

APPLICATION: MA/11/0154 Date: 28 January 2011 Received: 7 February 2011

APPLICANT: Mr & Mrs M Moore

LOCATION: 7, ROUNDEL WAY, MARDEN, TONBRIDGE, KENT, TN12 9TW

PARISH: Marden

PROPOSAL: Retrospective planning permission for the change of use of land from agriculture to residential garden as shown on 2no. A4 site plans received on 4th February 2011.

AGENDA DATE: 30th June 2011

CASE OFFICER: Richard Timms

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

- Councillor Verrall has requested the application be reported to Committee if minded to recommend refusal for the reasons outlined below.

1. POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV28, H31

The South East Plan 2009: CC1, CC6, C4

Government Policy: PPS1, PPS7

2. HISTORY

MA/03/1627 Retrospective application for the erection of rear conservatory-
APPROVED

MA/95/1117 Erection of a seven detached dwellings with garaging and new vehicular
access – ALLOWED AT APPEAL

MA/95/0293 Residential development of 8 No. dwellings and garages with access
driveway – ALLOWED AT APPEAL

MA/94/1155 Outline application for demolition of existing buildings and redevelopment
of existing builders yard and funeral directors – APPROVED WITH
CONDITIONS

3. CONSULTATIONS

- 3.1 **Marden Parish Council:** Wish to see the application approved but do not request the application is reported to Planning Committee.

"Councillors wished the application to be approved however would want to see permitted development rights removed."

- 3.2 **Rural Planning Ltd:** Raises objection to the loss of Grade 2 agricultural land.

"I understand these applications follow the recent sale of a strip of land (overall maximum dimensions about 100m x 20m) to the rear of the above 3 properties and No 19 Roundel Way plus two further adjoining properties off Napoleon Drive, No.s 15 and 17. The strip of land lies at the northern end of an arable field of 5ha or so.

An L-shaped section behind Nos. 7 and 19 have been incorporated into the garden of No 7, whilst a smaller square behind No 5 has been taken in with the latter property. The parts of the strip behind No 21 Roundel Way and Nos. 15 and 17 Napoleon Drive have yet to be incorporated, but since the sale now appear uncultivated

The agents dealing with No 7 confirm that the land in question is identified as Grade 2 quality on the relevant DEFRA classification map, i.e. within the category of "best and most versatile" (BMV) land which warrants particular consideration as to development proposals under relevant policies. Because of the limitations of the DEFRA mapping, a detailed soil survey would be required to definitely establish whether this particular land was of BMV status, but for the majority of the strip of land concerned (with the exception of 2 small corners further identified below) I would advise that no clear evidence of that sort has been presented to the contrary to date, nor are there any indications on the ground that suggest it would be obviously wrong to assume that it is so designated.

The total, and individual, areas concerned are quite small, but Natural England recognises agricultural land as an important national resource. (Source: Natural England Technical Information Note TIN049 Agricultural Land Classification: protecting the best and most versatile agricultural land, January 2009). Planning policies seek, where possible, to protect the long-term productive potential of the best quality agricultural land. The protection policy "is relevant to all planning applications, including those on smaller areas but it is for the planning authority to decide how significant are agricultural land issues and the need for field information". If small areas were excluded this would ignore the potential cumulative effects of multiple applications.

The Classification is concerned with the inherent potential of land under a range of farming systems. The current agricultural use, or non-use, or intensity of use does not affect the ALC grade per se.

The cultivation and cropping of the field in recent years can be seen in aerial imagery. This cultivation and cropping includes most of the overall strip, but (prior to the erection of the new fencing to the rear of No 7 and No 5) there were two rather awkward corner areas, one adjoining No 19 and No 7, and one adjoining No 7 and No 5, where cultivation and cropping were not apparently taking place. These two areas, in my view, could be

regarded, in practice, as not representing any significant loss to agriculture, but they only comprise a fairly small proportion of the overall strip.

Garden extensions within the two small areas referred to above, would be possible without affecting the efficient cultivation of the rest of the field. This would include all the land taken in by No 5 (Roundel Way), but not all the land taken in by No 7, much of which was cultivated and cropped previously."

