



Delegated Report

Householder Planning Application

Application No: 20220732

Location: 114 Vigilant Way, Gravesend, Kent, DA12 4PN

Description: Retention of Highway land as part of the residential curtilage and retention of the boundary fence.

Applicant: Mr Glen Richmond

Site Visit: 22nd August 2022

Submitted Documents/Plans

- Application Form - dated 08/06/2022;
 - Supplementary Information - Planning Statement (06/2022);
 - Supplementary Information - Drawing Register;
 - Drawing no. JMD-1145-B-010 - P2 - Site Plan (scale - 1:1250);
 - Drawing no. JMD-1145-B-020 - P2 - Existing Location Plan (scale - 1:100);
 - Drawing no. JMD-1145-B-030 - P3 - Proposed Location Plan (scale - 1:100);
 - Drawing no. JMD-1145-B-040 - P3 - Existing / Proposed Elevation;
 - Drawing no. JMD-1145-B-050 - P2 - Existing Block Plan (scale - 1:500);
 - Drawing no. JMD-1145-B-060 - P3 - Proposed Block Plan (scale - 1:500);
 - Drawing no. JMD-1145-B-070 - P2 - Existing Block Plan (scale - 1:200);
 - Drawing no. JMD-1127-B-051 - P2 - Existing (Drainage);
 - Drawing no. JMD-1127-B-052 - P2 - Proposed (Drainage);
 - Drawing no. JMD-1145-B-080 - P3 - Proposed Block Plan (scale - 1:200);
 - Drawing no. JMD-1145-B-090 - P2 - Existing Block Plan (scale - 1:100);
 - Drawing no. JMD-1145-B-100 - P3 - Proposed Block Plan (scale - 1:100).
- ~~• Drawing no. JMD-1145-B-030 - P2 - Proposed Location Plan (scale - 1:100) - SUPERSEDED;~~
- ~~• Drawing no. JMD-1145-B-040 - P2 - Existing / Proposed Elevation - SUPERSEDED;~~
- ~~• Drawing no. JMD-1145-B-060 - P2 - Proposed Block Plan (scale - 1:500) - SUPERSEDED;~~
- ~~• Drawing no. JMD-1145-B-080 - P2 - Proposed Block Plan (scale - 1:200) - SUPERSEDED;~~
- ~~• Drawing no. JMD-1145-B-100 - P2 - Proposed Block Plan (scale - 1:100) - SUPERSEDED.~~

Relevant Planning History

Reference	Description	Decision	Decision Date
20210776	Retention of Highway land as part of the residential curtilage and retention of the boundary fence.	REFUSED	22.03.2022
20210244	Erection of a single storey rear extension to extend over existing side extension and construction of a new external wall to the bay window in the front elevation	PERMITTED	21.04.2021

	incorporating a new pitched roof.		
19800687	Erection of a double garage at the rear	PERMITTED	19.09.1980
19780220	Erection of a single storey extension to form a porch wc study and kitchen at the side	PERMITTED	01.06.1978

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 - Sustainable Development
- CS02 - Scale & Distribution of Development
- CS12 - Green Infrastructure
- CS18 - Climate Change
- CS19 - Development & Design Principles

Gravesham Local Plan: First Review (1994)

- P3 - Vehicle Parking Standards

Paragraph 33 of the NPPF (2021) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2021), the Council will also seek to replace these.

National Planning Policy Framework (2021)

- Section 2 - Achieving Sustainable Development
- Section 12 - Achieving Well-Designed Places

Supplementary Planning Guidance

- SPG 2 - Residential layout guidelines including Housing Standards Policy Statement October 2015 Adopted 1996 - amended June 2020
- Technical Housing Standards - Nationally Described Space Standard (2015)
- SPG 4 - KCC Parking Standards (2006)
- Householder Extensions/Alterations Design Guide (2021)

Consultations, Publicity and Representations

Consultees

Kent County Council Highways - It is possible that this application affects Public Highway land and this matter should be resolved prior to any works commencing.

Subject to the above, I can confirm that provided the following requirements are secured by condition or planning obligation, then I would raise no objection on behalf of the local highway authority:-

- Provision and maintenance of 43m x 2.4m x 43m visibility splays at the access with no obstructions over 1.05m above carriageway level within the splays, prior to use of the site commencing.

- Provision and maintenance of 2m x 2m pedestrian visibility splays behind the footway on both sides of the access with no obstructions over 0.6m above footway level, prior to the use of the site commencing.

Informative: It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.

Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have highway rights over the topsoil.

Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

Kent County Council has now introduced a formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process.

Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website: <https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and-technical-guidance>. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181

GBC Highways Officer - The issues associated with this application are complex and need to be resolved. Land ownership does not mean the land is not highway, the highway authority maintain the surface and any equipment associated with it. If the land is highway, it also means public utility services can place their equipment in the land.

