

**East Malling &
Larkfield**
East Malling

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28.11.2005

TM/05/03699/FL

Proposal: Change of use of farm buildings (in part retrospective) to a combination of B1; B2 and B8 uses
Location: Corio Farm 450 Watringbury Road East Malling West Malling Kent
Applicant: W A King

1. Description:

- 1.1 Members will recall that this application was initially considered at the Area 3 Planning Committee on the 27 April 2006. The application was deferred for a Members' Site Inspection which took place on the 12 June 2006. The application was then withdrawn from agendas of the Area 3 Planning Committee on the 22 June 2006 and the 27 July 2006 as additional work further to the Members Site Inspection had not been completed; an objector was unable to attend the July Committee meeting; and additional information requested from the applicant had not been submitted. This report reproduces and updates the June report.
- 1.2 Further to the April Area Planning Committee meeting, Members requested clarification of the following points:
- whether all the buildings had planning permission;
 - further assessment of the impact of noise and vibration on the adjoining residential properties;
 - analysis of the additional information presented by Lambert & Foster in terms of the possible lawfulness of parts of the development.

A copy of my April report is annexed for convenience sake.

- 1.3 At the Members Site Inspection on the 12 June 2006, the following matters requiring further work were also raised:
- Checking aerial photographs for the existence of building 8 and the access road in particular, as well as any other buildings /works including checking any pre 1990 aerial photographs available;
 - Providing details of distances from the surrounding residential properties including Badgers Dell to various buildings, areas of open storage and the access road and also the distance of surrounding residential properties from the nearest site boundary;
 - Assessing the justification for a noise level condition;

- Reviewing controls over hours of operation;
- KCC Highways to assess the shared access arrangement in terms of visibility;
- KCC Highways to assess the manoeuvrability of larger vehicles within the site;
- Providing information on the newly erected fences on the site and adjoining Badgers Dell and around the open storage area south of the open field adjoining Badgers Dell;
- Clarification of the relative levels of Corio Farm and the Badgers Dell sunken garden.

1.4 The applicant has submitted a letter stating that they have had machinery and equipment at Corio Farm since the early 1990s.

2. Consultees (brought forward from the April supplementary report and additional letters and consultation responses received):

2.1 Private Reps: Two additional letters received objecting to the extent of open storage areas (A, B & C) and questioning the claimed time periods of historic use stated in the Committee report and questioning how such claims can be possibly substantiated. "*An information pack*" from the owners of Badgers Dell has been sent to all the Members of the Committee. This "*pack*" provides a brief history of complaints, copies of letters and photographs, including aerial photographs. The photographs show Corio Farm from various points and at various times (however, none of the photographs is dateable).

2.2 Two letters of support have been received. One stating that they are aware that business operations have been carried out by the applicant since 1990 and they have hired civil engineering and building plant from the applicant. A second letter states that they hired yard space at Corio Farm in the early 1990s. The Borough Council is asked to support an existing commercial and small family run company. If planning permission is granted, a condition should be imposed to restrict hours of working at Corio Farm.

2.3 DHH: Members requested that they be provided with additional information on the impact of noise and vibration from lorry movements to and from the adjoining residential property.

2.3.1 I do not have information on the absolute/relative level of lorry movements associated with the present/proposed use of the site and therefore cannot provide a comparative analysis between the present position and that which will arise if permission is granted. I have prepared my evaluation of these aspects by reference to absolute noise and vibration criteria.

