

MC/23/0707

Date Received: 22 March 2023  
Location: 40 Birling Avenue Rainham Gillingham Medway  
Proposal: Construction of a two-storey side extension comprising of a retail unit at ground floor level and a residential flat at first floor level with associated vehicular crossover - demolition of existing outbuilding.  
Applicant Mr MANJEET SINGH  
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Gillingham  
ME7 5EJ  
Ward: Rainham North Ward  
Case Officer: Hannah Rusbridge  
Contact Number: 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 5th July 2023.**

**Recommendation - Approval with Conditions**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:  
Received 22 March 2023:  
Proposed Block Plan  
ICON-134-P2 Proposed Plans  
ICON-134-P4 Proposed Elevations  
Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 All materials used externally shall match those of the existing building.

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 4 No development above ground floor slab level shall take place until a scheme of noise mitigation that protects residents of the proposed flat from traffic related noise to the extent that occupiers are not exposed to levels indoors of more than 35dB LAeq 16 hrs daytime and of more than 30dB LAeq 8 hours in bedrooms at night), shall be submitted to and approved in writing by the Local Planning Authority. The approved sound insulation measures shall be installed prior to first occupation of the flat and shall thereafter be retained.

Reason: To ensure that the amenity of occupiers of the development site are not adversely affected by noise from transport or commercial noise sources.

- 5 No development above ground floor slab level shall take place until a scheme of sound insulation works to the floor/ceiling structure between commercial and residential unit has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the bringing into use of the retail unit or first occupation of the flat (whichever is the sooner) and shall be retained thereafter in perpetuity.

Reason: To ensure that the amenity of occupiers of the development site are not adversely affected by noise from commercial noise sources.

- 6 No part of the development shall be occupied until the vehicular access to all the proposed parking spaces has been constructed in accordance with the approved drawing. The access shall thereafter be retained.

Reason: In the interests of highway safety and the free flow of traffic.

- 7 Prior to bringing into use the retail unit or first occupation of the flat (whichever is the sooner) the area shown on the submitted layout as vehicle parking space (to serve the entire development including the existing dwelling) shall be provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking or garaging of vehicles is likely to lead to hazardous on-street parking and in accordance with Policies T1 and T13 of the Medway Local Plan 2003.

- 8 No development shall take place above ground floor slab level until details of the provision of 3 electric vehicle charging points (2 for existing dwelling and 1 to serve the flat) have been submitted to and approved in writing by the Local Planning Authority. Details shall include the location, charging type (power

output and charging speed), associated infrastructure and timetable for installation. The EV charging points shall be provided prior to bringing into use the retail unit or first occupation of the proposed flat (whichever is the sooner) and shall thereafter be maintained.

Reason: In the interests of sustainability in accordance with paragraph 112(e) of National Planning Policy Framework 2021.

- 9 No part of the development shall be occupied until details of cycle storage facilities to serve the retail unit and flat have been submitted to and approved in writing by the Local Planning Authority. The cycle storage facilities shall be implemented in accordance with the approved details prior to the bringing into use of the retail unit or first occupation of the flat (whichever is the sooner) and shall thereafter be retained.

Reason: to ensure satisfactory cycle storage in accordance with Policy T4 of the Medway Local Plan 2003.

- 10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any order amending, revoking and re-enacting that Order with or without modification) no development shall be carried out within Schedule 2, Part 1, Classes A, AA, B, E, G and F of that Order unless planning permission has been granted on an application relating thereto.

Reason: To enable the Local Planning Authority to control such development in the interests of design and amenity, in accordance with Policies BNE1 and BNE2 of the Medway Local Plan 2003.

- 11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification) all dwellinghouses herein approved shall remain in use as a dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order amending, revoking and re-enacting that Order with or without modification) and no change of use shall be carried out unless planning permission has been granted on an application relating thereto.

Reason: To enable the Local Planning Authority to control such development in the interests of amenity, in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 12 The development herein approved shall incorporate the measures to address energy efficiency and climate change as set out within the Design and Access Statement received on 23 March 2023. The development shall not be occupied until a verification report prepared by a suitably qualified professional has been submitted to and approved in writing by the Local Planning Authority confirming that all the approved measures have been implemented.

Reason: In the interests of sustainability and to positively address concerns regarding climate change in accordance with paragraph 154 of the National Planning Policy Framework 2021.

- 13 The proposed retail unit shall not be open outside of the hours of 06.00 - 21.00 Monday to Saturday and 08.00 - 18.00 on Sundays and bank holidays. In addition, the retail unit should not be serviced or have deliveries outside of the same hours.

Reason: In the interests of residential amenity and to comply with Policy BNE2 of the Medway Local Plan 2003.

