

**Implementation of Planning Permission for 171 dwellings at Isles Quarry West**

1. Since the Urgent Item of Business report was circulated a number of further matters have occurred, including a site visit by officers, the circulation to Members of a number of emails and a request for Information submitted to the Council under the Freedom of Information/Environmental Information Regulations regimes.

**Land Contamination**

2. As with all sites in development the position is constantly changing and TMBC staff have been monitoring the situation.
3. Concern has been expressed that the storage of materials and the introduction of the “windrow” system could lead to contamination of the stream. While this is not considered likely, in light of the findings of our recent site inspection, the fact remains that there is a residual power for the Environment Agency to exercise its own enforcement powers in the event of contamination to water resources. The current arrangements do not indicate that such circumstances are likely to occur.
4. The “windrows”, in this case, are not intended to be used to remediate material for use on site but to allow the “improving” of the quality of the soil by oxygenation, to allow disposal to take place at the most appropriate receptor site, consistent with the EA Waste Licence that will also be necessary.
5. Several staff have visited the site and none have noticed a hydrocarbon type smell. It is believed that one or two anecdotal comments from local persons have suggested that such a smell has occurred. The Pollution Control Team has had no formal complains with regard to such matters. If any person has direct knowledge of such smells it would be very helpful if this could be reported immediately to the Pollution Control Team for urgent investigation.
6. Notwithstanding this staff are in a continuing dialogue with the developer’s specialist team and will continue to be so. The local expression of concern is understood, and it would be unacceptable for the approach to land contamination to fail – that is why our team is continuing to monitor and will continue to do so, including receiving the results of testing of the stockpiled material ready for onward movement to the appropriate disposal site under the Waste Licence.
7. The questions raised with regard to the removal of tarmac are under active discussion with the developer. That will be dealt with through the normal process of assessment,

and insofar as any decisions are required to be taken, as technical matters under delegated powers.

### **Drainage**

8. It is now clear that there is concern with regard to the areas cleared of vegetation, and potentially contaminated, that they might be a source of contamination leaching into the soil and the stream. In light of what is mentioned in paragraph 3 above, we will ask the EA to urgently inspect the site to establish if there is any potential breach of matters under their control.

### **Alterations to land form**

9. Members will have noted a series of items of correspondence concerning this matter.
10. Those exchanges and expressed views must be seen in the light of the factors raised in paragraphs 1.4.3 and 1.4.4 of the main report. Nevertheless we have also continued to investigate this matter, not least because of local concern.
11. It should be noted that there has, as yet, been no approval of a fundamental change in the design of the retaining wall. The ground form and the existence of a retaining wall were approved but the design and construction of the wall were not approved in detail and neither was its detailed structural capacity, in light of paragraph 120 of the NPPF.
12. It is arguable whether the revised retaining wall, composed of gabions, marks any significant change from the form in the approved sections. While the developer carries the ultimate responsibility for the satisfactory structural design to support the neighbouring land and access road, the Council's specialist officers are continuing to seek-out further detail from the applicant to clarify the precise arrangements to be finally adopted. We heard yesterday that it was expected that a further layer of gabions would be used to raise the height of the structure before back filling between the gabions and the retained land.
13. It is suggested by some parties that gabions are not suitable for supporting a private road but there appears to be no hard evidence to support such an assertion, and in any event ultimately such an assertion would need to be pursued by the adjoining landowner directly with the developer. In continuing investigations by TMBC staff anecdotal examples have been found of gabion construction supporting both roads that carry public service vehicles and the bottom of railway embankments. In investigating the background, staff have identified documentation from the Highways Agency accepting the use of gabions on the trunk road/motorway network – a network far more heavily trafficked than the Hornet estate access road. Notwithstanding the fact that the Council has no remit to approve the structural capacity of this work, we will continue to assist in finding a solution that appears structurally sound and proportionate to the position at Isles Quarry West.

14. Once the height of the gabion wall is finally defined we will consider whether the redesign deviates sufficiently from the approved landform to require the Council's approval and if so it will be dealt with under delegated powers as a technical amendment in terms of the visual changes.

#### **Further conclusions**

15. This supplementary report is intended to bring Members up-to-date with our continued monitoring of various aspects of this scheme as it progresses at its early stages. Investigations and monitoring will continue and Council officers will remain in dialogue with all parties.

16. At this stage there appear to be no unsatisfactory situations on site that lead to action other than that set out in 1.5.2 – 1.5.4 of the substantive report.

#### **FOR INFORMATION**

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**West Malling**                      **TM/13/01464/FL**

**West Malling and  
Leybourne**

**Erection of a conservatory at Rotary House Norman Road West Malling Kent ME19  
6RN for Age Concern**

No supplementary matters to report.

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**Ightham**                              **TM/13/01382/FL**

**Ightham**

**Erection of new agricultural/nursery dwelling and demolition of existing buildings at  
Crown Point Nursery Sevenoaks Road Ightham Sevenoaks Kent TN15 0HB for  
Reuthe's Nursery**

No additional representations have been received since the report was published.

