



PLANNING APPLICATIONS WEEKLY LIST NO.1709
Week Ending 26th April 2024

NOTE:

- (i). Decision Notices will be issued in accordance with the following recommendations unless **ANY MEMBER** wishes to refer any application to the next Development Committee meeting.

- (ii). Notification of any application that is to be referred must be received no later than 1:00pm on Wednesday **1st May 2024** this needs to include the application number, address and the planning reasons for the referral via email to the PBC Technical Support team pbctechnicalsupport@rochford.gov.uk .If an application is referred close to the 1.00pm deadline it may be prudent for a Member to telephone PBC Technical Support to ensure that the referral has been received prior to the deadline.

- (iii) Any request for further information regarding applications must be sent to Corporate Services via email.

Note

Do ensure that, if you request a proposal to go before Committee rather than be determined through officer delegation following a Weekly List report, you discuss your planning reasons with Emma Goodings Director of Place. A planning officer will then set out these planning reasons in the report to the Committee.

Index of planning applications: -

- 1. 23/00630/FUL - Midhurst The Drive Rayleigh pages 2 - 14

Application No :	23/00630/FUL Zoning : MGB
Case Officer	Mr Richard Kilbourne
Parish :	Rayleigh Town Council
Ward :	Lodge
Location :	Midhurst The Drive Rayleigh
Proposal :	Variation of condition 2 (Approved Plans) to reduce the extent of property given over to the new build bungalow when subdividing the property and adjust the boundary division line for application 21/00656/FUL dated 28/07/2022 (Demolition of existing workshops and construction of 1No. 3-bed bungalow and detached garage and create new access and driveway)

SITE AND PROPOSAL

1. The application site is located on the northern side of The Drive, which is an unmade private road leading towards Ethel Road (to the south) and Disraeli Road (to the north east). The area is made up of plot lands whereby dwellings are placed sporadically in the nearby vicinity amongst undeveloped plots all varying in shape fronting unmade roads. Although the site lies beyond the main built-up area, the overall character and appearance of the area is of a residential enclave within a rural setting. The site is located wholly within the Metropolitan Green Belt.
2. The application site forms part of the residential curtilage known as 'Midhurst' which comprises a detached single storey bungalow. Located at to the rear of this property adjacent to the boundary with 'Dyffryn' is a relatively large single storey structure and immediately to the north of this structure is a detached double garage. Located to the very north but within the applicant's residential curtilage are two large outbuildings.
3. The boundaries to the site are demarcated by post and wire fence and around the periphery of the application and in addition are mature hedgerows, which are punctuated at sporadic intervals by trees.

RELEVANT PLANNING HISTORY

4. Application No. 21/00656/FUL Demolition of existing workshops and construction of 1No. 3-bed bungalow and detached garage and create new access and driveway – Approved - 28.07.2022.

5. Application No. 19/00898/FUL Proposed Subdivision of the Site and Change of Use of Existing Outbuilding from barn/workshop into a 3-Bed Residential Dwelling including Re-Roofing, Cladding and Extension and Alteration. Associated Garden and Parking -Refused - 31.12.2019.
6. Application No. 86/00894/FUL – Single storey rear extension porch to front and new roof – Approved – 02.04.1987.

MATERIAL PLANNING CONSIDERATIONS

7. The proposed development must be assessed against relevant planning policy and with regard to any other material planning considerations. In determining this application regard must be had to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires proposals to be determined in accordance with the development plan unless material considerations indicate otherwise.
8. The relevant parts of the adopted Development Plan are the Rochford District Core Strategy (2011), the Allocations Plan (2014) and the Development Management Plan (2014).

Principle of Development

9. This application considers whether the proposed change (the subject matter of this application) is acceptable as the principle of the previous development has already been established. A section 73 consent is however a lawful and a new planning consent which must cover in its decision and conditions all those matters previously covered and referenced by condition (other than where revised and re referenced) such that in implementing the consent all safeguards required by the previous conditions are met. There is scope within the statutes where circumstances warrant to revise conditions or to add new conditions. The only matter which differs in other respects is the date of the commencement which must take place within 3 years of the date of grant of the original planning permission as a section 73 does not revise the time limit for commencement as compared to the original date specified.
10. The general powers for Local Planning Authorities to impose conditions on the grant of planning permission are set out in sections 70 and 72 of the Town and Country Planning Act (TCPA) 1990, although statutory powers to impose conditions are set out in TCPA 1990, ss 73, 73A, 96A and Sch. 5 Pt.1. The Secretary of State (SoS) also has powers to impose conditions on Appeal in TCPA 1990, ss 77, 79, 177 and Sch. 6.
11. TCPA 1990, s.70 provides that where an application is made to the LPA for planning permission, the LPA may grant planning permission,

either unconditionally or subject to such conditions as they think fit or refuse planning permission.

