

## Planning Committee

01 December 2010

**Reference:**  
**APP/10/00597**

**Area Team:**  
**North Team**

**Case Officer:**  
**Mr M Rushton**

**Ward:**  
**Greasby Frankby  
and Irby**

**Location:** Fenwall, 151 MILL LANE, GREASBY, CH49 3NT  
**Proposal:** Change of use of land to domestic curtilage

**Applicant:** Mr Paul Snowden  
**Agent :** STEPHEN BROMILOW ARCHITECTS LTD

### Site Plan:



© Crown copyright. All rights reserved. Licence number 100019803. Published 2010.

### Development Plan allocation and policies:

Green Belt

### Planning History:

APP/82/19835 – One pair of semi detached houses – refused 01/04/1982

OUT/91/06502 – Erection of a detached bungalow and garage (outline) – refused 04/10/1991

APP/02/06393 – Erection of a first floor extension at the side – refused 07/10/2002

APP/03/06101 – Erection of a pitched roof over existing extension – approved conditionally 31/07/2003

APP/07/06442 – Temporary permission for the siting of a caravan – returned invalid 10/09/2007

APP/07/06444 – Construction of an all weather horse arena – approved conditionally 14/12/2007

LDC/08/06081 – Lawful Development Certificate for existing use of land and erection of stables incidental to the enjoyment of the dwellinghouse (amended description) – approved 03/11/2008

LDC/09/05196 - Lawful Development Certificate for existing use of land as residential curtilage incidental to the enjoyment of the dwelling house – refused 15/09/2009, appeal withdrawn 21/04/2010

### **Summary Of Representations and Consultations Received:**

#### **REPRESENTATIONS**

A total of 15 letters were sent to neighbouring properties, a site notice erected, and a press notice advertising the application as a departure placed. Nine letters of opposition have been received, the grounds of opposition can be summarised as follows:

1. Historically, the land has not been in a use 'incidental to the dwellinghouse' – it was rented to others for grazing and exercising of horses; then was used for growing and selling vegetables and flowers; then returned to grazing. Horses have been grazed for 40 years.
2. There was a hedge and fences that delineated this parcel of land from the house previously, which have been removed.
3. The applicant seeks further development under permitted development rights.
4. A consistent approach should be adopted to protect the Green Belt from ad hoc development.
5. The site [151 Mill Lane] has been grossly overdeveloped in the last 4 years, and there remain many unauthorised structures including two which were constructed whilst LDC/09/05196 was under appeal, which have yet to be resolved.
6. The proposed change of use would be contrary to UDP Policy GB2 and detrimental to visual amenity and peaceful enjoyment of others.
7. The whole property is classified as a smallholding, and the land subject to this application has never been considered to be for anything other than agricultural use.
8. The land has been the subject of previous applications for modest extension, which have been refused.
9. The site has become a business and if it progresses, there is potential for accident hazard on this very dangerous road.
10. The land has been changed so much, if permission is granted there will be further buildings and a large dwelling house shortly.
11. The applicant keeps sheep and horses on the land, which is said to be for domestic use only. There have been tall fences erected but these can still be seen on many occasions.
12. The property has been developed to the maximum.
13. The change of use is not in keeping with the local area – the proposed site is a paddock and not a garden, nor has it ever been.
14. Previous owners have applied to develop the same land and have been refused for the same reasons.
15. The submitted aerial photographs are incorrectly dated.
16. The area of land in question was specifically excluded from the grant of LDC/08/06081, and included within refusal of LDC/09/05196.
17. 3 applications prior to 2002 were refused in part because this area was not a garden.
18. Should the application be approved, the precedent would be set for every pony paddock on the Wirral to have its usage changed to domestic curtilage, and no doubt an application for the area to the south of 151 Mill Lane could be made on the same grounds.

## **CONSULTATIONS**

None required

## **Director's Comments:**

## **REASON FOR REFERRAL TO PLANNING COMMITTEE**

The application proposes a departure - the recommended decision would be contrary to the provisions of the Unitary Development Plan.

## **INTRODUCTION**

The planning history to the application site shows that a number of applications for built development of the site have been refused (APP/82/19835, OUT/91/06502 and APP/02/06393), whilst a Lawful Development Certificate application (ref. LDC/09/05196), which included the current application site and the large paddock site to the south of 151 Mill Lane was refused in September 2009. In refusing the LDC, it was concluded that the applicant had provided insufficient demonstration that the entirety of the land had formed part of the curtilage and had been used as land incidental to the enjoyment of the dwelling house.

The applicant has indicated in a supporting statement that contends the use of the site has been intrinsically linked to the use of 151 Mill Lane, and notes that the land has not benefitted from any commercial planning permission. Further information has been submitted by the applicant in support of the claim that the land has been part of the residential curtilage of 151 Mill Lane – namely, two sets of sales details referring to the application site as “established lawned area” and “established lawned garden”; two Land Registry conveyance plans (1965 and 1973) showing demarcation of the site, and; an Ordnance Survey Sitemap (June 2008) similarly showing demarcation of the site.

Representations from adjoining landowners present arguments contrary to that made by the applicant, outlining that the site has been used for grazing and growing vegetables (surplus being sold commercially).

Given the refusal of LDC/09/05196, and the absence of comprehensive documentation of the use of the site, the current application seeks consent to change the use of a triangle of land to the north of 151 Mill Lane ('Fenwall') to form part of the domestic curtilage of that property.

## **PRINCIPLE OF DEVELOPMENT**

The site and surroundings lie within the Green Belt. The proposal is for a change of use which constitutes development - the statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt. There is a general presumption against inappropriate development in the Green Belt, which is, by definition, considered harmful in such locations. Very special circumstances must be demonstrated if such development is to be approved.

