

APPLICATION: MA/12/0751 Date: 22 April 2012 Received: 26 April 2012  
APPLICANT: Mr J Watson  
LOCATION: 21, ROUNDEL WAY, MARDEN, TONBRIDGE, KENT, TN12 9TW  
PARISH: Marden  
PROPOSAL: Change of use of land from agriculture to residential garden (resubmission of MA/11/0842) as shown on the 2No. change of use plans, 2No. un-numbered photographs, and 2No. supporting notes, received 26th April 2012  
AGENDA DATE: 1st November 2012  
CASE OFFICER: Catherine Slade

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

- it is contrary to views expressed by the Parish Council.
- it is a departure from the Development Plan.

## **1. POLICIES**

- Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, H31
- South East Plan 2009: CC1, CC6, NRM5, C4
- Village Design Statement: Not applicable
- Government Policy: National Planning Policy Framework 2012

## **2. HISTORY**

### **Land to rear of 21 Roundel Way:**

MA/11/0842 Change of use of land from agriculture to residential garden - REFUSED

### **Land to rear of neighbouring properties:**

MA/11/0154 Retrospective planning permission for the change of use of land from agriculture to residential garden – REFUSED, ALLOWED AT APPEAL (land to rear of 7 Roundel Way)

MA/11/0201            Retrospective planning permission for the change of use of land from agricultural land to residential garden - REFUSED, ALLOWED AT APPEAL (land to rear of 5 Roundel Way)

### **3. CONSULTATIONS**

3.1 **Marden Parish Council** wish to see the application refused on the following grounds:

3.1.1 "if approved (it) would leave the ditch behind 19 Roundel Way completely landlocked and inaccessible for maintenance/clearance. This ditch forms a key part of the surface water run-off from the eastern part of the Cherry Orchard estate. Furthermore, it is not clear if and how the applicant proposes to cross the ditch to access the area within the red line and Councillors would be very concerned if any culvert or any other crossing reduced the capacity of the ditch which is likely to lead to localised flooding."

3.2 The Kent County Council Biodiversity Officer raises no objection to the proposal, and makes the following detailed comments:

3.2.1 *"No ecological information has been submitted with this application. We have reviewed the information submitted with the application and in particular have compared the previous site photograph (Figure B) with current site photographs provided by the planning officer advise that the ecological status of the site has decreased significantly and currently provides minimal opportunities for wildlife. The creation of a native species hedge using the species proposed will however improve the site's ecological interest.*

3.2.2 *We recommend that to further increase the site's ecological interest, the grass under and adjacent to the hedge (once the hedge has grown up) is not maintained as short-cut. This will provide opportunities for small mammals and other wildlife which have been lost as a result of the loss of the field margin. In addition, log piles placed along the hedgeline will provide additional ecological enhancement."*

3.3 The **Rural Planning Consultant** objects to the application on the grounds that it results in the loss of the best and most productive agricultural land, and raises concern in respect to domino effect of consecutive changes of use of adjacent parcels of land, and makes the following detailed comments:

3.3.1 *"As you will be aware this application follows the earlier refusal of application MA/11/0842 for the same proposal. My letter of 16 June 2011 refers. At the same time I advised the Council as to the retrospective change of use of adjoining land in the same field at 7 Roundel Way (ref. MA/11/0154), and*

*another plot adjoining that, in the field corner, at 5 Roundel Way (ref. MA/11/0201).*