The applicant has submitted further financial information in support of the application, intended to clarify the amount of turnover set out in the report (*paragraph 1.2, last bullet point*). It has stated that:

"The present profit of	£24,530
Additional from new propagation	£14,400
Total profit	£38,950 + natural increase of the present profitability say £40,000 - £50,000 total"

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It has also stated that: "the point we are making is that this will be very comparable to Selected Plants in terms of their projections. You will realise that the present profit of £24,530 is likely to increase in any case so that we are looking at a likely profitability of £40,000 to £50,000 per annum".

DPHEH: Having given some further thought to the further financial information provided by the applicant, Members attention should be drawn to my advice contained in paragraph 2.2 of the main report, in so far as (for the reasons previously discussed) limited weight should be given to the financial background that has been provided in the determination of this application.

It has recently come to light that in December 2013, a judgement was handed down in the case of **R (Embleton Parish Council) v Northumberland County Council [2013] EWHC 3631 (Admin)** which provides some further clarification on the extent to which the functional and financial tests from Planning Policy Statement 7 (PPS7) could be relied upon in light of the National Planning Policy Framework. This judgement states that there is no justification in continuing to adopt the function/financial tests from PPS7. The correct test is that found in paragraph 55 of the NPPF, which is whether there is an "essential need for a rural worker to live permanently at or near their place of work in the countryside". However, the information originally gathered in order to make a judgement against the PPS7 criteria might still be used to assist in a determination as to whether the NPPF test has been met.

### **MY RECOMMENDATION REMAINS UNCHANGED.**

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**Wrotham**                                      **TM/13/03329/FL**  
**Wrotham**

**Removal of condition 1 of planning permission TM/83/376 (as last varied by permission TM/94/0931/FL) to allow year round use of the whole caravan park at Four Seasons Park, Labour In Vain Road, Wrotham, Sevenoaks, Kent, TN15 7PA for Mr Reuben Barney-Smith**

DPHEH: It has been suggested that marketing material on the applicant's Four Seasons Park website (<http://fourseasonsparkhomes.co.uk>) appears to be at odds with the current permitted (and now proposed) 'tourism' nature of the Park. This is in as far as prospective purchasers of plots/caravans are able to "part exchange" their existing home under an exchange scheme which aims to avoid the hassle of selling their existing home, aimed at making the purchase of a caravan at Four Seasons Park an easier process.

Members will be aware that under the recommendation set out in my main report, the applicant is required to ensure that the caravans are occupied for holiday purposes only and not as any person's sole or main residence (proposed condition 1) and that the

owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on site, and of their main home addresses (proposed condition 2). Therefore, the concept of "part exchanging" an owner's existing property to purchase a caravan at Four Seasons would appear to be contrary to the objectives of these conditions.

In light of the above, I will undertake to remind the applicant of the planning site requirements (i.e. holiday use only and not a person's sole or main residence) and, should evidence be brought forward to suggest that there has been any breach of the planning permission, formal action will be considered, as appropriate.

Members should also be aware that reference has incorrectly been in my original report to 32 concrete bases (in paragraphs 3.4 and 6.11); in fact this should read 33 concrete bases which currently exist at Four Seasons Park.

**MY RECOMMENDATION REMAINS UNCHANGED.**

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**Platt** **TM/13/03598/FL**  
**Borough Green And**  
**Long Mill**

**Erection of one 3 bedroom (attached) dwelling with shared access and parking and two storey extension to existing house at 1 Mill Cottages Maidstone Road Platt Sevenoaks Kent TN15 8JE for Magnum Opus Developments (Sevenoaks) Ltd**

Additional Reps:

KCC Highways: I can confirm that the details of this application have been carefully considered and attention has been paid to the concerns of the local residents.

The level of parking for the two properties is adequate with 2 spaces being provided for each house. The site has been visited and measurements checked; tracking diagrams have been submitted. Cars will be able to turn to and from the parking spaces within the private access road and this will not be likely to lead to any highway safety problems. Traffic flows will be increased by the additional dwelling; however this is not a significant intensification of use of the existing access where there is no record of personal injury crashes within the latest 3 year period.

In view of the NPPF advice which states that 'development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe', I do not believe that there are grounds for a highway related objection.

PC: Regardless of this revised information, we still object to this proposal.

Whilst we note your comments in your report re: garden land, we still feel that this proposal is subject to the required "exceptional" circumstances that should be applied. Our continued reservation, as expressed before, is the additional traffic movements.

With all due respects to Kent Highways, they are not interested in private access roads and we would query whether they have visited the site or just formed their opinion from a drawing.

