
Report from 8 November 2017

Trottiscliffe**3 June 2016****TM/16/01753/FL**

Downs And Mereworth

Proposal: Permanent retention of a static mobile home as accommodation for an agricultural worker ancillary to the nursery business and retention of 2no. dog kennels and pens

Location: The Nursery Taylors Lane Trottiscliffe West Malling Kent

Applicant: Mrs P Valler

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1. Description:

- 1.1 The original application (TM/12/00379/FL) for the siting of a static mobile home for a horticultural/agricultural worker on the site and the erection of dog pens and kennels was granted a temporary planning permission for a period of 3 years at appeal by the Planning Inspectorate in April 2013.
- 1.2 The current application proposes the permanent retention of the existing static mobile home for accommodation for an agricultural worker associated with the horticultural use of the site (plant nursery). It also includes retention of the ancillary development previously approved.
- 1.3 Determination of this application was deferred by APC2 back in April 2017 to allow officers to request the submission of detailed evidence setting out the different species grown on site presently, along with evidence that explains the proportion of turnover for each species, to account for any differences in type of species since the Inspector viewed the operations in 2013, and a technical explanation as to how the different species are cared for on a daily basis. This was all required in order to establish whether, given the type/hardiness of the species being grown, there is a genuine requirement for a continued on- site residential presence.
- 1.4 Since then, supplementary supporting information prepared by Kernon Countryside Consultants Limited has been submitted by the applicant.
- 1.5 The applicant originally also submitted correspondence from 4 businesses in Ightham, West Kingsdown and Meopham, which includes garden centres located in these areas, confirming that they have purchased plants from the applicant.
- 1.6 A Design, Access and Planning Statement, Supporting Statement, Business Accounts for 2012-2015 along with the original submitted Essential Needs Appraisal and Business Plan have been submitted with the application.
- 1.7 Since April and following the receipt of the additional information submitted on behalf of the applicant, specialist advice has been sought to assist officers in making their recommendations to the committee. This advice, along with the supporting evidence provided by the applicant, is discussed in detail within the

assessment that follows. The advice obtained (pre and post the April deferral) is annexed to this report in full for completeness of information.

- 1.8 The report that follows represents an entirely new report setting out a detailed assessment of the case.

2. Reason for reporting to Committee:

- 2.1 At the request of Councillor Kemp due to the history of the site and inappropriateness in the Green Belt.

3. The Site:

- 3.1 The application site comprises a rectangular parcel of land located on the west side of Taylors Lane, adjacent to the settlement confines of Trottiscliffe. It is fully enclosed by a brown stained close-boarded fence set just inside established hedgerows which align the boundaries of the site. The vehicular access to the site is on Taylors Lane within the northern section of the frontage. Gates are provided well back from the frontage.
- 3.2 The northern part of the site comprises two polytunnels, with black sheeting covering the land around them with arrangements of potted plants. A timber clad agricultural building comprising a workshop/potting shed with office facilities is situated within the centre of the site. The driveway and area around the potting shed is surfaced in bonded gravel. A static mobile home is positioned to the west of the agricultural building with an associated domestic garden area. Two dog kennels and pens lie just to the south of the potting shed and static mobile home.
- 3.3 The site is situated within the countryside, MGB and Kent Downs AONB. A groundwater source protection zone covers the southern part of the site. The Trottiscliffe Conservation Area lies to the southeast. Taylors Lane is a Classified Road.
- 3.4 Agricultural land lies to the north and west. A vacant parcel of land lies to the south between the application site and Millers Farm. The residential properties of Little Berries, The Cottage and 1-6 Taylors Lane are situated to the east.

