
Kings Hill Kings Hill	566902 154480	29.12.2005	TM/05/04119/FL
---------------------------------	----------------------	-------------------	-----------------------

Proposal:	Variation of condition 4 pursuant to planning permission ref. TM/05/00443/FL (ground floor garage extension and conversion of garage to dining room and study, first floor extension and repositioning of pedestrian accessway)
Location:	21 Victoria Drive Kings Hill West Malling Kent ME19 4DT
Applicant:	Mr A Notman

1. Description:

- 1.1 This application seeks non-compliance with a condition imposed on a planning permission for a ground floor garage extension and conversion of garage to dining room and study, first floor extension and repositioning of pedestrian accessway (TM/05/00443/FL).
- 1.2 The applicant now wishes to build the extension without repositioning the pedestrian accessway and hence does not want to comply with condition 4 which states:

Prior to the commencement of the extension hereby permitted, the new footpath link and associated barrier as shown on approved drawing 1404/0502 shall be completed in accordance with construction details hereby approved. The footpath link shall have a level cross gradient. The public use of the footpath shall be retained in perpetuity.

Reason: To safeguard existing pedestrian access.

- 1.3 The applicant has submitted a letter which contains the following points relating to this planning application:
 - My Solicitor advises that the link was constructed without planning permission, is illegal and the easement by the developer should not have been imposed.
 - An enforcement officer at TMBC has advised that the removal of the footpath link complies with the approved plans for this overall development.
 - I own the path and am responsible for the risks and liabilities: I and my family could lose the family home as a result of any litigious suit from an accident on the path.
 - There has never been a Public Right of Way on the path.
 - This is not a precedent as it is the only path to the bridle way that traverses private property.

- The safety exit argument of the PC is not applied elsewhere in Lapins Lane or Peregrine Road.
- The detour is only 5 minutes.
- The access allows strangers and cyclists to enter the cul de sac, endangering children and the cyclists.
- The 1996 minor amendment for the footpath deletion is not registered and if I had been aware of it, I would not have proposed the repositioning as part of the original planning permission.
- Objectors who back onto the bridleway could have access through gates in their boundaries if they wish.
- People using the footpath gather on my driveway to talk, affecting my privacy.
- Dogs using the path foul my garden.
- I have to maintain the access at my own personal cost.

2. The Site:

- 2.1 This application relates to a footpath link between a bridleway and Victoria Drive, Kings Hill. It crosses the privately owned driveway and garden of 21 Victoria Drive.
- 2.2 At the time of the relevant planning application, it was a block paved path some 1.8m wide and approx. 10m long across the garden and continued to the turning head of Victoria Drive for another 10m or so on the driveway of 21 Victoria Drive. There was a metal anti-cycling barrier at the bridleway end.
- 2.3 The extension permitted under ref TM/05/00443/FL was sited on the line of the existing footpath. Hence the approved repositioning would have moved the path some 2.5m away from the house. The barrier was to be repositioned accordingly with a new opening in the fence.
- 2.4 Since the planning permission was granted, the existing footpath has been partly removed and has been blocked at the bridleway end since Autumn 2005. This has been the subject of enforcement investigations. It has been concluded that the removal of the footpath link does not at this point in time breach condition 4 of TM/05/00443/FL because no start has been made on that application. It has also been concluded that there is no expediency in planning terms for enforcement action on any other land use basis.

3. Planning History:

- 3.1 05/00469/COND Case Closed- No Action
Alleged breach of planning condition.

- 3.2 TM/05/00443/FL Approved 04.04.2005
Ground floor garage extension and conversion of garage to dining room and study, first floor extension and repositioning of pedestrian accessway.
- 3.3 TM/96/01065/RD Approved 03.09.1996
Alternative details of landscaping pursuant to conditions attached to TM/89/1655 and related consent TM/95/1508 (residential development).
- 3.4 TM/95/1508/RM (Minor Amendment) Approved 14.08.1996
Deletion of footpath link between plots 20 and 21.
- 3.5 TM/96/00814/RD Approved 18.07.1996
Details of landscaping pursuant to conditions attached to TM/89/1655 and related to consent TM/95/01508.
- 3.6 TM/96/00377/RD Approved 09.05.1996
Details of materials pursuant to condition 26 of TM/89/1655 with reference to Housing Area 9.
- 3.7 TM/95/1508/RM Approved 15.02.1996
Reserved matters being housing development consisting of 3 and 4 bedroom dwellings with garages and associated ground works submitted pursuant to outline consent TM/89/1655.

