

Previous report to Committee on planning application (subject to latter appeal) APPENDIX C

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

5.03 - SE/09/00672/FUL Date expired 22 May 2009

PROPOSAL: Erection of replacement detached dwelling (amendment of planning permission SE/07/03532/FUL), to include basement double garage and new 2.5m boundary wall on Eastern boundary. Resubmission of SE/08/00877/FUL.

LOCATION: Four Winds, Farley Common, Westerham TN16 1UB

WARD(S): Westerham & Crockham Hill

Note: **The decision on this application is linked with enforcement issues relating to it. For this reason this report covers both the application and the enforcement issues that arise.**

ITEM FOR DECISION SE/09/00672/FUL

This application is being reported to Development Control Committee following deferral by Members at the last meeting.

RECOMMENDATION: That planning permission be REFUSED for the following reasons:-

1) The land lies within the Metropolitan Green Belt where strict policies of restraint apply. The proposed inclusion of an underground double garage and storage area to this replacement dwelling would be inappropriate development harmful to the maintenance of the character of the Green Belt and to its openness. The Council does not consider that the special circumstances put forward in this case are sufficient to justify overriding Government Guidance in the form of Planning Policy Guidance Note 2 (Green Belts), policy SP5 of the South East Plan or policy H13 of the Sevenoaks District Local Plan.

2) The land lies within the Green Belt where strict policies of restraint apply. The proposed 2.5m high brick boundary wall by reason of its height and depth of rearward projection would be inappropriate development harmful to the maintenance of the character of the Green belt and to its openness. This conflicts with Government Guidance in the form of Planning Policy Guidance Note 2 and policy SP5 of the South East Plan.

3) The application site lies within an Area of Outstanding Natural Beauty. The proposed underground garage and storage area by virtue of the level changes, associated ramp, access arrangements and retaining walls and the proposed 2.5m high brick boundary wall by virtue of its height and depth of rearward (southerly) projection, fails to give long term protection to the landscape and would detract from the character and appearance of the area. This conflicts with policy C3 of the South

(Item No 5.03) 1

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

East Plan and policies EN1 and EN6 of the Sevenoaks District Local Plan.

ITEM FOR DECISION Enforcement 310/05/085

That authority is given to serve an Enforcement Notice requiring:

Breaking up and removal of the garage roof and backfilling the garage with inert material to be covered with top soil.

Reduction in height of the boundary wall to a height not exceeding 2m above the adjacent ground level.

For the following reasons:

1) The land lies within the Metropolitan Green Belt where strict policies of restraint apply. The proposed inclusion of an underground double garage and storage area to this replacement dwelling would be inappropriate development harmful to the maintenance of the character of the Green Belt and to its openness. The Council does not consider that the special circumstances put forward in this case are sufficient to justify overriding Government Guidance in the form of Planning Policy Guidance Note 2 (Green Belts), policy SP5 of the South East Plan or policy H13 of the Sevenoaks District Local Plan.

2) The land lies within the Green Belt where strict policies of restraint apply. The proposed 2.5m high brick boundary wall by reason of its height and depth of rearward projection would be inappropriate development harmful to the maintenance of the character of the Green Belt and to its openness. This conflicts with Government Guidance in the form of Planning Policy Guidance Note 2 and policy SP5 of the South East Plan.

3) The application site lies within an Area of Outstanding Natural Beauty. The proposed underground garage and storage area by virtue of the level changes, associated ramp, access arrangements and retaining walls and the proposed 2.5m high brick boundary wall by virtue of its height and depth of rearward (southerly) projection, fails to give long term protection to the landscape and would detract from the character and appearance of the area. This conflicts with policy C3 of the South East Plan and policies EN1 and EN6 of the Sevenoaks District Local Plan.

