

REPORT SUMMARY

REFERENCE NO - 14/500282/FULL			
APPLICATION PROPOSAL Retrospective - use of land for a depot with associated storage, offices and parking as shown on drawing numbers 2147/14/B/2, 2147/14/B/4, 2147/14/B/5 and 2147/14/B/6, supported by Statement in Support of Planning Application, Transport Statement, Landscape and Visual Impact Assessment, Woodland Management document, Statement of Karen Fiona Ibrahim, Statement of Nicholas Lawson and information sheet about The Ideal Group, all received 6th June 2014			
ADDRESS Woodcut Cottage Crismill Lane Thurnham Kent ME14 3LY			
RECOMMENDATION APPROVAL SUBJECT TO CONDITIONS			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL Although the development is without policy justification and is being located within the open countryside and Kent Downs Area of Outstanding Natural Beauty in an unsustainable location is contrary to the Development Plan, it is considered that the very special specific circumstances of the case, primarily the site history, are such that they are considered to override the normal presumption against new development in the countryside for which there is no overriding policy justification contained in the Development Plan (Maidstone Borough-wide Local Plan 2000) and National Planning Policy Framework 2012.			
REASON FOR REFERRAL TO COMMITTEE The development for which planning permission is sought is contrary to the policies of the Development Plan.			
WARD North Downs	PARISH/TOWN Hollingbourne	COUNCIL	APPLICANT Mr Javid Ibrahim AGENT Ms Anna Bloomfield
DECISION DUE DATE 01/08/14	PUBLICITY EXPIRY DATE 01/08/14	OFFICER SITE VISIT DATE Various	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
MA/13/1559	Continued use of commercial area subject to certificate of lawful use defined under MA/99/0573 with adjustments to boundary.	Currently in abeyance pending outcome of enforcement appeal and application 14/500282.	Not applicable
Summarise Reasons The application was put in abeyance pending the outcome of enforcement appeal and application 14/500282 and has subsequently been superseded by the application currently under consideration; see PARAGRAPH *** below.			
MA/12/1845	Continued use of commercial area (B1) defined under application MA/99/0573 with adjustments to suit boundary embankment/route and retrospective change of use of B1 from C3 to extend commercial use area.	Withdrawn by applicant	Not applicable
Summarise Reasons The application was invalid on receipt and the information necessary to make the application valid was not subsequently provided by the applicant.			

MA/99/0573	Certificate of lawful development under section 191 in respect of:- 1) Use of land for repairs to motor vehicles, storage and dismantling of motor vehicles and motor vehicle parts, and sale of these items to the trade and general public; and for storage of, and/or repair of, other plant, equipment, machinery, engineering or building materials and miscellaneous items for sale to the trade and general public, and storage and cutting up of timber for sale as logs and firewood; 2) Use of building as a workshop for the repair and renovation of motor vehicles and other plant, equipment, machinery, engineering or building materials and miscellaneous items, for sale to the trade and general public; 3) Use of building for storage of motor vehicles and vehicle parts, and other plant, equipment, machinery, engineering or building materials and miscellaneous items for sale to the trade and general public.	Split decision	11/08/1999
<p>Summarise Reasons</p> <p>The use of the land and building outlined in red on the plan attached to the decision notice for repairs to and dismantling of second hand motor vehicles for resale is considered, on the balance of probability, to have existed on the land for a period in excess of 10 years and would therefore be exempt from enforcement action under the Town and Country Planning Acts. The description of the use as set out on the decision notice was modified from that submitted because the submitted evidence was not sufficiently robust to indicate that the other uses have constituted businesses for a continuous period in excess of 10 years.</p>			

MAIN REPORT

1.0 DESCRIPTION OF SITE AND SITE HISTORY

1.01 The site is within the open countryside and is in an area with the national designation of being within the Kent Downs Area of Outstanding Natural Beauty (AONB) and local designation of being within the North Downs Special Landscape Area (SLA) due to the natural beauty, scenic quality and distinctive character of the landscape. The site is located approximately 250m to the south east of Crismill Lane, an unclassified rural highway, approximately 2.3km from the defined settlement boundary of Maidstone.