- 2.3.2 So far as ground borne vibration is concerned I have used information provided in Department of Transport publication "Traffic induced vibration in buildings" to calculate that provided the site roads do not have potholes greater than 55mm in depth the movement of lorries within the site will not cause perceptible vibration within the adjoining residential property.
- 2.3.3 The noise emitted by diesel engines has significant low frequency components and it is a characteristic of such low frequency sounds that, if they are of sufficient magnitude, they may cause the vibration of building elements, particularly the rattling of windows. In this case I have calculated that low frequency noise from the movement of a "typical" lorry along the site road closest to the adjacent residential property will not be so great as to cause windows to rattle although it is possible that on occasion an individual lorry might cause windows to rattle.
- 2.3.4 With regard to lorry noise affecting the external amenity areas of the adjacent residential property; PPG 24 advises that "*general daytime outdoor levels of less than 55 dB (A) LAeq are desirable to prevent any significant community annoyance*". In this case I calculate that provided no more than 17 lorries/hour pass along the site road closest to the adjacent residential property these criteria to safeguard amenity will be satisfied.
- 2.3.5 In terms of the impact on the residential amenity of nearby dwellings in relation to noise disturbance from activities within the buildings, open storage areas and the operation of any fixed machinery, the DHH raises no objection subject to the imposition of conditions restricting the noise levels. In addition, controls over dust from the open storage and the access roads can also be covered by condition.
- 2.4 KCC Highways: Additional comments based on the recent analysis by TMBC environmental officer regarding lorry noise affecting external amenity. The officer has assessed that external amenity will not be adversely affected providing that 'no more than 17 lorries/hour pass along the site road closest to the adjacent residential property'. This I assess as 8 vehicles x 2 in/out movements an hour. Taken over say an operational day of 10 hours results in a total of 170 two-way (arrival and departure) movements per day.
- 2.4.1 TRICS (Trip Rate Information Computer System) does not hold data particularly relevant to units this small in floor area. However, having no other information to use I have used the nearest appropriate TRICS data to make a best assessment of likely traffic generation.
- 2.4.2 TRICS suggests that a B8 (storage and distribution) use would generate in the order of 5 to 6 movements per 100sq m per day, a B2 use would generate 3 to 4 movements. However, these figures are derived from much larger sites. Based on the number of buildings and the stated floor areas I estimate that the proposal could generate in the order of between 60 and 70 two-way (arrival and departure)

movements per day. This leads me to the conclusion that the proposals are unlikely to result in traffic generation exceeding that stated in the environmental officers' analysis.

2.4.3 I can confirm the provision of the parking in the locations shown on the plan is unlikely to interfere with the flow of vehicles within the site.

2.4.4 In terms of the vehicular visibility between the Corio Farm and Badgers Dell access roads, as the Committee is aware this is a private matter, as none of the land forms part of the public highway and any conflicts here are unlikely to affect the access to the public highway. However, in my view, the growth of the foliage within the metal palisade fencing does partially hinder the ability to see a vehicle exiting Corio Farm. My view is that if the foliage that is growing within the metal palisade fencing is cut down such that it is a maximum of 1.05m above the level of the drive to Badgers Dell then this should provide the ability for a driver to see over it and observe, through the palisade fence, a vehicle exiting Corio Farm. I am of the opinion that with suitable care and speed of vehicle that this should be beneficial.

3. Determining Issues:

3.1 The main additional issues to be considered are:

- Clarification on the existing buildings, the Use Classes Order and distances from Badgers Dell;
- Whether the additional information supplied by Lambert & Foster provides any clarification regarding the lawfulness of the use of the land and further clarification of the enforcement history;
- Further assessment of the noise and vibration impacts on the residential amenity on Badgers Dell;
- Clarification of fencing erected along the northern boundary with Badgers Dell.

3.2 The following list sets out whether the various buildings have planning permission:

- Building 1: TM/91/1363: Change of use of farm shop to B8 storage - Approved 27.02.1992.
- Building 2: TM/89/0299: Replacement agricultural barn - Approved 19.07.1989.
- Building 3: TM/97/2077: Prior Agricultural Notification for erection of tractor shed - Prior approval of siting and appearance not required 19.01.1998.
- Building 4: TM/83/0395: Erection of replacement farm building - Approved 08.06.1983.

- Building 5: No planning application submitted for this building.
- Building 6: Part of the building is covered by TM/83/0395: Erection of replacement farm building - Approved 08.06.1983. Building 7: No planning application submitted for this building.
- Building 8: No planning application submitted for this building.
- Building 9: No planning application submitted for this building.
- Building 10: No planning application submitted for this building.

