

Hildenborough
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30 May 2019

TM/19/01226/FL

Proposal: Proposed dwelling
Location: Land Adjacent To The Hutchings Leigh Road Hildenborough
Tonbridge Kent
Go to: [Recommendation](#)

1. Description:

- 1.1 Planning permission is sought for the construction of a detached dwelling and associated access within the land adjacent to The Hutchings.
- 1.2 The dwelling is proposed to sit centrally within the site measuring approximately 13.3m long by 10.3m wide and a total of 6.9m tall. Access to the site is proposed to the south through the curtilage of The Hutchings, using an existing gate which connects to the existing driveway. A total of two parking spaces are proposed to serve the dwelling.

2. Reason for reporting to Committee:

- 2.1 At the request of Cllr Rhodes given that the site lies within the Metropolitan Green Belt and is not designated for housing development.

3. The Site:

- 3.1 The application site consists of a modest plot of land located to the north of Leigh Road. The site is open in nature with established planting around the boundaries.
- 3.2 The site lies within the Countryside, is designated as MGB and within an AAP. PRow MT47 lies to the west of The Hutchings.

4. Planning History (relevant):

TM/03/00293/FL Grant With Conditions 26 April 2003

Erection of open barn

TM/17/02433/PDV Prior Approval Not 13 November 2017
AR Required

Prior Notification: Conversion of a building located on the East Side of an existing group of buildings into a single dwelling

5. Consultees:

- 5.1 PC: Objects. Concerns about access on a dangerous bend onto the very narrow Leigh Road and the impact on the public right of way. We are also concerned

about further development in this area which is clearly Metropolitan Green Belt. It should be noted that the development on the Powder Mills Site was on brownfield land. There are also concerns over the potential loss of valued mature trees.

5.2 KCC (PROW): Comments made concerning whether the proposed access would impact on users of MT47.

5.3 KCC (Heritage): No comments to make

5.4 Private Reps: 3 + site notice/0X/0R/0S.

6. Determining Issues:

Principle of development:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF at paragraph 12 asserts that it *'does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise'*.

6.2 The site lies within the MGB and designated countryside, where restrictive planning policies apply. However, it must be recognised that the Council cannot currently demonstrate a five year housing land supply and this means that the presumption in favour of sustainable development as set out by paragraph 11 of the NPPF must apply. In terms of the policies governing development in the countryside generally (not expressly the Green Belt), policy CP14 of the TMBCS has been found to be out of date given that a 5 year supply cannot be demonstrated and therefore the restrictions contained within it insofar as they relate to new housing development can no longer be relied on.

6.3 For decision making, the presumption in favour of sustainable development means that planning permission should be granted without delay unless:

i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

6.4 The restrictive policies referred to in paragraph 11 (d) (i) include those relating to development within the Green Belt. It is therefore necessary to firstly establish

whether those policies indicate a clear reason for refusing planning permission when applying the necessary tests.

Development in the Green Belt:

