

APPLICATION: MA/11/1039 Date: 12 July 2011 Received: 12 July 2011

APPLICANT: Mr Zoren Cheek

LOCATION: 26, COTSWOLD GARDENS, DOWNSWOOD, MAIDSTONE, KENT,
ME15 8TB

PARISH: Downswood

PROPOSAL: Application for new planning permission to replace extant planning permission in order to extend the time limit for implementing planning permission MA/08/1275 (erection of 1 No. dwelling) as shown on drawing numbers 180-E/01, 180-E/02, 180-E/03, 180-E/04, 180-L/01, 180-L/02 and 180-L/03, supported by a design and access statement and flood risk assessment received 20th June 2008.

AGENDA DATE: 1st September 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.
- Councillor Newton has requested it be reported for the reason set out in the report.

1. POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV6, T13

South East Plan 2009: SP3, CC1, CC4, CC6, H4, T4, NRM4, BE1

Village Design Statement: Not applicable

Government Policy: PPS1 Delivering Sustainable Development, PPS3 Housing, PPG13 Transport, PPS25 Planning and Flood Risk

Other: Kent Design Guide 2005 (SG), Maidstone Borough Council Policy/Development Advice Note – Changes to PPS3

2. HISTORY

2.1 The site is the subject of a great deal of planning history which relates to the development of Spot Quarry as a housing estate, but none of any direct relevance to the current application in addition to that summarised below:

MA/09/1879 An application for a Certificate of lawfulness for a proposed development for the erection of a single storey front extension – APPROVED

MA/08/1275 Erection of 1 No. dwelling – APPROVED WITH CONDITIONS
MA/95/0984 Erection of two storey side extension - APPROVED WITH
CONDITIONS

2.2 The current application is for a replacement permission to extend the time limit for the implementation of planning permission MA/08/1275. The principle and detail of the proposed development has therefore previously been accepted. Conditions 2 (materials), 4 (boundary treatments) and 5 (landscaping) have been discharged under MA10/1443.

3. CONSULTATIONS

3.1 **Downswood Parish Council:** Raise objection to the application on the grounds of over development and harm to ecological interests, and made the following detailed comments:

“...Our Parish is one of the densely populated parishes in the county of Kent with parking problems as it is. The proximity to a proposed Nature Reserve is a worry. With the fact that Downswood is overdeveloped as it is this could set a dangerous precedent.”

3.2 **Kent County Council Ecology Officer:** Raises no objection to the application and makes the following detailed comments:

“No ecological information has been submitted with this application. However as a result of carrying out a site visit, reviewing aerial photos and information supplied by the planning officer we feel that there is minimum potential for the site to contain protected species. As a result we do not require an ecological survey to be submitted.

...

We are aware that the River Len and a woodland area are adjacent to the site and concerns have been raised about the potential impact this development may have on this area. As a result of visiting the site we have identified the following:

- There is a large 3m high stone barrier on the boundary of the proposed development.
- There is a 5m wide path between the proposed development site and the woodland area.

- There is a tightly fitting fence around the boundary of the proposed development.

As a result we feel that the impact will be minor as all the above points will minimise the potential of any species moving from the woodland area to the proposed development site.”

The officer also suggested possible enhancements that could be incorporated into the development, including bat bricks and tiles and bird boxes.

3.3 Maidstone Borough Council Landscape Officer: Raised no objection to the application, and made the following detailed comments:

“I am satisfied that the proposal will not result in any harm to the roots of trees in the adjacent Len Valley corridor, due to the difference in ground level and separation by existing hardstanding. There are no trees present on the site that I consider to merit protection by a Tree Preservation Order.

As far as I am aware, condition 5 of the original consent has never been discharged, and if you are minded to grant consent, I would like to see the same condition used again. The applicant should be guided (by condition or informative as appropriate) to submit a landscaping scheme that reduced the total area of hardstanding and introduced more soft landscaping, using native species where possible, particularly on the site boundaries, to better integrate the proposal into its surroundings and to enhance biodiversity.”

4. REPRESENTATIONS

4.1 Councillor Newton wished to call the application in to Planning Committee for the following reasons:

- “1. The proposed development will affect the ecological balance of the Spot Lane/Len Valley that may impact on the habitat of the rare Woodland Grasshopper (*Omocestus rufipes*) recently discovered in the vicinity of the proposed development.
2. Overdevelopment of the area.”

4.2 No neighbour representations have been received.

5. CONSIDERATIONS

5.1 Site Description

5.1.1 The proposal site is located within a late twentieth century housing estate located within the defined urban boundary of Maidstone, in the parish of Downswood. The site is located on the northern periphery of the estate at the end of a residential cul de sac.