Compliance Period: 6 months

Development Plan

(Item No 5.03) 2

(Item No 6.01) 36

- 1 SE Plan Policies
 - Policy SP5: Green Belts
 - Policy C3: Areas of Outstanding Natural Beauty
- 2 Sevenoaks District Local Plan Policies
 - EN1 General principles
 - EN6 Areas of Outstanding Natural Beauty
 - H13 Replacement dwellings in the Green Belt
- 3 Planning Policy
 - Planning Policy Statement 1: Delivering Sustainable Development
 - Planning Policy Guidance 2: Green Belts
 - Planning Policy Statement 3: Housing
 - Planning Policy Statement 7: Sustainable Development in Rural Areas

Other Material Considerations

Relevant Planning History

- 4 SE/07/02532/FUL: Demolish existing house and erect one single house. Approved 12.2.08
- 5 SE/08/00877/FUL: Demolish existing house and erect one single house and integral garage. Amendment to planning application SE/07/03532/FUL; Refused on 19.6.08 on the following grounds:
 - “1) The land lies within the Metropolitan Green Belt where strict policies of restraint apply. The proposal would add to the built form on the land to a degree that would be harmful to the character and appearance of the area. This conflicts with PPG2 and policy SS2 of the Kent & Medway Structure Plan 2006, as amplified by policy H14A of the Sevenoaks District Local Plan.
 - 2) The land lies within an Area of Outstanding Natural Beauty. The proposal would detract from the character and appearance of that area. This conflicts with policy EN4 of the Kent & Medway Structure Plan 2006 and policy EN6 of the Sevenoaks District Local Plan.
 - 3) The land lies within a Special Landscape Area. The proposal fails to give long term protection to the landscape and would harm its character. This

(Item No 5.03) 3

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

conflicts with policy EN5 of the Kent & Medway Structure Plan 2006 and policy EN7 of the Sevenoaks District Local Plan.”

Consultations

Westerham Parish Council

- 6 WPC supports this application and understands the unusual circumstances under which permission for the wall was requested.
- 7 Discussion with the owners took place re the soil conditions they found on site which had necessitated a larger excavation than previously approved. This had exposed problems with underground water on site. The owners had consequently been advised that a larger excavation than approved was necessary. Councillor Shutter said that, in his opinion, the report by Mr. S. Childs of 3D Surveying and Engineering Ltd., submitted with the application, did not justify the granting of planning permission for the underground garage. (The General Permitted Development Order 1995 requires that any wall over 2m. high gains planning approval.)

Council's Consulting Structural Engineer

- 8 With regard to your enquiry, the stability and integrity of the house would not appear to rely on the construction of the adjacent garage for the following reasons:
 - 1 The house has its own foundations.
 - 2 Its retaining walls resist the lateral forces applied by the subsoil and ground water.
 - 3 The house has sufficient mass to resist flotation in water saturated subsoils.
 - 4 None of the above requires the garage construction to augment the design of the original house.
- 9 Finally, with or without soil backfilling to the garage, there appears to be no structural significance to either the house or garage.
- 10 Further information has been submitted by the applicant amplifying the structural reasons for undertaking the works. The Council's Consulting Engineer has examined the information but has nothing to add to his previous observations.

Representations

(Item No 5.03) 4

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

- 11 A letter has been received from a neighbouring property owner supporting the erection of a new 2.5m high boundary wall on the eastern boundary and commenting that the underground garages would minimise visual intrusion.

Head of Development Services Appraisal

Description of site

- 12 The application site is located to the south of a private access road leading from Farley Lane. The site is within the Metropolitan Green Belt and AONB. The area is characterised by low density, large detached houses set in extensive grounds. Four Winds formally comprised a detached property of no significant architectural merit, which was in poor condition. It has an extensive plot bounded by mature trees and hedges. The original dwelling has now been demolished and a new dwelling is in the process of being constructed.