1.02 The site is an irregularly shaped area located immediately to the east of Woodcut Cottage, a property occupied by, and in the ownership of, the applicant. The site is level and largely hard surfaced, with four outbuildings, decked areas and storage containers sited on it which serve the use for which planning permission is sought. To the east of the site is Cottage Wood, part of which, as identified on the site location plan, is within the ownership of the applicant. Cottage Wood, together with woodland belts in the vicinity of the site, is protected under Tree Preservation Order 10 of 1983, as amended by Tree Preservation Order 19 of 1988. A copy of this TPO is attached to this report as Appendix 1. Cottage Wood is also a Local Wildlife Site. A public right of way, the KH141, runs along the southern boundary of the site; there are other, more distant, public rights of way to the north and west of the site. To the north of the site is agricultural land, and to the south, significant transport infrastructure developments (including the M20, the Channel Tunnel Rail Link (CTRL) and mainline railway). The site itself is severed from these by landscaped embankments.

1.03 A Certificate of Lawfulness for an Existing Use or Development (CLEUD) has previously been granted under the scope of MA/99/0573 for the use of part of the application site "for repairs to and dismantling of second hand motor vehicles for resale". A copy of the decision notice and associated plans is attached to this report as Appendix 2.

1.04 Following the issue of the CLEUD, the land changed hands and was purchased by the applicant in November 2003, and the use for which planning permission is now sought, commenced, being as a depot for a company providing services to fire and water damaged

commercial and domestic properties, described in the application documentation as “emergency response, disaster recovery, environment management and property cleaning and repair”.

1.05 The current application was submitted in response to an enforcement investigation into the unauthorised change of use, as a result of which an Enforcement Notice was issued. This Enforcement Notice is currently under appeal by the applicant.

2.0 PROPOSAL

2.01 The current application seeks retrospective planning permission for the use of the land for the purposes set out in paragraph 1.04 above.

2.02 The application has been invited by officers in response to the appeal against the issue of the Enforcement Notice.

3.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Development Plan: Maidstone Borough-Wide Local Plan 2000 ENV6, ENV28, ENV33, ENV34, T13

Draft Development Plan: Maidstone Borough Draft Local Plan SP5, DM1, DM9, DM10, DM37

Supplementary Planning Documents: Kent Downs AONB Management Plan 2014-2019 (2014)

4.0 LOCAL REPRESENTATIONS

4.01 A site notice was displayed at the site and the application was advertised as a departure from the Development Plan. The overall publicity expiry date was 8th July 2014.

4.02 No neighbour representations were received in response to the publicity exercise.

5.0 CONSULTATIONS

5.01 Kent County Council Highway Services Engineer: Raises no objection to the application, making the following detailed comments:

5.01.1 “It is noted that Crismill Lane, in its entirety, is a private street. Connection with the public highway is therefore at the junction with the A20 where all movements to and from the site are undertaken. I can confirm that this junction has a good crash record, the last injury crash here being in 2005. I would agree from the descriptions provided in the Transport Assessment that the retrospective (and proposed) use creates low volumes of traffic generation. It is also considered that there is adequate informal space within the site for car parking, deliveries and servicing. I write to confirm therefore on behalf of the Highway Authority that I have no objection to this development.”

5.02 Maidstone Borough Council Landscape Officer: Raises concern over the erosion of the protected woodland, however raises no objection to the application subject to the imposition of conditions requiring the submission of a detailed landscape scheme with maintenance details and a long term management plan and implementation of the approved details, making the following detailed comments:

5.02.1 *“My comments relating to MA/13/1559 dated 16/10/13 were as follows:*

The area of woodland to the east of the site extending to the southern tip, known as Cottage Wood, is protected by TPO No. 10 of 1983. There are also 3 individual Oak trees protected by TPO No. 24 of 1984 to the west of the northern boundary.

The Certificate of Lawfulness issued in 1999 was for commercial development up to the edge of the protected woodland. Clearly, since this time, it can be seen from aerial photographs that development has encroached into the woodland, removing woodland edge vegetation and potentially encroaching into the root protection areas of other trees causing long term damage/instability. The initial encroachment appears to have taken place between 2004 and 2008, with further hard surfacing and the removal of trees to the east of the access road occurring prior to the 2012 photograph. I am not aware of the planning history of this site and whether there are any other planning considerations that might have overridden the TPO. But without specific evidence and with the passing of time we will be unable to pursue enforcement action under TPO legislation anyway.

