

DIP. Appendix 1
MA/12/1835

File ref: MA/11/0634

Case Officer: Jon Lawrence

Date: 23/2/2012

Delegated Report

Is the LOCATION and DESCRIPTION of the development correct on PACIS? Yes

as shown on drawing numbers PA-165-3, PA-165-4, PA.165.01, PA165.02, PA-165-6, PA-165-5, Design and Access Statement, Planning Statement and Business Plan received on 19 April 2011.

Has statutory consultation and neighbour notification been properly carried out? Yes

Has the application been properly advertised? Not applicable

- the decision would not conform to the provisions of the Development Plan
- would affect a public right of way
- is of wide public interest
- was accompanied by an EIA
- affects a listed building
- is a major development
- affects a conservation area

Is it necessary to consult the Secretary of State (ie GOSE) BEFORE determining this application? No

- T&CP (Shopping Development) (England a& Wales) (No 2) Direction 1993
- Circular 14/97 'Planning & Historic Environment' Appendix A
- T&CP (Development Plans & Consultation) (Departures) Direction 1999
- Circular 9/98 T&CP (Playing Fields) (England) Direction 1998
- Circular 8/00 T&CP (Residential Development on Greenfield Land) (Eng) Direction 2000
- specified retail developments over 2,500m²
- specified listed building consent applications
- specified major departures from Development Plan
- loss of specified playing fields
- more than 150 dwellings or 5 hectares of housing

Do the matters considered in this report raise any unique Human Rights issues? No

POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV28

South East Regional Plan: CC1, CC6, C4

Government Policy: PPS1, PPS3, PPS7, PPS9

HISTORY

There is no relevant planning application history on the site.

This application has, however, come about following the issue of an enforcement notice against the subject residential mobile homes and associated development in July 2010. An appeal against this notice was also dismissed in November 2010, although the agricultural elements on site such as sheds, enclosures and a polytunnel were allowed to remain (by this decision) (enforcement reference enf/10453).

There is an also extant enforcement notice from 1991 that covers a small section of the eastern part of the land subject to this application. This notice relates to the change of use of land to a mixed use for the purposes of agriculture and a caravan site and covers a much wider area, including land on the other side of the Headcorn Road.

CONSULTATIONS

Site Notice Expiry Date: 6/6/2011

Newspaper Advertisement Expiry Date: N/A

Parish Council: Originally requested refusal and for the application to be reported to committee due to the vagueness of the business plan. However, having seen the comments of the Council's agricultural advisor they support a two year temporary permission and no longer request the application be reported to committee. Separately, the Chairman of the Planning Cttee of LPC has also made comments questioning the business plan, but it is not clear whether these comments

PACIS Decision Code	AC	PM/PPO	<i>[Signature]</i>	Date of decision	5/3/12			
Date to typing	→	Date to admin	→	Date checked	→	Date signed	→	Date decision issued

Does the Enforcement Section need to be notified of the decision? Yes

have been made on LPC behalf or as an individual.

Neighbours: 7 objections have been received. These raise a number of issues between them, some repeated, which include questioning the business plan; the environmental hazards of noise, fires, smells, litter and waste; possibility of more occupants; cheap unnecessary accommodation; visual harm in countryside; loss of privacy; nature conservation; and hazards to traffic because of access.

Agricultural Advisor: Offers lengthy comments, including around business plan, so are confidential. However, concludes that *"whilst I do not doubt the genuine intent of the applicants to try to create a viable business here, I do not consider the submissions by and on behalf of the applicants provide sufficient evidence of a firm ability to develop an agricultural enterprise, or sufficient evidence of sound financial planning as required under Annex A of PPS7"*.

KCC Footpaths: Confirm that as footpath has been moved due to CTRL it is not now affected.

Environment Agency: State that poses low environmental risk and so have no detailed comments.

Network Rail: State that have no observations to make.

Cllr Tom Sams: Raises concern over the financial claims.

Disabled Considerations: None.

Environmental Health Considerations: Approve subject to a condition requiring details to be submitted of how foul sewage will be dealt with, and also suggest an informative should any method be used other than a cesspit.

Highways Considerations: Kent Highways state that there are no highways implications.

Public Safety Considerations: None.