Description of Proposal

- 13 Planning permission was granted for a replacement dwelling under reference SE/07/03532/FUL. It appears from the plans submitted that this element of the proposal remains very largely as approved.
- 14 The key difference is that the present application seeks to introduce additional underground storage space abutting the east flank and south-eastern rear corner of the house. Described as a double garage, this additional floor space would include a separate boiler room/store. The area, which has already been excavated, equates to approximately 150m² externally and slightly less measured internally.
- 15 A section submitted with the application indicates that the roof to this storage area will meet the natural ground level. The area above is to be terraced. The storage area would be served by a single garage door, approximately 4.3m wide. Access would be provided from the front of property (north) directly from the road and would comprise a ramped access which would slope down from the site boundary adjacent to the road to the entrance. Because the original site level was raised above the road level, the ground level at the entrance point to the store would be roughly 1.2m below the road level. This would entail a concrete retaining wall to the east side of the access ramp, which would extend approximately 11.5m towards the front of the site. The retaining wall to the west side would be similar but incorporate a turning area and steps up to the natural ground level. These works are progressing on site.
- 16 The proposals also include the erection of a brick wall along the eastern boundary of the site with Farleyside. The wall would be set back some 7.7m from the front of the site and extend some 47m to the south at a height of

(Item No 5.03) 5

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

2.5m. The wall is described as being of “old fashioned aged walled garden brick wall”. The southern-most section of the wall has already been constructed in blockwork.

Constraints:

- 17 Metropolitan Green Belt, Area of Outstanding Natural Beauty (AONB).

Determining issues

- Green Belt Implications.
- Visual Impact.
- Impact on residential amenity.

Green Belt

- 18 PPG2 (Green Belts) states that there is a general presumption against inappropriate development within the Green Belt. Such development should not be approved, except in very special circumstances. Inappropriate development is, by definition, harmful to the Green Belt. The construction of new buildings inside the Green Belt is inappropriate unless, amongst other things, it is for agricultural and forestry, or the replacement of existing dwelling houses, provided that it does not result in disproportionate additions over and above the size of the original building. The Guidance explains that Development plans should make clear the approach local planning authorities will take, including the circumstances (if any) under which replacement dwellings are acceptable.
- 19 In line with the Guidance, policy H13 of the SDLP sets out the approach the Council will take and sets out a number of criteria with which proposals must comply. Amongst other things, these states that the gross floor area of the replacement dwelling must not exceed the gross floor area of the “original” dwelling (as first built or as stood in 1948) by more than 50%. The replacement dwelling must be well designed, sympathetic to the character of the area and sited and designed to minimise the visual intrusion into the landscape; particular care will be required in Areas of Outstanding Natural Beauty.
- 20 The principle of the replacement of the dwelling has been approved under SE/07/03532FUL. During the consideration of this application, the Council concluded that the original dwelling had a total floorspace of 232.5m² (including 2 garages within 5m of the original house). The replacement dwelling has a total floor area of approximately 518m². This represents an increase of about 123% over the original floor area.
- 21 Whilst the proposed replacement house was considered to represent inappropriate development, it was accepted that very special circumstances

(Item No 5.03) 6

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

existed because the increase in built form above ground level was precisely 50% and the basement was contained entirely within the footprint of the house with no light wells or windows, no direct access from outside and not visible above ground level. Accordingly, the replacement dwelling would have no greater impact on the openness of the Green Belt as a result of the inclusion of the basement.

- 22 The present proposals have resulted in the substantial excavation of some 150m² which extends beyond the approved footprint of the house. Combined with the approved building, this would represent a total increase over the floorspace of the original dwelling in the order of 188%.
- 23 The proposals are therefore considered to represent inappropriate development, which by definition is harmful to the maintenance of the Green Belt.
- 24 Government Guidance states that in such circumstances it is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development.
- 25 In summary, the applicant has advanced the following circumstances:
- Severe, unforeseen, construction problems with the foundations and basement structure, largely a consequence of ground conditions and associated drainage issues. This is amplified in a supporting statement by Stephen Childs of 3D Surveying and Engineering Ltd.
 - The openness of the Green Belt would not be prejudiced because the basement garage structure is entirely below ground level.
 - There would be no material difference in terms of the visual impact on the street scene between what was originally permitted and what is now proposed in terms of the overall appearance of the replacement dwelling.
 - The Council has already accepted the principle of a basement to the house.
 - Reference is made to a previous appeal decision within the District.
- 26 Advice received from the Council's Consulting Structural Engineer does not support the applicant's contention that the garage is required to ensure the structural stability of the house.
- 27 PPG2 states that the statutory definition of development includes engineering and other operations, and the making of any material change in the use of

