

**Birling  
Downs**

**567889 160375 5 July 2010**

**TM/10/01744/FL**

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Proposal: New vehicle access and entrance gates (resubmission of TM/10/00561/FL)  
Location: 19 Ryarsh Road Birling West Malling Kent ME19 5JW  
Applicant: Mr Graham Sullivan

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**1. Description:**

- 1.1 The application proposes a new vehicle access to Ryarsh Road with new entrance gates and pillars set back 6m from the highway.
- 1.2 Members will recall that this application was withdrawn from the agenda for the committee meeting held on 15 September 2010, so that further investigation could be undertaken into matters that had arisen shortly before the meeting.
- 1.3 The applicant has since submitted an appeal to the Planning Inspectorate against non-determination of the application. Accordingly, this report seeks a resolution from Members to determine what the Council's decision would have been if they were still in a position to determine the application. This resolution will be taken forward and used as the basis for the Council's case in connection with the appeal.
- 1.4 The applicant submitted additional supporting information on 15th September 2010 addressing the recommendation for refusal initially put forward in the agenda for the Committee meeting on that day. This information has been reiterated and expanded upon within the grounds of appeal submitted to the Planning Inspectorate. The key arguments outlined include the following:
  - The recommendation to refuse is based on significant value being placed on a very small section of vegetation and corrugated iron fence on the southern side of Ryarsh Road which was not based on any input from a qualified arboriculturist or landscape officer.
  - The application of notification of intent to remove several of the trees on the site (TM/10/02206/TNCA) that was "live" at the time, was not taken into account in formulating that recommendation.
  - The Council has chosen not to issue a tree preservation order to safeguard the trees therefore demonstrating that it did not consider them worthy of preservation.
  - As this enabled the trees to be lawfully removed the principal basis behind the Council's proposed grounds of refusal no longer exists.

- The vegetation to be affected is of very low value in terms of appearance and well designed replacement plantings would provide an opportunity for improved tree growth and enhanced visual amenity.
- An insufficient appraisal and analysis of the vegetation and character of the area had been made by the LPA.
- The important characteristics of the Conservation Area arising from Ryarsh Road's sense of enclosure would not be lost or harmed by the development.
- A more open section of streetscape exists immediately to the west of the site.
- Frontage vegetation is not prevalent on the southern side of the road to the west of the site.
- Council permitted the erection of a new front boundary wall on the adjacent site at 25 Ryarsh Road (TM/06/02026/FL) which replaced shrubs and young trees which was seen to be an enhancement of the Conservation Area.
- The proposal would be consistent with the Birling Conservation Area Guide whereby although vegetation was an important feature along the northern side of Ryarsh Road, the southern side is largely dominated by railings, walls and front gardens. The proposal would open up public views of another C19th stone building which should be seen as a positive impact.
- Although the Parish Council has raised concerns in relation to highway safety, the Highway Authority has no objection to the proposed access.

## **2. Reason for reporting to Committee:**

- 2.1 The application had been called to 15 September 2010 Committee by one of the local Members due to local concerns over highway safety.

## **3. The Site:**

- 3.1 The subject site is located on the south side of Ryarsh Road in Birling. It accommodates a dwelling that is part of a large ragstone building that has been converted into two dwellings. Access to the site is currently via a private drive accessed off The Close, to the north east. This access way crosses the grounds of a neighbouring dwelling and serves 2 neighbouring residences, in addition to the application property.
- 3.2 The site is located within the village confines of Birling, the Birling Conservation Area and an Area of Outstanding Natural Beauty (AONB).

3.3 The locality consists of residential properties along the southern side of Ryarsh Road, with farmland to the south and to the north across the highway.

**4. Planning History:**

TM/77/10176/FUL Grant with Conditions 30 December 1977

Erection of freestanding carport for two cars.

TM/85/10862/FUL Grant with Conditions 30 August 1985

Detached double garage.

TM/10/00561/FL Application Withdrawn 21 May 2010

New vehicle and pedestrian access to Ryarsh Road

TM/10/02206/TNCA No Objection

Ash (T1) - fell, replant with 1 standard Ash (new Ash tree), Robina (T2) fell, replant with 1 standard Robina (new Robina tree), Laurel (T3) fell, replant with 1 standard Laurel (new Laurel tree), Laurel (T4) fell, replant with 1 standard Laurel (new Laurel tree), Wych Elm (T6) - fell, buxus (T7) fell

**5. Consultees:**

5.1 PC: The Parish Council considers the supporting arguments to be specious and the revisions to be of too little significance to persuade it not to repeat the same objections it raised on 18 May 2010 in respect to the earlier application.

