

APPLICATION: MA/11/1315 Date: 3 August 2011 Received: 22 September 2011

APPLICANT: Ms Reem Alasadi

LOCATION: EAST VIEW, BYDEWS GRANARY, FARLEIGH HILL, TOVIL,
MAIDSTONE, KENT, ME15 0JB

PARISH: Tovil

PROPOSAL: Raising of garden land to create terraced areas; retrospective change of use of an area of land to residential garden land and the erection of play equipment; the creation of wooden steps; and the erection of fencing.

AGENDA DATE: 29th March 2012

CASE OFFICER: Joanne Empett

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

- it is contrary to views expressed by the Parish Council
- Councillor Hogg has requested it be reported for the reason set out in the report

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, ENV35, H31
- South East Plan 2009: CC1, NRM7, C4, BE6
- Government Policy: PPS1 – Delivering Sustainable Development
PPS7 – Sustainable Development in Rural Areas

2. HISTORY

Planning Applications:

- 10/1010 – raising of garden land to create terraced areas – REFUSED 19.05.11
- 09/0464 – proposed new land levels and driveway and erection of detached garage (resubmission of MA/08/1258) – REFUSED 04.09.09
- 08/1750 – proposed new land levels and driveway and erection of detached garage (resubmission of MA/08/1258) – WITHDRAWN 05.11.08
- 08/1258 – erection of a single storey rear extension, alteration to fenestration, installation of 1 No. dormer window, alteration to external staircase to form

balcony, internal alterations and erection of detached garage – WITHDRAWN 13.08.08

- 00/0395 – East View and West View – infilling of area of 6000m³ in volume to landscape gardens – WITHDRAWN 23.08.00
- 95/0352 – renewal of planning permission MA/90/0091 being the conversions of granary and oasts to two dwellings and adjacent barn to ancillary garaging – WITHDRAWN 16.06.95
- 90/0091 – conversion of granary and oasts to two dwellings and conversion of adjacent barn to form ancillary garaging – APPROVED 15.06.90

Enforcement:

Issued 17.09.09 – Enforcement Notice in respect of East View – without planning permission, engineering operations comprising the importation of materials and the raising of ground levels – took effect 21.12.09

Issued 17.09.09 – Enforcement Notice in respect of Bydews Farm Cottage – without planning permission, engineering operations comprising the importation of materials and the raising of ground levels – took effect 14.06.10

Issued 30.07.08 – Temporary Stop Notice 0 Activities: (i) any further alterations to the levels of the land; (ii) any further disposal of waste material on the land – took effect 30.07.08 and ceased to have effect 27.08.08

Legal Action:

06.10.10 – Magistrates Courts in respect of failure to comply with a valid enforcement notice (issued 17.09.09 at East View) – Defendants being the two legal proprietors of East View – Found GUILTY of failing to comply with the Notice and sentenced to a 12 month conditional discharge.

3. CONSULTATIONS

Tovil Parish Council

Recommend refusal stating:

“Tovil Parish Council agreed to recommend refusal of this application on the same grounds as for the previous applications and the grounds used for the refusal by the Planning Inspector.

The Uncontrolled importation of materials and subsequent raising of land levels having taken place, has by reason of its extent and height, together with the loss and future damage to trees within and adjoining the site, caused harm, to the amenity of the adjoining properties which the occupiers could reasonably expect to be able to continue to enjoy and caused harm to the appearance of the countryside which is also designated as an Area of Local Landscape Importance. To permit this development would be contrary to policies of Maidstone Borough Council and the South East Plan.”

Neighbours

Letters of objection have been received from 3 parties.

One of those letters has been received from Ms Lunato who owns Title Number K766042, confirming that she is concerned with the development which they (the applicants) claim is going on on their land. Ms Lunato also notes that the applicants have signed (on the application form) that they own the land in question. Concern is also raised in respect of the excavating and movements of earth that has taken place on the land which she owns without planning permission.

