

AGENDA

PLANNING COMMITTEE MEETING



Date: Thursday 3 November 2011
Time: 6.00 pm
Venue: Town Hall, High Street,
Maidstone

Membership:

Councillors Ash, Collins, Cox, English, Harwood,
Hinder, Lusty (Chairman), Nelson-
Gracie, Newton, Paine, Paterson,
Mrs Robertson and J.A. Wilson

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Items withdrawn from the Agenda
5. Date of Adjourned Meeting - 10 November 2011

Continued Over/:

Issued on 26 October 2011

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEBBIE SNOOK on 01622 602030**. To find out more about the work of the Committee, please visit www.maidstone.gov.uk

Alison Broom

**Alison Broom, Chief Executive, Maidstone Borough Council,
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

6. Any business the Chairman regards as urgent including the urgent update report as it relates to matters to be considered at the meeting
7. Disclosures by Members and Officers
8. Disclosures of lobbying
9. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
10. Minutes of the meeting held on 13 October 2011 1 - 7
11. Presentation of Petitions (if any)
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21. Update on Matters Referred to the Leader of the Council and Cabinet Members for Environment/Economic Development and Transport

PLEASE NOTE

The order in which items are taken at the meeting may be subject to change.

The public proceedings of the meeting will be broadcast live and recorded for playback on the Maidstone Borough Council website.

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

MINUTES OF THE MEETING HELD ON 13 OCTOBER 2011

Present: **Councillor Lusty (Chairman) and
Councillors Ash, Black, Collins, Cox, English,
Mrs Gooch, Harwood, Hinder, Nelson-Gracie,
Paterson, Mrs Robertson and J.A. Wilson**

Also Present: **Councillors Beerling and Mrs Blackmore**

158. APOLOGIES FOR ABSENCE

It was noted that apologies for absence had been received from Councillors Newton and Paine.

159. NOTIFICATION OF SUBSTITUTE MEMBERS

The following Substitute Members were noted:-

Councillor Black for Councillor Paine
Councillor Mrs Gooch for Councillor Newton

160. NOTIFICATION OF VISITING MEMBERS

Councillor Mrs Blackmore indicated her wish to speak on the report of the Head of Development Management relating to application MA/10/2159.

It was noted that Councillor Beerling had indicated his wish to speak on the report of the Head of Development Management relating to application MA/11/1078.

161. ITEMS WITHDRAWN FROM THE AGENDA

There were none.

162. URGENT ITEMS

Update Report

The Chairman stated that, in his opinion, the update report of the Head of Development Management should be taken as an urgent item because it contained further information relating to the applications to be considered at the meeting.

163. DISCLOSURES BY MEMBERS AND OFFICERS

Councillor Ash disclosed a personal interest in the report of the Head of Development Management relating to application MA/11/0679. He stated that he knew Mr Norton, who had registered to speak on behalf of the applicant, as he was a former Chairman of the Bearsted branch of the Faversham and Mid-Kent Conservative Association. Although he had not discussed the application with Mr Norton, he would leave the meeting when it was considered to avoid any suggestion of bias.

Councillor Mrs Gooch stated that since she had pre-determined application MA/11/1078, she would not participate in the discussion or voting on the proposed development.

Councillor Hinder disclosed a personal interest in the report of the Head of Development Management relating to application MA/11/1002. He stated that he was a Member of Bredhurst Parish Council, but he had not participated in the Parish Council's discussions on the application and intended to speak and vote when it was considered.

Councillor Nelson-Gracie disclosed a personal interest in the report of the Head of Development Management relating to application MA/10/2159. He stated that he was a Member of Nettlestead Parish Council, but he had not participated in the Parish Council's discussions on the application and intended to speak and vote when it was considered.

Councillor Paterson stated that since it might appear that she had pre-determined application MA/11/0485, she would speak but not vote when it was discussed.

164. EXEMPT ITEMS

RESOLVED: That the exempt Appendix to the urgent update report of the Head of Development Management be considered in public if required, but the information contained therein should remain private.

165. MINUTES OF THE MEETING HELD ON 22 SEPTEMBER 2011

RESOLVED: That the Minutes of the meeting held on 22 September 2011 be approved as a correct record and signed.

166. PRESENTATION OF PETITIONS

There were no petitions.

167. DEFERRED ITEMS

MA/10/1627 - ERECTION OF A NEW DWELLING - LAND OFF BEECHEN BANK, BOXLEY ROAD, WALDERSLADE

The Head of Development Management advised Members that he expected to be in a position to report this application back to a meeting of the Committee within two months.

168. MA/10/1336 - VARIATION OF ENFORCEMENT APPEAL REFERENCE ENF/8968 CONDITIONS 1 AND 2 TO ALLOW THE USE OF THE SITE FOR THE SITING OF A MOBILE HOME AND A TOURING CARAVAN ON A PERMANENT BASIS FOR AN EXTENDED GYPSY FAMILY - THE CHANCES, LUGHORSE LANE, HUNTON

All Members except Councillor Black stated that they had been lobbied.

The Committee considered the report and the urgent update report of the Head of Development Management.

Mrs Aucamp, an objector, Councillor Sawtell of Hunton Parish Council (against) and Mrs Smith, the applicant, addressed the meeting.

RESOLVED: That permission be granted subject to the conditions and informative set out in the report and the additional informative set out in the urgent update report.

Voting: 11 – For 0 – Against 2 – Abstentions

FURTHER RESOLVED: That the Officers should give careful consideration to the extent of the information relating to applicants' personal circumstances which is included in Part I of the agenda.

169. MA/10/1546 - VARIATION OF CONDITIONS 1 AND 2 OF PLANNING PERMISSION MA/04/2108 (RESIDENTIAL STATIONING OF TWO MOBILE HOMES AND ONE TOURING CARAVAN FOR A GYPSY FAMILY) TO ALLOW USE BY ANY GYPSY TRAVELLER FAMILY ON A PERMANENT BASIS - PLUM TREE FARM, PARK ROAD, MARDEN, TONBRIDGE

The Chairman stated that he had been lobbied.

The Committee considered the report of the Head of Development Management.

Councillor Adam of the Marden Society Footpaths Group and Marden Parish Council (against) and Mr Brazil, the applicant, addressed the meeting.

RESOLVED:

1. That permission be granted subject to the conditions and informative set out in the report.
2. That the Head of Development Management be requested to write to Kent County Council Public Rights of Way requesting early resolution of the obstruction issues relating to Public Right of Way KM275.

Voting: 12 – For 1 – Against 0 – Abstentions

Note: Councillor Nelson-Gracie requested that his dissent be recorded.

170. MA/10/2159 - ERECTION OF RESIDENTIAL DEVELOPMENT WITH BOTH OUTLINE AND FULL DETAILS COMPRISING: OUTLINE UP TO 19 NO. RESIDENTIAL DWELLINGS INCLUDING MEANS OF ACCESS WITH ALL OTHER MATTERS RESERVED, THE PROVISION OF A DEVELOPMENT PLATFORM, OPEN SPACE AND LANDSCAPING ON SITE 1. FULL DETAILS FOR ENGINEERING OPERATION INCLUDING TEMPORARY ACCESS ON SITE 1A - FORMER SYNGENTA WORKS, HAMPSTEAD LANE, YALDING

All Members stated that they had been lobbied.

The Committee considered the report and the urgent update report of the Head of Development Management.

Mr Bird, an objector, Mr Darby, for the applicant, and Councillor Mrs Blackmore (against) addressed the meeting.

RESOLVED: That subject to the prior completion of a Section 106 legal agreement in such terms as the Head of Legal Services may advise to secure the following:-

That in the event that the construction of the dwellings has not commenced on site 1 within 24 months from the date of the agreement, the applicants undertake to provide an updated viability assessment to be independently assessed by the District Valuer (or equivalent body) to enable reconsideration to be given to the potential for S106 contributions to be made in relation to the development and secure appropriate contributions accordingly together with the costs of the independent assessment,

the Head of Development Management be given delegated powers to grant permission subject to the conditions and informatives set out in the report with the amendment of the second informative in relation to the development proposed on site 1 as follows:-

The details of reserved matters of appearance and layout should provide for a high quality design led approach, using design cues drawn from the local vernacular. In preparing the details, you are strongly urged to introduce ridge heights which are less than the indicated maximum parameter, due to the prominent location of the site.

Voting: 12 – For 1 – Against 0 – Abstentions

Note: Councillor Nelson-Gracie requested that his dissent be recorded.

171. MA/11/0485 - CHANGE OF USE FROM RESIDENTIAL TO A HOUSE OF MULTIPLE OCCUPATION - 23 RANDALL STREET, MAIDSTONE

All Members except Councillor Black stated that they had been lobbied.

The Committee considered the report and the urgent update report of the Head of Development Management.

RESOLVED: That permission be granted.

Voting: 9 – For 3 – Against 0 – Abstentions

Note: Having stated that she had pre-determined this application, Councillor Paterson did not participate in the voting.

172. MA/11/0679 - ERECTION OF THREE DWELLINGS COMPRISING ONE DETACHED DWELLING WITH INTEGRAL GARAGE AND TWO SEMI DETACHED DWELLINGS WITH ACCESS TO TONBRIDGE ROAD VIA ACCESS PERMITTED UNDER MA/08/2323 - LAND R/O 125 TONBRIDGE ROAD, MAIDSTONE

Having stated that he knew Mr Norton, who had registered to speak on behalf of the applicant, Councillor Ash left the meeting whilst this application was discussed.

The Chairman and Councillors Black and Hinder stated that they had been lobbied.

The Committee considered the report and the urgent update report of the Head of Development Management.

Mr Wadey, an objector, and Mr Norton, for the applicant, addressed the meeting.

RESOLVED: That this application be deferred for the submission of a fully detailed landscaping scheme to enable full consideration of the scheme and layout.

Voting: 10 – For 0 – Against 2 – Abstentions

173. MA/11/1002 - REDEVELOPMENT OF EXISTING COMMERCIAL SITE TO PROVIDE 9 UNITS FOR B1 LIGHT INDUSTRIAL USE - PURPLEHILL WORKS, WHITE HILL ROAD, DETLING, BREDHURST

The Chairman and Councillor Hinder stated that they had been lobbied.

The Committee considered the report and the urgent update report of the Head of Development Management.

Councillor Evernden of Detling Parish Council (against) and Mr Collins, for the applicant, addressed the meeting.

RESOLVED: That permission be granted subject to the conditions set out in the report, as amended by the urgent update report, and the additional informative set out in the urgent update report.

Voting: 13 – For 0 – Against 0 – Abstentions

174. MA/11/1078 - PLANNING APPLICATION FOR THE ERECTION OF A THREE STOREY MEDICAL CENTRE AND 10 DWELLINGS TOGETHER WITH ASSOCIATED LANDSCAPING AND ACCESS - 13 TONBRIDGE ROAD, MAIDSTONE

All Members stated that they had been lobbied.

The Committee considered the report and the urgent update report of the Head of Development Management.

Mr Scannell, for an objector, Mr Gould, for the applicant, and Councillor Beerling (in support) addressed the meeting.

RESOLVED:

1. That subject to the applicant amending the contract to purchase the application site from the Council so as to secure the execution of a Section 106 legal agreement upon completion of the purchase to ensure:-
 - A contribution of £11,088 for the Primary Care Trust to be spent at the new surgery within the application site;
 - A contribution of £2,348 for Kent County Council for improvements to the book stock at the new library and adult education at the new library;
 - A contribution of £748.50 for Kent County Council towards adult social services that will be provided within the urban area of Maidstone; and
 - A contribution of £15,750 for Maidstone Borough Council Parks and Open Space to be used on projects within a 2km radius of the application site,

the Head of Development Management be given delegated powers to grant permission subject to the conditions and informatives set out in the report, as amended by the urgent update report, the additional condition set out in the urgent update report and the deletion of the reason for approval set out on page 156 of the agenda (the reason for approval to be as set out on pages 148-149 of the agenda).

2. That the contribution to be sought for Maidstone Borough Council Parks and Open Space should be spent on projects to be agreed in consultation with the Ward Members.

Voting: 12 – For 0 – Against 0 – Abstentions

Note: Having stated that she had pre-determined this application, Councillor Mrs Gooch did not participate in the discussion or voting.

175. CHAIRMAN'S ANNOUNCEMENTS

The Chairman announced that following a visit by a group of Members and Officers from Swale Borough Council to a recent meeting of the Planning

Committee, he had received an email from their Cabinet Member complimenting Members and Officers on the way in which the meeting was conducted. Swale had also enquired about the possibility of joint training sessions.

176. UPDATE ON MATTERS REFERRED TO THE LEADER OF THE COUNCIL AND CABINET MEMBERS FOR ENVIRONMENT/ECONOMIC DEVELOPMENT AND TRANSPORT

It was noted that there was nothing to report at present.

177. DURATION OF MEETING

6.00 p.m. to 9.55 p.m.

Agenda Item 12

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

3 NOVEMBER 2011

REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT

1. DEFERRED ITEMS

- 1.1. The following applications stand deferred from a previous meeting of the Planning Committee. The Head of Development Management will report orally at the meeting on the latest situation. The applications may be reported back to the Committee for determination.

1.2. <u>Description of Application</u>	<u>Date Deferred</u>
(1) <u>MA/10/1627 – ERECTION OF A NEW DWELLING – LAND OFF BEECHEN BANK, BOXLEY ROAD, WALDERSLADE</u>	9 JUNE 2011

Deferred to enable:

1. A fuller analysis of the impact upon the semi natural ancient woodland as a whole.
2. An examination of the ecological interest of the site.
3. The design of the dwelling to incorporate features which take inspiration from the woodland setting.

(2) <u>MA/11/0679 - ERECTION OF THREE DWELLINGS COMPRISING ONE DETACHED DWELLING WITH INTEGRAL GARAGE AND TWO SEMI DETACHED DWELLINGS WITH ACCESS TO TONBRIDGE ROAD VIA ACCESS PERMITTED UNDER MA/08/2323 - LAND R/O 125 TONBRIDGE ROAD, MAIDSTONE</u>	13 OCTOBER 2011
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Deferred for the submission of a fully detailed landscaping scheme to enable full consideration of the scheme and layout.

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

3rd November 2011

REPORT OF THE DIRECTOR OF CHANGE, PLANNING AND THE ENVIRONMENT

REFERENCE: Tree Preservation Order No. 14 of 2011

Date: 7th July 2011

TITLE: Trees on land at The Lodge, Sittingbourne Road, Maidstone

CASE OFFICER: Paul Hegley

Tree Preservation Order (TPO) No.14 of 2011 was made under section 201 of the Town and Country Planning Act 1990 to protect one Cedar and one Sweet Chestnut coppice stump. One objection to the order has been received and the Planning Committee is, therefore, required to consider this before deciding whether the Order should be confirmed.

The recommendation on whether to confirm this TPO is being reported to Committee for decision because:

- one objection has been received.

POLICIES

Government Policy: *PPS1, Delivering Sustainable Development- Protection & Enhancement of the Environment*

CLG, Tree Preservation Orders: A Guide to the Law & Good Practice

Local Policy: *Maidstone Borough Council, Landscape Character Assessment and Landscape Guidelines, 2000*

BACKGROUND

In March this year an outline planning application was received (reference MA/11/0311) for the demolition of the existing dwelling house and outbuildings, levelling of the site and the provision of four 5 bedroom detached dwelling houses with parking. The application was subsequently refused on 26 April 2011 on the following grounds:-

The proposed development, including the levelling of the site, clearance of trees and vegetation and the erection of four dwellings would result in a cramped development that would harm the spacious and sylvan character of the surrounding area and is likely to provide inadequate garden space for the family dwellings contrary to the guidance contained in PPS1: Delivering Sustainable Development and PPS3: Housing.

Prior to the application being received a large Sweet Chestnut tree growing towards the front of the site was cut down to a coppice stump from which new re-growth has since been produced.

As a result of the site's history, it was considered expedient to protect the Cedar and Sweet Chestnut by the making of a TPO.

The grounds for the making of the order were stated as follows: -

The Cedar tree growing within the rear garden is a healthy maturing specimen, prominent from surrounding main roads and it therefore makes a valuable contribution to the character and amenity of the area. The Sweet Chestnut stump, located within the front garden shows signs of regeneration that, if left to mature, is likely to contribute significantly to the amenity of the area. Both trees are considered to be under threat due to potential development of the site. Therefore, it is considered expedient to make the trees the subject of a Tree Preservation Order.

The Section 201 direction bringing the order into immediate effect expires on 7th January 2012.

OBJECTIONS

The TPO was served on the owner/occupier of the land in question and any other parties with a legal interest in the land.

One objection has been received to the order, within the statutory 28 day period from its making by the owners of The Lodge, Sittingbourne Road, Maidstone. The full text of the objections are attached to this report as Appendix **A**.

The grounds of the objection/s are summarised as follows: -

Cedar tree (T1)

1. The Cedar, which is listed by yourselves as being in a good condition, is shedding large limbs. At least two such limbs are being held in place by lower branches and have the potential to cause serious injury or even death. It is asked how closely the expert looked at this tree before documenting his expert opinion.

Sweet Chestnut stump (T2)

1. The remaining stump is unsightly and is likely to grow back into an unsightly and untidy Sweet Chestnut bush rather than a mature single stemmed Chestnut tree.
2. Coppice for regeneration is best practiced in a woodland environment, not in a front garden and not directly underneath telephone lines.
3. It is unclear as to whom a Sweet Chestnut bush will represent amenity value. Protecting a tree once it has been felled makes little sense, nor will it improve the landscape. Surely removing the stump and planting

a species that is more manageable, a Rowan for example, would benefit the landscape thus.

General

1. TPO No. 14 of 2011 is unfair and badly prepared. It is obvious that no one has visited the property nor spoken to us. Since 1977 we have done nothing but to try and improve this property, developing its character and allowing it to contribute significantly to the amenity of the community. If the TPO stands it will do nothing to maintain the character and amenity of the area, but make The Lodge appear to be an unmaintained run-down property which is resented after 14 years improving it while maintaining its character.
2. It is felt that the substance of this TPO is an afterthought and is a knee-jerk reaction to the recently refused planning application. You are therefore urged to scrap the order rather than make it permanent, so as to allow the scope and flexibility to maintain or replace the trees in the garden, as has always been the case.

REPRESENTATIONS

The order was also copied to any landowners immediately adjacent to the site.

One letter in support of the TPO has also been received from neighbours. The reason for this support is summarised below:-

The mature Cedar adds great pleasure to the outlook from surrounding gardens and also benefits the many birds and other wildlife that frequent it.

CONSIDERATIONS

SITE AND SURROUNDINGS

The area is a mixed residential area with detached dwellings, terraced properties and semi detached properties. The Lodge is a detached dwelling with various auxiliary buildings which are accessed via a main drive that exits onto Sittingbourne Road. The site rises significantly from Sittingbourne Road up to the rear corner of the site adjacent to the boundary with Tudor Avenue. This area of Sittingbourne Road has a sylvan character with spacious plots.

DESCRIPTION OF TREE/S

The Cedar (designated as T1) is a maturing specimen growing within the rear garden of the property. It has attained a height of approximately 15m, an average radial crown spread of 7m and stem diameter of 680mm when measured at 1.5m from ground level. No major defects, other than the presence of a number of storm damaged branches could be seen during a ground inspection.

The Sweet Chestnut stump (designated as T2) is located on a grass embankment that fronts the site along the main Sittingbourne Road. The stump is approximately 0.2m in height and at the time of inspection exhibited extensive amounts of sucker growth, commonplace on this species of tree following coppicing.

LEGAL CONTEXT

Local Planning Authorities (LPAs) may make a TPO if it appears to them to be:

'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.

The Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State's view, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed. The trees should therefore normally be visible from a public place, such as a road or footpath. The benefit may be present or future. It is, however, considered inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous.

LPAs are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way, taking into account the following key criteria:

- (1) visibility
- (2) individual impact
- (3) wider impact

Officers use an amenity evaluation assessment form based on Government guidance and an industry recognized system which enables Arboricultural Officers to make an objective decision on whether trees fulfill the criteria for protection under a TPO.

RESPONSE TO OBJECTION/S

The response to the principle points of objection set out above is as follows:-

Cedar Tree (T1)

1. On 26th July 2011 the Landscape Officer visited the site and observed a number of storm/snow damaged branches within the crown of the Cedar tree. At the time of the meeting the owners were advised that the removal of such damaged/split hanging branches can be undertaken as an exemption under current TPO legislation, without the need to submit a formal application. Although the removal of the branches would leave a partial gap within the crown, their removal would not be considered detrimental to the tree's future health or physiological condition.

Sweet Chestnut (T2)

1. From an amenity point of view, it is acknowledged that the stump of the tree may not be aesthetically pleasing to everyone. However, the extent of adventitious re-growth that has been produced since its felling is starting to mitigate its untidy appearance.
2. Coppicing is most commonly practiced within woodland, historically for the production of timber. However, there are no arboricultural reasons why such management cannot be undertaken on trees within domestic gardens especially if they have been previously coppiced, as in this case. With regards to its position under the telephone wires, most trees growing within an urban environment often come into contact with utility services and this in itself is not considered to be a valid reason to remove a healthy tree.
3. It is accepted that at present the re-growth generated on the stump has far less amenity value than that of the mature stems that were previously felled. However, growing so close to Sittingbourne Road, which is a main arterial route into Maidstone, the amenity of the re-growth will become greater each growing season as Sweet Chestnut coppice has the ability to grow in excess of one metre per season. From a landscape perspective, given the area of grass that the tree is growing within, its spatial distance from the dwelling is considered acceptable. There is, however, nothing stopping the landowner from submitting an application to remove the Sweet Chestnut and replace it with a different species. If consent is refused the applicant then has the opportunity to appeal against the decision.

General

1. TPO No. 14 of 2011 was prepared and served in full accordance with current legislation, as previously described within the legal context of this report. When considering whether to make a TPO, an amenity evaluation assessment of trees is initially undertaken from a nearby public place, such as a road or footpath, as public prominence is a key criteria for protection. Clearly, this initial visual assessment does not always highlight defects that can be picked up from a closer inspection and is one of the benefits of making a provisional order in the first instance, as any potential concerns can be fully considered before the order is confirmed. In this case, since the making of the order, both trees have been closely inspected during a site meeting with the owners of The Lodge on 26th July 2011.
2. It is acknowledged that an order should not be used to prevent development of a site or restrict good arboricultural management. However, in this case, there is no doubt that the recently refused planning application has placed the Cedar and Chestnut under potential threat and made it expedient to make them the subject to a TPO. But the making of an order in itself does not restrict flexibility for appropriate ongoing tree management, for example the landowner could consider submitting an

application for regularly coppicing the Chestnut on a cycle of not less than 5 years, which is likely to be considered favourably by this Council.

RESPONSE TO REPRESENTATION/S

There are no significant issues arising from the representations received.

CONCLUSION:

For the reasons set out above it is considered that there are no grounds of objection above which are sufficient to throw the making of the Order into doubt.