12. TCPA 1990, s. 72 provides that, without prejudice to the generality of TCPA 1990, s 70, conditions can be imposed on the grant of planning permission:
 - For regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorized by the permission;
 - For requiring the removal of any buildings or works authorized by the permission, or the discontinuance of any use of land so authorized, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.

13. Furthermore, Paragraph 56 of the NPPF 2023 infers planning conditions may be used to make otherwise unacceptable development acceptable. In particular it states, “*planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*”. Additionally, para 57 of the National Planning Policy Framework states planning conditions should only be imposed where they are:
 - a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.

14. The principle of development on this site has already been accepted as part of application 21/00656/FUL. This is solely a Section 73 application which seeks to either vary or remove condition 2 attached to 21/00656/FUL. According to the submitted plans and accompanying planning application form the applicant is proposing to reduce the amount of private amenity space afforded to the proposed dwellinghouse when subdividing the plot by readjusting the site / plot boundary with the existing dwelling and realigning the drive. Furthermore, it is important to note that no alterations are proposed to the footprint or elevations of the proposed dwellinghouse and the proposed access/egress arrangements will not be altered as part of this application.

Background Information

15. As previously stated, planning permission was relatively recently granted for the demolition of existing workshops and construction of 1 No. three bed roomed bungalow and detached garage and create new access and driveway (planning reference 21/00656/FUL). It was considered that the provision of a dwelling smaller in size than the existing buildings on the site would not remove its open character and as such the proposal would not have a significant impact on the visual openness of the Green Belt. As a result, the proposal would not erode the openness of the Green Belt both in visual and/or spatial terms. The development would not have a greater impact on the openness of the Green Belt and so would benefit from exception g) of the NPPF. Furthermore, it was considered that the design of the proposed dwellinghouse would not have a detrimental impact on the character and appearance of the local environ and the proposal would result in any demonstrable harm to residential amenity. There were no other material planning considerations which indicated that the proposal should be refused planning permission.
16. The case officer has scrutinised the red/blue edge on the approved plans and they are very similar to the plans which have been submitted as part of this application. The plans indicate that the plot (as a whole) measures roughly 34m wide (site frontage) extending to 42m (as measured against the rear boundary) by 65m deep (all measurements are approximates). There does not appear to be any significant discrepancies between the approved plans and the current submission.
17. As previously alluded to the applicant seeks to vary Condition 2 (Approved Plans) of 21/00656/FUL.

This condition states: -

“The development shall be undertaken in strict accordance with the plan reference 06A received by the Local Planning Authority on the 22nd June 2022, plan references 11, 07A, and 04A received by the Local Planning Authority on the 24th January 2022 and plan references 10, 09, and 08 received by the Local Planning Authority on 16th June 2021.

REASON: For the avoidance of doubt and to ensure that the development is completed out in accordance with details considered as part of the application”.

18. According to the approved plans the proposed dwellinghouse will have a roughly rectilinear footprint and will be single storey in height. The

proposed dwellinghouse will be erected towards the rear of the applicant's property following the demolition of the two outbuildings. The proposed dwellinghouse would be sited on an irregular shaped plot which measures approximately 1220m². However, the applicant under this current submission proposes to retain more garden space for Midhurst (the existing dwellinghouse). In order to achieve this, the applicant is proposing to alter the boundary which separates Midhurst from the proposed dwellinghouse. The proposed boundary will be moved approximately 7m closer to the flank elevation of the proposed dwellinghouse making the plot for the new dwelling smaller.