The remaining grounds of objection can be summarised as follows:

- the application refers to an area of land which is not part of East View, rather belongs to a third party
- the outline drawn on East View includes part of West View and part of the wood which is in separate ownership
- the plans do not accurately reflect the scale and extent of the infill
- the play area and sleeper steps are on unlawful development of infill
- the drawings are inaccurate and misleading and the site location plan is not an official land registry copy
- concern is raised over the proximity of planting to the boundary with the adjacent property to the west
- the application is a further attempt to seek retrospective permission for the same materials and on the same land as previously which is covered by enforcement
- the further development at the site demonstrate the intention for continued non compliance to enforcement
- the deposited material continues to slide into adjacent land
- the development seriously interferes with right to privacy with the land levels being a good two metres higher than the adjacent land to the west
- four previous applications have been declined for the raising of the land, so this application must be declined
- the area of land for the change of use to residential garden and the erection of play equipment does not belong to the applicants and therefore should be declined
- the wooden steps and fencing are on land not belonging to the applicants with part of it belonging to third parties

Environmental Health

No Objection.

Originally, EH requested that a contamination land condition be attached if permission was forthcoming. However, following further discussions with them, it has been confirmed that as the proposed works do not involve excavation of land below the original ground levels, such a condition is not necessary.

CPRE

Request that the application is refused.

Raise concerns noting that the site is in the countryside and within an Area of Local Landscape Importance which is not only protected from inappropriate development by MBWLP 2000 saved policy ENV28 for the countryside but also saved policy ENV35 for the ALLI. They note that the landscape has already been considerably disturbed with the new surface having a sloping aspect. In contrast, the proposed drawing shows two flat topped terraces, but with a reduced height in an effort to reduce the height of the terraced area, but that does not reduce the scale nor the change of land surface as by constructing terraces the gradient of the landscape has been altered, and there are two terraces instead of one slope and flat land, yet adjacent raised land has created a gently sloping surface. There is no indication as to what has happened to the raised infill.

The high fence to the boundary with West View can obstruct light from a garden thereby reducing the growth potential of plants, and this would be exacerbated were the fence to be on top of the raised infill. That would also constitute a considerable adverse effect on the character and appearance of the countryside. Given the proposed reduction of the height of the terraces, there is no indication of the disposal of the soil to be removed nor of how any removal would safeguard the shared driveway from any lorry damage. The material has not been checked to ensure that it is not contaminated.

The introduction of domestic garden furniture has also altered the character and appearance of the countryside, in this instance the woodland beyond the main garden area and which forms a significant part of the ALLI.

The regular disturbance of the woodland could have an adverse effect on the fauna as well as the flora of the area thereby reducing the biodiversity of this interesting area, once part of a ragstone quarry, and subsequently reclaimed by "nature"

The steps are an intrusive feature.

Despite the reduction in the height of the terraces, the amount of material still on the site to raise the level of the surface area and change the topography of the site is intrusive and has an adverse effect on the character and appearance of the countryside within the ALLI, and with the high fence is likely to have an adverse effect on the amenities of the surrounding residents.

The play equipment has a deleterious effect on the appearance of the woodland and very likely reduces the biodiversity of the area, and the scale of the steps is intrusive.

English Heritage

Do not wish to offer any comments.

MBC Conservation Officer

No objection. It is noted that the works have no significant impact on the setting of the listed building.

MBC Landscape Officer

No objection. The Landscape Officer notes that the two sycamores and an ash show symptoms consistent with root death most probably due to asphyxiation by the raising of ground levels some years ago; noting that due to the trees lack of public amenity and their current declining condition, that they are not considered suitable for long term protection. It is noted that the proposed lowering of the previously raised ground as proposed is not likely to have much affect on any of the surrounding vegetation.

4. REPRESENTATIONS

Councillor Hogg requests that the application be reported to planning committee for the following reasons:

- 1. This applicant has completed 3 planning applications on this topic and failed to get planning permission over time.*
- 2. The application for, as not been completed in a true manner for the change of use of an area of land belongs to a "Mrs Lunato" which means the applicant has made a false claim to this land and completed section of certificates A, B, C, D falsely which I believe to be a criminal offence?*
- 3. There are still enforcements against this site which the applicants still have not addressed or made any attempt to clear.*
- 4. The terraced areas are not in keeping to the local area and since being fone over looks into neighbouring properties.*
- 5. After reading from the office of the Deputy Prime Minister 08/2005 "Guidance on changes to the Development Control System" it states under Repeat Applications Para. 8 Local Planning Authorities should use the power to decline to determine repeat applications only where they believe that the applicant is trying to wear down opposition by submitting repeated applications. If an application has been revised in a genuine attempt to take account of objections to an earlier proposal the Local Planning Authority should oppose the submission of this application".*