Kent County Council are the keeper of the relevant records and need to be approached with the correct question. The KCC web site <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries> is where the applicant needs to start the process.

If the land is highway, then it would have to be stopped up and this cannot be done via a planning permission, it has its own legal process and the outcome cannot be guaranteed.

Again, referring to the KCC web site <https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and-technical-guidance>

Alternatively, a stopping up order may be possible under Section 247 of the Town and Country Planning Act, this process is the responsibility of the Secretary of State for Transport and not Gravesham Borough Council.

<https://www.gov.uk/government/publications/stopping-up-and-diversion-of-highways/stop>

It is suggested that the applicant needs to consult Kent County Council to determine if the land is highway or not. If it is highway, then legal advice should be sought to determine the best way to process the stopping up order, but it cannot be done via a planning permission. If it is not highway, then the description of this application is wrong.

Given the situation we have an application for something that cannot be done by Gravesham's Planning Department, or the description is wrong, in that it relates to the relocation of a boundary fence and increasing its height to more than one metre when it is adjacent to the highway.

In terms of the fence alone;

1. 2m x 2m pedestrian visibility splay will be required down the side of the drive and the along the back edge of footway.
2. The applicant needs to submit a vehicular visibility splay diagram (43m x 2.4m x 43m) to ensure the new position for the boundary fence does not compromise the visibility from a vehicle emerging from the driveway. This is a triangle with a height of 2.4 metres down the centre of the drive from the kerb edge and 43m either side of the centre line of the drive measured along the nearside kerb edge. This check is essential because the property is on the inside of a curved carriageway.

Neighbouring properties

Eight surrounding properties were consulted and no representations were received. The consultation period expired 26th July 2022.

Preliminary Matters

This application is a resubmission following a refusal. The previous application proposed the "*retention of Highway land as part of the residential curtilage and retention of the boundary fence*" and was refused for the following reason:

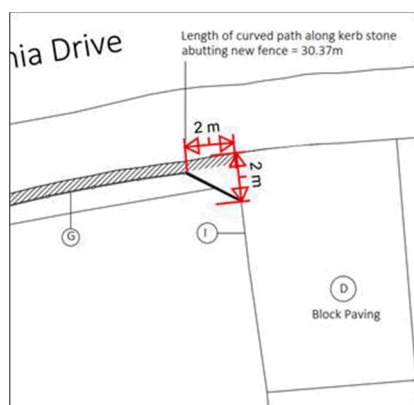
1. *The timber fence installed results in harm to the character and appearance of the property at 114 Vigilant Way and material harm to the street scene and the immediate local character. As such, the proposal would be contrary to Policy CS19 (Development and Design Principles) of the Gravesham Local Plan Core Strategy 2014 and Section 12 of the National Planning Policy Framework (NPPF) that requires development to make a positive contribution to the street scene, the quality of the public realm and the character of the area.*

To be supported by the Local Planning Authority the current application must be considered to overcome the previous reason for refusal.

Negotiations

There were concerns with the application as originally submitted. Although the plans demonstrated that the fencing would be set-back from the edge of the footway, no detail was included regarding the new strip of land. Moreover, the fencing was perpendicular to the highway and overhanging the driveway, thus failing to provide satisfactory pedestrian visibility splays and would create a risk to safety.

The agent was contracted regarding these concerns and it was recommended that the plans were amended to demonstrate the soft landscaping to be introduced fronting the footway, as well as to remove fencing to create acceptable visibility splays and to improve the appearance of the street scene.



The agent submitted revised plans (25/08/2022), which included a grass lawn on the strip of land and angled the final fence panel to create a pedestrian visibility splay. Although the fencing was not amended in accordance with the Local Planning Authorities recommendation, it was considered an acceptable compromise (see Design, Character and Appearance section below). These revisions were accepted by the Local Planning Authority.

Officer's Analysis

Land Ownership

This application involves a land ownership issue, regarding the strip of highway land which has been fenced off and this application seeks permission to retain. The Local Planning Authority do not get involved with such disputes, however for the purpose of this application the land would be considered highway land. The reason for this consideration has been explained in the representation received from Kent County Council Highways:

"Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have highway rights over the topsoil."

For this application, notice has been served on Kent County Council, the highway authority, under Certificate B. This is deemed acceptable for the application to be determined.

Design, Character and Appearance

114 Vigilant Way is a semi-detached property, which sits on a corner plot. The western boundary of the site fronts Vigilant Way and the northern boundary, which extends the length of the rear garden, is over 30 metres long and is highly visible from Britannia Drive. Towards the rear of the site along the eastern boundary to Britannia Drive there is a vehicle access to an existing double garage.

