Report of 28 January 2010

East Malling & Larkfield East Malling	**569446 155080**	**7 October 2009**	**TM/09/01927/FL**

Proposal:	Demolition of existing garage and stables and the erection of new detached house and garage
Location:	Badgers Dell Wateringbury Road East Malling West Malling Kent ME19 6JJ
Applicant:	Mr Gary Clark

1. Introduction:

1.1 Members will recall that this application was deferred from the 17 December Area 3 Planning Committee meeting for a report from DPTL regarding other development in the locality. The previous reports are attached as annexes.

2. Determining Issues:

2.1 The previous reports attached as annexes set out the objection in policy terms to this proposal and this position has not changed.

2.2 With regard to development at Heath Farm, the recreational use of the land in general and the conversion and re-use of the former Luteplayer complex to form 8 no. dwellings was approved by the Secretary of State as part of the phase two permission for Kings Hill, TM/02/3429/OAEA. In assessing the development following the three sites major Planning Inquiry the Inspector states that the proposed residential units would occupy no greater footprint than the existing buildings which they would replace. This would be a sensible and appropriate use of these buildings in accordance with PPG7.

2.3 The Inspector concluded that the footprint area of the existing buildings at Heath Farm would not be materially increased in the development. The proposals would retain its openness and character and would add a positive form of land use to the area for the benefit of Kings Hill and the community as a whole. The conclusion goes on to state that the proposals for Heath Farm would have no harmful effects on the character and appearance of the area. The Secretary of State agreed with the Inspectors' assessment in granting planning permission.

2.4 The Heath Farm development accords with the adopted development plan. Since the Inspectors' report PPG7 has been replaced by PPS7, which actively encourages the re-use of existing redundant agricultural buildings within the countryside. PPS7 has recently been replaced in part by the recently published PPS4: Planning for Sustainable Economic Growth. This document relates primarily to the re-use of rural buildings for economic development purposes. The development at Badgers Dell is still covered by the guidance contained in PPS7

which states that Local Planning Authorities should strictly control new house building (including single dwellings) in the countryside, away from established settlements or from areas allocated for housing in development plans.

2.5 There is therefore a fundamental difference between the approved residential development at Heath Farm and the proposed dwelling at Badgers Dell. The Heath Farm development accorded with adopted planning policy as it was the re-use of redundant agricultural buildings. The construction of a single dwelling in an area defined as Countryside within the Tonbridge and Malling Local Development Framework should be strictly controlled. The development proposed is an isolated house in the countryside with no specific circumstances in planning terms to justify its approval.

2.6 Given these facts and those raised in the previous reports there are no exceptional circumstances to justify the development contrary to adopted national and local planning policy and given this objection in principle to the works the application is considered unacceptable.

3. Recommendation:

3.1 **Refuse Planning Permission** for the following reasons:

1. The site lies outside any settlement confines as defined in the Tonbridge and Malling Local Development Framework and within a countryside area and accordingly there is a strong presumption against permitting new development outside the presently defined extent of urban areas and the present extent of any village, unless the development is directly related to agriculture or other uses appropriate to a rural area. Accordingly, the proposed development is contrary to PPS3, PPS7, and Policy CP14 of the Tonbridge and Malling Local Development Framework Core Strategy 2007.

2. The Local Planning Authority does not consider that there is any justification, in the circumstances of the present application for overriding the planning policy objections

Contact: Robin Gilbert

Report of 17 December 2009

East Malling & Larkfield East Malling	**569446 155080**	**7 October 2009**	**TM/09/01927/FL**

Proposal:	Demolition of existing garage and stables and the erection of new detached house and garage
Location:	Badgers Dell Wateringbury Road East Malling West Malling Kent ME19 6JJ
Applicant:	Mr Gary Clark

1. Description:

1.1 Members will recall that this application was deferred from the November 12 Area 3 Planning Committee meeting (copy of the report attached as an annex) for a Members' site inspection. The inspection has been arranged for 10 December 2009 at 08:30 hours.