5. **BACKGROUND**

- 5.1.1 The material/soil originally began to be deposited on the rear garden area of the site in September 2007. An investigation confirmed that a large amount of material consisting mainly of soil had been deposited and as a result, the land levels within the rear garden area had been significantly raised. Following a subsequent complaint in respect of the type of material which had been imported, the Environment Agency concluded that no formal action would be taken by them at the site.
- 5.1.2 In June 2008 a planning application for East View (ref MA/08/1258) was submitted for works to the house, but did not refer to the change in ground levels at the site (and was subsequently withdrawn in August 2008).
- 5.1.3 In July 2009 a Temporary Stop Notice (TSN) was issued as a result of further material being brought on and deposited on the site. Prior to this expiring, planning application MA/08/1750 was submitted (26 August 2008) in respect of proposed new land levels and driveway and erection of a detached garage at the site. However, this was subsequently withdrawn by MBC in November 2008 as required information was not submitted in a timely manner.
- 5.1.4 In January 2009, a further application was submitted under MA/09/0464, which, inter alia, sought permission for the land levels similar to what is currently on the site. This was refused in September 2009 on the basis that the raising of land levels caused harm to the amenities that the occupiers of nearby residential properties could reasonable expect to continue to enjoy by reason of the extent and height of the material together with the loss of potential future damage to trees, and causes harm to the character and appearance of the countryside and Area of Local Landscape Importance, (together with reasons in respect of the proposed garage)
- 5.1.5 This refusal lead to two enforcement notices being issued on 17 September 2009 in respect of the importation of the material and the raising of ground levels. The reasons the Notices were as set out in section 4 of the Notice is, "*... the breach had occurred within the last four years and that the artificial profiles of the raised land are unrelated to and incongruous with the natural topography with the engineering operations constituting an inappropriate form of development that adversely impacts on the amenity of the adjacent dwellings and is to the detriment of the visual amenity in the countryside; and given that the development was considered being contrary to the provisions of National Planning Policy Statement PPS1 (Delivering Sustainable Development) and PPS7 (Sustainable Development in Rural Areas); policies ENV28 and ENV35 of the Maidstone Borough Wide Local Plan 2000; and policies C4, NRM7, BE1 and BE6 of the South East Plan 2009 (copies of which were attached to the statement of*

case). The Council considered that planning permission should not be given because planning conditions would not overcome policy-led objections to the development."

- 5.1.6 The enforcement notice at the application site was required to be complied with by 17 April 2010. Following failure to comply with the notice, legal proceedings were commenced which resulted in the Magistrates Court finding the applicant and her partner/husband guilty of failing to comply with the notice, being sentenced to a 12 month conditional discharge on 6 October 2010.
- 5.1.7 In June 2010 a planning application was received under MA/10/1010 which again sought permission for the '*raising of garden land to create terraced areas*'. Whilst there were discussions on a possible way forward, the application was never amended in line with advice, and was refused on 19 May 2011 on the grounds that the development resulted in an unacceptable detriment to the living conditions of the residential occupiers of the adjoining property in terms of overlooking, loss of privacy, and the resultant overbearing impact; and the deposition of material resulted in an inappropriate form of development of artificial profiles that is incongruous and unrelated to the topography of the area resulting in the detriment to the visual amenity of the area, and that results in harm to the character and appearance of the countryside, the Area of Local Landscape Importance, and the surrounding area.
- 5.1.8 Whilst this current application is retrospective in parts and whilst there is an extant enforcement notice on the land against which the applicant and her partner have been convicted as a result of their failure to comply with the requirements of the notice, the current application is required to be determined on its own planning merits and in particular whether the previous reasons for refusal have been overcome.
- 5.1.9 The current application presents a proposed solution (and is an alternative scheme to that previously refused) by reducing the land levels in the southern part of the site, to the rear of the level patio areas serving the converted oasts, by up to 1.2 metres; suggesting landscaping in this area adjacent to the western boundary with the adjacent property; as well as to regularise the change of use to garden land which has occurred at the far northern end of the site, the erection of play equipment, steps and a section of fencing over 2 metres.

