

APPLICATION: MA/13/1621 Date: 9 September 2013 Received: 23 October 2013

APPLICANT: Mr D Ridgewell

LOCATION: GAIN HILL YARD, CLAYGATE ROAD, YALDING, KENT

PARISH: Collier Street

PROPOSAL: Outline application for demolition of existing buildings and hard standing at the former scrap yard and erection of 2 two storey dwellings with garages and access. All other matters (appearance, landscaping, layout and scale) reserved for future consideration.

AGENDA DATE: 10th April 2014

CASE OFFICER: Annabel Hemmings

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: ENV6, ENV28, T13
- National Planning Policy Framework 2012: Chapters 4, 6, 7, 10, 11
- National Planning Practice Guidance 2014

## **2. HISTORY**

MA/90/0775 – Replacement storage building and replacement cabin. Approved 2<sup>nd</sup> November 1990.

MA/02/0063 – Outline application for the erection of two dwellings with all matters, except means of access, reserved for future consideration. Refused 24<sup>th</sup> December 2003. Appeal dismissed.

MA/06/1734 – Erection of replacement workshop. Approved 29<sup>th</sup> December 2006.

MA/07/0321 – Application for a certificate of lawfulness for an existing development being an established use of the site falling under class B2. Refused 5<sup>th</sup> April 2007

MA/07/0860 - Application for a certificate of lawfulness for an existing development being the use of buildings and land as a scrap yard and vehicle breaking yard. Withdrawn 15<sup>th</sup> February 2008

MA/09/1881 – Application to extend the time limit for implementing permission MA/06/1734 (erection of replacement workshop). Refused 10<sup>th</sup> March 2010. Appeal dismissed.

MA/10/0243 – Erection of new office building and associated parking. Refused 12<sup>th</sup> April 2010

MA/11/0352 – Erection of 2 Class B1 light industrial units. Refused 28<sup>th</sup> June 2011

### **3. CONSULTATIONS**

**Parish Council:** Wish to see the application approved and request the application is reported to Planning Committee.

**Environmental Health (4<sup>th</sup> December 2013):** Given the former use of the site, it is essential that a contaminated land assessment is carried out and any issue mitigated before any occupation occurs. It is likely the site is grossly polluted and in its present condition could pose a serious risk to human health.

Recommend refusal until a contaminated land assessment has been carried out and any issues found mitigated prior to development.

**Environmental Health (4<sup>th</sup> March 2014):** Have now been made aware of a site investigation report dated November 2009.

Although it is now over 4 years old, its content should be relevant to the site as it is now. It is a detailed and thorough historical desk study report combined with an intrusive investigation using an acceptable methodology. It appears that four trial pits were dug on site, but based on the appearance of the material excavated it was determined that no analysis of this material was necessary. However, it would appear that eight sampling points were used and that extensive soil and organics analysis has been carried out. The results appear to show that none of the parameters tested have exceeded the Soil Guideline Values that existed at the time the survey was carried out.

On this basis, and despite the age of this report, it is difficult to come to any other conclusion but to agree with the findings of the assessment – that there is no evidence of contamination that would have an adverse impact on human health.

Section 11.2 states that excavated soils would need a chemical analysis before being acceptable for transportation. I would not disagree with this recommendation. The Environment Agency would need to be consulted and comment on any such analysis that takes place.

No land contamination objections based on the findings of this assessment.

**KCC Highways:** No objection in principle to this proposal. Have checked the crash records and can confirm that both Claygate Road and Jarmons Lane have an excellent crash record. There have been no injury crashes adjacent to this site in at least the last eight years.

**Environment Agency (22<sup>nd</sup> November 2013):** Object to the proposed development because there is insufficient information to demonstrate that the risk of pollution to controlled waters is acceptable. There are two strands to this objection:

- Consider that the level of risk posed by this proposal to be unacceptable; and
- The application fails to provide assurance that the risks of pollution are understood, as a preliminary risk assessment (including a desk study, conceptual model and initial assessment of risk) has not been provided. It requires a proper assessment whenever there might be a risk, not only where the risk is known.

The site proposes drainage to ground without demonstrating that the risk of pollution to controlled waters is acceptable, despite the application acknowledging that contamination is likely from previous uses.

National Planning Policy Framework paragraph 109 states that the planning system should contribute to, and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Paragraph 120 states that local policies and decisions should ensure that new development is appropriate for its location, having regard to the effects of pollution on health or the natural environment, taking account of the potential sensitivity of the area or proposed development to adverse effects from pollution. Government policy also states that planning policies and decisions should also ensure that adequate site investigation information, prepared by a competent person, is presented.

The applicant should provide information to satisfactorily demonstrate to the local planning authority that the risk to controlled waters has been fully understood and can be addressed through appropriate measures.

**Environment Agency (5<sup>th</sup> March 2014):** Have now reviewed the additional information (Desk Study and Site Investigation Report).