2. Consultees (comments received since the original report):

2.1 PC: Reiterates its previous objections to this application but has no further observations to make over land ownership.

2.2 Private Reps: One letter received in respect of a revised site plan and garage details. The neighbour confirms that the amendments do not seem to alter the situation significantly and his objection still stands.

3. Determining Issues:

3.1 The original report attached as an annex sets out the objection in policy terms to this proposal and this position has not changed.

3.2 I am aware that Members have received a number of representations from the applicants explaining the background to the application and providing photographs of the site and the surroundings.

3.3 The majority of the issues raised in this correspondence were addressed in the original report. However it is appropriate to clarify the position regarding permissions at Heath Farm. Permission for 8 no. residential units at the former Luteplayer complex at Heath Farm was approved in principle as part of the phase two permission for Kings Hill, TM/02/03429/OAEA, granted by the Secretary of State following the 3 Sites major Planning Inquiry.

3.4 The application proposed the redevelopment of the former farm complex at a footprint no greater than the original buildings. The works propose four new dwellings and conversion of the existing buildings to create four dwellings. The

Secretary of State concluded that this was acceptable in light of Government guidance on developing previously developed land, and also on the basis that the development would have a lesser impact on the surrounding area than the historic use of the farm and the health complex previously approved, as an appropriate reuse of the then existing buildings. There is therefore no direct comparison between this and the application at Badgers Dell which proposes the replacement of a domestic outbuilding with an additional dwelling.

3.5 In light of the above considerations and those raised in my original report from November 2009 it is considered that there are no exceptional circumstances to justify the development contrary to adopted national and local planning policy and given this objection in principle to the works the application is considered unacceptable.

4. Recommendation:

4.1 **Refuse Planning Permission** for the following reasons:

1 The site lies outside any settlement confines as defined in the Tonbridge and Malling Local Development Framework and within a countryside area and accordingly there is a strong presumption against permitting new development outside the presently defined extent of urban areas and the present extent of any village, unless the development is directly related to agriculture or other uses appropriate to a rural area. Accordingly, the proposed development is contrary to PPS3, PPS7, and Policy CP14 of the Tonbridge and Malling Local Development Framework Core Strategy 2007.

2 The Local Planning Authority does not consider that there is any justification, in the circumstances of the present application, for overriding the planning policy objections.

Contact: Robin Gilbert

Report of 12 November 2009

East Malling & Larkfield East Malling	**569446 155080**	**7 October 2009**	**TM/09/01927/FL**

Proposal:	Demolition of existing garage and stables and the erection of new detached house and garage
Location:	Badgers Dell Wateringbury Road East Malling West Malling Kent ME19 6JJ
Applicant:	Mr Gary Clark

1. Description:

1.1 This full application proposes the demolition of a single storey garage and stable building and the construction of a new detached three-bedroom house with detached garage. A replacement garage is also proposed for the existing dwelling on the site.

1.2 The application is supported by a planning statement that states the proposed dwelling is on the site of a previously consented detached one bedroom annexe over a garage and store. This permission lapsed on 1 March 2009. The dwelling proposed is to have a footprint of 108 square metres which matches the footprint of the single storey garage that is to be demolished. The two proposed garages have a footprint of 34 square metres but the dilapidated stables to be demolished have a footprint of 45 square metres and 98 square metres respectively. The proposal therefore has an overall developed site area that is less than exists at present.

1.3 It is stated that although there is a policy presumption against development in the open countryside the dwelling would be constructed on previously developed land and the principle of such development has been set by the council's own previous approval to the residential unit development in exactly the same location. The house will not affect the open nature of the countryside being in a screened hollow and being built on previously developed land and the demolition of the stable blocks will increase the open nature of the open part of the site considerably.

1.4 The final justification given for the works relates to the impact on Badgers Dell arising from the activities at the neighbouring commercial site. Construction of a new dwelling would enable finance to be raised which would provide for additional mitigation measures against the neighbouring commercial uses. Such mitigation would include further landscaping and tree planting and acoustic buffering to the existing dwelling.