4. REPRESENTATIONS

4.1 **Councillor Verrall:** *"If you are minded to refuse this application please report it to the Planning Committee for the reasons set out below:*

The increased size of the garden will allow the applicant's children more space to play safely without detracting from the existing surroundings."

4.2 Two representations from neighbours have been received, one offering support and the other raising objections. I summarise both as follows:

- I support the application, not least because it has cleared up what was an unsightly piece of waste ground and has reduced the maintenance involved in controlling weeds and invasive brambles.
- The close boarded fence stretches out into the agricultural field like a suburban intrusion and is required to secure additional privacy.
- Should be post and rail and not stock proof fencing.
- Loss of view.
- Will result in paraphernalia within extended garden.
- The planting of non-native fast growing leafed hedging all around the perimeter is out of character.

5. CONSIDERATIONS

5.1 Introduction

5.1.1 This is a retrospective application to change part of an agricultural field to domestic garden land at 7 Roundel Way, Marden.

5.2 Site Location

5.2.1 The application site is an L-shaped parcel of land to the south of the lawful garden associated with the applicant's house, 7 Roundel Way, a detached two storey dwelling. Roundel Way is at the southwest edge of Marden village and is a cul-de-sac off Albion Road to the east with mainly detached houses built in the 1990's. The applicant's house is within a group of 8 houses approved under a different permission to the rest of Roundel Way.

- 5.2.2 The land proposed for a change of use has a length of around 38m on the outside southern boundary, 20m on the outside west boundary and around 9m on the east and covers an area of around 460m². It mainly adjoins the lawful garden of no. 7 but part of the north edge runs alongside a drainage ditch with the rear garden of 19 Roundel Way just over 2m further north. It was turfed with grass earlier in the year and is bounded by post and rail stock proof fencing with ornamental hedging on the south side and 1.8m high close boarded timber fencing on the west and east sides.
- 5.2.3 Adjoining the site to the east is a parcel of land, which has also been changed to garden land associated with 5 Roundel Way that is the subject of retrospective application MA/11/0201, which is elsewhere on the papers. Adjoining the site to the west is a parcel of land proposed for a change of use to garden land under application MA/11/0842, which is still being considered. I also understand that two more parcels of land have been sold further west.
- 5.2.4 The application site was formerly part of a larger arable field to the south, which extends southwards for around 250m and westwards for around 200m. Along the east side of this field are the rear gardens of houses which front Albion Road. Further to the west and southwest is open countryside made up of arable fields and orchards bounded by established hedgerows. Public footpaths KM280, KM281 and KM283 are located between 80m and 160m to the west and south.
- 5.2.5 Both the applicant's house and most of the lawful garden are actually outside the settlement boundary of Marden in the Local Plan as is the application site. However the physical boundary of the village is clearly defined by the edge of gardens both to the west and south which can be seen on the plan attached at **Appendix 1**.
- 5.2.6 The site also falls upon land classified as being Grade 2 agricultural land under the National Agricultural Land Classification system (ALC) which is regarded as being the best and most versatile agricultural land under PPS7. This is the land considered to be the most flexible, productive and efficient.

5.3 **Proposed Development**

- 5.3.1 Retrospective permission is sought to change the parcel of land from agricultural use to be used as a garden associated with 7 Roundel Way. As stated above, the land is grassed and is bounded by post and rail stock proof fencing with ornamental hedging on the south side and 1.8m high close boarded timber fencing on the east and west sides. The applicant considers that the existing garden is quite small for a five bedroom house and that the additional space allows for their four children to play and exercise and for the family to enjoy a more sustainable lifestyle by growing fruit and vegetables for their own use.