19. According to plan reference 1898 04E (Proposed Site Plan and Block Plan) the flank elevation of the proposed dwellinghouse will be situated approximately 900mm off the amended boundary. Furthermore, the applicant is proposing to straighten the driveway from that which was originally approved. The access/egress arrangements will remain unaltered from the originally approved plans. Following the reduction in plot size the proposed dwellinghouse will be sited within a plot which measures roughly 918m². The width of the plot will be reduced from approximately 25m to 18m, a reduction of 7m. The applicant's agent has confirmed that there will be no alterations to the external appearance of the proposed dwellinghouse or its footprint.

Garden Sizes

20. Policy DM3 of the Development Management Plan requires the provision of adequate and usable private amenity space. In addition, the Council's adopted Housing Design SPD advises a suitable garden size for each type of dwellinghouse. Paragraph 135 criterion (f) of the NPPF seeks the creation of places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
21. The SPD2 requires a minimum 100m² garden area for all new dwellings. An exception to this requirement will be single storey patio housing or one- and two-bedroom dwellings which shall have an area of 50 m² minimum.
22. The layout as submitted shows that the proposed dwelling could be provided with a rear private amenity space of approximately 243m² (the approved site plan under application 21/00656/FUL showed that the proposal would be afforded a private rear garden measuring roughly 440m² a difference of 197m²), which is well in excess of the 100m² required. The proposed layout as revised, therefore, would satisfy the outdoor amenity space requirements set out in the Council's SPD2. Furthermore, as the proposal will result in the subdivision of the plot,

the host property will still maintain a private rear amenity space in excess of 850m² following the amendments to the boundary.

23. In conclusion, it is considered that the proposed amendments to the boundary will not have a detrimental impact on neighbouring residential amenity, or highway safety, and therefore the condition will be amended as proposed.

Flooding

24. According to the Environment Agency's Flood Risk Map the application site is located entirely in Flood Zone 1, where there is the lowest probability of flooding from rivers and the sea and to where development is directed. As such, the development is compatible with the advice advocated within the NPPF. Furthermore, according to the Government's Long Term Flood Risk assessment the application site is at low risk of surface water flooding.

Drainage

25. Development on sites such as this can generally reduce the permeability of at least part of the site and changes the site's response to rainfall. Advice advocated within the NPPF states that in order to satisfactorily manage flood risk in new developments, appropriate surface water drainage arrangements are required. The guidance also states that surface water arising from a developed site should, as far as possible, be managed in a sustainable manner to mimic the surface water flows arising from the site prior to the proposed development. Therefore, in the event that planning permission is approved, it is considered reasonable to attach a condition to the Decision Notice requiring the submission of a satisfactory drainage scheme in order to ensure that any surface water runoff from the site is sufficiently discharged.

Other Matters

26. The case officer can confirm that the requisite site notice was put up in close proximity to the site. Unfortunately, it would appear that this site notice was removed. In order to ensure that all local residents were made fully aware of the proposal a replacement site notice was displayed. In addition to the above, all the neighbours which are in proximity to the site have been notified by letter. It is considered that the requirements of the GPDO and the Town and Country Planning (Development Management Procedure) (England) Order 2010 have been fulfilled.

27. Concerns have been raised by the adjoining neighbour that the proposed development will encroach onto their land. According to the submitted planning application forms the applicant has completed Certificate A which states that *“21 days before the date of this application nobody except myself/ the applicant was the owner of any part of the land or building to which the application relates”*. A planning application is a legal document and if the incorrect Certificate has been completed then there is a risk that the permission granted may be made invalid and it is possible that the High Court may quash any permission. The objector continues to stress that the proposal will result in the loss of approximately 2m of property as the proposed access etc. will be situated on his land. The case officer notes that this objector who still owned the adjacent property did not raise any objections/concerns to the previous application 21/00656/FUL. Nonetheless, the case officer spoke to the applicant’s agent and reiterated the concerns raised by the objector. The case officer stated that either the plans will need to be amended showing that there will be no encroachment onto third party land, or complete Certificate B and serve the requisite notice on the adjacent land owner, or they will need to prove that the correct Certificate has been completed.
28. Following these discussions, the applicant’s agent has submitted title plans which have been overlaid with a topographical survey. The Title Plan which has been submitted by the applicant is dated 18th December 2023. The agent states *“an overlay of our topographical survey and both title plans that shows the boundary between the two properties aligns with the fence on the neighbours side of the ditch. We therefore believe the application site is entirely within the applicant’s property”*. Consequently, the agent has inferred that they believe the correct Certificate has been completed and they do not need to submit an amended certificate nor alter the access arrangements.
29. Nevertheless, the objector maintains that the Title Plan which has been submitted is incorrect and infers is not a true reflection, and the applicant is encroaching onto land which is owned by themselves. To substantiate this, the objector has also submitted their own title plans, which they purport to show that the applicant has encroached onto their property. The title plans which the objector has submitted relate to their own property and the applicants, all of which are dated 24th September 2023 and are copies. The objector maintains that the incorrect Certificate has been completed.
30. One of the main purposes of completing the Certificates to notify the landowner of any proposal which may or may not affect land which owned by them. To this extent, the objector is fully aware of the proposal and therefore not disadvantaged.

