

4.2 - SE/11/02868/CONVAR Date expired 9 January 2013

PROPOSAL: Pair of detached houses with garages Plots 2 and 3 as approved under application SE/87/2096, without complying with condition 1 which removes permitted development rights.

LOCATION: 2 And 3 St Edith Court, St Ediths Road, Kemsing  
TN15 6JQ

WARD(S): Kemsing

#### ITEM FOR DECISION

This application has been referred to Development Control Committee at the request of Councillor Stack on the grounds that this is a complicated application involving original conditions that were imposed for good reasons which need to remain in place.

**RECOMMENDATION:** That delegated powers be given to the Group Manager Planning to GRANT planning permission, subject to no new issues being raised as a result of the consultations which expire on 19<sup>th</sup> March 2013.

#### Description of Proposal

- 1 This application seeks to permission for a pair of detached houses with garages Plots 2 and 3 as approved under application SE/87/2096, without complying with condition 1 which states:-

*No development, whether permitted by Article 3, Class 1(1) of Schedule 1 of the Town and Country Planning General Development Orders, 1977 to 1987, or not, shall be carried out to the dwelling hereby permitted without the prior written permission of the District Planning Authority.*

- 2 The reason that the condition was imposed was:- In the interest of the residential amenities of the area.

#### Description of Site

- 3 The application relates to two modern detached dwellings, located at the end of a small cul-de-sac in the centre of Kemsing, which have been built out in accordance with the planning permission SE/87/02096.
- 4 When application SE/87/02096 was determined, the rear gardens of the properties were approximately 8 metres in length (from the back of the dwellings). The gardens of both dwellings appear to have been extended at some point and now include a larger garden area.
- 5 It is however important to note that the rear of the gardens were not included in the red line of the application site under application SE/87/02096, and are not part of this application.

## Constraints

- 6 Conservation Area
- 7 Since the application was approved, the owners have purchased additional land, which is outside the original application site for the reserved matters application. The additional land is located in the Green Belt but the rear part of the gardens is outside the application site.

## Policies

### *South East Plan*

- 8 Policies - CC6, C3, C4, SP5, BE6

### *Sevenoaks District Local Plan*

- 9 Policies - EN1, EN6, EN7, VP1

### *Sevenoaks Core Strategy*

- 10 Policies - SP1, L08

### *Other*

- 11 National Planning Policy Framework

## Planning History

- |    |                |  |
|----|----------------|--|
| 12 | 12/01524/HOUSE | At 2 St Ediths, Demolition of conservatory and replacement with single storey rear extension. GRANT 17/08/2012             |
| 13 | 87/02096/HIST  | Reserved Matters application for pair of detached houses with garages Plots 2 and 3. GRANT 12/01/1988.                     |
| 14 | 87/01328/HIST  | Outline application for the demolition of existing buildings and erection of three dwelling and garages. GRANT 11/09/1987. |

## Consultations

### *Kemsing Parish Council*

- 15 Comments received from the Parish Council on the 16.11.2011 are as follows:-

The Parish Councillors do not feel qualified to express an opinion on what appears to the Parish Council to be a purely legal argument. The Parish Council would like to draw Sevenoaks District Council's attention to the first condition on the letter of grant dated 11 September 1987 of the outline permission which is quoted below:-

*"Details relating to the siting, design and external appearance of the proposed building(s) and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced"*

16 Comments received from the Parish Council on the 22.02.2013 are as follows:-

The Parish Council has no comment on this application.

This application has been referred to committee at the request of Cllr Stack on the grounds that this is a complicated application involving original conditions that were imposed for good reasons which need to remain in place.

