

**Alleged Unauthorised Development
East Malling & Larkfield
East Malling**

EM/197

569525 155086

Location: Corio Farm 450 Watringbury Road East Malling West Malling Kent

1. Purpose of Report:

- 1.1 This report deals with potential breaches of planning control which need to be considered further in the light of the refusal of planning application TM/05/003699/FL, as well as all other potential breaches occurring at Corio Farm.

2. The Site:

- 2.1 The site lies within a Green Wedge and outside the rural settlement confines of East Malling. The site lies to the west of Watringbury Road, just north of its junction with Barming Road. To the north of the access lies 446 Watringbury Road, whilst to the northwest of the farm complex lies Badgers Dell situated behind a line of conifers. A pond lies to the south of the vehicular access. The site generally rises from the north to the south.

3. History:

- 3.1 TM/05/03699/FL Refused 29.08.2006
Change of use of farm buildings (in part retrospective) to a combination of B2 and B8 uses.
- 3.2 TM/05/02102/FL Withdrawn 14.11.2005
Change of use of farm buildings (in part retrospective) to a combination of B1, B2 and B8 uses.
- 3.3 TM/97/02077/AGPN Prior Approval Not Required 19.01.1998
Prior Agricultural Notification: Erection of tractor store (Building 3).
- 3.4 TM/91/1363 Approved 27.02.1992
Change of use of farm shop to B8 or B1 (Building 1).
- 3.5 TM/89/0299 Approved 19.07.1989
Erection of replacement barn (Building 2).
- 3.6 TM/86/1526 Approved 28.11.1986
Replacement of fire destroyed farm shop (Building 1).
- 3.7 TM/83/0395 Approved 08.06.1983
Erection of replacement farm building (Building 4).

- 3.8 TM/83/0694 Approved 18.10.1983
Raising of land levels to restore land for agricultural use.
- 3.9 18 April 1986 Enforcement Notice issued alleging the non-compliance with condition (ii) of planning permission TM/83/694 (failure to comply with a landscaping scheme: complied-with).
- 3.10 12 May 1992 Enforcement Notice issued alleging a material change of use of land for the storage of caravans, motor caravans coaches, lorries and civil engineering plant and equipment (complied-with but see below with regard to subsequent breaches).
- 3.11 5 June 2001 Section 215 Notice requiring the owner to remove from the land all lorry bodies building equipment and materials and various pieces of machinery and equipment and the old skips (complied-with).

4. Analysis and conclusions:

- 4.1 I should reiterate the point, made in my report on TM/05/03699, that there are certain buildings/works that are immune to enforcement action for a variety of reasons. My report of August explained, at paragraph 3.3, that all the buildings on site are either permitted or are immune to action (except as noted below).
- 4.2 Members will also be aware that a number of fences have been erected around the site. None of these fences exceeds 2m. in height and they are therefore permitted development.
- 4.3 One element of works that remains unapproved is the small amount of landfill between the two lines of "permitted development" fences that face the sunken garden of Badgers Dell. These works cannot be suitably soft landscaped and consideration is being given to suitable remedial measures – it would not be expedient to seek the removal of the materials as this would cause significant disturbance most notably to the next door property and would tend to destabilise the land on Corio Farm such that this may affect Badgers Dell.
- 4.4 Further investigations since the August meeting indicate that there are now breaches of the 1992 Enforcement Notice taking place on the site. We are taking steps to seek compliance with this Notice which may, should this prove necessary, involve prosecution action in the Magistrates Court.
- 4.5 The potentially unauthorised **uses** of all the buildings that are on site have been analysed. The matters raised below set out the circumstances where such considerations apply and is not an exhaustive list of uses on site.
- 4.6 Building 1: A recent site inspection found that the building was being used for storage which is a B8 use and in compliance with planning permission TM/91/01363.

- 4.7 Building 2: This building was granted planning permission in 1989 as a replacement barn. When the permission was granted a condition was imposed which required that it should be used solely for storage in connection with the agricultural use of the land and for no trade or business. At this time it appears that this condition is being breached and it is therefore appropriate to serve a Planning Contravention Notice to establish the full extent of the use and how long it has been taking place. Once we have received a response to this Notice, and subject to satisfactory evidence, a Breach of Condition Notice will be issued under the Chief Solicitor's delegated powers.
- 4.8 Building 3: This building was erected in 1998 following a Prior Agricultural Notification for a tractor store – TM/97/02077. It does not appear that the building is being used for the approved purpose. In light of this a Breach of Condition Notice will be served to require the removal of the building.
- 4.9 Buildings 4: Planning permission in 1983 as a replacement farm building. When the permission was granted a condition was imposed that required the building to be used solely for agricultural storage purposes directly related to Corio Farm. It does not appear that any agricultural use is taking place at Corio farm and therefore a breach of the condition would appear to be occurring. It is proposed to serve, a further Planning Contravention Notice on the owner and then following receipt of response and subject to satisfactory evidence a Breach of Condition Notice to seek the cessation of the non-agricultural storage.
- 4.10 Buildings 5, 6 and 10: although physically connected to building 4 they cannot be described as being covered by the permission for the building 4. As the only lawful use of these buildings could be for agriculture but, as is clear, there is no agricultural use of the site as whole, the use of the buildings for non-agricultural storage is unauthorised. Under such circumstances it is appropriate to serve a Planning Contravention Notice to establish the precise nature of the use of the buildings and how long this has taken place.
- 4.11 Buildings 7 and 8 would appear to be in use for domestic/general storage. The current use is not detrimental to the amenity and it is, therefore, not expedient to take any further action at this time.
- 4.12 Building 9 is used to store diesel in tanks. The installation of the tanks does not require the Council's approval under planning powers. At this time I do not believe it is expedient to take action against this use.
- 4.13 As it is clear that no agricultural use is taking place on the site the question must be asked what the current use is. The evidence we have before us would indicate that the site is used as a civil engineering depot/builders yard, this use would appear to have taken place for approximately eight years. Before enforcement action against this use I think that it is appropriate that we serve a Planning Contravention Notice with a specific question regarding the length of time this use has been in operation.

4.14 The service of both Planning Contravention Notices and Breach of Condition Notices is delegated to the Chief Solicitor.

4.15 Should the evidence that emerges from the PCNs, mentioned in paragraphs 4.11 and 4.14, indicate the need to consider the issuing of any further Enforcement Notice(s) then the most practical approach would be to now delegate the service of any such Notice(s) to officers.

5. Recommendation:

5.1 The proposed actions set out above, with the exception of the advice in 4.15 **BE NOTED**

5.2 In respect of the advice in 4.15 that the issue of any further Enforcement Notices **BE DELEGATED** to the Chief Solicitor.

Contact: Lindsay Pearson