2. Reason for reporting to Committee:

2.1 The application is reported to Committee due to the level of public interest.

3. The Site:

3.1 Badgers Dell is a detached two storey property situated to the west of Wateringbury Road in a rural area outside the village confines of East Malling and Wateringbury. Wateringbury Road is characterised by sporadic residential development and businesses. The site is set back from Wateringbury Road and is accessed via a driveway which passes between 446 Wateringbury Road to the north and Corio Farm 450 Wateringbury Road, to the south.

3.2 The property itself is a large detached house set in substantial grounds mainly laid to lawn. There are substantial tree and evergreen hedges to the eastern and southern boundaries of the site separating the property from 450 Wateringbury Road. On the northern side of the site there is a single storey garage and workshop building with an area of woodland beyond. The western extent of the residential curtilage is marked by tree and shrub planting with an area of woodland and pasture beyond. Immediately to the west of the domestic garden is a single storey stable block.

4. Planning History:

TM/69/10874/OLD Grant With Conditions 11 March 1969

Alterations and additions.

TM/06/00101/FL Grant With Conditions 1 March 2006

Demolition of detached single storey garage with proposal for double garage with first floor annexe.

5. Consultees:

5.1 PC: Object to the application for the following reasons:-

- Government Policy PPS 7 states that 'isolated new houses in the countryside will require special justification for planning permission to be granted'. A policy the Parish Council is strongly supportive of – no special justification has been demonstrated. The perpetual excessive infill that has befallen East Malling Village must not be extended to the surrounding countryside.

- In 2006 permission was given for a two storey garage to be built on this site, TMBC Core Policy changed in 2007, now justification must be demonstrated to build an isolated dwelling in the countryside – no justification has been demonstrated. The local landscape character will not be enhanced by this application (South East Plan 5.4).

- Acceptance of this new build house in the countryside will set a precedence, a precedence eagerly awaited by neighbours.

5.2 KCC (Highways): No objections from a highways point of view.

5.3 EMCG: The proposed development appears to fall within "open countryside" and therefore this type of development would require "special justification" for it to be acceptable, because the Government's overall aim is to protect the countryside for the sake of its intrinsic character and beauty. Simply because the land has been previously developed and already has a dwelling on it and is large enough to accommodate another dwelling does not deem it to be "special". Neither does the fact that previously, permission was granted for a large garage, which will now be replaced with a substantial dwelling and further garages under this application. We also believe, from the past history of the site, that infrastructure problems exist, which would be exacerbated by this proposal. We therefore urge Officers to reject this application, as to recommend permission would set a dangerous precedent in the village.

5.4 Private Reps: 5/0X/4R/0S + ART8. 4 letters of objection received raising the following concerns:-

- A new dwelling would set a precedent for further development in this countryside area.

- Proposal is contrary to Government guidance contained in PPS1, PPS3 and PPS7 as well as policies contained within the Development Plan.

- No special justification is given for the proposed development in the countryside.

- The previously permitted annexe was conditioned to be ancillary so should not be considered as being an approval for additional residential development.

- New property would be substantially larger than the buildings it replaces and the stables that are proposed to be removed are outside the proposed garden area and would appear to have little bearing.

- The site was previously a dump for farm waste.

- Financial gain is not a material planning consideration and if the applicants suffer noise disturbance from the neighbouring site this should be dealt with via the appropriate legislation under the Environmental Health Acts.

- Applicant has previously raised concerns regarding the narrow access that is often used by agricultural machinery and localised problems with the sewage system.

6. Determining Issues:

6.1 This full application proposes the construction of a new dwelling outside any existing settlement confines as set out on the Local Plan proposals map and the Development Land Allocations Development Plan Document.