### Representations

17 2 letters of objection have been received in connection with the application, the main issues include the following:-

- Impact on amenities of adjacent properties
- Impact on the character and appearance of the Conservation Area
- Impact on Green Belt
- That the Counsel's opinion that has been submitted with the application does not take into account that the site is located in a specifically designated area.
- That the condition was imposed correctly as at the outline stage the Council had no idea about the size of the buildings, their appearance, their position on the site, the layout of the site or the size of the gardens. It is considered that LPA could only determine whether to remove permitted development rights at the reserved matters stage and not the outline stage.
- The drawing at outline, just purely tests the water for the development. The reserved matters are where the proposal is properly assessed. The reserved matters application shows the dwelling in a different position.
- Concern about access arrangements and that they layout is too tight.
- Drainage

### Background

18 Outline planning permission was granted under application 87/01328/HIST, for the demolition of existing buildings and the erection of three dwelling and garages.

19 A Reserved Matter application was subsequently submitted under application 87/02096/HIST, only for two of the dwellings (plots 2 and 3). When approval of reserved matters was granted an additional condition was imposed which stated the following:-

*No development, whether permitted by Article 3, Class 1(1) of Schedule 1 of the Town and Country Planning General Development Orders, 1977 to 1987, or not, shall be carried out to the dwelling hereby permitted without the prior written permission for the District Planning Authority.*

20 This application seeks to remove the above aforementioned condition. To do this an application under section 73 application (of the Town and Country Planning Act 1990) has been submitted.

- 21 The application was considered to be invalid by the Council as amongst other reasons, the site plan and certificate only referred to 2 St Edith's Court and the reserved matters application covered both 2 and 3 St Edith's Court.
- 22 An appeal was made to the Planning Inspectorate against non-determination. The Inspectorate agreed with the Council that the application was invalid
- 23 Following the submission of a new plan which includes the adjacent property of 3 St Edith's Court and a new Certificate of ownership the application has now been re-validated.

#### Group Manager Planning Services Appraisal

- 24 The main issue that requires resolution in determining whether the condition should be removed is:
- is it appropriate that the properties continue to be subject to this restriction.

*Is it appropriate that the properties continue to be subject to Condition 1, withdrawing permitted development rights?*

- 25 This main consideration is a question of planning judgment.

Under Section 73 of the Town and Country Planning Act the Council can either:

- Grant planning permission with different conditions to those that were originally imposed and was the condition imposed lawfully
  - Grant planning permission unconditionally. Or,
  - Refuse the application if it considers that planning permission should be granted subject to the same conditions that were originally imposed.
- 26 The condition that is proposed to be removed, requires that any proposals for the extension or alteration of the dwelling under the Class of Permitted Development referred to, first need the written permission of the Local Planning Authority. The condition stated:-
- No development, whether permitted by Article 3, Class 1(1) of Schedule 1 of the Town and Country Planning General Development Orders, 1977 to 1987, or not, shall be carried out to the dwelling hereby permitted without the prior written permission of the District Planning Authority.*
- Reason:- In the interest of the residential amenities of the area.*
- 27 The applicant's view is that this condition on the reserved matters decision was imposed unlawfully.
- 28 Officer's have reviewed the original Outline permission, the Reserved Matters permission and the documents relating to these applications. Officer's are satisfied that the condition imposed on the Reserved Matter's decision was appropriate and in accordance with the requirement's of Circular 11/95 and was thus imposed lawfully.