We attach a plan showing the access track and its route to King Georges Field. This is the only route to the recreational ground used continually by school children and others, including junior football clubs. It is a very narrow track and vehicles manoeuvring in and out of this proposal are definitely a hazard. It is also used, obviously, by the other existing resident occupants. Whilst it may be perfect to turn and manoeuvre on paper, it is a different matter during rain, bright sunshine, darkness, etc. Not many drivers are that perfect, especially when a group of children come running down this track.

We would suggest that if the committee members visited the site, they would share our concern.

#### Additional Neighbour Reps:

Two neighbours have written in with additional objections (totally 5 additional e-mails/on line comments). The additional objections are (in summary):

- Reiterating previous concerns in relation to parking, access and turning.
- The lane is not wide enough and will require multiple manoeuvres and dry steering which will harm the surface.
- The lane will be used for parking causing an obstruction.
- Vehicles will need to reverse on to the A25.
- If three of the four bays were in use the final car would not have room to swing in to/out of the space.
- The lane should not be used for building material or construction vehicles. Access for all users should be maintained 24/7.
- Any cost of repair to the lane resulting from damage caused by the developer should be at their cost.
- No turning facilities will be provided within the access track (i.e. residents within the track will not allow vehicles to turn using the mouth of their driveway).
- Shouldn't all new dwellings have their own on site turning?

Both objectors also question how the Committee Report can be prepared in advance of all consultee periods having expired. They also question whether site visits were carried out by the Council and KCC Highways advisor. One of the neighbours questions whether assurance was given by TMBC Planning of the likeliness of planning permission being granted prior to the application.

DPHEH: The issue of access, parking and turning have all been discussed within the main report. However, KCC Highways have confirmed that they have visited the site in person and all measurements have been checked. KCC Highways remain satisfied that the access arrangement, turning circles and amount of parking proposed are acceptable.

The practice of reporting a case to APC2 while there are outstanding consultations is common practice. It should be noted that the re-consultation was on an amended design and layout. Accordingly, the consultee responses on the main principles of the development could be reported to Members within the main Committee Report with any Supplementary comments being reported on the night.

The pre-application advice service offered by the Local Planning Authority to developers is a routine part of the service provided. Any pre-application advice is not binding, should an application be submitted in the future and remains the informal view of the Officer and not the official view of the Council. Advice is made on that basis and there is never any assurance given to a developer or householder that permission will be secured.

It has recently come to light that in December 2013, a judgement was handed down in the case of **R (Embleton Parish Council) v Northumberland County Council [2013] EWHC 3631 (Admin)** which provides some further clarification on the extent to which technical tests, such as the Noise Exposure Categories (NECs) which previously formed part of PPS24 and remain extant in Policy SQ6 of the MDE DPD, could be relied upon in light of the publication of the National Planning Policy Framework. This judgement appears to suggest that there is no justification in continuing to adopt the NECs as a basis for assessing the acceptability of the acoustic environment. The test within the NPPF is whether “significant adverse impacts on health and quality of life” would occur. It is considered that the mitigation measures for acoustic protection set out within the Noise Report submitted would ensure an acceptable internal noise level and, as such, my recommendation remains unchanged.

#### **MY RECOMMENDATION REMAINS UNCHANGED**

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**West Malling                      TM/13/01952/FL**  
**West Malling And**  
**Leybourne**

**Development comprising 4 no. two bedroom town houses and one retail unit plus associated parking and external works at Mill Yard 26 Swan Street West Malling Kent ME19 6LP for Bedlars Holdings (UK) LLP**

DPHEH: Additional information has been received, being swept paths for spaces 1 and 2 within the parking court, and the Design and Access Statement has been revised to take account of a few discrepancies. The Archaeological Report received as part of the 2010 application has been resubmitted on this application.

The swept paths provided provide the necessary assurance that the parking spaces can be accessed and that manoeuvrability is achievable. The revisions to the Design and Access Statement are sufficient to take account of the previous inaccuracies. The full Archaeological report was required to be resubmitted to ensure consistency with the

previous application and the recommended archaeological conditions set out in the main report.

Following the publication of the main report, the methodology for the acoustic measurement and assessment to do with the collections from the recycling bins adjacent to the site has been questioned. The original approval for the site, which had a very similar relationship to the approved scheme in terms of proximity of habitable rooms to the recycling facility, required a noise report and appropriate mitigation measures to be submitted by condition. It is my view that the acoustic condition attached to the 2011 permission should be reinstated to allow for minor revisions to the currently submitted acoustic report and its recommendations to take place.

**AMENDED RECOMMENDATION:**

**Amend Condition 11:**

- 11. Development shall not begin until a scheme for protecting the proposed buildings from noise, that includes noise attenuation measures to protect the residential properties from noise from the public car park and recycling centre, in line with NPPF paragraph 123 and Noise Policy Statement for England 2010, has been submitted to and approved by the Local Planning Authority, and all works which form part of the scheme shall be completed before any of the permitted buildings are occupied and shall not be altered without the prior written approval of the Local Planning Authority.**

**Reason: In the interests of the residential amenity of the new development.**

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