

APPLICATION: MA/12/0324 Date: 20 February 2012 Received: 21 February 2012

APPLICANT: Mr R Clements

LOCATION: RHENCULLEN, BRIDGE STREET, LOOSE, MAIDSTONE, KENT, ME15 0BY

PARISH: Loose

PROPOSAL: Retrospective application for hard landscaping works to rear garden (re-submission of MA/11/1872), as shown on drawing number P626/1 Rev A and site plan received 21 February 2012, and Heritage Statement and Design & Access Statement both dated 20 February 2012 received 21 February 2012.

AGENDA DATE: 10th January 2013

CASE OFFICER: Jon Lawrence

The recommendation for this application is being reported to Committee for decision because:

- it is contrary to views expressed by the Parish Council
- it is a deferred item from a previous Committee (30/8/2012) that requires reporting back on the main papers following the amendments requested by Members being received and expiration of the re-consultation period

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: ENV28, ENV35, H27
- South East Plan 2009: C1, CC4, CC6, BE1, BE6, C4, NRM4, NRM5
- Government Policy: NPPF

2. HISTORY & BACKGROUND

This is outlined on the previous report to Committee attached at Appendix 1.

Members considered this application at Committee on 30 August 2012 and resolved to defer consideration for the following reasons:-

1. That consideration of this application be deferred for further negotiations to see whether a better engineering solution can be achieved which will also minimise the impact upon the Loose Valley Conservation Area.

2. That Councillors Collins, English and Harwood are to be involved in the discussions.

The revised submitted scheme has been prepared by a structural engineer. Councillor Collins, English and Harwood were involved in discussions.

3. CONSULTATIONS received in response to re-consultation

3.1 LOOSE PARISH COUNCIL: "There is still strong local opposition to proposals, and these views still carry weight within the Council as they align, to some extent, with our previously expressed concerns opposing acceptance of earlier proposals.

However, on balance, with a view to endeavouring to find a way forward and to address the issues for refusal that the Parish Council has raised in the past it would comment as follows.

The current proposals are such, that with some not unreasonable modifications, they would become acceptable to the Parish Council.

It is paramount that a "path" is formed along the stream edge to allow the migration of wildlife. This feature is currently shown as part of the proposals and is an important feature.

The use of gabions represents an improvement over the sleepers, however it is critical to our thinking that they should give rise to, and support vegetation. Consequently, it is considered that some form of filling of the interstices between the ragstone should be introduced to form a plant growing matrix. Similarly there should be a condition imposed for suitable seeding and planting.

The drawings show the gabions positioned vertically, one above another to form a retaining wall to one side of the steps, and a non-structural facing to the other. As such they will still present a hard face to the development when viewed from the north. It is felt that laying the gabions as a backward staggered terrace would help soften this and pick up something of the sloping profile of the stream bank to the side. A sloping face would also provide a better environment for the promotion of vegetation.

There is much to be gained by stepping the gabions back at horizontal joints, possibly in conjunction with laying them to a backward staggered terrace. There would not only be a visual benefit but it would also create ledges which would encourage vegetation and create wildlife habitats.

We do not feel that the proposals above are radical or impractical. They represent an extension to the current thinking as to how to achieve a solution to the problems this development has created.

As the previous application was passed to Members, it is requested that this amended application should proceed likewise, and taking in to account our additional proposals”.

- 3.2 KENT WILDLIFE TRUST – comment that they are not convinced that the benefits for wildlife are significant and that their objections still stand.
- 3.3 KCC ECOLOGY – “The river bank is included within the Loose Valley Local Wildlife Site.

The site was designated for a variety of reasons including:

-The combination of woodland and riverside shrubs and plants creates good conditions for a wide range of bird species throughout the year, including the unusual water rail in winter months. Species recorded include blackbird, mallard, goldfinch, kingfisher and green woodpecker

-The varying grassland conditions and abundant river marginal vegetation mean that a wide diversity of plant species is present.

-Several old crack willow and ash pollards along the river support a reasonable bryophyte and liverwort flora. Before the works were carried out the area of river bank may have met the above criteria. As an ecological survey was not carried out it is hard to establish exactly what the site was like prior to works starting.

From reviewing the 2003 aerial photos it appears that the area has been vegetated in the past and as a result could have acted as a corridor to wildlife along the river bank. As a result of the works the photos indicate that there is no or very minimal vegetation remaining and as a result it's suitability as a wildlife corridor has declined significantly.

From reviewing the information submitted with the planning we are aware of the reasoning behind the works however we question whether the works could have been carried out in a way that river bank and the vegetation could have been retained. This would have been the preferred option as it would have retained the connectivity of the river bank. The applicant is proposing to change the existing wooden railway sleepers to gabions and increase the planting within the area to minimise the visual impact. While this could slightly reduce the impact the works will have, it will not prevent the development having an impact on the

LWS and a loss of connectivity. As changes to the works are being carried out we, recommend that the connectivity of the LWS is recreated”.

