

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 2 PLANNING COMMITTEE**

**05 August 2009**

**Report of the Chief Solicitor**

**Part 1- Public**

**Matters for Information**

**PLANNING APPEAL DECISIONS**

- 1.1 Site **Little Mount, The Street, Plaxtol**  
Appeal **Against (1) the refusal of permission for the demolition of an existing dwelling and the construction of two detached dwellings and (2) the failure to give notice within the prescribed period of a decision on an application for conservation area consent for the demolition of an existing dwelling**
- Appellant **Mr Terry Groom**  
Decision **Appeals allowed**  
Background papers file: PA/02/09

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The Inspector considered the main issue to be whether the proposed development would fall within or outside the Green Belt.

At the time of the previous appeals there was no suggestion that the proposals would conflict with development plan policies for the protection of the Green Belt or represent inappropriate development in terms of Planning Policy Guidance 2: Green Belts. However, in the current proposals, the dwellings would be located several metres further north. In addition, the Council now believe the Green Belt boundary to be much closer to the existing dwelling. For these reasons the comments of the previous inspector in respect of the Green Belt did not assist the Inspector.

The appeal site lies within the Plaxtol Village Conservation Area and an Area of Outstanding Natural Beauty (AONB). The development plan includes the Tonbridge & Malling Borough Council Local Development Framework Core Strategy, adopted in 2007. Although there were some changes to the Green Belt boundary at the time the Core Strategy was adopted, for the most part the definitive boundary for the Green Belt remains that shown on the Proposals Map of the Tonbridge and Malling Local Plan, 1998. The introduction to the Local Plan states that within rural settlements, policy areas are defined by the inner edge of a thick black line.

On the Proposals Map the Green Belt boundary and that of the village envelope coincide. They bisect the appeal site and the neighbouring gardens to the west. Due to the scale of the Proposals Map, 1mm is equivalent to about 12.5 metres on the ground. A surveyor engaged by the appellant to establish the precise location of the Green Belt boundary concluded that it was not possible to scale anything closer than the nearest 4-5 metres. The Council did not dispute this.

The Council considers the Green Belt boundary to be about 5 metres from the rear elevation of the existing dwelling. The Proposals Map uses a Raster base which was created by a photographic reduction of a 1:10000 base. The base plan shows a line to the rear of the Rectory (the neighbouring dwelling to the west) that lies beneath the line of the Green Belt on the Proposals Map.

The Council stated that the Raster base is not a survey, and is not accurate in terms of the siting or dimensions of buildings shown on it. Both the base map and the Proposals Map incorrectly depict the position and size of the existing dwelling on the appeal site and the neighbouring dwellings. Nevertheless, the Council considered the boundaries to the various properties shown on these plans to be reasonably accurate.

It enlarged the base plan to 1:2500 and the Proposals Map to 1:2000 and used the northernmost boundary of the appeal site as a reference point. It states that in both cases the distance to the Green Belt boundary was scaled at 47 metres along the eastern boundary and 55 metres along the western boundary.

At the site visit the appellant measured 47 metres from the rear boundary of the site along the eastern boundary. This coincided with the distance of 9 metres from the rear of the existing dwelling and the position of the boundary previously provided to the appellant by the Council.

The Council suggested that the line shown on the Raster plan crossing the rear garden of the Rectory coincides with an existing post and rail fence and represents the boundary of the Green Belt. This would locate the Green Belt boundary about 5 metres from the rear elevation of the existing dwelling. The fence separates a vegetable garden and timber outbuilding from the rest of the garden. In the Inspector's view, the position of a post and rail fence within a domestic garden does not provide a reliable indication as to the precise location of the Green Belt boundary. There is no evidence to indicate how long it has been in place or whether there was a previous fence in a different location.

The Council's Planning Policy Team is currently preparing a digitised version of the Proposals Map to provide a more accurate indication of the Green Belt boundary. At the Hearing the Council submitted an aerial photograph with the draft version of the digitised map overlaid. This shows the Green Belt

boundary crossing the appeal site in the position suggested by the Council. Although the plan takes the form of an aerial photograph, there are additional lines on the plan, including a line that bisects the rear garden of the Rectory. These lines appear to be superimposed on the photographs, and not representative of features on the ground.