5.4 **Assessment**

5.4.1 The site is within the open countryside where local and national planning policies seek to restrict development and to protect the character and appearance. Policy ENV28 states that,

"In the countryside planning permission will not be given for development which harms the character and appearance of the area"

5.4.2 Policy H31 relates to the change of use of agricultural land to domestic garden land and states that,

"Planning permission will not be granted for the change of use of agricultural land to domestic garden if there would be:

- 1) Harm to the character and appearance of the countryside; and/or*
- 1) Loss of the best and most versatile agricultural land"*

The accompanying text states that,

"The change of use of agricultural land to domestic garden land is, in principle, contrary to the objectives of safeguarding the character and functioning of the countryside. However, in exceptional circumstances, extensions to residential gardens may be allowed where the overall appearance of the countryside is not compromised."

5.4.3 Policy CC6 of the South East Plan 2009 outlines that actions and decisions associated with the development and use of land should respect, and where appropriate enhance, the character and distinctiveness of settlements and landscapes. Policy C4 concerns landscape and countryside management, essentially outlining that outside nationally designated landscapes, positive and high quality management of the region's open countryside will be encouraged, protected and enhanced, securing appropriate mitigation where damage to local landscape character cannot be avoided.

5.4.4 PPS7: Sustainable Development in Rural Areas outlines at paragraph 15 that,

"Planning authorities should continue to ensure that the quality and character of the wider countryside is protected and, where possible, enhanced."

At paragraph 28 it states that,

"The presence of best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification), should be taken into

account alongside other sustainability considerations when determining planning applications."

5.4.5 I therefore consider the main issues to be the impact upon the character and appearance of the countryside and the loss of the best and most versatile agricultural land.

5.5 **Visual Impact on the Countryside**

5.5.1 The edge of this part of Marden village is clearly defined physically on the ground as the edge of the gardens of houses on Roundel Way and on Albion Road to the east. Beyond these gardens and the southwest of village, arable fields, orchards and grazing land with hedgerow boundaries make up the character of the countryside here. The edge of the gardens mark a clear visible line with the fields beyond and there is not a gradual change from a housing estate to the countryside but instead an immediate stop and change in land character from gardens to an agricultural field. For this reason, I consider any alteration to this established boundary and extension of the garden into the field results in a significant change.

5.5.2 The proposal results in an intrusion into the field of a different landscape character being a domesticated area of land with inevitable tended grass and ornamental planting. Along with this, close-boarded fencing has been erected at both sides of the land which is intrusive and not a sympathetic rural boundary treatment and one which increases the prominence of the change in land use and its harm. With any change to garden land you would inevitably expect to see domestic paraphernalia such as climbing frames, moveable goal post, children's toys, furniture etc. which would result in more domestic intrusion and harm.

5.5.3 Whilst conditions could be attached to substitute the close boarded fencing for more sympathetic treatments and native landscaping could be secured, I still consider the intrusion and erosion of the arable field would be harmful to the area.

5.5.4 Having walked the footpaths to the south and west in March this year, I noted that the site is visible from here as the land is flat and the crop (rape seed) was low in height. Having re-visited the site in June, I noted that the rape seed was at its full height and does provide some screening of the site. However, any summer crop would only provide this degree of screening for around 2 months a year when it reaches full height and before it is cropped, so for the rest of the year the site would be exposed. The official route of footpath KM283 comes within 90m of the site, however this doesn't appear to be that well used and people tend to walk around the edge of the arable field. However, clearly one is able to use this route. In addition, the site can be seen from the other official and diverted footpaths between 160m and 200m away. I also noted that when

walking the paths in the morning they were very well used by a large number of people walking dogs. (The official and unofficial footpaths are also marked on the plan at **Appendix 1**)

5.5.5 Therefore the development results in the intrusion into, and erosion of, undeveloped agricultural land. The site is a relatively large area of land and I consider it causes harm to the character and appearance of the countryside hereabouts, which is visible from public vantage points on footpaths to the west and south. For this reason I consider there is clear conflict with policies ENV28 and H31 of the Local Plan.

5.6 **Best and Most Versatile Agricultural Land**

5.6.1 Policy H31 states that planning permission will not be granted for the change of use of agricultural land to domestic garden if there would be loss of the best and most versatile agricultural land. The land here is categorised as falling within Grade 2 and therefore falling within this definition under PPS7. The applicant has provided no evidence, such as soil testing, to demonstrate that it does not fall within this classification and I note advice from Rural Planning Ltd following a site inspection, is that there are no indications on the ground that suggest it would be wrong to assume that it falls within this category.