5.1.1 Earlier PC comments (18.05.2010): The Parish has very serious concerns over the safety aspect of this application for access, considering it to be extremely dangerous, unless clear line of sight can be provided in each direction, particularly towards Ryarsh.

5.2 KHS (Initial comments): No objections to the proposals in respect to highway matters subject to conditions being imposed. The details of the proposed vehicle access as shown on drawing number 1178/1 are acceptable and would accord with pre-application discussions. The applicant will need to liaise with Kent Highway Services (KHS) regarding all works affecting the public highway. The integrity of the public highway must be maintained and all works required will be done to KHS specification and satisfaction. Surface water from private areas must not discharge onto the public highway.

5.2.1 (Additional comments provided 07.10.2010) Although visibility does not meet the standards it is difficult to object when neighbouring properties have visibility of a lesser standard than that proposed. On checking the County Council Crash Database, there have been no reported injury crashes along this section of Ryarsh

Road therefore it is difficult to state that the road is 'dangerous'. The road has no reported personal injury crashes in the vicinity of the property over the past 5 year period. It is however not clear as to why the resident wants a new access when the existing access serves the purpose. Any changes to the publicly maintainable highway need to be defined, with a concern being that all alterations to the highway could be detrimental to highway safety particularly at locations where there have been no crashes. KHS does not object, subject to use of conditions previously specified.

5.3 Private Reps: 5/0S/2R/0X plus Article 8 site notice and Conservation Area press and site adverts. Two letters received, objecting on the following grounds:

- The access point is to be close to the garden fence of No.23.
- The new driveway may impact on the tree near the common boundary.
- An issue with highway safety as the road is narrow and there are no sight lines for vehicles travelling from Ryarsh.

## **6. Determining Issues:**

6.1 This application is a resubmission following previous planning application TM/10/00561/FL, which was withdrawn due to the plans and details not being sufficiently detailed to adequately justify the proposals.

6.2 The current application proposes a new access with splays and entrance gates set back a minimum of 6m from the carriageway and approximately 5m from the front property boundary. Dwarf ragstone walls are proposed both sides of the gates with reinstatement of the existing corrugated iron fence and landscaping.

6.3 The main issues centre around the impact of the proposal on highway safety and whether it would have a detrimentally harmful impact on the Conservation Area, AONB and visual amenity of the area.

6.4 Concerns have been raised by the Parish Council and the public in relation to the impact the new access will have on highway safety along this section of Ryarsh Road. The access is to be sited just to the east of the brow of the hill on the approach to Birling. The road also bends gradually. The applicant has argued that in respect of highway safety the new access will be a betterment to that currently provided from The Close.

6.5 However, the Local Highway Authority, Kent Highway Services (KHS) has stated that it has no objection to the proposal in relation to highway matters, subject to conditions and has continued this position when asked to reassess the case. It is noted that pre-application discussions between the applicant and KHS prior to this application resulted in splays and details being proposed that are to the satisfaction of the Highway Authority. Additional comments were received from KHS on 7 October 2010 following a request from the Borough Council. KHS

comments that, as neighbouring properties have visibility of a lesser standard than that proposed and as there have been no personal injury crashes in the vicinity of the application site over the past 5 years, they do not object to the proposed development. Given the assessment and views of the Highway Authority, it would be difficult to sustain an argument that the proposal would result in significant harm to highway safety and would fail to comply with policy SQ8 of the MDEDPD.

- 6.6 Currently No.19 gains access from the shared right of way that runs along the front of the properties to the northeast. The proposed new access would provide direct access to No.19 in a more conventional and linear way. It would create privacy for the dwellings at No.15 and 19. However, the functional benefits of the new access need to be weighed against its effect on the Conservation Area, AONB and visual amenity of the area.
- 6.7 The site is within the Birling Conservation Area which is a designated heritage asset as outlined in PPS5 (Planning for the Historic Environment). Policy HE9.5 of PPS5 states that

*“when considering proposals, local planning authorities should take into account the relative significance of the elements affected and its contribution to the significance of the conservation area.”*

Further to this, policy HE10.1 states that LPAs

*“should treat favourably applications that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset.”*