## **SITE AND SURROUNDINGS**

The application site is a triangle of open land located to the north of the property 151 Mill Lane. The site is bounded by fencing and vegetation to each boundary. To the boundary with Mill Lane itself, there is a dense hedge of height in excess of 2m, whilst the north east boundary is characterised by semi-mature trees. The surroundings of the site are residential in character – to the west there are a series of residential properties fronting Mill Lane which face the application site, and residential properties continue along Mill Lane to the north of the application site. To the south is Arrowe Brook Lane and open green belt land beyond in agricultural use. To the east, a small cluster of residential properties is set back from Arrowe Brook Lane, beyond which the land is again open green belt in agricultural use.

## **POLICY CONTEXT**

UDP Policy GB2 and Planning Policy Guidance 2 must be considered. The two are consistent in their approach to green belt policy, outlining a general presumption against inappropriate development except in very special circumstances. Planning permission will not be granted for development in the Green Belt unless it is for the purposes of agriculture, sport and recreation, or the limited extension,

alteration or replacement of existing dwellings.

While the proposed use is not one normally considered appropriate, the site is wholly surrounded by land in residential use, and is physically separate and distinct from more open agricultural (and equestrian) uses to the south and east of no. 151, including the large open paddock immediately to the south of no. 151. The location of the site means that the change of use would not conflict with purposes of including land in Green Belts. The site is bound by fencing with substantial established hedging, shrubbery and trees around its boundaries and in visual terms already appears an integrated and established part of the residential curtilage of the property. It is also considered that the use of the land as a residential garden area, subject to conditions, would have minimal further impact upon the appearance and openness of the site which is already grassed and is currently being used for domestic purposes. The applicant has submitted information which contends that this parcel of land is linked to and forms part of the dwelling's residential curtilage. Whilst the information is not conclusive and it is clear that the land has supported a mix of uses over previous years, there is some weight of evidence that the site has been used for purposes ancillary to the residential property. It must also be considered that establishing the site as domestic curtilage could present amenity benefits when compared to potential commercial uses which, as outlined by third parties, might be resumed at the site (livery and/or commercial vegetable growing). The application also gives the opportunity to impose conditions which can give control over the buildings and other structures that might be erected within the site.

Concerns raised in representations from neighbours include that the application would allow a future development of the site for a replacement dwelling(s). Such development would be considered on its own merits, however, the land (as with the remainder of properties along Mill Lane) would remain within the allocated Green Belt and as such subject to the criteria of UDP Policies GB4 and GB5. Further representations relate to unauthorised structures retained within the paddock to the south of the dwellinghouse, which is not part of this application and remains the subject of enforcement proceedings.

In light of these very special circumstances - i.e. the physical separation of the site from surrounding open uses of land, the substantial boundary treatment, and the potential amenity benefits of retaining a domestic use with control over the erection of structures through the removal of permitted development rights - it is considered that the proposed change of use can be supported. The change of use into garden land would not have a detrimental impact upon the visual quality and character of the open countryside or the openness of the Green Belt. As such the proposal would not conflict with the PPG2 or PPS7. It is considered appropriate for the Local Planning Authority to remove permitted development rights which would allow the construction of curtilage buildings or fencing at the site, in order to retain the overall character of the local area.

#### **APPEARANCE AND AMENITY ISSUES**

As noted above, the site is bound by fencing with substantial established hedging, shrubbery and trees around its boundaries and in visual terms already appears an integrated and established part of the residential curtilage of the property. It is also considered that the use of the land as a residential garden area, subject to conditions, would have minimal further impact upon the appearance and openness of the site which is already grassed and is currently being used for domestic purposes. The proposed change of use is not considered to present potential for detrimental harm to the amenities of adjoining residential properties.

#### **SEPARATION DISTANCES**

Separation distances are not relevant to this type of application.

#### **HIGHWAY/TRAFFIC IMPLICATIONS**

There are no significant highway/traffic issues relating to these proposals.

#### **ENVIRONMENTAL/SUSTAINABILITY ISSUES**

There are no significant environmental/sustainability issues relating to these proposals.

#### **CONCLUSION**

In light of very special circumstances it is considered that the proposed change of use into garden land can be supported, and would not have a detrimental impact upon the visual quality and character

of the open countryside or the openness of the Green Belt. As such the proposal would not conflict with UDP Policy GB2, PPG2 or PPS7.

**Summary of Decision:**

Having regards to the individual merits of this application the decision to grant Planning Permission has been taken having regards to the relevant Policies and Proposals in the Wirral Unitary Development Plan (Adopted February 2000) and all relevant material considerations including national and regional policy advice. In reaching this decision the Local Planning Authority has considered the following:-

In light of very special circumstances it is considered that the proposed change of use into garden land can be supported, and would not have a detrimental impact upon the visual quality and character of the open countryside or the openness of the Green Belt. As such the proposal would not conflict with UDP Policy GB2, PPG2 or PPS7.

**Recommended            Approve  
Decision:**

**Recommended Conditions and Reasons:**

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

**Reason:** To comply with Section 91 (as amended) of the Town and Country Planning Act 1990.

2. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any Order revoking or re-enacting that Order), the following works shall not be carried out to the dwelling(s) hereby approved without the prior permission of the Local Planning Authority:

- (a) The construction of any building within the curtilage of the area of land approved as garden area under this application;
- (b) The construction of any boundary treatment or other means of enclosure over one metre in height around or within the area of land hereby approved as garden area.

**Reason:** To ensure that the character and appearance of the area is retained, having regard to UDP Policy GB2, PPG2 and PPS7.

**Last Comments By:** 17/06/2010 12:40:21  
**Expiry Date:** 09/07/2010