I would also add that, if this proposal is approved, there appears to be no space to seek replanting to mitigate the adverse impact to the woodland. However, please ensure that there is an informative/ advice note on any decision letter/notice issued to the effect that unauthorised work to protected trees is an offence which attracts a heavy fine.

*5.02.2 In terms of this retrospective application I would want to ensure that any potential further damage to protected trees/woodland is prevented by the creation of a physical barrier which clearly restricts activity to the developed area of the site. A timber post and rail fence reinforced with appropriate native shrub species of local provenance will help mitigate any potential damage which has already occurred. Any debris within the woodland area should also be removed and appropriate woodland management encouraged. Ideally, I would like also to see the phased removal of existing non-native conifers and laurel screen planting and its replacement with appropriate native species. I would suggest that an appropriate mix of species should predominantly comprise of Hawthorn (*Crataegus monogyna*) and Hazel (*Corylus avellana*) interspersed with groups of Holly (*Ilex aquifolium*), Field Maple (*Acer campestre*) and Dog rose (*Rosa canina*).*

5.02.3 Should you be minded to grant consent I would therefore recommend conditions requiring a detailed landscape scheme with maintenance details and a long term management plan in accordance with the principles set out in the Maidstone Landscape Character Assessment Supplement 2012."

5.03 Kent County Council Biodiversity Officer: Raises no objection to the proposal subject to the imposition of condition requiring the submission of a detailed woodland management plan and implementation of the approved details, making the following detailed comments:

5.03.1 "The site is seeking retrospective planning permission for the existing development. As a result of reviewing aerial photos it appears that the site has been cleared since at least 2008 and has limited potential to contain protected species.

5.03.2 Due to the length of time the development has been present we are satisfied, in this situation, that there is no requirement for an ecological survey to be carried out.

5.03.3 One of the principles of the National Planning Policy Framework is that "opportunities to incorporate biodiversity in and around developments should be encouraged".

5.03.4 The applicant is proposing to bring the adjacent woodland back in to active management to benefit wildlife and they have submitted a woodland management plan.

While we are satisfied with the principle within the woodland management plan we are not satisfied with the detail. We recommend that if planning permission is granted, a detailed management plan is submitted as a condition. We would expect the woodland management plan to include the following:

- *Explanation about why the woodland is being managed.*
- *Clarification on the proposed number of years coppice rotation – is a 5 year gap sufficient? Often Hazel coppice is left for at least 6 or 7 years before coppicing.*
- *Time of year the works are to be carried out.*
- *Monitoring.*

5.03.5 *The woodland plan has suggested covering the hard core track in soil rather than excavating the hardcore to minimise disturbance within the woodland - we are concerned in heavy rain the soil will just wash off in to the surrounding woodland."*

5.04 Natural England: Did not wish to comment on the application.

5.05 Network Rail: Did not wish to comment on the application.

6.0 BACKGROUND PAPERS AND PLANS

Drawing numbers 2147/14/B/2, 2147/14/B/4, 2147/14/B/5 and 2147/14/B/6, supported by Statement in Support of Planning Application, Transport Statement, Landscape and Visual Impact Assessment, Woodland Management document, Statement of Karen Fiona Ibrahim, Statement of Nicholas Lawson and information sheet about The Ideal Group, all received 6th June 2014.

7.0 APPRAISAL

Principle of Development

7.01 As Members will be aware, there is a general presumption against new development in the open countryside for which there is no specific policy support, as set out in MBWLP policy ENV28.

7.02 This policy of restraint is supported in this case by policies ENV33 and ENV34 of the MBWLP which seek to protect both the AONB and the SLA, stating that in such areas priority should be given to protection and conservation of the landscape over other planning considerations.

7.03 Whilst broadly supporting employment generating uses, the NPPF sets out a presumption in favour of sustainable development, which is defined as having three dimensions, the economic, the social, and the environmental, and requires Local Planning Authorities to take account of the different characters of different areas whilst recognising the intrinsic character and beauty of countryside and contribute to conserving and enhancing the natural environment. The document goes on to state that "great weight should be given to conserving landscape and scenic beauty in...Areas of Outstanding Natural Beauty", identifying AONBs as having the highest status of protection in this respect.

7.04 The use for which planning permission is sought does not fall within any of the exceptions set out in policy ENV28, or elsewhere in other policies in the MBWLP. The use is therefore unacceptable in principle in this location.

7.05 Notwithstanding this, to my mind the circumstances of the case are such that in this exception a departure from the Development Plan is acceptable.

