

APPLICATION: MA/12/0428 Date: 6 March 2012 Received: 27 March 2012  
APPLICANT: Mr Andrew Desmond  
LOCATION: LAND SOUTH WEST OF, CARING ROAD, LEEDS, KENT  
PARISH: Otham  
PROPOSAL: Erection of fencing and gate on west boundary of Caring Paddock  
AGENDA DATE: 1st November 2012  
CASE OFFICER: Jon Lawrence

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

- It is contrary to views expressed by the Parish Council

## **1. POLICIES**

- Maidstone Borough-Wide Local Plan 2000: ENV28, ENV34, ENV39
- South East Plan 2009: CC1, CC6, C4
- Government Policy: NPPF

## **2. HISTORY**

- 2.1 This application resulted from a letter sent to the Council in February 2012 by the (now) applicant advising that they were to erect agricultural fencing and gates with the intention to use the land for sheep grazing. A letter in response was sent advising that planning permission would be required due to an Article 4 Direction confirmed in March 2003 that includes the land subject to this application. This Article 4 Direction prevents the erection of fences, walls and other means of enclosures as permitted development and also temporary uses of the land as permitted development. This Article 4 was sought in 2002 following LPA concerns arising from the sale and possible sub-division of parts of the land into individual plots. The existence of this Article 4 Direction is the only reason planning permission is required for the development subject to this application.
- 2.2 There is also substantial previous enforcement history involving the land both before and since the Article 4 Direction was issued. This includes successful enforcement action in 1999 against its use for storage of caravans and associated engineering operations to raise and re-sculpt the land. It also includes the use of the land for motorbikes; the stationing and occupation of

caravans; repairing and storing vehicles; and concerns over subdivision of the land and erection of fencing. These matters have all been resolved.

- 2.3 There has only been one planning application submitted and this relates to the wider land. This concerned the field adjacent to the east of the application site, and was an outline application for a manor house and gate lodge (ref MA/99/0355). This application was, however, withdrawn in June 1999.

### 3. **CONSULTATIONS**

- 3.1 The line of the proposed fencing and gates, and therefore effectively the application site, falls within the Parish of Otham. However, the eastern section of the wider land/fields falls within the Parish of Leeds, whilst land within the Parish of Downswood is also nearby. All three Parish Councils have therefore been consulted on this application.

- 3.2 OTHAM PARISH COUNCIL wish to see the application REFUSED and REQUEST that it is reported to Planning Committee. They report that both residents and local farmers have expressed concern regarding this matter. They also offer some more detailed comments as follows:

*"History of the site -*

*This 6½ acre field was sold in Oct 1981 as grazing land, and was used as such.*

*The site was sold on to a developer who sought to build a large detached house on the Eastern boundary. Permission was refused.*

*The site was then sold off in small parcels, mostly to people in the Stratford area of London. The land is now divided into ten plots.*

*Alerted to this sale, MBC obtained an article 4 directive in March 2003 prohibiting amongst other things building and fencing. Numerous complaints of misuse of the land have been dealt with by MBC. The most serious being an attempt by itinerant workers to squat on the land with 28 caravans in June 2006. Because of the fragmented ownership this presented difficulties to MBC. But the Borough managed to gain an eviction fairly speedily.*

*Plot 8 (Southern corner) change hands again in 2007/2008. Over a weekend this plot was fenced and a shed was erected. MBC took enforcement action and the site was returned to grazing.*

*During the period 2006 – 2012 there have been two forms of agricultural use. Sheep grazing has occurred on an informal arrangement.*

*However, there have since been occasions of wide spread usage for pony grazing. The ownership of the animals has been difficult to trace, and the density has been such that both police and RSPCA have been asked to investigate.*

*The Parish Council does not wish to comment as such matters are outside of its planning remit being a civil matter between land owners.*

*Comments -*

*In viewing this application the Parish Council has, therefore, to express an opinion on the justification for removing part of the Article 4 direction on a specific strip. As no formal tenancy contracts have been offered, and the owners' stated intention is not related to their own farming activity, the Parish views the request with suspicion.*

*The effect of permission would be to divide the land unnecessarily (into two parcels of about 3 acres.) Furthermore, it could result in plots 1-8 on the western boundary being left derelict and potentially require action from MBC on environmental concerns. The only source of water would be outside of these plots making grazing use more difficult.*

*In practical terms an informal grazing arrangements would be acceptable and not require sub-division of the land.*

*The Parish Council, therefore, opposes this planning application. It asks that the Article 4 directive remains in place".*

3.3 DOWNSWOOD PARISH COUNCIL wish to see the application REFUSED and REQUEST it is reported to Planning Committee as "We see no reason to remove part of the Article 4 Directive for a specific strip of land and therefore ask that the directive remains in place."

3.4 LEEDS PARISH COUNCIL – No response.

#### **4. REPRESENTATIONS**

4.1 Nine objections have been received from local residents including a local farmer. In summary, the grounds for objection are as follows:

- Breach of Article 4 Direction
- Question agricultural motives – instead an attempt to mark territorial ownership

- Speculative and non-agricultural ownership of the land
- To sub-divide the field will damage the chances of it ever being returned to agriculture
- Will not ensure agricultural future of field so no need to lift Article 4
- The land would be better farmed without sub-division.
- If field separated into individual lots it would not be of use for grazing or crops, so is a threat to its agricultural usefulness
- Would set precedent for destruction of larger fields/parcels of land in area
- Would set precedent for fencing off of other plots, destroying field and those to east and west
- Natural beauty of this Len Valley Landscape Area would be lost forever, with impact on visual appearance of aesthetic value, and which would be worsened by an possible subsequent change of use
- Loss of recreational resource
- Gate not necessary as there is already a gate providing access to this field from Caring Road
- As one large field access is currently possible to natural water supply on Caring Road – to fence off would mean isolating the plots beyond the fence which would then have no legal access to mains water and therefore could not be used for grazing
- A divided field would not be large enough to graze the horses currently in the entire field
- This is for a new field boundary within an existing field and not for the fencing off of an identifiable existing paddock

