

LOCATION: HOOK MEADOW, PHILPOT LANE, CHOBHAM,
WOKING, GU24 8HD

PROPOSAL: Change of use of former field shelter and erection of
extensions to it, to form single storey dwelling house and
creation of residential curtilage (retrospective).

TYPE: Full Planning Application

APPLICANT: Miss Alison Hook

OFFICER: Michelle Fielder

This application would normally be determined as a delegated item, however, the application has been called in by Member's for consideration by the Planning Applications Committee.

RECOMMENDATION: REFUSE

1.0 SUMMARY

- 1.1 This application seeks retrospective planning permission for the conversion of a field shelter to a timber cabin used as a single dwelling with an associated residential curtilage.
- 1.2 The application site has an extensive planning history and the application development is the subject of extant enforcement notices (with appeals having been dismissed) and a High Court Injunction requiring the demolition of the dwelling and the reinstatement of the land to its former condition.
- 1.3 The report concludes that there has been no material change in the relevant material planning considerations which resulted in the issue of the enforcement notices, the dismissal of the subsequent appeals by the Planning Inspectorate and the grant of a High Court Injunction and accordingly it is recommended that planning permission be refused.

2.0 SITE DESCRIPTION

- 2.1 Hook Meadow is set in a rural location beyond any defined settlement to the east of Philpot Lane. The site lies within the Green Belt and high risk floodplain. Philpot Lane is characterised by low density development set in spacious plots. The area has a verdant character which is considered to be a defining feature of the area. The red line of the application site is drawn around the 2.1ha holding in the applicant's ownership and the bulk of the site, approximately 1.7ha, is set to grazing land. Development on the site includes a block of three stables with an attached feed store and ancillary development to support the lawful equestrian use. The site area to which this retrospective application relates is approximately 0.4ha

and comprises a garden area and an extended single storey timber cabin. A carport has also been erected.

3.0 RELEVANT HISTORY

- 3.1 The application site has an extensive planning history. The most relevant to this current application is summarised below.
- 3.2 In December 2003 planning permission was sought (ref. 03/1374 for the erection of a single storey house. This was refused due to the countryside/Green Belt location where new residential is strictly controlled. A further reason for refusal cited the site's location within an area liable to flood. An appeal against this refusal was subsequently dismissed with the Inspectorate agreeing that the development did not meet an agricultural housing need, and was inappropriate development, and that it would be harmful to the open and rural character of the Green Belt. The inspector found no conflict between the proposal and flooding.
- 3.3 A further application for planning permission (ref. 05/0438) for residential development was submitted in April 2005 and treated as valid in June the same year. This application was also refused for similar Green Belt and countryside reasons as those cited in 2003. No appeal to that refusal was submitted.
- 3.4 During February 2003 and October 2009 the site was subject to various complaints concerning alleged residential occupation. Early enforcement records during this period indicate that the applicant admitted to occasionally staying overnight on the land with a horse trailer providing accommodation for this purpose. A site visit on 11 February 2004 shows the structure referred to as a former field shelter as being a corrugated metal and timber building with a varied but low eaves height. The structure appeared to be in a poor state of repair and there is no evidence of a garden area on the land at this time. On 15 February 2008 the site was the subject of a routine site inspection and Officers noted that an area of land now had the appearance of garden land; a request to access the former field shelter was also denied. Officers subsequently gave the applicant notice of intent to visit the premises and gain entry under section 196 of the Town and Country Planning Act 1990. The premises were inspected on 21 February 2008 wherein it was noted that a residential unit had been formed within the fabric of the field shelter. The applicant advised at that time that she had been in residence since April 2006.
- 3.5 The site was revisited on 16 October 2009 and this revealed that large parts of the field shelter had been removed and a porch had been added. A further site visit was undertaken on 26 October 2009 specifically to enable officers to assess how the development had been undertaken with a view to considering whether it was expedient to pursue enforcement action to regularise the breach of planning control together with providing officers with the opportunity of undertaking a detailed inspection such that the exact nature of the breach could be identified. Enforcement Notices were subsequently issued on 29 October 2009 and

required the cessation of the use of the land for ancillary residential purposes and the demolition of the dwellinghouse contained within the former field shelter, the demolition of the field shelter and various ornamental garden fittings.

