

PLANNING COMMITTEE – 10 JANUARY 2019

PART 2

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO - 18/505761/FULL		
APPLICATION PROPOSAL Erection of a detached 2 bed dwelling with associated access, parking and dropped kerb.		
ADDRESS 47 Brier Road, Borden, Sittingbourne, Kent ME10 1YJ		
RECOMMENDATION – Grant subject to delegation to ensure that the SAMMS payment is made before planning permission is granted.		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection and subsequently Councillors Baldock and Hampshire also requested that the application be called in.		
WARD Borden And Grove Park	PARISH/TOWN COUNCIL Borden	APPLICANT Mr Paul Muehlthaler AGENT
DECISION DUE DATE 08/01/19		PUBLICITY EXPIRY DATE 11/12/18

Planning History

17/502909/OUT

Outline application with all matters reserved for the erection of a 2 bedroom detached dwelling. (Resubmission of 17/500438/OUT)

Refused

Decision Date: 24.11.2017

Appeal Allowed

Decision Date: 28.09.2018

17/500438/OUT

Outline application for the erection of a 2 bedroom detached dwelling.

Withdrawn

Decision Date: 12.04.2017

HE/13/0010

Single storey extension to the rear of the property, which would extend beyond the rear wall of the original house by 4 m, for which the maximum height would be 3.5 m, and for which the height of the eaves would be 2.3 m

Prior Approval Not Required

Decision Date: 01.10.2013

SW/92/0799

SIDE EXTENSION

Grant of Conditional PP

Decision Date: 03.11.1992

SW/08/0107

UPVC Conservatory on brick base.

Grant of Conditional PP

Decision Date: 20.03.2008

1. DESCRIPTION OF SITE

- 1.1 47 Brier Road is located within Borden Parish but it is also within the wider Local Plan defined built up area which includes Sittingbourne. The application site lies within the long rear garden of 47 Brier Road, which is a semi-detached dwelling fronting onto Brier Road. However, the proposed house would be accessed from Grove Park Avenue, which adjoins the property's rear boundary, at a much lower level.
- 1.2 The site slopes significantly downwards from the end of the garden of 47 Brier Road to the highway in Grove Park Avenue, at the point where that road ends. The surrounding area features predominantly semi-detached dwellings which feature a range of parking provision in the form of parking to the front and side, and within garages. There are no formal parking restrictions in the wide turning head at this end of Grove Park Avenue.
- 1.3 Running alongside the site is Public Right of Way ZR149, which runs in between 47 and 49 Brier Road, linking Brier Road to Grove Park Avenue in the form of an alleyway. A lamppost is located in the pavement on the site's frontage to Grove Park Avenue, and this would be re-located.
- 1.4 In September 2018, a refusal of outline planning permission (against my recommendation) for a two bedroom detached house on the site was overturned at appeal and outline planning permission for one house was granted (see Appendix 1). Whilst the outline application had all detailed matters reserved, the drawings submitted to illustrate that application were the same as submitted again now. In the appeal decision the Planning Inspector rejected the Council's argument that a dwelling in this location would harm the character and appearance of the area saying (at paragraph 9) that;

“Based on what I have seen and read, I find that two storey detached dwellings form an integral part of the character of this area. Furthermore, I acknowledge that as a result of the bends in the road, the size of the plot frontages and accesses and the orientation of dwellings relative to the road vary. Whilst the detailed design would be secured at reserved matters stage, I find that a dwellinghouse on this site would accord with those characteristics and make a positive contribution to the pattern and form of development in this location.”