CONSIDERATIONS

Site visited in May 2011 and December 2011.

The application site comprises some 0.1ha of approximately 0.8 hectares of a smallholding within the open countryside, in the Parish of Lenham. This smallholding is a roughly rectangular parcel of land accessed off the rural Old Ham Lane. It is of a fairly even ground level. It also lies immediately adjacent to a designated Site of Nature Conservation Interest to the north. The village of Lenham is approximately one kilometre to the north.

The application site containing the subject (applied for) two residential mobile homes and associated timber w.c. and utility buildings is at the west end of the smallholding, near Old Ham Lane. The authorised (by appeal) animal/fowl enclosures surrounded by post and chain/wire link fencing, which house some small shed buildings, are within the eastern part of the site, along with a polytunnel and other shed buildings. A number of small animals, fowl, sheep and a minimal amount of pigs are kept on the site.

The Channel Tunnel Rail Link runs immediately to the south. There are residential properties fairly nearby to the east off of the Headcorn Road and on the opposite side of Old Ham Lane.

The main issues to consider is whether the development applied for offers any justification to outweigh the harm 'in principle' that results from this residential use in open countryside, and therefore whether any such justification is sufficient to override development plan policy that the development would otherwise be contrary to. This would in turn also outweigh concerns over the unsustainable location of the development.

The (attached) Inspectors' appeal decision (against the enforcement notice) allowing the agricultural elements of the development indicated that this may well be an acceptable location for the residential elements of the subject development in visual terms, but also made it clear that, at that time, such could not be considered acceptable without a sufficient case/sufficient evidence having been put forward of the need for the residential elements to support the agricultural business/activity.

Given that such a case has, however, now been put forward in this application, albeit that it is considered to lack sufficient evidence of either a firm ability to develop that enterprise or of sound financial planning, it would now seem reasonable to allow time for the applicants to establish and achieve the business plan/enterprise they have forecasted in their submissions. In this respect, the agricultural consultant has also advised that to properly manage and protect the projected numbers of poultry and animals on site it would be necessary to have a residential presence on site. It would therefore in my view be appropriate for a temporary permission of two years to be granted for the residential use and associated buildings sought in this application, in order to allow a chance for the business to be established. The application was submitted in April 2010 with a three year business plan, and although the temporary permission sought was for three years, it is therefore appropriate taking into account the time lapse for the temporary permission to be for two years. A condition will be imposed to that effect. The guidance in PPS7 does also advise temporary periods of 3 years for agricultural dwellings in such circumstances, although clearly there are no actual dwellings subject to this application.

A condition will also restrict the number of mobile homes/caravans to that applied for. An appropriate condition will also be imposed concerning landscaping which will help to secure further screening of the development. A condition is also required regarding foul sewage treatment.

Whilst there is an adjacent designated SNCI, there is also no evidence to suggest that the subject development would be any more harmful than any other normal rural uses, including the associated development already allowed on appeal.

On the basis of all the above, I therefore recommend that temporary planning permission be granted.

DECISION See PACIS Decision Code at bottom of Page 1

Conditions or reasons for refusal

1. This development hereby permitted is approved for a limited period only until 1 April 2014, or the period during which the site is occupied, whichever is the shorter.

Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted, and an exception has been made to enable the applicants to establish and achieve the forecasted growth potential of the business enterprise, and for the situation thereafter to be reviewed at that time, in accordance with Maidstone Borough-Wide Local Plan 2000 Policy ENV28.

2. No more than two residential caravans, as defined in Section 24(8) of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the land at any one time.

Reason: To accord with the terms of the application and in the interests of the visual amenity in accordance with Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000.

3. Within 2 months of the date of this permission a scheme of landscaping for the boundaries of the site, together with a programme for the approved scheme's implementation and long term management, shall be submitted to and approved in writing by the local planning authority. 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 accordance with Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following any such approval, and any trees or plants which within a period of two years 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 pursuant to Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000.

5. If the use hereby permitted ceases, all caravans, mobile homes, structures, equipment and materials bought onto the land for the purposes hereby permitted shall be removed;

Reason: To safeguard the character and appearance of the countryside in accordance with Policy ENV28 of The Maidstone Borough-Wide Local Plan 2000.