The Council confirmed that this plan had no legal status. No information was available to indicate how the position of the boundary line had been arrived at, or why it was in a different position to that conveyed to the appellant at the time of the application.

The Council also drew the Inspector's attention to a number of other factors to support their view as to the location of the Green Belt boundary. It stated that the boundary was drawn more tightly in this location to preclude backland and tandem development. Whilst this may be the case, it does not assist in assessing the distance of the Green Belt boundary from the rear of the property, nor why other dwellings within the village were not subject to the same constraint.

At the time the applications were submitted, the appellant assumed that the Green Belt boundary was about 10 metres from the rear of the existing dwelling. The Planning Officer subsequently informed him that it was in fact about 9 metres from the rear elevation. The proposals were amended to reflect this advice. The committee reports in December 2008 and February 2009 stated that the proposal did not extend into the Green Belt.

This position of the boundary put forward by the appellant broadly aligns with the rearmost point of the replacement dwelling at Golding Orchard. This was permitted in 2003. The Green Belt boundary that crosses the appeal site continues towards Golding Orchard. The Council argues that the boundary was wrongly interpreted at the time at which Golding Orchard was permitted, and to allow the appeal proposal would simply compound this error.

The appellant suggested that the Council's re-assessment of the Green Belt boundary was prompted by a letter from an adjoining occupier. An extract from the appellant's plan was attached to the letter. This showed a line from the rearmost point of Golding Orchard across to the appeal site, and showed the Green Belt boundary to be in a similar position to that currently asserted by the Council. The position of Golding Orchard was shown wrongly, and the appellant submitted a revised plan showing the correct position of Golding Orchard based on survey information.

Prior to the letter from the neighbour, the Council believed that the proposed development would not extend into the Green Belt. The Inspector considered that whilst it was reasonable to reassess the boundary in the light of the neighbour's comments, it provided no explanation as to how, or why, the Council's position

changed on this key matter.

Due to the scale of the Proposals Map, and the absence of any supporting evidence as to the factors that influenced the precise boundary of the Green Belt, the exact position of the boundary is a matter of judgement, and in the face of very limited definitive evidence and conflicting submissions, can only be made on the balance of probabilities. The distance of 47 metres from the rear boundary, based on an enlargement of the base plan, would locate the boundary in a similar position to that asserted by the appellant, namely 9 metres from the rear of the existing dwelling. The Inspector acknowledged that the base plan and Proposals Map were enlarged to enable these dimensions to be scaled, and this inevitably involves a degree of distortion. Nevertheless, in the absence of any reliable features on the ground, it provides the most convincing indication of the likely position of the Green Belt boundary, particularly when combined with the measurements taken at the site visit.

Therefore, taking account of all the above factors, in my judgment, the Green Belt boundary runs about 9 metres from the rear of the existing dwelling, and the entirety of the proposed built development would be outside the Green Belt. For similar reasons it would also be within the village envelope. Therefore, in policy terms it would not amount to inappropriate development and the Inspector considered it was not necessary to go on to consider whether there are any other considerations sufficient to justify the proposal on the basis of very special circumstances.

Due to the mature trees and landscaping that limit views into the site, the proposal would not be prominent within the street scene. The Inspector therefore considered that the proposal would preserve the appearance of the Plaxtol Village Conservation Area.

The Council are satisfied that if the proposed dwellings lie outside of the Green Belt, they would have a similar relationship to other dwellings in the locality and would not harm the visual amenities of the Green Belt. The Inspector shared this view, and considered that the proposal would not harm the natural beauty of the AONB.