4. Planning History (relevant):

TM/10/00473/FL Approved 15 June 2010

Replacement Agricultural Building comprising a workshop and office facilities; replacement of glasshouse with two polytunnels; parking and revised access

TM/10/02411/RD Approved 27 October 2010

Details submitted pursuant to condition 8 (lighting); 10 (a) & (b) (site investigation) and 11 (sewerage) of planning permission TM/10/00473/FL: Replacement agricultural building comprising a workshop and office facilities;

replacement of glasshouse with two polytunnels; parking and revised access

TM/11/00658/FL Refuse 7 June 2011

Retrospective application for the retention of a residential caravan ancillary to the Nursery Business and retention of 2 No. dog kennels and pens

TM/12/00379/FL Refuse 9 July 2012
 Allowed on appeal 9 April 2013

Retrospective application for the retention of a static mobile home as temporary accommodation for an agricultural worker ancillary to a nursery business and retention of 2no. dog kennels and pens

5. Consultees:

5.1 PC: Objection. The concerns raised are summarised as follows:

- The Inspector commented that 'it should not be assumed that a permanent dwelling will be permitted after 3 years and that much will depend on any progress towards viability and the need for an on-site presence'.
- The applicant has not submitted any evidence that a viable business is in operation at the site.
- Local knowledge informs us that vehicle movements in and out of the site are minimal which also suggests that a viable business is not in operation.

5.2 Private Reps: 1+ site notice + press notice 2/0X/2R/0S. The concerns raised have been summarised below:

- There is little traffic to and from the site
- Virtually no business is being conducted on the site
- It is questioned whether there is a viable business being operated

6. Determining Issues:

6.1 The main issue is whether there continues to be an essential need for the applicant to live on the horticultural/plant nursery site, which would justify permanent retention of the existing static mobile home.

Principle considerations:

6.2 In the appeal decision for the 3 year temporary permission under planning reference TM/12/00379/FL, the Planning Inspector concluded that:

- After having regard to the functional and financial aspects of the former PPS7 tests there is an essential need for a mobile home for a rural worker at the appeal site

- The scope to install technology to allow remote living had been explored and attempts to find suitable rental accommodation had been made
- No practical alternative to the proposed mobile home had been established
- Significant weight was given to specialist written evidence from Council's retained agricultural consultant
- The NPPF generally opposes isolated new houses in the countryside but the Government also supports the sustainable growth and expansion of all types of business in rural areas and that the appellant should be allowed time to 'make a go of it' which would be in line with this policy approach.

6.3 Since this appeal decision, in the High Court decision in *Embleton Parish Council & Anor, R (on the application of) v Gaston*, December 06, 2013, [2013] EWHC 3631 (Admin) Judge Behrens concluded that in respect to paragraph 55 of the NPPF, the *"test simply requires a judgement of whether the proposed agricultural enterprise has an essential need for a worker to be there or near there"* and that it does not require that the proposal is economically viable.

6.4 The judgment makes clear that the relevant guidance for applications of this nature was contained in PPS7 prior to 27 March 2012 and paragraph 55 of the NPPF thereafter. Whereas under Annex A (paragraph 12(iii)) of PPS7 the applicant had to provide clear evidence that the proposed enterprise has been planned on a sound financial basis, this is no longer the case. Paragraph 55 of the NPPF requires that LPAs should avoid new isolated homes in the countryside unless there are special circumstances such as:

- "the essential need for a rural worker to live permanently at or near their place of work in the countryside"

6.5 Thus the guidance in paragraph 55 of the NPPF is significantly less onerous than in PPS7. It is the requirements set out in paragraph 55 that must form the basis of the assessment of this application.

6.6 In effect, this means that a planning judgement needs to be made as to whether an essential need for the permanent retention of the residential use in connection with the business remains. This is the sole test to be applied in this instance. It was on this basis that further information was sought from the applicant and specialist advice sought subsequently on behalf of the Council. This is discussed in detail below.

6.7 In support of the claim that an essential need exists in accordance with the paragraph 55 requirements, the applicant has submitted supplementary information (June 2017) prepared by Kernon Countryside Consultants Ltd, a specialist agricultural, equine and rural planning consultancy. It advises that plant species grown at the nursery during 2016 include hedge plants (laurel and

leylandii), ornamental shrubs (standard fuchsias), perennials (various) and winter and summer bedding plants. These plant species are considered to be consistent with those outlined in the Essential Needs Appraisal (March 2011) that formed part of the original proposal and that this generally reflects the stock viewed on the site during my inspection in September 2017.

