

Alleged Unauthorised Development

Aylesford

10/00219/UNAUTU

575190 162406

Blue Bell Hill And
Walderslade

Location: 244 Robin Hood Lane Blue Bell Hill Chatham Kent ME5 9JY

1. Purpose of Report:

1.1 To report an alleged breach of planning control consisting of, without planning permission, an unauthorised material change of use from residential (Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)) to a mixed use of residential and as an office relating to the operation of an accountancy business (Class B1(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended)).

2. The Site:

2.1 The premises are situated on the north side of Robin Hood Lane (Upper) within the confines of the Rural Settlement of Blue Bell Hill and an Area of Outstanding Natural Beauty. The premises comprise of an extended detached house with detached garage to the front and a large timber building in the rear garden. There is off street parking for about four cars, including within the garage. The premises are on a built up frontage with existing residential premises to the west and east and to the south on the opposite side of Robin Hood Lane. There is an area of open and wooded land to the north. This part of Robin Hood Lane is a quiet, predominantly residential, cul-de-sac.

3. History:

3.1 TM/10/02391/FL Approved 14.10.2010
Construction of single storey extension to the rear.

3.2 TM/10/02236/FL Invalid on Receipt
To operate an accountancy business from a log cabin situated in garden.

3.3 TM/10/01490/FL Withdrawn 21.07.2010
Single storey rear extension

3.4 TM/86/11490/FUL (TM/86/694) Granted with conditions 28.07.1986
erection of two detached houses and detached double garage

3.5 TM/74/11666/OLD (MK/4/73/748) Granted with Conditions 13.02.1974
Outline application for demolition of existing bungalow and erection of two detached dwellings with garages and alteration to access.

4. Alleged Unauthorised Development:

- 4.1 Without planning permission, an unauthorised material change of use from residential (Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)) to a mixed use of residential and as an office relating to the operation of an accountancy business (Class B1(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended)).
- 4.2 In May 2007 an informal enquiry was received relating to the proposed construction of a timber building in the back garden of these premises for use as a games room and home office. Based on the information given, the construction of the proposed building constituted permitted development provided the structure was used for purposes incidental to the enjoyment of the dwellinghouse. This detached timber building is now being used as an office containing at least four workstations with ancillary toilet facilities and storage. In addition there is some small scale storage of office records within the detached garage to the front of the house and in a small study within the house. Both owners work full time in the detached out-building. In addition there are one full time and one part time (three days per week) employees working from the building who are not residents of the house. A fourth employee works at other premises, but makes regular visits to this office. The business is trading as BPK & Associates. These premises are the Registered Office of BPK & Associates Limited incorporated on 2 September 2010 and after the owners were advised of the breach in July 2010. It is also understood that there is an office at Hayes, Bromley. The company are certified accountants and business advisors. Most clients are visited at their own premises, but it is estimated that on average there are about two client visits to the premises per week, but this does vary. There are other occasional deliveries solely connected to the business activities. There is on-street parking associated with these activities.
- 4.3 The scale and degree of these business activities are such that they cannot be regarded as incidental to the enjoyment of the dwellinghouse as such. In particular the employment on these premises of employees who are not residents of the house, can not be regarded as incidental. A material change of use of the premises has therefore occurred. The use is mainly as offices with occasional visit by clients rather than a use where services are provided principally to visiting members of the public and therefore a use falling within Class B1(a) rather than Class A2 of the Use Classes Order.
- 4.4 A retrospective planning application to continue to operate the accountancy business from the log cabin in the rear garden was submitted on 12 August 2010, but has not been validated because it lacks information and documentation necessary to complete the application (TM/10/02236/FL). In October 2010 the owner advised that they proposed to withdraw this application and to relocate to alternative authorised office premises by the 30 November 2010. However their purchase of the alternative premises fell through. They are still seeking alternative premises, but continue to operate from these premises in the meantime without the necessary planning permission and in breach of planning control.

5. Determining Issues:

- 5.1 This business activity from a private residence is likely to cause detriment to the amenity and character of the area arising from noise related to the use of the building in the rear garden, additional traffic movements, on-street parking and the general comings and goings related to the business within a quiet residential street.
- 5.2 The timber building was constructed under permitted development rights and is not in itself in breach of planning control. It does appear that the building was used for ancillary residential purposes, for a while, before the material change of use occurred. It is the use of that building for business activities that is not incidental to the enjoyment of the dwellinghouse as such. However, given the scale and nature of the business use, this has resulted in a material change of use of the premises as a whole.
- 5.3 The owners have more recently advised that they have had an offer accepted on alternative business premises and have agreed to rent these premises from 7 February 2011 until their purchase is completed. Further works are required before they can operate from the new premises and they currently anticipate that the business use of these premises should stop by 28 February 2011.
- 5.4 Although the owners are actively seeking alternative premises, the use is continuing in breach of planning control. The continued use is not acceptable and it is appropriate to take enforcement action, but with an appropriate period for compliance to enable the owners to find and move to alternative premises.

6. Recommendation:

An Enforcement Notice **be issued** as set out below and copies **be served** on all interested parties.

The Notice to take effect not less than 28 days from the date of service, subject to:

- The concurrence of the Legal Services Partnership Manager, he being authorised to amend the wording of the Enforcement Notice as may be necessary.
- In the event of an appeal against the Notice the Secretary of State and the appellant to be advised that the Local Planning Authority is not prepared to grant planning permission for the development the subject of the Enforcement Notice.

6.2 Breach Of Planning Control Alleged

Without planning permission, an unauthorised material change of use from residential (Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)) to a mixed use of residential and as an office relating to the operation of an accountancy business (Class B1(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended)).

Reasons For Issuing The Notice

It appears to the Council that this breach of planning control has occurred within the last 10 years. Policy CP1 of the Tonbridge and Malling Core Strategy 2007 seeks to protect residential amenity and requires that all new development must result in a high quality sustainable environment. The need for development must be balanced against the need to protect and enhance the natural and built environment where residential amenity must be preserved and where possible enhanced. Policy CP24 of the Tonbridge and Malling Core Strategy 2007 also requires that all development must through its scale, siting and character be designed to respect its site and surroundings. Development which by virtue of its design would be detrimental to the built environment, amenity or functioning and character of a settlement or the countryside will not be permitted. Policy SQ1 of the Tonbridge and Malling Borough, Managing Development and the Environment Development Plan Document 2010 reflects the general intent of policy CP24 but also requires development to respect the residential amenities of neighbouring properties and to protect, conserve and enhance the local distinctiveness of the area and the prevailing level of tranquillity. The continuation of the office use is likely to cause undue nuisance to the occupiers of the adjoining dwellings in particular by reason of the noise and activities of people working in or attending the office to the rear of the existing houses over and above those activities usually associated with a residential property. The increased use of the rear amenity areas is also likely to cause potential loss of privacy because of the use of the garden by employees not usually resident at the premises contrary to the above policies. The continuation of the office use from these premises is also likely to cause general detriment to the amenity and character of the area arising from the additional vehicle movements to and from the site contrary to the above policies. The Enforcement Notice is necessary to alleviate the nuisance and detriment to the amenity of the area resulting from the unauthorised development. The Council does not consider that planning permission should be granted because planning conditions could not overcome these objections.

Requirement

Permanently stop using any part of the residential premises for office uses related to the accountancy business and remove all associated office equipment and paraphernalia from the site.

Period For Compliance

Three calendar months from the date that the Notice take effect.

Contact: Gordon Hogben