- 14 14. Notwithstanding the provisions of the Town and Country Planning (use classes) (amendment) (England) regulations 2020 the retail unit shall only be used for purposes falling within Class E(a) and for no other purposes within Class E without the formal consent of the Local Planning Authority.

Reason: In the interests of residential amenity

**For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.**

### **Proposal**

This application seeks full planning permission for the construction of a two-storey side extension comprising of a retail unit at ground floor level and a residential flat at first floor level with associated vehicular crossover and demolition of existing outbuilding.

The proposed side extension would project approximately 5.87m from the flank elevation and would be lower than the maximum ridge height of the original property.

The proposed extension would facilitate a shop (Class E (a)) and toilet at ground floor which would be accessed from Birling Avenue. The first floor would consist of a 1b2p flat comprising a kitchen/living/dining area, shower room, bedroom, and a study. The flat would be accessed from Bloor's Lane. The existing property would remain as a 3-bedroom dwellinghouse with access from Birling Avenue.

There would be a gap of approximately 1m (at its closest point) from the flank elevation to the boundary of Bloor's Lane.

### **Relevant Planning History**

No relevant history.

### **Representations**

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

3 letters of objection have been received along with a petition signed by 154 residents objecting to the development on the following grounds:

- Concerns regarding increased traffic congestion
- Increase in traffic hazards and resultant safety concerns in area where there has been serious accidents and fatalities already.
- No requirement for additional retail unit and due to saturation may result in other retail units closing with consequent harm to the area.
- Insufficient parking proposed.
- 1 letter accepts principle of extension but only for domestic purposes not for retail.
- Retail would only be acceptable with traffic restrictions.

## **Development Plan**

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2021 (NPPF) and are generally considered to conform. Where non-conformity exists, this is addressed in the Planning Appraisal section below.

## **Planning Appraisal**

### *Principle*

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

The NPPF seeks to pursue sustainable development, in a positive way through a presumption in favour of sustainable development, unless the paragraphs within the NPPF provide clear reasons for refusing development, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits (paragraph 11). Paragraph 60 of the NPPF also seeks to boost the supply of housing by bringing forward a variety of land to meet specific housing requirements.

The site is within the urban area as defined on the proposal maps to the Local Plan. Policy H4 of the Local Plan promotes the best use of development opportunities within the urban areas and directs development to such areas. Paragraphs 11 and 60 of the NPPF seek to boost housing supply but is subject to assessment against other material considerations as to whether a clear improvement to the environment will result. Paragraph 71 of the NPPF states that development in residential gardens should be resisted where it would cause harm to the local area. Additionally, paragraph 117 of the NPPF promotes the effective use of land to meet housing needs.

The application site is located within the defined urban boundary of Rainham in a

residential area close to the town centre. The site appears to have historically been used as amenity space for the adjacent dwelling. There is a retail shop with a residential unit in the vicinity at Denbigh Avenue and there are other small commercial uses in the area, including a Glass & Glazing shop, Ceramics shop as well as private offices.

There is no objection with regard to the principle of the development when considered against the above policies and paragraphs in the Local Plan and NPPF.

### *Design*

Paragraphs 126 and 130 of the NPPF emphasise the importance of good design and Policy BNE1 of the Local Plan states that development should be satisfactory in terms of scale and mass and should respect the visual amenity of the surrounding area.

Birling Avenue contains residential development on the northern side with planting on the southern side, partially screening the development from the main A2 (London Road). The residential properties are generally 2-storey and a mix of detached and semi-detached. The existing garage would be demolished to accommodate the extension.

It is considered that the development in terms of scale, mass, proportion and layout is appropriate on this site. In terms of design, the building would be in keeping with the surrounding built form and would not be detrimental to the character of the area. Subject to the recommended condition to secure matching materials, the application is considered to be in accordance with Policy BNE1 of the Local Plan and paragraphs 126 and 130 of the NPPF.

### *Amenity*

There are two main amenity considerations, firstly the impact of the proposed development on neighbours and secondly the living conditions which would be created for potential occupants of the development itself. Policy BNE2 of the Local Plan and paragraph 130f of the NPPF relates to the protection of these amenities.

### Neighbouring Amenity

The proposed development would intensify the residential use on this site and introduce a commercial unit. The closest residential unit is the new build to the rear of the site which fronts Bloor's Lane. However, due to the orientation of both properties, proposed fenestration, and distance from any habitable windows, it is not considered that this would be detrimental to the amenities of occupiers of the neighbouring property by way of overlooking, or loss of privacy.

With regard to the direction of sun, it is not considered that the proposal would be detrimental to neighbouring amenity by way of loss of outlook or cause any unacceptable overshadowing.

## Future Occupier Amenity

With regard to the amenities of future occupants of the development itself, the proposed flats have been assessed with regard to the technical housing standards – nationally described space standard dated March 2015. The proposed new flat would exceed the space standards required for a 1b2p flat. All habitable rooms are provided with adequate outlook and daylight.