RECOMMENDATION:

CONFIRM WITHOUT MODIFICATION Tree Preservation Order No. 14 of 2011.

BACKGROUND DOCUMENTS:

406/100/341: TPO No. 14 of 2011

MA/11/0311: Outline application- consent refused 26 April 2011

ack
26/7/11
PF.

The Lodge
Sittingbourne Road
Maidstone
Kent
ME14 5HU
(01622) 752848

22nd July 2011

2 JUL 2011

Heritage, Landscape and Design
Maidstone Borough Council
Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

Dear Sir/Madam

**Re: Tree Preservation Order no. 14 of 2011 – Trees on land at The Lodge,
Sittingbourne Road, Maidstone**

We are writing to formally appeal the above Tree Preservation Order which has been placed on two trees in our garden (please see attached copy of Schedule 1 of the Order for the location of the trees in question)

The second tree (ref T2) protected under the order is a Sweet Chestnut stump in the front garden of our property. The tree itself was felled in early September 2010 and was not subject to a preservation order at the time. It was felled because it was shedding large limbs in the vicinity of the driveway area and was also interfering with the telephone line to the property. The tree (see fig. 1) had been coppiced in the past and the multiple trunk was showing signs of rot in the centre. The remaining stump (see fig. 2) is unsightly and is likely to grow back into an unsightly and untidy bush.

We are appealing the Preservation Order on this stump on the following grounds:

1. The remaining stump is unsightly and is likely to grow back into an unsightly and untidy sweet chestnut bush rather than a mature single stemmed chestnut tree.
2. Coppicing for regeneration is best practised in a woodland environment, not in a front garden and not directly underneath telephone lines.
3. It is unclear to whom a Sweet Chestnut bush will represent amenity value. Protecting a tree once it has been felled makes little sense, nor will it improve the landscape. Surely removing the stump and planting a species that is more manageable, a Rowan for example, would benefit the landscape thus.

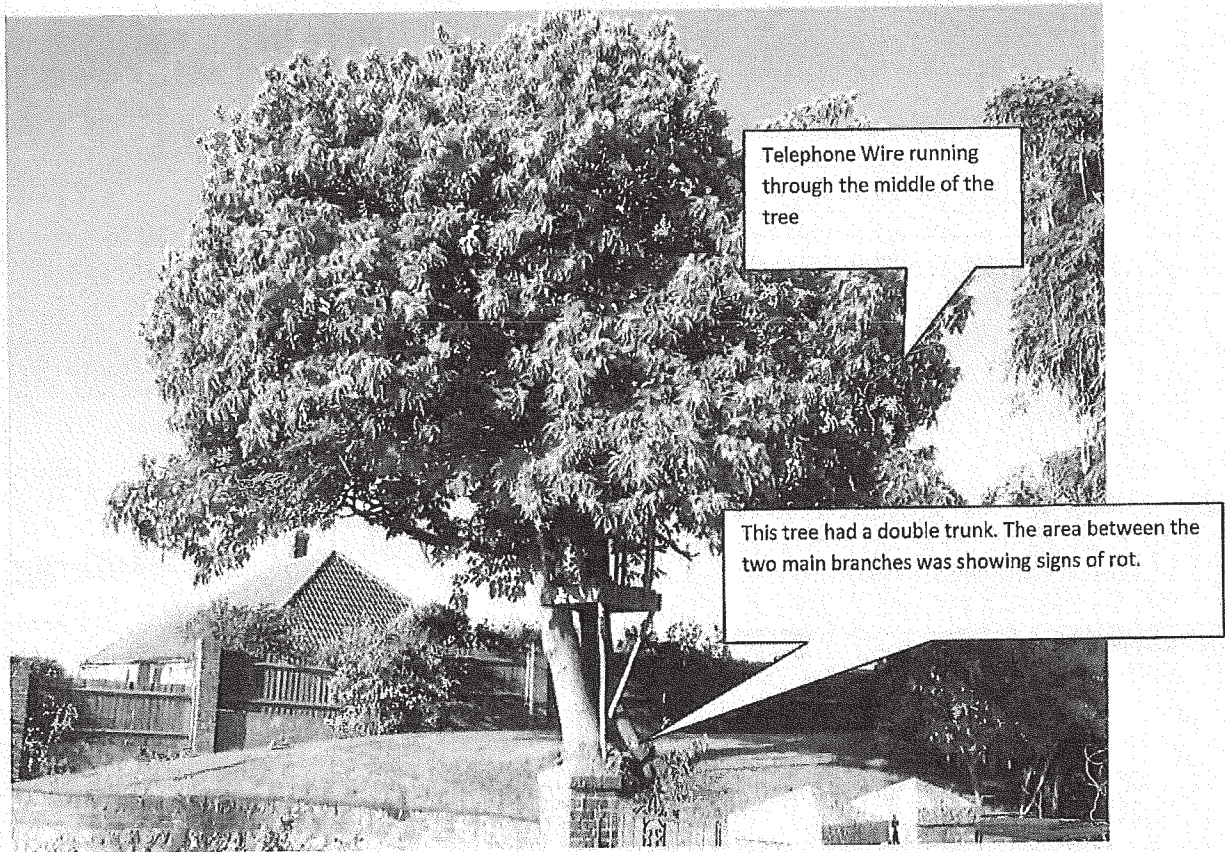


Fig.1

The tree house existed when we purchased the property in 1997. A few years ago, when strangers started coming into our garden to gather chestnuts, we removed the ladder as we were worried that someone would climb the tree and get hurt. In 2010, upon examination, we discovered that the wood in the tree house was rotten to the point that it could fall down. We also noticed that the area between the two trunks was showing signs of rot. Previously we had lost part of an Ash Tree (grown by coppicing) at the other side of our garden and had to pay a considerable amount of money to have the rest taken down due to the potential threat it posed to the wires at the other end of our property plus the threat to our neighbours' cars, so we decided to take the Sweet Chestnut tree down while we were still able to do so safely. Our plans for the bank called for removing as much as possible of the the Sweet Chestnut stump and replacing it with either a decorative bush or a smaller, more manageable, tree in a location which would not interfere with the phone wires.



Fig. 2

This is the Sweet Chestnut stump that is covered by Tree Preservation order No. 14 of 2011. We were quite taken back after receiving the TPO for a tree stump. We cannot see how the unmaintained coppicing of a Chestnut Tree Stump could possibly add character and amenity to the area. We asked a professional tree surgeon for his opinion of the stump and he told us that, without pruning, it will grow into a very large unruly bush that will limit our access and enjoyment of the bank in our garden (which at present is very pretty in Spring with numerous daffodils and other bulbs). Since the Tree Preservation Order states that the stump, "if left to mature, is likely to contribute significantly to the amenity of the area", it seems unfair that it will actually cause the area to become unsightly, choke out existing flower bulbs and limit our use of the surrounding area for many years to come.

The other tree (ref T1) that is protected by the Order is a large cedar growing on a bank in the back garden of the property.

We are objecting to the Order on this tree because the Cedar (see fig. 3), which is listed by yourselves as being in good condition, is shedding large limbs. At least two such limbs are being held in place by lower branches and have the potential to cause serious injury or even death. We would question how closely the expert looked at this tree before documenting his expert opinion.

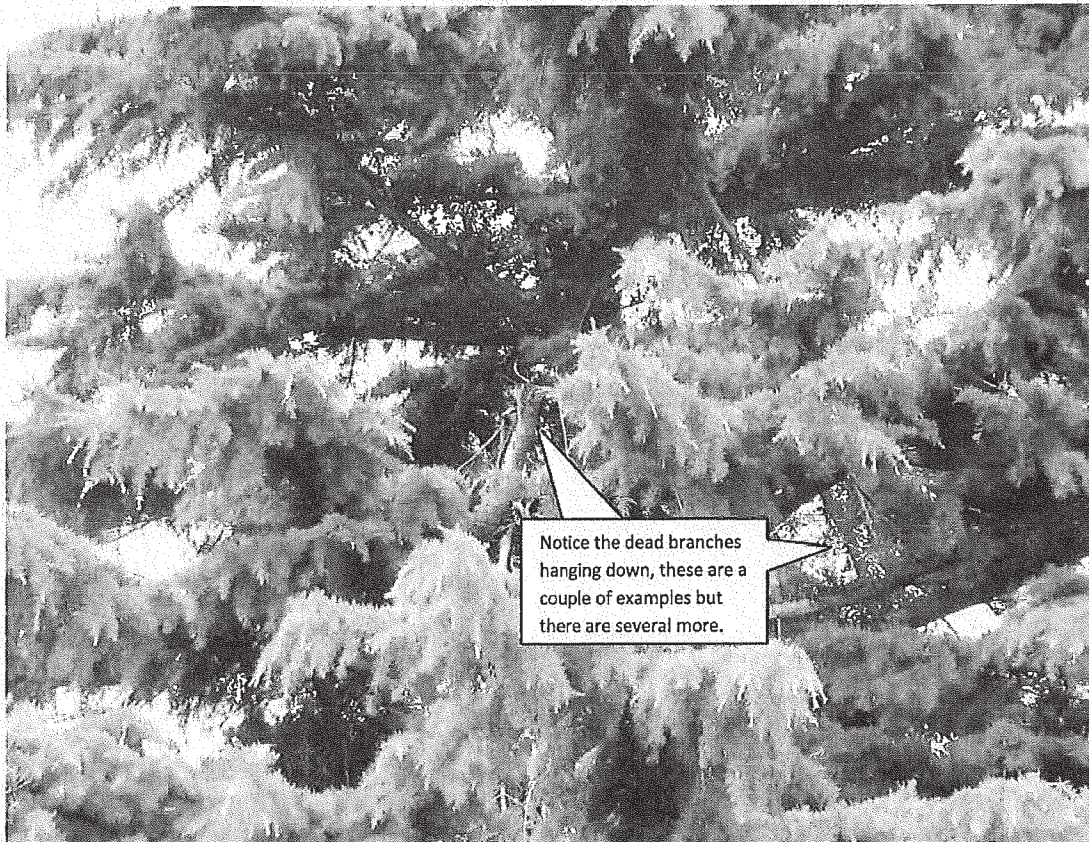


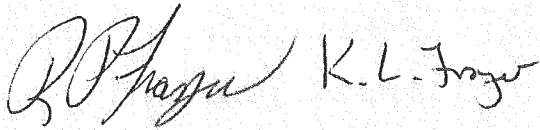
Fig. 3

We agree that this is a healthy tree but only because we have taken care of it. We had the lower branches removed a couple of years ago because of the size they had grown to. Every time it snows (and this has happened quite a bit lately with little sign of improving) these branches (which are so heavy due to the long dense needles) bend down and break. When we had the lower branches removed the tree surgeon recommended taking the tree down because he felt it could, and would, continue to pose a danger to life and surrounding property in the future but we rejected the idea.

We feel that the entire Tree Preservation Order no. 14 of 2011 is unfair and badly prepared. It is obvious that no one has taken the time to visit the property, nor spend the time to speak to us. Since 1997 we have done nothing but to try and improve this property, developing its character and allowing it to contribute significantly to the amenity of the community. If this TPO is allowed to stand it will do nothing to maintain the character and amenity of the area, but will make The Lodge appear to be an unmaintained run-down property which we resent after spending fourteen years trying to improve it while maintaining its character.

We feel that the substance of this TPO is afterthought rather than forethought and is a knee-jerk reaction to our recently refused planning application. We would therefore urge you to scrap this Order rather than to make it permanent, so as to allow us the scope and flexibility to maintain or replace the trees in our garden as has always been the case.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R.P. Frazer' followed by 'K.L. Frazer'.

R.P and K.L. Frazer

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	Cedar	On land at The Lodge, Sittingbourne Road, Maidstone
T2	Sweet Chestnut	-----“-----

Trees specified by reference to an area
(within a dotted black line on the map)

Reference on map	Description	Situation
NONE		

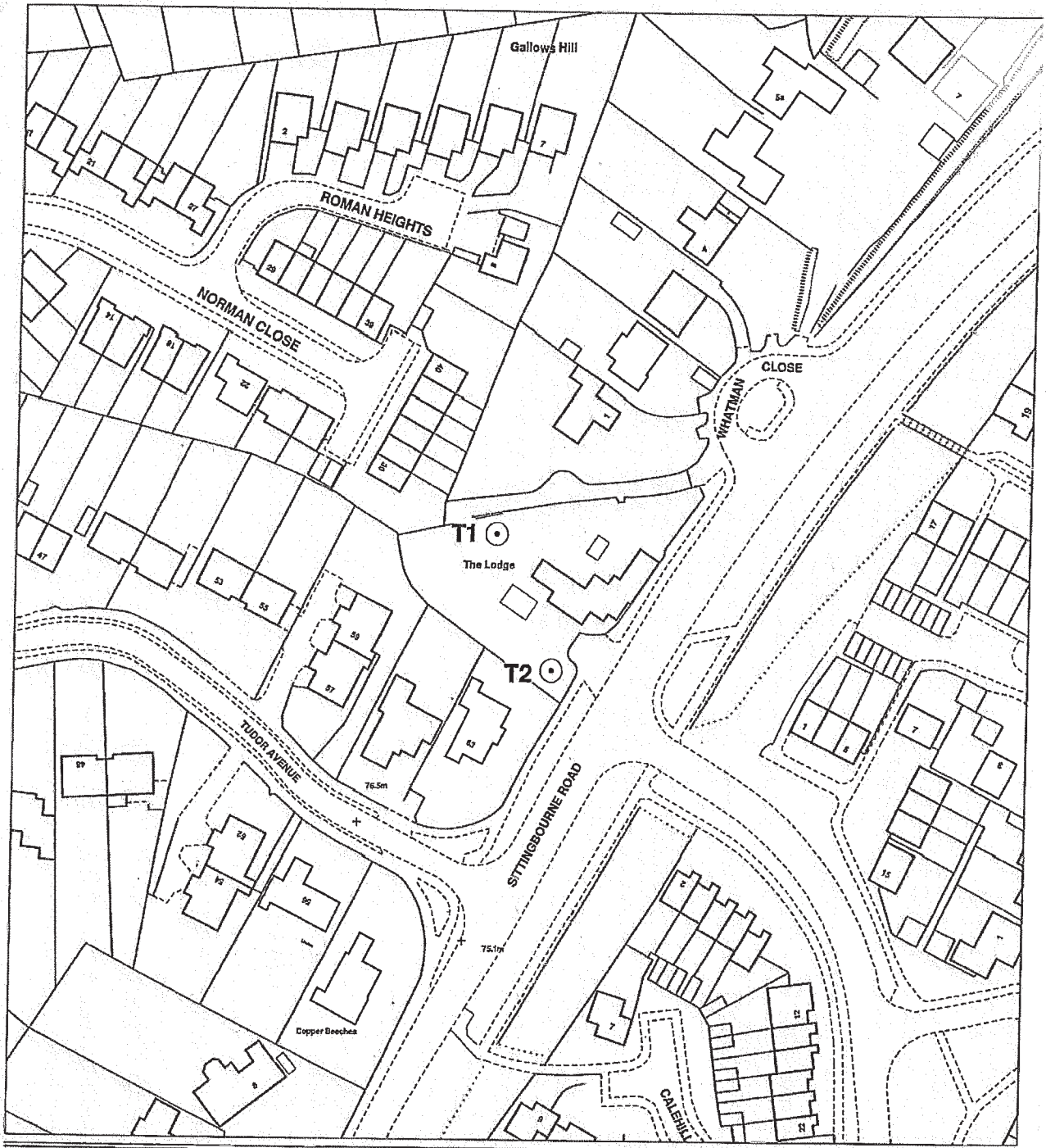
Groups of trees
(within a broken line on the map)

Reference on map	Description (including number of trees in the group)	Situation
NONE		

Woodlands
(within a continuous black line on the map)

Reference on map	Description	Situation
NONE		





THE MAIDSTONE BOROUGH COUNCIL
Tree Preservation Order No. 14 of 2011
Trees on land at The Lodge, Sittingbourne Road,
Maidstone, Kent. ME14 5HU

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Schedule

Individual Trees: T1 Cedar, T2 Sweet Chestnut

Groups of Trees: None

Areas of Trees: None

Woodlands: None

Steve Golette



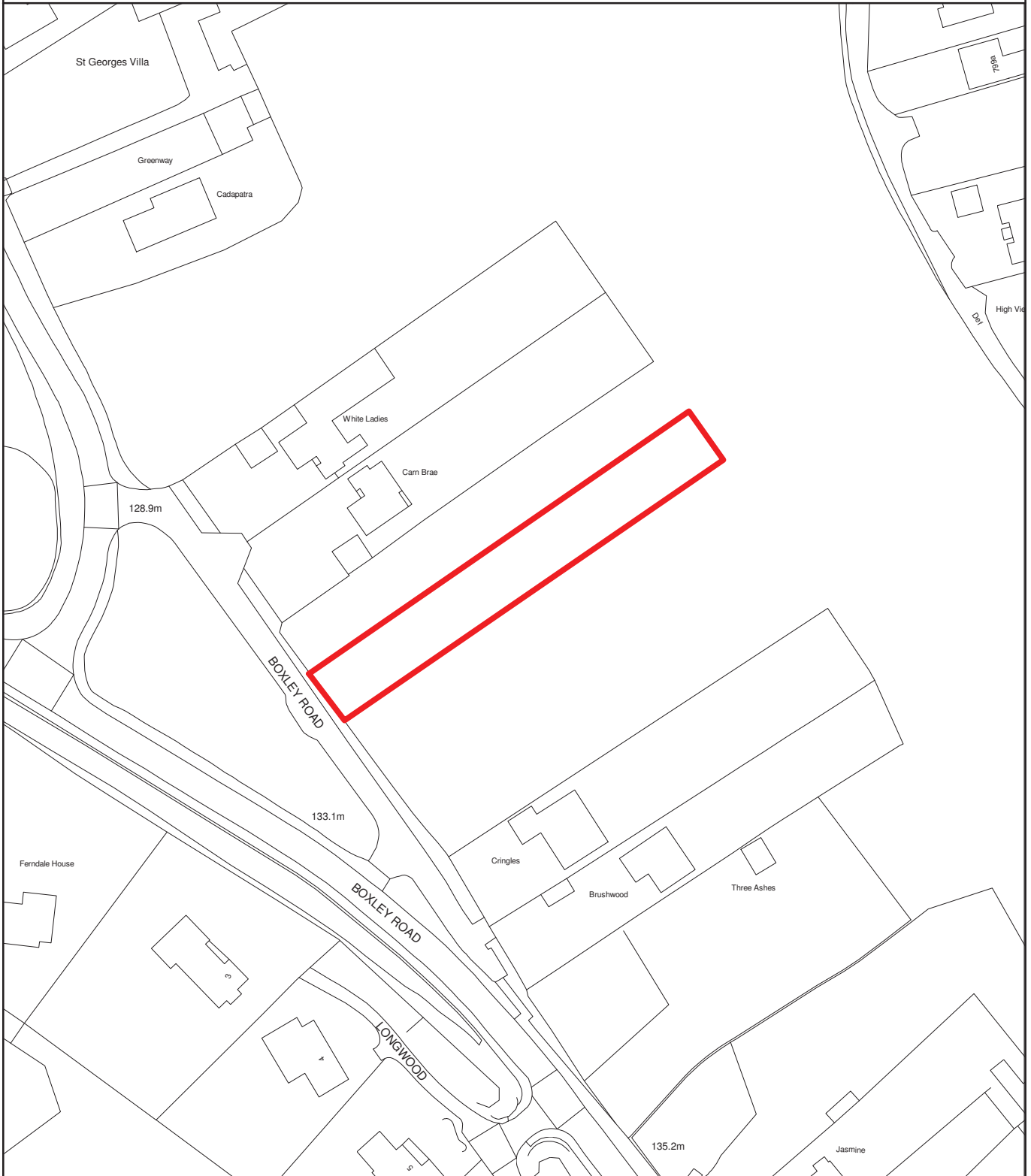


THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/10/1627

GRID REF: TQ7662

LAND OFF BEECHEN BANK,
BOXLEY ROAD, WALDESLADE.



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Rob Jarman
Head of Development Management

APPLICATION: MA/10/1627 Date: 17 September 2010 Received: 5 September 2011

APPLICANT: Mr & Mrs T Martin

LOCATION: LAND OFF BEECHEN BANK, BOXLEY ROAD, WALDESLADE, KENT

PARISH: Boxley

PROPOSAL: Erection of a new dwelling as shown on drawing nos. DHA/7467/01 and 06 received on 17/9/10; DHA/7467/04A, 05B, and 10A received on 11/8/11; and DHA/7467/03B received on 5/9/11.

AGENDA DATE: 3rd November 2011

CASE OFFICER: Geoff Brown

The recommendation for this application is being reported to Committee for decision because:

- it is contrary to views expressed by Boxley Parish Council and Committee consideration has been requested.

1. BACKGROUND

This application was reported to Planning Committee on 9th June 2011. I attach a copy of my Committee Report and Urgent Update Report as an appendix hereto. Members deferred making a decision to enable:

- a) A fuller analysis of the impact upon the semi-natural ancient woodland as whole;
- b) An examination of the ecological interest of the site;
- c) Amendments to the design of the dwelling to incorporate features which take inspiration from the woodland setting.

A meeting was subsequently held with the agents to explain the reasons for Members' deferral and amended details and an ecological survey were then submitted. All parties were re-consulted on the amendments/additional information and their views are reported below.

2. THE AMENDMENTS

The design of the house has been amended to lower the overall height to ridge from approx. 8.5m down to approx. to 7.9m: this to allow greater views of the woodland beyond. On the elevations, wooden boarding has been introduced to the upper elevations around the building to better reflect the character of the

site. Turning to hard and soft landscaping, the area for parking/turning in front of the house has been reduced in extent and is now (along with the drive) proposed to be surfaced in no-dig construction grasscrete or similar. Additional new silver birch tree planting and meadow grassland is proposed for the site frontage.

3. CONSULTATIONS (ie on the amendments)

BOXLEY PARISH COUNCIL states:

“Members wish to see the application Refused and request the application be referred to the planning committee for the reasons set out below and given previously:

This is a prominent site on Boxley Road with a sweeping wide view of Beechen Bank ALLI. The introduction of a residential property onto this site would result in an unacceptable increase in urbanisation and would also be detrimental to the Beechen Bank ALLI which is contrary to PPS1 and policy ENV35.”

MBC’S LANDSCAPE OFFICER: has no objection.

MBC’S ENVIRONMENTAL HEALTH MANAGER has no objection.

4. REPRESENTATIONS (ie on the amendments)

COUNCILLOR WENDY HINDER states:

“My objections to this application is the same as before, and I would like to reiterate these. This land is not designated development land and any development here is detrimental to the area and local wildlife. IT IS INTERESTING THAT THIS LAND WAS SCRUBBED OUT AS SOON AS THE OWNER KNEW THERE WAS TO BE AN ECOLOGICAL SURVEY.