- 3.3.2 *The applications followed the recent sale of a strip of land (overall maximum dimensions about 100m x 20m) to the rear of the above 3 properties and No 19 Roundel Way plus two further adjoining properties off Napoleon Drive, no.s 15 and 17. The strip of land lies at the northern end of an arable field of 5ha or so.*
- 3.3.3 *My advice in respect of both the plots adjoining Nos 7 and 21 was that in both cases the change of use had involved (in the case of No 7 ), or would involve (in the case of No 21), a loss of "best and most versatile" (BMV) agricultural land.*
- 3.3.4 *In response to the various submissions by or on behalf of the applicants referring to awkward field corners, I pointed out that the creation of the extended plot to No 7 had now created in turn an awkward corner for cultivation at the rear of No 21, likewise extension of No 21 would cause a similar impact for the next plot westwards, and so on: a potential domino effect.*
- 3.3.5 *The refusal of the applications relating to Nos 5 and 7 were appealed and the appeals were allowed on 20 March 2012. The loss of agricultural land was not an issue re. No 5. Re. No 7, the Inspector found the loss of agricultural land to be an adverse impact, although in the overall balance he decided that the harm arising from the loss of the small area of potentially productive agricultural land to be outweighed by the benefit of providing an improved landscaped edge to the settlement and that this in turn would contribute to biodiversity.*
- 3.3.6 *The Inspector went on to observe that in determining the appeal in that way he was conscious that similar issues may arise on the strip of land to the west; however his decision was taken on the basis of the evidence before him and was confined to the land the subject of that appeal.*
- 3.3.7 *It remains the case that the change of use, now, of the land to the rear of No 21 would likewise conflict with Policy H31 in terms of the loss of an area of the best and most versatile land and contribute to a further potential domino effect of land loss westwards along the strip of land, as referred to above, in terms of consecutive plots each becoming awkward corners to cultivate."*

#### **4. REPRESENTATIONS**

- 4.1 A site notice was displayed at the site on 28<sup>th</sup> May 2012 and the application was advertised by means of a press advert which expired on 15<sup>th</sup> July 2012.
- 4.2 No responses were received as a result of the publicity procedure.

## **5. CONSIDERATIONS**

### **5.1 Site Description**

- 5.1.1 The proposal site comprises a trapezium shaped parcel of land with an area of approximately 0.02Ha. The site is located to the rear (south) of 21 Roundel Way and located in open countryside with no specific environmental or economic designations.
- 5.1.2 The site is a small part of a larger agricultural unit which abuts the rear boundaries of some of the properties on Roundel Way. The defined settlement boundary runs along these boundaries, the properties being located with the village and the land to the south being in the open countryside.
- 5.1.3 The site is grassed and well maintained as a lawn. The adjoining land uses include agricultural to the south east and west of the site, residential to the north, and garden land associated with number 7 Roundel Way to the east.
- 5.1.4 The site is enclosed to the north east by a close boarded fence, and to the west and south east by a post and rail fence. The site boundary to the curtilage of 21 Roundel Way, which is "blue land" in respect of the current application, is marked by a wooden fence.

### **5.2 Proposal**

- 5.2.1 The application is retrospective, and seeks planning permission for a change of use of the land from agriculture to garden land associated with number 21 Roundel Way. The land has been enclosed with the boundary treatments described above, and is laid to lawn. A simple wooden bridge has been installed to provide access to the land from the adjoining residential property.
- 5.2.2 Planning permission for the change of use has previously been refused under MA/11/0842.

### **5.3 Principle of Development**

- 5.3.1 The proposal site is located in open countryside and as such new development is subject to policies of restraint, in this case primarily under ENV28, which seeks to protect the open countryside and restricts new development to specified cases, such as development necessary for agricultural or forestry, or to other exceptions as set out in policies in the Local Plan.
- 5.3.2 In cases of applications for the change of use of agricultural land to garden land, there is a specific Local Plan policy, H31, which states that planning permission

for such changes of use such as that currently under consideration shall not be granted if there would be harm to the character and appearance of the countryside, and/or loss of the best and most versatile agricultural land.