The Medway Housing Design Standards (MHDS) requires properties to have at least 5sqm additional private outdoor amenity space for flats. The proposal does not include private external amenity space, but internally does exceed the space standards by more than 5sqm in order to compensate.

Given the restricted size of the plot and mix of uses in the immediate vicinity, in this instance it is considered necessary to remove permitted development rights with regard to extensions, roof extensions and alterations, and outbuildings within the curtilage of the dwelling and an appropriate condition is recommended. This restriction is justified in the interest of protecting neighbouring amenity in accordance with Policy BNE2 of the Local Plan and paragraph of 130 of the NPPF.

It is recommended that a condition is added to remove the permitted development right to change between C3 and C4 to reduce any potential future impact on the residential amenity of neighbouring residents, in accordance with Policy BNE2 of the Local Plan and paragraph 130 of the NPPF.

In order to protect the amenities of prospective occupiers from noise from surrounding traffic and from the proposed retail unit appropriate conditions are recommended to secure sound insulation and to restrict the opening hours of the proposed retail unit.

## *Highways*

40 Birling Avenue is a 3-bedroom property with parking on the drive. An outbuilding is in use as a gymnasium and store. The property is located on the junction of Bloor's Lane and the A2 London Road, and accessed off Birling Avenue, a no-through residential road that runs parallel to the A2 London Road. It is proposed that 4 car parking spaces are provided, all accessed from Birling Avenue. 1 to serve the proposed retail unit and 1 space for the flat, while the existing dwelling will be served by 2 parking spaces. It is considered that the 4 off-street parking spaces provided are acceptable and the proposal is unlikely to result in an adverse impact on highway safety or affect the free flow of traffic on the local highway network.

The NPPF has put sustainable development at its core and paragraph 112e outlines that development should provide electric charging facilities. One electric vehicle charging point has been shown on the submitted plans and an appropriate condition is recommended to secure the implementation of the charging point.

A condition is recommended to ensure cycle storage facilities are provided on site. Subject to this condition, the application is considered acceptable with regard to Policy T4 of the Local Plan.

Subject to the recommended conditions the proposal is considered to be acceptable in highway terms and in accordance with Policies T1, T2, T4 and T13 of the Local Plan and paragraphs 111 and 112e of the NPPF.

### *Climate Change and Energy Efficiency*

A sustainability section has been submitted within the Design and Access Statement which states the following measures to address climate change and energy efficiency:

- Compliance with Part L of Building Regulations
- Condensing boilers with low Nitrous Oxide emission rates
- Low energy AAA rated appliances specified and installed.
- Low flush/dual flush WC cisterns and spray taps
- Low energy light fittings.

An appropriate condition is recommended requiring a verification report to ensure that the measures outlined in the Energy Efficient and Sustainable Building Principles have been complied with in accordance with paragraph 154 of the NPPF.

### *Bird Mitigation*

As the application site is within 6km of the North Kent Marshes SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in combination, on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest. Natural England has advised that an appropriate tariff of £314.05 per dwelling (excluding legal and monitoring officer's costs, which separately total £550) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries. This tariff should be collected for new dwellings, either as new builds or conversions (which includes HMOs and student accommodation).

These strategic SAMMS mitigation measures are being delivered through Bird Wise North Kent, which is the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, and the mitigation measures have been informed by the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014. Further information regarding the work being undertaken is available at The Bird Wise website which can be found at <https://northkent.birdwise.org.uk/about/>.



The applicant has submitted a SAMMS Mitigation Contribution Agreement and payment and therefore no objection is therefore raised under Policies S6 and BNE35 of the Local Plan and paragraphs 180 and 181 of the NPPF.

A decision from the Court of Justice of the European Union detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full 'appropriate assessment' is needed under the Habitats Directive. Given the need for the application to contribute to the North Kent SAMMS, there is a need for an appropriate assessment to be carried out as part of this application. This is included as a separate assessment form.

### **Conclusions and Reasons for Approval**

The proposed development would not detract from the appearance of the surrounding area, appearing as an extension to 40 Birling Avenue. The proposal would not result in significant impact to parking provisions, highway's function or neighbouring amenity. As such the proposal would be in accordance with Policies S6, BNE1, BNE2, BNE35, H9, T1, T2, T4, and T13 of the Medway Local Plan 2003 and paragraphs 60, 71, 111, 112e, 126, 130, 180 and 181 of the National Planning Policy Framework 2021 and is accordingly recommended for approval.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the number of representations received expressing a view contrary to officer's recommendation for approval.

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### **Background Papers**

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection on Medway Council's Website <https://publicaccess1.medway.gov.uk/online-applications/>