

Minutes of the meeting of the **PLANNING COMMITTEE** held at the Council Offices, Whitfield on Thursday, 30 May 2019 at 6.00 pm.

Present:

Chairman: Councillor J S Back

Councillors: R S Walkden
D G Beaney
E A Biggs
T A Bond
P M Brivio
D G Cronk
D P Murphy
O C de R Richardson
H M Williams

Also present: Councillor P D Jull

Officers: Team Leader (Development Management)
Senior Planner
Planning Officer
Planning Officer
Planning Solicitor
Democratic Services Officer

The following persons were also present and spoke in connection with the applications indicated:

<u>Application No</u>	<u>For</u>	<u>Against</u>
DOV/19/00328	Mrs Jane Scott	Mr Nigel Avery Councillor T J Bartlett
DOV/19/00105	Mr John Peall	Mr Clive Towe
DOV/19/00106	Mrs Linda Hingston-Gibbs	-----

160 APOLOGIES

It was noted that an apology for absence had been received from Councillor J P J Burman.

161 APPOINTMENT OF SUBSTITUTE MEMBERS

It was noted that Councillor P M Brivio had been appointed as a substitute member for Councillor J P J Burman.

162 DECLARATIONS OF INTEREST

It was noted that there were no declarations of interest.

163 MINUTES

The minutes of the meeting held on 18 April 2019 were approved as a correct record and signed by the Chairman.

164 ITEMS DEFERRED

The Chairman noted that the one deferred item was due for consideration at the meeting.

165 APPLICATION NO DOV/19/00328 - LUCIDA STUDIOS, EAST STREET FARM, EAST STREET, ASH

The Committee viewed a plan and photographs of the application site. The Planning Officer advised Members that the application sought a change of use of the existing building to an artist's studio. The application was a retrospective one as the use had already occurred for at least three years. As an update to the report, a further representation had been received, referring to the fact that part of the agricultural land and barn to the north of the site were being auctioned. E-mails had also raised concerns referring to residential development in the area, as well as the prior approval of an application for the barn to the north. As a correction to the report at paragraph 2.8, Members were advised that the application building was located 60 metres to the south of the nearest dwelling rather than 60 metres to the west.

Whilst the site was outside the settlement confines, the change of use was considered to be acceptable in principle due to its compliance with Policy DM4 of the Core Strategy (and paragraph 83 of the National Planning Policy Framework (NPPF)), which supported the re-use or conversion of rural buildings. No new external alterations were proposed, and the change of use was therefore considered acceptable in respect of its impact on the character of the countryside and landscape area, in accordance with Policies DM15 and DM16 and the NPPF. Furthermore, the proposal was not considered to be harmful to residential amenity in respect of overshadowing, overbearing or loss of privacy.

Residents had raised a number of concerns, including overnight stays by the applicant. These were the subject of a separate enforcement investigation and therefore outside the remit of the committee when determining the application. The larger barn to the north-east of the application building had been the subject of a prior approval application for a conversion to three dwellings as the development complied with the criteria set out in the Town and Country Planning (General Permitted Development) (England) Order 2015. The application under consideration was not seeking permission for residential use, and a condition restricting the building's use had been included.

The site was accessed via byway EE93 which ran to the east of the site. Whilst concerns had been raised by members of the public, no access changes were proposed and Kent County Council's (KCC) Public Rights of Way team was satisfied that there would be no impact on the byway. KCC Highways had commented that the proposal was unlikely to generate a material increase in the use of the access route such that an objection on highway grounds could be made, but had suggested that an informative be included.

Councillor R S Walkden noted that there would be no external changes to the building and that the proposal was supported by Policy DM4. Councillor D G Cronk suggested that the number of parking spaces should be reduced given that visitors were not permitted, and queried ownership of the access road. He, along with Councillor T A Bond, raised concerns that the building would be used as long-term sleeping accommodation. The Planning Officer advised that the access road was

shared between several residents. She understood that there were varying levels of ownership, with part of the road being owned by Woodnesborough Parish Council.