- 6.5 Policy CP3 of the TMBCS sets out that national Green Belt policy will be applied when making decisions. This is contained within Section 13 of the NPPF. Paragraph 145 of the NPPF states that new buildings should be regarded as inappropriate development, which is considered harmful by definition and not granted unless very special circumstances exist. Certain exceptions to this do however apply, and relevant to this case includes new buildings that amount to limited infilling in villages.
- 6.6 The site lies outside of the rural settlement boundary of Hildenborough. Nonetheless, it is acknowledged that in *Wood v Secretary of State for Communities and Local Government [2014]* the Court of Appeal held that whether a site lies within a village is a matter of planning judgement and not solely determinative on whether it falls within a defined settlement boundary, although this can be a material consideration. The correct test is therefore to determine if the site can reasonably be considered as falling within a village, when giving due consideration to the physical context of the site, and whether it would constitute limited infilling, as a matter of planning judgement.
- 6.7 This section of Leigh Road within which the application site falls has a clear linear pattern with modest dwellings located within spacious plots. It also physically links in with the Powder Mill development to the south. The site is bordered by The Hutchings to the west and by Oast Cottage and Delamere to the east. To the north is a sand school and cluster of buildings associated with the former smallholdings. The proposed dwelling is to be two storeys in height and is comparable in size to the surrounding dwellings. Taking into account the physical characteristics of the site and its' surroundings and the limited nature of the proposed development for one dwelling, it is my judgement that the proposal amounts to limited infilling and therefore the exception provided for by paragraph 145 (e) is met and very special circumstances are not required to be demonstrated.
- 6.8 As such, the relevant restrictive policies do not provide a clear reason for refusal (being the correct test set out in paragraph 11 (d) (i)). The presumption in favour of sustainable development therefore falls to be applied and it is necessary to make an assessment as to whether the development would result in any significant and demonstrable adverse impacts that would outweigh the benefits (paragraph 11 (d) (ii)). It is on this basis that the remainder of my assessment takes place.

Visual impact:

- 6.9 Policies CP24 of the TMBCS and SQ1 of the MDE DPD are the most relevant design policies and require development to be well designed and through its scale, density, layout, siting, character and appearance respect the site and its

surroundings. Development should also protect, conserve and where possible enhance the character and local distinctiveness of the area, including its setting in relation to the pattern of the settlement, roads and surrounding landscape.

6.10 Paragraph 127 of the NPPF sets out that planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

6.11 Paragraph 130 is also material and sets out that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development.

6.12 The adopted development plan policies therefore fully accord with the requirements of the NPPF in these respects.

6.13 The dwelling is to be set over two storeys. It is to sit under a dual pitch roof with front gable projection and rear projection to include a modest flat roof. The dwelling is to be clad in a mix of white render, cedar boarding and proposes a plain tiled roof. The building would not appear in any way out of keeping with the prevailing character of the locality in terms of form, design or use of materials. I also note that the existing established hedge to the south of the site is to be

retained and this will assist in ensuring the existing site character is retained. I am therefore of the view that the proposal accords with the adopted and national policy in these respects.

- 6.14 The Parish Council have raised concern regarding the impact on mature trees on site. The applicant has provided a revised plan which corrects the location of a cherry tree which is now proposed to be retained. They have also set out that there is adequate space for the construction of the driveway without the need for the removal of mature trees on site. They have suggested a no-dig method for the driveway so as to avoid damage to the root protection zone of the trees. Also of note is the applicant's intention to gain access for construction to the site from the north, preventing any need for the removal of vegetation to provide access from construction vehicles. The proposal does not seek to remove any mature trees; however given the close proximity the trees may be vulnerable to damage during construction. I would therefore suggest a condition is imposed to ensure adequate tree protection measures are put in place during this time.

Residential amenity:

- 6.15 The proposed dwelling is approximately 21m from the nearest neighbour to the east (Oast Cottage) and approximately 29m to the nearest to the west (The Hutchings). This level of separation is considered to be sufficient in ensuring an acceptable amount of privacy to the neighbouring dwellings. Furthermore, the internal layout of the building and the positioning of windows within the flank elevations will ensure that private garden areas are not overlooked. These distances and the proposed layout of the building relative to the existing dwellings would also ensure there would be no unacceptable loss of daylight/sunlight and there would be no over bearing impact arising from the development.

Highway Safety and parking provision:

- 6.16 The relevant development plan policy in relation to highway safety and parking is contained within Policy SQ8 of the MDE DPD. This states that before proposals for development are permitted, they will need to demonstrate that any necessary transport infrastructure, the need for which arises wholly or substantially from the development is in place or is certain to be provided.
- 6.17 Paragraph 109 of the NPPF is also an important material consideration and sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 6.18 The proposal seeks to gain access to the site through the curtilage of The Hutchings. The existing five-bar gate into The Hutchings is to be retained with new bound gravel driveway installed along the southern boundary into the application site. A parking and turning area is to be created within the site itself providing adequate parking and turning for two vehicles.