There is no housing need in this area, there are so many houses for sale in this area that have now been up for sale for months there is no need build on green field land, to approve this application will set a precedence for all other applications. This area should be retained as a wooded area to conserve the wildlife and the wooded area of Beechen Bank.

I would like this application to be refused.”

ONE LOCAL RESIDENT points out that the lack of covered parking means that there is likely to be future pressure to erect garaging in the front garden and questions how that would be received by the Council.

ONE LOCAL RESIDENT objects and makes the following (summarised) points:

- a) In forming their recommendations officers have given insufficient weight to the recent Inspector's decision to dismiss the appeal for a dwelling on the adjacent plot (MA/10/1270) which involved very similar circumstances. Officers refer to previous appeal decisions supporting the principle of the development but the MA/07/2297 decision does not do that, whilst these appeal decisions are old and have been effectively superseded by more recent appeal decisions.
- a) With regard to the size of the house, there has been no significant change with the amended plans.
- b) The proposed position for the house is such that it is in line with the proposed position of the MA/10/1270 dwelling dismissed on appeal: with that position the new house would adversely impact on the woodland as confirmed recently by the MA/10/1270 Inspector.
- c) Woodland has been progressively degraded over time but could still regenerate.

PROTECT KENT reiterates its previous objections.

5. CONSIDERATIONS

5.1 General Points

- 5.1.1 As stated above Members resolved to defer a decision to enable officers/agents to reconsider three main issues which I address in detail below. I previously recommended that planning permission be granted and I maintain that recommendation here. As I have previously stated, a fundamental consideration here must be the views expressed by previous Inspectors on the development of this site. On MA/05/1960 the Inspector indicated that some form of development could occur subject to detail, whilst the MA/07/2297 Inspector raised no objection to the principle of the detached house. Whilst both appeals were dismissed, the issue of the principle of a dwelling on this particular plot has been accepted by Inspectors and the Council must give those judgements considerable weight here. I recognise that proposals for similar development on other sites have been rejected (including recently on the adjacent site) but each case must be considered on its own merits and against the background of the site history.
- 5.1.2 The amendments that have been made since deferral improve the quality of the development. The reduction in hard landscaping in favour of enhanced tree planting is clearly beneficial to the character of the area as are the amendments to the design of the dwelling (discussed below).

5.1.3 The consultation draft of the National Policy Framework has recently been published and whilst regard has been paid to it this decision does not turn on matters raised by this consultation document.

5.2 Impact on Woodland

5.2.1 'Saved' Local Plan Policy ENV35 designates Beechen Bank as an ALLI, the formal description being:

"BEECHEN BANK, BETWEEN WALDESLADE AND LORDSWOOD"

The preceding text (3.115 (xi)) reads as follows:

"Beechen Bank – a prominent area of wooded landscape set on a steep sided slope which provides a setting for the built up areas of Walderslade and Lordswood."

5.2.2 The main feature of the ALLI is the heavily wooded elevated ridge running north west/south east between the two built up areas and it is this elevated wooded backdrop that is the striking feature of this area. I consider that the flatter area at the bottom of the ridge is of some significance in terms of the character of the area but it is the higher ground that is of more importance. The Inspector on the MA/05/1960 decision agreed:

"To my mind there is substance in the argument that the function of this ALLI is met by keeping the steep sided slope of the hill free from development rather than the flat part at its foot which may afford sites for development without adversely affecting the character of the landscape."

5.2.3 The significance of previous Inspectors' decisions has already been discussed. Whilst the Council has previously considered that development of these 'green fingers' at the foot of the slope is not desirable, Inspectors' decisions must be given significant weight. The proposal does not involve development on the important elevated wooded slopes and, to my mind, the impact would be limited to short and medium range views from Boxley Road (mainly from the western approaches to the site) of the lower slopes that are not heavily wooded. In this sense, in my view the scheme would not have any significant impact on the wide sweep of semi-natural ancient woodland that occupies the ridge and the development would not compromise the important landscape function provided by Beechen Bank: the impact rather is on the relatively clear areas at the base of ridge. The positioning and scale of the dwelling would allow views of the ridge around and above the proposed dwelling. The absence of objection from the Landscape Officer on landscape or arboricultural grounds supports the view that the woodland as a wider entity is not significantly affected. The agents point out

that the landscape appraisal originally submitted with the application carried out by LloydBore Ltd reaches similar conclusions.

5.3 Ecology

- 5.3.1 An ecological survey has been submitted. That survey concludes that there are no protected species on site and the fauna and flora is unexceptional. The survey recommends that biodiversity enhancements be put in place in the form of bat roosts and bird boxes. There is therefore no reason to object on ecological grounds and the agents have indicated that biodiversity enhancement conditions would be acceptable.

5.4 Design

- 5.4.1 In deferring a decision Members indicated that the dwelling should be redesigned to incorporate features which take inspiration from the woodland setting. The design has been changed so that the previously proposed 'mock Tudor' wooden detailing at first floor level is deleted and replaced by horizontal wooden boarding all around the house at that level. The lowering of the roof ridge height by around 0.5m is a marginal benefit in terms of providing enhanced views of the wooded ridge behind. I have discussed the landscaping changes above and in my view they would provide a less developed, softer feel to the scheme, more in tune with the wooded backdrop.

6. CONCLUSION

- 6.1 I have addressed the three principle issues raised by Members above and the applicants' amendments. I agree with persons making representations that the development of 'green fingers' such as this one would not normally be acceptable but the fact remains that Inspectors have previously accepted the principle of development here and that must be given significant weight. The more recent appeal decision to refuse permission for a dwelling on the adjacent site is a material consideration but it does not alter my recommendation that planning permission be granted.
- 6.2 I recommend conditions along the lines of those previously recommended. I have added a condition to control future fencing/walling on the site as, for example, uncontrolled close boarded fencing could have a severe adverse impact on the site frontage.

7. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

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

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:
drawing nos. DHA/7467/01 and 06 received on 17/9/10; DHA/7467/04A, 05B, and 10A received on 11/8/11; and DHA/7467/03B received on 5/9/11;

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers in accordance with the advice in PPS1.

3. The dwelling shall achieve a minimum of Level 3 of the Code for Sustainable Homes. The dwelling shall not be occupied until a final Code Certificate has been issued for it certifying that (at least) Code Level 3 has been achieved;

Reason: To ensure a sustainable and energy efficient form of development. This is in accordance with PPS1.

4. The development shall not commence until, written details and samples of the materials to be used in the construction of the external surfaces of the building(s) hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

Reason: To ensure a satisfactory appearance to the development. This in accordance with Policies CC1 and CC6 of The South East Plan 2009.

5. The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular

access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety. This in accordance with Policies CC1 and CC6 of The South East Plan 2009.

6. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development. This in accordance with Policy ENV6 of The Maidstone Borough-Wide Local Plan 2000.

7. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 1995 (as amended) no further development that would fall within Schedule 2, Part 1, Classes A, E and F of that Order shall take place without the prior written consent of the Local Planning Authority;

Reason: In the interests of visual amenity and in order to safeguard the future health of trees on the site. This in accordance with Policies CC1 and CC6 of The South East Plan 2009 and Policy ENV6 of The Maidstone Borough-Wide Local Plan 2000.

8. Before development commences full details of the proposed ecological mitigation/enhancement works (including a timetable for implementation and maintenance) shall be submitted to and approved by the local planning authority. The proposed works should include the provision of suitable accommodation for bats and birds in the form of bat roosts and bird boxes;

Reason: In the interests of the ecology of the area. This in accordance with Policy NRM5 of The South East Plan 2009.

9. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 1995 (as amended) no further development that would fall within Schedule 2, Part 2, Class A shall take place without the prior written consent of the Local Planning Authority;

Reason: In the interests of visual amenity. This in accordance with Policies CC1 and CC6 of The South East Plan 2009.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.

Item 15, Page 36

MA/10/1627:

Address

**Land off Beechen Bank, Boxley
Road, Walderslade**

I would like to draw Members attention to the attached appeal decision which was issued on 27th May 2011. The decision relates to the refusal of planning permission for the erection of a detached chalet bungalow on an adjacent proposal site.

My recommendation remains unchanged.



Appeal Decision

Site visit made on 16 May 2011

by **J D Westbrook BSc(Hons) MSc MRTPI**

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

Decision date: 27 May 2011

Appeal Ref: APP/U2235/A/11/2146337

**Land Adjacent to Carne Brae, Boxley Road, Walderslade, Chatham, Kent,
ME5 9JD**

- 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 Abigail Elizabeth Byrne against the decision of Maidstone Borough Council.
 - The application Ref MA/10/1270, dated 13 July 2010, was refused by notice dated 13 September 2010.
 - The development proposed is the erection of a chalet bungalow.
-

Decision

1. I dismiss the appeal.

Procedural Matters

2. The current use of the appeal site is described on the application form as "builders storage". There is no evidence of any authorised use of the site for storage purposes, and I take this to have been a temporary use.
3. The application form notes that there are trees on the site, but there is no full Tree Survey provided. This makes the relationship between the proposed dwelling/amenity areas and the existing trees on site difficult to assess accurately. In particular, there is no information as to the canopies or root protection areas of the protected trees on the site.

Main Issue

4. The main issue in this case is the effect of the proposed dwelling on the character and appearance of Boxley Road and Beechen Bank Area of Local Landscape Importance.

Reasons

5. The appeal site is an area of land on the north-eastern side of Boxley Road, adjacent to a detached dwelling known as Carne Brae. The site consists of a relatively level piece of ground to the front of the site and a steeper hillside to the rear. The rear portion of the site contains woodland with some evidence of
-

clearance of undergrowth. The front portion is largely open and consists of a rough grassed area with one mature tree and evidence of past clearance of other trees.

6. The site forms part of the Beechen Bank Area of Local Landscape Importance (ALLI). This area is described in the Maldstone Borough-wide Local Plan 2000 (LP) as a "prominent area of wooded landscape set on a steep sided slope which provides a setting for the built up areas of Walderslade and Lordswood". Policy EN35 of the LP indicates that in an ALLI particular attention will be given to the maintenance of open space and character of the landscape. This part of the ALLI, including the appeal site, is also covered by Tree Preservation Order No 4, 1991 relating to mixed woodland.
7. The northern part of Boxley Road has a largely built-up frontage with extensive woodland behind. The appeal site is located towards the southern end of the road where there are a number of significant breaks in the built-up frontage, allowing clear views of the woodland and where the woodland extends down largely to the road. These areas are described by the Council as "Green Fingers" which give the area an attractive, open sylvan character and appearance. I concur with that view. The appeal site lies within one such "Green Finger" situated between the dwellings Carne Brae and Cringles
8. The proposed dwelling would be sited on the more level front portion of the site, well forward of the building line of the adjacent Carne Brae, though approximately level with the front elevation of the garage to that property. It would be a four-bedroomed, family-sized property, and it would have a block-paved car parking and manoeuvring area within the front garden. It would have a small patio to the rear leading into a back garden area that would extend into the existing woodland.
9. The appellant has provided a diagram to illustrate that there would be a significant amenity area to the rear of the proposed dwelling which would be largely free from trees. However, the diagram does not indicate canopy cover and I consider that the proximity of the trees to the dwelling would be likely to lead to pressure from future occupiers to remove trees in order to provide more light and space for the patio and windows in the rear elevation, and also for the creation of a more useable private garden area. This is particularly the case given the size of the proposed dwelling and its potential for family use. Moreover, I note that the rear garden area of Carne Brae extends well up the slope, and I consider it a likelihood that there would be pressure from future occupiers of the proposed dwelling to create a similar garden arrangement on the appeal site, to the detriment of the existing tree cover.
10. In the light of the above, I conclude that the proposal would conflict with policy ENV6 of the LP, which relates to landscaping schemes and which requires such schemes to incorporate the retention of existing trees and woodlands that contribute to landscape character, and to provide a scheme of new planting.
11. The erection of a house on the appeal site would result in encroachment by the built environment into the significant "Green Finger" between Carne Brae and Cringles. The Southern end of Boxley Road has a less urbanised feel than the northern end, and the presence of the "Green Fingers" is an important element in establishing this character of the area. For example, there are other

important "Green Fingers" in the vicinity, one opposite Travertine Road and another to the south of the dwelling known as Brushwood. The site map provided by the appellant indicates a further "finger" between White Ladies and Cadapatra, though at the time of my site visit this area was fenced off and gave the appearance of having been incorporated into a garden area.

12. There is evidence of pressures for a creeping urbanisation along Boxley Road and the proposed dwelling on the appeal site would continue this trend, to the detriment of the character and appearance of the area. It would be visible from the cul-de-sac part of Boxley Road and also, through the trees, from the main Boxley Road and Beechen Bank Road further to the west, particularly in the winter. Furthermore, whilst every proposal must be assessed on its own merits, to allow this development could encourage the submission of further similar proposals which would be progressively more difficult for the Council to resist and which could cause cumulative harm to the character of the area.
13. I conclude, therefore, that the proposal would be harmful to the character and appearance of Boxley Road and Beechen Bank ALLI, and that it would conflict with policies ENV6 and ENV35 of the LP.

Other matters

14. There is evidence of significant clearance of trees and undergrowth on both the appeal site and on land immediately to the south-east. This is apparently the result of storm damage and the removal of dead or diseased trees. However, this is not a reason to allow the area to be used for new housing since woodland areas are capable of natural regeneration.
15. The appellant has made note of a recent appeal decision on nearby land, in which the inspector indicates that the lower flatter reaches of Beechen Hill could afford opportunities for development without adversely affecting the character of the landscape. However, for my reasons given above, I consider that the current proposal would adversely affect the character and appearance of the area in general and the ALLI in particular. The appellant has also referred to planning permissions for recent new housing developments along Boxley Road. However, the circumstances of these cases appear to be different from those of this proposal and I have, in any case, dealt with this proposal on its own merits.

J D Westbrook

INSPECTOR

THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/10/1627

GRID REF: TQ7662

LAND OFF BEECHEN BANK,
BOXLEY ROAD, WALDERSLADE.



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Rob Jarman
Head of Development Management

APPLICATION: MA/10/1627 Date: 17 September 2010 Received: 28 April 2011
APPLICANT: Mr & Mrs T Martin
LOCATION: LAND OFF BEECHEN BANK, BOXLEY ROAD, WALDESLADE, KENT
PARISH: Boxley
PROPOSAL: Erection of a new dwelling as shown on drawing no.s DHA/7467/01, 02, 03A, 04, 05 and 06 received on 17/9/10; DHA/7467/10 received on 24/2/11; and 0930/04 received on 8/3/11.
AGENDA DATE: 9th June 2011
CASE OFFICER: Geoff Brown

The recommendation for this application is being reported to Committee for decision because:

- It is contrary to views expressed by Boxley Parish Council and committee consideration has been requested

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: ENV6, ENV34
- The South East Plan 2009: CC1, CC4, CC6
- Village Design Statement: N/A
- Government Policy: PPS1, PPS3, PPS9

2. HISTORY

The relevant planning history is as follows:

MA/07/2297 - Erection of one dwelling (Re-submission of MA/07/0937) - Refused and dismissed at appeal

MA/07/0937 - Erection of one dwelling - Refused

MA/05/1960 - Erection of 1 number detached dwelling with integral garaging - Refused and dismissed at appeal

3. CONSULTATIONS

BOXLEY PARISH COUNCIL states:

"Wish to see the application refused and if the Planning Officer is minded to grant permission request that the application is reported to the Planning Committee. Reasons for refusal are;

This is a prominent site on Boxley Road with a sweeping wide view of Beechen Bank ALLI and the introduction of a residential property onto this site would result in unacceptable increase in urbanisation and would be detrimental to the Beechen Bank ALLI which is contrary to PPS1 and policy ENV35."

MBC'S LANDSCAPE OFFICER: has no objection (see discussion below).

MBC'S ENVIRONMENTAL HEALTH MANAGER has no objection.

4. REPRESENTATIONS

COUNCILLOR WENDY HINDER states:

"I wish to object to this Application on the following grounds.

Applications for a dwelling on this site has been refused before, and previously appeals have been dismissed by the Planning Inspector. This site is part of Beechen Bank which is a ALLI and forms one of the green fingers of this particular area. It is wooded and it breaks up the development of the other parts of Boxley Road. To allow infilling here would be detrimental to the street scene and spoil the rural look and feel of this part of Boxley Road. It provides a setting for the built up areas of Walderslade. Beechen Bank is a sensitive area and should be protected against any further development and to preserve the trees and wildlife for future generations.

I feel this application contravenes Policies ENV34 3.115 (xiii) ENV35(xi).

I therefore wish to see this application refused."

In a further written statement she makes the following (summarised) main points:

- a) The site is part of the Beechen Bank Area of Local Landscape Importance.
- a) Plots of this nature can not be regarded as previously developed land as was confirmed by the Inspector on the appeal on land nearby at 'Berkeley' (MA/08/1475).
- b) On the appeal at nearby Three Ashes (MA/09/1222) the Inspector concluded that the development of a dwelling there would have a negative impact on the character of the area.

- c) The Council recently refused application MA/10/1270 [re: the plot immediately to the west of this application now under consideration] due to the adverse impact on the character and appearance.
- d) It is understood that damage to trees may have taken place and the coppiced ash appears to have died.
- e) Recent appeal decisions in this general area are at odds with the previous Inspector's decision re: this site.
- f) Statements made by the agents in the application documentation to the effect that the development would not have an adverse impact on the character of the area are criticised.

LETTERS OF OBJECTION HAVE BEEN RECEIVED FROM PROTECT KENT AND TWO LOCAL RESIDENTS. The following (summarised) points are made:

- a) The scheme would erode undeveloped land within the Area of Local Landscape Importance to the detriment of its character. Similar proposals elsewhere have been refused and dismissed at appeal. To grant planning permission here would be to set an undesirable precedent.
- a) Trees on the site are TPO protected and should remain undisturbed so as to protect the woodland character. Woodland and individual trees could regenerate if allowed to.
- b) There is no evidence of a prior residential use of this site.
- c) The site provides a natural habitat for woodland species which should be preserved. An environmental assessment has not been carried out.
- d) The design of the dwelling is out of keeping with other local properties.

5. CONSIDERATIONS

5.1 Site Description

- 5.1.1 The application site is a long, rectangular strip of land located on the north east side of Boxley Road. The application site is approx. 14m wide. This undeveloped land forms part of a block of grass, scrub and woodland approx. 60 to 70m wide that separates White Ladies and Carn Brae (to the north west) from Cringles and Brushwood (to the south west). TPO 16/2008 protects trees on the site under Woodland W1 and individually a coppiced ash under T1. The front part of the site has been cleared of its undergrowth to leave a single tree on that part of the land: the coppiced ash situated close to the highway. TPO consent reference

TA/0029/09 allowed the coppicing of that ash and the removal of a hornbeam located further back into the site. To the rear of the cleared area the ground slopes upwards to the more intensively wooded slopes of Beechen Bank.

- 5.1.2 The site is defined in the Local Plan as falling within the defined urban area but also within the Beechen Bank Area of Local Landscape Importance (ALLI).
- 5.1.3 Attention is drawn to Appendix 1 where the Inspector provides his description of the locality and what he considers to be its significant characteristics on the proposal embodied in MA/07/2297. Appendix 2 involves an earlier appeal decision for MA/05/1960 to which the later Inspector referred. Both of these decisions for the erection of a dwelling on this land are particularly relevant to this case.

5.2 Proposal

- 5.2.1 This application follows the dismissal of the appeal into MA/07/1960 and represents a further attempt to develop this land for a single dwelling.
- 5.2.2 This is a full application for the erection of a two storey, detached house of two bedrooms. The house would have a footprint measuring approx. 10.5m by 8m with a ridge height of 8.5m. The dwelling would be set back approx 20m from the road, broadly in line with the other properties in the vicinity. A new access and driveway would be formed leading to two vehicle parking spaces shown in front of the house. The dwelling would exhibit hipped roofs, with a front facing gabled projection and dormer window. It would be constructed of brickwork and exposed timber beams under a plain tile roof and would essentially face 'front and rear' with minimal openings to the sides.
- 5.2.3 Landscaping and arboricultural concerns have been of significant importance in the planning history of this development (see below). Therefore this application is accompanied by a fully detailed landscaping scheme. Proposed hardstandings on the site are confined to the access drive and parking/turning area (which would be of 'no-dig' construction to avoid damage to the roots of existing trees) and a small patio and footpath to the rear, leaving the remainder of the plot for soft landscaping. Unfortunately the ash tree has died following coppicing and it is proposed to replace it (and the previously removed hornbeam) with an ash and a hornbeam to the front and a common alder and a silver birch to the rear. A hedge of indigenous species is proposed around the curtilage of the dwelling, whilst the wooded area on the upper slopes behind the dwelling would remain in a natural state.

5.3 Principle of Development

5.3.1 The site is located within the defined urban area but also within the ALLI. Whilst new residential development is potentially acceptable within the urban area, this is not previously developed land and Local Plan Policy ENV35 states that particular attention will be given to the maintenance of open space and the character of the landscape. The planning history is of prime importance here.

5.3.2 This Council has generally sought to resist new residential development in this area where such development was considered to erode undeveloped blocks (or 'green fingers') of land and be harmful to the character of the area. This stance has proved successful on appeal at other sites; recently at the Three Ashes site (MA/09/1222) approx. 70m away to the south east; and the Council has refused planning permission for a dwelling on the plot immediately to the north west of the application site and that is currently the subject of an appeal (MA/10/1270).

5.3.3 However, in the case of this plot there are two appeal decisions (see Appendices) where Inspectors have found no fault with the principle of a new dwelling on the site. On MA/05/1960 the Inspector said:

"I conclude, in relation to the first issue, that in principle some development of this site would not necessarily cause harm to the character of the area or of the ALLI and could be consistent with the relevant development plan policies. However, there are matters of detail to consider and I now turn to the second issue which is the effect of the proposal on trees on site,"

He went on to dismiss the appeal due to the adverse impact of the development on the aforementioned ash and hornbeam.

5.3.4 The Inspector on MA/07/2297 essentially followed this lead and raised no objection to the principle of the detached house. In that case he found that the dwelling had been pushed too far back into the site to the extent that the development would have an adverse impact on trees on the wooded slope.

5.3.5 Whilst both appeals were dismissed, the issue of the principle of a dwelling on this particular plot has been accepted by Inspectors and the Council must give those judgements considerable weight here. I recognise that proposals for similar development on other sites have been rejected but each case must be considered on its own merits and against the background of the site history. In view of the planning history (particularly appeal decisions) I do not consider that an objection in principle can be sustained for this particular plot.