The Team Leader (Development Management) advised the Committee that it should only concern itself with the proposed change of use. The building could be used for infrequent overnight stays which would be considered ancillary to the use of the building as a studio and were unlikely to cause real harm. That said, greater frequency of use and activity would require another application. However, it would be for the enforcement team to determine what was acceptable in the light of all the facts and, if appropriate, advise the applicant that a further application should be submitted. Should this not happen, further action would be taken. He suggested that an informative could be added, advising the applicant that the Planning Committee, whilst aware of the ongoing enforcement action, had not taken it into account when assessing the application. He agreed that condition 4) could be amended to reduce the level of parking provision.

RESOLVED: (a) That Application No DOV/19/00328 be APPROVED subject to the following conditions:

- (i) The development hereby permitted shall only be carried out in accordance with the following approved plans: 190226-S-001 Rev A (Site and Location Plans) received 3rd May 2019 and 190226-E-001 (Existing Plan and Elevations) received 13th March 2019. Reason: For the avoidance of doubt.
- (ii) The application building shall only be used as an artist's studio (B1) and for no other purpose, including any other purpose in the same use class of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification. Reason: In order to preserve the amenity of the locality.
- (iii) The application building shall at no time be used as a gallery or open to any visitors or members of the public to view or purchase artworks or for any other purpose. Reason: In the interests of sustainability and in order to prevent further activity and parking at the site which would be likely to be detrimental to highways and byway safety.
- (iv) Detailed plans showing the provision of car parking spaces within the site shall be submitted to the Local Planning Authority for their approval within two months of the date of this decision notice. The approved parking spaces shall be provided as such within one month of the approval of details and retained for such purposes thereafter. Reason: In the interests of highway safety and amenity.

- (v) No deliveries and dispatches to or from the site shall take place before 08:00hrs and after 21:00hrs on any day. Reason: In the interests of residential and rural amenity.

- (b) The following informative from Kent County Council Highways and Transportation be included in the decision notice:
 - i) It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>
The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

- (c) Informative: In reaching its decision on the application, the Planning Committee was cognisant of ongoing investigations relating to the alleged residential use of the building. The decision to grant planning permission is made without prejudice to the outcome of those investigations and/or the consideration of any required application submissions relating to the same.

- (d) That powers be delegated to the Head of Planning, Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by the Planning Committee.

166 APPLICATION NO DOV/19/00105 - LAND ADJACENT TO 44 FOSTER WAY, DEAL

Members were shown a plan, drawings and photographs of the application site. The Planning Officer reminded the Committee that the application had been deferred at last month's meeting pending clarification of written information submitted by the applicant. Since publication of the report, further e-mails had been received from the applicant but these did not raise any issues that had not already been covered in the report. The applicant had also submitted a diagram which he claimed demonstrated that the outlook from 44 Foster Way had been improved as a

result of the partial removal of the boundary wall with that property. However, it was evident from these comments that the applicant had misunderstood the concerns raised previously by Officers and Planning Inspectors about the 'tunnelling' effect that would be created by the proposed dwelling. It was the side elevation of the dwelling that would create this effect and not the boundary wall. The wall's removal would therefore have no positive impact on the amenity of 44 Foster Way.

The Planning Officer advised the Committee of the history of the site, recapping that a planning application for nine dwellings had been granted permission in 2016. At that time, the application site had been included in the garden land of unit 9 but had remained vacant. Of the four schemes subsequently submitted for the development of the site, three had been refused and dismissed at appeal, with a fourth refused in January 2019. Paragraphs 2.4 to 2.14 of the report gave full details of the four proposals. The dwelling now under consideration was located in a similar position, and of a similar overall design and scale, as the scheme refused in January. The site acted as a transitional gap between the developments on either side, and was considered important to the character and appearance of the street scene. It was considered that the applicant had not overcome previous issues of concern and refusal was therefore recommended.

RESOLVED: (a) That Application No DOV/19/00105 be REFUSED on the following grounds:

(i) The proposed development, by virtue of the location, layout, scale and design of the dwellings, together with their relationship with adjoining properties, would create a cramped and congested form of development, out of character with the pattern of development within the area. Consequently, the development would fail to integrate into, and cause harm to, the character and quality of the area, contrary to paragraphs 127, 130 and 131 of the National Planning Policy Framework.