2. PROPOSAL

- 2.1 This application seeks full planning permission to erect a two storey two bedroom house with one parking space to the front, and a new vehicular crossover onto Grove Park Avenue. The footprint of the dwelling would be the same as the application allowed at appeal (17/502909/OUT). The existing garden of 47 Brier Road would be divided to provide the plot for the new dwelling. Due to the levels of the site the plot levels would be lowered by almost two metres to align with the level of Grove Park Avenue.
- 2.2 The existing garden at no 47 would be reduced to an average 11m in length (net of an existing single storey rear extension) and the new dwelling would have an eight metre long garden with a smaller side garden measuring six metres in width at its widest. It is proposed to remove part of the existing hedge running along the public footpath boundary and replace this with a low level brick wall.

- 2.3 The proposed dwelling would measure approx. 6.0m wide x 6.0m deep, to a height of 4.75m to the eaves and 7.2m to the ridge, with a bay window to the side. This bay window would have a gabled roof. A porch canopy is proposed over the front entrance door. One off-road parking space measuring 5.5m x 2.5m will be provided to the front of the dwelling.
- 2.4 The new dwelling will provide two bedrooms at first floor, both with an en-suite shower rooms. There would be no windows in the north facing side elevation and no first floor (west facing) rear windows except that serving an en-suite bathroom. This is to ensure that the existing house (47 Brier Road) does not suffer loss of privacy from the new house.
- 2.5 The external finishing materials are indicative and can be addressed by way of condition, however, the house will be brick built with grey composite wall cladding at first floor level.

3. PLANNING CONSTRAINTS

None

4. POLICY AND CONSIDERATIONS

- 4.1 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are relevant in terms of encouraging good design standards and minimising the potential impacts of any development upon the amenity of neighbouring residents.
- 4.2 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policies ST3, CP3, CP4, DM7, DM14 and DM19

5. LOCAL REPRESENTATIONS

- 5.1 I have received eleven letters of objections making the following summarised comments:
- This proposal has already been turned down as it is inappropriate and the area too small to build a dwelling, and I cannot see any reason why the decision should change now
 - The public footpath is regularly used by school children and will become dangerous as there will be a blind spot for vehicles leaving the property
 - The public footpath will also be left in darkness as re-siting of the lamp post will provide no light to the alleyway, making it dangerous for pedestrians after dark and increasing the risk of crime
 - Only one car parking space being provided
 - Significant loss of valuable parking space and reduced turning space
 - There simply is not enough space in the cul-de-sac to accommodate extra cars
 - Overshadowing
 - Overlooking and loss of privacy

- Will block sunlight to gardens
- Loss of property value
- Visual blight in the area as it would be totally out of character
- This is an obvious case of 'garden grabbing' and would set a precedence for anyone in the area to develop half their garden into housing
- The run-off water will contribute to the flooding at the bottom of the avenue
- Soakaways will not solve the potential risk of run off going down to the lower areas of Grove Park Avenue as the underlying soil is heavy clay
- Levelling of the land to create a driveway will cause damage to our plants and brick wall
- Re-siting the lamppost in front of our land will restrict any change of use for our own land
- The exit site is unsuitable as it's a turning point for cars
- Out of keeping in the street scene
- The garden is too small to build on
- This is a quiet cul-de-sac and another property will affect the already limited parking and cause disruption to residents in Grove Park Avenue
- We are concerned about the volume of noise pollution that the building work will have on residents of Grove Park and Brier Road
- Should this development proceed conditions need to be imposed on the times and size of delivery lorries as access can be restrictive
- The plans show a smaller site area of only 170m² and the Design & Access Statement gives a separation distance of only 20m. The site is too small, minimum separation distances cannot be achieved and does not meet the conditions set out in the grant for outline permission
- Concern on effect of proposal on protected & endangered species, such as sloe worm, stag beetle and their larvae that are present on neighbouring sites and the adjoining bank. Along with Bats which use the site for foraging.

NOTE that the application for outline planning permission was allowed at appeal and matters regarding the principle of the proposed development has been accepted by the Inspector. In allowing this appeal, the Inspector agreed that matters regarding overlooking, privacy, air quality, impact on adjoining footpath, parking, water run-off and living conditions for future occupiers would be dealt with at reserved matters stage. However, loss of property value should be afforded little weight. With regards to concerns relating to precedent, the Inspector confirmed that each proposal must be considered on its own merits and determined the appeal accordingly.