- 5.3.3 As set out above, the Rural Planning Consultant confirms that the site comprises agricultural land falling within the scope of "best and most versatile". The development is therefore contrary to policy H31 of the Local Plan, and the previous application was refused on these grounds, as set out above in paragraph 5.2.2.
- 5.3.4 Notwithstanding the above, planning permission has been recently granted at appeal for similar changes of use of land adjoining and near the application site, Maidstone Borough Council case reference numbers MA/11/0201 and MA/11/0154; the appeal decisions relating to these applications are attached as Appendices 1 and 2 respectively. The sites are identified on the plan attached as Appendix 3.
- 5.3.5 The appeal decisions referred to above were both issued on the 20<sup>th</sup> March 2012, and postdate the refusal of MA/11/0842, the decision notice being issued on 12<sup>th</sup> July 2011. These appeal determinations are a material consideration in the assessment of the current application.

#### **5.4 Visual Impact**

- 5.4.1 The Inspector, in determining the appeals detailed above, concluded that whilst close boarded fencing was visually intrusive, that the enclosure of the land by what he termed "ranch style" fencing and the introduction of landscaping in the form of the introduction of native hedging within the southern boundaries of the site would mitigate this harm with the result that the visual impact of the development would not cause harm to the character or appearance of the countryside.
- 5.4.2 In the circumstances of this case, the fencing introduced by the applicant is of a post and rail construction and the close boarded fencing to the eastern boundary of the site introduced by the owner of 7 Roundel Way is required to be removed by condition attached to the previous appeal decision.
- 5.4.3 As such I am bound to agree with the Inspector in finding the visual impact of the application to be acceptable, subject to a time limited condition requiring the submission, approval and implementation of a landscaping scheme which shall include the introduction of a native hedge to the southern boundary of the site.

## **5.5 Loss Of Best And Most Versatile Agricultural Land**

- 5.5.1 The Rural Planning Consultant is of the view, based on DEFRA classifications and records of such resources, that the land falls within the scope of best and most versatile agricultural land, in this, he concurs with the opinion of the Inspector in assessing the two appeal cases referred to throughout this report.
- 5.5.2 However, the Inspector was of the view that the awkward field corner caused by the curtilage of number 7 would impede use of this part of the larger agricultural unit by large, modern farming equipment, and concluded that the resultant difficulties in cultivating this land weighed against the best and most versatile value of the land.
- 5.5.3 The Inspector conceded that allowing the appeals would effectively displace the issue to another area of the larger field (paragraph 13 of APP/U2235/A/11/2167736), and specifically referred to the land to the rear of number 21 in this regard, and it is clear that the current application has resulted from the appeal decision. The Rural Planning Consultant has raised concern in respect of a "domino effect" of the erosion of the field margin in this location as a result of the appeal decisions and the current application, and I share this concern, however in the light of the appeal decisions, it is not considered possible to resist the current application for this reason.

## **5.6 Ecology**

- 5.6.1 The site is not a designated ecological site, and the Inspector found in the appeal decisions referred to above that there was no "indication that either it or nearby land supports or supported any specific species". The Inspector further found that marginal agricultural areas could be of ecological value and gardens were of comparatively limited benefit. However, he opined that the planting of native hedgerows along the site boundary "would be sufficient to restore the ecological value of the area". The Kent County Council Biodiversity Officer has confirmed that the site is of limited ecological value as a result of the activities on site, and has recommended ecological improvements, as set out above.
- 5.6.2 In this case, I can find no reason to diverge from these views, and subject to the landscaping condition set out in paragraph 5.4.3 above, consider that there is no objection to the proposal on the grounds of impact on biodiversity.

## **5.7 Other Matters**

- 5.7.1 The development does not have any implications for highway safety or heritage assets. The site is not known to be within an area recorded by the Environment

Agency as being prone to flood. The proposal would not result in harm to residential amenity.

