

MC/13/3227

Date Received: 13 December, 2013

Location: Plot 2, Merryboys Stables, Merryboys Road, Cliffe Woods, Kent, ME3 7TP

Proposal: Relocation and rebuilding of barn for use as holiday let with parking area

Applicant: Mr JS Gill

Agent:
Ward Strood Rural

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 2 April, 2014.

Recommendation - Refusal

- 1 The proposed new dwelling would have an adverse impact on the rural character of the area and would be contrary to the requirements of Policies BNE1, BNE25 and BNE27 of the Medway Local Plan 2003 and national policy as set out in the NPPF 2012; it is not accepted that the development constitutes sustainable development as set out in the framework or that there is any justification to outweigh the development plan or national policies in this instance.

For the reasons for this recommendation for refusal please see planning appraisal section and conclusion at the end of this report

Proposal

The development involves the dismantling, rebuilding and extending of a barn for use as a holiday let dwelling. It will be rebuilt some 7-9m to the north of the existing location of the building. The finished structure will include extensions to the building and the addition of a basement. The ground floor is shown to accommodate a living area, a kitchen/diner, a disabled bedroom and a disabled WC. The first floor is shown as a single open plan area as a bedroom with an en suite. The basement which covers the central area of the building is indicated to accommodate storage and laundry areas. It is said that a grey water recycling system will be situated in the basement but no details are shown.

Part of the area of the existing location is shown to be a car parking area with planting on the remainder. Orchard planting is shown on land in the same ownership to the north.

The property will use the existing shared access to Merryboys Stables.

Relevant Planning History

The site has a long complex history. Of particular relevance to consideration of this proposal are the following:

Plot 1 MC/08/1892	Alteration and extension to building Approved 29 January 2009 Appeal against conditions partially allowed but with replacement condition
Plot 2 MC/11/1473	Conversion of barn to holiday let. Refused 17 November 2011. Appeal allowed 30 August 2012.
MC/12/2432	Relocation and rebuilding of barn and use as a holiday let, including basement area, enlargement of curtilage and provision of parking area. Refused 23 January 2013. Appeal dismissed 13 June 2013

Representations

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

There have been **7 representations** received raising the following objections:

- The development would have an adverse and negative impact on the surrounding countryside and street-scene in general.
- A similar scheme was refused before.
- The site has already been ruined.
- This is a new building in the open countryside that would not normally be allowed.
- It would be in a more prominent position and a new obtrusive new build.

There are also comments regarding the history and the applicant that are not material considerations in relation to the determination of a planning application.

Cliffe and Cliffe Woods Parish Council would want the landscaping features to be included and conditioned. It does not object in principle and notes further investigation into the impact of the barn is required. It also expects conditions to be monitored and action taken where necessary to enforce any breaches.

The Environment Agency has no comments.

Kent Fire and Rescue Service consider the means of access satisfactory.

The applicant has submitted a Planning Statement. This includes a description of the site and the history. It states that since the appeal decision an application has been submitted seeking discharge of the pre-commencement conditions and that the development has commenced. There is an analysis of the policy position and the position in relation to the appeal decision, as well as impacts on residential amenity and the character of the surrounding area; with comments on landscaping and access and parking. It concludes that this is a suitable location for this form of development, that the scheme has taken proper account of the local context and that the proposals are justified by the NPPF.

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003. The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework, 2012 and are considered to conform.

Planning Appraisal

The Site

Merryboys Stables is a plot of land situated outside the confines of Cliffe Woods village but at the rear of a small group of dwellings at the junction of Merryboys Road and Perry Hill. It is generally flat with open fields adjacent. There are four main buildings on the site. At the rear of the group of dwellings there is a former barn now converted to a dwelling (Plot 1). On the southern boundary there are three buildings; one appears to be used for storage, one has permission for conversion to a dwelling (Plot 3) and the one in the south west corner is the barn to be moved as part of this proposal. It is visible from Merryboys Road over the mixed boundary treatment on the western side and from the front. There is an access opposite the junction with Perry Hill that is used for the site but has limited visibility.

Main Issues

The main issues in the determination of this application are whether there is justification for a new building in the countryside and the impact on the character, amenities and appearance of the countryside having regard to the policies of the development plan and the NPPF.

Assessment

It will be seen from the history that planning permission was granted on appeal for the extension and conversion of the existing barn located in the south western corner of the Merryboys site into a holiday let dwelling. The Inspector noted the requirements of Local Plan policy BNE27 relating to the re-use of buildings in the countryside and concluded that the conversion of the building would not conflict with the objectives of policies BNE25 and BNE27 and would provide visitor accommodation that would support the rural economy.

More recently an appeal was dismissed for the dismantling, relocation and rebuilding

of the barn as a holiday let. The applicant says that since that decision material factors have changed.