6. CONSULTATIONS

- 6.1 Borden Parish Council objects to the application “*on the same basis as previously*” as follows:

“Due to the slant of the land the second floor will have a clear sight into adjacent properties and will look right into the bedroom windows.

Will cause substantial shading of adjacent front gardens and properties.

Because of the turning circle on to the road in Grove Park Avenue it will impact on the area and cause issues with parking.

It will deny residents the opportunity to turn at the end of this cul-de-sac. This is an essential access to properties and will prohibit proper use by vehicles.

The driveway will create a health and safety issue for pedestrians using the adjacent footpath.

The proposed moving of the street light will make the footpath dark; at present the light shines up the alleyway and is a deterrent to crime.

There is inadequate parking provision.

Concerns about flooding and excess water run-off. This is a known flood area due to a previous pond.”

- 6.2 The KCC Public Rights of Way Officer raises no objection but initially requested further information and plans on how the footpath will be supported and maintained during the construction period. The applicant has responded saying that the footpath will remain open at all times and that a new concrete retaining wall will be faced with brickwork where seen above ground level, with a close boarded fence 1.8m high on or behind the new wall. The Public Rights of Way Officer is satisfied with this arrangement.
- 6.3 Kent Highways and Transportation considers this to be a non-protocol matter.
- 6.4 Natural England raises no objection subject to SAMMS mitigation payments being secured. The applicant has agreed to this payment.
- 6.5 The Council’s Environmental Health Manager recommends imposing a condition to minimise the dust and noise generated throughout the construction process and a condition restricting the construction hours.

7. BACKGROUND PAPERS AND PLANS

- 7.1 Planning application background papers and plans to planning references 18/505761/FULL and 17/502909/OUT.

8. APPRAISAL

- 8.1 The site is located within the built up area, and the recent appeal decision which allowed the erection of a two bedroom detached dwelling indicates that the principle of residential development on this site is acceptable. What falls to be considered under this application, therefore, is the acceptability of the submitted scheme in terms of scale, design, access, landscaping and amenity. I will consider the objections which have now raised.

- 8.2 Local concern has been raised that the location of the new dwelling will be especially prominent within the surrounding area. The site itself is fairly unusual for a residential property in so far as land levels at this location dramatically slope down to Grove Park Avenue and the development will require a significant reduction in existing ground level, with the entire site being excavated to at least 1.9m deep. Whilst this will alter the topography of the site, the Inspector argued that it would make a positive contribution by saying:

“The topography of the site is a positive part of its character and the indicative proposals to further reveal this difference in levels would, in my view, celebrate this relationship.”

- 8.3 The result of this is that the dwelling will be more visible within Grove Park Avenue than from Brier Road. Nonetheless the ridge height will be at a similar level to properties within Grove Park Avenue and I note that the Inspector was satisfied that a new dwelling here would not harm the character and appearance of the area by saying:

“The proposed dwelling would have a more direct relationship with Grove Park Avenue than Brier Road, and would be viewed as part of this backdrop of existing built form by occupiers in Brier Road. Furthermore, I observed that nearby properties on Brier Road have a relationship with 23 Grove Park Avenue similar to that proposed. Therefore, within this existing context, the proposed dwelling would not result in a harmful loss of openness to the rear of Brier Road properties, and as such the development would not harm this aspect of the character of the area.”