5.1.2 The application site comprises the side and front garden of number 26 Cotswold Gardens, which is the northernmost property in a terrace of four two storey dwellinghouses. The properties that form the terrace are narrow, having widths of just over 4m. The site is level and the rear is laid to turf with some landscaping to the sides. The front of the site is partially hard surfaced with concrete and partially landscaped, the landscaping including a mature fruit tree which was bearing fruit at the time of the site visit. The rear of the site is currently enclosed with a 1.8m close boarded fence. There is an existing vehicle access to the public highway, and the front garden currently provides off road parking for three vehicles.

5.1.3 The site is surrounded to the south, east and west by residential development, however the north boundary of the site is adjacent to Spot Lane and its verges, which is not used by public vehicles at this point. The proposal site is elevated by approximately 3m in relation to Spot Lane, and the boundary between the highway and the proposal site is marked by a Gabion Wall. A footpath located immediately to the east of the site links Cotswold Gardens with Spot Lane via steps leading down to the lower land to the north.

5.1.4 On the northern side of Spot Lane lies an area of woodland which separates Spot Lane from the River Len, which is located 25.8m to the north of the proposal site. The land to either side of the River Len in this location is recorded on the Environment Agency Flood Risk Map as falling within Zone 3 Flood Zone. The proposal site falls within this zone.

5.1.5 The site has no specific environmental or economic designations in the Local Plan, and whilst comments have been received in response to the consultation drawing attention to the intention to allocate the land to the north of the proposal site as part of the Len Valley Nature Reserve, the designation has not been formally adopted, and therefore neither does any of the land adjacent to the site. Notwithstanding this, the area of woodland between Spot Lane and the River Len to the north of the proposal site is covered by TPO 9 of 1975.

5.1.6 The documentation relating to the application is that approved under MA/08/1275.

5.2 Proposal

5.2.1 The proposal under consideration is the erection of a two storey dwellinghouse to the north elevation of number 26 Cotswold Gardens, which would effectively become the end dwelling in a terrace of five dwellings.

5.2.2 The current application is for a new planning permission to replace an extant planning permission for the erection of a single dwellinghouse, as detailed in the documentation submitted in support of MA/08/1275. The application shall be determined on basis of the details previously submitted, and cannot be modified at this

time. The existing permission was granted subject to conditions by Planning Committee at the meeting on 18th September 2008. A copy of the Committee report is attached as Appendix 1.

5.2.3 As stated above, the proposed dwelling has previously been assessed by Planning Committee and found to be acceptable in the context of the planning policy framework in place at the time of the previous decision. The application has therefore been fully considered in terms of design and scale; the visual impact upon the existing terrace of four dwellings, the streetscene of both Cotswold Gardens and Spot Lane, and the character and appearance of the Len Valley; flood risk; highways; and the impact of the proposal on the residential amenity of the occupiers of neighbouring residential properties.

5.2.4 The current application must therefore be considered in the context of whether there have been any changes to the physical circumstances of the site or surroundings, or in planning policy terms since then, such that a different decision (or additional conditions) would be warranted.

5.2.5 In this case, there have been no significant changes to the physical setting of the proposal site. The Gabion wall was in place at the time of the determination of the previous application, and whilst some settling of this structure may have occurred in the intervening period, there is no evidence to suggest that it has been deformed in this time. In any case, the structural integrity of the wall is not a matter for consideration under the provisions of the planning system. Since the time of the previous determination an application for a Certificate of Lawful Proposed Use or Development has been granted under MA/09/1879 for a single storey front extension to number 26 Cotswold Gardens, which has not yet been implemented. It is not considered that the erection of the structure considered under MA/09/1879 on the appearance of the development currently under consideration. Otherwise, there are no extant planning permissions for development in the close vicinity of the site.

5.2.6 With regard to amendments to the policy framework since the time of the previous decision, the key modification is the change of PPS3: Housing in June 2009 which had the effect of removing private residential garden land from the scope of previously developed land as defined in Annex B of the PPS as republished in June 2011.

5.2.7 As Members will be aware, the Maidstone Borough Council response to the changes to PPS3 is set out in a "Development Advice Note – Changes to PPS3" which is attached as Appendix 2. The position of the Council is that the effect of the policy change is to remove a presumption in favour of development of garden land. However, whilst the 'old' PPS3 didn't allow for the development of all garden sites, it is not now the case that the amended PPS3 means that all development in gardens should be refused. It follows that each application must be judged on its own merits.

5.2.8 In this case, given the crucial change to national planning policy outlined in paragraphs 5.2.6 and 5.2.7 above, whilst the detail of the proposal is considered to be acceptable, as stated above in paragraphs 5.2.2 and 5.2.3, the principle of the development is the primary matter for consideration under the provisions of the current application.