- 29 Class 1(1) of Schedule 1 of the Town and Country Planning General Development Orders, 1977 to 1987 has now been superseded by Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.
- 30 If Condition 1 was removed, the permitted development rights for extensions and alterations to the dwellings under the current legislation would apply. Therefore, it is necessary to assess the harm that there may be if those works were to be undertaken as permitted development under this current legislation. This condition does not remove permitted development rights for outbuildings which can already be built as permitted development if the current legislation is complied with.
- 31 The key test for the Council in the determination of this application is:
- Would granting the planning permission and thus restoring the permitted development rights:-
- preserve or enhance the Conservation Area, Section 72(1) of the Planning Listed Buildings and Conservation Areas Act 1990 provides 'In the exercise, with respect to any buildings or other land in a conservation area, of any (Planning Act functions)...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'.
  - protect the amenities of residents
- 32 The removal of the current condition would allow for extensions and other alterations, providing that they meet the parameters for class A of the General Permitted Development Order 1995. As the proposal is in a Conservation Area, it is not possible to carry out any alterations to the roof.
- 33 It is considered that a rear extension (constructed under permitted development) could be built without harm to the Conservation Area. In this respect granting the application and restoring permitted development rights, would preserve and enhance the Conservation Area, as stated in Section 72 (1) of the Planning Listed Buildings and Conservation Area Act 1990.
- 34 The main area for concern is the potential extensions being built as permitted development would have on the amenities of 2 and 3 St Edith's Court and adjacent properties respectively.
- 35 The residents of 2 St Edith's Court, have a garage that is situated adjacent to the common boundary. If the property of 3 St Edith's were to extend to the rear by 4 metres (subject to all the other parameters), the extension is considered to have limited impact on the amenity of the residential amenity of 2 St Ediths Court given the position of the garage and the set back of the 3 St Edith's Court. The legislation covers the height and proximity to the boundary, which would help to mitigate any harm to amenity.
- 36 The main area of concern is the impact that a 4 metre extension would have on the amenity of 3 St Edith's Court.
- 37 The ground floor opening unit nearest to the boundary (of 3 St. Edith's Court) is a set of patio doors. It is important to note that this is not the only opening to this open plan room as there is also a window on the other side of the rear elevation.

There is also a patio area immediately behind the patio doors close to the common boundary.

- 38 In terms of loss of daylight, the 45 degree light tests are applicable in plan and elevation form. It would appear that an extension may fail the 45 degree plan test but given the restrictions of height would pass the 45 degree elevation test. Which means that there would be no loss of light to merit an objection.
- 39 The property of 27 Old Barn Close is located to the south of the site, the side elevation of the application property adjoins the rear garden. There is also a lot of screening along the boundary. Given the distances between the properties, it is considered that an extension built under permitted development would have no adverse impact on the amenity of this property.
- 40 In light of the above the proposal would have limited area of residential curtilage it is also considered that the proposal would have limited impact on the Conservation Area. In this respect, in granting the application to remove the condition, it is considered that the proposal would preserve and enhance the Conservation Area, as stated in Section 72 (1) of the Planning Listed Buildings and Conservation Area Act 1990.

#### Conclusion

- 41 In conclusion, the Council is satisfied that Condition 1 of application SE/87/02096 which was imposed to withdraw permitted development rights, was appropriately imposed on the Reserved Matters application and is lawful.
- 42 With the properties now built, and with the additional restrictions imposed on permitted development that now apply, it is considered that there is no longer any justification for retaining Condition 1.
- 43 This recommendation would meet the advice contained in Circular 11/95.