- 3.6 As part of the appeal proceedings instigated by the applicant a further site visit was undertaken on 11 March 2010 wherein it was noted that the garden area had been extended and those parts of the dwelling house formerly uncovered had been recovered with timber affixed to the shell of the former field shelter.
- 3.7 The enforcement appeal proceeded as a Public Inquiry and after considering the case presented by both parties the Inspector dismissed the appeal and upheld the notices and in doing so opined that the dwelling is not a conversion of the former shelter but a freestanding building constructed within it, and that consequently the Council's assessment of the breach of planning control was correct. The decision letter (DL) is dated 24 May 2010 and required the demolition of the dwelling and ancillary garden development and the cessation of the use of the land for residential purposes. The period for compliance was stated as 6 months (for the use) and 9 months for works of demolition and making good.
- 3.8 The period for compliance with the terms of the notices was informally extended until mid-summer 2011; however, requests for compliance since then have not met with success despite extensive communication between the Council and the applicant. Moreover, notwithstanding the presence of the extant enforcement notices and the failed appeal against the same, the applicant undertook an extension (to form a lounge) to the unauthorised dwellinghouse with these works commencing in October 2013. These works were inspected on 12 May 2014 where it was also noted that it appeared that preparatory works were in place to facilitate a further extension to the dwelling (this time to the bedroom).
- 3.9 Concerns regarding the applicant's failure to comply with the extant enforcement notices, coupled with the erection of an unauthorised extension (and the apparent intent to undertake further works) resulted in the Council applying to the High Court for an Injunction. The application for the Injunction was granted by his Honour Judge Seymour following a hearing held on 30 October 2014. The requirements of the injunctive Order are (in summary):
 1. The cessation of the residential use of the specified garden land by no later than 30 April 2014;
 2. The removal of all ornamental planting, decorative features and raised beds from the specified garden land by no later than 30 October 2015; and,
 3. The demolition of the unauthorised dwellinghouse (including the porch and recently completed extension) by no later than 30 April 2016.
- 3.10 Site visits undertaken at key dates reveal that points 1 and 2 of the injunctive Order have not been complied with.

4.0 THE PROPOSAL

- 4.1 Notwithstanding the fact that the Enforcement Appeal Inspector agreed with the Council's assessment that the works undertaken did not amount to the conversion of the former field shelter but rather the erection of a free standing dwellinghouse within the fabric of the former field shelter (see paragraph 3.7 above), the applicant describes the proposal as the retrospective change of use of the field to a single storey timber cabin (a reference is made to September 2005). The application form also cites the change of use of grazing land to curtilage (with reference to 2003). A further reference is made to the applicant being in residence in Oct 2002. It should be noted, however, that any reference to dates of occupation are moot in this application. This is because this application does not seek to establish a lawful use by the passage of time (such considerations are stymied by the extant enforcement notices which prevent the applicant establishing a residency under the '4 year rule'), but instead seeks planning permission based on the favourable consideration of the planning merits of the application.
- 4.2 The information submitted, that is the application form and plans, indicate that the application is limited to the extent of the building the applicant considers to be the original field shelter and does not include permission for the porch extension (undertaken between 2008 and 2009) and the lounge extension (erected October 2013).
- 4.3 The application is supported by a petition of support dated September 2014 and contains 26 signatures. A written extract of what appears to be a response from the Environment Agency (EA) is also included as is a flood map produced by the EA and this shows the site to lie in flood Zones 2 (Medium Risk) and 3 (High Risk). The EA has caveated the response provided to the applicant to the effect that it is not a flood risk assessment (FRA). The applicant has, however, taken forward this information and produced a FRA to support the application. A further submission in support of the application is an extract of an email between Natural England (NE) and the applicant. In this extract NE advises that it is for the LPA to apply its avoidance strategy to mitigate harm to the SPA. NE comments, however, that if the applicant was in occupation prior to March 2005 (i.e. prior to the SPA designation) it is its view no harm would arise to the SPA.
- 4.4 The applicant has also provided a written response (by email sent 31/12/2015) to the objection raised by Chobham Parish Council advising that the Parish Council's response is incorrect as she has not previously applied for a change of use of the field shelter and also makes reference to the Parish Council's response of no objection to an application for a change of use of an agricultural barn at Bourne Farm.