5.4 Landscaping

- 5.4.1 It is the impact on trees that has been the main issue of detail when looking at the planning history. Applications have modified the proposed layout to try and arrive at a situation where trees on the site would not be damaged (principally the ash at the front, the hornbeam further back, and the denser canopy on the slopes to the rear where trees merge with the wooded bank of Beechen Bank). The hornbeam has now been removed and the ash coppiced (both with the Council's consent).
- 5.4.2 This current application was made on the basis that the coppiced ash was still healthy. On investigation by both the Council and the applicants' landscape advisors it has now been found to be dead. On that basis there can no longer be a concern as to the impact on the hornbeam (which has been removed) or the ash (which has died). The denser trees to the rear of the proposed house are no longer affected in terms of potential direct damage or future pressure for removal due to the revised position of the dwelling away from trees to the rear. With the ash tree no longer a constraint, there should be plenty of space for the construction of the dwelling. A comprehensive landscaping scheme accompanies the application that safeguards existing trees, proposes new trees as a replacement for those lost and puts forward new hedging around the site. In my view, there are no longer grounds to refuse this application on arboricultural grounds.
- 5.4.3 The Landscape Officer has examined the details of the application, including the detailed landscaping plan, and has no objection. On the issue of the demise of the coppiced ash he states:
- "With respect to the sudden death of the Ash that was re-coppiced last year following consent under application TA/0029/09, at the time of my last inspection there were no visual indications as to why the cut stool has not regenerated. Trees are dynamic, continually self-optimizing living organisms whose condition is subject to change and there is always a risk of no regenerative growth being made following the re-coppicing old mature lapsed coppice, as this tree was. However, this risk was taken into consideration at the time of determining the tree application and advice was sought from the Forestry Commission who advised that, in their experience, old lapsed Ash coppice usually readily regenerate from cut stumps. Based on this information and the fact that the works were in accordance with good forestry practice, there were no arboricultural reasons to refuse the application (and a refusal was likely to be successfully challenged at an appeal). Therefore, consent was granted with conditions."

5.5 Visual Amenity

5.5.1 As stated above, Inspectors have considered the impact of a new dwelling on the character of the area and have accepted the principle of a dwelling on the site. In my view the dwelling would be clearly visible from the road; but Inspectors have considered visual impact issues on previous appeals and found the principle of a dwelling acceptable in an area which is designated ALLI but which is also located in the urban area and where there are already patches of built development. On detailed matters, given the diverse range in terms of the scale of houses and building styles in this general locality, I consider the scheme presented to represent reasonably good design. Hipped rooflines, a projecting gable and dormer window, and brickwork detailing provide interest and the palette of materials is appropriate. Given that the principle is accepted I consider the visual impact on the ALLI to be acceptable.

5.6 Residential Amenity

5.6.1 The site has no immediate residential neighbours, however there is the matter of the MA/10/1270 appeal on the plot to the north west. Whatever the outcome of that appeal, I do not consider the dwelling proposed here would have any significant negative impact on the residential amenities of neighbours. The dwelling proposed here has no openings above ground floor level on its side elevations so as to avoid any potential loss of privacy.

5.7 Highways

5.7.1 In accord with the previous appeal decisions, I have no objection on highways matters. I consider the access arrangements and the on-site parking and turning facilities to be appropriate to serve the development. The site is within the defined urban area and constitutes a reasonably sustainable location.

5.8 Other Matters

5.8.1 Persons making representations raise the issue of ecology and the potential impact of the development on fauna and flora. The applicants' agents state that, having spoken to an ecologist, no ecology survey is necessary as no trees are being lost and the site is a regularly cleared one. They point out that no ecology survey has been requested previously and Inspectors have not dismissed appeals on the basis of ecology. In view of the planning history I do not consider it reasonable to request an ecology survey in this case and I do not consider that ecological interests would be significantly harmed, given that no trees would be lost here and in consideration of the comprehensive landscaping scheme proposed.

5.8.2 If planning permission is to be granted it would be appropriate to impose a condition requiring the development to achieve at least Level 3 on the Code for Sustainable Homes. This is acceptable to the applicants.

6. CONCLUSION

6.1 The planning history is of great significance in this case. Although finding fault with the detail of previous schemes, Inspectors have accepted the principle and that must be given significant weight. I find the layout and design acceptable and recommend that planning permission be granted.

7. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

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

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: drawing no.s DHA/7467/01, 02, 03A, 04, 05 and 06 received on 17/9/10; DHA/7467/10 received on 24/2/11; and 0930/04 received on 8/3/11;

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers in accordance with the advice in PPS1.

3. No development shall take place until an independently verified report has been submitted to and approved in writing by the Local Planning Authority showing that the development achieves a score of Level 3 or better for each residential unit under 'The Code for Sustainable Homes'. Each residential unit shall be provided strictly in accordance with the approved report before it is occupied.

Reason: To ensure a sustainable and energy efficient form of development in accordance with Policy CC4 of The South East Plan 2009.

4. The development shall not commence until, written details and samples of the materials to be used in the construction of the external surfaces of the building(s) hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

Reason: To ensure a satisfactory appearance to the development. This in accordance with Policies CC1 and CC6 of The South East Plan 2009.

5. The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety. This in accordance with Policies CC1 and CC6 of The South East Plan 2009.

6. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development. This in accordance with Policy ENV6 of The Maidstone Borough-Wide Local Plan 2000.

7. The development shall be constructed in accordance with the tree protection measures embodied in the application, including the Tree Protection Fencing Plan 0930/04 received on 8/3/11;

Reason: To ensure that trees to be retained are adequately protected. This in accordance with Policy ENV6 of The Maidstone Borough-Wide Local Plan 2000.

8. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 1995 (as amended) no further development that would fall within Schedule 2, Part 1, Classes A, E and F of that Order shall take place without the prior written consent of the Local Planning Authority;

Reason: In the interests of visual amenity and in order to safeguard the future

health of trees on the site. This in accordance with Policies CC1 and CC6 of The South East Plan 2009 and Policy ENV6 of The Maidstone Borough-Wide Local Plan 2000.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.



Appeal Decision

Hearing held on 25 November 2008

by Michael Say BA DipTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
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Bristol BS1 6PN

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Decision date:
18 December 2008

Appeal Ref: APP/U2235/A/08/2074040 Land off Beechen Bank, Boxley Road, Walderslade, Kent, ME5 9JE

- 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 and Mrs Martin against the decision of Maidstone Borough Council.
- The application Ref MA/07/2297, dated 2 November 2007, was refused by notice dated 26 March 2008.
- The development proposed is the erection of a 3 bedroom detached dwelling.

Decision

1. I dismiss the appeal.

Main issue

2. The main issue in this case is the effect the proposed development would have on the character and appearance of the area.

Reasons

3. The appeal site lies on the lower section of a prominent wooded slope known as Beechen Bank. The woodland gives way to scrub on flatter land at the front of the site. Here there are several individual trees including a large coppice ash. Elsewhere in the locality is a scattering of dwellings, but the character retains a rural feel due mainly to the presence of a large number of trees and the woodland on the slopes behind.
4. The site lies within an Area of Local Landscape Importance (ALLI) designated in the Maidstone Borough-Wide Local Plan (LP), adopted in 2000. LP policy ENV35 seeks to protect the character of the ALLI. A Tree Preservation Order (TPO) was confirmed in 1992, protecting an area of woodland which includes the appeal site. A further TPO (as yet unconfirmed) was made in 2008, updating the protection afforded to the woodland on the appeal site and including individual specification of the coppice ash.
5. My attention has been drawn to a previous appeal decision on the site (Ref APP/U2235/A/06/2009882). Although the appeal, in respect of a dwelling, was dismissed, the Inspector considered that some development of the site would not necessarily cause harm to the character of the area or of the ALLI and could be consistent with the relevant development plan policies. At the Hearing the Council acknowledged that there was no objection in principle to a suitable residential development, but reaffirmed the view that the details of the current proposal would be likely to result in unacceptable harm.

6. Since the previous hearing the parties have agreed that a large hornbeam located in front of the main woodland area is not worthy of retention. The current proposal envisages the removal of this tree and the construction of a house a sufficient distance behind the coppice ash to avoid direct interference with its root system.
7. At my site visit detailed measurements were taken and agreed by the parties which showed that the land begins to slope up significantly just behind the proposed dwelling's rear elevation. The main area of woodland commences a little further back, including a very substantial multi-stemmed tree near the north west boundary of the site and some 6 metres from the corner of the building. This tree makes an important contribution to the appearance of the woodland and, combined with others nearby, justifies the high level of protection it enjoys. Part of the tree's root system would be directly affected by the dwelling's foundations. However, given the proportion of the system which would not be touched, this effect could be mitigated by the use of root and beam foundations in order to protect the long term health of the tree.
8. A more significant threat to the future of this and the other trees close to the back of the house is the pressure for their removal and or reduction which would be likely to result from their location in a domestic garden close to the house. On site I observed that the edge of the canopy of the largest tree would be located above the anticipated position of the corner of the house. The substantial size of the trees on the rising slope a few metres from the building would give rise to a significantly overbearing effect when viewed from the main habitable rooms in the rear (north east) elevation. Furthermore, although they would cause no loss of direct sunlight to the building, they would have an impact on the general daylight levels reaching these windows.
9. A very large proportion of the rear garden would consist of woodland, with a short section of partially shaded open land sloping down to the dwelling. This would not be compatible with the usual domestic use of a rear garden serving a family sized dwelling. I acknowledge the particular circumstances of the case in that the appellants wish to use the dwelling for their retirement and foresee that they could use the front garden as a private amenity space. However, in balancing these circumstances against the other considerations in this case, I have taken into account the fact that the dwelling is likely to remain long after the personal circumstances have ceased to be material. In my view it is likely that future occupiers would not find such an arrangement satisfactory and the anticipated pressure on the trees to the rear would become a reality. This view is reinforced not only by the front garden's relatively exposed location but also by the use of that part of it situated outside the canopy of the ash for vehicle access and parking.
10. Both main parties have sought support from other decisions in the surrounding area including the dismissal of an appeal (Ref APP/U2235/A/05/1188434) against the refusal of outline permission for a dwelling on land adjoining the site. The previous appeal decision on the current appeal site, referred to in paragraph (5) above, is an important consideration to which I give significant weight. The other decisions tend to demonstrate the relevance of the individual circumstances of each case and carry less weight in my consideration of the appeal.

11. The appellants have drawn my attention to the presumption contained in national policy advice in favour of making efficient use of vacant land in urban areas and to the Government's belief, stated in paragraph 24 of Planning Policy Statement 7: *Sustainable Development in Rural Areas* that rigid local landscape designations (such as the ALLI) may be unduly restrictive. On the first point, the efficient use of land should not take precedence over the protection of an area's character. On the second, the ALLI is based on adopted development plan policy and is consistent with policy objectives in the Kent and Medway Structure Plan (SP) for the protection of tree cover (policy EN9) and of areas of distinctive character (policy QL1). Its existence, reinforced in this case by the TPOs, underlines the need for these policies to be carefully applied in the sensitive Beechen Bank area. In my view the proximity of the proposed building to the edge of the wooded slope would be likely to lead to the erosion of the woodland.

12. I conclude that the proposed development would have a harmful effect on the character and appearance of the area, contrary to the objectives of SP policies EN9 and QL1.

Other Matters

13. My concerns regarding the long term future of the woodland are reinforced by uncertainty as to how the construction would be completed without harming the trees on the site. Given the relative narrowness of the site, and the high proportion of the land which comes within the root zones of protected trees, I consider that assurance would be needed prior to a grant of permission of the feasibility of satisfactory arrangements for matters such as HGV access, storage and mixing of materials and disposal of soil. Furthermore, I am not persuaded by the appellant's suggestion at the Hearing that construction vehicles could be routed across private land on an adjoining site, since I have no evidence that such an arrangement could be implemented or would be beneficial.

Conclusion

14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

M.A.Say

INSPECTOR



Appeal Decision

Site visit made on 5 June 2006

by **P W Clark MA MRTPI MCMI**

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



Date 24 August 2006

Appeal Ref: APP/U2235/A/06/2009882

Land off Beechen Bank, Boxley Road, Walderslade, Kent

- 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 & Mrs T Martin against the decision of Maidstone Borough Council
- The application Ref MA/05/1960, dated 7 October 2005, was refused by notice dated 2 December 2005.
- The development proposed is the erection of 1 No 3 bedroom dwelling with integral garaging

Decision

1. I dismiss the appeal.

Reasons

2. The principal issues in this case are the effect of the proposed dwelling on (i) the character and appearance of the area; and (ii) trees on the site.
3. The character of the area is the first issue. It appeared to me as a green wooded slope at the foot of which there are scattered dwellings fronting Boxley Road. Behind the hedgerows of Boxley Road and Beechen Bank Road lie a number of dwellings, many apparently constructed in recent decades. Despite the number of houses it has the character and appearance of a country lane because of the retention of roadside hedgerow and many other mature woodland trees. On the north-easterly side of Boxley Road the land has apparently been parcelled into individual plots. Some of these are intensively wooded right to the edge of the road. Others, like this appeal site, are less so. In some parts the steep slope of Beechen Bank abuts Boxley Road. In other parts, as on this site, the steep slope is set back from the road.
4. The site is within an Area of Local Landscape Importance (ALLI) designated in the adopted Maidstone Borough-wide Local Plan in which policy ENV35 requires particular attention to be given to the maintenance of the character of the ALLI. The justification to this policy describes the function of this particular ALLI as providing a setting for the built up areas of Walderslade and Lordswood.
5. Some development within this area is clearly compatible with its designation as the extract from the Local Plan proposals map shows it to include a number of existing residential properties along Boxley Road and permission has recently been given in outline for a house on land south east of Glenside within the ALLI and close to this appeal site.

6. The appellant points out that the site lies within an urban area defined by the adopted Maidstone Borough-Wide Local Plan. Although this is a greenfield site, Kent Structure Plan policy ENV16 and Local Plan policy H20 clearly envisage the development of vacant land within the urban area for housing, but subject to provisos including safeguards for the character of an area and for open space which contributes to that character. These safeguards for character are independent of any special designation as an ALLI.
7. To my mind there is substance in the argument that the function of this ALLI is met by keeping the steep sided slope of the hill free from development rather than the flat part at its foot which may afford sites for development without adversely affecting the character of the landscape.
8. Development of this appeal site would interrupt the undeveloped gap which currently lies between Carn Brea and Cringles but as that is simply a reiteration of the pattern of development along much of Boxley Road it does not seem to me that it would inevitably have an adverse effect on its character. In principle it would appear to comply with the conditions of the first part of local plan policy H20(2) provided new landscaping reinforces or provides a roadside hedgerow of native species in accordance with structure plan policy ENV7.
9. I conclude, in relation to the first issue, that in principle some development of this site would not necessarily cause harm to the character of the area or of the ALLI and could be consistent with the relevant development plan policies. However, there are matters of detail to consider and I now turn to the second issue which is the effect of the proposal on trees on the site.
10. A previous application for development on this site was made in 1995 and dismissed on appeal (T/APP/U2235/A/95/261089/P7). In his decision letter the inspector made particular reference to what was then policy CC5 of the Structure Plan, dealing with the conservation, enhancement and renewal of trees and woodlands. Although development plan policies have changed, that policy appears to be the equivalent of policy ENV7 of the current Structure Plan. There has also been a recent appeal on an adjoining plot made earlier this year. In that decision (APP/U2235/A/05/1188434) particular reference is also made to the loss of trees.
11. In the lower part of this site are a multi-stemmed ash and a hornbeam. The ash stands towards the front of the plot. Whatever its merits as a specimen tree its canopy is contiguous with tree canopies on the opposite side of Boxley Road and with those on plots on either side so it contributes greatly to the character of the area. Its retention would be highly desirable.
12. Between the ash and the hornbeam to the rear at the edge of the woodland there is a clearing. If the ash has been correctly plotted on plan, the dwelling proposed would be located approximately 3.5m from the ash and 2m from the hornbeam, within the root protection area of both trees. This matter could possibly be dealt with by a condition relating to foundation construction, but from my site visit it appears that the canopy of the ash at least has been greatly underrepresented on the plans as I could see that it extends over part of the carriageway of Boxley Road to the front.
13. Notwithstanding the claim that the footprint and built form of the development has been minimised I note that it would extend the full width of the site and has a deep plan with an

POST ROOM
25 AUG 2006

internal layout including two habitable rooms lit solely by windows facing the side boundary at close range and depending on the adjoining plot for their light.

14. In my view the size of dwelling proposed is too large to fit between the trees without causing damage to them and would be likely to result in the damage or destruction of one or more trees protected by a tree preservation order and so would be contrary to local plan policy ENV5 and structure plan policy ENV7.
15. I have noted the point that development of this site might reduce the incidence of fly tipping but that is not in itself a sufficient reason to permit unacceptable development.
16. In conclusion, notwithstanding the arguments that some development of the site could in principle accord with Structure and Local Plan policies concerning the ALLI and the defined urban area, this particular proposal by reason of its size would be likely to result in the damage or destruction of one or more trees protected by a tree preservation order contrary to Structure Plan policy ENV7 and Local Plan policy ENV5 and that in turn would in practice adversely affect the character of the area, contrary to Local Plan policy H20(2).

P. W. Clark

Inspector

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THORNFIELD



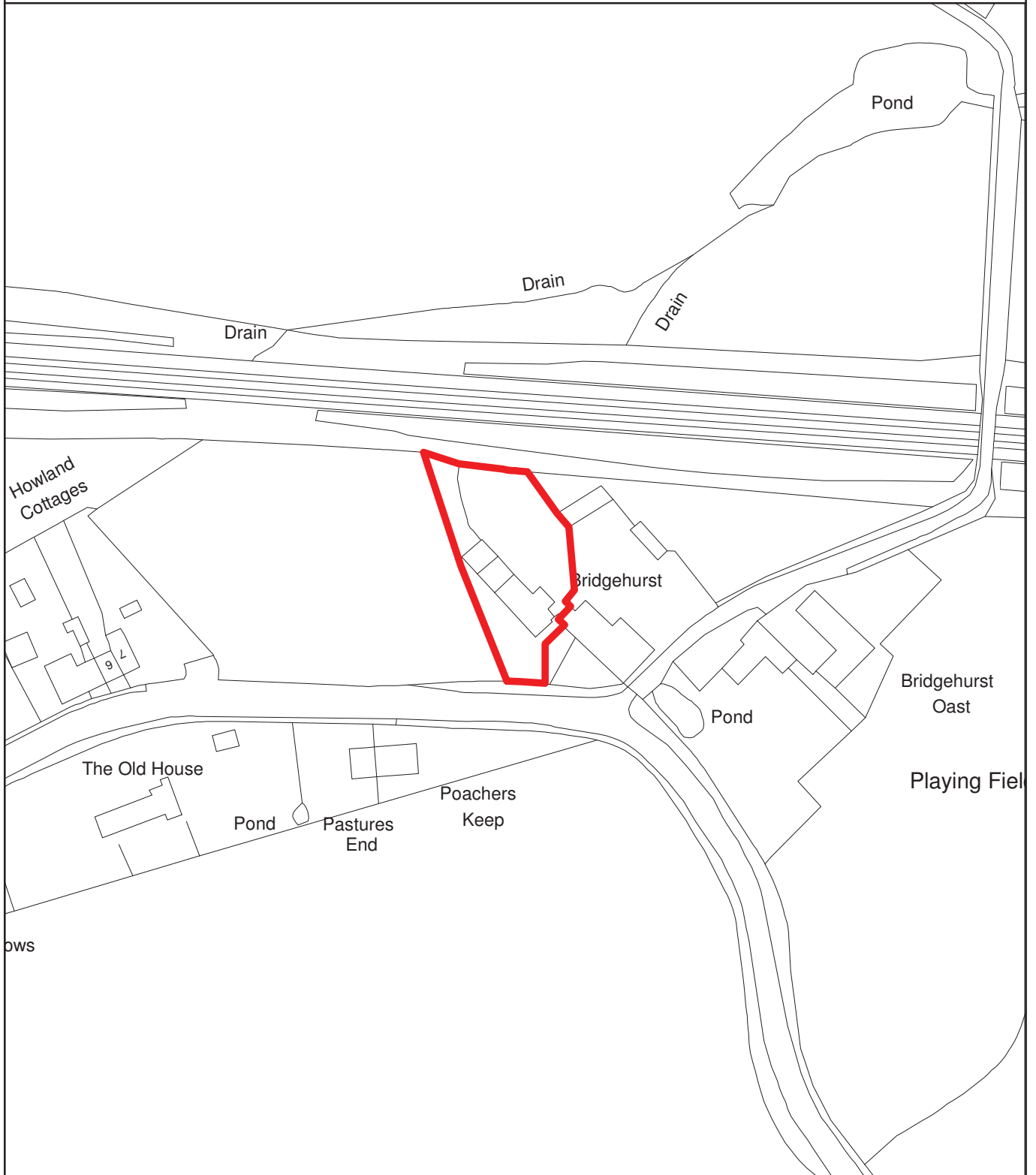
Agenda Item 15

THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/10/2122

GRID REF: TQ7544

BARN ADJOINING BRIDGEHURST FARMHOUSE,
HOWLAND ROAD, MARDEN.



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Rob Jarman
Head of Development Management

APPLICATION: MA/10/2122 Date: 25 November 2010 Received: 12 April 2011

APPLICANT: Mr & Mrs B Hutson

LOCATION: BARN ADJOINING BRIDGEHURST FARMHOUSE, HOWLAND ROAD,
MARDEN, KENT, TN12 9ET

PARISH: Marden

PROPOSAL: Conversion of barn from residential storage to single dwelling including demolition of outbuildings as shown on Drawing No.s 1642/01, 1642/02/Rev A, 05/Rev B and 07/ Rev A and supporting Design and Access statement received on 10 December 2010, amended Drawing 1642/3/Rev D received on 07 January 2011 and Bat and Barn owl Survey dated 28/03/11, received on 12 April 2011

AGENDA DATE: 3rd November 2011

CASE OFFICER: Laura Gregory

The recommendation for this application is being reported to Committee for decision because:

- it is contrary to views expressed by the Parish Council

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: ENV28, ENV45
- South East Plan 2009: CC1, CC6, C4, BE6
- Village Design Statement: Marden Village
- Government Policy: PPS1, PPS3, PPS7, PPS5, PPS9

2. BACKGROUND

2.1 This application was placed on the Committee Agenda for the meeting held on 22nd September 2011. However it was withdrawn following the need for further analysis of the highways issues associated with the proposed development. This has now been done and the considerations are assessed within this report.

3. **HISTORY**

- **MA/10/2125** – Application for listed building consent for alterations to barn to form a dwelling in the grounds of a listed building including demolition of outbuildings – APPROVED WITH CONDITIONS
- **MA/97/1104** – A Full planning application for the renewal of planning permission MA/92/1041 being conversion of barn to a residential dwelling – APPROVED WITH CONDITION
- **MA/97/1105** - Application for the renewal of listed building consent granted under ref: MA/92/1058 being the conversion of barn to residential dwelling – APPROVED SUBJECT TO CONDITIONS
- **MA/92/1058** - Listed building consent for conversion of barn to residential use. – APPROVED SUBJECT TO CONDITIONS
- **MA/92/1041** - Conversion of barn to residential use – APPROVED WITH CONDITIONS

4. **CONSULTATIONS**

MARDEN PARISH COUNCIL: Wish to see the application REFUSED

“Cllrs have NO OBJECTION in principle for these applications but however are aware of the existing gateway and the previous applications MA/92/1041 & 1058 and MA/97/1104 & 1105 both of which make comment of the existing gateway being permanently closed. Cllrs would only support these new proposals if the applications were to be amended to make use of the existing access via Bridgehurst Farmhouse.”