6. Within two months of the date of this permission, details of the method of foul sewage treatment shall be submitted to the local planning authority for approval

Reason : in order to ensure that suitable sewage treatment is provided for the development and therefore to protect the environment in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan 2000.

Informatives

1. The applicants are advised that if any other method of foul sewage treatment other than a cesspit is used/to be used, then they should also contact the Environment Agency to establish whether any discharge consent is required.

REASON FOR APPROVAL/REASON FOR REFUSAL

Planning Approval Reason: Standard/Other

Planning Refusal Reason: Standard/Other

Listed Building Consent: Standard/Other

Conservation Area Consent: Standard/Other

Letter to accompany decision notice or other special decision issuing instructions

No.



The Planning
Inspectorate

Quality Assurance Unit
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0117 372 8252
Customer Services: 0117 372 6372

Juliet Stringer
Maidstone Borough Council
Maidstone House
Environmental Enforcement
King Street
Maidstone
Kent
ME15 6JQ

Your Ref:

Our Ref:

Date:

APP/U2235/C/10/2133299
**Further appeal references at
foot of letter**

22 November 2010

Dear Ms Stringer

**Town and Country Planning Act 1990
Appeals by Mrs Michelle Richards and Mr Shaun Patrick Richards
Site at Woodside Farm, Old Ham Lane, Lenham, Maidstone, ME17 2LT**

I enclose a copy of our Inspector's decision on the above appeals.

If you have queries or complaints about the decision or the way we handled the appeals, you should submit them using our "Feedback" webpage at www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 0207 947 6655.

Yours sincerely

James Bunten

pp Ewa Sherman

EDL1

Further appeal references:- APP/U2235/C/10/2133300



You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - <http://www.pcs.planningportal.gov.uk/pcsportal/casearch.asp>
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button



Appeal Decisions

Site visit made on 27 October 2010

by **M A Champion BSc CEng FICE FStructE FCIHT FHKIE**

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

Decision date: 22 November 2010

Appeals A and B: APP/U2235/C/10/2133299 and 2133300

Land known as Woodside Farm, Old Ham Lane, Lenham, Maidstone, ME17 2LT.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Maidstone Borough Council.
- The appeals are made by Mrs Michelle Richards (Appeal A) and Mr Shaun Patrick Richards (Appeal B).
- The Council's reference is ENF/10453.
- The notice was issued on 21 July 2010.
- The breach of planning control as alleged in the notice is:
Without planning permission the change of use of the land to the stationing and residential occupation of mobile homes, the erection of a timber utility room building, the erection of a timber w.c. building, the erection of a polytunnel, the erection of 7 No shed buildings, the erection of fencing to form enclosures to keep animals and fowl, and the placing on the land of domestic and other paraphernalia all ancillary to the residential use of the land.
- The requirements of the notice are to:
 - (i) Stop using the land outlined in red on the attached Plan A for the stationing and residential occupation of mobile homes and caravans and for the placing on the land of domestic and other paraphernalia ancillary to the residential use of the land;
 - (ii) Permanently remove from the land shown outlined in red on the attached Plan A all mobile homes and caravans and all domestic and other paraphernalia;
 - (iii) Permanently remove from the land shown outlined in red on the attached Plan A the timber utility room building, the timber w.c. building, the shed buildings and the polytunnel all shown in the approximate positions on the attached Plan B and remove all resultant rubble, material and debris from the land;
 - (iv) Permanently remove from the land shown outlined in red on the attached Plan A the fencing enclosures shown coloured green in the approximate positions on the attached Plan B and remove all resultant rubble, material and debris from the land.
- The period for compliance with the requirements is four months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered. As the prescribed fees for Appeal B have not been paid within the specified period, the deemed planning application and the appeal on ground (a) in this appeal have lapsed, and it proceeds on ground (f).

Summary of decision: The appeals succeed in part and permission for that part is granted, but otherwise the appeals fail, and the enforcement notice is upheld as set out below in the Formal Decision.

Appeal A on ground (a) and the deemed application

Main Issues

1. I consider that the main issues are firstly, the effect of the development on the character and appearance of the surrounding rural area, and secondly, whether the development is in a sustainable location.

