

APPLICATION: MA/10/0839 Date: 12 May 2010 Received: 3 September 2010

APPLICANT: Mr I Fern

LOCATION: TUTSHAM HALL, TUTSHAM FARM, WEST FARLEIGH, MAIDSTONE, KENT, ME15 0NE

PARISH: West Farleigh

PROPOSAL: Conversion of Oast House to 5No. live-work units, and external alterations, associated garaging, parking and landscaping as shown on drawing nos. 2000/P/103, 2000/P/104, 2000/P/105, 2000/P/106, 2000/P/107A, 2000/P/108A, 2000/P/109B, \*2000/P/110B, 2000/P/111B, 2000/P/112B, DHA/7347/01 RevA and Bat Survey received on 3rd September 2010 and 2000/P/101B received on 3rd March 2011.

AGENDA DATE: 7th April 2011

CASE OFFICER: Richard Timms

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

- It is contrary to the views expressed by West Farleigh Parish Council

## 1. **POLICIES**

- Maidstone Borough-Wide Local Plan 2000: ENV28, ENV35, ENV44, ENV45, T13
- The South East Plan 2009: CC1, CC6, RE3, C4, BE6
- Government Policy: PPS1, PPS3, PPS4, PPS5, PPS7, PPS9, PPG13, PPS23

## 2. **HISTORY**

MA/09/0603 **Demolition of American oast**, reconstruction/restoration of traditional oast house and change of use to holiday let accommodation. Conversion of general purpose building to stable complex, conversion of small barn to office/store and construction of ménage – REFUSED

MA/07/1439 **Conversion of American oasthouse to form one dwelling**, conversion/restoration of twin oasthouse to form annexe accommodation and garaging and conversion of small barn to pool house – REFUSED (APPEAL DISMISSED)

- MA/06/0107 Conversion/extension of existing barn and erection of new buildings to form 3 residential units (**involving demolition of American oast**) – REFUSED (APPEAL DISMISSED)
- MA/05/0892 Change of use of buildings from agriculture to Class B1 / B8 use and associated works including formation of new vehicular access off Hunt Street (**change of use of American oast to B1 offices**) – REFUSED
- MA/03/0736 Conversion of twin-kiln oasthouse with restoration of stowage barn to 1No. dwelling and **conversion of American oasthouse to 4 dwellings** – REFUSED

### **3. BACKGROUND**

- 3.1 This application was reported to Planning Committee on 16<sup>th</sup> December 2010. Members deferred consideration of the application to enable officers to –
- *"Consider the effectiveness and suitability of conditions and/or a legal agreement in terms of ensuring that the live-work units remain as such and do not become solely residential; and*
  - *Advertise the application as a departure from the provisions of the Development Plan."*
- (The original committee report is attached as an **Appendix**)
- 3.2 The application was advertised in the Kent Messenger newspaper and consultation expired on 7<sup>th</sup> January 2011. Two site notices were erected at the site which expired on 18<sup>th</sup> January 2011.
- 3.3 Following this re-consultation one neighbour representation has been received raising the following points:
- We do not want contractors lorries and vans coming down what is a public footpath and damaging property on either side of this footpath as has happened in the past.
  - The extra live work units will increase traffic and therefore we want the planning to address the fact that access is via Hunt Street, which is a road maintained by the council rather than a road that is maintained by the residents of the Mill hamlet without any contribution from Tutsham Hall and its associated buildings.
  - Verbal and written agreements need to be enforced.

