

Trottiscliffe
Downs And Mereworth

11 July 2018

TM/18/00357/OA

Proposal: Outline Application: Erection of a detached dwelling for an agricultural worker relating to the nursery business to replace the mobile home, with landscaping reserved

Location: The Nursery Taylors Lane Trottiscliffe West Malling Kent

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1. Description:

1.1 Determination of this application was deferred on 26 September 2018 to allow for legal services to provide the committee with a report setting out the risks involved with refusing outline planning permission on grounds of impact to the Green Belt and matters of viability.

1.2 This is in line with the Council's Constitution which sets out as follows:

Where a Committee rejects a recommendation to approve, or is minded to refuse, an application which is recommended for approval by the Director of Planning, Housing and Environmental Health on grounds which the Director does not consider can be substantiated at appeal, the matter shall be deferred to the next meeting of the Committee to enable the Director of Central Services & Monitoring Officer to submit an independent report to the Committee on the possibility of costs being awarded against the Council. If the Director of Central Services & Monitoring Officer's report indicates that there is likely to be a significant risk of costs being awarded against the Borough Council and the Committee resolves to refuse the application that decision will be a recommendation only and the matter shall be submitted to Council for resolution.

1.3 Copies of the previous officer's report and supplementary report from the 26 September meeting are annexed for ease of information.

1.4 Since the deferral, the agent for the applicant has sought to provide additional supporting information which sets out a summary of similar cases which have been considered by the Council and approved.

2. Consultees (since 26 September):

2.1 None

3. Determining Issues:

3.1 The key matter for consideration in respect of the requisite Green Belt assessment is discussed at paragraph 6.12 of the officer's previous report. To embellish on this and for the avoidance of any doubt, the Planning Committee is required to make an assessment solely on the development that is proposed through this current

planning application, not on matters that have been for determination previously although the development that is currently in situ forms the context for making that assessment.

- 3.2 In essence, previous planning decisions have been connected to the residential use and occupation of the site in relation to the business use. The residential use has been accepted on a permanent basis and is facilitated by the siting of a static mobile home in the approved location. The mobile home is not, for the purposes of planning, considered to be a *building*.
- 3.3 What is now proposed, and falls to be determined, is the removal of that mobile home and the construction of a new building (dwelling) on the site, still in connection with the same agricultural operation. The principle surrounding this residential use has been established and cannot be considered any further within the context of this application. The main issue for consideration is whether the new building is acceptable in planning terms.
- 3.4 In this respect, the NPPF sets out that the construction of new buildings within the Green Belt is inappropriate development unless specific exceptions apply. Paragraphs 145 and 146 set out the relevant exceptions. In this case, the necessary test to be applied is set out in paragraph 145 (g) of the NPPF which states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are (inter alia):
- g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
- not have a greater impact on the openness of the Green Belt than the existing development; or
 - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
- 3.5 This part of the application site falls within the definition of previously developed land for the purposes of applying paragraph 145 (g). The only matter for consideration is therefore whether the new building has a greater impact on openness than the existing development (the residential use facilitated by the mobile home).
- 3.6 However frustrating it might be to witness a series of events whereby in relatively quick succession the applicant here has sought to establish a lawful, permanent residential occupation of the site and the resultant categorisation of the land for planning purposes as previously developed, this is a legitimate route and this is the correct test to be applied.

- 3.7 It is on this basis that I return to paragraph 6.12 of the officer's report in respect of the impact on the openness of the Green Belt. It is concluded that there would not be any substantial additional harm to openness. This is a matter of planning judgement but in making such a judgement, Members must be mindful of a recent High Court judgement which found that a greater impact on openness must involve something more than a mere change of environment (*Euro Garages Limited v Secretary of State for Communities and Local Government (CO/145/2018)*).
- 3.8 The exceptions set out paragraph 145(g) therefore applies and there is no need to establish whether any very special circumstances exist.
- 3.9 Turning to matters pertaining to the viability of the business, the salient issues centre on the fact that the new dwelling would still be tied to the continuation of the business use by virtue of the recommended planning conditions. The conclusions drawn in connection with the Green Belt considerations mean that there is no ability to further consider matters of viability. In effect, Members do not need to find or additional very special circumstances. In any event, as mentioned above, the success of the business use is not parasitic on the size of the dwelling the applicant can reasonably expect to inhabit. Moreover, the only test to be applied is whether there is a greater amount of harm arising to prevailing levels of openness.
- 3.10 With the above considerations in mind, the following recommendation is reiterated.

4. Recommendation:

- 5. Grant outline planning permission** in accordance with the following submitted details: Site Layout 1786/19 A dated 10.07.2018, Proposed Floor Plans 1129/2 A dated 10.07.2018, Proposed Floor Plans 1129/3 A dated 10.07.2018, Proposed Elevations 1129/1 B dated 10.07.2018, Other Amended Application Form dated 11.07.2018, Location Plan 1786/1 A dated 13.02.2018, Site Layout 1786/18A Rev 04/11 dated 13.02.2018, Other Kernon Countryside Supplementary Info dated 13.02.2018, and subject to the following conditions:

Conditions:

- 1 Approval of details of the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority.

Reason: No such approval has been given.

- 2 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 3 The occupation of the dwelling hereby approved 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 site of the dwelling is outside any area in which development would normally be permitted if it were not required for occupation by a person employed on the site for agricultural/horticultural purposes.

- 4 The existing mobile home shall be removed from the site prior to first occupation of the dwelling or completion of the development hereby approved, whichever is the earlier.

Reason: The retention of the mobile home on the site is likely to cause harm to the openness of the Green Belt and visual amenity of the rural locality.

- 5 No development above ground level shall take place until details and samples of materials to be used externally have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the area or the visual amenity of the locality.

- 6 No development shall take place until a plan showing the proposed finished floor, eaves and ridge levels of the dwelling in relation to the existing ground levels of the site and adjoining land has been submitted to and approved by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details.

Reason: To ensure that the development does not harm the character of the area or visual amenity of the locality.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order), no development shall be carried out within Class A, B, D or E of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: To ensure that the development does not harm the character of the area or visual amenity of the locality.

- 8 The area shown on the submitted layout as vehicle parking space shall be provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

- 9 No external lighting shall be installed on the site, except in accordance with a scheme of external lighting that has been submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme.

Reason: To safeguard neighbouring residential amenity and the visual amenity of the locality.

- 10 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.

Informatives:

- 1 This permission does not purport to convey any legal right to undertake works or development on land outside the ownership of the applicant without the consent of the relevant landowners.
- 2 During the demolition and construction phase, the hours of working (including deliveries) shall be restricted to Monday to Friday 07:30 hours - 18:30 hours. On Saturday 08:00 to 13:00 hours, with no work on Sundays or Public or Bank Holidays.
- 3 The applicant should be aware that the disposal of demolition waste by incineration or use of bonfires on the site can lead to justified complaints from local residents and would be contrary to Waste Management Legislation.

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