The proposal would come within the village envelope and would not establish a precedent in respect of inappropriate development within the Green Belt. The appeal site occupies slightly higher ground than the neighbouring dwelling at Daltons Farm. However, the finished floor level of the dwelling on Plot 2 would be lower than the existing ground level, and due to its distance from the boundary, and the screening provided by the existing trees and shrubs, the Inspector was satisfied that it would not have an overbearing effect on the occupants of Daltons Farm. The flank wall window to bedroom 1 would be sufficient distance from the dwelling at Daltons Farm to maintain a satisfactory

level of privacy. The proposed dwelling would not significantly increase the shadows cast by the existing trees.

## **Application by the appellant for an award of costs against the Council**

### **The Submissions for the Appellant**

The guidance states that a Local Planning Authority may be at risk of a costs award where it fails to provide an adequate pre-hearing statement, or introduces a new reason for refusal at a late stage in the proceedings. It is also at risk where an amendment or late addition to statement of case causes a Hearing to be unnecessarily prolonged. The Planning Officer at the time of the application was satisfied that the Green Belt boundary was 9 metres from the rear of Little Mount, and confirmed this in her report to the committee. This view was only changed in March some three months after the appeals were lodged.

The Council submitted significant additional evidence outside of the timetable agreed with the Planning Inspectorate. This resulted in an adjournment and caused the Hearing to be unnecessarily prolonged.

Annex 3 paragraph 7 states that a planning authority should not prevent, inhibit, or delay development which could reasonably be permitted in the light of the development plan and any other material considerations. The planning authority will be expected to provide evidence to substantiate each reason for refusal by reference to the development plan and all other material considerations.

There appear to be no records to clarify how the boundary was originally determined, and the Council relied on enlargements of the base plan and Proposals Map. No measurements were taken at the appeal site and no evidence was provided to explain why the Council changed its original view. The digitised version of the Proposal Map has no legal status.

Paragraph 15 explains that planning authorities are expected to consider the views of local residents, but need to consider the substance of any local opposition to a proposal and decide the case on its planning merits. The Local Planning Authority fully intended to approve the second set of applications submitted by the appellant in an endeavour to avoid these appeals. They changed their minds because an objector claimed that parts of both dwellings were sited beyond the village boundary and in the Green Belt. The plan submitted by the objector was based on an inaccurate siting of Golding Orchard. This was not checked by the Council and was drawn to their attention in the appellant's statement.

## **The Response by the Council**

The Council's behaviour was not unreasonable nor did it lack discipline. The proposal would extend into the Green Belt and would be inappropriate development. Therefore it would breach policy and the appeal should proceed. It is accepted that the applications were due to be permitted prior to the letter from the neighbour. The original advice to the appellant was in error and the Council's view was altered due to the convincing case put by the objector.

The appellant didn't challenge the original advice from the Council because it was beneficial to his case. Officers repeatedly recommended the proposal and would not have made a complete reversal had they not felt strongly that the Green Belt issue was fundamental.

The appellant did not make a genuine attempt to interpret the Proposals Map, he simply looked at Golding Orchard and opted for 10 metres. It would have been wrong to determine the applications on the basis of delegated authority, and it was important to put the new evidence before the committee and allow them to make a decision.

The appellant could have amended his proposals and avoided these appeals. Poor communication between the appellant and his agent meant that the case has taken longer to deal with. If the site is within the Green Belt it is inappropriate development and should be refused. Therefore there has been no abortive work or costs.

## **Conclusions**

The Inspector considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

The Council accept that it repeatedly recommended the proposal for approval on the basis that it did not come within the Green Belt. A letter from an objector prompted it to re-assess the position of the Green Belt boundary. Whilst the Inspector agreed that planning authority needed to consider the substance of the objection, there is no evidence that the Council sought to verify this information.

The Council stated that the revised position of the boundary was based on the enlargement of the Proposals Map and the base plan. It did not check these dimensions on the appeal site, had it done so it would have found them to be remarkably similar to its previous interpretation of the position of the boundary.

The Inspector therefore concluded that there was no substantial evidence to support the Council's change of view. It would seem that it was unduly influenced by the views of the objector and prevented development which could have reasonably been permitted. She concluded that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated, and a full award of costs is justified.

**Ian Henderson**  
Chief Solicitor