

**15 DCNW2005/0752/F - CHANGE OF USE FROM
PADDOCK TO RESIDENTIAL CURTILAGE AT THE
BOTHY, LOWER HERGEST, KINGTON, HR5 3EN****For: Mr D Broadley at the same address.****Date Received:****9th March 2005****Ward:****Kington Town****Grid Ref:****27536, 55436****Expiry Date:****4th May 2005**

Local Member: Councillor T James

1. Site Description and Proposal

- 1.1 The application site lies to the rear of the detached rural dwelling known as the Bothy. The piece of land that is the subject of this application sits to the rear (northwest) of the dwelling (at a higher level than the associated dwelling) and is accessed via steps. The site has been used formally as garden area for a number of years and is currently grass lawn. This area drops away steeply at the southern end towards a post/wire fence that forms the boundary with the neighbouring agricultural grazing land.
- 1.2 Rose Cottage, a detached cottage, lies immediately to the south east of the garden and to the south west of The Bothy. The application site is some 2m in height above the ground level of the dwellings.
- 1.3 The previous application (DCNW2004/3725/F) was refused, however a section decking does remain in situ at this time. The applicants have informed the local planning authority that they will appeal against the decision to refuse their last application and this is being monitored. Members will recall visiting this site prior to making this decision.

2. Policies**2.1 Planning Policy Guidance**

PPS1 – Delivery Sustainable Development

2.2 Hereford and Worcester County Structure Plan

CTC2 – Development in Area of Great Landscape Value

2.3 Leominster District Local Plan

A41 – Protection of Agricultural Land

A53 – Protection from Encroachment into the Countryside

A54 – Design and Layout of Housing Development

2.4 Herefordshire Unitary Development Plan – Deposit Draft

DR2 – Land Use and Activity
LA2 – Landscape Character and Areas Least Resilient to Change
LA6 – Landscaping Schemes

3. Planning History

DCNW2004/3725/F – Change of use from paddock to residential garden and retention of decking – Refused – 5th January 2005

4. Consultation Summary

4.1 Statutory Consultations

No statutory consultees

4.2 Internal Council Advice

Traffic Manager has no objection

5. Representations

5.1 Kington Parish Council comment:

The Bothy and Rose Cottage at Lower Hergest, Kington appear to have originally been built into a hillside with all land for both the properties and gardens being dug out and removed to form the gardens to the front of both properties. Both properties have very small rear access points to the back of their properties. The members of the Council believe that in order to enlarge the garden of the Bothy, it will be necessary to create an access-way as the paddock is greatly elevated and this would involve either steep steps and or a similar steep ramp-way. The members of the Council felt that if planning permission were given, then there would be no controls over the future use of this land; should it be the desire of the current or future owners of the Bothy to excavate and dig out this area of the paddock thus levelling the piece of land to the height of their current property then further destabilisation of the whole area would occur, then nothing could be done to prevent it. This piece of land runs not only behind the Bothy but also behind Rose Cottage, and it was felt that any change could create difficulties for adjacent property owners, not only in their loss of privacy, but the possible unsettling of the ground above their property and also their boundaries and further destabilisation of the ground could not be ruled out. The owners of the Bothy have already removed an ancient hedge in their zeal to change the use prior to any planning permission being sought; importantly this hedge, which was on the western side of the land in question, stabilised the ground which slopes down into the adjacent field and with this now removed land slippage and future erosion is a strong possibility.

The members of the Council have grave reservations about this proposal and therefore object to the change of use, and would request that the hedge be reinstated to stabilise the area as a matter of urgency and the land be restored to that of a paddock without further delay.

5.2 Two letters of objection have been received. The first from Tina and Gordon Davison of Rose Cottage raise the following points:

