the Appellant there was no reason to believe that the business had not been planned on a sound financial basis.

Turning now to consider whether the functional need of the business could not be fulfilled by existing accommodation in the area which is suitable and available for occupation. In the Inspector's view the Appellant's position is weak on this point. From the evidence available to him it does not appear that any meaningful scrutiny or consideration has been given to whether existing available accommodation, on either a purchase or rented basis, would satisfy their domestic needs and be sufficiently close for responsive action in the circumstances discussed above.

Trottiscliffe is a small village but property is available for sale, including a family home offered for sale, at a reasonable price by local standards, immediately opposite the appeal site in Taylors Lane. In addition, there are several nearby larger villages which have a range of properties for sale or rent. Details of these

properties were made available to the Inspector and he noted when in the area that the drive time to the appeal site from such locations was such that swift and responsive access to the appeal site could be obtained by car.

The Inspector accepted that in extremely adverse weather conditions, such as heavy snow, local roads might be blocked. This would be a very occasional occurrence and he shared the view expressed by the Council that meteorological information of impending situations of this kind is highly likely to be available in advance of such weather. This would permit a temporary overnight stay at the unit to be considered in order to deal with any problems which might emanate from such an event and threaten the wellbeing of the plants being grown.

The Inspector was prepared to accept that until the business is fully operational and financially productive the Appellant might not be in a position to purchase a local property. However, various rental properties are available in villages within a close radius of the appeal site and there did not appear to be any satisfactory evidence that such opportunities had been realistically considered. The Inspector gained the view that it had always been the intention to move a caravan onto the site even without the functional need having been fully established and despite the knowledge that such an event would require the sanction of a planning approval.

The final test deals with other normal planning considerations. There are no issues relating to access or siting matters, although the impact of the proposal on the openness of the Green Belt and the landscape sensitivities of the AONB are addressed below.

In summary therefore in relation to the PPS7 tests, the Inspector was not satisfied that the functional need test or the examination of alternative potential accommodation has been satisfactorily determined in this case.

### ***Landscape Impact***

In addition to its concerns about the functional and alternative accommodation tests, the Council was also concerned about the impact of the caravan on the openness of the Green Belt, which is of course its prime asset. Having viewed the site from a number of surrounding locations the Inspector considered that such an effect would be very small. The appeal site is enclosed on all sides and given its limited height, and its containment by other permitted structures, the caravan has a very modest visual profile. The dog compounds have a similarly low visual impact. When trees and hedges are in leaf its presence is not readily discernable. As such its impact upon openness considerations is very limited, although the Inspector accepted that in winter months this situation might change to some, albeit not a decisive, degree.

Similar considerations apply in relation to the overall landscape impact upon the AONB. Although the site is within the countryside it is well related to the village, adjacent to the settlement boundary. The caravan is however viewed as part of the approved horticultural complex, which the Inspector found to be very well maintained, and because of its height and dimensions it does not register as a discordant feature within the landscape.

The Inspector therefore formed the view that had the PPS7 tests been met and the proposal represented an appropriate form of development within the Green Belt, resistance to it in terms of openness (PPG2) or landscape impact considerations could not be sustained. As such he found there to be no harmful contradiction of the guidance contained within adopted Local Development Framework policies SQ1, CP1, CP3, CP6 or CP7.

### **Conclusions**

Had the full range of PPS7 tests been met the Inspector considered that the impact of the proposal on the openness of this part of the Green Belt and the landscape qualities of the AONB would be acceptable.

However, he found that when considered against the functional need for a dwelling on site and the availability of alternative accommodation in the area the proposal is defective. These represent decisive factors against the proposal.

For the reasons set out above, and having had full regard to all other matters raised, including the letters of support and indeed opposition to the proposal by local residents, the Inspector concluded that this appeal should not succeed.

1.6 Site: **Green Acre, Comp Lane, Platt**  
 Appeal **Against the refusal of permission for the erection of two dwellings, replacing existing dwelling and the formation of a new access**

Appellant **Mr Neil Kelley**

Decision **Appeal dismissed**

Background Papers file : PA/23/11

Contact: Cliff Cochrane  
 01732 876038

The Inspector considered the main issue in determining this appeal to be whether the proposed development would preserve or enhance the character or appearance of the Platt Conservation Area, within which the site is located.