- 5.7.2 The Parish Council has raised concern over the condition of the drainage ditch located in the north of the site, and the provision of access for the maintenance of the same. From observations on site it is clear that no part of the ditch is impeded in terms of free water flow, and as such it is not considered that this objection to the proposal is sustainable.
- 5.7.3 It is of note that the Inspector imposed conditions on the approvals granted at appeal. In both cases condition 1 of the decision required the submission of a landscaping scheme and details of the removal of close boarded fencing within 2 months of the decisions. In the case of MA/11/0154, the details were submitted in a timely fashion, and approved as such, however the removal of the close boarded fencing had not taken place at the time of the site visit (18<sup>th</sup> June 2012). In the case of MA/11/0201, the details were not submitted until 10<sup>th</sup> July 2012, and the application is currently undetermined as the details submitted are not of an adequate standard. Negotiations are underway to secure an appropriate scheme.
- 5.7.4 The wording of the conditions attached to the appeal decisions require that the use of the land as garden land ceases until such a time as the conditions have been approved and fully implemented; the cases have been reported to the Council's Planning Enforcement Team.
- 5.7.5 Whilst the breaches of planning control following the appeal decisions are regrettable, and are currently under investigation, the subsequent failure to comply with condition attached to the appeal decisions does not invalidate the Inspector's findings in respect to the changes of use.

## **6. CONCLUSION**

- 6.1 For the reasons set out above, I consider that, whilst the development is contrary to development plan policy, the recent appeal decisions represent a strong material consideration which outweighs the policy concerns, which are fully exercised in the appeal decisions. I therefore recommend approval of the application, subject to the conditions set out above.

## **7. RECOMMENDATION**

GRANT PLANNING PERMISSION subject to the following conditions:

1. Unless within 2 months of the date of this decision a scheme for the landscaping of the site, which shall include the introduction of a native species hedge to the south east boundary of the site, including a timetable for the implementation of the scheme and a programme for the future maintenance of trees and shrubs, is submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented in accordance with the approved programme, the use of the site as garden land shall cease until such a time as a scheme is approved and implemented. If no scheme is approved within 4 months of the date of this decision the use of the site as garden land shall cease until such a time as a scheme approved by the Local Planning Authority has been implemented. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines.

Reason: To ensure the quality of the development is maintained, safeguard the character and appearance of open countryside and mitigate against the loss of the field margin as a biodiversity habitat in accordance with policies ENV6, ENV28 and H31 of the Maidstone Borough-Wide Local Plan 2000 and CC1, CC6, NRM5 and C4 of the South East Plan 2009, and central government planning policy and guidance as set out in the National Planning Policy Framework 2012.

2. If within 5 years of their planting in accordance with the landscaping scheme any trees or plants die, are removed or become seriously damaged or diseased they shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written approval to any variation of the approved scheme;

Reason: To ensure the quality of the development is maintained, safeguard the character and appearance of open countryside and mitigate against the loss of the field margin as a biodiversity habitat in accordance with policies ENV6, ENV28 and H31 of the Maidstone Borough-Wide Local Plan 2000 and CC1, CC6, NRM5 and C4 of the South East Plan 2009, and central government planning policy and guidance as set out in the National Planning Policy Framework 2012.

3. 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 fences, gates or walls shall be erected on the extended garden area other than as indicated within the landscaping scheme approved under the provisions of condition 1;



Reason: To ensure the quality of the development is maintained and safeguard the character and appearance of open countryside in accordance with policies ENV6, ENV28 and H31 of the Maidstone Borough-Wide Local Plan 2000 and CC1, CC6 and C4 of the South East Plan 2009, and central government planning policy and guidance as set out in the National Planning Policy Framework 2012.

**Informatives set out below**

Please note that this planning permission grants a change of use of the land from agriculture to garden land; as such the land does not benefit from permitted development rights under the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order with or without modification).

In order to enhance the ecological value of the site, the grass under and adjacent to the hedge should not be maintained as short-cut, and log piles should be provided along the hedgeline to provide additional ecological enhancement.

Although the proposal for the change of use of the land is contrary to the policies of the Development Plan, it is considered that the recent appeal decisions (APP/U2235/A/11/2166248 and APP/U2235/A/11/2167736) relating to similar developments on neighbouring sites represent a material consideration which justifies the approval of a scheme which is contrary to the Development Plan (Maidstone Borough-Wide Local Plan 2000 and South East Plan 2009).