- 8.4 I too, consider that the new dwelling will sit comfortably within the existing street scene without giving rise to any serious harm to the character of the area. The Inspector did not view the site as too small for residential development and has accepted that the site is appropriate for development of this kind in principle. Members should bear in mind that the current drawings are the same as those available to the Inspector, and to which he may well have had regard. I consider that the dwelling has been appropriately designed and the use of appropriate facing materials can be secured by condition.
- 8.5 The proposed dwelling would lie to the rear 47 Brier Road. The Inspector imposed conditions regarding windows and separation distances in the interests of the living conditions of existing and future occupiers. These conditions would equally protect dwellings on either side of number 47. The submitted plans show that the new dwelling will comply with these conditions, being sited at least 22.0m from the nearest first floor rear window of 47 Brier Road and the rear first floor (obscure glazed) window will serve a shower room. As such, I consider that no significant overlooking will occur.
- 8.6 However, at paragraph 19 of his decision, the Inspector rejected a condition prohibiting the insertion of any new windows in the rear elevation of the new house. In so doing, he has failed to safeguard the privacy of number 47 (and its neighbours) from the later insertion of a first floor rear bedroom window, or a possible two storey rear extension. I consider this to be an oversight, and one that the Council can and should correct now. A suitable condition (14) has been recommended below which restricts any additional windows being inserted at first floor to safeguard this issue.
- 8.7 In terms of impact from the front and side facing first floor bedroom windows that are now shown, I do not consider that the proposed dwelling will create a loss of privacy

sufficient to cause significant harm to the amenity of residents in Grove Park Avenue or Maylam Gardens which they face towards. There would be an adequate separation distance of approximately 21 metres to the rear of 45 Maylam Gardens (to the side) and any overlooking to properties to the front (in Grove Park Avenue) would be from an oblique angle only. The Council does not operate a policy of minimum window to window distances in relation to front windows, but windows to the rear should be at least 21m from the windows of other houses to the rear. In this case, the proposal conforms to these guidelines.

- 8.8 I note local concern with regards to problems arising from the construction period, but note that this can be dealt with by imposing conditions. I have added conditions in relation to working hours and hours for impact pile driving to ensure that any potential impact on the amenity of the area is reduced.
- 8.9 Local residents refer to highway safety and parking provision. At outline stage I was of the view that the addition of one dwelling was unlikely to have a significant impact on the parking provision on Grove Park Avenue as there are no formal parking restrictions in place. I see no reason to change this view now. The submitted drawings show that the proposal would provide one car parking space to the front of the dwelling which accords with adopted Kent County Council Highways and Transportation standards for a dwelling with two bedrooms. In my view, the parking space will be adequate for the parking needs of the property as the site lies within a sustainable urban location where the occupiers will not be completely reliant on the use of a car. Though, there may be potential for on-street parking, I believe that the development will not create any significant problems in this matter.
- 8.10 With regards to local concern about the re-siting of the lamppost further away from the footpath, its re-positioning will need approval from Kent Highways and Transportation who will be able to take account of the safety of users of the footpath. I note that Kent Highways and Transportation raise no concerns about an additional access point here, nor do I consider that this will result in any potential congestion or manoeuvring problems.
- 8.11 Local concern also makes reference to safety concerns of having a driveway access next to the footpath. The submitted drawings show a low level wall (0.45m high) which will provide adequate sight lines and visibility which is similar to the existing arrangement on the opposite side of the footpath.
- 8.12 I note that there is local concern in relation to flooding and drainage issues, but the property is not located within a flood risk area and drainage details will be controlled under building regulations.
- 8.13 Due to a recent appeal decision in Newington (ref. 17/503997/FULL), the Council is now seeking developer contributions on any application which proposes additional residential development within 6km of the Special Protection Area (SPA). The application site is within 6km of the SPA, and as such the Council seeks a mitigation contribution of £239.61 for each new dwelling. The applicant has confirmed that he is willing to pay this fee. The precise means of securing the payment has not yet been set, and my Officers remain in discussion with the Head of Legal Services regarding the matter. I will be seeking delegation to approve this application subject to that payment being secured,

- 8.14 Finally, in relation to newly raised local concerns about the possibility of slow worms being present on the site I have taken the advice of KCC’s Ecological Advice Service and recommended a condition regarding precautionary measures, even though the likelihood of disturbing any such species appears very low.