6. CONSIDERATIONS

6.1 Site Description

- 6.1.1 East View is one of a joined pair of converted oasts, being one of a group of seven residential properties, many of which are listed, and which would have

once been the former farm buildings. The site is located to the south of the southern area of Maidstone town centre, and for the purposes of planning, is located in the open countryside, within an Area of Local landscape Importance which extends from the northern corner of the adjacent property to the north, encompassing the groups of properties at Bydews, extending to the woods to the north and west beyond.

- 6.1.2 Vehicular access to the application property is gained via a long access track from Dean Street. The track serves all seven properties in the group, with the application property being the second to last at the most north eastern end. The adjoining converted oast to the west is known as West View. Bydews Farm Cottage which is a listed building and owned by the applicant's mother, lies to the east. Part of the application site previously formed part of the residential garden serving Bydews Farm Cottage (an area of approximately 8m x 23m), prior to it being transferred from the mother to her daughter, who is the owner of East View, and the applicant.
- 6.1.3 East View was given planning permission in 1990 to be converted (together with the adjoining 'West View') from a granary and oasts to two dwellings. This application permitted a relatively large residential curtilage serving the subject property, however, smaller than the area which is currently utilised as garden by the property. The garden area previously sloped off downwards to the north/rear of the site, having a steep dropping slope to the very rear part, forming a 'gully'. The unauthorised deposition of the material on the site has allowed this gully to be filled in and an area of land to the north to be incorporated into the garden currently serving the property on part of which play equipment has been erected. This change of use and erection of the play equipment is encompassed in this application. Directly beyond this is a wooded area which is part of Bydews Woods. Practically the whole area of Bydews Woods is a historic landfill site, with approximately a third of the most northern section of the garden of East View being identified as falling within that landfill area.

6.2 Proposal

- 6.2.1 This planning application is part retrospective in that it seeks planning permission for the development which has occurred on the land, namely the raising of the garden land, the change of use of an area of land to the north to garden land, the erection of play equipment, the creation of steps, and the erection of part of the fencing; with the prospective part of the application being a reduction in height of part of the land which has been previously raised.

The Raised Land Levels

- 6.2.2 The material which has been deposited on the land, and the resultant land level at the site is covered by the enforcement notice which was issued in September 2009, as detailed at Section 2 of this report. That notice requires the excavation of the material which has been imported and deposited to be removed; and for the land on which it was deposited to be treated for soil compaction. This application, so far as the land levels are concerned, seeks to regularise that development (the deposition of the material and the increase to the levels of the land) on the site by proposing a reduction in the current height of part of the land.
- 6.2.3 The majority of the material existing is in the central part of the rear garden area, including the part of the garden area which has been incorporated into East View's garden from Bydews Farm Cottage's garden. The application essentially proposes a reduction in height of the two existing raised tiers/terraces from their current height above original land level of some 2.3 metres and 1.8 metres to 1.4 metres and 0.7 metres respectively (this can be seen on Section Y-Y on Drawing HH:20:10:14:03 Rev A). And whilst it will result in a sharper drop in the land from the existing levels to the rear of the 1.2 metre fence which runs to the rear of the parking area at the rear of the property, it will result in a much less steep fall at the northern end of the tiers/terracing. Material has been deposited to the north of these tiers which will result in a continues sloping off to the north to the point where the 'sleeper steps' are proposed retrospectively.

Change of use to garden

- 6.2.4 As stated above, the application also proposes a change of use of an area of land to the north to be incorporated into the garden area of East View. The plans show this as being the width of the site; some 7.4 metres in depth at the eastern side, and some 2.8 metres at the western side. Having considered the planning permission given for the conversion of East View (MA/90/0091), I consider that the area of land which has been incorporated into the garden of East View to be larger than that indicated within the current application. I consider it to be some 16 metres to the eastern boundary and some 12 metres to the western boundary. I will consider the application as proposing a change of use of the larger land area which is currently being used as garden land and which is denoted by the northern boundary on plan HH:20:10:14:03 A.