31. Notwithstanding the above, prima facie it would appear from the title plans which have been submitted by the applicant's agent appear to corroborate the assertions made by the applicant. Whilst it is acknowledged that official copies of Title Plans are admissible in Court, the same cannot be said for copies which are often open to interpretation, for example, distortions in scale, thickness of red lines etc. Copies of title plans are indicative and give general position and not the exact line of boundaries. Furthermore, title plans may change over the years when boundaries are altered/removed. The Title Plan submitted by the applicant is the most up to date version the Council has received.
32. Typically issues revolving around land ownership are private matters and as such are not considered to be a material planning consideration. Whilst the case officer notes the concerns raised, all the reasonable steps to ascertain land ownership have been followed. The Local Planning Authority cannot and will not become embroiled in land ownership disputes. In any event, by granting planning permission does not remove or negate the rights of the legal land owner.
33. Concerns have been raised regarding the infilling of a drainage ditch, which is said to delineate the applicant's property from the neighbouring property. The applicant's agent has confirmed that the ditch would likely be infilled with a drainage pipe laid in. The agent confirms that this issue will be addressed at the technical design stage. They have requested that this issue be dealt with via a condition. The case officer acknowledges the concerns raised by the objector that the proposal may exacerbate issues concerning drainage within the proximity of the site and it is considered prudent to attach a condition relating drainage.

CONCLUSION

34. Approve.

CONSULTATIONS AND REPRESENTATIONS (summary of responses):

Rayleigh Town Council: No comments received.

Essex County Council Highways: No objections. This application is in relation to condition 2 of the approved application, 21/00656/FUL, therefore the basis of the mitigation measures agreed in support of the previous approval must be transferred to this application if approved.

Rochford District Council Arboricultural Officer: No objection.

Neighbour representations:

3 responses have been received from the following addresses;

The Drive: "Hillview" (3 letters of objection received)

And which in the main make the following comments and objections:

- The submitted plans and accompanying planning applications are misleading. The measurements which are stated are incorrect;
- The current proposal involves altering the boundary and moving the boundary 2m closer to Hillview to give the new property its own driveway;
- The drawing does not prove ownership and we strongly oppose and disagree that he owns all the land that is the subject of the application, and further disagree that he owns the ditch and land to the northern side of the ditch;
- We hold all the original conveyances, dating back to 1898 and have copies of the title deeds for 'Midhurst' and 'Hillview' to support and prove our ownership;
- We assume that the topographical drawing, that now appears on the planning portal, is an attempt to prove Mr. Scarrots ownership of the land and to support his declaration certificate "A" on his planning applications?. This drawing does not agree with the measurements from your officer's report from the planning application 2019 (34m) nor with the applicants Design and Access statements from 2019 and 2021;
- I do not see how you can approve this application as it encroaches onto my land;
- The front white concrete fence finishes at its northern end with a half panel 34m on the southern side of the ditch. This agrees with RDC officer's measurements in the report from the 2019 planning application. Mr Scarrott also agrees with this measurement as stated in his Design and Access Statement accompanying the 2021 application;
- His newly erected wooden fence is on the northern side of the ditch and is on our absolute title land. This fence doesn't link up to his white concrete boundary fence that sits on the 34m but stands alone on our absolute title 800 plot;
- The applicant does not own all the land and the application forms are incorrect;
- The applicant has removed all the trees and shrubs which were adjacent to a drainage ditch. The applicant and RDC cannot allow a driveway to fill in this ditch;
- The area is at high risk of flooding and the proposal will exacerbate the risk;
- The applicant has already infilled a number of drainage ditches in the immediate locality;
- The applicant has taken at least 2m of my land.
- I did not object to the previous application as I did not think that given its location within the Green Belt it would be approved.