The report is adequate in respect to risks to groundwater protection. The report observes that the site lies predominantly on Weald clay, a non productive rock type. The report also indicates that there is low permeability in the clay and, therefore, soakaway type drainage will not function at the site, and surface water systems will be more likely to discharge to a local ditch system along the site boundary. This will need to be carefully designed in connection with site drainage to ensure no localised flood issues arise.

Remove objection and request conditions relating to a surface water drainage scheme, finished floor levels, previously unidentified contamination are attached to any planning consent.

#### **4. REPRESENTATIONS**

One letter has been from a local resident in support of the proposal. Their comments are summarised below:

- As neighbours to the site for a number of years, we are aware of the problems that have been caused by recent uses on the site, both from a noise and traffic perspective;
- Have lived on this quiet rural lane and have lived with numerous goings on at the site, often working at unsociable hours and at weekends;
- Wholeheartedly support an application for residential use on the site;
- Understand the parish Council lent its support to the previous proposal;
- Have not known the site to flood whilst we have lived as neighbours to the property.

#### **5. CONSIDERATIONS**

##### **5.1 Site Description**

5.1.1 The application site is located in open countryside in the parish of Collier Street.

5.1.2 It is a triangular plot of land sandwiched between two narrow, single track lanes, Claygate Road and Jarmons Lane, which bound it on the western and eastern sides respectively and meet at the southern corner. The northern boundary abuts an open field/paddock from which it is separated by a ditch. All three sides are marked by mature and semi mature trees, generally Oak and Ash and these are covered by Tree Preservation Order 16 of 2013. There is a Grade II listed building some 50m to the south east.

5.1.3 The site is hard surfaced and at the time of the application site visit housed containers, mobile storage units and several vehicles including caravans. It is surrounded by a palisade fence.

## **5.2 Proposal**

5.2.1 This application seeks consent for the demolition of the existing buildings and hardstanding within the site, the erection of 2 two storey dwellings (with at least 4 bedrooms) and the change of use to residential.

5.2.2 The proposal is an outline scheme with access, layout and scale to be considered as part of this application and appearance and layout reserved for future consideration.

5.2.3 The submitting drawings show two detached dwellings within the site with shared garage facilities. The existing access to Claygate Road would be retained and improved to serve the proposed dwellings.

5.2.4 Whilst appearance is a reserved matter, the supporting document states that the aim of the applicant *"is to create two dwellings worthy of their setting which would respond well to the adjoining properties of rural value. There are several large properties nearby that include brick, tile, render and timber cladding. Our images attached with this application give an indication as to the type of design we would be looking to secure on the site and that it would respond well to its setting and provide a positive contribution to the landscape."*

## **5.3 Principle of Development**

5.3.1 New residential development in the countryside is unacceptable in principle unless there are other determining factors or policies which can justify such development. Policy ENV28 of the Maidstone Borough Wide Local Plan restricts development in the open countryside unless it falls within the following criteria:

1. Reasonably necessary for agriculture and forestry;
2. The winning of minerals;
3. Open air recreation and ancillary buildings;
4. The provision of public or institutional uses for which a rural location is justified.
5. Such other exceptions as indicated by policies elsewhere in this plan.

5.3.2 In this instance, the proposed development does not fall within one of those categories and as the development is for private housing there is no other policy in the plan which overrides ENV28. The agent accepts that the development would be a departure from the development plan; however, he considers that the site is previously developed land and that this together with the

enhancement to the appearance of the area and removal of an unsociable use outweigh the policy objections. I agree that this is previously developed land, however, the policy presumption is still against new residential development in the countryside.

## **5.4 Consideration**

- 5.4.1 The agent argues that Local Plan policy ENV28 is not up to date and does not reflect the guidance contained in the National Planning Policy Framework (NPPF). He considers that the NPPF encourages the effective use of previously developed land, the replacement of poor design with better design, the widening of the choice of quality homes and that in rural areas, special circumstances for new homes would include an enhancement of the immediate setting. He also goes on to state that the NPPF, when dealing with the issue of loss of employment land, states that Local Planning Authorities should avoid the long term protection of sites where there is no reasonable prospect of the site being used for that purpose. Lastly, he highlights that it is the Council's duty to allocate a 5 year housing supply and this has not been achieved.
- 5.4.2 Essentially, the agent is arguing that the application should be recommended for approval as the redevelopment of the site for residential is sustainable as the site is previously developed land, the appearance of the site would be enhanced, the adverse impact of the commercial use of the site would be removed, the proposed dwellings would add to the available stock of housing and make a contribution to the Council's 5 year housing supply.
- 5.4.3 Policy ENV28 of the Maidstone Borough Wide Local Plan 2000 was saved with a number of other policies within the plan in September 2007 in a direction from the Secretary of State. The direction stated "*where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy and also new evidence, will be afforded considerable weight in decisions.*" This is noted by the Council, the aims of policy ENV28 are consistent with the advice and guidance of the NPPF and this view is consistent with recent appeal decisions.
- 5.4.4 The emphasis of the NPPF on achieving sustainable development is a key consideration in this application. The application site is clearly in the open countryside, outwith any built up area. The occupiers of any residential development on this site would be wholly reliant on the use of a private car to access day to day facilities such as shops and schools. In my opinion, this clearly fails the test for a sustainable location.
- 5.4.5 As stated above, I accept that the site would be considered as previously developed land and it is noted that the NPPF does consider development on a

disused site could be acceptable as an enhancement. This site is not, however, disused. In fact according to the supporting information for this application, the site is in use as a breakers yard and has been for a number of years. No information has been submitted in terms of the viability of the enterprise and the agent does not advance any arguments to suggest that the business is not viable. His stance that the redevelopment of the site would remove the traffic etc associated with the commercial use of the site, gives no reason to conclude any other than the site is in active use.