9. CONCLUSION

- 9.1 I consider that due to the clear and recent appeal decision here, this application for the erection of a two bedroom detached dwelling is acceptable and I therefore recommend that planning permission be granted. I do not consider that there are grounds to refuse this application and any opposition to the principle of development is not relevant to the decision as this has already been settled at appeal. In terms of conditions I have adhered to those imposed by the Inspector where relevant, save only for additional conditions relevant to this fully detailed application.

10. 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 three 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 development hereby approved shall be carried out in accordance with the following approved drawings:

1221/1 C; 1221/2 A; 1221/3 A; 1221/4 and 1221/5;

Reason: For the avoidance of doubt and in the interests of proper planning.

- (3) No development beyond the construction of foundations shall take place until details of the external facing materials to be used in the construction of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity

- (4) No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works (including the facing of retaining walls) have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which should be native species and of a type that will enhance or encourage local biodiversity and wildlife), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity

- (5) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity

- (6) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity

- (7) Demolition or construction works shall take place only between 0730-1900 hours on Monday to Friday and 0730–1300 hours on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.

Reason: In the interests of residential amenity.

- (8) Any impact pile driving in connection with the construction of the development shall take place only between 0900-1700 hours on Monday to Friday and shall not take place at any time on Saturdays, Sundays or on Bank or Public Holidays.

Reason: In the interests of residential amenity.

- (9) Adequate precautions shall be taken during the construction period to prevent the deposit of mud and/or other debris on the public highway.

Reason: In the interests of highway safety and convenience

- (10) The area shown on approved drawing 1221/2 A as a car parking space shall be kept available for vehicle parking at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

- (11) The vehicular access to the site as shown on the approved drawings shall be constructed and completed prior to the commencement of the first use of the dwellinghouse hereby permitted.

Reason: To ensure that a satisfactory means of access is provided for the site and in the interests of highway safety.

- (12) No development shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, energy

efficiency, and sustainable drainage principles. Upon approval, the details shall be incorporated into the development as approved.

Reason: In the interest of promoting energy efficiency and sustainable development

- (13) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwelling shall not be occupied unless the notice for that dwelling of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability

- (14) No additional windows, doors, voids or other openings shall be inserted into the rear elevation of the dwelling above ground floor level, nor shall the approved dwellinghouse be extended above ground floor level beyond the approved rear wall, whether or not such works would ordinarily have been permitted by Class A 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) .

Reason: In the interests of the protecting the privacy of homes in Brier Road.

- (16) No development shall take place (including any demolition, ground works, site clearance) until a precautionary method statement for reptiles and nesting birds within the site has been submitted to and approved in writing by the Local Planning Authority. The method statement, produced by an ecologist, shall include the:

- a. Map showing area to be cleared and areas of retained suitable habitat
- b. Over view of the works to be carried out
- c. Methodology to implement the works
- d. Timings of the proposed works
- e. Details of who will be carrying out the works.

The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.

Reason: In the interests of conserving protected species; and to ensure that these details are approved before works commence.

The Council’s approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

This Appropriate Assessment has been undertaken without information provided by the applicant.

The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats. The proposal thus has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England (NE) advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "*it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.*" The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group (NKEPG).