Play Equipment

6.2.5 The play equipment which is on part of the land utilised as garden is included in the application and consists of a double swing, a climbing frame, an undulating wooden walkway and a sand pit.

Wooden Steps

6.2.6 The application shows the construction of wooden steps from old railway sleepers towards the northern end of the site. The first section of these steps have been installed, having 8 steps leading down to a construction platform area. A further 7 steps are proposed in the second section. The area of steps are some 2 metres in width.

Fencing

6.2.7 The application includes a section of closeboard fencing which has been erected on the western elevation as it exceeds 2 metres in height. The fencing is typical closeboarded with the part which exceeds 2 metres, and hence requires planning permission, has been 'stepped', i.e. one section placed adjacent to another, being higher than it.

Landscaping

6.2.8 Conifer trees have been planted as shown on the submitted drawings from the most northern point of the play area, along the western boundary for some 23 metres. New planting is proposed as part of the scheme adjacent and close to the western boundary on the area of land to the north of the roundel of West View.

6.3 Principle of Development

6.3.1 Policy H31 addresses the change of use to domestic garden noting 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, permission may be given in circumstances where the extensions to garden where the overall appearance of the countryside is not compromised.

6.3.2 Policy ENV28 is concerned with development in the countryside, noting that permission will not be given for such which harms the character and appearance of the area or the amenities of surrounding occupiers.

- 6.3.3 Policy ENV35 with those areas identified as an Area of Local landscape Importance. It is recognised that these areas perform a vital local function by demarcating particular distinctive features which are important to Maidstone specifically, and which perform a variety of functions. The policy states that in these areas particular attention will be given to the maintenance of open space and the character of the landscape.
- 6.3.4 The current planning application seeks to regularise the engineering works which have been carried out within the garden to create terracing. The scheme proposes a reduction in the height of the tiers and presents a softer, less obtrusive topography in order to overcome the residential and visual amenity objections of the previous refusals. Development consisting of a change to the topography of a garden area and the creation of tiers can be considered acceptable, subject to consideration of detrimental impact. Similarly, the change of use to garden land can be acceptable in some instances under Policy H31, given consideration of the impact to the overall appearance of the countryside.
- 6.3.5. The aspects of the development included within the application are required to be determined upon their own merits in accordance with the development plan and other material considerations. The main considerations are any impact on the character and appearance of the countryside and Area of Landscape Importance; any impact which the development may have on the living conditions of neighbouring residential occupiers; any impact on trees.

6.4 Visual Impact

Change to the land levels

- 6.4.1 The site has changed physically and visually over the years since the issuing of the Enforcement Notice.
- 6.4.2 The material which has been deposited has essentially significantly heightened the previous level of the land to the rear of East View. For ease, the four main areas can be identified:
1. Extension to the parking area - The 'flat' area to the rear of the property which is used as a parking area has been extended at the same level to the north, being the same height as the previously existing parking area by 2 metres at the point of cross section Y-Y.
 2. 'tier 1' - 'tier 1' (as existing) has been created some 2.3 – 2.4 metres higher than the ground level prior to the deposition of the material. This 'tier' extends for some 6 – 7 metres to the north.

3. 'tier 2' – 'tier 2' has been created to the north of 'tier 1', and (as existing) is some 1.7 – 1.8 metres higher than the ground level prior to the deposition of the material. This tier extends for some 6 – 7 metres to the north.
4. 'tier 3' – whilst cross section 'Y-Y' on submitted plan HH:20:10:14:03:A shows the area of this third tier as being 'original ground level' it is clear that at least part of the land on this 'third tier' as it currently exists on the site has also been increased in height from its previous level by the deposition of material, with the steps being created on the latter sloping off of this material; and the previously mentioned 'gully' having been in filled.

6.4.3 The application looks to reduce the height of 'tier 1' and 'tier 2' leaving 'tier 3', the area where the steps have been created, the area where the play equipment has been created and the area to the north eastern boundary with the sloping walkway down the side accessing the garden and the area contained by the ragstone wall unchanged.