- 6.19 The proposal seeks to re-use the existing shared access road to allow access to the highway network with adequate land provided to pull off the access drive whilst operating the gate. The increased use of this access would be limited to an additional dwelling only and this would only be limited and not give rise to any adverse highway safety impacts as a result.
- 6.20 Equally, the provision of two parking spaces to serve the new dwelling would accord with the requirements set out in KHS IGN3: Residential Parking.
- 6.21 As such, there are no justifiable grounds to resist the development on grounds of highway safety or parking provision when considering the proposal against adopted and national policy requirements.

Public Right of Way:

- 6.22 PRoW MT47 runs north-south along the access drive to the west of the application site and that of The Hutchings. I have noted the representations made by KCC (PROW) and whilst I am seeking further clarification from them. I do not consider that the introduction of one further dwelling here would cause an unacceptable adverse impact on the public right of way. Any further information provided by KCC in this respect will be reported as a supplementary matter.

Conclusions:

- 6.23 Whilst the location of the development would not accord with policy CP14, Tonbridge and Malling Borough Council cannot currently demonstrate a 5 year housing supply and as such this policy is considered to be out of date. In such circumstances paragraph 11 of the NPPF sets out that the presumption in favour of sustainable development must be applied. This presumption is only disbarred if the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Having applied the restrictive policies in connection relating to development in the Green Belt, I have concluded that these do not provide for a clear reason to refuse planning permission. The development is acceptable in all other respects and as such planning permission should be granted accordingly.

7. Recommendation:

Grant planning permission in accordance with the following submitted details:

Proposed Floor Plans 704-08 dated 23.05.2019, Proposed Plans and Elevations 704-10 dated 23.05.2019, Site Plan 704-11 dated 23.05.2019, Planning Statement dated 23.05.2019, Photographs dated 04.07.2019, Site Plan 704-09 Rev A proposed dated 04.07.2019, Email dated 04.07.2019, subject to the following conditions:

Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. All materials used externally shall accord with the approved plans

Reason: In the interests of visual amenity.

3. Prior to the occupation of the dwelling hereby approved a scheme of landscaping and boundary treatment shall be submitted to and approved by the Local Planning Authority . All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

4. The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle access, parking and turning has been 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

5. Prior to any groundworks a contoured site plan showing the ground levels and finished floor levels of the dwelling proposed to be constructed shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity.

6. The development hereby approved shall be carried out in such a manner as to avoid damage to the existing trees, including their root system, or other planting to be retained as part of the landscaping scheme by observing the following:

- (a) All trees to be preserved shall be marked on site and protected during any operation on site by a fence erected at 0.5 metres beyond the canopy spread (or as otherwise agreed in writing by the Local Planning Authority).
- (b) No fires shall be lit within the spread of the branches of the trees.
- (c) No materials or equipment shall be stored within the spread of the branches of the trees.
- (d) Any damage to trees shall be made good with a coating of fungicidal sealant.
- (e) No roots over 50mm diameter shall be cut and unless expressly authorised by this permission no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches of the trees.
- (f) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, except as may be otherwise agreed in writing by the Local Planning Authority.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

Informatives

1. The grant of planning permission confers no other permission or consent to undertake works to the Public Right of Way. No works can be undertaken on a Public Right of Way without the express consent of the Highways Authority. In cases of doubt the applicant should contact Kent Country Council's Public Right of Way team before commencing any works that may affect the Public Right of Way.
2. The Borough Council will need to create new street name(s) for this development together with a new street numbering scheme. To discuss the arrangements for the allocation of new street names and numbers 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. To avoid difficulties, for first occupiers, you are advised to do this as soon as possible and, in any event, not less than one month before the new properties are ready for occupation.

Contact: Paul Batchelor