4. Consultees:

- 4.1 PC: Representations made on planning issues material to this decision are that the closure of the footpath breaches a covenant the owner signed when he took over the property. By planting shrubs and constructing a fence, surely he has already breached the condition. This would set a precedent for similar footpaths on Kings Hill. This footpath is a vital escape route for people walking on the bridle way who need to flee to where residents can be contacted. It is also an escape route should the area need to be evacuated in an emergency. Residents have been used to having access at this point and it provides a safety escape for children and lone walkers from the bridle path onto a residential area. We note the owner of 21 Victoria Drive has argued against this but mistakenly as an escape option from the residential area onto the footpath. There has not been any vandalism or anti social behaviour in that area for sometime prior to access being removed. This is mainly due to the Police Community Support Officers being aware and warning off any offenders. We know that we represent a large proportion of the residents of Kings Hill in objecting to the footpath being closed, who also find it unacceptable that ten years later it should be removed.
- 4.2 KCC (CPO): No response to date.
- 4.3 KCC (Highways): No response to date.

4.4 Private Reps (32/8R/0X/0S): A 9 signatory petition and 8 letters of objections are summarised as follows:

- Loss of a public amenity from the local community.
- Path is a route to a beautiful walk.
- Everyone at Kings Hill will start changing things to suit their needs.
- Alternative routes to and from the bridle way are a considerable detour.
- The right of way is registered on the deeds.
- Several other short walks are no longer possible due to the Golf Course.
- Appalling that there was no warning of this closure.
- Access is a short cut to Victoria Drive- a safety feature needed for the elderly, young and vulnerable.
- The closure of the path has questionable legality.
- Breach of covenant.
- Pathway should be instated by PC, TMBC and KCC and adopted as a PROW.
- Need an explanation as to why the path has never been adopted as a PROW.

No letters of support have been received but the applicant has submitted an 11 signatory petition in support of the application.

5. Determining Issues:

- 5.1 The background to this case matter is particularly complex due to the planning history.
- 5.2 The original reserved matters for the development showed a footpath link from a cul de sac to the bridleway as part of the overall pedestrian movement strategy for the development.
- 5.3 Subsequently, a minor amendment to the layout was sought by the developers in which the footpath link was deleted. This was approved after consultation with West Malling and Mereworth PCs; Borough Council Members; residents in Lapins Lane and Pippin Way and internal consultees, Leisure Services and the Borough Engineer.

- 5.4 The 1996 minor amendment was an **alternative** to the approved layout. The developers were able to but not obliged to implement a minor amendment. They were entitled to choose to implement the original scheme in accordance with the original planning permission. The developers did indeed implement the original approved layout and not the minor amendment. The actual layout constructed included the footpath link. In 1997, this was transferred with the property of 21 Victoria Drive and made subject to covenants on public use. This public footpath link's existence and the obligations it imposed on the applicant should have been clearly evident to him when he purchased his house in 1997.
- 5.5 Members will note that the applicant claims that the Council has stated that the deletion of the footpath link "accords with the approved layout for the development". It is true that statement was made in the context of an enforcement investigation, having fully considered the matter; I would advise Members that it is my view the **implementation** of the original scheme including the footpath link effectively prevented the right to subsequently implement the minor amendment that deleted the footpath. The previous correspondence to the applicant could therefore have more accurately stated that, having at one time in the past approved the deletion of the footpath link, this was a material consideration as to whether or not it was expedient to take enforcement action at that time and the existence of the alternative scheme without the footpath (albeit never implementation) has to be taken into account.
- 5.6 Turning to the merits of the application, Policy P2/2 of the TMBLP is strategic policy for Kings Hill and requires provision of cycleways, pedestrian and equestrian routes linking with the existing network of public footpaths and bridleways abutting the site throughout the development.
- 5.7 Policy P4/11 of the TMBLP requires development proposals to not harm the character and quality of the local environment and to have regard to the principles contained in "Kent Design" such as encouraging pedestrian permeability and links to wider footpath systems.
- 5.8 This footpath link was in existence for approx. 8 years. Over this period of time, it has become an important local amenity and clearly accords with Policies P2/2, P4/11 and "Kent Design" in that it links this part of Kings Hill with the bridleway network at its periphery.
- 5.9 Other points raised by the objectors and the PC, whilst noted, are not land use matters in my view. Members are advised that some of the PCs views reproduced above are mistaken on matters of fact and I have engaged in separate correspondence with it on those points.

- 5.10 It is necessary to assess whether there is justification for the loss of this amenity. The comments of the applicant are noted. I have dealt with the planning history background above. Many of the other points are not land use matters. As I have mentioned above, the applicant should have been fully aware when he purchased the property of the existence of the footpath and its implications and obligations.
- 5.11 Overall, I do not consider that there is adequate justification for the loss of this important local amenity and refusal is recommended.

6. Recommendation:

- 6.1 **Refuse Planning Permission** as detailed by site location plan received 09.12.2005; letters and enclosures dated 07.12.2005; 27.01.2006; email dated 31.01.2006 for the following reason:
- 1 The footpath link is an established pedestrian route linking Kings Hill with the wider bridleway network. Its loss resulting from implementation of an extension on its alignment would be detrimental to local amenities and to the local pedestrian network and is thereby contrary to Policies P2/2 and P4/11 of the Tonbridge and Malling Borough Local Plan 1998.

Contact: Marion Geary