

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**COUNCIL**

**09 April 2019**

**Report of the Director of Planning, Housing and Environmental Health**

**Part 1- Public**

**Matters For Decision**

**1 PLANNING APPLICATION TM/18/00357/OA – THE NURSERY, TAYLORS LANE, TROTTISCLIFFE**

**Summary**

**Outline planning permission is sought for the replacement of an existing (and lawful) static mobile home with a detached dwelling as permanent accommodation for an agricultural worker associated with the plant nursery. The application was reported to the Area 2 Planning Committee at the request of Councillor Ann Kemp on 26 September 2018 and 07 November 2018 (on the latter occasion accompanied by a Part 2 report from the Director of Central Services and Monitoring Officer. Members of the Area 2 Planning Committee resolved not to accept the recommendation that planning permission be granted (although no formal proposition to refuse planning permission was made). As such, in accordance with the Constitution, this application is being reported to Council for a decision.**

**1.1 Introduction**

1.1.1 The reports to APC2 of 26 September and 07 November, including the Part 2 report, are attached in full and set out in detail the reasoning behind and recommendation of the Director of Planning, Housing and Environmental Health.

1.1.2 For the purposes of taking this decision, the Constitution provides that the same rules apply both to applications determined by an Area Planning Committee and where the matter is referred to full Council. Rule 16.1 of the Council and Committee Procedure Rules (Constitution: Part 4, p29) provides that the public speaking rules apply to planning applications being considered by the Council when it has 'resolved itself into a committee of the full council'. As such, the procedure rules relating to Planning Committees are to be applied in this instance.

**1.2 Legal Implications**

1.2.1 Prior to determining this application, Members are requested to note the advice contained within the Part 2 report to members of Area 2 Planning Committee dated 07 November 2018.

(a) Determination of Planning Applications

- 1.2.2 Planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise (see s.70 (2) Town & Country Planning Act 1990 and s.38 (6) Planning and Compulsory Purchase Act 2004). For TMBC, the development plan is currently the Local Development Framework adopted in 2007. The National Planning Policy Framework (“NPPF”) and Planning Practice Guidance (“PPG”) are important material considerations.
- 1.2.3 Paragraph 11(c) of the NPPF requires that planning authorities approve development proposals which accord with the development plan “without delay”.

**1.3 Financial and Value for Money Considerations**

- 1.3.1 An award of costs against the Council by the Planning Inspectorate would be for the expense incurred by the Applicant in lodging and pursuing a planning appeal. The applicant has already engaged professional planning agents and these would likely take such an appeal forward. Legal representation may also be instructed to assist in preparing and making their appeal case.
- 1.3.2 There would in addition be further costs to the Council in terms of its own officer time and resourcing up to and including the appearance at any appeal hearing or inquiry.

**1.4 Risk Assessment**

- 1.4.1 The risk of an award of costs by the Planning Inspectorate presents a reputational risk because it would indicate that the Inspectorate considered the Council had behaved in an unreasonable manner.

**1.5 Equality Impact Assessment**

- 1.5.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

**1.6 Recommendation**

- 1.6.1 **Grant planning permission** 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.

Background papers:

contact: Emma Keefe

Reports to the Area 2 Planning Committee of the Director of Planning, Housing and Environmental Health and the Director of Central Services and Monitoring Officer

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