

**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 27<sup>th</sup> 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.**



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## 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

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**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 Maldstone 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.
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### 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
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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, WALDESLADE.



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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  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email:enquiries@pins.gsi.gov.uk

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

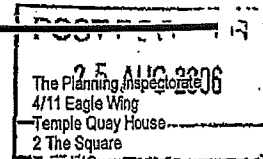


## Appeal Decision

Site visit made on 5 June 2006

by **P W Clark MA MRTPI MCI**

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  
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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