

**East Malling &
Larkfield**
East Malling

570063 155459 16 May 2011

TM/11/01269/FL

Proposal: Removal of condition 4 (the site shall only operate between 1st March and 31st October) on planning permission reference TM/10/01908/FL (continued use of land as caravan site to accommodate up to 20 touring caravans)

Location: Land At Hillberry House 353 Wateringbury Road East Malling West Malling Kent ME19 6JG

Applicant: Mr John Hilden

1. Description:

1.1 Planning permission is sought to remove condition 4 from planning permission reference TM/10/01908/FL, which was granted for the continued use of the land as a caravan site to accommodate up to 20 touring caravans, on the 10 February 2011. No variation is sought to the other conditions attached to the planning permission.

1.2 Condition 4 required:

The site shall only operate between 1 March and 31 October.

Reason: To ensure that the use does not become a permanent residential use.

1.3 The reason put forward by the applicant for the removal of the condition is that it is unnecessary and unreasonable.

1.4 Additional information has been received from the applicant giving the planning history and Caravan Site Licence details for 4 existing touring caravan sites, which either have no restrictions on seasonality of use, or are permitted to be occupied for 11 months of the year.

2. Reason for reporting to Committee:

2.1 Sensitive nature of the application.

3. The Site:

3.1 The application site falls within the land owned along with Hillberry House. The application site is accessed via the existing driveway to Hillberry House, which is from Wateringbury Road, located to the west of the site.

3.2 The application site is located in a rural location to the south of East Malling village. The site has woodland to the north and east and open land to the south.

4. Planning History:

TM/04/02379/FL Grant With Conditions 24 September 2004

Demolition of dwellings and outbuildings and replacement with one dwelling and garage

TM/04/04212/FL Grant With Conditions 23 May 2005

Repositioning of dwelling granted planning permission under application reference TM/04/02379/FL

TM/05/00506/RD Grant 11 April 2005

Details of external materials submitted pursuant to condition 2 of planning permission TM/04/02379/FL: demolition of dwellings and outbuildings and replacement with one dwelling and garage

TM/05/01606/RD Grant 11 July 2005

Details of landscaping and boundary treatment submitted pursuant to condition 4 of planning permission TM/04/04212/FL: Repositioning of dwelling granted planning permission under application reference TM/04/02379/FL

TM/05/01735/RD Grant 29 June 2005

Details of external materials submitted pursuant to condition 2 of consent ref TM/04/04212/FL (Repositioning of dwelling granted planning permission under application reference TM/04/02379/FL)

TM/05/02867/FL Grant With Conditions 11 November 2005

Stable block with ancillary storage

TM/05/03663/RD Grant 23 December 2005

Details of external materials submitted pursuant to condition 2 of planning permission TM/05/02867/FL: Stable block with ancillary storage

TM/05/04043/FL Grant With Conditions 24 January 2006

Formation of outdoor exercise arena for horses

TM/08/03096/RD Approved 27 November 2008

Details of landscaping submitted pursuant to condition 4 of planning permission TM/05/02867/FL: Stable block with ancillary storage

TM/10/01908/FL Approved 10 February 2011

Continued use of land as caravan site to accommodate up to 20 touring caravans

TM/11/00506/RD Approved 26 April 2011

Details of landscaping submitted pursuant to condition 6 of TM/10/01908/FL:
Continued use of land as caravan site to accommodate up to 20 touring caravans

TM/11/01268/FL Approved 8 July 2011

Convert half of garage to bedroom and shower for disabled person

5. Consultees:

5.1 PC:

- Notes the argument put forward within the statement of support,
- Wishes to ensure the site is only used for touring caravans,
- Feels the argument that condition 4 fails the test of necessity and reasonableness raises legal issues and National policy issues,
- Wishes the application to be referred to Committee,
- Would like enforceable, clear conditions to prevent the site becoming a full residential one.

5.2 KCC (Highways): No representations received.

5.3 Neighbours, Site Notice, Press Notice: No representations received.

5.4 DHH: Housing – Standards – The land is subject to a Caravan Site Licence under the Caravan Sites and Control of Development Act 1960 and the proposed change to the planning consent will need to be reflected in the Caravan Site Licence and conditions.

5.5 Ramblers Association: No representations received.

5.6 KCC (PROW): No representations received.

5.7 Environment Agency: The site is not within an area of Flood Risk, therefore no comments.

6. Determining Issues:

- 6.1 As many Members may recall, the use of the land for the siting of touring caravans was approved under reference TM/10/01908/FL on 10 February 2011, so the principle of the use is established and this is therefore not something that can be considered within this application.
- 6.2 Given the location of the site outside any defined settlement, one of the key issues when the original application was considered was the acceptability of the use (as a site for touring caravans) in the context of Core Strategy policy CP14 and MDE DPD policy DC5. These policies do allow for predominantly open recreational uses (which would include a touring caravan site) but would not as a matter of principle allow, for example, for permanently occupied residential caravans.
- 6.3 The main consideration in relation to the current application is whether the removal of condition 4 would enable the site to be used as a permanent residential site and whether the removal of the condition would have any other impact on the surrounding area.
- 6.4 There are several other conditions attached to the planning approval, which are not subject to this planning application, and which are considered to aid in the prevention of the use becoming a permanently occupied residential site.
- 6.5 Condition 3 requires:
- The site shall only be used for occupied touring caravan pitches with no storage of caravans or residential use on the site at any time.*
- Reason: To prevent the overintensive use of the site and to restrict uses that would not accord with a countryside location.*
- 6.6 Condition 1 requires:
- No caravan shall stay for more than 28 consecutive days and there shall be no return within 7 days. A log book shall be kept at all times by the applicant of the dates of arrival and departure of each caravan and this log shall be available for inspection by the Local Planning Authority at any time.*
- Reason: To prevent the potential of residential usage on the site and to enable the Local Planning Authority to monitor the operation of the site.*
- 6.7 The applicant has put forward a case that seeks to demonstrate that not only is condition 4 not needed in order to achieve the aim of preventing permanent residential occupation, but also that a condition limiting seasonal occupation is, by its very nature, not an appropriate mechanism to use to achieve that aim, the preference advocated in Government guidance being conditions that address the matter more directly, as exemplified by conditions 1 and 3.