This application seeks to retain 2m close board fencing, however the fencing will be moved back from the edge of the footway by 450mm. A section of lawn will be planted between the relocated fencing and the edge of the footway, with the end fence panel being repositioned to allow for a pedestrian visibility splay.

The fencing was erected without planning consent and requires planning permission by virtue of exceeding 1m in height adjacent to a highway, and therefore fails to comply with Schedule 1, Part 2,

Class A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

As aforementioned in this report, the Local Planning Authority suggested that the fencing that crosses the garage/hardstanding should be removed and an angled panel installed across the end of the garden to provide visibility and serve to open up the street scene. This would be a positive design aspect and would have improved the appearance of the area. However, through investigation the pre-existing fencing partially enclosed the driveway with a brick pillar abutting the entrance (see images below):



Google Maps (October 2008)



Google Maps (May 2018)



Existing

Therefore, the development would not significantly alter the character of the street scene, and the potential improvement in appearance is not sufficient grounds to refuse the application nor request that the final panels are removed and hipped back to be granted permission.

The setting back of the fencing and reintroduction of soft landscaping will soften the impact of the development on the street scene. Even though it is narrower, the grass verge is similar to the verge area on the opposite side of the highway (no. 68 Britania Drive). As such, the proposal will mirror the arrangement opposite and create a consistent appearance within the street scene.



Overall, the changes made to the development will lessen the impact of the fencing and improve the appearance of the street scene. The grass strip will reintroduce a green barrier between the development and the footway, creating separation and a more open character similar to the arrangement opposite. Therefore, the amendments to the proposal have been considered to overcome the previous reasons for refusal and the development is in accordance with Policy CS19 (Development and Design Principles) of Gravesham's Local Plan Core Strategy (LPCS) (2014) and Section 12 (Achieving well-designed places of the National Planning Policy Framework (NPPF) (2021).

Amenity of Future Occupiers

Policy CS19 (LPCS) requires that all development should be 'fit for purpose' and be 'adaptable to allow changes to meet the need of users' and that 'the design and layout of new residential development, including conversion, will accord with the adopted Residential Layout Guidelines (RLG) (2020). The development will have no impact on the amenity of future occupiers and is therefore in accordance with Policy CS19 (LPCS) and Section 12 (NPPF).

Neighbouring Amenity

Policy CS19 (LPCS) requires new development to safeguard the amenity, including privacy, daylight and sunlight, of its occupants and those of neighbouring properties and land and paragraph 127 of the NPPF (2021) requires development to have a high standard of amenity for existing users (in this case surrounding properties). The development will not impact on the amenity of neighbouring properties and is considered to be in accordance with Policy CS19 (LPCS) and Section 12 (NPPF).

Parking and Highways

The proposed development is not considered to result in any increased risk to highway safety. Although, the Highway Officer raised concerns with pedestrian and vehicular visibility splays by virtue of the fencing extending across the driveway entrance and being flush with the footway, this has since been adjusted by virtue of setting back the fencing 450mm and relocating the final fence panels to create a 2m x 2m splay for pedestrians. The concern regarding vehicular visibility of 43m is considered to be excessive for an unclassified highway and is not sufficient grounds to refuse the application with the angled back fence which creates better visibility. Moreover, the revised plans represent an improvement on the pre-existing arrangement that was discussed previously in this report.

Therefore, the fencing hereby proposed is considered to provide improved visibility than the current and pre-existing layouts which will reduce the risk to highway safety in accordance with highway policy guidance.

Any Other Material Planning Considerations

Impact on Biodiversity - Section 15 of the NPPF requires development to result in a biodiversity net gain. In this case, the proposed development will result in a net gain in biodiversity from the existing arrangement, by setting back the fencing and reintroducing soft landscaping. Although the grass lawn has significantly less biodiversity potential compared to the pre-existing hedgerow, the proposed landscaping is an improvement on the current layout and is in accordance with Section 15 of the NPPF.

Conclusion

The application has been fully considered and is in accordance with local and national planning policy.

The proposed development will set-back the fencing from the edge of the footway and will relocate the final panels to create an angled end to the fence line. These changes allow for the reinstatement of a soft landscaping strip to improve the appearance of the street scene and create significant improvements to

visibility splays for vehicles egressing the driveway. Therefore, the development is considered acceptable in terms of design, will not impact on the amenity of future occupiers or neighbouring properties and presents an improved situation for both pedestrian and vehicular visibility.

As such, it is recommended that planning permission is granted subject to conditions.

Recommendation

Permission

(For detailed conditions and informatives, see draft Decision)

Case Officer:	Mr Ethan Bonthron	Team Leader:	
Signed:		Signed:	
Dated:	26 th August 2022	Dated:	