3.3 Whilst buildings 5, 7, 8, 9 and 10 do not have planning permission, all of these buildings appear on aerial photographs from 1999. Buildings 5 & 8 appear on aerial photographs from 1995, whilst building 7 appears on aerial photographs from 1990. Members will also note that the following compliance with a separate Enforcement Notice relating to a caravan on the land in early 1994, Planning Services officers did not have cause to visit the site until 1998. In terms of the lawfulness of these buildings, they have all stood for more than four years and therefore are lawful (and thus also immune to enforcement action). Therefore, Members will need to consider the appropriateness of the change of use of these rural buildings to alternative uses in light of Policy P6/14 of the Tonbridge and Malling Borough Local Plan 1998. In particular, I draw Members attention to paragraphs 5.6 to 5.11 of my April Committee Report.

3.4 In terms of the access road running north/south up to the Open Storage Area C, this appears on aerial photographs from 1999, 1995 and 1990. The road around the edge of Corio Farm adjoining Badgers Dell also appears on these aerial photographs.

3.5 Members requested the following clarification of B1, B2 and B8 uses:

- B1 Use - Light Industrial, offices and research and development. These are by definition activities which can be carried out within residential areas, without any harm to residential amenity;
- B2 Use - General Industry. All other industrial activities not falling within B1 use, such as a workshop or a factory.
- B8 Use – Storage, warehousing and depots.

3.6 Information was also sought on the distances from nearest buildings, open storage and access road to Badgers Dell, they are as follows:

- Building 1 – 58.5m to house;
- Building 2 – 44m to house;

- Building 3 – 54m to house;
- Building 4 – 79m to house;
- Building 5 – 89m to house;
- Building 6 – 79m to house;
- Building 7 – 27m to house
- Building 8 – 20m to house;
- Building 9 – 52m to house;
- Building 10 – 85m to house;
- Open Storage Area A – 48m to the house;
- Open Storage Area B – 31m to the house;
- Open storage Area C – 56m to the house;
- In addition, the distance from the access road to the house is 22m.
- The distance from Badgers Dell to the northern boundary of the site by the access road and by Building 8 is 20m.

3.7 In terms of the distances from other nearby dwellings,

- 80 Teston Road, Wateringbury lies 82m from the block of buildings 4,5,6 and 10;
- 380 Wateringbury Road, East Malling lies 77m from building 1 and 75m from Open Storage Area A;
- 567 Red Hill, Wateringbury lies 104m from Building 3;
- The properties on the eastern side of Wateringbury Road and Red Hill lie a minimum of 106m from Open Storage Area A and a minimum of 108m from Building 3.

3.8 The additional information supplied by Lambert & Foster relates to the claimed areas of open storage. Reference is made to an Enforcement Notice dated the 12 May 1992 which related to a “*material change of the use of land for storage of caravans, motor caravans, coaches, lorries and civil engineering plant and equipment*”. This notice appears to have been complied with, but is also still in effect. Letters on file appear to indicate that all the materials and equipment stored on the site were for agricultural purposes in 1998. Further investigations

relating to a plant hire business operating from site, revealed that there was open storage involving equipment, machinery, lorry bodies and skips, but which were used for agricultural purposes.

- 3.9 Following further enforcement investigations around 2000/2001, the Borough Council served a Section 215 Notice. Such a Notice does NOT place control over uses as such but rather can only be used to control the appearance of land (and then only in particular circumstances). This notice required the site owner “*to remove from the land all lorries, building equipment and materials and various pieces of machinery and equipment and old skips*”. The extent of the Notice covered the whole of the Corio Farm land holding and significantly extended beyond the open storage areas currently sought. It should be noted that the Notice could not prohibit open storage, but required specific items to be removed to improve the appearance. This Notice was finally complied with in September 2004, which meant that the areas of open storage remained, but the lorry bodies, building equipment and materials, machinery and old skips were removed from the area covered by the notice.
- 3.10 The three areas on which planning permission is sought will consolidate the open storage areas within the Corio Farm complex. The areas of open storage are partially screened by the newly erected fences, however, I have requested that the Open Storage Area C be further screened and softened with an extensive 5m deep landscape buffer zone along the northern and western boundaries. Full details of the planting scheme have been requested from the applicant but to date these have not been received. It is envisaged the landscape buffer will include trees and hedgerows. An update will be provided in the supplementary report, but in the absence of any submitted details, this matter could be covered by a landscaping condition.
- 3.11 In terms of the further assessments of the impact on the residential amenity of the nearby Badgers Dell, the main source of noise and vibration will be from vehicular movements in the northern section of the site adjacent to the boundary with this neighbouring property. The DHH does not consider that vibration from lorry movements will be significant. As for noise from lorry movements, the DHH considers that the lorry movements would need to exceed 17 lorry movements per hour along the road nearest to Badgers Dell to cause demonstrably significant harm to residential amenity. This is approximately one lorry movement every 3 minutes and this scenario clearly does not exist at Corio Farm, which is backed up by KCC Highways own analysis of traffic movements. A condition can be imposed to restrict the level of lorry movements, to ensure that the noise analysis is borne out in fact.
- 3.12 It should also be noted that the noise assessment by the DHH was based on the assumption that no fence existed between the access road nearest to the site boundary and Badgers Dell. Circumstances have clearly changed. The potential noise mitigation from these fences, (which have been erected under ‘permitted

