

APPLICATION: MA/10/0130 Date: 29 January 2010 Received: 29 January 2010

APPLICANT: Mr D Sands

LOCATION: 4, DANE PARK, DEAN STREET, EAST FARLEIGH, MAIDSTONE, KENT, ME15 0DU

PARISH: East Farleigh

PROPOSAL: Retrospective application for change of use of land to private residential garden as shown on Drawing No SANDS/2010/04, scale 1:1250 site plan , planting schedule and Applicant's Statement received on 29th January 2010.

AGENDA DATE: 18th March 2010

CASE OFFICER: Laura Gregory

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

- it is contrary to views expressed by the Parish Council

POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV28, H31
South East Plan 2009: C4,
Village Design Statement: None
Government Policy: PPS7

HISTORY

00/1080 - Demolition of existing buildings and erection of 4No. detached dwellings with associated access and ancillary works – APPROVE SUBJECT TO CONDITIONS

CONSULTATIONS

EAST FARLEIGH PARISH COUNCIL – Wish to see the application REFUSED for the following reasons

- The Village Plan clearly states that there should be no further development in the village
- that the proposed fences are not in keeping with the rural scene
- that agricultural land is being eroded
- that there is a possible adverse effect on wildlife

RURAL PLANNING ADVICE – Raises no objections

“The loss of best and most versatile agricultural land is regarded as small”

REPRESENTATIONS

One Neighbour Representation received raising the following:

- Change of use affects the livelihood of the farmed orchards nearby
- Fence blocks badger runs and pathways
- Fencing is obtrusive

CONSIDERATIONS

Site & Surroundings

- 1.1 The application site is located in the open countryside, in the parish of East Farleigh, and forms a parcel of agricultural land bordered which by residential property to the north, south and east orientations. To the west, the site is bounded by a public footpath which connects Forge Lane in the north to Dean Street in the south. Beyond this footpath are orchards.
- 1.1 The residential development in the area is ribbon development comprising of small groups of terraces houses to the north and small number detached dwellings to the south. The majority of dwellings are located to the north of the site and are within with East Farleigh/ Dean Street Conservation Area. To the east of the site is the applicant's dwelling and this forms part of Dane Park a resident development of 4 large detached dwellings. With the footpath to the west and Dean Street to the east, the site is within a triangle of land comprising of a small number dwellings surrounding a patch of land with lawful agricultural use.

Proposal

- 2.1 Retrospective planning permission is sought for the change of use of this parcel of agricultural land to residential garden, serving 4 Dane Park. A 1.8m high close boarded fence has been erected on the northern boundary and a children climbing frame and in addition, a patio has been installed to the north east of the site.

Planning Assessment

- 3.1 The proposal site is located outside the boundaries of any defined built up area. Although the applicant has referred to the use of the land as arable in the application documentation, it is considered that the development represents the change of use of the land from agricultural to domestic garden land. This is supported by case law and appeal decisions which confirm that the use of land as allotments, vegetable gardens, or similar does not constitute agriculture, and if ancillary to the use of a dwellinghouse, represents a change of use to garden land.

3.2 The key policy consideration therefore is the impact of the development on the character and appearance of the open countryside.

Impact upon on the Countryside

- 3.3 The change of use of agricultural land to domestic garden land is often contrary to the objectives of PPS7 and policy ENV28 which, aim to safeguard the character and functioning of the countryside. However, as policy H31 stipulates, extensions to residential gardens may be allowed where the overall appearance of the countryside is not compromised.
- 3.4 The unauthorised development results in the extension of garden land beyond the established rear boundary of Dane Park, the applicants have "squared off" approximately 1209m² of this patch of agricultural land and installed 1.8m high solid close boarded fencing and a children's climbing frame and play area in the north east corner.
- 3.5 In terms of scale, the development has resulted in a large chunk of agricultural land being fenced off. However, when considering the impact upon the countryside, it is not considered that the impact is significantly detrimental to the rural area. This is because in terms of open countryside, the "open" nature of this land is questionable. To the north, east and south of the site there are residential properties bounding the land which, are fenced off. The public footpath to the west is separated by a mixed hedgerow of trees bramble and hawthorn and the resultant impact is that this piece of land appears to have been boxed off over time with gradual sections of land being fenced off to be used as garden land. A significant example of this is application MA/06/1072 where a Certificate of Lawfulness was submitted and approved for the use of part of this land as residential garden for a period in excess of ten years. The land was formerly used a nursery and comprised of some 0.49 hectares. With the removal of this land from agriculture, the remaining section of land is so small and of an awkward shape, that it is not suitably used for either arable or livestock farming. The result is that the land it has been left to pasture.
- 3.6 Whilst it is appreciated that Rural Planning Advice Agricultural Advice consider the land to form some of the best agricultural land, given that the section of land is so small it cannot be used for arable or livestock farming and, that it is already bounded by residential property, it is not considered the loss of the land causes significant. to ensure that the impact of the change of us is kept to minimum and, to prevent the proliferation of domestic paraphernalia into the open countryside it is considered that conditions are necessary ton prevent any shed or structures being erected on this land.
- 3.7 To reduce the visual impact of the extended garden, the applicant's have proposed landscaping to reduce the visual impact of the extended garden and this is welcomed. The installation of native planting along the northern boundary comprising of Forest Whips, Hawthorn, Hornbeam and Privet would reduce visual impact of the fence.

Furthermore, with native planting proposed the new landscaping would appear in keeping with the surrounding and preserve some rural character to the site.

Other Issues

- 3.8 There is not considered to be any significant detrimental impact the residential amenity of the adjacent neighbouring occupier or on upon the setting of nearby conservation area.
- 3.9 Considering the letter of objection which has been received, the change of use of the land and the visual impact of the fence have been addressed in the main report and there are no further comments to make on this subject.
- 3.10 With regard to the impact the fence has on badger runs and pathways, no evidence has been provided which indicates the presence of badgers on site and the site is not designated as a Site of Nature Conservation Interest. There are no badger sets on or adjacent to the site and on this basis, it is concluded that the development is not significant enough to have a damaging affect on nearby wildlife.

Recommendation

- 4.1 In conclusion, for the reasons stated above, the proposal is considered to be acceptable with no significant harm being caused to the visual quality of the rural setting and or, significant the erosion of the open countryside. The development is therefore in accordance with the provisions of the Development Plan. Members are therefore recommended to approve the application subject to the following conditions.

RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. Within 3 months of the date of this permission, the scheme of landscaping as shown on Drawing No SANDS/2010/04 and detailed in Planting Schedule received on 28 January 2010 shall be carried out in the first planting and seeding seasons; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development, in accordance with Policy C4 of the South East Plan 2009 and Policies ENV28 & H32 of the Maidstone Borough-Wide Local Plan 2000.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification) no development within Schedule 2, Part 1 Classes E & F shall be carried out without the permission of the local planning authority.

Reason: To safeguard the character and appearance of the countryside, in accordance with Policy C4 of the South East Plan 2009 and Policies ENV28 & H32 of the Maidstone Borough-Wide Local Plan 2000.

Informatives set out below

This application concerns the change of use of the lands only and planning permission is still required for that the children's climbing frame and patio areas. You are therefore reminded that an application for these works must be submitted accordingly. Otherwise, you will be liable to Enforcement Action.

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 South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.