- 6.8 I have therefore taken the opportunity to review Government advice on the use of conditions of this nature in a more general sense; this guidance is contained principally in Circular 11/95 (The use of conditions in planning permissions) and, perhaps more pertinently, in the Good Practice Guide on Planning for Tourism (which is a more recent document, having been published in 2006). Both of these documents make a distinction between “holiday occupancy conditions” (such as, in this case, conditions 1 and 3) and “seasonal occupancy conditions” (such as condition 4).
- 6.9 The Circular advises that, where it is desired to prevent permanent residential use, a holiday occupancy condition would seem to be more appropriate than a seasonal occupancy condition. Although the use of seasonal occupancy conditions is not ruled out altogether, the circumstances in which this is advocated would not readily apply to the current case.
- 6.10 The Good Practice Guide also favours the use of holiday occupancy conditions to ensure that the premises are used only by visitors and do not become part of the general housing stock. It goes on to advise that seasonal occupancy conditions, seeking to restrict the use of holiday accommodation during particular times of the year, might be used in order to protect the local environment. An example is given: *“This could be used if, for example, use of the premises or the site might affect an important species of bird during its breeding season or when it is winter feeding.”* In the current case, it is clearly not this sort of environmental protection that is the issue of concern.
- 6.11 In the light of this analysis, I have reached the conclusion that a seasonal occupancy condition such as condition 4 is not the most appropriate means by which to prevent permanent residential occupation of the site. It is interesting to note, however, that whilst the current conditions 1 and 3 are in the nature of what is described as “holiday occupancy conditions”, they are in some respects less precise than the examples of similar conditions advocated in the Good Practice Guide referred to above. The suggested conditions that are held up as “good practice” say:
- (i) the caravans (or cabins/chalets) are [to be] occupied for holiday purposes only;
 - (ii) the caravans (or cabins/chalets) shall not be occupied as a person’s sole, or main place of residence;
 - (iii) the owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans/log cabins/chalets on the site, and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.

6.12 In dealing with an application for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted (which, technically, is what the current application is), one of the options open to the local planning authority is to grant planning permission subject to different conditions than were imposed on the original permission. If Members agree with my recommendation that condition 4 should be deleted, I believe it would also be appropriate to take the opportunity to substitute conditions more akin to those set out in the Good Practice Guide for the existing conditions 1 and 3. Not only would this ensure that the conditions are in accordance with the most up-to-date guidance, but it would also, I believe, be the most appropriate way of achieving the underlying objective of ensuring that the site is used only for touring caravans and does not become used for permanent residential accommodation.

7. Recommendation:

7.1 This was approved in accordance with the following submitted details: Letter dated 01.06.2011, Site Plan HIL-1A-TR dated 16.05.2011, Letter dated 16.05.2011, Validation Checklist dated 16.05.2011, Drawing HIL2A dated 16.05.2011, Planning Statement dated 16.05.2011, Letter dated 30.06.2011, Documents SUPPORTING INFORMATION dated 27.06.2011, subject to:

Conditions / Reasons

1 The site shall only be used for occupied touring caravan pitches with no storage of caravans or residential use on the site at any time. The caravans are to be occupied for holiday purposes only. No caravans shall stay for more than 28 consecutive days and there shall be no return within 7 days.

Reason: To prevent the potential of residential usage on the site which is in a location where residential development would not normally be allowed and to restrict uses that would not accord with a countryside location.

2 The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on the site, and of their main home addresses, and the dates of arrival and departure of each caravan, and shall make this information available at all reasonable times to the local planning authority.

Reason: To prevent the potential of residential usage on the site, and to enable the Local Planning Authority to monitor the operation of the site.

3 The caravans shall not be occupied as a person's sole or main place of residence.

Reason: To prevent the potential of residential usage on the site which is in a location where residential development would not normally be allowed.

- 4 Notwithstanding any of the provisions of Part 5 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) at no time shall the total number of touring caravans on the site exceed a maximum of 20.

Reason: To ensure that the use of the site is not overintensive for a countryside location.

6. There shall be no external lighting on the site without the prior approval of the Local Planning Authority.

Reason: To protect the character of this countryside location.

7. Within two months of the date of this consent a full scheme of landscaping to the site boundaries shall be submitted to the Local Planning Authority for approval. The approved landscaping shall be implemented within the first planting season and retained thereafter. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to variation.

Reason: To protect the character of this countryside location.

8. The use hereby permitted shall be carried on only by the occupant of Hillberry House.

Reason: Due to the relationship between the dwelling and the application site.

9. The sealed septic tank shall be fitted with a suitable alarm to ensure against the potential for the tank to overflow.

Reason: In the interests of pollution prevention.

Informatives

1. Towing vehicles shall only enter and leave the site to or from the south on Wateringbury Roads towards the A26 and not through East Malling village. The site owner/operator is asked to actively encourage potential clients to adhere to this, through promotional literature and advice given on site.

Contact: Vicky Bedford