development' rights not requiring the Council's approval) has been considered again by the DHH, in light of further investigations relating to these fences, and the relative ground levels. In this instance, the upper fence would block noise from low level exhausts, but not from high level exhausts from HGVs. DHH's recent investigations reveal that most recent HGV exhausts seem now to be low level rather than high level. The applicant has been requested to review the position of the principal access route to the rear section of the site. It has been suggested that the applicant uses the existing access which runs through the middle of the site, rather than utilising the access adjacent to Badgers Dell, in order to lessen the potential impact upon Badgers Dell. Again, I am awaiting a response from the applicant and will update Members in the supplementary report.

- 3.13 The DHH has carried out a noise survey to establish background noise levels at Badgers Dell in order to set a benchmark for setting noise condition levels. The DHH considers it appropriate to impose conditions to control operational noise from buildings and goods handling of open storage, as well as from fixed and mobile plant. These conditions are designed to be assessed from the adjoining site boundaries.
- 3.14 Various fences have been recently erected around the site, such as between the access road and Badgers Dell and also along the northern side of the open storage area of the application site. These have been inspected and measured. At no place does any part of the fences exceed 2m in height. Therefore, they are permitted development not requiring the Council's approval.
- 3.15 There is a distinct change in ground level between the currently proposed access road, the boundary abutting Badgers Dell and the "sunken garden" at Badgers Dell. From the chicken wire boundary fence with Badgers Dell, the first lower level fence recently erected is 0.9m to the south. The height of this close boarded fence is 1.82m. Whilst there is a small rise in ground levels of 0.41m from the chicken wire boundary fence with Badgers Dell, this fence appears to have been built on existing ground levels. The second, upper level, fence is sited 1.2m to the south of the lower fence and 2.1m from the chicken wire fence with Badgers Dell. This upper fence level is 1.88m high and also appears to be built on the original higher level ground of Corio Farm. Behind the lower fence a retaining structure has been erected, which supports earth to just below the top of the lower fence. In addition, a small platform has been erected over this retaining structure, between the two fences and covers the retained land. The upper fence extends for 21.5m round to Building 8 (east of Badgers Dell).
- 3.16 The change in ground levels and formation of a retaining wall/shuttering amount to an engineering operation and require the benefit of a planning permission.
- 3.17 Members also requested clarification of the difference in ground levels between the sunken garden of Badgers Dell and the second fence on the access road, which is 2.235m.

3.18 Members will recall from the April report, that I requested the submission of a desktop contamination study. To date this has not been submitted and I await an update from the applicant.

3.19 In light of the above considerations and those set out in my April 2006 report, I recommend that planning permission be granted subject to the receipt of additional information from the applicant.

