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| <b>2.5 REFERENCE NO - 17/504664/FULL</b>   |  |  |
| <b>APPLICATION PROPOSAL</b><br>Erection of a single storey side extension to residential dwelling to accommodate garage with loft space over and alteration to existing garage to create new utility and family room. Change of use of woodland to residential garden and extinguishment of public right of way. |  |  |
| <b>ADDRESS</b> 36 Woodside Dunkirk Faversham Kent ME13 9NY   |  |  |
| <b>RECOMMENDATION</b> - Approve  |  |  |
| <b>REASON FOR REFERRAL TO COMMITTEE</b><br>Parish Council objection  |  |  |
| <b>WARD</b> Boughton And Courtenay   | <b>PARISH/TOWN COUNCIL</b><br>Dunkirk    | <b>APPLICANT</b> Mr Tony Mayer<br><b>AGENT</b> Wyndham Jordan Architects |
| <b>DECISION DUE DATE</b><br>08/11/17   | <b>PUBLICITY EXPIRY DATE</b><br>12/10/17 |  |

**1.0 DESCRIPTION OF SITE**

- 1.01 The site comprises a modern detached chalet bungalow set amongst similar properties and adjoining land; some of which is now owned by the applicant. The original plot is a standard rectangular plot and the existing dwelling occupies almost the full width of it. The property itself lies within the built up area of Boughton and Dunkirk as indicated by proposal map of the Local Plan, whilst the application site also extends to the east onto an area of woodland and greenery designated as an Area of High Landscape Value. The area is on the edge of the village and has a semi-rural feel.
- 1.02 To the southern part of the application site, between the original plot boundary and the neighbouring property at no. 37 Woodside is a narrow strip of land with a public footpath that links this neighbourhood with Canterbury Road to the north. The path runs through land which has a width of approximately 7 metres and is now in the ownership of the applicant (since November 2016).
- 1.03 This footpath is recognised by KCC’s Definitive Map Officer as part of the network of paths which has accrued easement rights due to the number of years of use. Currently, the path appears little used, untended and overgrown.
- 1.04 Immediately to the south of the application site is a large area of land behind the adjacent row of chalet bungalows (also within the area of high landscape value) within which the Council has approved several applications for change of use of long thin strips of land to gardens for the neighbouring properties in 2013. The wider application site now includes land of a similar nature to these strips

**2.0 PROPOSAL**

- 2.01 There are two parts to this application. Firstly, the application seeks permission for a change of use of a long thin parcel of land that sits mainly to the east (rear) of the current residential curtilage of the property. The area in question measures approximately 977 square metres and is largely within the area locally designated as of high landscape value. The application seeks to take this area of land into the

residential curtilage of number 36 Woodside, in order to maintain, control and ultimately extend the footprint of the existing house to the side over this piece of land. The narrow part of the land to the side of the property is currently not maintained and is in the main overgrown and neglected. The change of use proposed does not necessitate the extinguishment of the footpath which runs through this strip of land to the south (side) of the property.

- 2.02 The second part of the proposal which is solely dependent on the success of the previous aspect (and extinguishment of the footpath) is for the erection of a side extension. The proposed side extension will measure 5m wide × 6m deep. The eaves / ridge height proposed will tie in with the existing; the design of the roof will be gable ended to match the existing. Materials proposed are to match. At ground floor level, the extension will have a garage with loft space above. Fenestration details proposed are a garage door within the front elevation, a standard door to the rear elevation and two roof windows within the roof slopes.
- 2.03 The applicant consulted the Definitive Map Officer of Kent County Council prior to the submission of the proposal and were advised as follows:

*'It is very difficult to have a path extinguished as the legislation requires that for an Order to be made, the path must be "not needed for public use." We are aware that this path has become very overgrown, and that there is another path very close by which appears to serve the same purpose, so therefore we are prepared to accept an application from you and to agree to take it to an informal consultation to see what the general response would be.*

