

Alleged Unauthorised Development

Hildenborough
Hildenborough

14/00181/WORKM

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Location: Foxbush Cottage 107A Tonbridge Road Hildenborough
Tonbridge Kent TN11 9HN

1. Purpose of Report:

- 1.1 To report the unauthorised construction of a detached outbuilding following the refusal of planning permission under our reference TM/14/03073/FL, and the subsequent dismissal of the appeal by the Planning Inspectorate.

2. The Site:

- 2.1 This site is located within the Metropolitan Green Belt. It also borders the Hildenborough Conservation Area.
- 2.2 The application site identified under planning reference TM/14/03073/FL adjoins Sackville School and is accessed via the school car park. On the site is the dwelling house – Foxbush Cottage, an annex building, a further barn and the outbuilding that is currently under consideration. There are several well established trees on and around the site.

3. Planning History:

TM/88/10256/FUL grant with conditions 16 May 1988

Single storey extension.

TM/93/00649/FL grant with conditions 10 June 1993

Erection of open fronted double garage with garden shed/outhouse

TM/98/00440/FL Refuse 19 May 1998

two storey addition to existing property

TM/98/01365/FL Grant With Conditions 9 October 1998

two storey extension

TM/98/01929/FL Grant With Conditions 18 February 1999

provision of dormers and external alterations to open fronted double garage with garden shed permitted under TM/93/462

TM/05/00098/LDCE Refuse 9 March 2005

Lawful Development Certificate Existing: Use of barn as separate dwelling

TM/14/03073/FL Refuse 25 November 2014
Dismissed on appeal 28 March 2015

Retrospective application for a garden office with store room above

4. Alleged Unauthorised Development:

4.1 The unauthorised erection of an outbuilding.

5. Determining Issues:

5.1 The site lies within the Metropolitan Green Belt, where restrictive policies apply. The NPPF (paragraph 89) states that the construction of new buildings is inappropriate development. Exceptions to this include the replacement of a building, providing the new building is in the same use and not materially larger than the one it replaces. The NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (paragraph 87). Very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations. The development in question was considered to be inappropriate development and also to have caused material harm to the openness of the Green Belt by virtue of its overall size and location within the site. Specifically, the development was considered to represent an incremental spread in built footprint across the site which was considered to be harmful. No very special circumstances were identified that outweighed the degree of harm caused to justify the grant of planning permission.

5.2 Policy CP14 of the TMBCS restricts development in the countryside generally. It was considered that the development would be tantamount to the creation of a separate and independent new dwelling in the countryside, which does not fall into any categories of acceptable development in the countryside set out in policy CP14. In reaching this conclusion, it was noted that only relatively minor works would be required in order to bring about a use as a separate dwelling and that the size and position of the building would very simply allow for the creation of a separate planning unit. It was also recognised that another large separate annex already exists within the curtilage of this dwellinghouse; it was noted (and drawn to the attention of the Inspector through the subsequent appeal) that in 2005 the owner

attempted through the submission of a Certificate of Lawfulness (Existing Use) to prove that this annexe formed a separate unit of accommodation but this was refused due to the evidence being flawed.

5.3 With the above in mind, planning permission was refused for the building in question under delegated powers for the following reasons:

- *The site lies within the Metropolitan Green Belt where there is a strong presumption against inappropriate development, as defined in the National Planning Policy Framework (2012). The development constitutes inappropriate development within the Green Belt by definition. Furthermore, the development by virtue of its overall size and bulk fails to preserve the open nature and function of the Metropolitan Green Belt. No very special circumstances have been demonstrated that outweigh the degree of harm to the Metropolitan Green Belt in these respects and the development is therefore contrary to paragraphs 79 to 92 of the National Planning Policy Framework (2012) and Policy CP3 and CP14 of the Tonbridge and Malling Borough Core Strategy 2007.*
- *The development would be tantamount to the creation of a separate and independent new dwelling in the countryside, which does not fall into any categories of appropriate development in the countryside. As such the proposal is contrary to policy CP14 of the Tonbridge and Malling Core Strategy 2007*
- *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.*

5.4 The applicant lodged an appeal with the Planning Inspectorate and their decision has just been issued. The appeal was dismissed and a copy of the full decision is annexed for ease of information. The Inspector made the following detailed comments:

“Whilst I am of no doubt that the development is inappropriate development in the Green Belt, added to the harm of being inappropriate development is the level of impact that the development has in diminishing the openness of this part of the Green Belt. In my opinion, the bulk, additional floor space and height of the building consequently reduces the openness of this part of the Green Belt.”

5.5 He went on to state:

“Whether the development is tantamount to being an independent dwelling is a matter of fact and degree. The distinctive characteristic of a dwelling house is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.