Relevant Development Plan Policies:

National Planning Policy Framework December 2023

Core Strategy Adopted Version (December 2011) – H1, CP1, GB1, GB2, T8

Development Management Plan (December 2014) DM1, DM2, DM3, DM4, DM25

Parking Standards: Design and Good Practice Supplementary Planning Document (December 2010)

Supplementary Planning Document 2 (January 2007) – Housing Design

The Essex Design Guide (2018)

Natural England Standing Advice

RECOMMENDATION: APPROVE

Conditions:

1. The development hereby permitted shall be begun before the 27th July 2025 (3 years from the date of grant of the original consent).

REASON: To comply with Section 91(1) of The Town & Country Planning Act 1990 (as amended) by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development approved shall be undertaken in strict accordance with the following approved plans 11B (as per date stated on plan 29th April 2020), 04E (as per stated on plan 29th April 2020), 08 (as per date stated on plan 29th April 2020), 07A (as per date stated on plan 29th April 2020), 06A (as per date stated on plan 29th April 2020) and the Title Plan and Topographical Plan.

REASON: To ensure that the development is undertaken in accordance with the approved plan.

3. No development involving the use of any facing or roofing materials shall take place until details of all such materials have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details as may be agreed unless any variation is agreed in writing by the Local Planning Authority.

REASON: To ensure the external appearance of the building/structure is acceptable having regard to Policy DM1 of the Council's Local Development Framework's Development Management Plan.

4. Prior to its use, details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall not be occupied until the scheme has been implemented in accordance with the details as may be agreed.

REASON: To ensure that boundaries within the development are adequately formed and screened in the interests of the appearance of the development and the privacy of its occupants Policy DM3 of the Council's Local Development Framework's Development Management Plan.

5. In accordance with the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG), the site shall be drained on a separate system with foul water draining to the public sewer and surface water draining in the most sustainable way. The NPPG clearly outlines the hierarchy to be investigated by the developer when considering a surface water drainage strategy. The developer shall consider the following drainage options in the following order of priority:

1. into the ground (infiltration);
2. to a surface water body;
3. to a surface water sewer, highway drain, or another drainage system;
4. to a combined sewer.

REASON: To secure proper drainage and to manage the risk of flooding and pollution.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development by way of further extensions, alterations to the roof or outbuildings (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) A, B, C and E of Part 1 Schedule 2 of the Order shall be carried out.

REASON: To ensure continued control over the extent of further built form on the site in future, in the interests of maintaining the open character of the Metropolitan Green Belt.

7. Prior to the first occupation of the development a scheme of landscaping for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of any to be retained together with measures for their protection during the course of development, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted shall be submitted to and approved by the Local Planning Authority, and shall be carried out in the first planting season following the commencement of the development. Any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

REASON: To secure a high standard of landscaping in the interests of the appearance of the development in the locality.

8. No development, ground works or demolition shall take place until a method statement for no-dig construction is provided and approved in writing by Rochford District Council for the construction of the driveway within the Root Protection Area of Tree T1. The driveway shall be constructed as a starting phase of development to provide suitable ground protection for the development access. The finished surface may be left until the end phase of development. The details to be submitted shall be further supported by a statement for arboricultural supervision to ensure compliance during the construction phase with the supply of evidence of photos of the installation.

REASON: To ensure the protection of Tree T1 and in the interests of the appearance of the development in the locality

9. Prior to the removal of any vegetation or the demolition of buildings between 1st March and 31st August in any year, a detailed survey shall be carried out to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone taking place.

REASON: To safeguard protected species especially nesting birds.

10. Prior to first occupation of the development, the Developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator. These packs

(including tickets) are to be provided by the Developer to each dwelling free of charge.

REASON: In the interests of reducing the need to travel by car and promoting sustainable development and transport in accordance with policies DM9 and DM10.

The local Ward Members for the above application are Cllr. I. H. Ward, Cllr. R. Milne and Cllr. R. Lambourne.