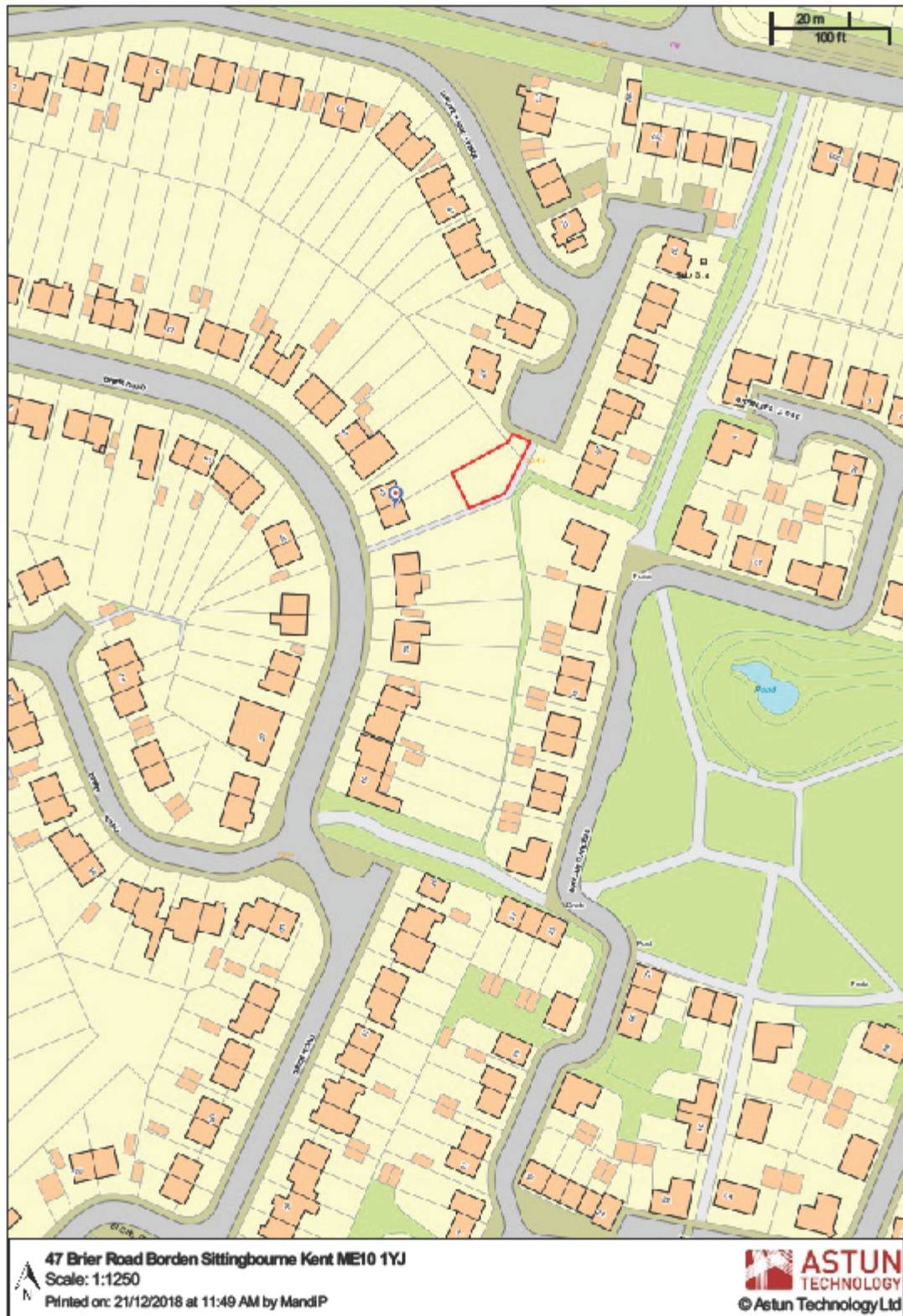
NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied. Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (to be secured by either s106 agreement or unilateral undertaking on all qualifying developments) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others.

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.