6.4.4 The application proposes a reduction in height of 'tier 1' and 'tier 2' by 1 metre and 1.1 – 1.2 metres respectively; resulting in the creation of two tiers to a height of 1.3 to 1.4 metres and 0.6 – 0.7 metres respectively above the ground level prior to the deposition of the material.

6.4.5 To the eastern side of the site, the created topography is such that the landscape is softly undulating, sloping down to the rear of the site; and the 'main' section in 'tiers 1 & 2' being reduced somewhat from the significant increase in height which they are currently. The result will be the creation of an area of land which is less dramatically different in height to the southern and western end of the site.

6.4.6 The development is located within the garden area of the property which is, for the purpose of planning, is within the open countryside and ALLI. There are no public footpaths through the site, or in close proximity to the site, with the property being the second but last property at the end of a private drive. The rear garden cannot be seen from any public viewpoints. The garden area serving the property to the east, Bydews Farm Cottage, many years ago was landscaped, and currently enjoys different land levels within it. The garden area serving the property to the west enjoys a garden which has a raised patio area directly to the rear of the property, prior to the land sloping gently off to the north. The proposal under this application, whilst will reduce the height of tier 1 and tier 2, will result in a significant amount of material remaining on the site in comparison to the two adjacent gardens. Although different to other gardens, the key thing to consider is whether the application proposes development which will be visually acceptable given its countryside location, within the ALLI. I consider that given the soft sloping topography which has been created to the

eastern side of the site with the slope down to the rear of the site, the manner in which the deposition has been contained by the ragstone wall, and the proposed reduction of two of the tiers will result in a scheme which visually is not out of keeping nor results in visually incongruous development. I do not consider that the resultant development will result in unacceptable harm to the character and appearance of the countryside; or result in insignificant harm to the character of the landscape or fail to maintain open space with the ALLI.

Change of use to garden land

- 6.4.7 As identified at section 5.2.4 above, the area of land which is currently being used as garden is between some 12 metres and 16 metres in length. Whilst this area extends to the north into land which, for the purposes of planning, is undeveloped countryside, prior to the deposition of the material, the majority of the land was a large, deep gully which was essentially scrub land. This area still remains as a gully at the adjacent West View.
- 6.4.8. The land which is subject to the change of use is not readily visible from public vantage points. It is only visible from inside the garden of the property and that of the two adjacent gardens. It does not result in a change of use of a piece of land which visually spreads into an otherwise open piece of countryside, but rather is a piece of land which will be contained by the existing gardens and the woodland. In my opinion, its use of this piece of land as garden land does not result in significant harm to the character and appearance of the countryside or the Area of Local Landscape Importance.
- 6.4.9 I do not consider that the change of use of this area of land in this location to residential garden will compromise the overall appearance of the countryside. I do not consider it to be an excessive extension given this location backing onto the wood, without open views into the site; nor does it result in the loss of the best and most versatile agricultural land.

Playing Equipment and Steps

- 6.4.10 The play equipment which has been erected/installed is of a typical size and design which would normally be found at domestic properties. The equipment consists of a double swing, a climbing frame, an undulating walkway, and a sand pit. Given the considered acceptability of the change of use of the land to garden land, and the amount, size, design and location of the play equipment, it will not result in development which is visually unacceptable given the context of its setting.
- 6.4.11 It will not result in development which is considered visually incongruous, given its location to the rear of a garden area, nor result in development which is inappropriate given its location. As such, I do not consider the play equipment to

result in unacceptable harm to the character and appearance of the countryside or harm to the character of the ALLI.

6.4.12 The steps are constructed from wooden sleepers. They are rural in appearance and are set in the slope on the site. Given their size, construction material and location, the steps do not result in unacceptable harm to the character and appearance of the countryside, or unacceptable harm to the character of the ALLI.

Fencing

6.4.13 Much of the fencing does not exceed 2 metres in height, and as such has been erected under permitted development rights. One section of fencing exceeds this permitted height, being to 2.55 metres and has been constructed by affixing two standard fence panels to each other, one at ground level, and the other higher than the ground, resulting in the overall height of 2.55 metres.