*I am attaching to this email an application form and general notes. Please note that, as well as the fees, there is currently a back log of applications, which means that once we receive your application, it will be approximately 2-2½ years before the case will be allocated to an officer. You would not be able to build your garage (and obstruct the path) before the extinguishment was successful, and I would clarify that there is no guarantee of this. If objections are received it is unlikely that we would proceed further.'*

### **3.0 PLANNING CONSTRAINTS**

Public Right of Way

### **4.0 POLICY AND OTHER CONSIDERATIONS**

The National Planning Policy Framework (NPPF):

- Chapter 7: Requiring good design

Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies;

- CP 4 Requiring good design
- DM 13 Extending the garden of a dwelling in the rural area
- DM 14 General development criteria
- DM 16 Alteration and extensions
- DM 13 Extending garden of a dwelling in the rural area
- DM 24 Conserving and enhancing valued landscapes
- DM29 Woodlands, trees and hedges

Supplementary Planning Documents: Designing an Extension – ‘A Guide for Householders’

## 5.0 LOCAL REPRESENTATIONS

5.01 The Faversham Society supports the KCC in the matter of the Public Right of Way and would prefer that the footpath is not extinguished. They say that if any extinguishment is required an order should be applied for to extinguish the footpath.

5.02 A letter of objection was received from the resident of number 44 Woodside, Dunkirk who recently sold part of the application site to the applicant, stating.

- The development will be against a covenant of the title deed of the land
- Loss of the strip of woodland and footpath will be of no benefit to the local community.

5.03 Two letters of support were received from residents at property numbers 32 and 34 Woodside, Dunkirk.

- The footpath is unkempt, cessation and development will improve the visual quality of the area and increase property values.

## 6.0 CONSULTATIONS

6.01 Dunkirk Parish Council has discussed the application and objects to the proposal, qualified by the following reasoning. They do not object to the proposed extension in principle on its shape or form. They do object as the development would be on top of/over a public footpath. They do not think many people use the path, which is reportedly heavily overgrown in places, but they expect landowners to clear them as is their responsibility in law. If people come forward with more knowledge and still use/wish to use the footpath then of course KCC will decide, but this will probably take several years before the position is clear. They have reservations that, should planning permission be granted, it would only be possible to implement if the footpath is extinguished. This would not be a tenable position for the owner to be left in and they would not like to contribute to this position. For the avoidance of doubt, the Parish Council does not think the proposal would be possible to build if the footpath is not extinguished.

6.02 Kent County Council Public Rights of Way and Access Service comment that the proposed development directly affects public footpath ZR533, adding:.

*“Close inspection of the map suggests that the footpath will not be affected by the proposed development. However Kent County Council is of the belief that the route available to the public has been used as of right for in excess of 20 years and public rights to use it will have accrued. As such it should be treated as a public right of way and should consent be granted I would seek a condition that a confirmed order to extinguish this section of path and the remainder of ZR533 to Canterbury Road before work commences.*

*“The applicant is indicating an intention to extinguish part of public footpath ZR533 where it crosses his property. The whole of the path would need to be extinguished and the agreement of all relevant landowners would be required.”*

## 7.0 BACKGROUND PAPERS AND PLANS

7.01 Application papers for application 17/504664/FULL

## **8.0 APPRAISAL**

### **Principle of Development**

8.01 Planning considerations assessed in the determination of the proposal are issues relating to the change of use of land for residential purposes and the impact of the proposed extension upon residential and visual amenities of the area. In both cases the impact on the public right of way is considered. However, the purpose of this application is not to test the principle of the cessation of the public right of way. The procedure and mechanics of a footpath diversion or footpath extinguishment are separate non planning matters.

### **Visual Impact**

8.02 The proposed extension will be located to the southern side of the existing dwelling and will be visible in the street scene. The design matches that of the host property and will be in keeping with the existing dwelling. A lower ridge height for new extensions may often be appropriate. In this case however, it is thought that to tie in the ridge height is more complementary and will harmonise the development better in the area. With the application of matching materials, it is not anticipated that the development will be detrimental to the area's visual amenities. As a consequence I do not consider that there will be any material harm to visual amenity or the character and appearance area.

