

Application Number: 19/10465 Full Planning Permission

Site: Land Adj 3 Kivernall Road (Rear of 10 Park Lane),
MILFORD-ON-SEA SO41 0PT

Development: House; parking; access onto Kivernall Road; landscaping

Applicant: Mr R Clitherow and Dr F Gabbay

Target Date: 04/06/2019

Link to case file: [view online here](#)

1 SUMMARY OF THE MAIN ISSUES

The following are considered to be the main issues to be taken into account when determining this application. These, and all other relevant considerations, are set out and considered in Section 11, of this report after which a conclusion on the planning balance is reached.

- 1) principle of the development
- 2) visual amenity
- 3) residential amenity
- 4) trees
- 5) highways

This matter is before Committee as a contrary view has been expressed by the Parish Council.

2 THE SITE

The site lies within the built up area of Milford on Sea in a residential area. It is an L-shaped site containing a large, detached house fronting, but set back around 20m from, Park Lane with a detached double garage accessed off Kivernall Road. There is also a vehicular access to the site from Park Lane.

The level changes between the dwelling and garage are significant with steps leading from the garden area down to the garage which is set at a slightly higher level than the road. Dwellings to this side of Kivernall Road are largely set at the higher level, with properties opposite lower than the road with their gardens dropping down to the Danes Stream to the rear.

The site is well screened from Kivernall Road by an earth bank with vegetation, including a statutorily protected tree. There is also much vegetation to the side boundaries and within the site to this northern section.

The existing dwelling has several outbuildings within its site although these would not be affected by the proposed development.

3 THE PROPOSED DEVELOPMENT

The proposal entails the demolition of the garage and its replacement with a two storey dwelling accessed from Kivernall Road. The new dwelling would comprise double garage, utility/plant room, 2 bedrooms (one ensuite) a shower room, hall and study/snug at ground floor level with lounge, kitchen/dining room

and master bedroom with dressing area and ensuite at first floor level. A bin store would be provided in the retaining wall to the north side of the access.

In view of the changes in levels, a recessed courtyard would be provided, accessed from the rear of the ground floor. Steps from this and an external side staircase would lead up to the main garden area. At first floor level, the dining room would open out onto the main garden area to the rear and the lounge would open out onto a front terrace over the garage. The main bedroom would also have direct access to a small balcony above the courtyard.

4 PLANNING HISTORY INCLUDING NOTES OF PRE-APPLICATION DISCUSSIONS

In 1992, permission was allowed on appeal for a dwelling on a similar site to this. It followed a previously dismissed scheme. The permission was subsequently renewed in 1996, 2001 and 2005. More recently, the following applications should be noted:

10/95629 - house. Refused 6.8.10

11/97563 - house. Refused 29.9.11, appeal dismissed.

Pre-application advice for a new dwelling (including a meeting), was given in October 2018. The response highlighted concerns in respect of the resultant private rear garden for the host dwelling, the amount of accommodation proposed and that it would be a large, bulky building which would impact on the street scene and character of the area.

5 THE DEVELOPMENT PLAN AND OTHER NFDC GUIDANCE

Core Strategy

CS1: Sustainable development principles

CS2: Design quality

CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)

CS15: Affordable housing contribution requirements from developments

CS24: Transport considerations

CS25: Developers contributions

Local Plan Part 2 Sites and Development Management Development Plan Document

DM3: Mitigation of impacts on European nature conservation sites

The Emerging Local Plan

Policy 13 - Design quality and local distinctiveness

Supplementary Planning Guidance and other Documents

SPD - Mitigation Strategy for European Sites

SPG - Milford-on-Sea Village Design Statement

SPD - Parking Standards

6 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Relevant Legislation

Section 197 Trees

Town and Country Planning Act 1990

Relevant Advice

National Planning Policy Framework

NPPF Ch.2 - Achieving sustainable development (paras. 8c & 11)

NPPF Ch. 4 - Decision-making (paras. 47-60)

NPPF Ch.11 - Making effective use of land (para. 118c & d)

NPPF Ch.12 - Achieving well-designed places (paras. 127 & 130-131)

7 PARISH / TOWN COUNCIL COMMENTS

Milford On Sea Parish Council

PAR3: Recommend PERMISSION.