I realise that the first floor is accessed via a ladder and that further insulation would be required for residential accommodation. Nevertheless, in my opinion, the building,

albeit small, is capable of being used independently. In particular, the provision of a kitchen area, shower room and carpeted first floor indicates that the building is capable of being used independently with no functional or practical linkage to the existing two residential buildings. Thus, the building is capable of being used as a separate dwelling. Therefore, I have determined the appeal before me in this respect.”

“I note that the building is required for room for children to study and wider family needs. Whilst I sympathise with this situation, such requirements could be argued by many people wishing to expand accommodation in the Green Belt. Therefore, I have attributed limited weight to these matters in my determination of this appeal.

I realise that the building is well screened from public view. Views within the Green Belt are distinctly different to openness. Thus, I have attributed limited weight to this matter in my determination of this appeal.”

- 5.6 In light of these considerations, the recent refusal of planning permission and the dismissal of the subsequent planning appeal, it is necessary to consider whether it is expedient to take enforcement action against the unauthorised works and, if so, what form that action should take. In light of the preceding assessment, and the harm identified, I cannot see any way in which the impacts of the building could be reduced by compensatory measures, particularly given the specific and detailed comments made by the Inspector regarding the position and size of the building and its ability to be occupied as an entirely independent dwelling. As such, I recommend that an Enforcement Notice should require the removal of the building. I consider that the degree and specific nature of the harm that has been caused by the unauthorised development sufficiently justifies the service of an Enforcement Notice to this effect and the following recommendation is put forward:

6. Recommendation:

- 6.1 An Enforcement Notice **BE ISSUED** to seek the removal of the unauthorised building, the detailed wording of which to be agreed with the Director of Central Services.

Contact: Paul Batchelor

Appeal Decision

Site visit made on 16 March 2015

by J L Cheesley BA(Hons) DIPTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 March 2015

Appeal Ref: APP/H2265/A/14/2229036

**Foxbush Cottage, 107A Tonbridge Road, Hildenborough, Tonbridge,
Kent TN11 9HN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Edward Simpson against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/14/03073/FL dated 29 August 2014 was refused by notice dated 25 November 2014.
 - The development proposed is garden office with store room above.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant appealed against non-determination of the planning application on 18 November 2014. The appellant was informed on 2 December 2014 that there were missing documents preventing registration of the appeal. Meanwhile a decision was issued by the Council on 25 November 2014. The registration of the appeal was not undertaken until 30 December 2014.
3. Under these circumstances, it is necessary for the appeal to be determined as a refusal of planning permission. I must emphasise that this has no bearing on the planning merits of the case or the way I have approached my determination of this appeal.

Main Issues

4. I consider the main issues to be:

whether the development amounts to inappropriate development in the Green Belt, and if so, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development; and

whether the development constitutes the creation of an independent dwelling and if so whether it is appropriate in this countryside location.

Reasons

Green Belt

5. The National Planning Policy Framework explains that the fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. One of the purposes of including land within Green Belts is to safeguard the countryside from encroachment. The Framework explains that the replacement of a building is not inappropriate in the Green Belt provided the new building is in the same use and not materially larger than the one it replaces.
6. Policy CP3 in the Tonbridge and Malling Borough Council Core Strategy (2007) seeks to apply national Green Belt Policy.
7. The replacement building has already been constructed. I note that it replaces a previous shed on the same footprint. That shed had a sloping roof between some 2.5 to 3 metres in height. The replacement building has a first floor with the ridge of the highest gable reaching a maximum height of some 5 metres.
8. Due to the increase in height and bulk of the building above that it replaces, I consider that the building is materially larger than the one it replaces. Thus, it is inappropriate development, which the Framework states is, by definition, harmful to the Green Belt.
9. Whilst I am of no doubt that the development is inappropriate development in the Green Belt, added to the harm of being inappropriate development is the level of impact that the development has in diminishing the openness of this part of the Green Belt. In my opinion, the bulk, additional floorspace and height of the building consequently reduces the openness of this part of the Green Belt.

Independent Dwelling

10. Whether the development is tantamount to being an independent dwelling is a matter of fact and degree. The distinctive characteristic of a dwelling house is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.
11. I realise that the first floor is accessed via a ladder and that further insulation would be required for residential accommodation. Nevertheless, in my opinion, the building, albeit small, is capable of being used independently. In particular, the provision of a kitchen area, shower room and carpeted first floor indicates that the building is capable of being used independently with no functional or practical linkage to the existing two residential buildings. Thus, the building is capable of being used as a separate dwelling. Therefore, I have determined the appeal before me in this respect.
12. The appeal site lies within the countryside. Core Strategy Policy CP14 restricts new development to that within a list of criteria. The objective of this policy is to preserve the character of the countryside and concentrate development in or adjoining existing built up areas. The building is capable of being used as a separate dwelling and does not meet the requirements of Core Strategy Policy CP14, which seeks to restrict development in the countryside. Thus, I consider

that the development has an adverse effect on the character of the countryside and is not appropriate in this countryside location.