6.4.14 This section of fence has been erected at a point where there is a 'gap' in the existing boundary planting. I do not consider fencing to this height to be acceptable at this location on the boundary with the garden area serving West View. It is some 0.55 metres higher than that allowed to be erected under permitted development rights, and will present a section of fencing which causes an overbearing impact to the users of the garden at West View. I consider that this section should be reduced to a height of 2 metres; or alternatively, removal of the fence and inclusion of planting at this point as part of the landscape scheme. I consider that this can be controlled via a planning condition.

6.5 Residential Amenity

Change to the Land Levels

6.5.1 The deposition of the material on the land and the resultant form of tiers which are to a significant height adjacent to the neighbouring boundary results in an unacceptable detriment to the living conditions of the adjacent property in terms of overlooking from tier 1, and to a lesser extent from tier 2 back towards the private garden area of West View; and by the creation of a bank to a height of some 2.3 – 3.4 metres in height in the area to the rear of the patio serving West View, causing an overbearing impact to the users of the garden of West View.

6.5.2 As previously confirmed, both East View and West View enjoy a patio area immediately to the rear of the properties which is to the same level as the rear of properties themselves. At West View, close board fence has been erected to a height of 2 metres running the length of the patio area. Beyond this fence there

is existing mixed planting of buddleia and other bush type plants on the side boundary with East View.

- 6.5.3 The current height of the land at East View on the land identified above as 'tier 1' is some 2.3 – 2.4 metres above the previous ground level for a length of some 6 – 7 metres. This not only creates an overbearing impact close to the patio area serving West View, but facilitates ease of overlooking across to this private area of garden. The application proposes a reduction in height of this tier by one metre, resulting in the tier being 1.3 – 1.4 metres above the previous ground level. This reduction in height is considered sufficient, given the layout of the sites and the proposed planting to compliment the reduction of this 'tier' to overcome the previous concerns in terms of overlooking. Similarly, the reduction in height of this tier to 1.3 – 1.4 metres, will alleviate the overbearing impact which results when the land in this location was 2.3 – 2.4 metres in height above the previous ground level.
- 6.5.4. 'Tier 2' which is currently 1.7 – 1.8 metres above the previous ground level extending for 6 – 7 metres currently facilitates the ability to 'look back' from further down the garden of East view, back to the private patio area of West View. The application proposes a reduction of this tier by 1.1 – 1.2 metres resulting in this tier being some 0.6 – 0.7 metres above the previous ground level. Given the location of this tier, further down the garden, together with the existing fencing and planting on the boundary, I do not consider the proposed height of 'tier 2' of 0.6 metres – 0.7 metres to result in an unacceptable loss of privacy to the occupiers of West View; nor the creation of an overbearing impact.
- 6.5.5 The applicant has also confirmed that they would accept a landscape condition which would involve suitable planting in the area to the south of the first level.
- 6.5.6 I consider that these proposed changes to the land form, together with suitable new planting and the existing planting on the boundary, will overcome the previous objection in terms of residential amenity.

Play Equipment and Steps

- 6.5.7 Given the location and type of play equipment, I do not consider that it will result in harm to the living conditions of neighbouring residential occupiers.

Wooden Steps

- 6.5.8 The steps facilitate access in this part of the garden to the lower level of garden. They are essentially set in the sloped land. Given their location, to the northern

end of the garden, I do not consider that they will result in harm to the living conditions of the neighbouring residential occupiers.

Fencing

6.5.9 Providing the fence is limited to a height of that allowed under permitted development, I do not consider it will result in harm to the living conditions of neighbouring residential occupiers.

6.6 Impact on Trees

6.6.1 None of the trees growing on or surrounding the site are subject to any Tree Preservation Orders (TPO) and the area is not such that the trees are afforded any protective status. Whilst the mature pair of sycamores and the ash to the eastern side of the site are showing signs of crown decline and branch dieback consistent with root death most probably due to asphyxiation by the raising of the ground levels some years ago, I do not consider the trees to provide a high public amenity value.

6.6.2 The landscape officer has raised no objection to the application noting that the proposed lowering of the previously raised ground is not likely to have much affect on any of the surrounding vegetation. Further, he notes that he does not consider any of the trees suitable or long-term protection.

