

REGULATORY SERVICES COMMITTEE
8th September 2011
WITHIN STATUTORY PERIOD

APPLICATION NO:	P1111.11	
WARD :	Upminster	Date Received: 22nd July 2011
ADDRESS:	Forest View Nursery St Marys Lane Upminster	
PROPOSAL:	Replacement of existing buildings for koi fish breeding and sale	
DRAWING NO(S):	Location Site Plan PL-5034_32A PL-5034_02A PL-5034_23B PL-5034_34A PL-5034_24B	
RECOMMENDATION :	It is recommended that planning permission be GRANTED subject to conditions given at the end of the report.	

CALL-IN

No.

RECOMMENDATION

That planning permission is granted for the reasons set out in this report.

SITE DESCRIPTION

Forest View Nursery is located on the southern side of St Mary's Lane close to its junction with Ockendon Road. The site comprises 0.73ha. It had been a traditional nursery since before 1939 until 2000 when it was sold and acquired by the present owners. Plants are still sold on the site but the main interests are the breeding and wholesale of Koi Carp. There are a number of buildings on the site; an office building, a number of storage buildings; shop with nursery buildings containing a number of fish tanks for breeding purposes, a shed, toilet block; shed for water features and a caravan. The buildings are set 60m back on the southern side of St Mary's Lane.

The site is within the Metropolitan Green Belt and also forms part of the Thames Chase Community Forest. Part of the site is within a Flood Zone 3 however, this does not extend to where the replacement building is proposed.

DESCRIPTION OF PROPOSAL

The Council is in receipt of a planning application seeking permission to demolish a number of buildings which would be replaced by the proposal for purposes of koi fish breeding and sale.

The building would cover a floor area of 286sq metres, measuring 23m in depth and 12m in width. There would also be a small entrance porch, measuring 2m by 5m. The building would have a pitched roof, measuring 4.2m in height to the top of the ridge, 2.6m to the eaves.

The building would have timber cladding on the outside with rooflights to the western and eastern elevations. The internal layout would comprise an office, a filtration & servicing and display of stock room, a counter an area with fish tanks, area where kois are displayed and bred

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and an ancillary sales area.

RELEVANT HISTORY

ES/HOR/164/59 - Private garage and new crossover - Approved
ES/HOR/59 - 2 semi detached - bungalows - Refused
P2152.03 - Retention of mobile home of the site - Approved
P1804.06 - 1 No dwelling - Withdrawn
P1370.07 - 1 No Dwelling (for use with nursery) - Approved
P1582.08 - 1 No. dwelling (for use with nursery) - Refused
P1583.08 - Replacement of existing buildings with commercial building A1 (shop) - Refused
P0288.09 - 1 no. dwelling (for use with nursery) - Approved.
P1457.09 - Replacement of existing buildings - use class A1 - Application withdrawn.

CONSULTATIONS/REPRESENTATIONS

Notification letters were sent to 8 neighbouring properties and the application advertised by means of a site and press notice, as development in the Green Belt. No representations have been received.

RELEVANT POLICIES

Policies CP14 (Green Belt), CP17 (design), DC32 (road network), DC33 (car parking), DC45 (appropriate development within the Green Belt) and DC61 (urban design) of the Core Strategy and Development Control Policies Development Plan Document are material considerations.

Policies 1.1B and 7.16 of The London Plan (2011) and PPG2 (Green Belts) are also material considerations.

STAFF COMMENTS

The issues to be considered in this case are the principle of development, impact on the openness and appearance of the Green Belt, the design and impact on the street scene, the impact of the development on neighbouring amenity and parking / highway issues.

PRINCIPLE OF DEVELOPMENT

The site is within the Metropolitan Green Belt where, in accordance with PPG2, new development is considered to be unacceptable in principle unless it is for one of the exceptions set out in paragraph 3.4 of the PPG.