## **5. CONSIDERATIONS**

### **5.1 Site Description**

5.1.1 This application relates to a parcel of land within fields in the open countryside east of Maidstone and between urban areas to the north and west and the village of Otham to the south. Most of the application site is within Otham Parish but a small section of the wider land on the east side appears to be in the Parish of Leeds. The field(s) comprising and surrounding the application site rise to the east and west and to the south, so naturally have a valley type feature. The Article 4 Direction confirmed for the land and the wider fields removes the right to erect fences and other enclosures and to use the land for temporary uses under permitted development.

5.1.2 Otham Lane runs along the west boundary of the wider fields within which the application site is located, and Caring Road is adjacent to the north. There is hedgerow, planting and vegetation generally around the boundaries of the wider field with both Otham Lane and (including the application site) Caring Road, although the inner field boundaries of the site are both unmarked and with post

and rail fencing to the south side. There are some residential properties in the vicinity of the site, particularly along Otham Lane.

- 5.1.3 The application site and adjoining fields are presently used to graze horses. There is also the remains of a dilapidated former stable building on the top of the slope at the eastern end of the field adjacent to the east of the application site. The land and wider fields have in the past been subject to enforcement investigations and formal action concerning unauthorised activity and developments, which in the early 2000's led to the Council seeking the Article 4 Direction that was later confirmed.

## **5.2 Proposal**

- 5.2.1 This application seeks permission, as described on the application forms, for a proposed 1.22m high wooden post and wire/proof netting fencing, over a distance of some 160-170 metres along the entire western boundary of the application site, and including the provision of a '5 bar rounded' gate in the southern end of that fencing. The netting is described as being galvanised, with two strands of galvanised barbed wire at the top. The gate would provide an "access way" through to the fields either side of the proposed fence and their separate access points from the highways of Otham Lane to the west and Caring Road to the north.
- 5.2.2 The proposed gate is described as being a galvanised 5-bar agricultural gate, and being 3.65m in length and 1.2m in height.
- 5.2.3 There is no proposal under this application to change the use of the land and any use other than agriculture would require planning permission.
- 5.2.4 If planning permission were granted for the proposed development this would not result in the Article 4 Direction being removed. This Direction would remain in force and any proposal for future fencing would require planning permission.

## **5.3 Considerations**

- 5.3.1 Although the application site lies within open countryside and also immediately south of a designated Special Landscape Area, I am satisfied in principle that this development is acceptable in line with development plan policies and government advice aimed at rural areas and settlements.
- 5.3.2 Strong regard must be had to development plan policies and government advice aimed at protecting the countryside and landscapes of quality and character. Further, the development must accord with the principle of sustainable development that underwrites government policy.

## **5.4 Visual Impact**

- 5.4.1 The development would be visible from public areas along Caring Road to the north and Otham Lane to the west, at close distances in part from Caring Road which the fencing would run up to, and at distances of around 45-50 metres from Otham Lane which it would run parallel to.
- 5.4.2 However, the height, form, scale, type and material of the development proposed is considered to be acceptable for the location. In fact, it is considered a typical agricultural post and wire fencing and gate type enclosure for the countryside, and would not therefore have an unacceptable impact on its character and appearance, nor the scenic quality and distinctive character of the nearby designated SLA.
- 5.4.3 A significant reason for seeking the Article 4 Direction was to stop fencing off of plots of this land and therefore the formation of small plots. The proposed line of fencing and gates would not lead to the fencing off and formation of small individual plots, and would not therefore result in harm contrary to aims of the Article 4.
- 5.4.4 I therefore consider that on balance the proposed scheme is acceptable in visual terms.

## **5.5 Other matters**

- 5.5.1 The proposal raises no issues concerning sustainable development.
- 5.5.2 The history over the application site and wider fields, as brought up in representations, does form some of the background of this application, as identified in Section 2 above. However, the consideration of this application should only be based on the proposal submitted.
- 5.5.3 With regard to concerns over what might happen in the future should this proposal be granted planning permission, it is important to remember that any further development requiring planning permission, including further sub-division of the application site or wider land by any physical enclosures, would not automatically be considered acceptable, and also that enforcement action could still be taken against any future unauthorised development on the application site and wider land.

## **6. CONCLUSION**

- 6.1 The proposed scheme would not have an unacceptable visual impact on the character and appearance of the countryside or nearby SLA and would appear as a typical rural fence.
- 6.2 There are no sustainable development issues.
- 6.3 Should the proposed scheme be granted planning permission then any further fencing on the application site and wider fields would not automatically be considered acceptable, would still require planning permission, and would be open to enforcement action.
- 6.4 I therefore consider the development to be acceptable and that planning permission should be granted subject to a standard time implementation condition.

## **7. RECOMMENDATION**

GRANT PLANNING PERMISSION subject to the following condition:

- 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2. The development hereby permitted shall be carried out in accordance with the following approved plans:

un-numbered site plan received 8 March 2012  
un-numbered site/block plan received 27 March 2012

Reason: in the interests of visual amenity in accordance with policies ENV28, ENV34 and ENV39 of the Maidstone Borough-Wide Local Plan 2000 and policies CC1, CC6 and C4 of the South-East Plan 2009.

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.