- 5.4.6 The agent goes on to state that the NPPF supports the replacement of poor design with better design. It is correct that the NPPF supports high quality design and that it is indivisible from good planning. This guidance was not designed to allow every slightly untidy site to come forward for redevelopment purely as a means to tidy them up. If this were the case, this argument could be repeated time and time again throughout the country. In this instance, there is little on the site other than containers, mobile storage units, several vehicles and hard standing and whilst not the most attractive site within the borough, the residential redevelopment of the site is not the only means by which the site could be enhanced in terms of design.
- 5.4.7 Linked with the above is the agent's assertion that the NPPF states one of the special circumstances for allowing new homes in the rural area is that it would be an enhancement of the immediate setting. Infact the NPPF clearly states in paragraph 55 that "*Local Planning authorities should avoid new isolated homes in the countryside unless there are special circumstances.*" One of the special circumstances set out relates to the "*the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.*" In this case there are no permanent or redundant buildings that would be enhanced by their reuse.
- 5.4.8 The potential for visual harm caused by development on this site has been highlighted in previous applications on site and the Inspector also makes specific reference to it in dismissing the appeal on MA/09/1881 in December 2010. In paragraph 4 of his decision letter he states "*The site is in a highly visible location as it is between the arms of a Y shaped road junction. Claygate Road and Jarmons Lane are both single track country lanes and the site is visible from some distance, particularly from the south.*" He also comments on the character of the tree screen, "*The site is surrounded by mature trees and a wire fence, but there is only limited understorey vegetation and in the winter months there are clear views into the site from both roads.*" The appeal decision is attached as an appendix to this report.
- 5.4.9 With the above in mind, I note that the site is in a highly visible location at a road junction. Whilst the site is surrounded by several mature trees, which are

now the subject of Tree Preservation Order, in the winter months there are clear views into this site from both roads. The introduction of two dwellings to the site would introduce incongruous development to the site, which would be harmful to the visual amenities of the area contrary to Policy ENV28 of the Local Plan. Further planting might help to screen the site, but this would take many years to establish and the bulk of the proposed dwellings would be likely to remain highly visible. I am also concerned that there may be pressure from the occupiers of the properties to remove some or the entire tree screen, although this would require consent from the Council now that they are protected.

5.4.10 The agent's final argument to support the application is the Council's lack of a 5 year housing supply. The Council is in the process of allocating strategic housing sites in the Borough and is about to go out to consultation on the emerging plan. With this in mind, and given the limited contribution which the proposed two dwellings would make to the Council's housing supply it is not considered that this is an exceptional circumstance to justify the residential redevelopment of this site.

5.4.11 Given the above, I do not consider there are any exceptional circumstances that would support the residential reuse of this site which would override the policy objections.

## **5.8 Other Matters**

5.8.1 It is noted that when the application was initially submitted that both the Environment Agency and the Council's Enforcement Team raised concerns in relation to possible contamination issues with the site. A Desk Study and Site Investigation report was subsequently submitted and both bodies have now removed their objections.

5.8.2 From reviewing the planning history of the site, it appears that at the time of the previous application for residential development (2002), the site lay within Flood Zone 3 as identified by the Environment Agency. It appears that following reviews of these zones, that the site now lies adjacent to, but not within any identified flood zone.

## **6. CONCLUSION**

6.1 The proposed development would be contrary to Policy ENV28 of the Maidstone Borough Wide Local Plan 2000 as it would constitute unjustified residential development in the open countryside, which would represent a prominent and intrusive development. As such the proposal would be harmful to the character and appearance of the countryside. The proposal also fails to meet the aims and objectives of central government advice and guidance as set out in the National



Planning Policy Framework as it fails the test for sustainable development. The occupiers of any residential development on this site would be wholly reliant on the use of a private car to access day to day facilities such as shops and schools.

## **7. RECOMMENDATION**

REFUSE PLANNING PERMISSION for the following reasons:

1. The proposed development would be contrary to Policy ENV28 of the Maidstone Borough Wide Local Plan 2000 as it would constitute unjustified residential development in the open countryside, which would represent a prominent and intrusive development. As such the proposal would be harmful to the character and appearance of the countryside. The proposal also fails to meet the aims and objectives of central government advice and guidance as set out in the National Planning Policy Framework as it fails the test for sustainable development. The occupiers of any residential development on this site would be wholly reliant on the use of a private car to access day to day facilities such as shops and schools.