5.0 CONSULTATION RESPONSES

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| 5.1 | Surrey County
Highway Authority | No comment. |
| 5.2 | Natural England | <p>Summary: as there was not a lawful residence in situ in March 2005, the property has not been included in baseline household figures, the applicant should therefore comply with the LPA's SPA avoidance strategy (in terms of mitigation i.e. SANGS and SAMM contributions).</p> <p>If compliance with avoidance strategy is not secured it is likely NE would object to the proposal.</p> |
| 5.3 | Environment Agency | Comments awaited – will be reported by way of update. |
| 5.4 | Chobham Parish
Council | Development in the Green Belt – previous application was refused by the Planning Inspector at appeal. |

6.0 REPRESENTATION

At the time of preparation of this report 23 representations of support have been received, in general these submissions do not provide an assessment of any material planning considerations to justify a grant of why planning permission, however some refer to an improvement in the appearance of the site and the fact the applicant manages and cares for the land to an exemplary standard as planning considerations.

7.0 PLANNING CONSIDERATION

- 7.1 The nature of the application and the site's location mean that the following matters are the main consideration in the determination of this application:
- Impact on the Green Belt (including whether the application represents inappropriate development, causes harm to openness and the purposes of the Green Belt)
 - Impact on Flooding
 - SPA and infrastructure
 - Very Special Circumstances (including consideration of the applicant's personal circumstances and Human Rights).
- 7.2 **Impact on the Green Belt**
- 7.2.1 Development in the Green Belt is strictly controlled with the aim of preserving the openness and the undeveloped rural character of these areas. At para 89 of the NPPF this is taken forward as a presumption against the erection of new buildings except in a few restricted circumstances.

The applicant is not seeking a determination on the grounds of any of the stated exceptions and it is clear the applicant contends that the works associated with the timber dwelling are not a new build but rather a conversion of the former field shelter. This was a matter of some debate at the Enforcement Appeals and it is noted that the Planning Inspector addressed this point in the Decision Letter (para.2) as reproduced below:

Although the appellant has not challenged the wording of the allegation in Notice B, she refers to having converted the field shelter to a dwelling. The Council submitted that the works undertaken cannot reasonably be considered works for conversion. From my own observations on site and from the evidence at the inquiry, I find that the dwelling is not a conversion of the shelter but a freestanding building constructed within the field shelter.

Notwithstanding this the Council is charged with determining the application as submitted by the applicant and so this report will consider whether the works undertaken in the formation of the timber dwelling comply with para 90 of the NPPF which states that certain other forms of development are not inappropriate development in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. This, amongst four other specified exceptions provides that *'the re-use of buildings provided that buildings are of permanent and substantial construction'* would not be inappropriate. It would therefore seem reasonable to again consider whether the former fielder shelter was of permanent and substantial construction and whether the works undertaken can reasonably be considered to be works of conversion. Key to this assessment is the photographic evidence in the Council's possession.

- 7.2.2 The Council has relied on a photograph taken in 2004 showing the condition of the former fielder shelter. This formed part of the Council's defence against the appeal of the enforcement notices and was accepted by the Inspector as evidence in that appeal. The applicant has never contested this photograph in any way. This shows a small ramshackle building of mixed timber and corrugated metal construction. It is in poor condition and does not appear to readily or easily lend itself to conversion. This photograph will be displayed at the Planning Applications Committee meeting to enable Member consideration on this point.
- 7.2.3 Later photographs of the building, most tellingly those taken in October 2009 show larger parts of the outer skin of the former field shelter removed to expose the new dwelling erected inside. It does not appear that any part of the former field shelter supports or forms part of the concealed dwelling. Later photographs of the application building show that this bears no visible resemblance to the former scale or appearance of the former field shelter, nor is there any evidence to show that any part of that structure still exists. While it is noted the applicant now advises that the field shelter was removed in 2013, due to it collapsing onto the internal structure beneath, it remains that photographs taken in 2009 support the Council's former assessment (and that of the subsequent appeal Inspector) that the former field shelter simply enclosed and concealed the newly erected dwelling. Indeed, the applicant's explanation of why the former field shelter no longer exists (i.e. it