- 6.8 The supplementary information by Kernon provides a detailed breakdown of the rearing of the hedge plants, shrubs, perennials and bedding plants from cutting/seeding to repotting to point of sale. It advises that although the hedge plants become hardy, when they are young they are vulnerable to the cold, heat-stress, waterlogging, mould and drying. The ornamental and flowering plants have diverse needs and require varied propagation techniques. It was noted that the care for these young plants is carried out by hand and is labour-intensive. All plants must be kept warm in winter, and where necessary, be covered by polythene and carefully monitored to prevent mould. Plants that are hardening up outside may need to be moved quickly in the event of heavy rainfall which can damage stocks. Polytunnel power failure, frosts, snowfall and other adverse weather conditions would affect the supply of plants for sale and therefore affect the business. It is therefore considered by those advising the applicant to be essential that a skilled worker continues to live on site to identify and deal with situations that arise.
- 6.9 The Council's retained specialist rural consultant (Richard Lloyd Hughes) has reviewed the application details, including the information described above, and was asked expressly to advise on matters of essential need. It was advised that there is no reason to doubt that the nature of production on the site continues broadly along the same lines as before and that the exact mix of plants grown can vary year to year depending on market demands. Also, that the functional reasons for requiring accommodation on-site outlined in the supporting document produced by Kernon Countryside Consultants Ltd are supported. In addition to this, it was advised that a presence on the site would assist to deter theft or vandalism that could seriously affect production.
- 6.10 Specific horticultural advice has also been obtained by the Council from a reputable horticultural adviser (Dominic Hall). The advice is summarised as follows (but again is annexed in full for completeness of information):
- The initial phase of propagation (cutting or seeds) requires a high level of manual labour and immediate aftercare to ensure the young stock is adequately watered and sheltered
 - Permanent staff presence is able to instantly deal with sudden market changes in terms of labour to begin propagation

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- Storm damage and power loss (to heating, lighting and irrigation systems) could ruin young stock which are extremely vulnerable to sudden environmental changes
 - Pest and diseases which usually relate to unpredictable weather conditions can ruin plants quickly and therefore stock needs constant monitoring
 - Hedge plantings require regular inspection but rarely urgent attention unless problems arise; herbaceous plants require a higher level of monitoring than hedging with correct watering being critical in summer; seasonal/annuals require a high level of labour needing contact care and monitoring and are the most susceptible to pests and disease
 - Irrigation systems require monitoring for leaks and pump failure which can occur at any time at the height of summer which could ruin stock
 - The nursery trade is especially vulnerable to stock theft due to their rural location where intruders are less likely to be spotted and polytunnels are easy to access/cut open

6.11 The specialist advice obtained by the Council therefore concludes that the nursery trade needs highly flexible labour input, flexibility in coping with the unpredictable weather and vigilance in the monitoring of stock in care and therefore being on-site permanently means a higher level of monitoring, response and higher quality of stock at the point of sale.

6.12 From the advice provided by the applicant's agricultural consultant and from the Council's retained rural consultant and horticultural adviser it can be concluded that the plant species being grown on the site are generally in line with those previously described and that there is consensus that there is an essential need for the plant nursery business to have a worker living on the site permanently to provide appropriate care and monitoring of the plant stock. It is therefore my judgement that an essential need, as required by paragraph 55 of the NPPF does exist in this instance. With this in mind, I consider that it would be necessary to restrict the occupation of the mobile home to the nursery business, given that the justification for its retention rests solely with the essential need for on-site presence. It would equally be necessary to impose a condition requiring that the residential use cease and the static home and all associated development be removed in the event that the nursery ceases to operate.

Green Belt considerations:

6.13 The application site is in the Green Belt where Policy CP3 of the TMBCS advises that National Green Belt policy will apply (Section 9 of the NNPPF).