6.6.3 I do not consider the proposals within the application to be unacceptable in terms of impact on trees.

6.7 Highways

6.7.1 There are no highway safety implications.

6.8 Landscaping

6.8.1 As confirmed by the Landscape Officer, the proposal of the reduction of the land levels is unlikely to have much affect on any of the surrounding vegetation. None of the trees on the site are the subject of a Tree Preservation Order, nor within a Conservation Area, and hence are not afforded any protective status. Whilst it is noted that some trees, notably a pair of Sycamores and an Ash appear to have been affected by the raising of the ground levels which have occurred, they have little public amenity value and are not considered suitable for long-term protection.

6.9 Other Matters

- 6.9.1 There is an extant enforcement notice on the application site in respect of the deposition of the material and the resultant raising of the land. That notice requires the removal of all the material. As the notice is not being complied with, a criminal offence is being committed. The owners of the property have once already been convicted for this offence, and by virtue of their continued non-compliance, are open to further legal action. Whilst a wilful breach of planning law is not condoned, it has been confirmed by the applicants that they wish to resolve the matter through the submission of this revised application.
- 6.9.2 If permission is forthcoming, it will essentially override the extant notice at the site to the extent for which planning permission has been granted; and it would be necessary to impose conditions which ensure that the permitted work is carried out in a timely manner to ensure closure at the site. To this extent, the applicant has confirmed that they are willing to accept a condition, should permission be forthcoming, which requires the work to be carried out as approved within 3 months from the date of the decision. Should such a condition fail to be complied with, a Breach of Condition Notice can be served, against which there is no appeal, and if there is a failure to comply with this, legal action can be considered.
- 6.9.3 Concerns have been raised in relation to the fact that previous applications have been submitted and either withdrawn or refused for the same development; and that the application should not have been submitted given the fact that there is an extant enforcement notice in respect of the deposition of the material on the land. As confirmed previously in this report, this application is required to be determined on its own planning merits. It is a revised scheme which seeks to achieve an acceptable way forward at the site.
- 6.9.4 Concerns have also been raised in respect of the fact that the land on which parts of the development has taken place is in the ownership of a third party. It is not the responsibility of the Local Planning Authority to determine the ownership of land – that would be a civil matter.

7. CONCLUSION

- 7.1 The changes to the land levels within the application overcome the reasons for issuing the enforcement notice and the reasons for refusing planning applications in that the development will be acceptable in terms of visual amenity and will overcome the unacceptable impact on the amenity of the adjacent occupiers. On this basis, planning permission is recommended, subject to a number of conditions.

8. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. Within 3 months, the development hereby approved shall be carried out fully in accordance with the approved plans.

Reason: To ensure the development is carried out in a timely manner given the unacceptability of the unauthorised development which currently exists on the land, and in order to overcome the unacceptable harm to the character and appearance of the countryside and ALLI and the impact on the amenity of neighbouring residential occupiers in accordance with Policies ENV6, ENV28 and ENV35 of the Maidstone Borough Wide Local Plan 2000.

2. Within 3 months all fencing to the western side boundary which exceeds 2 metres in height from the level of the land prior to the unauthorised development having occurred shall be reduced to a height of 2 metres from the level of the land prior to the unauthorised development having occurred.

Reason: In the interests of amenity of the adjacent residential occupiers in accordance with Policy ENV28 of the Maidstone Borough Wide Local Plan 2000.

3. Within 1 month, a detailed scheme of landscaping shall be submitted for approval by the LPA and shall include details of planting to be provided on the south western part of the site and western boundary. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines.

Reason: In the interests of visual amenity and in order to protect the amenity of neighbouring residential occupiers in accordance with Policy ENV6, ENV28 and ENV35 of the Maidstone Borough Local Plan 2000.

4. The approved details of landscaping shall be carried out fully in the first planting and seeding season following approval by the local planning authority; and 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: In the interests of visual amenity and in accordance with Policy ENV6, ENV28 and ENV35 of the Maidstone Borough Wide Local Plan 2000.

Informatives set out below

You are advised that should you fail to comply with any of the conditions attached to this permission, formal action is likely to be taken by the Local Planning Authority.

Plant and machinery used for the approved works 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 Sundays and Bank Holidays.

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

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.