6.2 Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7) sets out the Government's planning objectives and policies for housing in the countryside. These objectives are in line with those set out in PPS3, Housing. To promote more sustainable patterns of development and make better use of previously developed land, the focus for most additional housing in rural areas should be on existing towns and identified service centres.

6.3 In planning for housing in their rural areas, local planning authorities should apply the policies in PPS3. They should:

- Have particular regard to PPS3 guidance on the provision of housing in villages and should make sufficient land available, either within or adjoining existing villages, to meet the needs of local people; and

- Strictly control new house building (including single dwellings) in the countryside, away from established settlements or from areas allocated for housing in development plans.

Isolated new houses in the countryside will require special justification for planning permission to be granted.

6.4 Policy CP14 of the Tonbridge and Malling Borough Core Strategy sets out the criteria for development in the countryside. This policy states that one-for-one replacement or appropriate extension of an existing dwelling or conversion of an existing building for residential use would normally be acceptable, with new residential development restricted to essential housing for farm or forestry workers or affordable housing which is justified as an exception under Policy CP19.

6.5 The development proposed is for a single detached open market dwelling. The principle of this development is therefore contrary to the above policy.

6.6 The applicant's agent has submitted a case of special justification for approving the development in accordance with the requirements of PPS7. In support of the application it is stated that the site is previously developed land and that consent has previously been given (although now lapsed) for residential development. Annex B of PPS3 states, with regard to previously developed land, that there is no presumption that land that is previously developed is necessarily suitable for housing development nor that the whole of the curtilage should be developed.

6.7 The removal of existing outbuildings does not justify the development of a new dwelling in the countryside. Many buildings in rural locations have large garages or outbuildings within the curtilage but their presence does not automatically make the land suitable for further development including new independent dwellings.

6.8 The previous permission for a detached garage with a one-bedroom annexe over also does not justify the approval of an additional dwelling in this location. The approved annexe may have occupied a similar location to the proposed dwelling, however it was restricted to be ancillary accommodation linked to the existing property on the site and as such accorded with policy that allows for additions to existing dwellings. There is therefore no justification for a new dwelling in this location due to a historical precedent being set.

6.9 The justification that construction of a new dwelling would enable finance to be raised which would provide for additional mitigation measures against the neighbouring commercial uses is not considered to be sufficient. Financial gain of individual property owners is not a material planning consideration in circumstances such as this. Any perceived nuisance is a matter that should be dealt with via existing Environmental Health legislation rather than developing an additional dwelling. The Council has recently served an Enforcement Notice against unauthorised business use on the adjoining site and the use has ceased and that Notice has been complied with.

6.10 Turning to the proposed dwelling itself, it is considered that there are no objections to the proposed design of the building as it is set well back from the road in an area characterised by a wide variety of building styles and sizes.

6.11 Concerns have been raised regarding the ability of the local infrastructure to cope with the additional pressure placed on it by the development. The concern regarding the sewage system has historically been raised by the applicant in relation to applications on the adjoining site and no enhancements are planned as part of the submission.

6.12 The siting of the proposed dwelling would appear, anecdotally, to be on an old farm tip. No information regarding contamination of the site has been submitted with the application and without such a study the suitability of the land for such a development cannot be considered.

6.13 Overall it is considered that there are no exceptional circumstances to justify the development contrary to adopted national and local planning policy and given this objection in principle to the works the application is considered unacceptable.

7. Recommendation:

7.1 **Refuse Planning Permission** for the following reasons:

1 The site lies outside any settlement confines as defined in the Tonbridge and Malling Local Development Framework and within a countryside area and accordingly there is a strong presumption against permitting new development outside the presently defined extent of urban areas and the present extent of any village, unless the development is directly related to agriculture or other uses appropriate to a rural area. Accordingly, the proposed development is contrary to PPS3, PPS7, and Policy CP14 of the Tonbridge and Malling Local Development Framework Core Strategy 2007.

2 The Local Planning Authority does not consider that there is any justification, in the circumstances of the present application, for overriding the planning policy objections.

Contact: Robin Gilbert