8 COUNCILLOR COMMENTS

None received

9 CONSULTEE COMMENTS

The following is a summary of the comments received which can be read in full via the link set out at the head of this report.

Waste Management - no issues

HCC Highways - no objection subject to conditions

Environmental Health (Contaminated Land) - no concerns

NFDC Conservation - objection due to scale and massing

NFDC Trees - no objection subject to condition

10 REPRESENTATIONS RECEIVED

The following is a summary of the representations received they can be read in full via the link set out at the head of this report.

A comment has been received stating

- the planning statement has inaccuracies in it
- the excavation could de-stabilise adjacent buildings
- hedging should not be damaged by building works
- proposal is an improvement on the previous scheme but could do with further refinement

A further response in support of the proposal, considering it to have architectural merit, has been received also stating that the vegetation needs to be retained.

11 OFFICER COMMENTS

Introduction

- 11.1 The application follows a pre-application submission towards the end of 2018 where concerns were raised in respect of the proposed size of the dwelling and its associated impact on the street scene and remaining garden for the host dwelling. Since that time, the proposal has been amended by setting back the first floor living accommodation. However, there has been no reduction in the footprint or level of accommodation proposed.
- 11.2 The main issues to consider relate to the principle of development, amenities of the area, the impact of the proposal on the protected tree and the highways implications of the scheme.

Relevant Considerations

The Principle of Development

- 11.3 There is a long planning history associated with this site. Permission was granted (at appeal) for a dwelling originally in 1993 and renewed in 1996, 2001 and 2005. It is, however, most relevant to consider the more recent appeal decision in 2011 where an application for a house was dismissed. The main issue at this appeal was the impact of the proposal on the character and appearance of the area, specifically how the proposed dwelling related to its plot and the level of mature vegetation which could be retained to maintain this spacious character.
- 11.4 The Inspector identified the generously sized plots with properties sitting within their mature gardens giving the area a spacious character. He considered that due to the proximity to both side boundaries the proposal would appear bulky and this would be accentuated due to its position forward within its plot. Although permission was previously granted for a dwelling at this address, the plot was larger and it was prior to the host dwelling (10, Park Lane) being extended to the rear with a two storey extension. However, new residential development can be acceptable in this location subject to the following considerations being acceptable.

Visual Amenity

- 11.5 The character of the area includes mature vegetation and family dwellings in a variety of styles including bungalows, chalets and full two storey houses. The street scene of the site has dwellings set at a higher level than that proposed and set back from the road. The proposed garage element would have a similar relationship to the road as the existing garage although the two storey nature of the house and its relationship with the road would be very different to other properties in both Kivernell Road and Park Lane. This would conflict with the advice in paragraph 127c) of the NPPF which states developments should be sympathetic to local character, including the surrounding built environment and landscape setting. Other properties on this side of the road have a gentle slope up to the dwelling/garage and the two properties immediately north west of the site have single storey eaves. Whilst the proposed dwelling would have its living accommodation and main bedroom at first floor level when viewed from the front (at a similar level to the ground floor accommodation of the adjacent dwelling), the presence of the entrance and accommodation below this and its visibility from the road would appear out of context, giving the appearance of a two-storey dwelling but at a significantly lower level than other properties in the area.