8.03 The extension will directly affect the public footpath, and cannot be built unless that path is extinguished. This does not prevent approval of the application as the footpath issue will require a separate procedure. However, given how long that process might take, the normal three year period to commence the development might be insufficient and I recommend a five year commencement period to avoid this permission being futile.

### **Residential Amenity**

8.04 In reference to residential amenity, the most affected will be residents at the neighbouring property to the south (no. 37 Woodside). The proposal will extend the footprint of the existing dwelling across the public foot path and in close proximity to the new common boundary. Given the orientation of the properties and the separation however, it is not considered the additional bulk and height of the proposed extension would result in any significant loss of light.

8.05 In a similar vein, outlook currently enjoyed from side windows of habitable rooms along the neighbouring dwelling will not be unduly harmed. There will be a separation of over 3 metres between the proposed and the built footprint of the neighbouring property. This should sufficiently alleviate any overbearing impact.

8.06 With regard to privacy, the only additional openings proposed are a garage door and standard door on the front and rear elevations respectively. On the upper floor, two roof lights are proposed. It is not anticipated any impact will be significant to warrant refusal. The bedroom on the upper floor is likely to be occupied to a level normally associated with a habitable room. Therefore it is not considered any potential harm to privacy associated with the use would be significant to warrant a refusal in this instance.

### Highways

- 8.07 Concerns raised by the Parish Council and a neighbour in relation to the cessation of the public right of way are noted. This is a matter which the applicant has already taken steps to address. The footpath appears little used and in any case a more convenient alternative route is available. The question of extinguishment of a public right of way is a civil matter and will have to be resolved before planning permission - if granted - can be implemented. The applicant will be made aware of the current situation through an informative.
- 8.08 Importantly to this case, the Public Rights Of Way Officer has not raised any objections to the potential extinguishment, commenting that such matters could be dealt with more easily after planning permission has been granted.

### Impact on the Area of High Landscape Value

- 8.09 Policy DM29 of the Local Plan seeks to protect woodland from development, including its incorporation within gardens. Such a change may sometimes be unacceptable as it might prejudice the future management and amenity value of woodland. In this particular case the area of woodland concerned is relatively small and not of high quality. Moreover, as the Council has approved very similar developments nearby it is hard to see how this can form the basis of withholding planning permission in this particular case. This is provided normal householder Permitted Development rights are removed from the additional land. In this way, the proposal to use of the land for residential purposes is unlikely to make a major difference to the area.
- 8.10 The change of use of land does not in itself require extinguishment of the footpath, but that is in any case a matter for another procedure.

### 9.0 CONCLUSION

- 9.01 Having regard to the above matters, the proposed extension is considered to be acceptable, it will not unduly harm visual or residential amenity and will maintain the character and appearance area. There are also examples of similar uses of land as requested in the immediate area. It is therefore recommended that planning permission be granted, subject to conditions.

### 10.0 RECOMMENDATION – GRANT Subject to the following conditions

#### CONDITIONS

- (1) The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those on the existing building in terms of type, colour and texture

Reason: In the interests of visual amenity.

- (3) Upon completion, no garden buildings, enclosures, pools or hardstandings, whether permitted by Classes E or F of Part 1 of Schedule 2 to the Town and Country Planning

(General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out without the prior permission in writing of the Local Planning Authority.

Reason: In the interests of visual amenity of the area.

**The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance, the application was acceptable as submitted and no further information was required. The application was also considered by the Planning Committee where the applicant / agent had the opportunity to speak and promote the application.

**INFORMATIVE**

- (1) The attention of the applicant is been drawn to the issue relating to right of way. Planning permission does not override this concern and Kent County Council Public Protection Team will have to be contacted to extinguish the public footpath before development can commence. Contact details are [Tel:03000418142](tel:03000418142) or Public Protection, The Granary, Penstock Hall Farm, Canterbury Road, East Brabourne. Kent. TN25 5LL.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