KENT HIGHWAY SERVICES – Raises No Objections

“No objections to the proposals in respect of highway matters. The barn, if in use, could generate some traffic movements from the existing access and the dwelling would generate approximately 6-8 movements per day which is not a significant increase in traffic. Howland Road does not carry heavy traffic volumes and speeds are restricted due to the bends”

Following the completion of a speed survey on 3rd October 2011

"A speed survey was completed on the afternoon of 3 October 2011 in fine, dry conditions. The results indicated that the 85%ile speed of traffic passing the access to Bridgehurst Barn was 27mph westbound (to Marden) and 28mph eastbound (from Marden).

The visibility distances from the access and forward visibility are therefore satisfactory and I have no objection to this proposal"

KCC ECOLOGY – No Objections

"Having spoken to the ecologist who conducted the survey for confirmation over the likely status of the bat roost, we are satisfied that sufficient effort has been undertaken to reach the conclusion that the site is only used as an occasional roost by bats. We recommend that a planning condition provides for:

- The inclusion of at least four 'bat tubes' within the walls of the converted building under guidance from a suitably experienced ecologist (recommendation 6.1);
- The presence of a suitably experienced and licensed ecologist during the removal of the ridge and hip tiles of the barn (recommendation 6.2);
- The removal of the ridge and hip tiles by hand (recommendation 6.2)
- The inspection of the mortice joints and the implementation of exclusion measures by a suitably experienced and licensed ecologist prior to work commencing (recommendation 6.3)"

MBC CONSERVATION OFFICER – No Objections

"The principle of conversion to residential use has been previously accepted in 1992 and 1997. If we are satisfied that the figures submitted prove that use as holiday accommodation is not financially viable, I consider that use as a single dwelling is the next best option in this case. The barn probably dates from the 18th Century, although the roof of the main section is a modern structure following storm damage in 1987, and it constitutes an important feature of the setting of the listed farmhouse and may be considered as a heritage asset in its own right. Its loss would diminish the significance of the listed farmhouse, so re-use is to be welcomed.

The current proposals, in contrast to the earlier permitted scheme, involves the replacement of the modern roof by one which will replicate the pitch and height of the original lost roof; in heritage terms this is considered to be an improvement. In other respects, the current proposals are also largely acceptable and on the main elevations show some reduction in fenestration over the previously approved scheme, which is to be welcomed. My one reservation relates to the inclusion of a roof light to serve a first floor bathroom – it is our normal policy to resist roof lights to non-habitable rooms, and the drawings are wrong in referring to this as “previously approved” as it was removed from the proposals at the Council’s request in 1992. Its removal should, therefore, be requested again.”

5. REPRESENTATIONS

None

6. CONSIDERATIONS

6.1 Site Description

- 6.1.1 The application relates to a detached redundant barn located within the curtilage of Bridgehurst Farmhouse; a grade II listed building located approximately 70m outside of the village envelope on the north side of Howland Road, Dating back to approximately the 18th century, the barn is not listed but it is afforded the same protection as the house itself, being within its curtilage.
- 6.1.2 The barn is a timber framed structure with black weatherboarding and has a peg tiled roof although as a result of storm damage in 1987, the main part has been reconstructed at a lower angle. It is an interesting and attractive vernacular building which contributes to the setting of Bridgehurst Farmhouse.
- 6.1.3 Located in the countryside, the site has maintained much of its open and rural character. To the west of the barn is an open paddock and the boundary treatments comprise of low hedgerow and 1m post and rail fencing. The site is in a prominent location on the northern corner of Howland Road as the road sweeps round to the south. The road is narrow with mature hedging and trees on the southern boundary and although the national speed limit is 60mph, I noted from my site visit that approaching vehicles appear to be travelling at

significantly lower speeds due to the narrow and meandering nature of Howland Road.

6.2 Proposal

6.2.1 Planning permission is sought for the conversion of the barn into one dwelling. The proposed works include the insertion of new windows and doors on all elevations, and the reconstruction of the main roof to its original angle of 45°, to enable plain clay tiles to be used. Access to the barn would be off Howland Road via an existing gate, once an old farm access; which is south of the barn, approximately 17m from the existing access and, where the Parish Council prefer the access to be.

6.3 Principle of Development

6.3.1 The most relevant Local Plan Policy is ENV45 which deals with the re-use and adaptation of existing rural buildings for residential purposes. The proposal is assessed against the criteria of this policy as follows: -

Business Re-use

6.3.2 Criterion 1 of the Policy ENV45 states that the re-use and adaptation of rural buildings for residential purposes will not be permitted unless every reasonable attempt has been made to secure a suitable business re-use for the building.

6.3.3 By virtue of its close proximity to Bridgehurst Farmhouse, the building is not suitable for a commercial use, such as office, storage or workshop due to the noise disturbance which would be likely to be caused to the residents of the farmhouse as a result of such uses. With regard to converting the barn to holiday lets, the viability appraisal submitted with the application, indicates that the cost of converting the building to such a use would be so high that, even with a reasonable return from the start of the holiday use, considerable losses would still be made and the business would not be viable. I therefore conclude that the building could not be converted into a viable business use. The only suitable re-use for this building is therefore as a single dwelling if it is to be retained.

Quality of the Building

- 6.3.4 The building is a curtilage-listed building by virtue of its relationship with the Grade II listed Bridgehurst Farmhouse. It is an interesting and visually attractive building due its vernacular form and forms a good group with, and contributes to the setting of Bridgehurst Farmhouse. Due to its close relationship with the farmhouse, it exemplifies the hisitorical development of the Kentish countryside.
- 6.3.5 It is of good quality and positively contributes to the main listed building and character of the area. Its retention is therefore a desirable outcome. The Conservation Officer considers it to be of sufficient historic interest to justify conversion to residential use as this would secure its long term preservation and I therefore conclude that this building meets the tests to justify residential conversion as an exception to the general theme of countryside restraint. Residential use has been previously approved under applications MA/92/1041 and MA/97/1105.

6.4 Historic Building Considerations

- 6.4.1 Under Policy HE7 of PPS5 local planning authorities are advised to consider the extent to which new development makes "*a positive contribution to the character and local distinctiveness of the historic environment*". It is stated that consideration should be given to the design in terms of the scale, height and massing. In cases where development affects the setting of a designated heritage asset such as Bridgehurst Farmhouse, and if the application preserves the elements of the setting of the listed building and makes a positive contribution or better reveals the significance of the asset, then it should be treated favourably.
- 6.4.2 In terms of the impact on the historic building I consider that the proposed development is acceptable. The barn is of permanent and sound construction which does not require complete or major reconstruction to facilitate its residential use and its re-use would ensure the long term conservation and protection of the barn and the adjacent listed building is secured. The barn constitutes an important feature of the setting of the listed farmhouse and its loss would diminish the significance of the listed farmhouse, so its re-use is welcomed.
- 6.4.3 In terms of the design, the proposal is in keeping with both the rural and historic character of the building. The vast majority of the proposed windows and doors will be new but given the number of new openings has been reduced; these are

welcomed by the Conservation Officer. Where existing openings do exist these have been maximised with the use of vertical, single casement windows. This is acceptable given that these openings such as the old cart entrance on the north east elevation are fundamental elements of the barn's character and give legibility to the original form and function of the building and therefore should be preserved. The mirror image of the cart entrance on the south west elevation is acceptable, designed with the original character and form of the barn in mind.

6.4.4 Overall, the fenestration proposed would be simple, of vertical emphasis and not of regular pattern and would ensure that the barn does not appear overly domestic. In accordance with the Conservation Officer's advice the applicant has agreed to remove the proposed bathroom roof light on the north east elevation as shown on amended Drawing 1642/38/ Rev D. This improves the proposal, is considered acceptable, ensuring that the simple rural appearance of the barn is preserved. With a condition imposed requesting that joinery details are submitted, I consider that a high quality finish to the fenestration can be achieved.

6.4.5 With regard to the historic fabric of the barn, no significant alterations are proposed. It is proposed to remove the modern roof constructed after the 1987 storm and this is considered acceptable especially as it is proposed to reconstruct the roof to the original angle and height using traditional materials. In heritage terms this is considered to be an improvement and, would help towards restoring the barn back to its original appearance and thereby enhancing the setting of the listed building. A condition requesting that details of the materials and the new roof structure are submitted for approval is necessary, to ensure that a high quality finish to the building is achieved.

6.4.6 No objection is raised to the demolition of the adjacent pole barn. This is an unlisted single storey shed which is of no architectural merit or historic significance to the setting of the listed building or barn. Its loss would serve to improve the overall appearance and historic character of the site.

6.5 Highway Considerations

6.5.1 The main objection from the Parish Council to this proposal relates to the access arrangements. It is proposed that vehicular access to the barn will be obtained via the existing farm access gate which is approximately 17m to the west of the

main house. Marden Parish Council are concerned over the impact the use of this access would have on highway safety due to the visibility splays which are in place, and have commented on the fact that on the previous applications, MA/92/1041 and MA/97/1104, the development was approved subject to the condition that this gateway was permanently closed.

- 6.5.2 The condition which requested that the gateway was closed permanently was imposed in lieu of comments received from the Highways Engineer at the time. The Highways Engineer objected to the proposal and considered that "*the access was inadequate to serve the development being on an unrestricted classified road on a bend.*" However visibility splay requirements have changed since these approvals.
- 6.5.3 Having inspected the site, the Highway's Officer has observed that the proposed development will generate some additional traffic movement from this access. However considering that only one dwelling is proposed and the traffic generated from a single dwelling is approximately 6-8 vehicle movements per day, the Highways Officer is satisfied that the resultant increase in traffic will not be detrimental to highway safety.
- 6.5.4 On the issue of visibility, the speed limit on Howland Road is 60mph however; the alignment of the section of road where the access is located, control the speed at which vehicles will travel. The section of road in question is narrow, bounded by tall hedging and trees on one side. Approaching a sharp bend in the road, vehicles are likely to be travelling at speeds below the limit set for this section of Howland Road. To ascertain the average speed of vehicles travelling past the proposed access, a speed survey has been carried out.
- 6.5.5 The speed survey was carried out in fine dry conditions. The result indicated that the 85%ile speed of traffic passing the proposed access was 27mph westbound (to Marden) and 28mph eastbound (from Marden).
- 6.5.6 The Department of Transport's Manual for Streets advises that on a 30mph road, visibility splays should be no less than 43m in either direction. The access has visibility splays of more than 43m in both directions. Considering that the 85%ile speed of vehicles passing the proposed access in either direction is less than

30mph. the Highways Officer considers that the visibility distances from the access and forward visibility is acceptable for the proposed use.

6.5.7 Turning space is proposed within the site on the drive along with two off road parking spaces. This is acceptable and ensures that no turning in the road will take place and that vehicles will be able to enter and exit the site in forward gear.

6.5.8 In conclusion, given that the Highways Officer is satisfied with the proposed access arrangements in terms of visibility and traffic movements and highway safety, I consider that the development is acceptable on this matter and that a condition which requires the permanent closure of this access is not necessary.

6.6 Ecology Considerations

6.6.1 Bat and Barn Owl surveys have been carried out and conclude that the barn does have features of potential suitability for use by bats as an occasional roost and indeed two bats were observed during the internal inspection of the building. No evidence of the presence of owls was found in the barn KCC Ecology has been consulted on the findings and is satisfied with the details which have been submitted stating that *"sufficient effort has been undertaken to reach the conclusion that the site is only used as an occasional roost by bats"*. The Ecology Officer raises no objection requesting only that a condition is imposed which ensures the development is carried out in accordance with the survey's recommendations. This includes the installation of at least four 'bat tubes' within the walls of the converted building, the presence of a consultant on site when the roof is replaced and the planting of soft landscaping to enhance the site for wildlife in general and bats in particular. I consider that this is reasonable and accords with the principles of PPS9.

6.7 Residential Amenity Considerations

6.7.1 With regard to the residential amenity of the future occupiers of the barn, the area of land to the north of the barn is shown on the submitted layout plan to be used as garden land; this is acceptable and would provide a sufficient level of outdoor space for the occupants without intruding significantly into the countryside or on the residential amenity of Bridgehurst Farmhouse.

6.7.2 The development would not result in any loss of privacy to the Farmhouse and given that it is for the conversion of an existing building I do not consider that any loss of light would be caused. Overall I consider that the development would result in minimal harm to the residential amenity of the farmhouse and as such the development is considered acceptable on this matter.

6.8 Landscaping

6.8.1 On the issue of landscaping, it is proposed that a new indigenous hedgerow and post and rail fencing will be planted on the south west boundary of the site, this is acceptable given that this will be visible from the main road. As details of the species of the hedgerow have not been submitted, I propose a landscaping condition which requires details of the species to be used in the hedgerow and, details of suitable protection measures to ensure the longevity of the hedgerow.

6.8.2 An area is proposed for the parking and turning area and this is to be constructed of gravel. Given that there is an existing gravel drive to the farmhouse, the use of gravel is acceptable and would compliment the setting of this historic building.

6.9 Sustainability

6.9.1 On the issue of sustainability, I note that the development is in the open countryside. However, located some 70m outside the village envelope it is not in an isolated position and is within walking distance of Marden village centre and local facilities such as public transport, the local school and health services. Considering that the development is the conversion of an existing building and will ensure the long term preservation for a protected building I consider that the development accords with principles of PPS1 and is sustainable.

6.9.2 With regard to the Code for Sustainable Homes, the code is not applicable to building conversions. However, the BREEAM Eco Homes rating can be applied to residential conversions. The agent has indicated that a BREEAM rating could be achieved within this development. I therefore propose that a condition requiring that a report be submitted showing what BREEAM level will be achieved as a result of this development.

7. CONCLUSION

7.1.1 In conclusion considering the above, I conclude that for the reasons stated above the proposed development is in accordance with the provisions of the Development Plan and that there are no overriding material considerations to indicate a refusal. I therefore recommend approval with conditions as set out below.

8. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

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

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development shall not commence until, written details and samples of the materials (including stain colour) to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

Reason: To ensure a satisfactory appearance to the development in accordance with Policies ENV28 & ENV45 of the Maidstone Borough-Wide Local Plan 2000 and Policies CC6, BE6 & C4 of The South East Plan RSS 2009 and advice contained within PPS5 Planning and the Historic Environment .

3. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority, details of the indigenous species which comprise the proposed boundary hedgerow, together with measures for their protection in the course of development and a programme for the approved scheme's implementation and long term management. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines;

Reason: No such details have been submitted in accordance with Policies ENV28 & ENV45 of the Maidstone Borough-Wide Local Plan 2000 and Policies CC6, BE6 & C4 of The South East Plan RSS 2009 and PPS1 Delivering Sustainable Development.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is

the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development in accordance with Policies ENV28 & ENV45 of the Maidstone Borough-Wide Local Plan 2000 and Policies CC6, BE6 & C4 of The South East Plan RSS 2009 and PPS1 Delivering Sustainable Development.

5. The development shall not commence until, details of all fencing, walling and other boundary treatments have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details before the first occupation of the building(s) or land and maintained thereafter;

Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers in accordance with Policies ENV28 & ENV45 of the Maidstone Borough-Wide Local Plan 2000 and Policies CC6, BE6 & C4 of The South East Plan RSS 2009 and PPS1 Delivering Sustainable Development.

6. The development shall not commence until, full details of the following matters have been submitted to and approved in writing by the Local Planning Authority:-
 - a) New internal joinery in the form of large scale drawings.
 - b) New external joinery in the form of large scale drawings.

The development shall be carried out in accordance with the approved details;

Reason: To ensure the appearance and the character of the building are maintained in accordance with Policy BE6 of The South East Plan RSS 2009 and advice contained within PPS5 Planning and the Historic Environment .

7. The development shall not commence until, a detailed schedule of repairs and alterations and a method statement detailing how such repairs are to be carried out has been submitted to and approved in writing by the Local Planning Authority. The repair works shall be carried out in accordance with the approved details

Reason: No such details have been submitted and to ensure the appearance and the character of the building are maintained and in accordance with Policy BE6 of the South East Plan 2009 and advice contained within PPS5 Planning and the Historic Environment.

8. The development shall not commence until, full details of the new roof structure and eaves treatment, in the form of large scale drawings have been submitted to and approved in writing by the Local Planning Authority.

Reason: No such details have been submitted and to ensure the appearance and the character of the building are maintained and in accordance with Policy BE6 of the South East Plan 2009 and advice contained within PPS5 Planning and the Historic Environment.

9. All bat mitigation measures recommended within the Bat and Barn Owl Survey Report received on 12 April 2011 shall proceed in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority;

Reason: To ensure the maintenance of the population of this protected species in accordance with Policy NRM5 of The South East Plan RSS 2009 and the Central Government policy contained in PPS9 Biodiversity and Geological Conservation.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order with or without modification), no development within Schedule 2, Part 1, Classes A - F shall be carried out without the permission of the Local Planning Authority;

Reason: To safeguard the character and appearance of the development and the enjoyment of their properties by existing and prospective occupiers in accordance with Policies ENV28 & ENV45 of the Maidstone Borough-Wide Local Plan 2000 and Policies CC6, BE6 & C4 of The South East Plan RSS 2009 and PPS1 Delivering Sustainable Development.

11. The driveway and parking area shall be surfaced in accordance with the details shown on drawing number 1642/05A received on 10/12/10 unless otherwise agreed in writing by the Local Planning Authority;

Reason: To ensure a satisfactory appearance to the development and ensure the rural setting the building is maintained, in accordance with Policies ENV28 & ENV45 of the Maidstone Borough-Wide Local Plan 2000 and Policies CC6, BE6 & C4 of The South East Plan RSS 2009 and PPS1 Delivering Sustainable Development.

12. The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing No.s 1642/02/Rev A, 03/Rev C, 05/Rev B and 07/ Rev A

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers in accordance with in accordance with Policies ENV28 & ENV45 of the Maidstone Borough-Wide Local Plan 2000 and Policies CC6, BE6 & C4 of The South East Plan RSS 2009 and advice contained PPS1 Delivering Sustainable Development and PPS5 Planning and the Historic Environment.

13. The development shall not commence until a report outlining the BREEAM level that will be achieved by the development has been submitted to and approved in writing by the Local Planning Authority. The report shall be produced by a competent person and should aim to achieve a 'Very Good' level for the development unless it can be evidenced that such a level is not achievable for sound practical or viability reasons. The development shall thereafter be constructed strictly in accordance with the details subsequently approved before it is occupied.

Reason: To ensure a sustainable and energy efficient form of development in accordance with policies CC1 and CC4 of the South East Plan 2009 and PPS1.

Informatives set out below

No vehicles may arrive, depart, be loaded or unloaded within the general site except between the hours of 0800 and 1900 Mondays to Fridays and 0800 and 1300 hours on Saturdays and at no time on Sundays or Bank Holidays.

Plant and machinery used for demolition and construction shall only be operated within the application site between 0800 hours and 1900 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sunday and Bank Holidays.

Clearance and subsequent burning of existing woodland or rubbish must be carried out without nuisance from smoke, etc. to nearby residential properties. Advice on minimising any potential nuisance is available from the Environmental Health Manager.

Attention is drawn to Sections 60 & 61 of the COPA 1974 and to the Associated British Standard COP BS 5228:1997 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.

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RADFORD'S
REAL ESTATE
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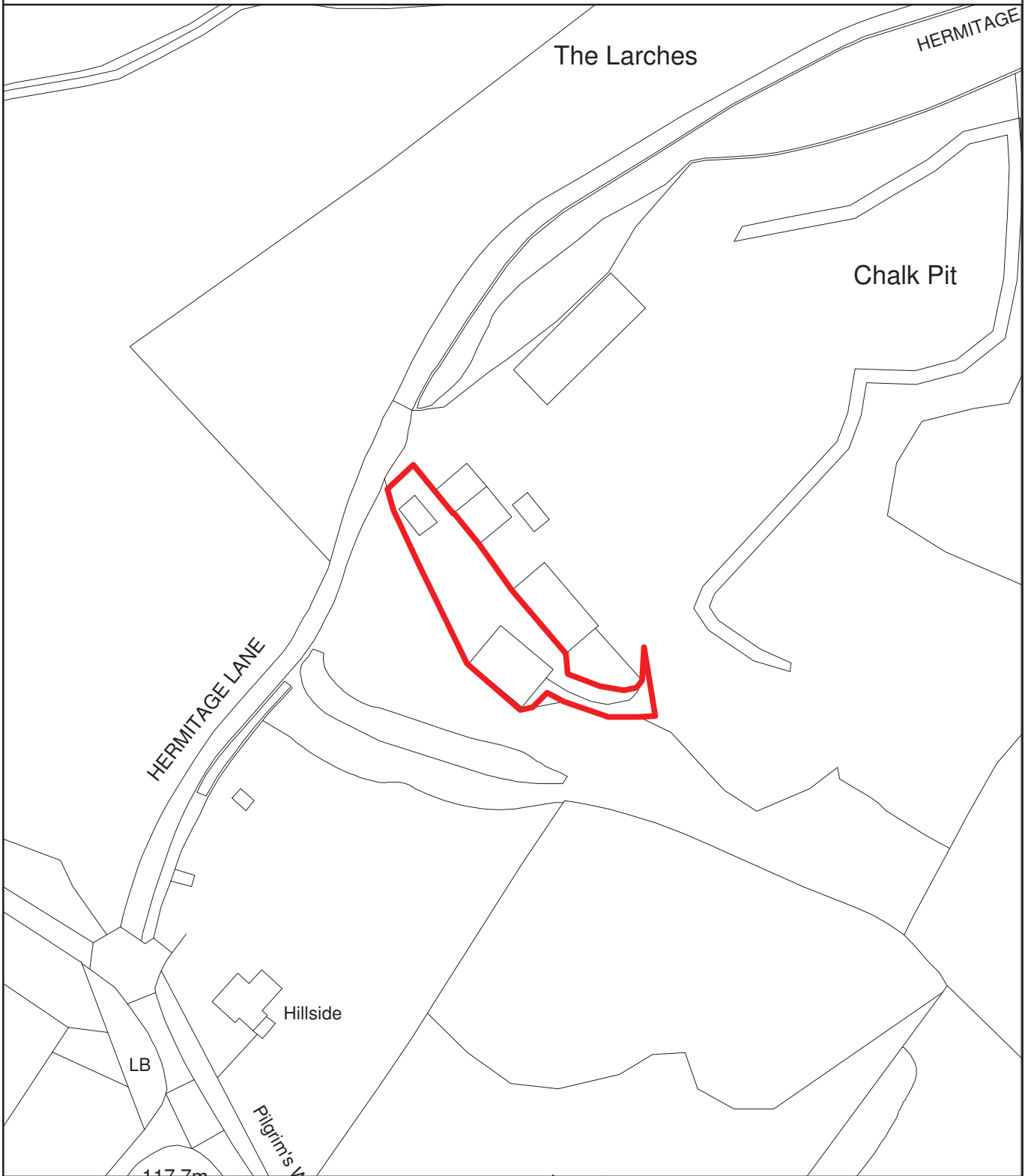


THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/11/0575

GRID REF: TQ7958

CARAVAN, DETLING LIME WORKS,
HERMITAGE LANE, DETLING.