having simply collapsed) simply supports the Council's assessment that this shelter was not of permanent and substantial construction, nor had the fabric of it been used in a substantive manner as one would reasonably expect with works of conversion.

- 7.2.3 On the basis of the evidence available to the Council, it is therefore considered the dwelling on site cannot reasonably be said to have arisen as a result of works of conversion of the field shelter. Moreover, the application is not supported by any information or evidence to show how the former field shelter was converted to form substantive elements, fabric or parts of the unauthorised dwelling on site today. The only reasonable conclusion, therefore, is that the application for retrospective planning permission for the conversion of the former field shelter to a timber dwellinghouse must fail.
- 7.2.3 In light of the assessment above it is considered reasonable to assess whether there is any planning policy support for the erection of an unfettered and independent dwelling in the Green Belt. In this regard the planning history of the application site shows that the Council and the Planning Inspectorate have previously resisted any proposal to erect a new dwelling on the land. This outcome is in line with the both the national planning policy guidance and local plan policies in place at the time of those determinations. The NPPF and the Surrey Heath Core Strategy and Development Management Policies (CSDMP) both published in 2012 now providing the framework against which applications are assessed. However, the guiding principles governing isolated new builds in the Green Belt has not changed. Indeed as set out at 7.2.1 above, para.89 of the NPPF sets out those limited circumstances where new build is acceptable. The proposal cannot be reasonably considered to fall within any of the stated exceptions. With this in mind, the proposal can only reasonably be considered to be inappropriate development in the Green Belt.
- 7.2.4 The application also includes the formation of an area of previously open countryside to form a garden serving the unauthorised dwellinghouse. This amounts to a change of use of the land in question and is development requiring planning permission. The use and the associated hardstanding and features erected are also the subject of the enforcement notices and the High Court Injunction. Such development is not listed as an exception to the general thrust of development being inappropriate development in the Green Belt. It must also be noted that the domestication of the land in question gives rise to more than a technical breach of planning control and represents inappropriate development.
- 7.2.5 Indeed the character of the land which is situated in a rural and open location has changed dramatically from being open and undeveloped to being segmented into areas of low to mid-level planting, gravel paths and hardstanding. This development represents a form of countryside encroachment which the Council routinely seeks to avoid. The enclosure, planting and domestication of the land to form the garden, together with the unauthorised dwelling, is contrary to the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open and conflicts with three of the purposes of the Green Belt i.e. to

check the unrestricted sprawl of large built up areas; to prevent merging of town into one another; and, to assist in safeguarding the countryside from encroachment.

- 7.2.6 In summary, the application represents inappropriate development and causes further harm to the openness of the Green Belt and the purposes of including land within it. The NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (VSC). VSC will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The following paragraphs consider whether, in addition to the Green Belt harm, there is any other harm caused. Paragraph 7.5 then considers whether there are any VSC.

7.3 Flooding

- 7.3.1 The site lies in Flood Zone 3 and the unauthorised residential is a more vulnerable use. The NPPF advises that development for 'more vulnerable' uses, such as residential, should be directed to areas with a lower probability of flooding. In addition para 103 of the NPPF advises that development in one area should not displace flood waters and give rise to a problem, or increase problems, experienced elsewhere. An application for residential development in flood zone 3 can be approved; however this can only be done following the receipt of a site specific flood risk assessment and when the Sequential Test and Exception Tests have been passed.
- 7.3.2 The Sequential Test is essentially a means of directing development to areas with a lower probability of flooding, where this is not possible, the Exception Test requires the development proposal to demonstrate wider sustainability benefits to the community that outweigh the flood risk associated with development, in addition to the development being safe for its lifetime.
- 7.3.3 The application is supported by a short Flood Risk Assessment and this has been referred to the Environment Agency for consideration. While officers note that the content of this document does not include a Sequential Test or demonstrate that there are no other sites with a lower probability of flooding available (and as such anticipate than an objection will be raised), the lack of formal comments from that consultee at this time mean that an update will be provided.