Policies

2. Saved Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 deals with the countryside. Government advice as set out in Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7) is also relevant to this appeal.

Reasons

3. The appeal site lies in an area of mixed open and wooded countryside south of the village of Lenham adjacent to the High Speed Rail Line. It comprises a field to the north of the railway and the east of Old Ham Lane. It abuts a poultry farm (Kilwood Farm) to the north with a Site of Nature Conservation Interest (SNCI) beyond, and the rear garden of a residential property (Squirrels' Drey) to the east. There are further scattered houses to the north and east. Although the Council states that a small section of the site may fall within the SNCI, the appellant has submitted evidence from the Council's website which clearly shows that the two areas are separate and do not adjoin.
4. Two residential caravans have been stationed on the site and timber buildings for a wc and a utility room have been erected, together with a polytunnel, fenced enclosures and sheds for animals and fowl. The Council states that this is not a commercial scale of operation. However the appellant states that she is self-employed running a poultry business from the site and is trying to establish a smallholding. She also is DEFRA registered with registered herd numbers for pigs, cattle, deer, sheep and goats.
5. While this does not comprise the full extent of evidence (as set out in PPS7) expected to support a claim for a viable agricultural enterprise, it does demonstrate the appellant's intention and ability to start up a new business on her own land. In the absence of evidence regarding the functional need, the sound financial basis, and the availability of other nearby accommodation I cannot conclude that the mobile homes are required as a temporary agricultural dwelling essential to support a new farming activity. I therefore have to consider them as residential.
6. As residential units the mobile homes are not stationed for any purpose which is accepted by Policy ENV28 in the countryside. Thus, together with the ancillary utility and wc buildings, they are contrary to this policy.
7. However, these structures are only partially visible from public viewpoints, and their impact on character and appearance is thus somewhat limited. This could be further reduced by additional planting which could be secured by condition if planning permission were to be granted. I do not therefore consider their effect on the character and appearance of the rural area to be significant.

8. The fences, polytunnel and small sheds for animals and fowl are normal features of a rural field and are reasonably necessary for the agricultural activity on site. Notwithstanding the small scale of the operation I have to conclude that these parts of the development are agricultural and not ancillary to the residential use. They are not, in my view, harmful to the countryside.
9. The development is located about 1 kilometre from the village, and while this distance can be easily covered on foot or by bicycle by the able bodied, the route, whether along a narrow country lane or by footpath, would be unsuitable for the less able or those with pushchairs or carrying heavy shopping, especially in winter or after dark. I consider that most journeys are likely to be made by car. In this respect, therefore, the development is not sustainable.
10. However, the appellant states, and the Council does not dispute, that she recycles rainwater, manages her woodland and vegetables naturally, is prudent in her use of natural resources, and has a carbon footprint significantly lower than the national average. In these respects I consider the site to be operated on a highly sustainable basis.
11. I acknowledge that many other dwellings in rural locations are at greater distances from villages and are not served by public transport. However their existence does not necessarily justify the establishment of another residential dwelling which, unless it is for an accepted countryside use, would be contrary to current policy.
12. Although the development lies close to an SNCI, and it is possible that residential development could interfere with this natural habitat, no evidence has been submitted to demonstrate that normal rural uses of the field, such as the keeping of animals, would be harmful.
13. I conclude therefore that the agricultural parts of the development (the fences, polytunnel and small sheds for animals and fowl) do not harm the character and appearance of the surrounding rural area. Neither would the residential parts (the mobile homes and the ancillary utility and wc buildings) if planning permission were granted subject to condition. However, in the absence of evidence to the contrary, the residential parts do not comply with Policy ENV28. Neither is it in a sustainable location as a residential development. The appeal on ground (a) succeeds in part and fails in part.

Appeals A and B on ground (f)

14. This ground of appeal is that the steps required to comply with the notice are excessive and that lesser steps would overcome the objections. Although the appellants state that they are well served by utility companies and pay Council Tax, they have not suggested any lesser steps that would overcome the harm. In the absence of sufficient evidence to justify a temporary agricultural dwelling in connection with the smallholding enterprise on the site, no lesser steps than removal of the residential element and the ancillary buildings would suffice to remedy the breach of planning control that has occurred. The requirements of the notice are not therefore excessive, and the appeals on ground (f) fail.