Appeal Decision

Site visit made on 22 August 2018

by **H Miles BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 September 2018

Appeal Ref: APP/V2255/W/18/3199746 47 Brier Road, Sittingbourne, Kent ME10 1YJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Paul Muehlthaler against the decision of Swale Borough Council.
 - The application Ref 17/502909/OUT, dated 1 June 2017, was refused by notice dated 24 November 2017.
 - The development proposed is the erection of a two bedroom detached dwelling.
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Decision

1. This appeal is allowed. Planning permission is granted for the erection of a two bedroom detached dwelling in accordance with the terms of the application, Ref 17/502909/OUT, dated 1 June 2017, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matters

2. Outline planning permission is sought with all matters reserved. I have determined the appeal on this basis. Submitted drawings (1221/II and 1221/IB) include some illustrative details of access, appearance, landscaping, layout and scale. These are considered on an indicative basis only.
3. The decision notice refers to Grove Park Road rather than Grove Park Avenue. Based on the evidence submitted and my observations, the correct street name appears to be Grove Park Avenue and as such this has been used in this decision.
4. During the course of the consideration of this appeal the revised National Planning Policy Framework (the Framework) has been published. I have invited both main parties to submit comments on the relevance of the revised Framework to this case. I have taken any comments received into consideration and I have assessed this appeal in light of the revised Framework.

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the area, in particular on Grove Park Avenue.

Reasons

6. Grove Park Avenue is a residential no-through road. The part closest to the appeal site forms a T shape at the end of the road and is fronted by two storey

<https://www.gov.uk/planning-inspectorate>

APPENDIX 1

Appeal Decision APP/V2255/W/18/3199746

- residential houses, mainly semi-detached but with some detached properties. Due to the bends in the road the width of these properties' frontages are varied. Evidence submitted shows that garden sizes also vary, particularly at this end of the road. However, the extent of these garden areas is not visible in the streetscene. Furthermore, I note that land slopes upwards from the entrance to Grove Park Avenue to the appeal site.
7. When viewing the site from Grove Park Avenue, the front garden and hardstanding to No. 24, which is partly enclosed by what appears to be a retaining wall, adjoin on one side. Between the site and No. 23 are the end of the rear gardens to Brier Road properties. These sit at a higher level than Grove Park Avenue with boundary treatment including fencing and planting visible. This results in a domestic character to this part of Grove Park Avenue.
 8. The majority of the appeal site is in use as the rear garden to 47 Brier Road. The land has been built up so the garden is broadly level with the ground level of the host property, which results in a retaining wall and steeply sloping grass verge fronting Grove Park Avenue. A public footpath runs along the side of the property.
 9. Based on what I have seen and read, I find that two storey detached dwellings form an integral part of the character of this area. Furthermore, I acknowledge that as a result of the bends in the road, the size of the plot frontages and accesses and the orientation of dwellings relative to the road vary. Whilst the detailed design would be secured at reserved matters stage, I find that a dwellinghouse on this site would accord with these characteristics and make a positive contribution to the pattern and form of development in this location.
 10. Matters of layout and scale are also not for determination at the outline stage. Therefore, the detailed layout of the proposal would be considered as part of a reserved matters application. However, I find that the plot would be of a sufficient size and shape to accommodate a dwellinghouse without being cramped.
 11. From the evidence presented, I find that there is an assortment of sizes and shapes of garden areas in the part of Grove Park Avenue that forms the immediate context for the proposed development. This variety is a key part of the character of the area. Consequently, I find that the size of the garden area proposed would enhance this variety and therefore the character of the locality.
 12. I note that indicative drawings have been submitted showing that the land could be excavated, which would ensure that the proposed dwelling would be at a similar level to Grove Park Avenue properties. This provides me with assurance that development at this level could be achieved. As such, I consider that a dwelling of the size shown on the illustrative drawings would be similar in height to nearby houses. Furthermore, given the reasonable separation distances from the closest properties I find that the proposed dwelling would not be overbearing. The topography of the street is a positive part of its character and the indicative proposals to further reveal this difference in levels would, in my view, celebrate this relationship.
 13. The proposed dwelling would have a more direct relationship with Grove Park Avenue than Brier Road, and would be viewed as part of this backdrop of existing built form by occupiers in Brier Road. Furthermore, I observed that nearby properties on Brier Road have a relationship with 23 Grove Park Avenue

APPENDIX 1

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similar to that proposed. Therefore, within this existing context, the proposed dwelling would not result in a harmful loss of openness to the rear of Brier Road properties, and as such the development would not harm this aspect of the character of the area.