The main activities at the application site involves the breeding of Koi fish which is considered to fall within the list of exceptions as set out in PPG2, being agriculture. The design and access statement states that the application site, Koi Logic, has already been accepted in principle as an agricultural use. The agricultural use has been established at Forest View since 1939 when the use was for a nursery and subsequently turned into the Koi farming enterprise sometime after 2000. Fish farming is defined in the General Permitted Development Order (GPDO) and the Planning and Compensation Act 1991 sec.14 as meaning "the breeding, rearing or keeping of fish or shellfish whilst the definition of agriculture "includes horticulture, fruit growing, seed growing, dairy farming, the keeping and breeding of livestock.

The proposal is for a new replacement building which will be utilised for breeding and selling of koi fish however in addition, the building would also be used for sale of other fish and ancillary goods used for keeping of the fish. Whilst the main use of the building is for agricultural

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purposes and considered to be appropriate as set out in PPG2, it is important to consider whether the retail sale of other goods also proposed to be accommodated in the replacement building is ancillary to the agricultural use in order to establish its appropriateness.

In support of demonstrating that the retail sale of other goods will be ancillary to the agricultural use of the business, the applicants have submitted financial information indicating a breakdown of Koi sales and ancillary sales for 2007 until 2011. Evident from the information submitted is that approximately 75% of sales are from Koi fish with ancillary sales at approximately 25%. Ancillary goods include the following:

- Filters
- Pipes
- Test kits
- Air pumps
- Water pumps
- Medication
- Water improvement products
- Nets and bowls

The applicant has further submitted a drawing indicating the proposed layout of the floorspace. The building would have a small office area, a filtration / servicing area and display of stock, a counter, an ancillary sales area, fish tanks and an area for breeding and displaying of koi fish.

Whilst the proposed building would have large areas of ancillary goods displayed, Staff noticed upon site inspection that the ancillary goods naturally take up a large area within the building compared to the actual koi fish tanks and breeding areas. As evident from the financial figures, this does not mean the ancillary goods are the main part of the business.

It was further noticed upon site inspection that the majority of the other existing buildings (which would be retained) are used for breeding of koi fish (approximately 32,220 Gallons of koi fish tanks). These buildings take up the majority of built space on the site and Staff are therefore satisfied that the breeding of koi fish is the main use on the site.

It is acknowledged that the proposed building would incorporate a percentage of retail goods. In light of the above circumstances, Staff are of the opinion that these goods would be ancillary elements and that the main use of the site for Koi fish breeding still forms the majority of turnover and therefore the main business of the application site. Notwithstanding the retail element of the proposal, it is considered that the use of the site for agricultural purposes is an appropriate use as identified in the definition of PPG2.

GREEN BELT IMPLICATIONS

The applicant states that Koi Logic at Forest View Nursery are reaching a stage where some enhancement redevelopment is required. Buildings that are functional are needed to be refurbished or replaced. The applicant has two options in order to expand their business which is to either enhance the site by means of repair and refurbishment to the existing buildings or to demolish existing buildings and replace with new buildings. The proposal is to rebuild and replace 2 existing buildings with a building which is smaller in footprint and volume.

The Design and Access Statement indicates the proposed building would replace buildings nr 2, 3, 4, 5, 6, 7 and 9. In granting permission for a new dwelling on the site (Ref: P0288.09), buildings 2, 3, 4, 5 and 6 were proposed to be demolished to accommodate the replacement

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dwelling. Members should however note that the removal of these buildings were not considered as a direct trade off for the replacement dwelling. Rather, they were simply shown to be removed in order to be able to physically accommodate the dwelling in its proposed location on the site. Confirmation was received from the agent that the applicant is committed to implementing the permission to construct the dwelling. The Council is further in receipt of a Building Regulations application and an application to discharge conditions for this application.

By means of background information, the proposed 4-bedroom dwelling would have a footprint of approximately 97.2sq.m with a total residential curtilage of 300sq.m. The L-shaped chalet bungalow was shown to replace 4 buildings along with 2 smaller greenhouses. These buildings (shown as buildings 1-4) have been increased in footprint and the greenhouses (buildings 5 & 6) added. History shows that no planning permission has ever been obtained for these alterations.