4. Recommendation:

4.1 **Grant Section 73A Approval** as detailed by letters dated the 04.05.2006 and the 28.11.2005, schedule of buildings dated 16.11.2005, site plan received on the 28.11.2005 and by plans P124 Sheet 3, 050201.01, 050201.02, 050201.03, 050201.04, 050201.05, 050201.06, 050201.07, 050201.08, 050201.09, 0502010A, 050201.11 subject to:

- The receipt of an acceptable desktop contamination study. Should any matters arise from the desktop study, then appropriate condition(s) be imposed (acceptance delegated to DPT);
- the receipt of a revised site layout plan showing the principal access to the rear open storage area and buildings 4, 5, 6, 9 & 10 being through the middle of the site, rather than adjacent to Badgers Dell;
- the following conditions:

1 The business and associated operations shall not be carried on outside the hours of 07:00 to 18:00 Mondays to Fridays and 07:30 to 12:00 Saturdays with no working on Sundays or Public and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.

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

2 No vehicles used in connection with the business operations shall arrive, depart, be loaded or unloaded within the application site outside the hours of 07:00 to 18:00 Mondays to Fridays, 07:30 to 12:00 Saturdays, or at any time on Sundays or Public and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.

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

3 There shall be no open storage outside the areas shown on the attached plan, and the height of open storage within the designated areas shall not exceed 3 metres in height above ground level.

Reason: To avoid obstruction of vehicle parking/manoeuvring areas and to ensure the character and appearance of the development and the locality is not significantly harmed.

- 4 No materials shall be burnt on the site.

Reason: To protect the amenities of nearby dwellings.

- 5 Within three months of the date of this permission the area shown on the submitted layout as vehicle parking space shall be provided, surfaced and drained. Thereafter it shall be kept available for such use and no development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

- 6 Within three months of the date of this permission the area shown on the submitted plan as turning area shall be provided, surfaced and drained. Thereafter it shall be kept available for such use and no development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved turning area.

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

- 7 Within three months of the date of this planning permission, the applicant shall submit for approval to the Local Planning Authority a scheme of landscaping, incorporating a 5m buffer along western and northern boundaries of Open Storage Area C, . All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following approval of the landscaping details. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation.

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

- 8 No external lights shall be installed on any building or any part of the application site without the express written consent of the Local Planning Authority.

Reason: In the interests of the visual amenity of the locality.

- 9 Within three months of the date of this planning permission the area of land within the vision splays shown on the approved plans shall be reduced in level as necessary and cleared of any obstruction exceeding a height of 1.05metres above the level of the nearest part of the carriageway. The vision splay so created shall be retained at all times thereafter.

Reason: To ensure the safe and free flow of traffic.

- 10 No new surface water or foul drainage works shall be installed until a scheme has been submitted to and approved by the Local Planning Authority.

Reason: To prevent pollution of the water environment.

- 11 The parking spaces to the north of Open Storage Area C shall only be occupied when all other car, van and lorry parking spaces within the remaining part of the application site have been utilised.

Reason: In the interests of the visual amenity of the locality.

- 12 No more than 7 lorries per hour shall pass along the access road adjoining the north site boundary adjacent to the residential property know as Badgers Dell.

Reason: In the interests of the aural amenity of the nearby dwellings.

- 13 During the permitted operational hours the combined noise emission from the permitted development shall not exceed 55 LAeq dB (one hour) free field when assessed at the site boundary with the outdoor amenity areas of adjoining noise sensitive properties.

Reason: In the interests of the aural amenity of nearby dwellings.

- 14 At no time shall the noise rating level L_{A,r,T}, calculated in accordance with the method provided in BS4142:1997, attributable to the operation of all fixed and mobile plant and machinery installed at the premises exceed the background noise level L_{A90,T} by more than 3 dB at any noise sensitive premises. For the purposes of this condition the rating level shall be evaluated over a one hour period during the day (07:00-19:00) and evening (19:00-23:00) and a five minute period during the night (23:00-07:00).

Reason: In the interests of the aural amenity of nearby dwellings.

- 15 Within three months of the date of the planning permission details of a dust management scheme in respect of the storage/handling of materials and use of site roads is to be submitted to and approved by the Local Planning Authority. The approved scheme shall be fully implemented at all times.

Reason: In the interests of dust control.

Informative:

- 1 The applicant is advised to reduce and maintain the height of the vegetation in between the palisade fence by the junction of the accesses of Badgers Dell and Corio Farm to a maximum height of 1.05m.

Contact: Aaron Hill