

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 3 PLANNING COMMITTEE

11 November 2010

Report of the Legal Services Partnership Manager

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

Site **Paris Farm, The Rocks Road, East Malling**
Appeal **A. against an enforcement notice issued by the Council alleging a breach of planning control, namely without planning permission the stationing of a portable unit on the land, B against the refusal of planning permission for the change of use from B1 (light industrial) to a mixed B1 (light industrial) and D1 (chiropractic clinic) including the stationing of a Portakabin clinic unit**

Appellant **Mr Martin Eagle**

Decision **Appeals dismissed, enforcement notice upheld.**

Background papers file: PA/01/10

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The Inspector considered that the main issue to be whether or not the Portakabin at the site is harmful to the rural character and appearance of the area in which the site is located.

Appeal A, the appeal on ground (a), the deemed application and appeal B

The appeal site lies near the south-eastern extremity of the rural settlement of East Malling. The Rocks Road leading to the appeal site from the centre of the settlement is mainly lined with dwellings which are closely clustered at its western end with a more sporadic pattern of development on the approach to Paris Farm, the buildings of which define the limit of built development. Paris Farm occupies high ground which overlooks wide tracts of open countryside in views from north through east to west.

The Portakabin at the appeal site is the most southerly element in the complex of structures at Paris Farm. It stands in an enclosed yard to the south of a 2- storey building which is in light industrial use. The Portakabin covers a ground area of some 9.5 m by 2.8 m and stands more than 3.0 m high. Decking surrounds its

south and west sides. Access to Paris Farm is gained by a spur that leads eastward from The Rocks Road, with this spur also serving a public footpath.

The Portakabin is not unduly noticeable in views from the north in the vicinity of the spur and public footpath. However, despite its enclosure by a fence, which is about 1.8 m high, the top part of this portable unit, perhaps amounting to one third of its total bulk, is highly prominent when seen from The Rocks Road which passes the site some 65 m to the west. Its mass, utilitarian rectilinear form, green painted plane surfaces, and basic detailing render the Portakabin alien and incongruous in its rural environment.

In the Inspector's opinion, the Portakabin is severely injurious to the rural character and appearance of the surrounding countryside, and in this respect it fails to accord with the provisions of policy CP14 of the adopted Core Strategy of the Council's Local Development Framework. This local planning policy reflects those elements of national policy in PPS7 "*Sustainable Development in Rural Areas*" which remain operative, with the local and national policies providing protection for the countryside against inappropriate development.

The Inspector did not deny that the use of land for which planning permission is now sought accords with certain planning policies that provide for employment generation. Notwithstanding this point, in the light of the visually harmful impact of the subject development on its surroundings, and its consequential failure to comply with planning policy, the Inspector found it unacceptable.

The Inspector considered all the other matters raised, including the Appellant's need to move his chiropractic clinic to land he owns at Paris Farm owing to economic pressures, and the fact that the Council makes no objection to the use sought if carried out within the building for which industrial use has been approved or to the vehicular traffic that this use generates. However, he did not accept that any of these matters are such as to outweigh the reasoning that has led to his decision to dismiss these appeals.

Appeal A, the appeal on ground (f)

The Appellant claims that compliance with the enforcement notice would result in the demise of his chiropractic business. The appeal on this ground further records that the Parish Council has no objection to the subject use and that it accepts the use could move into the existing building, which could possibly be extended.

The Council contends that the steps required for compliance with the notice are not excessive and states that there are no lesser steps that would overcome the objections to the unauthorised development.

The grounds of appeal make no direct reference to any lesser steps the Appellant has identified. However, the grounds of appeal that relate to ground (g) suggest

that the Appellant is not averse to relocation of the chiropractic clinic into the existing building for which industrial use has been approved. This indicated to the Inspector that dismissal of the appeal on ground (f) would not necessarily result in the demise of the clinic.

To the contrary, the Appellant's acknowledgement in this respect indicates that relocation of the clinic into the 2-storey industrial building would be likely to enable the enterprise to continue. Such action may not comprise lesser steps, but in the absence of the identification of any lesser steps by the Appellant and in recognition that compliance with the notice would not necessarily lead to the demise of the chiropractic enterprise, the Inspector was led to the conclusion that there is no basis for the appeal on ground (f). Accordingly, this appeal fails.

Appeal A, the appeal on ground (g)

On this matter the Appellant argues that a period of six months for compliance with the notice provides insufficient time to obtain planning permission and extend the existing building. In order to accommodate these activities a period of 12 months is requested.

The Council stands by the period for compliance given in the notice. It points to the portable nature of the Portakabin and suggests that a period of 6 months provides sufficient time for the Appellant to relocate to alternative premises whether at Paris Farm or elsewhere.

There is clearly acceptance by the Appellant of the possibility of relocation of the clinic into the 2-storey industrial building, with mention of an extension. If an extension is not required, or an application in that behalf is refused by the Council, then bearing in mind the statutory 8 week period for the determination of a planning application, the inspector considered 6 months to be sufficient time to obtain the necessary approvals and to reorganise the internal layout of the existing building in accordance with any planning permission that might be granted.

If extension of the existing building is required, and the Inspector was not suggesting that planning permission for an extension would necessarily be granted, then even allowing for the 8 week period for obtaining planning permission, he considered that an extension of the size of the Portakabin could be constructed within 6 months period for compliance cited in the notice. Having regard to his conclusions on these matters he was disposed to allow the appeal on ground (g).

Adrian Stanfield
Legal Services Partnership Manager