### **Reasoning**

*The site and the proposal*

The appeal site comprises a substantial detached dwelling and its extensive curtilage, which includes a detached garage building. The site is set above an embankment abutting the northern side of Comp Lane, contains several trees and rises steeply from the road. The existing dwelling and garage are set well away from the highway and well above carriageway level. The property is served by a single vehicular access at the eastern end of its frontage.

The proposal entails the replacement of the existing house with two detached dwellings, both of which would be set further forward, and thus lower, on the site. The dwellings would comprise three storeys and be of very similar design, distinguishable only by differences in external materials and finishes. The existing garage and access would be retained to serve one of the new properties. The other would have a new detached double garage set well back on the site and a new vehicular access cutting through the existing embankment. A number of trees would be removed.

#### *The fallback position*

The planning permission referred to above was granted on 19 August 2011. The approved scheme comprises the erection of two dwellings and the formation of a new access following demolition of the existing dwelling. However, it sets the replacement properties further back on the site than the appeal proposal and presents contrasting designs. Both would be served by a shared vehicular access in a position corresponding to the new access currently proposed. The existing access would be stopped up.

It is highly likely that the Appellant would implement this planning permission in the event that the current appeal is unsuccessful. The approved dwellings therefore constitute a very significant fallback position and, accordingly, the permission is an important material consideration in the Inspector's determination of the appeal.

#### *Character and appearance*

The Inspector found this part of the conservation area to have a spacious and sylvan character enhanced by its steep topography. The northern side of this part of Comp Lane is notable for its high embankment adjacent to the road and well separated dwellings of diverse design, many of which are set well back from the road within extensive plots. Houses on the opposite side of the road are closer together and much nearer the road. However, they lie outside the conservation area.

The Inspector found that the appeal proposal would detract significantly from the prevailing sense of place for a number of reasons. Although staggered and not unduly cramped, both envisaged dwellings would be set considerably further

forward on the site than the property they would replace. Built development would thus be far more prominent in the street scene than is presently the case and would have an undesirable urbanising effect. Contrary to the Appellant's contention, he did not consider there to be a discernible building line with which the proposal could be said to comply. Additionally, the continuity of one of the most pleasing features of the lane, the roadside embankment, would be broken by an additional access which would cut deeply into the site and create an unsightly gap.

The Inspector acknowledged that the existing dwelling has limited architectural or historic merit. He also found that the design of the proposed development incorporates an element of symmetry, reflects traditional Georgian architecture and respects some neighbouring ridge heights. He also noted that they would be lower than those already approved. Nonetheless, it has not been demonstrated that the scheme otherwise draws discernibly on the local vernacular. In any event, most significantly, a pair of almost identical dwellings would appear unduly incongruous within a street scene characterised by diversity. The use of contrasting high quality materials and finishes and additional landscaping would not provide adequate visual mitigation.

Notwithstanding concerns expressed by the Council the Inspector did not consider that the additional garage, despite its elevated position, would be unduly prominent given that it would be located deep into the site. Nor would the proposed removal of trees, including that associated with the creation of the access, be unduly harmful in such a wooded context and thus contrary to Policy NE4 of the Council's *Managing Development and the Environment* Development Plan Document 2010 (MDE). Nonetheless, he considered that the harm otherwise identified is of overriding importance.

The Inspector acknowledged that the approved scheme includes the creation of a new vehicular access in approximately the same position as that currently proposed. However, this would be compensated for by the stopping up of the gap in the embankment created by the existing access. Moreover, that scheme is far more pleasing than the appeal proposal in terms of its contrasting designs for the two dwellings and the fact that the development would be set further back from the road. He did not therefore find the fallback position to justify approval of the inferior scheme before me.

The Inspector concluded that the appeal proposal would fail to conserve or enhance the character or appearance of the Platt Conservation Area and is therefore contrary to Policies CP1 and CP24 of the Council's Core Strategy 2007 (CS), MDE Policy SQ1 and national policy in Planning Policy Statement (PPS) 1: *Delivering Sustainable Development* and PPS5: *Planning for the Historic Environment*. He found no other material considerations to outweigh the harm that would arise from implementation.

**Adrian Stanfield**

Chief Solicitor

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	Information report
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	Information report
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*