5.3 Principle of Development

5.3.1 The current application is for the renewal of an extant permission, MA/08/1275. Three out of four pre-commencement conditions attached to the existing permission have been discharged, and, given that the current permission does not expire until 17th September 2011, it is possible for the extant permission to be implemented. This is a significant material consideration in the assessment of the current application.

5.3.2 Notwithstanding the above, the proposal site comprises the side and front garden of number 26 Cotswold Gardens, and therefore no longer falls within the scope of previously developed land, as detailed above. However, the proposal site is located in a sustainable location in close proximity to services and facilities including shops, schools and transportation links within the defined built up area of Maidstone, in accordance with central government planning guidance and policy as set out in PPS1: Delivering Sustainable Development and PPS3: Housing, notwithstanding the change to the definition of previously developed land in Annex B of PPS3. The proposal site is therefore considered to represent a suitable site for residential development, subject to the impact of the proposal on the character and appearance of the area. As set out above, these matters have been previously considered by Planning Committee, however I will revisit these elements of the impact of the development in the light of the policy change to PPS3.

5.3.3 The proposal site is located to the northern periphery of the residential estate at the end of a cul de sac. As such, the space plays a limited role in maintaining the openness of the residential development, and its overall visual impact upon the streetscene of Cotswold Gardens is limited. The design of the proposed dwelling would match that of the existing properties in the terrace, and would not have any significant effect of eroding the openness of the area.

5.3.4 In respect to the impact on Spot Lane, as set out above in paragraph 5.1.3, there is a difference in land levels of approximately 3m between the site and the adjacent land to the north, and as such the visual impact of the development on the character and appearance of Spot Lane would be restricted.

5.3.5 Although the site lies within an area recorded by the Environment Agency as being susceptible to flooding, a flood risk assessment was submitted in support of the previous application, and the Environment Agency did not raise objection to the proposal at that time.

5.3.6 In the light of the above, it is considered, notwithstanding the amendments to PPS3 since the time of the previous determination, that the principle of the development remains acceptable in policy terms.

5.4 Other Matters

5.4.1 Various concerns have been raised by Downswood Parish Council and Councillor Newton. I will address these in turn.

5.4.2 The consideration of whether the proposal would result in overdevelopment of the site was previously considered under MA/08/1275. The assessment of the officer was as follows:

"The applicant has sought to achieve a design which reflects other property in the area and I consider this to be the correct approach. The new dwelling would have approximately the same footprint and height as those adjoining it, and I do not [consider] that it would be 'tall, thin or crammed on the site' or seriously erode the area of green land between the two settlements. I note that the Parish Council feels that it constitutes overdevelopment, but since the plot is very similar to others nearby, cannot accept this view."

5.4.3 I concur with the previous officer's conclusion.

5.4.4 Concern was also raised by the Parish Council in regard to parking. As Members will be aware, the Council is dependent on central government planning guidance as set out in PPG13 Transport, which allows developers great latitude in what level of parking they wish to provide for developments. Whilst PPG13 has been amended since the previous determination to allow more scope for local needs for parking to be taken into consideration, in the absence of any local adopted parking standards the Council should accept what is proposed, which in this case, being 4 off road parking spaces for number 26 and the proposed dwelling, is considered to be acceptable in the context of the location of the site.

5.4.5 In addition to the above concerns, Councillor Newton also raised concern over the impact of the development on the "ecological balance" of the Len Valley. The Kent County Council Ecology Officer has been consulted on the application, and the comments received in response are set out above, which concluded that the character of the proposal site, which is landscaped and partly hard surfaced and as a result of limited potential as habitat for species, and the physical barriers between the site and the River Len and woodland are such that the proposed development would have no impact upon the ecological value of the Len Valley.

5.4.6 It is noted that the process of designating the land to the north of the proposal site as part of the Len Valley Nature Reserve is in progress, however it is not yet formally designated, and there is no guarantee that this will ever take place. This

cannot, therefore, be taken into consideration in the determination of the current application. In any case, as set out above it is not considered that the development would result in harm to the ecological or biodiversity value of the land.

5.4.7 In respect of conditions attached to the previous permission, as discussed above the applicant has discharged conditions 2 (materials), 4 (boundary treatments) and 5 (landscape). The details submitted in relation to materials and boundary treatments are considered to be acceptable, however it is considered appropriate in the circumstances of this case, and in the context of the comments from the Maidstone Borough Council Landscape Officer and the concerns of Downswood Parish Council and Councillor Newton, to require the submission of further details of hard and soft landscaping which should include, notwithstanding the details of hard surfacing shown on drawing number 180 L/01 received 20th June 2008, the retention of the fruit tree in the front garden of the property and robust planting to the northern boundary of the site with Spot Lane. This will require the imposition of an amended condition requiring the submission of details of car parking.