7.4 SPA and infrastructure

- 7.4.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2006 requires the LPA to determine planning applications in accordance with the development plan unless material considerations indicate otherwise. Section 38 (3) advises that the development plan is the documents (taken as a whole) which have been adopted or approved in relation to that area. The Council's Adopted CIL and Infrastructure Delivery Supplementary Planning Document is therefore part of the development plan and accordingly consideration could be given to whether the proposal is CIL liable. However, it is considered the specific circumstances and site history of the case (primarily that the works of conversion / new build would have commenced

prior to the adoption of the Council's former infrastructure charging scheme) are material considerations to justify setting aside the CIL requirement.

- 7.4.2 However, notwithstanding the observation above, and in line with the response provided by Natural England, it is noted that any occupation of the land since the SPA designation in 2005 has been unlawful or illegal. With this in mind the dwelling has not been included in the baseline housing figures. Because of this it is considered that a SAMM contribution of £368 should be secured such that the LPA could, in the event planning permission were granted, pool this contribution towards the strategic access management and monitoring of the SANGS which in themselves provide the main means by which new dwellings mitigate their impact on the SPA.
- 7.4.3 A SAMM contribution has not, at the time of writing been secured, and for this reason this is taken forward as a reason for refusal.

7.5 Very Special Circumstances

- 7.5.1 Given the identified harm in the paragraphs above it is necessary to consider whether there are any VSC. The NPPF advises that when considering any application LPA's should ensure substantial weight is given to any harm to the Green Belt and that VSC will not exist unless the harm (to the GB and any other harm) is clearly outweighed by other considerations (para 87 and 88).
- 7.5.2 The applicant has not submitted a very special circumstances case however, on the basis of the significant history and circumstances of this case it is considered necessary for the following points to be considered in turn:
- I. The size of the dwelling house and the visibility of it from public view;
 - II. Consistency and fairness of approach with other applicants and other developments in the vicinity and Borough;
 - III. Need and alternatives;
 - IV. Personal circumstances; and,
 - V. Consideration of Human Rights.

7.5.3 (i) Size and visibility of development

The fact the timber dwellinghouse (minus the porch and the lounge extension) is a modest building of 9.1m by 3.3m and stands 2.4m high (using the measurements supplied by the applicant) does not change the assessment that it is inappropriate development. Furthermore, the fact the site is well screened, or that the applicant manages the land well, does not alter this. Whether seen or unseen the harm to openness exists and there are many green belt sites in the Borough where this argument could be repeated again and again. These matters cannot be considered to be very special circumstances to justify a grant of planning permission.

7.5.4 (ii) Consistency and fairness of approach with other developments

The applicant has referred to a number of other examples in the Borough where she considers the Council has applied Green Belt policy inconsistency. However, each proposal is always assessed on its own merits based upon the individual site circumstances and any other material considerations. Thus, precedent cannot be said to represent a VSC. Moreover the applicant's case does not appear to be directly comparable with any other application.

7.5.5 The LPA has therefore not been inconsistent or unfair to the applicant with its application of policy. On the contrary the LPA has shown considerable leniency in its approach.

7.5.5 (iii) Need and alternatives

It is accepted that the applicant requires alternative living accommodation. However, given, the period of time the applicant has been aware of the breach of planning control it is considered only very limited weight can be given to this argument.

7.5.6 (iv) Personal circumstances

It is clear that a refusal of planning permission would be likely to give rise to a need for alternative accommodation and that this could prove stressful or give rise to other health concerns. However, there is no known change in the applicant's circumstances that would warrant the LPA coming to a different view that either the appeal inspector or his Honour Judge Seymour.