As mentioned above, Members should note that although this application indicated the removal of these buildings, determining the acceptability of the proposal did not rely on their removal as such as the application was determined against the principles of PPS7. The proposal was considered to comply with the tests set out in PPS7 in respect of functional requirements in connection with the agricultural use and was therefore acceptable.

In light of the above, for the purposes of assessing this application and the impact on the openness of the Green Belt, the removal of buildings 2, 3, 4, 5, 6, 7 and 9 will be taken into consideration as being directly replaced by the new proposal. Buildings 2, 3, 4, 5, 6, 7 and 9 have a combined floor space of 495.9sq metres and a combined volume of 1075.9 cubic metres.

The replacement building will have a footprint of 286.2sq metres and a volume of 970 cubic metres (9.8% decrease in volume).

The proposal would therefore clearly be materially smaller compared to the 7 buildings it replaces with a 209.7sq.m decrease in footprint and 105.9 cubic metre decrease in volume. Staff takes notice of the fact that the existing buildings are in need of refurbishment and in order to expand the business, refurbishment / replacement of the buildings are required. This application therefore relies on the above mentioned buildings on the site to be removed as the proposed building will be a direct replacement. An appropriate planning condition can be imposed to require the removal of these buildings.

The site has dense vegetation with mature trees to the rear of the site. The proposal will be viewed against the backdrop of those mature trees and being approximately 60m from the edge of the highway, any potential impact on the open character and appearance of the Green Belt would be reduced.

The proposal would result in a net reduction in terms of the footprint and volume of buildings on the site. Notwithstanding, the proposal would present an agglomeration of buildings on a centralised position on the site and the proposal is arguably more visible due to its increase in height compared to the lower buildings it would replace. On balance, Staff are of the view that the replacement building may still be harmful to the openness of the Green Belt and the applicant is therefore required to put forward a case for very special circumstances to demonstrate how these circumstances will outweigh the potential harm to the open character and appearance of the Green Belt.

DESIGN/IMPACT ON STREET/GARDEN SCENE

The building would have an agricultural appearance having timber cladding and appropriate materials can be agreed to blend in with the character and appearance of the Green Belt.

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The proposal would be replacing the existing dilapidated buildings and therefore represent an overall improvement of the general appearance of the site. The building would be approximately 60m from the edge of St Mary's Lane and Staff noticed upon site inspection that the boundaries of the site is screened by means of dense vegetation in the form of mature trees. The proposal would therefore have limited views from the street scene which also reduces its visual impact on the appearance of the Green Belt.

Given the above circumstances, Staff are of the opinion that the proposal would not have any harmful impact on the character and appearance of the street scene. It is further considered that due to the location, appearance of existing buildings and proposed design and use of materials, the development would not be harmful to the character of the local area. The proposal would therefore be compliant with the aims and objectives of Policy DC61 of the LDF in this respect.

IMPACT ON AMENITY

The proposal would not change the use of the site. The proposal is however for the expansion and improvement of the existing business and would introduce additional items for the retail sale of ancillary goods. Whilst there may be an increase in the number of customers visiting the site on a daily basis, Staff are of the opinion that this would not give rise to a significant increase in noise and disturbance over and above the current circumstances. The building would remain in the same location as the existing buildings, approximately 32m from the nearest residential dwelling at Nursery House towards the north. The activities associated with the business are not considered to be particularly noisy and the proposal is therefore considered to be acceptable in this respect and there would be no requirement to control opening hours by means of a condition.

HIGHWAY/PARKING

Policy DC33 of the LDF DPD is relevant. The site currently provides 28 parking spaces for customers with an additional disabled parking bay. The proposal would not alter this arrangement. The proposal is further for a replacement building and the general activities on the site would not intensify to a degree which would justify additional parking spaces over and above the existing.

The proposal would therefore not have any impact on parking or highway issues and it is considered that the current parking arrangement is sufficient, compliant with Policy DC33 of the LDF.