5.4.8 Conditions should also be attached requiring the development to be undertaken in accordance with the materials and boundary treatments approved under MA/10/1443, and a further condition requiring the development to achieve at least Level 2 of the Code for Sustainable Homes, in line with condition 2 attached to MA/08/1275, amended to be in accordance with current suggested wording of such conditions.

6. CONCLUSION

6.1 In the circumstances of this case the application to a new planning permission to replace an extant planning permission for the erection of a single dwellinghouse is considered to be acceptable in principle in this location, notwithstanding the changes to PPS3: Housing set out above, and it is not considered that the loss of garden land in this case would be detrimental to the appearance of the streetscene or the character of the area.

6.2 For the reasons set out above and having regard to the policies of the Development Plan and any other material considerations, the proposed development is considered to be in accordance with the policies of the Maidstone Borough-Wide Local Plan 2000, the South East Plan 2010 and central government planning policy guidance and advice, and I therefore recommend the application for approval subject to the conditions set out above.

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 constructed using the materials approved under reference MA/10/1443 being Draycott Multi Red bricks; Marley Modern brown roof tiles, cedar panelling and cream-coloured render, unless otherwise agreed in writing by the Local Planning Authority;

Reason: To ensure a satisfactory appearance to the development in accordance with policies CC1, CC6 and BE1 of the South East Plan 2009.

3. 'The dwelling shall achieve Level 2 of the Code for Sustainable Homes, and shall not be occupied until a final Code Certificate has been issued for it certifying that Code Level 2 has been achieved:

Reason: To ensure a sustainable and energy efficient form of development in accordance with policy CC4 of the South East Plan 2009 and central government planning policy guidance in PPS1 Delivering Sustainable Development.

4. The details of all fencing, walling and other boundary treatments approved under MA/10/1443 shall form part of the development, unless otherwise agreed in writing by the Local Planning Authority;

Reason: To ensure a satisfactory appearance to the development in accordance with policies CC1, CC6 and BE1 of the South East Plan 2009.

5. Notwithstanding drawing number 180 L/01 received 20th June 2008 and the landscape details approved under MA/10/1443, no development shall take place until a revised hard and soft landscaping scheme, showing a reduction in the hard surfacing to the front garden of the proposed dwelling shall be submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, using indigenous species which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, 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, and shall include, inter alia, the retention of the existing fruit tree; landscaping along the northern boundary of the site with Spot Lane; and details of all hard surfacing and car parking and turning areas, which shall incorporate permeable surfaces;

Reason: To ensure a satisfactory appearance to the development in accordance with policies ENV6 of the Maidstone Borough-Wide Local Plan 2000 and CC1, CC6 and BE1 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; 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 ENV6 of the Maidstone Borough-Wide Local Plan 2000 and CC1, CC6 and BE1 of the South East Plan 2009.

7. The areas shown on the details submitted and approved in accordance with condition 5 as vehicle parking and turning areas shall be provided, surfaced and drained to the satisfaction of the Local Planning Authority before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to these areas;

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to parking inconvenient to other road users and be detrimental to highway safety and amenity, contrary to policies T13 of the Maidstone Borough-Wide Local Plan 2000 and T4 of the South East Plan 2009 and guidance in PPG13 Transport.

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

180-E/02, 180-E/03, 180-E/04, 180-L/02, 180-L/03 received 20th June 2008;

Reason: To ensure the quality of the development is maintained in accordance with policies CC1, CC6 and BE1 of the South East Plan 2009.

Informatives set out below

The Environment Agency encourages the installation of grey water recycling facilities and methods for rainwater collection for domestic purposes. Although the benefits of

such systems are small regarding reduced storm water storage and discharge from developments, there is the additional benefit of reduced consumption of domestic potable water. This results in reduced abstraction of water and therefore helps maintain the wetland environment during prolonged dry periods. The publication PPS1 (Delivering sustainable development), gives weight to the installation of both SUDS (sustainable drainage systems) and grey water recycling systems for new developments.

The Local Planning Authority's drainage engineers should be satisfied with the method of surface water drainage on the site. If soakaways are permitted, the Environment Agency normally recommends that they should be designed to accommodate the 100 year rainfall event plus climate change, which according to PPS25 (Development and flood risk) represents an additional 30% increase in peak rainfall intensity.

Attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 and to the Associated British Standard Code of practice BS5228:1997 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.

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.

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.

The occupants should register with the Environment Agency's Floodline Warnings Direct Service.

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.