#### **4. FURTHER CONSIDERATIONS**

- 4.1 Negotiations have been taking place between the Council and the applicant to ensure an appropriate bilateral planning obligation (Section 106) to secure the live/work units in perpetuity. The obligation will secure as follows (summarised)–
- The residential accommodation shall only be occupied for residential purposes associated with the commercial use of the work accommodation.
  - No persons other than the occupier of the work accommodation and their dependants shall occupy the residential accommodation of the associated unit.
  - The work and residential accommodation of each unit shall be retained in one ownership and in one overall occupation and in one possession at all times.
  - The work and residential accommodation of each unit shall be disposed of together and not separately.
  - The work accommodation shall only be used for B1 use only.
  - The work accommodation shall remain as such in perpetuity and shall not be converted to residential accommodation.
- 4.2 MBC Legal services consider that this adequately controls the occupation and function of the live/work units. Concern was raised by some members at the last committee regarding whether or not the continued existence of the business can be controlled. Legal advice outlines that this cannot be governed by a Section 106 agreement as it is not a planning consideration and it would be overly prescriptive and ultra vires to do so. However, the provision that the work units are the occupant's "main" workplace assists with the maintenance of business activity at the site, which is secured under the definition of an 'occupier' within the obligation.
- 4.3 Having assessed the agreement and based on legal advice, I consider that the obligation will secure the live/work use as far as is reasonably possible. As previously pointed out, these points will be difficult to enforce but Members have acknowledged this.
- 4.4 Other measures relating to traffic management have been included within the obligation. Some measures have been proposed including an electric gate (with pin code access) at the existing gate near to Mill Cottages, signage directing access only via Hunt Street and the provision of rubber matting over a cattle grid near to Mill Cottages. The measures are essentially to control access via Mill Lane, a private lane.

- 4.5 Members will be aware that there are strict tests for planning obligations being that they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
- 4.6 Any use of Mill Lane is a private matter but I do not consider that any potential use of Mill Lane by future residential occupiers of the live/work units to be unacceptable. It would be reasonable for people living at the live/work units to use this access if they are entitled to and unreasonable for the Council to preclude this. However, I consider that delivery vehicles and customers of the business units could potentially cause additional noise and disturbance to properties on Mill Lane, especially as deliveries could potentially take place late at night. For this reason, I consider measures to restrict access to the site via Hunt Street in relation to the work units is necessary, directly related to the development and reasonable. Signage measures at the site could also be required to direct such traffic along Hunt Street.
- 4.7 The provision of an electric gate with pin code access would affect other existing users with a right of way over the lane and would therefore not be directly related to the development. The rubber matting, which is to reduce noise, is not considered necessary as business traffic would be restricted to Hunt Street and this would affect other users.
- 4.8 For the above reasons, if Members are minded to approve the application I consider the planning obligation will provide an appropriate means of securing the live/work units and the restriction of access for business traffic to Hunt Street would be appropriate. Any recommendation for approval could be subject to delegated powers for the prior completion of the legal agreement to secure this.
- 4.9 Notwithstanding my advice on the suitability of the obligation, this does not affect my view on the acceptability of the proposed development, which I still consider to be unacceptable for the same reasons as before. I consider that the site is unsuitably located for the live/work development such that future occupants and visitors would be reliant upon private vehicles and therefore the proposals would not secure a sustainable pattern of development. I consider that the building is not worthy of retention for residential purposes and the changes to the building and the provision of decking areas and the communal garden would result in domestic intrusion that would be harmful to the character and appearance of the rural area contrary to countryside protection policies. I therefore still recommend refusal of the application for the following reasons.

## **5. RECOMMENDATION**

REFUSE PLANNING PERMISSION for the following reasons:

1. Due to the remoteness of the site from public transport, shops, services and other facilities the proposal would result in an unsustainable form of development with a reliance on the private car thereby contrary to policy CC1 of the South East Plan 2009 and PPS1, PPS4, PPS7 and PPG13.
2. The existing building is not of sufficient quality or architectural merit and does not make a positive contribution to the character and appearance of the countryside to justify its retention or preservation for residential purposes. In addition, the alterations to the building, the provision of decking areas and the communal garden are considered to result in harm to the character and appearance of the countryside contrary to policies ENV28, ENV35, ENV44 and ENV45 of the Maidstone Borough-Wide Local Plan 2000, policies CC6 and C4 of the South East Plan 2009 and PPS7.