

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 3 PLANNING COMMITTEE

18 December 2008

Report of the Chief Solicitor

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

- 1.1 Site **Land east of Common Road Water Tower, Blue Bell Hill, Aylesford**
Appeal **Against (A) an enforcement notice alleging a breach of planning control namely, without planning permission the unauthorised erection of a fence and gates and the creation of a hardsurface and (B) the refusal of planning permission for the storage of tools, metal containers, static mobile home, sheds, Ford Transit truck, metal fencing and vehicular access**
Appellant **Mr A Cook**
Decision **Appeals dismissed, enforcement notice upheld**
Background papers file: PA/15/08 Contact: Cliff Cochrane
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The ground (a) appeal and Appeal B

The Inspector considered the main issues in the appeal to be the effects of the unauthorised and proposed development on:

- (a) The natural beauty of the landscape and countryside of the Kent Downs Area of Outstanding Natural Beauty (AONB) and on the function of the Mid Kent Strategic Gap,
- (b) The living conditions of neighbouring dwellings regarding noise and disturbance, and
- (c) Highway convenience and safety, in terms of access to the site and visibility.

(a) AONB and Strategic Gap

The appeal site is a small triangular shaped area of land on the north side of Common Road and immediately east of a site containing the adjoining water tower.

Policy SS8 of the *Kent and Medway Structure Plan 2006* and CP14 of *Tonbridge and Malling Core Strategy 2007* aim to resist inappropriate development in the countryside. Policies EN4 and CP7 respectively of the same documents confer the highest status of protection to AONB's whereby the conservation of the natural beauty of the landscape and countryside is given great weight in planning decisions. The function of the Strategic Gap is to maintain the separation and separate identities of Maidstone, the Medway towns and the Medway Gap and policies SS3 and CP5 of the Structure Plan and Core Strategy respectively provide that development which would extend settlements beyond their existing built confines will not be allowed, and development will only be permitted in special circumstances.

Although the appeal site is within a small enclave of development and is bordered by features such as the A229 and the water tower, it is outside the settlement boundary of Blue Bell Hill and within the AONB. The AONB is characterised not only by open countryside, but by some areas of scattered or loose knit development which are essentially rural and an integral part of the wider landscape. These areas also need the special protection afforded to the AONB as a whole, and the use of this land for storage purposes would not only be seriously harmful in its own right, but would serve to consolidate this enclave of loose knit development, to the detriment of the AONB. The Inspector was also mindful that taking the appeal B proposal in the precise terms in which permission is sought, there would be no check on the amount of storage of tools, metal containers and sheds, which would be difficult to control by the imposition of planning conditions. In these circumstances greater harm would result than was the situation on the site before the appellant responded to the unchallenged enforcement notice.

In respect of the appeal A enforcement notice, the Inspector considered that the metal panelled fence along the whole of the site's frontage is a very strident and discordant feature, which is damaging to the street scene to the west of the bridge over the A229, and to the wider AONB. In respect of the hard surface, whilst this is essentially of loose chippings and is visible only from close distance, the Inspector considered that it serves to diminish the rural character of the site as it was before any of the unauthorised development of the site took place.

In respect of harm to the Strategic Gap, it appeared to the Inspector the prime objective of maintaining the separateness of the urban areas can be achieved only by the strict control of new development. He considered the proposed storage uses, together with the frontage fence and hard surface to be alien elements in the Gap and similar objections arise as do with the harm to the AONB. The Inspector found no special circumstances to justify the development.

The Inspector concluded on issue (a) that the development the subject of these two appeals is harmful to the interests which the AONB and Strategic Gap aim to protect. There is therefore conflict with Structure Plan policies SS8 and EN4 and policies CP14, CP7 and CP5 of the Core Strategy.

(b) Noise

The Council's concern with regard to appeal B was that with virtually unrestricted storage of containers, sheds etc on the site, there could be considerable

uncontrolled vehicular movements onto and off the site, as well as noise associated with the handling of stored equipment and materials.

The Inspector sympathised with the Council's position on this matter. Nearby residential occupants could, to a greater or lesser degree, be adversely affected by noise if the full potential of the site was exploited in terms of the storage of sheds, containers etc. The Inspector therefore concluded that there is conflict with Local Plan policy P3/17.

(c) Highway convenience and safety

The County Council as Highway Authority made an objection based on the inadequacy of the access on to Common Road. Two shortcomings are identified. Firstly, the access gates need to be set back to enable vehicles to park clear of the highway when entering the site. Secondly, proper visibility splays need to be provided to enable vehicles to leave the site safely.

The Inspector considered both requirements to be fully justified in highway terms.

Conclusions on the ground (a) appeal and Appeal B

The Inspector found compelling objections to the development attacked by the enforcement notice and to the development the subject of Appeal B. The appellant indicated that he would be prepared to replace the metal sheet frontage fence with a more visually acceptable palisade fence. The Council indicated its agreement with the suggestion to the extent that a condition could be imposed on any planning permission granted to require a 1.8m palisade fence.

Given the views of the parties on this matter, the Inspector considered whether this could be achieved through a variation in the enforcement notice. However, this represents a significant departure from the fence which is enforced against, and he had no detailed plans of the alternative fence to which any variation of the notice and planning permission could be tied. Given his conclusions on the planning merits of the fence as erected, he considered that he had no option but to endorse the requirements of the notice.

The ground (f) appeal

The ground (f) appeal centred on the appellant's claim that a part of the area of hardsurfacing already existed when he took control of the land, having been constructed at the time the Kent County Council used the site in association with the construction works for the improved A229. The steps to comply with the notice are therefore regarded as excessive, as not all the hard surfacing was put down by the appellant, and is likely to have been there for many years and thus be immune from enforcement action. Aerial photographs submitted by the Council show that the whole site was covered by vegetation in 1999 and 2003 and further photographs taken by the Council in May 2007 show across the site only signs of bare ground scoured of vegetation, but no hard surface.

The Inspector had no clear and convincing evidence from the appellant that there was hard surfacing of even part of the land when he acquired it. The Inspector also noted that according to the Council, there is no known record of the County Council having used the appeal site as a depot or similar, and that it is nothing more than a parcel of land left over following the A229 widening programme in the early 1980's.

Given the photographic evidence advanced by the Council and the absence of convincing evidence to the contrary, the Inspector concluded that all the hard surfacing now existing constitutes a breach of control and should be removed.

Background papers: File PA/15/08

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