(Item No 5.03) 7

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt, one of which includes safeguarding the countryside from encroachment.

- 28 With regard to the street scene, it is my view that the wider visual impact would be modest. I accept that with gates in situ and closed and appropriate planting along the frontage public views would be limited. However, it is reasonable to anticipate the gates will at times be open and having viewed the structure from the road directly in front of the site, do not consider the computer generated images submitted in support of the application to be completely representative of the views which can be gained. Viewed from the road, the excavation undertaken to reduce the existing ground level, create an access ramp and the substantial retaining walls is readily visible and consequently, in my view, adds to the bulk of built form of the site to the detriment of the visual openness of the Green Belt.
- 29 Mr Justice Sullivan set out some helpful advice on the balancing exercise that has to be undertaken between very special circumstances and the harm that they can they can cause to the openness of the Green Belt openness in R (on the application of Chelmsford BC v First Secretary of State & Draper [2003] EWHC 2978 (Admin). At paragraph 42 he said: *“The list of development that is appropriate within the Green Belt has changed, but paragraph 3.2 of the current PPG2 emphasises the fact that, even if there is no other harm, for example, to openness, inappropriate development is, by definition, harmful to the Green Belt. This reminds decision takers that it is important that they do not fall into the trap of saying, for example when considering the effect of a proposed development in terms of the openness of the Green Belt, this development is inconspicuous, therefore there will be only be limited harm to the Green Belt. The harm in principle will remain even if there is no further harm to openness because the development is wholly inconspicuous. Adopting this policy approach is essential if the cumulative effect of numerous (inconspicuous) developments in the Green Belt is to be prevented.”*
- 30 With regard to the appeal decision on a site at Little Hatch, Stone Street, Seal, I do not consider the case to be of particular relevance as, amongst other reasons, it did not vary the footprint of the dwelling and was only 5% over the 50% policy limitation set out in policy H13. Furthermore, I am aware of a recent case for a subterranean garage at Cedar Court in Leigh in which the Inspector did not accept the limited visibility of the ramp and underground area and consequent limited visual impact on the openness and character of the Green Belt to represent very special circumstances to outweigh the presumptive harm to the Green Belt.
- 31 In the circumstances, I consider the case advanced for the construction of underground storage does not clearly outweigh the harm which would be caused by reason of inappropriateness and do not consider the circumstances advanced to outweigh the normal presumption against inappropriate development in the Green Belt.

(Item No 5.03) 8

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

- 32 With regard to the wall, I would note that even if reduced to 2m in height, it would fail to comprise permitted development as Condition 4 on the planning permission (SE/07/03532/FUL) removes permitted development rights for means of enclosure. Notwithstanding this fact, the proposed wall (part of which has already been erected) would exceed 2m in height over its full depth of some 47m, 33m of which would extend beyond the rear of the new house well into the garden. In my view the wall is a form of development which fails to maintain openness and fails to safeguard the countryside from encroachment and it is thus considered unacceptable in this respect.