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Rob Jarman
Head of Development Management

APPLICATION: MA/11/0575 Date: 11 April 2011 Received: 26 September 2011

APPLICANT: Mr K Harper

LOCATION: CARAVAN, DETLING LIME WORKS, HERMITAGE LANE, DETLING, MAIDSTONE, KENT, ME14 3HW

PARISH: Detling

PROPOSAL: Variation of condition 5 of appeal decision of MA/05/1462 (Retrospective application for the change of use of land to a mixed use of residential and business use to include the stationing of 1 number caravan and the retention of 3 number outbuildings {2 being conjoined} to allow a second vehicle to be kept on the site as shown on details received on 26/4/11 as amended by revised ownership certificate received on 26/9/11.

AGENDA DATE: 3rd November 2011

CASE OFFICER: Peter Hockney

The recommendation for this application is being reported to Committee for decision because:

- Councillor de Wiggondene has requested it be reported for the reason set out in the report.

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: ENV28, ENV31, ENV33, ENV34, T13
- South East Plan 2009: T4, C3
- Government Policy: PPS3, PPS7, Circular 01/2006

2. HISTORY

- MA/05/1462 – Retrospective application for the change of use of land to a mixed use of residential and business use to include the stationing of 1 number caravan and the retention of 3 number outbuildings (2 being conjoined) – REFUSED – ALLOWED AT APPEAL.

3. BACKGROUND

3.1 Mr Harper has been residing within Detling Lime Works for approximately 31 years having moved to the site in approximately 1980. In 1983 Kent County Council granted consent for the stationing of a residential mobile home for a

night watchman, Mr Harper. This was a temporary planning permission that expired in September 2003 and was not renewed.

- 3.2 In November 2003 Kent County Council issued an enforcement notice alleging a material change of use from quarry to non-quarry related purposes, the erection of buildings and structures and the storage for onward sale, selective retention and transfer of non quarry related materials, articles and the stationing of vehicles on site. An appeal was made against this notice but was subsequently withdrawn prior to its determination and thus the notice took effect and remains in force. The enforcement notice did not cover the continued stationing of the caravan and residential use of the site.
- 3.3 Subsequently, planning application MA/05/1462 was submitted to Maidstone Borough Council and refused on 27 October 2005. An appeal was made against this refusal and heard at a public inquiry on 23 and 24 May 2006 where Mr Harper claimed gypsy status, which was accepted at the inquiry. On 3 July 2006 the Inspector issued her decision which granted a permanent and personal consent to Mr Harper for residential occupation of the site. I attach a copy of the appeal decision at Appendix 1. Crucially at the appeal the business element of the change of use was not considered and only the residential use was approved. Mr Harper continues to live at the site following this permission.

4. CONSULTATIONS

- 4.1 **Detling Parish Council** raise no objections to the application.

5. REPRESENTATIONS

- 5.1 Letters of objection have been received from 3 respondents, including a planning agent on behalf of the freeholder and head lessee of Detling Lime Works on the following grounds:-
- The owners of site are opposed to the application.
 - Increase in traffic.
 - Concerns with the description of the application.
 - Concern that incorrect notice has been served.
 - There is no justification for an additional vehicle in this sensitive location.
- 5.2 **Cllr de Wiggondene** has requested that the application be reported to planning committee for the following reasons:-
"This application is currently the subject of a Breach of Condition Notice issued by MBC for which enforcement proceedings are under consideration."
- 5.3 **CPRE Maidstone** objects to the application on the grounds that there is no justification for a second vehicle.

6. CONSIDERATIONS

6.1 Site Description

- 6.1.1 The application site relates to part of Detling Lime Works, which is a working lime quarry. The site is within the open countryside and the designated Kent Downs Area of Outstanding Natural Beauty, Special Landscape Area and Strategic Gap within Detling Parish.
- 6.1.2 The quarry lies within an extremely attractive wooded landscape on the south facing escarpment of the North Downs. The Pilgrims Way follows the road along the base of the escarpment providing extensive views across the Medway Valley, and the North Downs Way follows the top of the escarpment. About 200m to the south of the application site are the outlying houses of Detling Village and just beyond is the A249 dual carriageway.
- 6.1.3 There are only limited short range glimpses of the development from Hermitage Lane.

6.2 Proposal

- 6.2.1 The application seeks to vary condition 5 of the appeal decision. Condition 5 stated:-

No more than one vehicle, of a non-commercial nature, shall be kept on the appeal site at any time;

- 6.2.2 The application seeks to allow a second vehicle to be parked on the site.

6.3 Considerations

- 6.3.1 The site has permission for residential use for Mr Harper following the permanent consent gained at appeal in 2006. There are allegations and investigations into breaches of planning control with regard to commercial activities, open storage and landscaping on the site. However, none of these issues are material in the consideration of this planning application.
- 6.3.2 The site is within the Kent Downs Area of Outstanding Natural Beauty and development is sought to be restricted in order to protect its scenic quality. This was the reason that the Inspector imposed certain restrictive conditions on the approval, including the restriction to one vehicle.
- 6.3.3 The Inspector considered that the one vehicle permitted on site, which could have been the van Mr Harper was converting to a motor home was reasonable.

- 6.3.4 The agent for Mr Harper has stated in the application that "whilst the Inspector expressly accepted the applicant's need to retain the 'coach' this vehicle is not viable for the applicant whose health has deteriorated as the Inspector anticipated and is too large to enter hospital car parks nor is it yet restored. The applicant needs to retain his land rover discovery vehicles for that purpose."
- 6.3.5 The main considerations of this application relate to the visual impact of an additional vehicle on the site. Whilst the site is in the Kent Downs Area of Outstanding Natural Beauty and the open countryside it is a well screened site with planning permission for a residential caravan and outbuildings. It is my view that the parking of one additional vehicle would not have a significant visual impact on the character and appearance of the area or the scenic quality of the Kent Downs Area of Outstanding Natural Beauty. For this reason I do not consider that there is any conflict with Development Plan policies and that the visual impact of the parking of a vehicle would be acceptable.
- 6.3.6 The site is a significant distance (approx 80m) from the nearest residential property of 'Hillside'. This distance would ensure that the parking of a vehicle would not have a significant impact on the residential amenity of the occupiers in terms of any disturbance.
- 6.3.7 I note the concerns that have been raised with regard to the increase in traffic movements. However, the site will still be limited to the residential occupation of Mr Harper only and given that the number of occupiers will not increase I do not consider that by allowing the parking of a second vehicle there would necessarily be an increase in traffic movements. Even if there were an increase, the increased movements when compared to the existing movements on the site and the wider quarry would not have a significant impact on traffic, highway safety or residential amenity of nearby occupiers.
- 6.3.8 There have been objections raised on the issue that there has been no justification put forward for an additional vehicle on the site. The agent has explained the reason for the application (as set out above in para 6.3.4), however, I do not consider there to be any significant planning harm caused by the parking of an additional vehicle and therefore do not consider that parking an additional vehicle requires particular justification.
- 6.3.9 It is important to consider whether it would be reasonable to prevent an individual at a lawful residence to own and park more than one car. Although the site is in the Kent Downs Area of Outstanding Natural Beauty it is my view that it would be unreasonable to prevent the parking of a second vehicle on the lawful residential site. There are no other residences in the Borough, that I am aware of, either bricks and mortar housing or caravan sites where the number of private vehicles is restricted. Therefore, it is reasonable to allow a second vehicle to be parked at the site.

7. CONCLUSION

- 7.1 The site has planning permission for a residential caravan site for Mr Harper following an appeal decision in July 2006, following refusal of MA/05/1462. Condition 5 of the approval restricted the number of vehicles on the site to one vehicle. This application seeks to vary that condition to allow a second vehicle to be parked.
- 7.2 The site is within the Kent Downs Area of Outstanding Natural Beauty, however, it is a well screened site with some approved development and the stationing of a residential caravan. The additional visual harm that would be caused by an additional vehicle would not be significant and there are no other planning reasons to warrant refusal of the application.

8. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. No more than two vehicles, of a non-commercial nature, shall be kept on the site at any time;

Reason: In the interests of visual amenity and the protection of the scenic quality of the Kent Downs Area of Outstanding Natural Beauty.

Informatives set out below

Please note that all other conditions attached to appeal decision MA/05/1462 remain in force and shall be adhered to.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.



Planning Appeal Decision

Inquiry held on 23 & 24 May 2006

Site Visit held on 23 May 2006

by **Lucy Drake** BSc MSc MRTPI

an Inspector appointed by the First Secretary of State

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Date

03 JUL 2006

Appeal Ref: APP/U2235/A/05/1193932

The Caravan, Detling Lime Works, Hermitage Lane, Detling, Maidstone, ME14 3HW

- 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 Ken Harper against the decision of Maidstone Borough Council
- The application, No MA/05/1462 dated 27 April 2005, was refused by notice dated 27 October 2005
- The development proposed is the siting of one caravan for residential use and the erection of 3 outbuildings (2 conjoined) for ancillary residential use

Summary of Decision: The appeal is allowed and planning permission granted subject to the conditions set out in the Formal Decision below.

Procedural matters

- 1 The description of the development given above was agreed at the inquiry. The application seeks a personal planning permission for Mr Harper and this was the basis on which the inquiry proceeded

The main issues

- 2 The main issues in this case are
 - (a) Whether Mr Harper is a gypsy for the purposes of planning policy
 - (b) If so, whether the development complies with relevant gypsy site policies
 - (c) The effect of the development upon the character and appearance of this part of Detling
 - (d) The effect of the development upon the operation of and restoration works to the quarry
 - (e) The provision of and need for additional gypsy sites within the Borough
 - (f) Mr Harper's personal circumstances, his need for a site and alternative accommodation options

Planning policy

- 3 The development plan for the area includes the Kent Structure Plan 1996 and the Maidstone Borough-Wide Local Plan 2000. In justifying their decision to refuse the application the Council also referred to the Kent & Medway Structure Plan Deposit Draft of September 2003. Proposed Modifications to this plan were published in September 2005 with a view to adoption in 2006. In the main, the proposed Structure Plan Policies relevant to this appeal are not so materially different from the adopted ones as to merit separate consideration. I therefore intend to concentrate on the adopted policies, while noting their rolling-forward by the emerging Plan.
- 4 The appeal site is within the open countryside outside any defined settlement. It also lies within the Kent Downs Area of Outstanding Natural Beauty (AONB) and the North Downs Special Landscape Area (SLA) as well as within the Maidstone/Medway Strategic Gap. The overall aim of development plan policy in these areas is to strictly control unnecessary development.
- 5 With regard to development in the countryside generally, Structure Plan Policy ENV1 says that the countryside will be protected for its own sake. Development which will adversely affect it will not be permitted unless there is an overriding need for it which outweighs the requirements to protect the countryside. Policy RS1 requires all development in the countryside to be well designed, appropriate to its location, acceptable in highway terms and preserve and, as far as possible, enhance the character, amenity and functioning of the countryside. Local Plan Policy ENV28 seeks to protect the character and appearance of the countryside and says that planning permission will not be given for development which harms the character and appearance of the area or the amenities of the surrounding occupiers. Development will be confined to the listed categories, which includes exceptions indicated by policies elsewhere in the plan.
- 6 With regard to AONBs, Structure Plan Policy ENV3 says that LPAs will provide long-term protection for these areas, giving priority to the conservation and enhancement of their natural beauty. Proposals for development which would be inconsistent with this priority will be weighed in the light of their importance in securing the economic and social well-being of the area. Local Plan Policy ENV33 is similar in intent but provides that small scale development to meet the social and economic needs of rural communities will be permitted provided that such development is consistent with the protection of the natural beauty of the landscape.
- 7 The policies relating to SLAs are broadly similar to those for AONBs. Structure Plan Policy ENV4 says that the local planning authorities will provide long-term protection for SLAs and will give priority to the conservation and enhancement of the natural beauty of the landscape over other planning considerations, whilst having due regard to the economic and social well-being of the area. In the Local Plan, Policy ENV34 provides that particular attention will be given to the protection and conservation of the scenic quality and distinctive character of the area and priority will be given to the landscape over other planning considerations.
- 8 Structure Plan policy MK5 provides that within the Maidstone-Medway Strategic Gap, as defined in Local Plans, development proposals which would significantly extend the built confines of existing settlements or the areas currently identified for development will not be permitted. Local Plan Policy ENV31 is very similar in wording.

- 9 The appeal site also lies between two parts of a designated SSSI but the Council put forward no evidence to indicate any harm to this land and I see no need to assess the development in relation to development plan policies or statutory requirements relating to these
- 10 National policy for gypsy site provision is now provided in Circular 01/06 Planning for Gypsy and Traveller Caravan Sites which was issued in February 2006, after the lodging of the appeal Development plan policies for gypsy sites are dealt with in section (b) below

Background

- 11 The appeal site is an area of land, about 80m by 30m on the southern edge, and within the ownership, of Detling Lime Quarry The entrance to the quarry is about 150m north of the junction of Pilgrims Way and about 500m north west of the village of Detling Chalk extraction for agricultural purposes has taken place at the quarry since before the Second World War and, since 1953, under the terms of a series of planning permissions which, in latter years included restoration and landscaping conditions The most recent of these was granted in 2005 which permits extraction to continue until 2016
- 12 In September 1983 the County Council granted planning permission for the stationing of a residential mobile caravan on the appeal site which was sought to enable residential occupation by a night watchman Mr Harper had moved to the site in about 1980, at the invitation of Mr Sandford the site owner, to perform such duties Initially his caravan was sited on the quarry floor next to the operational buildings, but by virtue of this planning permission it was resited on adjacent higher ground close to the southern boundary The planning permission was subject to conditions which amongst other things (i) required its removal by 1 September 2003, and (ii) restricted its occupation solely to a person employed for security duties in connection with quarrying on the site The permission expired in September 2003 and was not renewed, although Mr Harper has continued to occupy a caravan on the land and act as an informal night warden and deterrent to unauthorised visitors The appeal seeks a permanent permission for his continued occupation, unrelated to any continuing security role he may or may not have at the quarry
- 13 At some time since the mid-1980s, though it is unclear exactly when and may not have been until the late 1990s or even the early years of the 21st century, Mr Harper erected three single storey buildings on the appeal site without planning permission Authorisation for their retention for ancillary residential use forms part of the appeal They comprise a kitchen/dayroom, about 3m by 5m in area at the western end of the site close to the embankment with Hermitage Lane, and two linked buildings a workshop about 2.5m by 5m and a garage, about 4m by 7m, within the central part of the site, both of which are mainly used for storage
- 14 Over the years Mr Harper was said to have brought a large number and variety of objects and vehicles on the site which he repaired and sold on In November 2003 the County Council served an enforcement notice alleging a material change of use from quarry to non-quarry related purposes, the erection of buildings and structures and the storage for onward sale, selective retention and transfer of non quarry-related materials, articles and the stationing of vehicles on the site An appeal against this notice was submitted, but withdrawn prior to determination and thus the notice took effect and remains in force Although there has been some tidying up of the site since, and the enforcement notice did not seek to prevent the continued stationing of the caravan and residential use of the site, the three buildings and two vehicles (a large passenger coach and a Mercedes van which Mr Harper is seeking to convert to a motorhome) remained on site at the date of the inquiry

- 15 A fire which occurred at the site in August 2004 destroyed the caravan and some of the buildings on site at the time, but these were said to have been replaced in a similar form in approximately the same position. The fire also destroyed some of the trees and shrubs on the embankment leading up from Hermitage Lane which assisted in screening the caravan and kitchen from public view.
- 16 The Borough Council has no objections to the continued justified presence of a night watchman's caravan on the site, but objects to an independent residential and business use in an area of high restraint against inappropriate development. It was agreed at the start of the inquiry that planning permission was no longer being sought for business use but that the appellant wished to keep all of the buildings for ancillary residential purposes.

Reasons for the decision

(a) *Whether Mr Harper is a gypsy for the purposes of planning policy.*

- 17 The definition of 'gypsies and travellers' for planning policy purposes is contained in paragraph 15 of Circular 01/06 'Persons of nomadic habit of life whatever their race or origin, *including such persons who on grounds only of their own health needs or old age have ceased to travel temporarily or permanently*'. The italicised section being the principal amendment to the earlier definition.
- 18 At the inquiry the Council's planning witness accepted that Mr Harper met the above definition. His father came from a gypsy family, although did not travel for an economic purpose. After he left the Army, in 1966, Mr Harper extensively travelled in a caravan for work purposes with no fixed abode. In the mid 1970s he settled on a former highways works depot at Coldharbour, West Malling which later became an unofficial gypsy site. With the agreement of that Council he acted as an unpaid warden/security presence for about 5 years, continuing to travel in a van while leaving his trailer on site.
- 19 In 1980 he was approached by Mr Sandford, the owner of Detling Quarry, to move onto the Quarry to act as a night watchman in return for free rent, rates, water and electricity. He had no contract of employment, was paid no wages and had to provide his own caravan, but no explicit restrictions were placed on his day-time activities and there does not appear to have been any formal requirement for him to spend every night at the quarry. Initially the caravan was sited close to the operational buildings on the quarry floor, but following the planning permission granted in 1983 it was moved to the higher ground just to the south. Mr Harper was permitted by Mr Sandford to have only one caravan and to park a single vehicle close to the site entrance.
- 20 From about 1986 Mr Harper began travelling regularly again, typically staying away between 1 and 4 nights, with an average of about 7 nights in each month. He went to fairs, car boot sales, markets and anywhere he could buy and sell items with a view to profit. He initially kept a touring caravan at the site but because of Mr Sandford's complaints later kept it at a friend's when not in use. He stored the goods he bought, which ranged in size from a 32-seater coach to household objects, at the site. Initially in the open and later in the two sheds he constructed, without planning permission, in the central area. This unauthorised storage led to a deterioration in the relationship between Mr Harper and Mr Sandford, who regularly removed items and sought to clear up the site.
- 21 Although Mr Sandford said he was unaware of Mr Harper's travelling during the period 1986-1999, he agreed that it was not uncommon for Mr Harper to be away from the site.

during the daytime (indeed this provided him the opportunity to clear up the site) Furthermore although Mr Sanford was often at the quarry until 7pm he did not stay overnight and did not go into Mr Harper's part of the site on a daily basis The pattern of travelling described by Mr Harper is compatible with the observations of Mr Sandford and I find no reason to doubt Mr Harper's claims that he travelled regularly for an economic purpose during the period 1986-1988/9 Around this date his health deteriorated and he gave away his touring caravan The fact that he received no monetary wage for his night watchman duties would have necessitated some other form of economic activity The goods brought onto the site and the confirmation by Mr Sandford's son-in-law that Mr Harper was a regular presence at Maidstone Market, buying and selling goods, all support the claim that Mr Harper made a living in this way The travelling may have only have accounted for some of the activity but it appears to have been done on a regular basis and for an economic purpose and is consistent with both the former and current definitions of gypsies and travellers

- 22 The serious medical problems which have beset Mr Harper since the late 1990s are described in detail by his GP in letters written in Sep 2004 and May 2006 and, with his age, provide a sound justification as to why he ceased travelling from about 1998 From the evidence submitted I consider that Mr Harper meets the definition set out in paragraph 15 of Circular 01/06 and is a gypsy for the purposes of planning policy

(b) Whether the development complies with relevant gypsy site policies.

- 23 Structure Plan Policy H8, Gypsy site provision, provides that where there is an identified need, local planning authorities will make provision for gypsies in local plans and through development control Provision should be consistent with the Plan's other policies and will not normally be permitted in areas protected under Policies ENV3-6 This Policy has to be read in the context of paragraph 52 of Circular 01/06, which says that in areas with nationally recognised designations, such as AONBs, as with any other form of development, planning permission for gypsy and traveller sites should only be granted where it can be demonstrated that the objectives of the designation will not be compromised by the development Paragraph 53 provides that local landscape designations (*which include SLAs*) should not be used in themselves to refuse planning permission for gypsy and traveller sites This overrides the presumption against such development in these designated areas by Structure Plan Policy H8 and while mindful of the multi-layered status and character of the area it is necessary to consider the nature and degree of harm to the designated areas arising from the development
- 24 Emerging Structure Plan Policy HP10 says that where a need for permanent or transit gypsy accommodation is established, provision should be in accordance with the Structure Plan's policies for protection of the environment, countryside and the Green Belt Sites should be provided within the major/principal urban areas or rural settlements In the absence of such sites, locations with good accessibility to the major/principal urban areas or rural service centres and with easy and safe access to primary and other main roads will be preferred Proposals should be located to avoid adverse impact on residential amenity, highway capacity and highway safety
- 25 Notwithstanding the requirements of former Circular 1/94, PPG3 and Structure Plan Policy H8 it is not until very recently that Maidstone Borough has commenced a quantitative assessment of need for additional gypsy sites on which to base their Local Plan or

forthcoming DPDs. The great majority of existing sites in the Borough are within the countryside and while future site provision may be concentrated in urban areas, the emerging Structure Plan Policy recognises that this may not always be possible. The appeal site has very good access to Maidstone and the primary road system and no party has claimed the development causes any harm to residential amenity or highway capacity/safety.

- 26 The gypsy sites policy in the Local Plan, H36 does not exclude such development from any part of the Borough and to that extent can be regarded as one of the exception categories for development in the countryside referred to by Local Plan Policy ENV28. It says that that planning permission will not be given for gypsy sites unless 3 criteria are met. These are (1) that the resident has a nomadic way of life and travels for the purpose of making a livelihood (2) that the site should be satisfactorily screened by natural features and (3) that the development will not lead to an undue concentration of such developments which would adversely affect the character or amenity of the countryside or area. The Council's planning witness accepted that the first criterion essentially requires a proof of gypsy status, and that Mr Harper meets the definition contained in paragraph 15 of 01/06 and therefore complies with it. He also accepted the development met the requirements of criterion (2) in that it was capable of being satisfactorily screened, subject to additional planting on the bank adjoining Hermitage Lane and that there was no conflict with criterion (3).
- 27 The effect of the development upon the character and appearance of the area, including the AONB, SLA and Strategic Gap is dealt with below, but in all other respects, and particularly that of Local Plan Policy H36, the development complies with relevant gypsy site policies.