OTHER ISSUES

Very Special Circumstances

In support of their Very Special Circumstances (VSC), the applicant puts forward 4 arguments:

- Competition
- Established business (planning for growth)
- Dilapidation
- Overall decrease of floor space on site

The applicant makes reference to two other similar uses which sell ancillary retail goods, namely Latchford Farm Aquatics along St Mary's Lane and Spice Pits Farm (also known as Tisbury Fish Farm) along Church Road, Noak Hill. Both sites are in the Metropolitan Green Belt. Staff noted

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that both these premises sell fish with ancillary retail goods, i.e. filters, fish food, water pumps and other reptiles and animals.

Staff acknowledge that the current proposal is to upgrade and expand an existing business and that the proposals are necessary to keep up with modern day trends at similar sites. According to recent Ministerial advice on "Planning for Growth" local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development. Appropriate weight should be given to the need to support economic recovery and applications that secure sustainable growth should be treated favourably (consistent with policy in PPS4).

Staff are satisfied that improvements at the application site are necessary to either maintain competition with other similar sites as mentioned above or to increase the level of trade. The proposal would be at an existing business and therefore also consistent with the Ministerial advice on Planning for Growth and Policy PPS4.

As mentioned earlier in this report, Staff noticed upon site inspection that the current buildings are not in a particularly good condition and fairly dilapidated. Their replacement would further aid in improving the overall business not only in terms of its general appearance, but also in terms of customer experience and its attractiveness to customers.

Members may wish to give consideration to the combined impact of the removal of buildings 2, 3, 4, 5, 6, 7 and 9 from the site. Although it appears that many of the older buildings on the site have no planning permission, the combined footprint of these buildings are 495.9sq.m with a combined volume of 1075.9 cubic metres. In removing all of these buildings and replacing them with the current proposal, the site benefits from an overall reduction in the footprint of buildings of 209.7sq.m. Although it is acknowledged that the proposed building would be higher compared to the existing buildings on the site, the overall combined reduction in floor space would be beneficial in terms of the general impact on openness of the Green Belt.

In Staff's opinion, the site would benefit from the dilapidated buildings being replaced. In implementing planning permission P0288.09 in combination with the current proposal, the site would see an overall improvement both in term of its appearance and a reduction in the overall foot print of buildings on the application site. In the event that planning permission reference P0288.09 is not implemented, Staff recommend a condition to require the removal of buildings 2, 3, 4, 5, 6, 7 and 9. The retail sale of goods can also be conditioned to remain directly associated and ancillary to the breeding of fish on the premises.

Contributing to the acceptability of the proposal is the landscaping and dense vegetation to the boundaries of the site which would screen the proposal from wider views. The site also has mature trees towards the rear which would serve as a backdrop to the proposed building. The building would therefore not have a significant harmful impact on the Green Belt when all of the above circumstances are taken into consideration.

The above is considered to comprise sufficient very special circumstances to justify the material harm as a result of the proposed building. The proposal would therefore be acceptable in Green Belt terms and in respect of Policy DC45 of the LDF.

KEY ISSUES/CONCLUSIONS

The proposal is for a replacement building in the Green Belt with the addition of retail sale of ancillary goods for Koi breeding / keeping. The proposal is not considered to be inappropriate in Green Belt terms provided that the retail sale of other goods remain an ancillary element to the

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main agricultural use of Koi breeding. The replacement building is considered to potentially have a harmful impact on the openness of the Green Belt being in a centralised position on the site and being higher compared to the existing buildings. Staff are however of the opinion that the very special circumstances put forward by the applicant is sufficient to overcome the potential harm to the openness of the Green Belt and that overall, the proposal would be acceptable in Green Belt terms. The proposal is not considered to be harmful to the character and appearance of the street scene or neighbouring amenity. There are no parking or highway issues. The development is therefore considered to comply with the aims and objectives of Policies CP13, DC33, DC45 and DC61 of the LDF and with Government guidance as set out in PPG2 and PPS4 and in terms of Ministerial advice for "planning and growth". The application is therefore recommended for approval, subject to conditions.