5.6.2 With regard to the loss of this land, the agent states that,

"the land was previously on the edge of the field which was in arable cropping. However, due to its proximity to the residential properties, not all of the land was cropped, instead forming part of the arable margin."

"the positioning of 7 Roundel Way that already sticks out into the agricultural field making it difficult for agricultural machinery to manoeuvre around. Thus the loss of economically viable agricultural land is little."

5.6.3 I would suggest that it may not have been possible to use the land right up to the boundary with the houses, however, I see no reason why most of the land could not be used for production. Clearly, a lot of arable fields have margins but this is not sufficient grounds to allow development of them. Advice from Rural Planning Ltd. is that the loss of some small areas within the corner of the field would be possible without affecting the efficient cultivation of the rest of the field but this would not include all the land taken in by this proposal, much of which was cultivated and cropped previously. Having looked at aerial photographs from 2003 and 2008, they confirm that around half of the land was used for growing crops. Consequently this productive land would be lost to the development.

5.6.4 With regard to the reference to the property already sticking out and causing an awkward field corner, the extension of the garden in turn has created an awkward corner for cultivation so I give this no weight.

5.6.5 Overall, the proposals will result in the loss of the best and most versatile agricultural land contrary to policy H31 of the Local Plan, for which there is no overriding justification.

5.7 **Other Matters**

5.7.1 The point made by both Councillor Verrall and the applicant is that the lawful garden is small for a five bedroom house and the extension will provide more space for children, however, I do not consider this is sufficient to outweigh the harm caused to the countryside. I certainly do not consider it warrants increasing the garden by over three times its size, resulting in a garden larger than most in the housing estate. I also note that in the Inspector's decision to allow the dwelling in 1996, he stated that, "*in my judgement, the amount of amenity space on plot 4 (7 Roundel Way) would be adequate, being no smaller nor less attractive for use as a private garden than other examples which have been permitted on the adjoining estate.*" A conservatory has been provided in the rear garden since that decision, however, I still do not consider the garden is so small so as to override the harm to the countryside.

5.7.2 The agent points out that the land has been assessed under the Strategic Housing Land Availability Assessment (SHLAA) as having potential for housing development and therefore if development were to go ahead the agricultural land would be lost. The purpose of the SHLAA is simply to identify potential housing land and it does not make judgements about whether this should be included in the Local Development Framework (LDF). It is the role of the LDF process through public consultation and legal examination to determine the distribution strategy and following that, which sites should be allocated for housing development. So just because it has been identified as having some potential, this should not mean that harmful garden extensions upon such land should be accepted.

5.7.3 The issue of a loss of view has been raised by a neighbour, however, this is not a planning consideration. I do not consider the change to garden land would result in a poor outlook for any neighbouring properties or any unacceptable loss of privacy.

6. **CONCLUSION**

6.1 The change of use of land results in a large extension of domestic land into an arable field which has an adverse impact upon the character and appearance of the countryside hereabouts contrary to policies ENV28 and H31 of the Local Plan.

This intrusion and consequent harmful change is visible from public footpaths to the south and west of the site. The change of use also results in the loss of the best and most versatile agricultural land contrary to policy H31 of the Local Plan. For these reasons I recommend the application is refused.

7. RECOMMENDATION

REFUSE PLANNING PERMISSION for the following reasons:

1. The change of use of land to domestic garden due to its size and intrusion into the adjoining agricultural field results in harm to the character and appearance of the countryside hereabouts contrary to policies ENV28 and H31 of the Maidstone Borough-Wide Local Plan 2000, policies CC6 and C4 of the South East Plan 2009 and PPS7.
2. In the absence of any evidence to demonstrate otherwise, the change of use of land to domestic garden land results in the loss of the best and most versatile agricultural land contrary to policy H31 of the Maidstone Borough-Wide Local Plan 2000 and PPS7.