- 3.4 MBC CONSERVATION OFFICER – No comments received in response to re-consultation.
- 3.5 MBC LANDSCAPE OFFICER – “The proposal to add gabions on a concrete foundation in front of the existing timber retaining wall immediately adjacent to the main stem of the protected tree will require excavation that will cause significant and unacceptable levels of root damage, likely to result in its death or destabilisation and subsequent failure. I therefore object to the proposal on arboricultural grounds”.
- 3.6 ENVIRONMENT AGENCY - No comments received in response to re-consultation.

4. REPRESENTATIONS received in response to re-consultation

- 4.1 Three letters of objection have been received, from local residents and the Loose Amenities Association. In summary, the grounds of objection are as follows:

- * Poor and unnecessary standard of design, cheap solution
- * Gabions will retain urban feel
- * Loss of privacy through raising of existing garden levels
- * Raised structure that is also closer to the stream under these revisions causes greater visual impact
- * Risk of flooding
- * Is Article 4 land
- * No environmental assessment submitted
- * Protected trees affected, particularly a Norway Spruce
- * Contrary to planning policy and NPPF
- * Detrimental effect on character of conservation area including from public vantage points, gabions are difficult to camouflage
- * Does not conform to Landscape Character Assessment
- * Inappropriate design and appearance
- * Destroyed wildlife advantage of natural sloping bank
- * Both original and revised scheme do not mitigate negative impacts of the development
- * Proposed planting to soften would not be permanent whilst planting areas under revised scheme are actually smaller
- * Increased size of gabions will intrude further into stream and cause unstable bank to collapse
- * Loss of landscape feature and destruction of natural line of streambank
- * The application does not include any documentation from a structural engineer

- * Gabion wall structure in Old Loose Hill was required to be removed
- * Changes to unauthorised structure are not significant
- * The development has had a negative impact on habitats in the wider landscape by damaging the connectivity of the riverbank wildlife corridor
- * The development may have had an adverse impact on protected species and / or their habitats, although this cannot be confirmed because no ecological survey work was undertaken prior to the construction of the development
- * The adverse impacts on landscape and visual character may be exacerbated if the protected, but now damaged Norway Spruce tree suffers decline or dies
- * The proposed alterations to the unlawful development as outlined in drawings P626/Rev A and Rev B in planning application MA/12/0324 do not resolve its negative landscape, visual, ecological and arboricultural impacts
- * Alternative proposals for creating a stabilised garden space should be explored

5 CONSIDERATIONS

5.1 Site Description

5.1.1 The site description is in the previous report to Committee attached at Appendix 1.

5.2 Proposal

5.2.1 The scheme in general is described in the previous report to Committee attached at Appendix 1.

5.2.2 This revised scheme does, however, offer a gabion wall structure to (i) replace the existing timber sleeper retaining walls on the east side of the development and (ii) be installed in front of the timber sleepers to be retained on the west side. Otherwise the development subject to this application is now "as built" and with the previously proposed extra terrace in the structure on the east side now eliminated.

5.2.3 The gabions will be comprised of a stainless steel cage containing local ragstone.

5.2.4 It is also still proposed to apply darker mortar with recessed joints the existing areas of ragstone walling and new brickwork.

5.2.5 This revised proposal is in line with Members requests.

5.3 Principle of Development

5.3.1 This is addressed in the previous report to Committee attached at Appendix 1.

5.4 Visual Impact

5.4.1 Again, this matter is addressed in the previous report to Committee attached at Appendix 1.

5.4.2 It is, however, considered that the revised scheme is a visual improvement on the previous proposed and the existing "as built" development, and therefore offers an improvement in terms of its relationship with the character of both the natural and historic environment.

5.4.3 Again, therefore, taking into account the apparent need for some sort of retaining structure at the property due to the historical subsidence problems, I do consider that on balance the proposed scheme is acceptable in visual terms.

5.5 Residential Amenity

5.5.1 This is addressed in the previous report to Committee attached at Appendix, when it was considered that there was no overlooking of adjacent dwellings or their private areas.

5.5.2 Therefore, given that this revised scheme actually reduces the height of part of the structure to "as built", then once again I do not consider that there would be any adverse impact on residential amenity.

5.6 Landscaping

5.6.1 No landscaping is now proposed with this revised scheme. The gaps between the stone in the gabion structures will allow indigenous flora and fauna to colonise the area and reduce any visual impact. I consider that this is acceptable. It is not appropriate to introduce seeds into these areas but instead allow the local species to colonise

5.6.2 An appropriate condition could also ensure that if the protected Norway Spruce tree on the lower terrace on the west side of the development was to die, then a suitable replacement would be required. It has already been suggested by the Council's Landscape Section that the roots of this tree at least are likely to have been damaged by the work that has already taken place. Indeed, MBC Landscape Section has also objected to this revised scheme on the grounds that the excavation works involved would damage this tree, however, as aforementioned, it is likely that damage has already occurred.