(ii) The proposed dwelling, by virtue of its location, scale and relationship with 44 Foster Way, would cause an unacceptable sense of enclosure to, and corresponding loss of outlook from, that property, resulting in an unacceptable loss of amenity, contrary to paragraphs 127 of the National Planning Policy Framework.

(b) That powers be delegated to the Head of Planning, Regeneration and Development to settle any necessary matters in line with the issues set out in the recommendation and as resolved by the Planning Committee.

167 APPLICATION NO DOV/19/00106 - LAND ADJACENT TO ST MARY'S GROVE COTTAGE, ST MARY'S GROVE, TILMANSTONE

Members viewed plans, CGI images and photographs of the application site which was situated on the edge of Tilmanstone and in a Conservation Area. The Senior Planner advised that the application sought planning permission to sub-divide the site and erect an additional dwelling which would be sited 30 metres away from St Mary's Grove Cottage, a Grade II-listed building. The Council's Heritage Officer had visited the site and concluded that the proposed development would not have a detrimental impact on the listed cottage or wider area.

Under Policy CP1 of the Core Strategy, Tilmanstone was classified as a hamlet and, as such, was regarded as unsuitable for residential development. Policy DM1 of the Core Strategy presumed against development in such locations and circumstances. Given that there was no functional requirement for the development to be in this location, the proposal was therefore considered to be contrary to DM1 and CP1. The proposal was also contrary to DM11 which sought to resist development outside settlement confines due to the increase in travel demand. The area had an open character with views across the site dominated by an open rural landscape. The proposal would extend built development in a sensitive edge-of-village location. For these reasons, Officers considered that the proposal would be contrary to Policies DM15 and DM16 which sought to protect the countryside. Whilst Officers were sympathetic to the applicant's circumstances, national policies and the longer term impact of the dwelling must be considered.

Councillor P M Brivio understood the need to respect planning policies, but was of the view that sympathetic consideration should be given to the applicant's personal circumstances. Councillor R S Walkden agreed, commenting that KCC's Archaeology team, KCC Highways and the KCC PROW team had all raised no objections to the proposal. Furthermore, the Heritage Officer had raised no objections regarding the proposal's impact on the cottage or Conservation Area. He was of the view that the applicant's personal circumstances should outweigh any planning objections.

Councillor Bond stressed that, whilst he sympathised with the applicant, Members needed to consider the application against Local Plan policies. Granting permission for this site would lead to creeping development and would set a precedent for others to follow suit. He could find no robust planning reason to grant permission and urged caution.

The Planning Solicitor advised Members that the courts had indicated that personal circumstances were capable of being a material consideration, but only if all other matters were evenly balanced. Members should approach the application by assessing it first and foremost against the Local Plan and other material considerations, including personal circumstances. The Team Leader (Development Management) added that there was likely to be an increase in travel demand to meet the daily needs of the applicant. Members should bear in mind that the proposed dwelling would be there for another 70 years or so, in other words long after the applicant. Whilst personal circumstances carried weight, in this case they would not outweigh the harm caused by development in a rural area.

It was moved by Councillor D P Murphy and duly seconded that Application No DOV/19/00106 be REFUSED as per the Officer's recommendation.

On being put to the vote, the motion was LOST.

It was moved by Councillor D G Beaney and duly seconded that the application be DEFERRED for a site visit.

On being put to the vote, the motion was CARRIED.

RESOLVED: That, notwithstanding the Officer's recommendation, Application No DOV/19/00106 be DEFERRED for a site visit to be held on Tuesday 18 June 2019 to enable Members to: (i) Assess the impact on the countryside; and (ii) Understand the needs of the applicant, and that Councillors D G Beaney, E A Biggs, P M Brivio, R S Walkden and H

M Williams (reserve: Councillor J S Back) be appointed to visit the site.

168 APPEALS AND INFORMAL HEARINGS

The Committee noted that there was no information to receive regarding appeals and informal hearings.

169 ACTION TAKEN IN ACCORDANCE WITH THE ORDINARY DECISIONS (COUNCIL BUSINESS) URGENCY PROCEDURE

The Committee noted that no action had been taken since the last meeting.

The meeting ended at 7.22 pm.