#### Background Papers

Site and Block plans

Contact Officer(s): Vicky Swift Extension: 7448

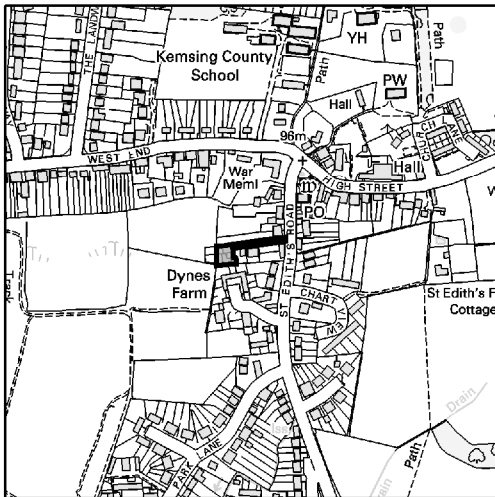
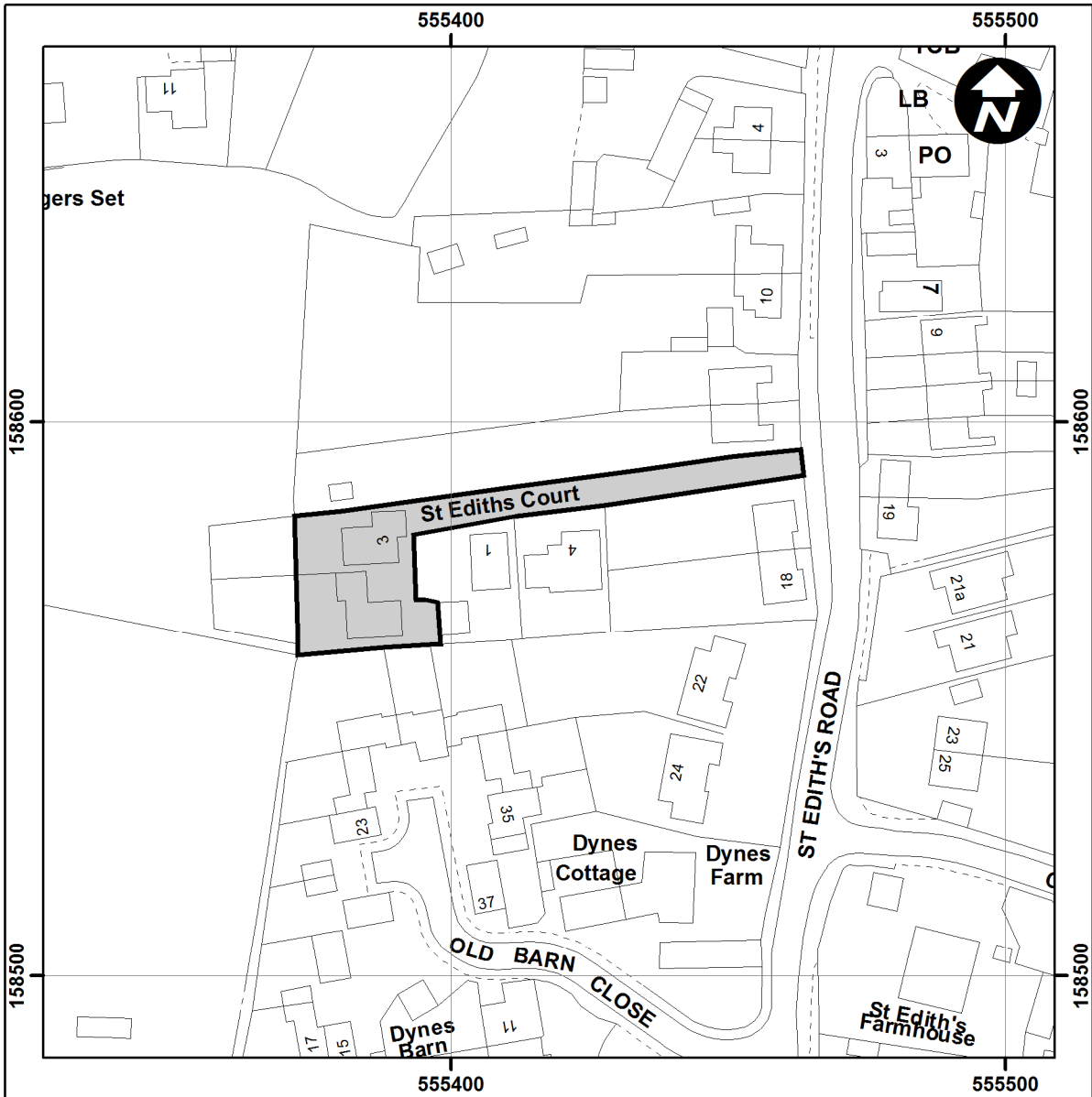
**Kristen Paterson**  
Community and Planning Services Director

Link to application details:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=LU4X07BK0CR00>

Link to associated documents:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=LU4X07BK0CR00>



# Site Plan

Scale 1:1,250

Date 28/02/2013



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BLOCK PLAN