Conclusions

15. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part.

Conditions

16. I have considered the need for conditions, and those suggested by the Council, in the light of Circular 11/95: *The Use of Conditions in Planning Permissions*.
17. As a result of my decision on ground (a) conditions relating to the residential use of the site are not necessary. Neither would a condition requiring conformity with approved plans be appropriate as the agricultural fencing and sheds would be moved across the site. I am not persuaded that conditions prohibiting bonfires and requiring approval of the colour of the sheds are necessary as no evidence has been submitted to demonstrate why planning permission for the agricultural parts of the development cannot be granted without them.
18. I do not therefore consider any conditions to be necessary.

Formal decision

Appeal A: APP/U2235/C/10/2133299

19. I allow the appeal insofar as it relates to the erection of a polytunnel, the erection of 7 No shed buildings, and the erection of fencing to form enclosures to keep animals and fowl, and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a polytunnel, the erection of 7 No shed buildings, and the erection of fencing to form enclosures to keep animals and fowl, at Land known as Woodside Farm, Old Ham Lane, Lenham, Maidstone, ME17 2LT, referred to in the notice.
20. Variation of the requirements of the notice to exclude those parts of the development for which permission has been granted above could give rise to two inconsistent permissions: the conditional one granted above and an unconditional one deemed to have been granted under s173(11) of the 1990 Act as amended as a result of the variation cutting down the requirements. I shall not therefore vary the notice in this respect but rely on s180 to mitigate the effect of the notice so far as it is inconsistent with the permission.
21. I dismiss the appeal and uphold the enforcement notice insofar as it relates to the stationing and residential occupation of mobile homes, the erection of a timber utility room building, and the erection of a timber w.c. building, and I refuse planning permission in respect of the stationing and residential occupation of mobile homes, the erection of a timber utility room building, and the erection of a timber w.c. building, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, at Land known as Woodside Farm, Old Ham Lane, Lenham, Maidstone, ME17 2LT, referred to in the notice.

Appeal B: APP/U2235/C/10/2133300

22. I dismiss the appeal and uphold the enforcement notice.

M A Champion
INSPECTOR

<u>For admin. use</u>	
Date logged:	19/10/2012
21 day completion:	Yes
If no, timescale is:	
Time allocation:	90

Maidstone Borough Council
Heritage, Landscape and Design
Planning Consultation Response Sheet (L)

FAO (Case Officer): Catherine Slade
Application No.: MA/12/1835

Address of site: PLOT 4, LAND WEST OF, CHURCH HILL, BOUGHTON MONCHELSEA, KENT

Proposal: Retention of breeding pens, bird runs, rearing unit, aviary and feed store; temporary stationing of a mobile home; and the siting of new brooding and rearing sheds

Reason for consultation:		
<input type="checkbox"/> Major application	<input type="checkbox"/> Conservation area	<input type="checkbox"/> Planning committee report
<input type="checkbox"/> Trees (protected)	<input type="checkbox"/> Design advice	<input type="checkbox"/> Appeal
<input checked="" type="checkbox"/> Trees/hedges (other)	<input type="checkbox"/> Pre app. advice	<input type="checkbox"/> Not known
<input type="checkbox"/> Landscape scheme	<input type="checkbox"/> Additional comments	

Comments:

There are no protected trees on this site although to the west, adjacent to the neighbouring plot, is an area of woodland which is protected by virtue of Tree Preservation Order No. 3 of 1994. This proposal will have no impact on this woodland.

There is a well established hedgerow to the east of the site where it fronts Church Hill but, again, the proposal to erect a proposed mobile home approximately 5m from the boundary does not appear to adversely impact upon this hedge so long as any supporting platform is carefully excavated to avoid any potential damage to roots should they extend that far. Any roots that are encountered should be pruned back, making a clean cut with a suitable sharp tool. Protective fencing is considered unnecessary due to the location of the existing breeding pens. On this basis I raise no objection to the application on arboricultural grounds.

If the application is being determined by Planning Committee, or by Members under delegated authority, and makes reference to any of the issues outlined above, a further commentary will be provided.

Signed: Deanne Cunningham

Date:07/11/2012