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- 6.14 Paragraph 87 of the NPPF states that “*as with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*”
- 6.15 Paragraph 88 follows stating that “*when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt and that very special circumstances will not exist unless potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations*”.
- 6.16 Paragraph 89 of the NPPF advises that the construction of new buildings should be regarded as inappropriate in the Green Belt. Although a number of exceptions are specified, none of these are considered to be applicable to the proposed development. The proposal would therefore be *inappropriate development* in the Green Belt and would need to be justified by ‘very special circumstances’.
- 6.17 The Planning Inspector in granting the temporary planning permission in 2013 advised that if an essential need for a rural worker were to be established then very special circumstances would exist that would outweigh the harm of the development’s inappropriateness in the Green Belt.
- 6.18 Given the conclusions drawn above concerning essential need and the requirements of paragraph 55, I can conclude that such very special circumstances do exist.

Impact on setting of Conservation Area:

- 6.19 Section 72 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires planning authorities to give special attention to the desirability of preserving or enhancing the character or appearance of the CA.
- 6.20 The National Planning Policy Guidance also requires an assessment of whether substantial harm is caused to the significance of the Heritage Asset (Paragraphs 132 and 133 of the NPPF).
- 6.21 The Planning Inspector in allowing the appeal in 2013 concluded that there would be no adverse impact on the setting of the Trottiscliffe Conservation Area and its character and appearance due to the modest size of the mobile home and its location. The on-site conditions of the development have not changed to any noticeable degree. The current application does not propose any changes to the existing static home on site or to any of the other development in situ. I am therefore satisfied that the retention of this development on a permanent basis would not cause demonstrable harm to the character and appearance of the area or the setting of the adjacent Conservation Area. It therefore accords with Policies CP24 of the TMBCS and SQ1 of the MDE DPD and with Section 7 (Requiring good design) and paragraphs 129 and 131 (Heritage Assets) of the

NPPF. Regard has also been had to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Technical considerations:

- 6.22 In respect to land contamination, a desk study and intrusive investigation were submitted with the Reserved Details application (TM/10/02411/RD) relating to the 2010 permission for the replacement agricultural building (TM/10/00473/FL). Although this was based on a continued agricultural use, made ground was found across the site that included plastic, metal, wood and brick, which presented elevated levels of lead and hydrocarbons. The report also mentions that the site has historically been used for vehicle maintenance and re-spraying. As it is proposed to retain the mobile home permanently, it is considered necessary to ensure the residential garden land is decontaminated and suitable for permanent residential use. Conditions can be imposed requiring a site investigation and remediation of the land where required. With the imposition of these conditions, the development would accord with paragraphs 120-121 of the NPPF.
- 6.23 The applicant has confirmed that foul water for the mobile home and workshop/potting shed are connected to the mains sewer which runs along Taylors Lane. A condition can be added to confirm this requirement.

Planning balance and conclusions:

- 6.24 In light of the above, I consider that it has been adequately demonstrated that the existing plant nursery has an essential need for a worker to live permanently on the site and that this justifies the retention of the static mobile home and associated development that is in situ in accordance with the requirements of paragraph 55 of the NPPF.
- 6.25 It is noted that the NPPG is clear in advising that:
- “It will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so.”*
- 6.26 In light of my preceding assessment, I do not consider that it would be necessary or reasonably justified to seek to recommend a further temporary planning permission in these circumstances, particularly in light of the above guidance.
- 6.27 Accordingly, it is recommended that permission be granted for the permanent retention of the static mobile home on the site for accommodation for an agricultural worker relating to the nursery business, subject to conditions.