7.06 The majority of the site, prior to occupation by the applicant, benefitted from a CLEUD for uses which similarly would not be considered acceptable when assessed against planning policy, as shown on the documentation attached to this report as Appendix 2. The site was, therefore, at the time of occupation by the applicant; previously developed land (PDL), albeit in the open countryside and the ANOB and SLA.

7.07 Furthermore, it is understood that since the change in ownership, the use currently operating from the site, has been operating continuously. Whilst the Council's position, as set out in the Statement of Case associated with the appeal against the Enforcement Notice, is that the use is not immune from formal enforcement action, the determining timescale is a matter of days; it is not a matter of dispute that the business had been operating from the site for a continuous period in excess of 9 years and 11 months prior to the date of issue of the Enforcement Notice.

7.08 In taking formal enforcement action Local Planning Authorities are required to be reasonable and proportionate.

7.09 In the very specific circumstances of this case, namely the detailed site history, it was considered that the most expedient course of action to remedy the breach was the issuance of an Enforcement Notice in order to secure the Council's position and safeguard the woodland to the east of the site, which is also covered by the Enforcement Notice due to the activities taking place on this land at the time of the enforcement investigation, and the subsequent invitation of an application for planning permission in order for the use of the land identified on the site location plan and associated operational development to be regularised, and control exerted over the development which would satisfactorily remedy the harm identified during the taking of enforcement action.

7.10 For these reasons, it is considered that, subject to appropriate mitigation, the use, whilst contrary to Development Plan policy, is, in the very specific circumstances of this case, acceptable.

Visual Impact

7.11 As set out above, the site is located in open countryside designated as being within an AONB and SLA, and therefore recognised for its high quality of landscape and scenic value. However, set against this are the status of much of the site as PDL; the length of time that the use has been operating from the site without complaint to the Council.

7.12 Notwithstanding this, the use, which is commercial in its character and appearance, is visually intrusive in what is essentially a rural agricultural area within the Thurnham Vale (Hollingbourne Wooded Arable Land) Landscape Character Area, which is characterised by large open arable fields with mixed woodland blocks interspersed with sporadic development.

7.13 However, the applicant has provided a landscape planting plan (drawing number 2147/14/B/4) in support of the application which proposes the introduction of additional hedging and north planting along the southern and northern site boundaries, which would serve to effectively mitigate the appearance of the site over time, subject to the imposition of appropriate implementation and long term management conditions. In addition, the landscaping strategy includes the introduction of a native hedge along the eastern boundary of the site, which would provide a physical separation between the site and the woodland subject to the TPO, and thereby sever the use from this land and serve to protect the trees and safeguard their considerable landscape contribution.

7.14 Notwithstanding the details provided to date in respect of landscaping, as set out in the Maidstone Borough Council Landscape Officer's comments, amendments to the scheme are required, including the introduction of a post and rail fence to provide a physical barrier between the site and the woodland, particularly whilst the landscape is maturing. Whilst the comments in respect of the replacement of existing non-native planting is noted, it is considered that this goes beyond what can reasonably be required in connection with the current application, however the submission of a long term management plan and its implementation are considered to be both reasonable and necessary in this case, and due to the sensitivity of the site and the need for robust landscaping to be effectively established and maintained, I proposed a 10 year limit on this.

7.15 Subject to the conditions set out above, it is considered that, in the special circumstances of this case, the visual impact of the development can be mitigated to a satisfactory extent such that planning permission may be granted.

Biodiversity

7.16 It is noted that the existing hardcore track within the woodland, which is outside the proposal site, is shown on the landscape plan as being retained. This is considered to be inappropriate and prejudicial to the regeneration of the woodland and the restoration of soils to the area, for the reasons set out in the comments of the Kent County Council Biodiversity Officer, and for this reason this element of the operational development associated with the use is required to be removed.

7.17 The Kent County Council Biodiversity Officer has also raised concerns over the management of the woodland, and to this end, I propose to include the submission of an amended woodland management plan in the landscape condition referred to above, which shall include the elements suggested in order to provide improvements and enhancements to this woodland which has previously been used unlawfully in association with the operation of the site, although this has now ceased and the woodland is not within the scope of the redline of the application site.

7.18 Subject to the conditions set out above, it is considered that, in the special circumstances of this case, the impact of the development on biodiversity can be mitigated to a satisfactory extent such that planning permission may be granted.