7.5.7 (vi) Human Rights

Both the previous Inspector and his Honour Judge Seymour have fully considered the Human Rights Act 1998 in respect of this case. There is nothing before the Council with this application to come to a different conclusion in this respect.

7.5.8 Conclusion in relation to VSC

Overall, it is not considered that the matters raised by the application and addressed above, either on their own, or cumulatively, amount to VSC to outweigh the harm to justify a grant of planning permission.

8.0 ARTICLE 2(3) DEVELOPMENT MANAGEMENT PROCEDURE (AMENDMENT) ORDER 2012 WORKING IN A POSITIVE/PROACTIVE MANNER

In assessing this application, officers have worked with the applicant in a positive and proactive manner consistent with the requirements of paragraphs 186-187 of the NPPF. This included 1 or more of the following:-

- a) Provided or made available pre application advice to seek to resolve problems before the application was submitted and to foster the delivery of sustainable development.
- b) Provided feedback through the validation process including information on the website, to correct identified problems to ensure that the application was correct and could be registered.

9.0 CONCLUSION

- 9.1 This application seeks planning permission for the conversion of former field shelter to a single storey timber dwellinghouse and the retention of a garden area to the same. The application is retrospective and the development is the subject of extant enforcement notices (appeal dismissed) and a High Court Injunction requiring the demolition of the dwelling and garden structures and the making good of the land. This report explains that the works undertaken cannot reasonably be considered to be those of conversion and are in fact the erection of a new build dwellinghouse (a view shared by the inspector in 2010). The report explains that the works comprising the dwellinghouse and the creation of the garden are inappropriate development in the Green Belt, are harmful to its open and rural character, and, conflict with the purposes of including land in the Green Belt. There is no compelling case of very special circumstances to clearly outweigh the harm to the Green Belt.
- 9.2 The application would, if approved, give rise to an additional lawful dwelling within 5km of the Thames Basin Heath SPA, and accordingly it is considered a SAMM payment should be secured. At the time of writing there is no mechanism in place to secure this.
- 9.3 The application is therefore recommended for refusal for the reasons detailed below.

REFUSE for the following reason(s):-

- 1. The Local Planning Authority is not satisfied that the former field shelter was of permanent and substantial construction as required by paragraph 90 of the NPPF and as such, the authority cannot reasonably conclude that the building was suitable for conversion to a dwellinghouse. Moreover the application is not supported by any evidence or plans demonstrating how substantive structural or other elements of the former field shelter were utilised or retained in the works undertaken in the creation of the dwellinghouse. It is not therefore considered the applicant has sufficiently and robustly demonstrated that works do not comprise the erection of a new dwellinghouse as alleged in the extant enforcement notices or addressed by the Appeal Inspector at paragraph 2 of the appeal decision letter (ref: APP/D3640/C/09/2117978 dated 24 May 2010). This element of the proposal is therefore inappropriate development in the Green Belt

which is, by definition, harmful and by its very nature causes harm to the openness of the Green Belt. Moreover, the creation of the residential curtilage to serve as garden land to the unauthorised dwellinghouse causes further harm to the open and undeveloped character of the area and results in an enclosed and domesticated area of land. The resulting countryside encroachment is contrary to the purposes of including land in the Green Belt. As such the development is contrary to the the aims and objectives of the Core Strategy and Development Management Policies 2012 and the National Planning Policy Framework.

2. In the absence of a completed legal agreement under section 106 of the Town and Country Planning Act 1990, or payment of the SAMM payment in advance of the determination of this application, the applicant has failed to comply with Policy CP14B (vi) (European Sites) of the Surrey Heath Core Strategy and Development Management Policies Document 2012; and, Policy NRM6 (Thames Basin Heath Special Protection Area) of the South East Plan in relation to the provision of contribution towards strategic access management and monitoring (SAMM) measures, in accordance with the requirements of the Surrey Heath Borough Council's Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Document (Adopted January 2012).
3. There are no very special circumstances present to clearly outweigh the identified harm to the Green Belt and accordingly the proposal is contrary to the aims and objectives of the Core Strategy and Development Management Policies 2012 and the National Planning Policy Framework 2012.