First, he says that the details submitted in relation to the pre-commencement conditions attached to the permission for the barn conversion have been approved. That is not considered to be a correct summary of the situation. Condition 8 required further submissions in relation to contamination before development commenced and no details in relation to that condition have been submitted or approved. The applicant does not accept this so this report will consider the alternatives.

Secondly he says that works to implement the conversion permission have commenced and the lawful use of the building is now a C3 residential property, albeit one for use as a holiday let. Despite requests no actual evidence of the commencement has been submitted. The alternative positions in relation to this will also be considered.

Although not listed in the above history of applications, new buildings on plot 1 have been refused although permission has been granted for a garage and a swimming pool in connection with the barn conversion there. This site is considered to be a sensitive location in the countryside but close to Cliffe Woods village.

There is no explanation as to why the building needs to be demolished and rebuilt in a new location although it is said that on the one hand there will be an increase in the carbon footprint but, on another, the new building will be more energy efficient.

It is claimed that the impacts of moving the location will be addressed through additional landscape planting both within and adjacent to the plot. As a result, it is said, the new building will not be a more prominent feature.

Pre-commencement conditions

The applicant is not suggesting that details have been submitted in relation to condition 8, but rather that the details originally submitted were sufficient and that the Inspector somehow overlooked this.

That analysis does not stand up to examination. At paragraph 34 of the appeal decision for MC/11/1473 the Inspector said that "In view of the evidence of the range of uses on the land, with a reasonable likelihood of contamination, it is necessary, in the interests of public health and the wider environment, to impose a condition requiring investigation of the site for potential contamination and its remediation if necessary" This requirement for further work was reflected in Condition 8 which states "No investigation shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved by the Local Planning Authority. The results of the site investigation shall be made available to the Local Planning Authority before any development begins." The Phase 1 Desk Study referred to has been re submitted with this application and it identifies potential sources of contamination and recommends further investigation. The Environmental Health Officer continues to recommend that there needs to be further investigations and approvals. The resubmission of the Phase 1 Desk Study is not considered

sufficient to discharge condition 8.

Given the Inspectors explicit reference to contamination and the need for further details it cannot simply be assumed that the Inspector overlooked a factor. Nor can it be considered that there has been compliance with the requirements of condition 8 which was a pre-commencement condition. There is therefore, at the very least, doubt whether any commencement was in accordance with the permission and represents a lawful start.

Commencement

As noted the applicant has been asked to provide evidence of the commencement. The applicant has stated that the "current works include the laying out of provisions for the drainage system" but has provided no further details or evidence.

If the Council is to accept that there has been a lawful start then there ought to be evidence on which to base a decision. Given the applicants view that a decision turns on this factor it is essential that there is clear evidence to justify the claim. In the absence of such evidence the matter remains in doubt and a precautionary approach is considered to be appropriate.

Policies

The applicant suggests that as a result of the change of status of the existing building to a lawful dwelling the position in relation to the policies has changed.

That is not accepted.

First, because, as indicated above, any start is not considered to be lawful as not all pre-commencement conditions have been discharged. No details have been approved for condition 8 which clearly states that "no development shall take place until...[further details have been submitted and approved and those details complied with]." The condition relates to a critical matter of contamination and is considered to go to the heart of the permission and the development cannot commence until the condition has been satisfied.

Even setting aside the position in relation to the condition there must also be doubt about the lawful implementation of the permission in the absence of any substantive evidence.

Moreover, even if there has been a lawful commencement that does not change the status of the building. In order for the permission granted on appeal to have been implemented, the Council would need to be satisfied that any work in the construction as well as for the change of use have begun. It is not accepted that a start is sufficient to mean that the building is now a dwelling. Case law suggests, for example, that permitted development rights do not apply until a building is completed. It cannot be considered to be a dwelling until the works have been substantially completed.

Under those circumstances it is considered that the position remains as it was at the

recently dismissed appeal. There is not a lawful dwelling on the site and the development proposes the replacement of a barn with a new dwelling in the countryside.

Having said that, there are some changed circumstances in that Medway Council has now formally assessed the saved policies of the Local Plan in terms of consistency with the NPPF. Key policy BNE25 that affected the basis of the previous refusal and appeal decision is considered to have significant issues and policy BNE27 is considered to be only partially consistent with the NPPF.

It is therefore relevant to consider the development in relation to the Framework and the findings of the Inspector. In this respect it is important to note that the Inspector found that aspects of the policies were consistent with the NPPF and the similar development then considered to be in conflict with the Framework.

Conclusions and Reasons for Refusal

As matters stand it is considered that the proposal continues to involve a new building in the countryside that is contrary to Framework policies as well as the saved policies of the development plan.

The new building will be closer to the road and more visible in the street scene; in particular when viewed from in front of the site. It is maintained that the development will be harmful to the character and appearance of the rural area. The proposed additional planting is not considered to be justification that outweighs the objections to this development.

The application would normally be determined under delegated powers but is being referred to Planning Committee for determination due to the request of the Committee.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://planning.medway.gov.uk/dconline/AcolNetCGI.gov>