Other Considerations

13. I note that the building is required for room for children to study and wider family needs. Whilst I sympathise with this situation, such requirements could be argued by many people wishing to expand accommodation in the Green Belt. Therefore, I have attributed limited weight to these matters in my determination of this appeal.
14. I realise that the building is well screened from public view. Views within the Green Belt are distinctly different to openness. Thus, I have attributed limited weight to this matter in my determination of this appeal.

Conclusion

15. It is necessary to determine whether there are other considerations which clearly outweigh the harm to the Green Belt and any other harm, hereby justifying the development on the basis of very special circumstances. For the reasons stated above, in my opinion the considerations advanced in support of the appeal development do not clearly outweigh the harm it causes to the Green Belt and to the character of the countryside. In conclusion, I am of the opinion that there are no material factors that would amount to the very special circumstances needed to clearly outweigh the presumption against inappropriate development in the Green Belt. Therefore, the development is contrary to policy in the Framework and Core Strategy Policies CP3 and CP14.
16. In reaching my conclusion, I have had regard to all matters raised. For the reasons stated above, I dismiss the appeal.

J L Cheesley

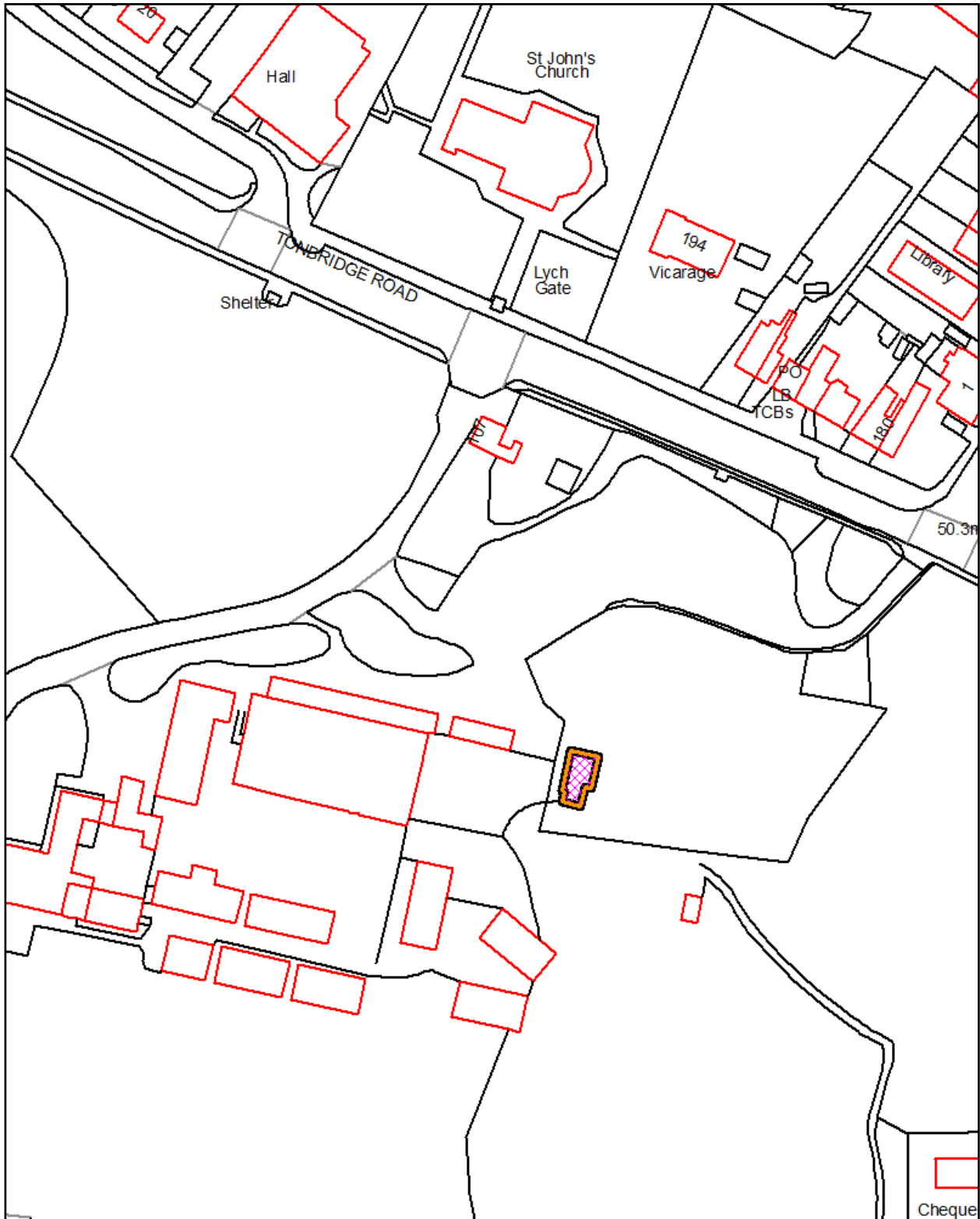
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