5.7 Ecology

5.7.1 Although this development will have involved removal of vegetation along the corridor of the riverbank, leading to a significant decline in its suitability as a wildlife corridor, the gabion walling structure proposed would allow indigenous flora and fauna to colonise within the area to minimise the general impact of the development. KCC Ecology accept that this could reduce the impact. They do, however, also point out that it will not prevent the development having an impact on the Local Wildlife Site and a loss of connectivity.

5.8 Flooding

5.8.1 This is addressed in the previous report to Committee attached at Appendix, where it was considered that any resultant flood risk is not to the extent that permission should be refused. This view does not alter as a result of this revised scheme.

5.9 Other Matters

5.9.1 As in the previous committee report, it needs to be considered how best to secure implementation of the scheme subject to this application as opposed to the development constructed.

5.9.2 Enforcement action could be taken against the unauthorised development as constructed (prior to it achieving immunity which would be in at least another 3 years) should any planning permission granted for the scheme subject to this application not be implemented in the meantime. Whilst I could understand any demand for the proposed scheme to be implemented within a restrictive timescale, I do not therefore consider it necessary to impose a short time limit for implementation by way of condition on any permission granted for the proposed scheme, if this were indeed even possible. The applicants could also be advised by way of Informative that appropriate enforcement action will be taken by the LPA should the unauthorised development remain in place without any progress being made to implement the planning permission granted. Such action would not necessarily have to wait until near the time when immunity would be reached.

5.9.3 An appropriate condition requiring the protected Norway Spruce Tree to be suitably replaced if it dies or is removed would secure an important tree in this location.

- 5.9.4 A condition requiring submission within 2 months of the materials and details of the repointing of the ragstone will also provide focus in implementing any approval.
- 5.9.5 It has been suggested in comments from the Parish Council that the Council secured removal of a similar gabion wall structure elsewhere in Loose village. However, it needs to be considered that whether or not this was the case, each planning matter is required to be assessed and considered on its own individual merits.

6. CONCLUSION

- 6.1 The proposed scheme would not have an unacceptable visual impact on the character of the natural and historic environment including the Conservation Area and designated ALLI.
- 6.2 The proposed scheme would not have an unacceptable impact on residential amenity.
- 6.3 The ecological impact of the development can be reduced through the gabion structures proposed.
- 6.4 It can be assured that the materials to be used and repointing of the ragstone are acceptable and appropriate by securing all for submission and implementation by condition.
- 6.5 A suitable replacement tree for the protected Norway Spruce if it dies or is removed can also be secured by condition.
- 6.6 Should the subject revised scheme not be implemented then enforcement action could still be taken against the unacceptable development as constructed before it achieves immunity.
- 6.7 I therefore consider the development to be acceptable and that planning permission should be granted subject to conditions.

7. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and

Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Should the existing protected Norway Spruce tree die, be removed, or become seriously damaged or diseased then it shall be replaced with a suitable replacement to be agreed in writing with the Local Planning Authority;

Reason: in the interests of visual amenity, in accordance with policies ENV28, ENV35 and H27 of the Maidstone Borough-Wide Local Plan 2000 and policies CC1, CC6, C4, BE1 and BE6 of the South East Plan 2009.

3. Within 2 months written details and samples of the materials used and to be used in the development shall be submitted to and approved in writing by the local planning authority and the development shall thereafter be constructed using the approved materials within 2 months of the date of any subsequent approval of those details;

Reason: to ensure a satisfactory appearance to the development, in accordance with policies ENV28, ENV35 and H27 of the Maidstone Borough-Wide Local Plan 2000 and policies CC1, CC6, C4, BE1 and BE6 of the South East Plan 2009.

4. Within 2 months of the date of this decision written details and a sample of the proposed repointing of the existing ragstone walling included in the development shall be submitted to and approved in writing by the local planning authority and the approved details shall thereafter be implemented within 2 months of the date of any subsequent approval of those details;

Reason: to ensure a satisfactory appearance to the development, in accordance with policies ENV28, ENV35 and H27 of the Maidstone Borough-Wide Local Plan 2000 and policies CC1, CC6, C4, BE1 and BE6 of the South-East Plan 2009.

5. The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing number P626/1 Rev A received 21 February 2012.

Reason: To ensure the quality of the development is maintained in accordance with policies ENV28, ENV35 and H27 of the Maidstone Borough-Wide Local Plan 2000 and policies CC1, CC4, CC6, C4, BE1, BE6 , NRM4 and NRM5 of the South East Plan 2009.

Informatives set out below

The applicant is advised that, for biodiversity reasons, the inclusion of species native to the riverbank should be included and incorporated in the landscaping scheme required to be submitted.

The applicant is reminded that the existing development as constructed is in breach of planning control and considered unacceptable, and that therefore appropriate formal enforcement can and will be pursued by the local planning authority should it remain without implementation of the scheme hereby approved.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.