(c) The effect of the development upon the character and appearance of this part of Detling.

- 28 The lime quarry, with its exposed chalk faces, industrial-type buildings, heavy lorries and occasional noise, while harmful to the character and appearance of the area has been in existence for over 50 years and is likely to continue to be operational for at least another 10. The higher parts of it were said to be visible from the M20 to the south west, but at a local level it is well concealed by surrounding woodland and the high-banked lane such that its presence only becomes apparent when close to the entrance, from where the closed metal gates prevent views into the site. When they are open large extent of the quarry, the chalk store shed and two buildings used as an office/workshop and tractor shed, as well as some abandoned heavy vehicles, are visible. When the gates are closed, only the upper parts of the buildings and the quarry walls are visible although the 'gap' in the woodland and the chalk faces clearly indicate the nature of the use. The hard-surfaced part of Hermitage Lane ends at the quarry entrance but the lane continues north eastwards as an unsurfaced track along the edge of the quarry.
- 29 The quarry lies within an extremely attractive wooded landscape on the south-facing escarpment of the North Downs. The Pilgrims Way follows the road along the base of the escarpment providing extensive views across the Medway Valley, and The North Downs Way follows the top of the escarpment. About 200m to the south of the appeal site are the outlying houses of Detling Village and just beyond is the A249 dual carriageway. However the slope of the land and the surrounding woodland mean that the harm to the landscape caused by the quarry and its associated buildings is very localised and, in my view, surprisingly small.
- 30 Part of Mr Harper's caravan and kitchen/dayroom can only be seen from a 20-odd metre stretch of Hermitage Lane at the top of a 3-4m embankment which, until a fire which occurred in 2004, was said to be very well wooded. But even with the loss of some of the

trees the small scale of the structures, their partial screening and the fact that are well above eye level is likely to mean that many people would pass by unaware of their presence. Were they to be noticed at all, in my view they are likely to be regarded as connected in some way to the adjacent, larger, quarry buildings and workings.

- 31 Replacement planting on the embankment would further reduce the visual impact of the caravan and kitchen, but even before this matures, the effect of the development upon the character and appearance of the area is minimal. It certainly does not have any material harm upon the natural beauty, landscape character or function of the AONB or SLA or the Strategic Gap, such as to compromise the objectives of their designation or any development plan policy seeking to protect these areas. While it could not be said to enhance the area, this is not a requirement of any development plan policy for gypsy sites.
- 32 The caravan has been on the appeal site for 23 years, 20 of them authorised. The buildings erected by Mr Harper may not have had planning permission, but in the case of the kitchen/dayroom is reasonably necessary for his residential occupation and small in scale. The other buildings to the rear are not visible from any public place and are barely visible even from within the quarry itself. Mr Harper is in poor health and is now 61 years of age. His continued occupation of the site would cause no additional harm to the character and appearance of the area beyond that which has already occurred. While accepting that Structure Plan Policies provide that gypsy sites should not normally be within protected areas I find no material harm to the objectives of the designations as a result of the development and thus no conflict with the relevant planning policies.

(d) The effect of the development upon the operation of and restoration works to the quarry.

- 33 By virtue of a planning permission granted by the County Council in 2005(MA/04/335/MR42), chalk extraction from Detling Quarry can continue until 31 December 2016. An approved programme of remedial works, removal of buildings, landscaping and site restoration must be completed by December 2017. The appeal site lies within an area shown as intended for 'final tree planting' comprising a mix of native tree and shrub species to be planted in double staggered rows at 1m spacings.
- 34 The area of permitted chalk extraction is at the north eastern end of the quarry, between about 100 and 200m from the appeal site. Mr Harper has been permitted to use the main (and only) site entrance at all times and there is no evidence to suggest that his past or future residential occupation of the appeal site has had or would have any effect upon the operation of the quarry. The chalk face is now much further away from Mr Harper's caravan than when he first occupied the site and he reported a '1,000% improvement' in terms of dust, noise and general disturbance since then. While the appeal site could not be described as a good residential environment, active working only takes place for a part of the year, its impact upon Mr Harper is slight and he has become accustomed to it.
- 35 If Mr Harper were to still be living on the appeal site in 2017 the final tree planting, as on the approved plans, could not take place in its entirety, but that would not prevent restoration being completed to all other parts of the quarry. His subsequent death or departure from the site would enable this relatively small part of the overall scheme to be completed in due course, albeit with an amendment to the conditions in terms of timing. His earlier death or departure would mean that the full restoration works could be completed in accordance with

the approved scheme The County Council could not rule out the possibility that an extension of the working period may be allowed as the rate of extraction in recent years had been less than expected, with a possible resultant extension of the restoration timetable

- 36 Even the 'worst case' scenario of quarry ceasing in 2016 and Mr Harper continuing to occupy the site would, at most, result in a temporary delay to a small part of the final site restoration and landscaping to an area that is already well screened from surrounding land The development the subject of this appeal would have no material effect upon the operation of the quarry and, at worst, only a delaying effect upon subsequent restoration works

(e) The provision of and need for additional gypsy sites within the Borough.

- 37 The Council accepts that there is a demand for additional gypsy accommodation within the Borough as demonstrated by the numbers of planning applications received (over 40 in the last 5 years) and by the fairly consistent level of unauthorised caravans It also accepts that there are no vacancies on any Council-owned or operated gypsy site in the Borough and that there is a need to provide additional gypsy sites A needs assessment is underway but is not expected to be completed until later this year The results are to be fed into the Housing DPD, for which the Core Options Consultation Document is due to be published at the end of 2006 The identification of suitable sites had not yet commenced and the Council's planning officer was unable to give a date as to when sites would begin to become available From this it has to be assumed it will be several years hence, even if the process is not delayed to allow for need to be considered at a Regional level and pitch allocations determined through the RSS
- 38 The Council could identify no alternative gypsy site to which Mr Harper could move to were he required to leave the appeal site

(f) Mr Harper's personal circumstances, his need for a site and alternative accommodation options.

- 39 Mr Harper is an elderly gentleman with significant health problems affecting his legs, kidneys, urinary system, heart and bones He is on regular medication, has had several in-patient hospital stays, has a prospect of heart surgery in the near future and is currently being monitored in three separate hospital speciality departments for (according to his GP) 'quite major medical problems' He is unable to earn a living and is dependant upon state benefits
- 40 He has not lived in a house since he was 16, or in bricks and mortar since his Army days in his early 20s Although his GP considers his health would be greatly benefited by resettlement in modern housing, Mr Harper said that he would find this type of accommodation alien to him after so many years and fears that a move to bricks and mortar would be harmful to his mental well-being (as it was for his grandfather) and significantly shorten his life expectancy He confirmed at the inquiry that there were no circumstances under which he would live in a house A genuine aversion to bricks and mortar is not uncommon amongst gypsies and has to be respected, especially after so many years of living in a caravan Mr Harper has a clear need for a site on which to station his caravan, which has to be seen both as part of the general need for gypsy sites in the area and as a particular need specific to himself
- 41 When he became aware that the planning permission had expired in 2003 he made enquiries with friends and other travellers who had small private sites However, they all informed

him that he could not live on their land for planning and other reasons. He visited a number of Council-owned and other sites within Maidstone District and further afield, including Croydon and Gravesend but all were full, with waiting lists, and priority likely to be given to relatives of existing site occupants. He has no such family connections with any of them, but in the unlikely event of him securing a pitch he felt he would have difficulty in settling onto any of these sites, having lived alone for some 25 years in considerable privacy. He also feels that he would be unwelcome on such sites as he would be seen to be taking up a plot which other residents believed should have been offered to one of their own family.

- 42 He could not afford to buy a plot of land for himself. He has no financial assets apart from his caravan, which he had to replace from his own resources following the fire of 2004 that destroyed the previous one and all of his other items of any significant value. He occasionally does repair jobs on household items for friends and acquaintances but only charges expenses and relies entirely on state benefits.
- 43 Given all these factors, and the lengthy period of time before which additional sites may begin to emerge through the DPD process, Mr Harper's only realistic alternative accommodation to remaining on the site would be to return to an itinerant roadside existence in a Mercedes van he is currently converting to a motor home. The shortage of authorised transit sites would make this way of life very difficult. The lack of heating, running water and sanitary conditions would, according to his GP, certainly cause his general health to deteriorate and jeopardise his renal function. The absence of a fixed address would also make it far more difficult to be contacted by the medical services and threaten the continuity of his medical care.
- 44 Mr Harper's need for a site on which to live in his caravan, the lack of any suitable alternative site and his age and medical conditions are all factors which must be given significant weight in favour of allowing the development.

Other matters

- 45 Mr Harper's continued occupation of the site while no longer formally employed by the freehold or leasehold owners of the quarry may well place him in breach of private or other contracts which operate independently of planning control. However, these are matters to which I can give little weight and I have considered the appeal on the basis of planning, and all other material considerations only.

Conclusions

- 46 Mr Harper has lived on the appeal site for over 25 years (for all but the last 3 of them on an authorised basis) without causing any apparent harm to any interest of acknowledged public importance. The scale of the development he is responsible for is very minor and barely visible from outside the appeal site. The very slight harm caused to the character and appearance of the area by the partial visibility of his caravan and kitchen from a short stretch of Hermitage Lane is not such as to materially harm the character and appearance of the area or compromise the objectives of the AONB, SLA or Strategic Gap. To all intents and purposes the development complies with relevant planning policies for gypsy sites. Built development and mining activity is expected to continue within the adjoining parts of the quarry for another 10 years at least. Mr Harper's continued occupation will neither prejudice the continued working of the quarry nor significantly prejudice or delay the final restoration requirements. Mr Harper has a need for a site on which to live in his caravan, there are no alternative sites likely to be available to him in the short to medium term, at the very least. A

forced return to a nomadic lifestyle on unauthorised sites would seriously worsen his health and life expectancy

- 47 Although Mr Harper has no legal interest in the land he occupies, his lengthy period of occupation means that it has to be regarded as his home for the purposes of Article 8 of the European Convention on Human Rights. Dismissal of the appeal would be likely to lead to his enforced departure from the site and a return to an itinerant, roadside existence, which would be both highly unsatisfactory for him, as well as the owners of the land he stopped on, and contrary to national policy objectives aimed at meeting the needs of gypsies and travellers. It would represent a significant interference with his home and family life which in my view outweighs the very limited harm which is caused by the development, in terms of its effect upon the public interest and the rights and freedoms of others. The dismissal of the appeal would have a disproportionate effect upon the rights of Mr Harper under Article 8 of the European Convention on Human Rights.
- 48 The personal basis on which planning permission is sought will mean that the need for the development will cease upon either his death or earlier departure and thus the very minimal visual harm caused will be for a limited period only. But in any case, this slight harm is heavily outweighed by Mr Harper's need for a site, the absence of any realistic alternative and his personal circumstances.
- 49 For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed, subject to conditions.

Conditions

- 50 I have considered the conditions suggested by the Council and discussed at the inquiry in the light of Circular 11/95, Government advice on The Use of Conditions in Planning Permissions.
- 51 If planning permission were to be granted, the Council sought a personal condition limiting occupation until 31.12.16. Such a condition would be consistent with the life of the 2005 quarrying permission and associated restoration works, but were Mr Harper to still be in occupation at that date he would have lived on the site for over 35 years, be in his early 70s, his health is likely to have further deteriorated and there is no certainty that a suitable alternative site will be available at that time.
- 52 During the next 10 years replacement planting on the roadside embankment should provide additional screening and the harm caused by the development to the character and appearance of the area would have further reduced. Even if by 2017 all of the other restoration requirements attached to the quarrying permission had been complied with, the remaining harm caused by Mr Harper's continued occupation for a limited period would be extremely slight. Taking into account all material considerations, a limitation of 10 years on the length of the personal permission is unnecessary and would be unreasonable. I therefore intend to impose a personal condition, reflecting the importance of Mr Harper's personal circumstances to the overall balance in this case, without a time limit.
- 53 To ensure the removal of all signs of residential occupation upon Mr Harper's departure from the site and allow for full restoration in accordance with the 2005 planning permission (or any variation to those conditions) it is necessary to also impose a condition requiring the removal of all hardstandings, structures and buildings within a specified period.

- 54 To limit the scale and visual impact of the development on the surrounding area it is necessary to impose a condition preventing more than one residential caravan from being stationed on the site at any one time. Also to explicitly prohibit the open storage of waste or other materials on the land and to prevent more than one vehicle of a non-commercial nature from being kept on the land at any time. The enforcement notice issued in Nov 2003 would still be effective against all other vehicles and any open storage, although it was acknowledged at the inquiry that the low wooden fence around the site may be immune from enforcement action as it is permitted development. This condition would allow only one vehicle on the site, which could be the van Mr Harper is converting to a motor home which he would need in the event of a private prosecution requiring him to leave the site.
- 55 Conditions requiring details of replacement planting on the roadside embankment and its implementation would in time improve the screening effect of the vegetation and return the situation to something akin to the situation before the fire of 2004.

Formal Decision

- 56 I allow the appeal and grant planning permission for the siting of one caravan for residential use and the erection of 3 outbuildings (2 conjoined) for ancillary residential use at **Detling Lime Works, Hermitage Lane, Detling, Maidstone, ME14 3HW** in accordance with the terms of the application No MA/05/1462 dated 27 April 2005, and the plans submitted therewith, subject to the following conditions
- 1) The residential occupation of the site hereby permitted shall be carried on only by Ken Harper
 - 2) When the land ceases to be occupied by Mr Harper the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land and buildings and hardstandings shall be removed within 6 months of that time and the land restored in accordance with condition 22 of planning permission MA/04/335/MR42, or as varied by the local planning authority in writing
 - 3) No more than 1 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
 - 4) No commercial activities shall take place on the land, including the open storage of materials or waste
 - 5) No more than one vehicle, of a non-commercial nature, shall be kept on the appeal site at any time
 - 6) Within two months of the date of this decision a landscaping scheme providing for planting with appropriate native species along the embankment to Hermitage Lane shall be submitted to the local planning authority for their approval in writing. This should list the numbers, spacing, size and species of the trees and/or shrubs to be planted
 - 7) All planting shall be carried out in accordance with the approved details and within a time period to be specified by the local planning authority. Any trees or other plants which within a period of 5 years from the date of first planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing by the local planning authority

L M Drake

INSPECTOR

APPEARANCES**FOR THE APPELLANT**

David Watkinson of Counsel

He called

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Appellant

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FOR THE LOCAL PLANNING AUTHORITY

Giles Atkinson of Counsel

He called

Stephen Clarke MRTPI

Senior Planning Officer, Maidstone Borough Council

Robin Gregory MRTPI

Principal Planning Officer, Kent County Council

INTERESTED PERSONS

Edward Sandford

EH & EG Sandford (Lime Products) Ltd

DOCUMENTS SUBMITTED AT THE INQUIRY

- Document 1 List of persons present at the Inquiry
- Document 2 Copy of the letter notifying local people of the inquiry and list of those notified
- Document 3 Statement of Common Ground
- Document 4 Appeal decision APP/U2235/A/04/1146980, Hatching Tan, Maidstone Road, Staplehurst, 12 May 2005
- Document 5 Letter from Dr ML Moss, Bearstead Medical Practice, 22 May 2006
- Document 6 Letter from Robin Gregory, KCC, to Community Law Partnership, 10 February 2006
- Document 7 Letter from John Bourne & Co, to Community Law Partnership, 6 May 2005
- Document 8 Appeal decision APP/Q3305/A/04/1138976, Brook Farm, Barton Rd, Butleigh, Bath, 12 Jan 2005
- Document 9 Appeal decision APP/V3310/C/05/2002480-1, Riverside Drove, Bartletts Bridge, Cocklade, Wedmore, Bristol, 28 Feb 2006

Document 10 Appeal decision APP/U2235/A/05/1181803, Greengates, Lenham Rd,
Headcorn, April 2006

Document 11 Statements of EG Sandford Esq as read out at the inquiry

PLANS

Plans A -C Floor plans and elevations of the buildings on the site

Plan D Location plan

Plans E & F Site plans

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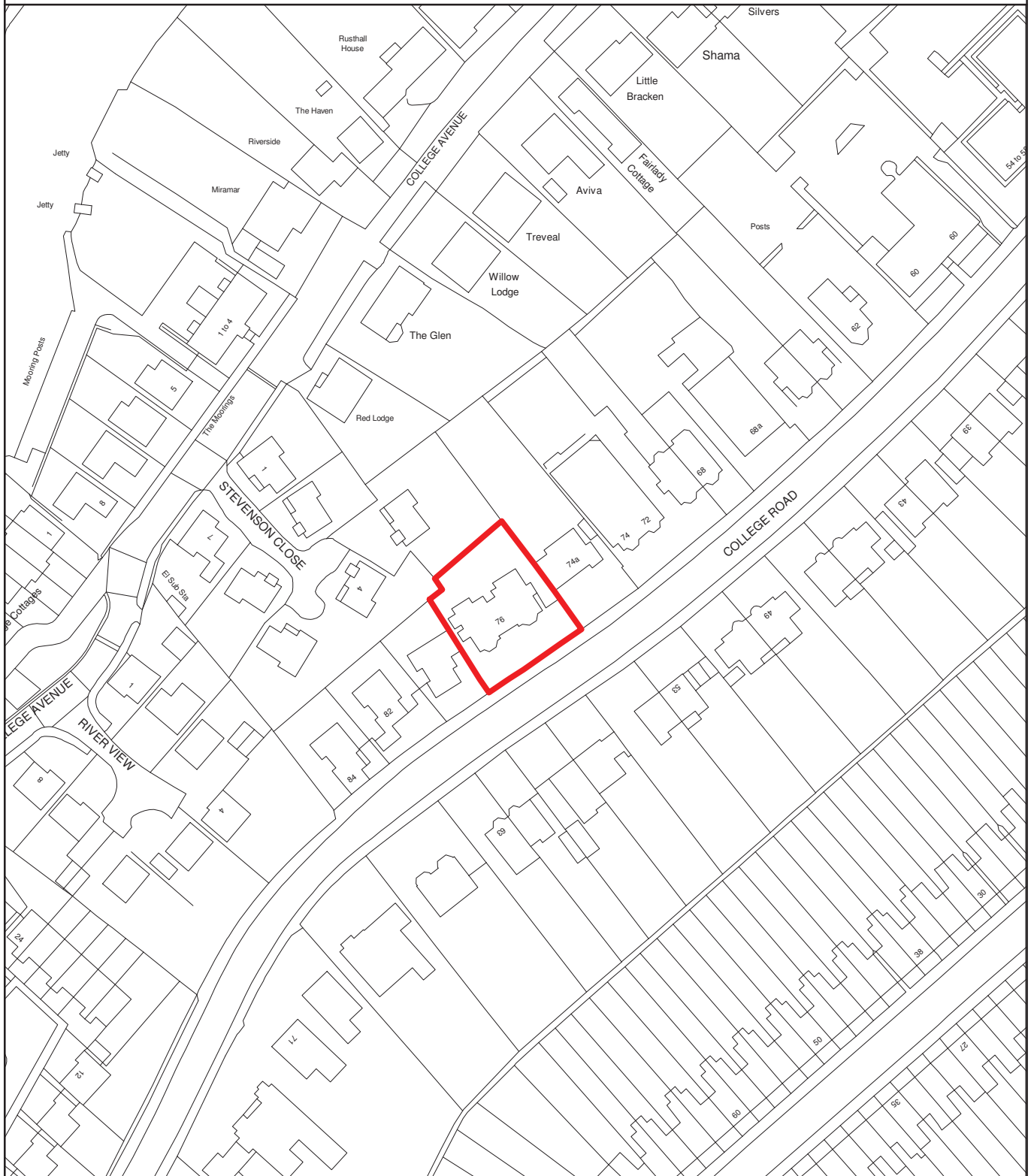
Agenda Item 17

THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/11/1132

GRID REF: TQ7555

76-78 COLLEGE ROAD,
MAIDSTONE.



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Rob Jarman
Head of Development Management

APPLICATION: MA/11/1132 Date: 4 July 2011 Received: 13 July 2011

APPLICANT: Mr & Mrs R & N Haq

LOCATION: 76-78 COLLEGE ROAD, MAIDSTONE, KENT, ME15 6SJ

PARISH: Maidstone

PROPOSAL: Change of use of building from B1 offices to C3 residential for the creation of a single dwelling with elevational alterations as shown on plan numbers 1807/01, 1807/04, 1807/05, design and access statement, supporting letter and application form received 6th July 2011 and additional Drawing 1807/17 received 25 October 2011

AGENDA DATE: 3rd November 2011

CASE OFFICER: Kevin Hope

The recommendation for this application is being reported to Committee for decision because:

- The proposal is a departure from the policies within the Maidstone Borough Wide Local Plan 2000 and has been advertised as such.

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: ENV6, ED2, T13
- South East Plan 2009: CC4, NRM11, T4, CC1, H5, W1, W6, BE1, CC6
- Government Policy: PPS1, PPS3

2. HISTORY

- MA/06/2007 - External alterations including the addition of dormers and other alterations to rooflines, plus minor extensions (works to form additional office floor space and improve facilities for disabled persons) – Approved with conditions
- MA/91/0642 - Formation of 5 no. car parking spaces at rear of property – Approved with conditions
- MA/88/0459 - Conversion of existing attic storage space to form additional office area – Withdrawn
- MA/84/0225 - Details of ten dwellings, pursuant to outline permission MA/83/1797 and MA/1677W – Approved

- MA/82/1165 - Change of use from offices to dental laboratories – Approved with conditions
- MA/82/0195 - Use of existing building as offices – Approved
- MA/80/1547 - Office annexe – Approved with conditions
- MA/79/1144 - Residential development – Refused

3. CONSULTATIONS

3.1 **Parish Council:** N/A

4. REPRESENTATIONS

- 4.1 One letter of objection has been received on the following grounds:
- Overshadowing
 - Loss of privacy

One letter of support for this application has also been received

5. CONSIDERATIONS

5.1 Site Description

5.1.1 The application site relates to a detached two storey building with additional accommodation within the roofspace and the basement. Located within the urban area of Maidstone and within an area designated under policy ED2 of the Maidstone Borough Wide Local Plan 2000 for economic activity, the building has a lawful office (B1) use but has remained empty for a number of years. Set back from the road approximately 7.8m, the building is fronted by a large area of hard standing which provides parking for 15 cars. To both sides of the building, there is pedestrian access which leads to an area of amenity space to the rear of the building. This extends approximately 8m to the rear boundary of the site and is also laid to hardstanding.

5.1.2 The property has two large pitched roof projecting elements framing the front elevation and is of red brick and tile construction. The building also has white painted bargeboards, headers and window details which contribute to the character of the building.

5.2 Proposal

5.2.1 Planning permission is sought for the change of use of building from B1 offices to C3 residential for the creation of a single dwelling with elevational alterations.

These changes include the removal of a ground floor window within the rear elevation, the change of a window to a door within the front elevation and the additional of a front entrance canopy.