- 6.8 The new access will result in the removal of a section of fencing, landscaping and embankment adjacent to the highway in front of the application site. The site frontage is currently characterised by shrubs and young trees located behind corrugated iron fencing that runs along a raised embankment. This provides an enclosed attractive approach to the centre of the village.
- 6.9 The Conservation Area takes in the properties at No.15 and 19 as well as an area of landscaping extending west from The Close and lying between the existing private access way and the highway. An Area Tree Preservation Order (TPO) in place since 1977 lies within this landscaping strip. Although the landscaped area affected by the proposal lies just outside this TPO area, it is considered to provide an important visual extension to this protected landscaped area which is integral to the established visual amenity and character of this part of the Conservation Area.
- 6.10 The applicant gave 6 weeks notice of intent to remove trees within the Conservation Area (TM/10/02206/TNCA). The Borough Council did not, in response to this notification, serve a TPO because the trees affected were not considered to be worthy of such protection. The applicant has now removed those trees and shrubs specified within the vicinity of the proposal. Even with the

removal of these trees and shrubs, the new access would still require modification of a 10-11m section of the established embankment and associated fencing. The proposal would provide gates, pillars and dwarf walls that are similar in appearance and design to those of the existing entrance at The Close.

- 6.11 I have noted the additional points put forward on behalf of the applicant and in the Grounds of Appeal. I do not disagree that more open and conventional residential layouts and settings exist to the west of the site and that the more established and dominant vegetation/landscaping lies along the northern side of Ryarsh Road. I also acknowledge that the vegetation immediately to the west of the designated TPO area that extends across the front of the application site does not consist of trees that individually or together warrant being protected under a TPO. However, it is not the individual value of the vegetation or corrugated iron fencing that is considered most important, as referred to by the applicant, but rather their aggregate value in providing a sense of enclosure and the harmful impact that the new opening/access will have on the landscape along this section, most importantly on the established embankment. The embankment provides a physical and visual base which, allows naturally forming vegetation including shrubs, ivy and young trees to take hold. This is considered to contribute strongly to the maintenance and attractive enclosed feel of the landscaped approach along the southern side of Ryarsh Road.
- 6.12 The loss of trees following the Notification of Intent to remove trees (TM/10/02206/TNCA), although thinning the vegetation, has not, in my view, altered the overall visual continuity of the landscape along this section. This is due to the retention of the embankment and fencing. The proposed opening, and associated hardstanding, walls, pillars and gates would interrupt this continuity proving a hard appearance that would significantly interrupt and damage the established softer landscaped character and visual amenity of the area.
- 6.13 A front boundary wall was granted permission at 25 Ryarsh Road (two properties to the west) in 2006. However, its setting is considered to be substantially different to that of the application site. It appears as a natural extension to the more traditional residential settings to the west that consist of open front gardens, driveways and ornamental shrubs and trees. The application site on the other hand, has an established access from The Close, Preserving the strip across the front as an attractive landscaped area which, together with the vegetation along the northern side of the road, provides a feeling of landscaped enclosure and a distinct attractive character that should be preserved. The proposed opening / access point would unreasonably encroach into, and open up, this section of the landscape without sufficient overriding benefit or need for the proposal.
- 6.14 I therefore remain of the view that any claimed positive aspects of the proposal would not outweigh the interrupting and damaging impact that the creation of the opening would have on the Conservation Area and visual amenity of the area. The proposal is therefore contrary to PPS5 and policies CP24 and SQ1. The

proposal would also not result in a high quality sustainable environment and is therefore also contrary to policy CP1.

6.15 The proposed access would not result in any harmful impact on the neighbouring property to the southwest. It is set back from the side boundary by 1.8m and would not impinge on trees within the front garden of the neighbouring property. In addition to the application site (No.19), the applicant also controls the adjoining property to the northeast (No.15). The proposal would thus not be detrimental to the residential amenities of neighbouring properties.

6.16 The proposal would not in my opinion cause material harm to the wider AONB. The proposed operations are limited to the creation of the opening and gates and dwarf walls. Although the access is deemed to have a damaging effect on the Conservation Area, the proposal would not be substantial enough, in my view, to have a detrimental impact on the AONB more broadly.

## **7. Recommendation:**

7.1 The Planning Inspectorate and the applicant be advised that, had the Local Planning Authority been in a position to determine the application, it would have **Refused Planning Permission**, for the following reason:

1 The proposal, by virtue of the interruption of the established landscaped embankment, would be damaging and detrimental to the appearance, setting and character of the Birling Conservation Area and to the visual amenity of the rural locality. The proposals are therefore contrary to Planning Policy Statement 5 (Planning for the Historic Environment) and policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD 2010. The Local Planning Authority does not consider that the proposed development brings forward any substantial benefit such as to override this harm.

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