RECOMMENDATION

It is recommended that **planning permission be GRANTED** subject to conditions

1. S SC4 (Time limit) 3yrs
2. M SC09 (Materials)
3. M SC11 (Landscaping)
4. S SC25 (Open storage)
8. S SC58 (Storage of refuse)
5. Non standard condition
Prior to the commencement of any works pursuant to this permission the developer shall submit for the written approval of the Local Planning Authority;
 - a) A Phase I (Desktop Study) Report documenting the history of this site, its surrounding area and the likelihood of contaminant/s, their type and extent incorporating a Site Conceptual Model.
 - b) A Phase II (Site Investigation) Report if the Phase I Report confirms the possibility of a significant risk to any sensitive receptors. This is an intrusive site investigation including factors such as chemical testing, quantitative risk assessment and a description of the sites ground conditions. An updated Site Conceptual Model should be included showing all the potential pollutant linkages and an assessment of risk to identified receptors.
 - c) A Phase III (Risk Management Strategy) Report if the Phase II Report confirms the presence of a significant pollutant linkage requiring remediation. The report will comprise of two parts:

Part A - Remediation Statement which will be fully implemented before it is first occupied. Any variation to the scheme shall be agreed in writing to the Local Planning Authority in advance of works being undertaken. The Remediation Scheme is to include consideration and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified. Any further contamination shall be fully assessed and an appropriate remediation scheme submitted to the Local Planning Authority for written approval.

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Part B - Following completion of the remediation works a "Validation Report" must be submitted demonstrating that the works have been carried out satisfactorily and remediation targets have been achieved.

d) If during development works any contamination should be encountered which was not previously identified and is derived from a different source and/or of a different type to those included in the contamination proposals then revised contamination proposals shall be submitted to the LPA ; and

e) If during development work, site contaminants are found in areas previously expected to be clean, then their remediation shall be carried out in line with the agreed contamination proposals.

For further guidance see the leaflet titled, "Land Contamination and the Planning Process".

Reason:

To protect those engaged in construction and occupation of the development from potential contamination. Also in order that the development accords with the LDF Development Control Policies Development Plan Document Policy DC53.

6. Non standard condition

The building hereby approved shall be used only for the purposes of retail sales to the public of goods and products directly to be associated and ancillary to the breeding of koi carp fish on the premises and for no other purpose including any other retail use within use class A1 of the Town and Country Planning (use classes) Order 1987.

Reason:

In order to retain control over any future uses of the site not forming part of this application and in order to restrict the use of the building to one compatible with the surrounding rural area which is within the Metropolitan Green Belt.

7. Non standard condition

Within 1 month of the works for which permission is hereby granted commence, the buildings indicated as Building 2, Building 3, Building 4, 5, 6, Building 7 and Building 9 as indicated on Drawing Nr PL-5034_41 and dated July 2011, shall be demolished and removed from the site entirely and no replacement buildings apart from those granted as part of this planning application and planning permission P0288.09 shall be erected on the site without prior consent in writing from the Local Planning Authority.

Reason:

To retain the open character and appearance of the Green Belt.

1 INFORMATIVE:

1. Reason for approval:

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The proposed development is considered to be in accordance with the aims, objectives and provisions of Policies CP13, DC33, and DC61 of the LDF Core Strategy and Development Control Policies Development Plan Document. The proposal is contrary to the aims, objectives and provisions of Policy DC45 as there would be harm to the openness of the Green Belt however, due to sufficient very special circumstances the proposal would be acceptable and in accordance with the provisions of Government Guidance contained within PPG2.

2. The applicant is advised that any advertisement signage to the building hereby approved would require separate advertisement consent.

Note: Following a change in government legislation a fee is now required when submitting details pursuant to the discharge of conditions, in order to comply with the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations, which came into force from 06.04.2008. A fee of £85 per request (or £25 where the related permission was for extending or altering a dwellinghouse) is needed.