14. Therefore, in these respects I conclude that the proposal would have no significant detrimental effect on the character and appearance of the area. As a result, it would not be contrary to policies CP4 and DM14 of the Swale Borough Local Plan – Bearing Fruits 2031(2017). Amongst other matters, these policies seek to ensure that development is of a high quality design, appropriate to its surroundings and set general development criteria including the reflection of the positive characteristics and features of the site and locality.

Other Matters

15. Issues including the principal of residential development on this site, effect on living conditions of existing occupiers including overlooking and loss of privacy, air quality, the impact on the adjoining footpath, parking, water run off and quality of the living conditions for future occupiers have been drawn to my attention. These matters are largely identified and considered within the Council officer's report and the Council did not feel that these were reasons to refuse the application, noting that this is an outline application with all matters reserved. Moreover, I have been provided with no substantive evidence which would prompt me to disagree with the Council's original conclusions on these matters.
16. I note comments in relation to the impact on property values. However, it is a long established principle that planning is concerned with land use in the public interest. Therefore, the protection of purely private interests such as property values should be afforded little weight. I have also had regard to concerns raised relating to precedent. Notwithstanding this, each proposal must be considered on its own merits and I confirm that I have determined this appeal accordingly. As a result, these other matters do not lead me to differ from my overall conclusion.

Conditions and Conclusion

17. I have attached conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying the relevant plans as this provides certainty.
18. I have also attached conditions which set out guiding principles for reserved matters, these conditions include providing details on access, landscaping appearance and scale of the proposal. Moreover, a condition relating to the details of site levels is required in the interests of character and appearance. Conditions regarding windows and the maintaining of separation distances are necessary in the interests of the living conditions of existing and future occupiers.
19. The Council has recommended part of a condition restricting permitted development rights for the proposed new dwelling. However, Planning Practice Guidance notes that these conditions should only be used in exceptional circumstances. I do not consider that the circumstances of this case (a single new dwelling in a residential area) amount to exceptional circumstances, nor

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have I been presented with evidence to justify this. Therefore I do not consider that this condition meets the test of necessity and so it is not included below.

20. As issues of landscaping and access are reserved matters, the details as suggested within the Council's conditions relating to landscaping and parking would be included in the subsequent determination of these reserved matters. Therefore these conditions would not meet the test of necessity so are not included. The Council have recommended a condition requiring details of retaining walls to ensure adequate foundations are in place. These details would not be relevant to planning and therefore the condition is not attached.
21. In view of the scale of development, its location and likely construction period, I am not persuaded that a Construction Method Statement is required and as such, I have omitted the suggested condition accordingly. I have however attached conditions in relation to working hours and hours for impact pile driving to protect living conditions of existing occupiers.
22. For the reasons above, and subject to the conditions listed, I conclude that the appeal should be allowed.

H Miles

INSPECTOR

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Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") of the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1221/II, Site Plan – 17/502909/OUT – 47 Brier Road.
- 5) The details submitted pursuant to condition (1) above shall show that the new dwelling shall not be sited less than 21 m from the nearest first floor rear (north facing) window of 47 Brier Road, and the new property shall not include any rear (south facing) window above ground floor level serving a habitable room. The development shall then, be completed strictly in accordance with the approved details.
- 6) The details submitted pursuant to condition (1) above shall include cross-sectional drawings through the site, of the existing and proposed site levels. The development shall then be completed strictly in accordance with the approved levels.
- 7) Demolition or construction works shall take place only between 0730-1900hours on Monday to Friday and 0730-1300hours on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 8) Any impact pile driving in connection with the construction of the development shall take place only between 0900-1700hours on Monday to Friday and shall not take place at any time on Saturdays, Sundays or on Bank or Public Holidays.