- 11.6 There is a significant level of vegetation in the area although some is relatively low key and allows glimpses through to the properties behind. As a result, the area has a feeling of spaciousness and gardens to the rear of nearby dwellings add to their setting. The proposal would provide a rear garden area significantly smaller than others in this part of Kivernell Road/Park Lane and would also reduce the size of the rear garden to the host dwelling, impacting on the ratio of built form to open space in the area and leading to a cramped form of development.
- 11.7 The proposed dwelling would appear to fill the full width of the plot - the ground floor would be just 0.8m from the south eastern boundary and the retaining wall with glass balustrade above would extend up to the boundary with no.3. This would also necessitate the excavation of the existing drive area, which is part of the character of this end of the road given that the levels drop down to the Danes Stream to the south east. In addition to this, the loss of vegetation required to achieve this would further erode this established character. Having regard to the concerns raised in the appeal, the Inspector concluded that the previous scheme was also too close to the boundaries and would therefore appear bulky and hemmed-in. It is not considered that this concern has been addressed through the submission of this application and therefore, there is no justification for a dwelling of this size on this site.
- 11.8 Although there are no particular objections to the modern design of the proposed dwelling which incorporates a green roof, it is considered that the site cannot accommodate the level of accommodation proposed without resulting in a cramped form of development out of character with the area. Further west along Kivernell Road (where it turns into Whitby Road and beyond), there are other examples of modern design which form part of the existing character of the area. The proposed design is considered to be one which could also add to this character, albeit on a smaller scale, and as such it would comply with the advice given in paragraph 131 of the NPPF which states that innovative designs which promote sustainability should be given great weight providing they fit in with the overall form and layout of their surroundings. Although the NPPF indicates that sustainable developments should not be resisted, proposals should also create high quality built environments which can then be protected and enhanced (para 8c) NPPF).

Residential Amenity

- 11.9 In view of the unusual nature of the proposed dwelling, the first floor windows are at the ground floor level of the adjoining dwellings and overlooking is not considered to be of concern. Similarly, in view of the low slab level to the proposed dwelling, the built form is unlikely to give rise to unacceptable impacts on light or have an overbearing impact on the neighbouring properties.
- 11.10 It is noted that one bedroom would be served by a large rooflight and would have no outlook and the other ground floor bedroom would have north-west facing windows/door onto a sunken courtyard where light would be limited, which would result in a poor standard of amenity to the occupants.
- 11.11 There were no residential amenity issues identified on the appeal scheme and no further matters identified with the current proposal.

Trees

- 11.12 The site contains a protected holm oak tree sited between the Kivernell Road boundary and the existing garage. Whilst the siting of the proposed garage is similarly located, the slab level would be lowered in order to accommodate the dwelling. Subject to the works being implemented in accordance with the submitted tree report and protection plan, the proposal would not have any detrimental impact on this protected tree.

Highways

- 11.13 The proposal would remove the second access to the host dwelling from Kivernell Road although it would retain the main Park Lane access which leads to a substantial area of drive, large enough to accommodate an appropriate level of parking and turning for this property.
- 11.14 The proposal does not entail altering the 4.5m width of the existing access onto Kivernell Road nor does the proposed parking layout vary significantly from the existing situation. On this basis, there are no objections to the proposed level of parking and turning facilities for the proposed dwelling.
- 11.15 However, the Highway Authority has advised that the access is substandard and vegetation should be cleared from either side of the access to enable adequate visibility in each direction. It is not considered that engineering works to lower the adjacent banks would be required in order to achieve the necessary splays although there would be much vegetation lost. The splays could be achieved through the imposition of a suitably worded condition however, this would have the effect of further eroding the existing character of the area which undermines the appearance of the street scene.

12 CONCLUSION ON THE PLANNING BALANCE

Although the proposal would offer a unique dwelling at this end of Kivernell Road, it is considered that its bulk and massing is such that it would appear out of context in the street scene through the lowering of levels within the site in order to provide a full 2-storey dwelling and impacting upon the character of the area through the cramped nature of the built form in relation to the spaciousness currently enjoyed in this area.

The current proposals do not address the concerns identified at the previous appeal and despite the current lack of 5 year housing land supply, the harm that would result from the scale and form of the development cannot be justified. The application is therefore recommended for refusal.