7. Recommendation:

- 7.1 **Grant planning permission** in accordance with the following submitted details:

Email received 31.01.2017, Supporting Statement received 13.10.2016, Email received 14.12.2016, Supporting Information Correspondence from businesses received 14.12.2016, Other ACCOUNTS received 03.06.2016, Letter received 14.06.2017, Supporting Information KERNON CONSTRYSIDE CONSULTANTS received 14.06.2017, Planning, Design And Access Statement received 03.06.2016, Site Plan 1786/18A Rev 04/11 received 03.06.2016, Location Plan 1786/1 received 03.06.2016, Appraisal ESSENTIAL NEEDS received 03.06.2016, Other BUSINESS PLAN received 03.06.2016, Letter received 03.06.2016, subject to the following conditions:

Conditions:

- 1 The occupation of the static mobile home shall be limited to a person solely or mainly employed in the associated Nursery business or a dependant of such a person residing with him or her, or a widow or widower of such a person.

Reason: The occupation of the static mobile home by persons not associated with Nursery business would result in a separation of functions and expansion of movements and paraphernalia that could harm the openness of the Green Belt and character and visual amenity of the rural area.

- 2 The residential use hereby permitted shall cease within 1 month of the date that the horticultural enterprise at The Nursery ceases to trade and any caravan, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the residential use (including the dog pens and kennels) shall be removed and the land restored to its condition before the development took place in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

Reason: To preserve the openness of the Green Belt and ensure that the character and visual amenity of the rural locality is not significantly harmed.

- 3 No replacement static mobile home shall be stationed on the site before details of its size and appearance have been submitted to and approved by the Local Planning Authority. The replacement static mobile home shall accord with the approved details.

Reason: To preserve the openness of the Green Belt and ensure that the character and visual amenity of the rural locality is not significantly harmed.

- 4 The static mobile home shall only be stationed in the position shown on Drawing No.1786/18A Rev 04/11 hereby approved and no more than one caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any time.

Reason: To preserve the openness of the Green Belt and ensure that the character and visual amenity of the rural locality is not significantly harmed.

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- 5 Details of any external lighting within the areas indicated as tarmac finish, mobile home, shed and playhouse on Drawing No. 1786/18A Rev 04/11 shall be submitted to and approved in writing by the Local Planning Authority prior to installation. The works shall be carried out in accordance with the approved details.

Reason: To protect the visual amenity of the locality.

- 6 Foul water shall be disposed of directly to the mains sewer, unless agreed in writing by the Local Planning Authority for any variation.

Reason: To prevent pollution of groundwater.

- 7 Within 2 months of the date of this decision, the following shall be submitted to the Local Planning Authority for approval:

(a) based on the findings of the desktop study from 2010 submitted under planning reference TM/10/02411/RD, proposals for a site investigation scheme of the residential part of the scheme that will provide information for an assessment of the risk to all receptors that may be affected including those off site. The site investigation scheme should also include details of any site clearance, ground investigations or site survey work that may be required to allow for intrusive investigations to be undertaken.

If, in seeking to comply with the terms of this condition, reliance is made on studies or assessments prepared as part of the substantive application for planning permission, these documents should be clearly identified and cross-referenced in the submission of the details pursuant to this condition.

Reason: In the interests of amenity, public safety and human health and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

- 8 Within 2 months of the approval of the site investigation under condition 7 above, the following shall be submitted to the Local Planning Authority for approval:

a) results of the site investigations (including any necessary intrusive investigations) and a risk assessment for the private garden area associated with the static mobile home, of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement must include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended).

The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.

(b) the relevant approved remediation scheme shall be carried out in accordance with the approved timetable of works. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme works.

Reason: In the interests of amenity, public safety and human health and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

- 9 Within 2 weeks following completion of the approved remediation, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the Local Planning Authority.

The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved.

Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.

Reason: In the interests of amenity, public safety and human health and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

- 10 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reason: In the interests of amenity and public safety and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

Informatives

- 1 The proposed development is within a road which does not have formal street numbering and, the new property will require a new name(s), which is required to be approved by the Borough Council, and post codes. To discuss suitable house names you are asked to write to Street Naming & Numbering, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ or to e-mail to addresses@tmbc.gov.uk. You are advised to do this as soon as possible.

Contact: Mark Fewster