Highways

7.19 The application is supported by a Transport Statement. The site is located on a private road of rural character and appearance and of variable surfacing quality. The highway is a non-through road, and as such all vehicle traffic has to exit via the junction with the A20, however there is not a record of significant accidents at this location. The site is located in a position relatively remote from public transport, however the nature and volume of vehicle activity associated with the use for which planning permission is sought is considered to be comparable with that associated with the previous lawful use. There is some space within the site for turning and parking of vehicles commensurate with the scale of the activities taking place, however due to the physical constraints of the site the number and scale of vehicles beyond that which can be accommodated on the land is restricted.

7.20 The Kent County Council Highway Services Engineer, as set out in the comments above, raises no objection to the proposal on the grounds of highway safety.

7.21 There is therefore not considered to be any objection to the proposal on highways grounds.

Residential amenity

7.22 There is a residential property immediately adjacent to the site, which is currently occupied by the applicant. Whilst this is currently a satisfactory arrangement, the character of the use is such that in the event of the use of the land and the occupation of the dwellinghouse being severed, harm to the residential amenity of the occupiers of this property may be compromised as a result of disturbance resulting from the activities on the application site, which by their nature are not limited to what might be described as conventional office hours and are likely to give rise to movements by vehicles larger than cars at unsociable hours. For this reason in the circumstances of this case I consider it reasonable and necessary to impose a condition restricting the use to occupation of the neighbouring property. This accords with the suggested condition set out in the Planning Statement submitted in support of the application.

7.23 It is not considered that there are any other neighbouring properties detrimentally affected by the use.

Other Matters

7.24 Given the history of the site, the nature of the use applied for; the absence of immediate neighbours; the lack of objection from Kent County Council Highway Services; the fact of Crismill Lane being a private highway; and the physical limitations on the site in respect of space, it is not considered necessary in this case to impose an hours of operation condition on the use, or restrictions on the numbers and size of vehicles which can be used in conjunction with it.

7.25 The site is not located in an area recorded by the Environment Agency as being prone to flood, and there are no heritage or archaeological assets in close proximity to the site.

8.0 CONCLUSION

8.01 For the reasons set out above, whilst the application seeks planning permission for a use which does not benefit from any local or national planning policy support in a site which is both unsustainable and subject to the highest levels of landscape protection, in the very special circumstances of this case it is considered that there are material factors such that planning permission should be granted subject to the conditions set out above.

9.0 RECOMMENDATION – GRANT PLANNING PERMISSION Subject to the following conditions:

CONDITIONS to include

1. The use of the land hereby permitted shall only take place in association with the occupation of the property identified as “Woodcut Cottage” as identified outlined in red on the attached plan, and when no longer used for these purposes shall cease and all associated paraphernalia removed from the land.

Reason: To safeguard the residential amenity of current and future occupiers of the dwellinghouse.

2. Within two months of the date of this decision, a long term management plan for the landscaping scheme shown on drawing number 2147/14/B/4 shall be submitted for consideration by the Local Planning Authority. The landscape scheme shown on drawing number 2147/14/B/4 and the approved long term management plan shall

thereafter be implemented in full, and all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of ten 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 safeguard the visual and scenic quality of the landscape and ensure a satisfactory setting and external appearance to the development.

3. Within two months of the date of this decision, a woodland management plan, which shall include, inter alia, details of the coppicing schedule, including the time of year of the works, and a programme of monitoring, shall be submitted for consideration by the Local Planning Authority. The landscape scheme shown on drawing number 2147/14/B/4 and the approved long term management plan shall thereafter be implemented in full, and all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of ten 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 safeguard the visual and scenic quality of the landscape, ensure a satisfactory setting and external appearance to the development and provide biodiversity enhancement of the site to mitigate the erosion of a biodiversity habitat.

4. Notwithstanding the details shown on drawing number 2147/14/B/4, within three months of the date of this decision a post and rail fence will be installed along the proposed hedge line demarking the eastern boundary of the site and the hardcore track on blue land will be removed and the land restored to a natural surface;

Reason: To provide a clear boundary between the proposed site and the adjacent woodland protected under Tree Preservation Order 19 of 1988 and to prevent further erosion of, and thereby harm to, this landscape and biodiversity asset.

Case Officer: Catherine Slade

- NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.