13 OTHER CONSIDERATIONS

Crime and Disorder

None

Local Finance

If this development is granted permission, the Council will receive a New Homes Bonus of £1224 in each of the following four years, subject to the following conditions being met:

- a) The dwelling the subject of this permission is completed, and
- b) The total number of dwellings completed in the relevant year exceeds 0.4% of the total number of existing dwellings in the District.

Based on the information provided at the time of this report this development has a CIL liability of £0.00.

Tables setting out all contributions are at the end of this report.

Human Rights

In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that this recommendation, if agreed, may interfere with the rights and freedoms of the applicant to develop the land in the way proposed, the objections to the planning application are serious ones and cannot be overcome by the imposition of conditions. The public interest and the rights and freedoms of neighbouring property owners can only be safeguarded by the refusal of permission.

Equality

The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty *inter alia* when determining all planning applications. In particular the Committee must pay due regard to the need to:

- (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Other Case Specific Factors

Housing Supply

The LPA is not currently able to demonstrate a 5 year supply of housing land when assessed against its most recent calculation of Objectively Assessed Need.

Relevant policies for the supply of housing are therefore out of date. In accordance with the advice at paragraph 11 of the NPPF, permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or specific policies in the NPPF indicate that development should be restricted. In this case, it is considered that the adverse impact of the proposed development would significantly and demonstrably outweigh the benefits of the development.

Habitat Mitigation

In accordance with the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations') an Appropriate Assessment has been carried out as to whether granting planning permission would adversely affect the integrity of the New Forest and Solent Coast European sites, in view of that site's conservation

objectives. The Assessment concludes that the proposed development would, in combination with other developments, have an adverse effect due to the recreational impacts on the European sites, but that the adverse impacts would be avoided if the planning permission were to be conditional upon the approval of proposals for the mitigation of that impact in accordance with the Council's Mitigation Strategy or mitigation to at least an equivalent effect.

Section 106 Contributions Summary Table

Proposal:			
Type of Contribution	NFDC Policy Requirement	Developer Proposed Provision	Difference
Affordable Housing			
No. of Affordable dwellings	0		
Financial Contribution	0		
Habitats Mitigation			
Financial Contribution	£4,706		

CIL Summary Table

Type	Proposed Floorspace (sq/m)	Existing Floorspace (sq/m)	Net Floorspace (sq/m)	Chargeable Floorspace (sq/m)	Rate	Total
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Self Build (CIL Exempt)	244.5	30	214.5	214.5	£80/sqm	£20,988.00 *
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Subtotal:	£20,988.00
Relief:	£20,988.00
Total Payable:	£0.00

* The formula used to calculate the amount of CIL payable allows for changes in building costs over time and is Index Linked using the All-in Tender Index Price published by the Build Cost Information Service (BICS) and is:

$\text{Net additional new build floor space (A)} \times \text{CIL Rate (R)} \times \text{Inflation Index (I)}$

Where:

A = the net area of floor space chargeable in square metres after deducting any existing floor space and any demolitions, where appropriate.

R = the levy rate as set in the Charging Schedule

I = All-in tender price index of construction costs in the year planning permission was granted, divided by the All-in tender price index for the year the Charging Schedule took effect. For 2019 this value is 1.22

14. RECOMMENDATION

Refuse

Reason(s) for Refusal:

1. By virtue of the excessive footprint, bulk and massing of the proposed 2-storey built form combined with reduced slab level and resultant small garden area for both the existing and proposed dwellings, the proposal would be out of context with the general pattern of development in this part of Kivernall Road. This would result in an imposing and cramped form of development, harmful to the street scene and character of the area, contrary to policy CS2 of the New Forest District Council Core Strategy and the NPPF.

Further Information:

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Planning Committee

July 2019

Item No: 3c

Land adj 3 Kivernall Road
Rear of 10 Park Road
Milford on Sea
19/10/465

Scale 1:1250

N.B. If printing this plan from
the internet, it will not be to
scale.