1. Permitted development on the land following the proposed change of use to residential garden would have further detrimental impact on our land and property.
 2. The development is intrusive giving rise to problems of overlooking and a loss of privacy to our house and garden and to increased noise, all of which is detrimental to our property. Please note that the development land is elevated some 2 metres above ours and is only 5 metres away from our house.
 3. Related to the previous point, we have a current planning approval for a rear extension that, when implemented, brings a rear facing window of our dwelling to within 2.5 metres of the subject land (planning reference is NW2003/1313/F).
 4. No measure have been included in this application to mitigate the overlooking of our property.
 5. We do not understand what the justification is for increasing the garden space of The Bothy when there is already ample garden space within the applicant's curtilage.
 6. The proposal, as submitted, would constitute a fundamental change to the character and identity of the land within the rural landscape into which it encroaches, this being landscape the Council has determined in its UDP to be 'least resilient to change'.
 7. The site abuts existing agricultural uses on three sides and breaks through the natural settlement boundary of Lower Hergest.
 8. The site is in an area defined in the Leominster and District Local Plan as an 'Area of Great Landscape Value' and the proposed development conflicts with Policy A2 thereof. It also conflicts with the Local Plan's environmental objectives regarding the protection of natural habitats from the effects of development and changes in land use and ensuring that developments fit sensitively into the landscape.
- 5.3 A second letter from Kate and Andrew Garman of Orchard House who raise the following issues:
1. The development land adjoins agricultural land on 3 sides. It is some 2 metres higher than the house and existing garden of the Bothy. This change in level has served to provide a natural settlement boundary and buffer between residential and agricultural use. There is no proposal to provide a new suitable screen/buffer between the incompatible uses of the land.
 2. As the development land encroaches into the agricultural landscape the affect of any domestic paraphernalia e.g. greenhouses, garden ornaments, lights, climbing frames, washing lines decking etc would have a detrimental effect on the otherwise open and undeveloped character and appearance of the landscape. The large area of decking already built on the plot is intrusive and can be seen from some distance across the landscape. There are no proposals to mitigate the effects of current or future development on the landscape.
 3. If change of use is granted permitted development rights may further prejudice our amenity. Our paddock is half an acre in size. It currently is, and always has been, used for animal grazing. Given its small size it is a concern that very intensive residential use (e.g. parties, outside lights, music, fireworks), by current or future owners may prejudice the continued use of the agricultural land for animal grazing.
- 5.4 The full text of these letters can be inspected at Northern Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.
- 6. Officers Appraisal**
- 6.1 The main issues in the consideration of this application are the principles and acceptability of the change of use on the landscape quality of the area and on the

amenities and living conditions currently enjoyed by the residents of the adjoining properties.

- 6.2 The change of use of use of the land from agricultural to garden was undertaken a number of years ago. In principle the encroachment of residential use into agricultural land is contrary to the policies that set out to protect the countryside. However, consideration has been given to the minimal nature of the intrusion and minimal impact on the landscape and surroundings. As such it is considered that the proposed change of use conforms to the policies, which seek to protect the rural landscape. The parish council raises objection to the removal of a hedgerow. The applicant maintains they have not removed a hedgerow and there is little evidence of this on site. As such it is not considered appropriate to pursue the reinstatement of this hedgerow other than through and appropriate landscaping scheme as outlined below. .
- 6.3 The letters of objection received raise concern in relation to the potential for overlooking and loss of privacy. It is accepted that the garden area does have a direct overlooking relationship with its neighbour. However this is not a principal garden area, and this issue could be addressed through the planting and use of landscaping. As such it is not considered to have such a detrimental impact that would call for a reason for refusal. As this application is retrospective and is already having an impact on the neighbouring property, in terms of overlooking and privacy a condition landscaping scheme submitted within 2 months is recommended. A further condition ensuring that the landscaping is provided and completed within the first planting season and retained for the life of the development.
- 6.4 Members are minded to grant permission to continue the use of the land as part of the residential curtilage, then the site would benefit from permitted development rights, under which further structures could be erected. A condition removing the rights to erect any structures on the application site is therefore recommended. In addition to this a condition ensuring the unauthorised decking structure to be removed from the garden is recommended.
- 6.5 To conclude, the proposal represents minimal encroachment into the countryside and its impact on the landscape quality of the area is considered to be acceptable. Issues relating to overlooking and privacy have been carefully considered and a condition to provide landscaping and screening would overcome these concerns. As such approval subject to conditions is recommended.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1 - Within 2 months of the date of this permission a scheme of landscaping, which shall include all proposed planting, clearly described with species, sizes and planting numbers, shall be submitted to and approved in writing by the Local Planning Authority.**

Reason: In order to ensure to protect the visual amenities of the area and amenities of the neighbouring properties.

- 2 - G05 (Implementation of landscaping scheme (general))**

Reason: In order to protect the visual amenities of the area.

3 - E16 (Removal of permitted development rights)

Reason: In order to protect the landscape character of the area.

4 - Within 2 months of the date of this permission the unauthorised decking area shall be removed from the application site and land restored in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.

Reason: In order to ensure to protect the visual amenities of the area and amenities of the neighbouring properties.

Informatives:

1 - N15 - Reason(s) for the Grant of PP/LBC/CAC

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.