Visual impact

- 33 PPG2 (Green Belts) and states that the visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt.
- 34 Policy C3 of the South East Plan states that high priority will be given to conservation and enhancement of natural beauty in the region's Areas of Outstanding Natural Beauty (AONBs) and planning decisions should have regard to their setting. Proposals for development should be considered in that context.
- 35 Policy EN6 of the SDLP relates to Areas of Outstanding Natural Beauty and states that development which would harm or detract from the landscape character of these areas will not be permitted. Policy EN1 of the SDLP identifies a broad range of criteria to be applied in the consideration of planning applications. Criteria 1 states that the form of the proposed development, including any buildings or extensions, should be compatible in terms of scale, height, density and site coverage with other buildings in the locality. The design should be in harmony with adjoining buildings and incorporate materials and landscaping of a high standard. Criteria 2) states that the proposed development should respect the topography of the site and retain any importance features. Criteria 3) of policy EN1 of the SDLP states that the proposed development must not, amongst other things, have an adverse impact on the amenities of a locality by reason of form, scale, height or outlook.
- 36 As explained above, the underground storage area, by virtue of the vertical face of the entrance in combination with the ramped access and retaining walls either side, is considered to have a visual impact outside the site, even if relatively limited. I do not consider the impact could be suitably mitigated by soft landscaping. Consequently, I consider this part of the present proposals to unacceptably add to the overall visual bulk of approved built form on the site to the detriment of the openness of the Green Belt and the semi rural and open character of the landscape and thus this part of the AONB.
- 37 With regard to the brick boundary wall, such means of enclosure are not a characteristic of the immediate area, where the visible boundaries tend to be

(Item No 5.03) 9

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

more informal in nature, comprising planting including hedges. I would note that Guideline 5/1 of the Westerham and Crockham Hill Village Design Statement, which has been adopted by the Council as supplementary planning guidance, states that “There should be greater use of hedges as boundaries between properties in future development.” I consider the 2.5m high wall proposed would represent an uncharacteristically formal and suburban approach which, especially because of the extensive depth of southerly projection beyond the rear of the houses, would appear as an incongruous feature at odds with the semi-rural and sylvan character of the area.

- 38 In the circumstances, I consider the brick boundary wall would also harm the visual openness of the Green Belt as well as the visual character of this part of the AONB. Though planting may help to soften the impact over time, I consider unlikely that this would be so comprehensive as to fully mitigate the impact.

Impact on residential amenity

- 39 Criteria 3) of policy EN1 of the SDLP states that the proposed development must not have an adverse impact on the privacy and amenities of a locality by reason of form, scale, height, outlook, noise or light intrusion or activity levels including vehicular or pedestrian movements. Appendix 4 to H6B also states that proposals should not result in material loss of privacy, outlook, daylight or sunlight to habitable rooms or private amenity space of neighbouring properties, or have a detrimental visual impact or overbearing effect on neighbouring properties.
- 40 The storage area is set far enough from neighbouring occupiers to mitigate any direct impact. Despite its height, the neighbouring occupier at Farleyside supports the erection of the 2.5m high brick boundary wall.

Conclusion

- 41 In light of the above, I consider the proposals represent inappropriate development and do not consider the circumstances advanced outweigh the harm in principle to the Green Belt. I also consider the proposals would detract from the visual openness of the Green Belt and the landscape character of this part of the AONB. I therefore recommend refusal on the basis of the inclusion of the basement area and the erection of the boundary wall as proposed.
- 42 In determining to refuse the application, I would also recommend the instigation of enforcement proceedings seeking the removal the additional basement garage.

Background Papers

(Item No 5.03) 10

Development Control Committee: 9 June 2011

310/05/085 Item 6.01 – Appendix C

Development Control Committee: 17 September 2009

SE/09/00672/FUL Item No 5.03

- Site Plan

Contact Officer(s): Mr J Sperryn Extension: 7179

**Kristen Paterson
Community and Planning Services Director**

Link to application details:

http://publicaccess.sevenoaks.gov.uk/publicaccess/tdc/DcApplication/application_detailview.aspx?caseno=KHH74VBK0H000

Link to associated documents:

<http://idox.sevenoaks.gov.uk/PLWAM/showCaseFile.do?appType=Planning&appNumber=09/00672/FUL>

(Item No 5.03) 11

(Item No 6.01) 45