5.2.2 This proposal would also involve the addition of a 800mm high brick wall and 900mm high piers to the front boundary of the site to define this boundary. A large amount of the existing hardstanding would be retained within the front of the property, although some border shrub planting is proposed along the frontage of the building and along the front boundary abutting the proposed wall.

5.3 Principle of development

5.3.1 In terms of whether a development of this type is acceptable in principle, the restriction on the land needs due consideration. The site lies within an area designated for employment purposes (B1) by virtue of saved policy ED2 (xxi) of the Maidstone Borough Wide Local Plan 2000. The rationale for this land designation is to reduce the pressure for additional allocations on fresh land that would arise if these areas were redeveloped for other uses. The policy states:-

"Planning permission will not be granted to redevelop or use vacant business, industrial, storage or distributions sites or premises for non-employment purposes unless the retention of the site or premises for employment use has been explored fully without success"

5.3.2 Therefore, provided that sound evidence is provided to meet this criterion, the principle of this proposal could be acceptable in planning terms. As such, an assessment of the viability of this proposal will be carried out under section 5.4 below.

5.4 Viability

5.4.1 The applicant has submitted a marketing statement which provides a background to the marketing of the building. The statement states that the property has been marketed since August 2007 and is still on the market. A number of marketing tools have been implemented during the publication of this property including the presence of a "For Sale" board to the front of the building, the inclusion of the property within the "Offices Availability List" which is regularly mailed to all office property applicants, several adverts within the commercial property section of the Kent Business Publication together with its inclusion within the Caxtons and Estates Gazette Property Link websites. During this time, the building has been under offer on two occasions in November 2007 and March 2008 but there has been no interest since.

- 5.4.2 Taking this into consideration, I consider that the property may not be best suited for an office use at this time. The statement gives details of some of the feedback given by the viewers and perspective buyers of the property which explain that the building has an inflexible layout for a modern office and that the property is not economically feasible to update to the required standard of a modern office premises.
- 5.4.3 With no interest in the premises since 2008 and the property vacant since 2007 I am satisfied that there has not been a significant change in the office market in Maidstone which would require the retention of these premises. There has been no increase in demand for office accommodation within this locality and, no proposals for office accommodation on this site brought forward. Considering that there are a number of existing large office buildings empty or partially empty within the town centre which include large areas of office space for example, Kent House, I am satisfied that a sufficient level of office accommodation would be retained within the town centre area for future office provision.
- 5.4.4 The policies within the Maidstone Borough Wide Local Plan were adopted in excess of 11 years ago and circumstances have changed significantly in that period. Considering that demand is unlikely to increase in the near future due to the economic climate, I am satisfied that it is acceptable to depart from the Development Plan in this instance, subject to all other material considerations being met.

5.5 **Visual Impact**

- 5.5.1 With regard to the visual impact of the proposal, the proposed front entrance porch is modest in scale and would be in keeping in terms of roof design and appearance. This would ensure the porch would appear subservient. The materials proposed would also be in keeping with the existing building which would further reduce the visual impact of the development, although this will be restricted by condition.
- 5.5.2 The proposed walling and piers to the front boundary of the site would help to define the boundary of the site and frame the proposed pedestrian entrance to the middle of the property. Similarly, due to its modest scale and appropriate design, I consider that this would not cause any significant visual harm.
- 5.5.3 As such, I consider overall that this proposal would not result in any significant detrimental harm to the character or appearance of the existing building or streetscene.

5.6 Highways

5.6.1 With regard to highways issues, the proposed residential use of the building is likely to involve significantly less traffic movements by virtue of the nature of this use. Considering that vehicles will continue to enter and exit the site in forward gear and that the visibility splays at the driveway entrance and exit will not be obstructed by the proposed boundary wall and gate piers, I consider that no significant hazard to highway safety would arise from this proposal.

5.7 Landscaping

5.7.1 There is a degree of landscaping proposed within this development involving shrub planting to the front elevation of the building and abutting the proposed front boundary wall. This would soften the appearance of the building and would create a more residential appearance to the building. In my view, this level of landscaping is sufficient in this case to soften the appearance to the development.

5.7.2 With regard to the impact upon the tree which is adjacent to the site to the front, the size and height of the proposed boundary wall are such that I consider it is unlikely that damage to the roots of the tree will be caused by its construction. Nevertheless, given that the tree is a mature tree which makes a positive contribution to the character of the area, I consider that a condition which requires an arboricultural method statement to be submitted for approval is necessary, to ensure the longevity of the said tree.

5.8 Neighbouring Amenity

5.8.1 In terms of the impact upon neighbouring amenity, I note that a representation have been received with regard to overlooking and loss of privacy to the neighbouring property 80 College Road. I have assessed this and consider that due to the siting of the application building in line with 80 College Road, there is unlikely to be a significant level of overlooking upon this property.

5.8.2 Due to the nature of this proposal, there would not be a significant impact upon the amenity of any other neighbouring property.

5.9 Ecology

5.9.1 Due to the existing hardstanding and lack of planting within the site, I consider that there would not be a significant impact upon ecology as a result of this development.

6. CONCLUSION

Taking all of the above in to consideration, I consider that this proposal would not significantly harm the level of available office space within the town centre and that this proposal would not cause any significant visual harm to the surrounding area. It is therefore recommended that planning permission should be granted subject to conditions.

7. RECOMMENDATION

Subject to the expiry of the most recent consultation period, The Head of Development Management be GRANTED DELEGATED POWERS TO APPROVE SUBJECT TO THE IMPOSITION OF THE FOLLOWING CONDITIONS:-

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

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The materials to be used in the construction of the external surfaces of the boundary wall and porch hereby permitted shall match those used in the existing building;

Reason: To ensure a satisfactory appearance to the development in accordance with policies CC6 and BE1 of the South East Plan 2009 and guidance in PPS1 Delivering Sustainable Development.

3. The development shall not commence until an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP), which shall include details of all trees to be retained and the proposed measures of protection, undertaken in accordance with BS 5837 (2005) 'Trees in Relation to Construction-Recommendations' has been submitted to and approved in writing by the Local Planning Authority. The AMS shall include full details of areas of hard surfacing within the root protection areas of retained trees which should be of permeable, no-dig construction and full details of foundation design for the extension, where the AMS identifies that specialist foundations are required. The approved barriers and/or ground protection shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The sitting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the Local Planning Authority;

Reason: To safeguard existing trees to be retained, ensure a satisfactory setting and external appearance to the development, and secure the character and appearance of the undesignated heritage asset and the London Road Character Area in accordance with policies ENV6 of the Maidstone Borough-Wide Local Plan 2000 and CC1, CC6, BE1 and BE6 of the South East Plan 2009, and guidance in PPS1 Delivering Sustainable Development.

4. The development hereby permitted shall be carried out in accordance with the following approved plans:

Plan numbers 1807/01, 1807/04, 1807/05, 1807/17

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers in accordance with policies CC6 and BE1 of the South East Plan 2009 and guidance in PPS1 Delivering Sustainable Development.

The proposed development would be a departure from the Development Plan, in that it would not provide B1 Use employment accommodation within the application site. However given the existing level of office provision within the town centre, the development would not be prejudicial to its designation. The proposal is therefore considered to be acceptable.



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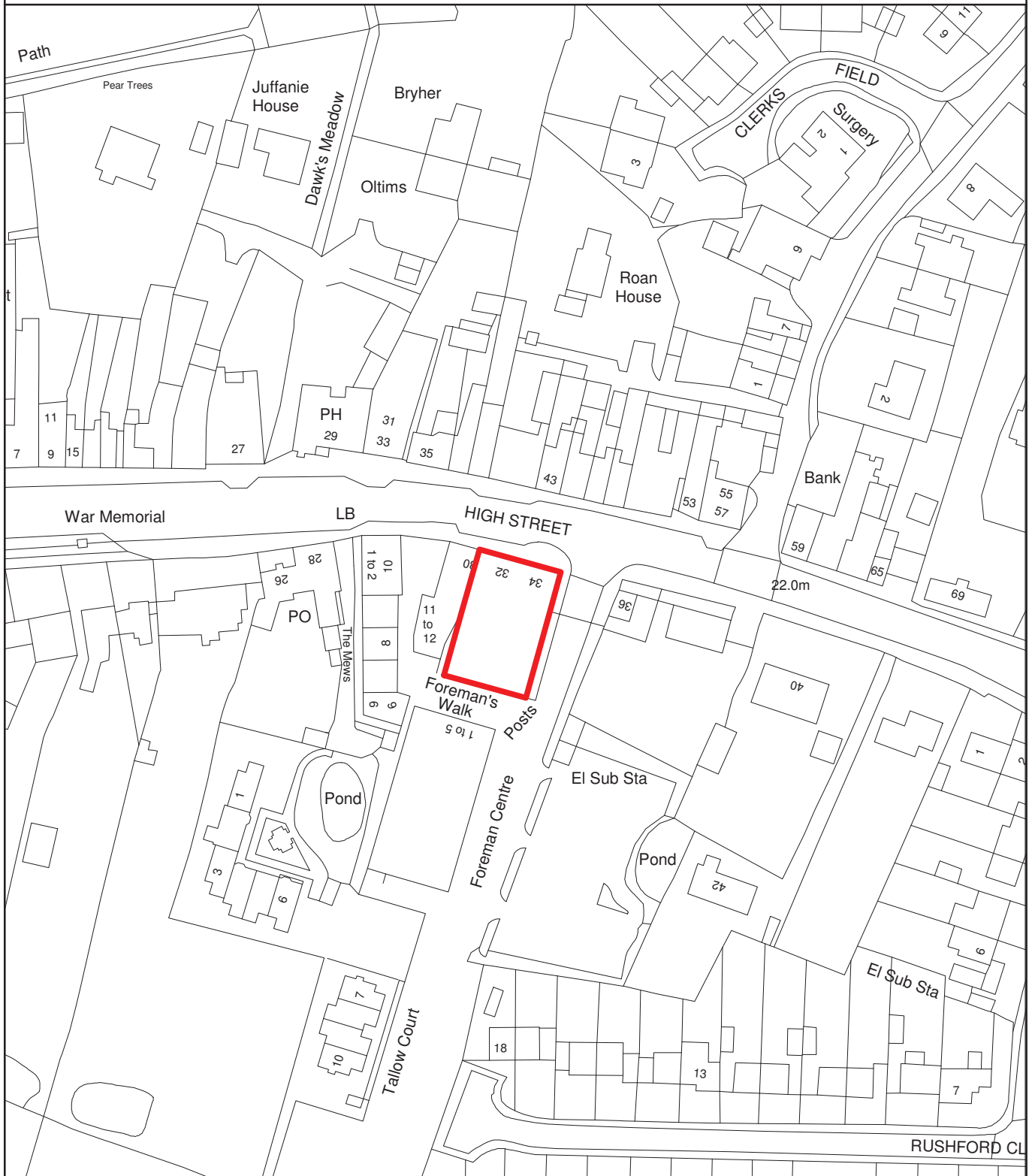
Agenda Item 18

THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/11/1373

GRID REF: TQ8344

SAINSBURYS, 34 HIGH STREET,
HEADCORN.



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Rob Jarman
Head of Development Management

APPLICATION: MA/11/1373 Date: 12 August 2011 Received: 16 August 2011

APPLICANT: Mr A. Phipps, Sainsbury's Supermarkets

LOCATION: SAINSBURYS, 34, HIGH STREET, HEADCORN, ASHFORD, KENT, TN27 9NE

PARISH: Headcorn

PROPOSAL: Advertisement consent for the installation of 2 externally illuminated fascia signs and 2 externally illuminated projecting hanging signs as shown on drawing numbers 301, and 303 received 12th August 2011 and 302 rev A received 11th October 2011.

AGENDA DATE: 3rd November 2011

CASE OFFICER: Catherine Slade

The recommendation for this application is being reported to Committee for decision because:

- it is contrary to views expressed by the Parish Council

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: ENV8, ENV34
- South East Plan 2009: CC1, CC6, BE1, BE5, BE6
- Village Design Statement: Not applicable
- Government Policy: Government Policy: PPS1 Delivering Sustainable Development, PPS5 Planning and the Historic Environment, PPG19 Outdoor Advertisement Control, Circular 03/2007 Town and Country Planning (Control of Advertisements) (England) Regulations 2007

2. HISTORY

2.1 Development Management:

- MA/05/0956 - An application for advertisement consent for the installation of 2 No. externally illuminated fascia signs, 1 No. new projecting sign within existing frame (lit by external strip lighting). 1 No. additional projecting sign (lit by external strip lighting), 2 No. non-illuminated advertisement panels, new colouration, text and logos to existing windows and new ATM fascia – SPLIT DECISION
- MA/03/0803 - An application for advertisement consent for the erection of an illuminated wall mounted sign – REFUSED, DISMISSED AT APPEAL
- MA/02/1045 - An application for the display of two non-illuminated canister lettering signs to front and side of building - APPROVED WITH CONDITIONS

- MA/02/0331 - An application for advertisement consent for 2No. internally illuminated fascia signs and 1No. externally illuminated projecting sign – SPLIT DECISION
- MA/98/1314 - Installation of new externally illuminated fascia & projecting signage and new illuminated wall mounted sign - APPROVED WITH CONDITIONS
- MA/98/1174 - Variation of condition 7 of permission MA/97/1775 (permitting the store to trade to 22.30hrs) to permit the store to trade to 22.00hrs - APPROVED WITH CONDITIONS
- MA/ 98/0997 - Advertisement application for two externally illuminated signs - APPROVED WITH CONDITIONS
- MA/97/1775 - Construction of a new village store (use class A1) with an automatic teller machine (being an ancillary A2 use) with parking area for 31 cars, associated pedestrian footpath, refuse store and delivery lay-by - APPROVED WITH CONDITIONS
- MA/97/1774 - An application for Conservation Area Consent for the demolition of a building - APPROVED WITH CONDITIONS

2.2 Enforcement:

- ENF/8374 - Strip lighting in breach of planning permission

2.3 Planning permission and conservation area consent were granted for the redevelopment of the site for retail purposes under the provisions of MA/97/1774 and MA/97/1775. Planning permission MA/97/1174 subsequently varied the hours of operation of the development.

2.4 Of particular note is MA/05/0956, an application for similar advertisements which was reported to Planning Committee with a recommendation for approval. Members overturned the recommendation and issued a split decision, refusing advertisement consent for the illuminated projecting signs.

2.5 The refused signs were nonetheless erected, and subsequently became the subject of an enforcement investigation (ENF/8374), which was opened in November 2005. The investigation concluded that it was not expedient to pursue formal enforcement action in this case. Subsequently the consent for advertisements under MA/05/0956 expired with the result that all advertisements on the building were in breach of planning control, and the occupiers were advised that steps should be taken to regularise the situation. The enforcement case remains open.

3. **CONSULTATIONS**

3.1 PARISH COUNCIL: Headcorn Parish Council wish to see a split decision as follows:

"We would wish to see APPROVED the installation of the 2 externally illuminated fascia signs.

We would wish to see REFUSED the 2 externally illuminated projecting hanging signs as they would be harmful to the character and appearance of our conservation area, which is as per the Council's decision notice dated 16th May 2005 under reference MA/05/0956. It is felt that if this application was approved then a clear precedent would be set and other shops would follow suit. We would wish for this to be reported to the planning committee."

- 3.2 MAIDSTONE BOROUGH COUNCIL CONSERVATION OFFICER: Raises no objection to the proposal, and makes the following detailed comments:

"The externally-illuminated signs as proposed will have no adverse impact on the character of the conservation area in my opinion."

- 3.3 KENT COUNTY COUNCIL HIGHWAY SERVICES OFFICER: Raises no objection to the proposal.

4. REPRESENTATIONS

- 4.1 NEIGHBOURS: One representation was received which raised concern about the proposed lighting and the impact of this on the character and appearance of the High Street.

5. CONSIDERATIONS

5.1 Site and Surroundings

- 5.1.1 The proposal site is located to the south of the High Street in Headcorn, a classified highway (A274), and comprises a detached two storey building purpose built for retail under the provisions of MA/97/1775. The site is located within the Headcorn Conservation Area, and in close proximity to a number of listed buildings.

- 5.1.2 The site is located within the Low Weald Special Landscape Area, and in the "High Street, Headcorn" local retail centre, as defined in the Maidstone Borough-Wide Local Plan 2000.

5.2 Proposal

- 5.2.1 Advertisement consent is sought for two externally illuminated fascia signs and two externally illuminated projecting signs. One fascia sign would be affixed to the east elevation of the building, and the other advertisements would be to the front (north) elevation of the building, which forms the site frontage with the High Street.

- 5.2.2 Fascia sign to east elevation:

This advertisement would measure 0.725m by 5.135m by 0.1m, and would have a height to its base of 2.63m. The maximum height of the lettering would be 40cm, and it would read "Sainsbury's Local". The sign would be externally illuminated by 5 existing swan neck lights.

- 5.2.3 Fascia sign to north elevation:

This advertisement would measure 0.725m by 11.725m by 0.1m, and would have a height to its base of 2.93m. The maximum height of the lettering would be 40cm, and it would read "Sainsbury's Local" and would also state the hours of operation of the retail unit as "7am-10pm daily" (twice). The sign would be externally illuminated by 12 existing swan neck lights.

5.2.4 2No. projecting signs to north elevation:

The easternmost of the two projecting signs would measure 0.6m by 0.9m by 0.01m, and would have a height to its base of 2.63m. The maximum height of the lettering would be 12.5cm, and it would read "Sainsbury's Local". The sign would be externally illuminated by strip lighting to both sides.

5.2.5 The westernmost of the two projecting signs would measure 0.6m by 0.9m by 0.01m, and would have a height to its base of 3.025m. The maximum height of the lettering would be 12.5cm, and it would read "Sainsbury's Bank". The sign would be externally illuminated by strip lighting to both sides and would be positioned over the existing ATM.

5.2.6 The current application has been submitted in response to the expiry of the existing advertisement consent granted under MA/05/0956, which granted consent for the fascia signs, and the enforcement investigation detailed above, which relates primarily to the projecting signs.

5.2.7 The proposed advertisements are similar to those applied for under the previous consent but differ in relation to the detailed design. The advertisements would be in the standard corporate livery of Sainsbury's.

5.2.8 Specific details of the advertisements are set out in the application form and shown on drawing numbers 301 and 302 received 12th August 2011, and drawing number 303 received 11th October 2011.

5.3 **Assessment**

Policy Considerations

5.3.1 The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and PPG19 set out the considerations to be taken into account in the determination of such applications, restricting them to those of visual amenity, in terms of the particular qualities and characteristics of the locality; highway and public safety; and the provisions of the Development Plan, so far as they are material.

5.3.2 In the case of Maidstone there is a specific policy in the Maidstone Borough-Wide Local Plan 2000 (ENV8) which relates to advertisements and requires that consideration be given to the size, design, positioning, colour and method of illumination and their relationship with both the building they are attached to and the surrounding area. The policy also requires that the standard of design is appropriate for the location of the site.

5.3.3 In addition, the site is within the Headcorn Conservation Area, and in close proximity to listed buildings, and as such proposals for development should be assessed in accordance with policy BE6 of the South East Plan, and central government planning policy as set out in PPS5 Planning and the Historic Environment, whilst policies CC1 and CC6 of the South East Plan 2009, seek to secure a high quality of design which respects and if possible enhances the built and natural environment. Policy BE5 requires that proposals for village sites be subject to scrutiny in order that the character of the village is not damaged.

5.3.4 The issue of residential amenity is not covered by the scope of the legislation, if a statutory light nuisance were to result from the advertisements, it would be controlled through separate legislation, in this case the Environmental Protection Act 1990.

Planning Considerations

5.3.5 The design, scale and overall appearance of the proposed advertisements are considered to be acceptable in the context of the streetscene.

5.3.6 Objection has been raised by the Parish Council in regard to the strip lighting proposed to the projecting signs to the north elevation. Whilst these comments are noted, it is considered that this element of the proposal is not unacceptable given the village centre location, which is characterised by commercial development and recognised in the Local Plan as a retail centre, and is well lit by other forms of lighting. The Maidstone Borough Council Conservation Officer raises no objection to the proposal in respect of its impact upon either the character or appearance of the Headcorn Conservation Area or the setting of the nearby listed buildings.

5.3.7 Members will be aware that the current enforcement case, which concluded in 2009 that the introduction of the strip lighting in breach of the previous split decision was not expedient to pursue as detailed above in paragraph 2.5, is a material consideration in the determination of the current application.

5.3.8 No objection has been raised in respect of the swan neck lighting to the fascia signs, or the fascia signs themselves.

5.3.9 It is not considered that the proposal would result in harm to the character or appearance of the Special Landscape Area.

5.3.10 The advertisements, although sited in close proximity to the highway, are not unduly prominent or obstructive to the visibility of highway users, and would not serve to distract drivers. Consequently, the proposal would not affect highway safety. The Kent County Council Highway Services Officer raises no objection to the proposal.

5.3.11 For the reasons set out above, in the circumstances of this case I consider that the proposal is, on balance, acceptable.

5.4 **CONCLUSION**

5.4.1 Taking all of the above into account, it is considered overall that the proposal complies with Development Plan policy and the central government planning policy and guidance as set out in PPG19. I therefore recommend to Members that advertisement consent is granted subject to the following conditions.

6. **RECOMMENDATION**

GRANT ADVERTISEMENT CONSENT subject to conditions:

1. (i) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.

(ii) No advertisement shall be sited or displayed so as to-
 - (a) endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);
 - (b) obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or
 - (c) hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
(iii) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.

(iv) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.

(v) Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

Reason: In accordance with the provisions of Regulation 14 of The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

2. The advertisement(s) for which consent is hereby granted must be removed in accordance with condition 1 (iii) within five years of the date of this consent;

Reason: In accordance with the provisions of Regulation 14 of The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.

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Agenda Item 20

THE MAIDSTONE BOROUGH COUNCIL **PLANNING COMMITTEE – (3/11/11)**

APPEAL DECISIONS:

1. **MA/10/0167 -(Article 10 Consultation – Materials Recycling Facility)**

APPEAL: DISMISSED

The Old Quarry Straw Mill Hill Tovil Maidstone

Planning Committee

2. **MA/10/1345 - Demolition of public house and erection of five houses and six apartments**

APPEAL: DISMISSED

Former Papermakers Arms 509 Loose Road Maidstone

Planning Committee

3. **MA/10/1741- Minor alterations to footprint to approved 2 storey side extension planning reference: MA/09/0508 - no increase in height proposed.**

APPEAL – ALLOWED

7 Hazelwood Drive Maidstone

Planning Committee

4. **MA/11/0040 -Three bay garage with ground and first floor annex**

APPEAL: DISMISSED

Mountview House, Greenway Forstal, Harrietsham, Maidstone

Planning Committee

5. MA/11/0476 – Erection of a two storey side extension.

APPEAL- ALLOWED

Bridge Oast, Collier Street Marden

Planning Committee
