
Appeal Decision

Site visit made on 14 February 2017

by L Gibbons BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21st March 2017

Appeal Ref: APP/A2280/W/16/3157235

Land at rear of 23 Chapel Road, Isle of Grain, Rochester ME3 0BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr K Carter (Carter Land and Development Ltd) against the decision of The Medway Council.
 - The application Ref MC/16/1903, dated 28 April 2016, was refused by notice dated 28 July 2016.
 - The development proposed is 4no detached houses with off street parking.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant considers that Policies BNE1 and BNE2 of the Medway Local Plan (LP) were not saved. However, a letter dated 21 September 2007¹ does include a schedule which clearly lists the saved policies of the LP including BNE1 and BNE2. I therefore consider that the policies are saved policies. I return to this matter below.

Main Issues

3. The main issues are:
 - i) The effect of the proposal on the living conditions of the future occupiers and No 23 Chapel Road in respect of the quality of outdoor space to be provided and retained, and on the living conditions of the occupiers of adjacent properties in respect of outlook;
 - ii) Whether the proposed parking provision would be acceptable with regard to the effect on the existing residents of Doggets Row; and,
 - iii) The effect of the proposed development on the North Kent Marshes Special Protection Area (SPA).

Reasons

Living conditions

4. The properties close to the appeal site generally have long rear gardens, with the exception of those on Doggetts Row. The proposed dwellings would have small rear gardens, which would face towards the northwest. My attention has

¹ Planning and Compulsory Purchase Act 2004, Medway Local Plan 2003 Saved Policies Application

been drawn to the Council's Interim Housing Design Standards (IHDS) 2011 in respect of garden sizes. The Council refer to a depth of 7 metres being acceptable as a minimum. None of the gardens are of sufficient depth to meet this standard, although I acknowledge they are wider. I note that the IHDS has largely been replaced by the national Technical Housing Standards, and as such I give it little weight.

5. Nevertheless, the garden of Plot 3 would have a very limited depth. In addition, due to the staggered nature of development parts of the garden would be adjacent to the parking spaces and bin storage on both sides of the plot. In combination with the small size of the garden overall and orientation this would provide a poor quality outdoor environment for the future occupiers. Plot 4 would also have a very narrow depth of garden to the rear. Whilst there would be some side garden this would be north facing, and adjacent to an area of open space and a pavement. As such it would not be particularly private with the remaining space very small. The scheme would not provide high quality outdoor space for Plots 3 and 4 which future occupiers could reasonably expect.
6. Plots 1 and 2 would have slightly larger gardens. The Council's officer report also refers to the potential for a condition which would remove the permitted development rights of future occupiers to build additions or other structure within the rear gardens. The garden of Plot 1 of the scheme would be overlooked from the first floor of No 23. There would be the opportunity to sit out at some distance from the rear elevation of No 23. I consider this would provide an acceptable level of privacy for the future occupiers of Plot 1. However, these matters would not be sufficient to overcome my concerns in respect of Plots 3 and 4.
7. No 23 Chapel Road would retain a side garden, and the rear garden would be reduced in depth to accommodate the proposed scheme. The side garden is mainly open, and exposed to public view from Doggetts Row and Chapel Road. The remaining part of the rear garden would be north facing, and of fairly limited depth close to the rear elevation of the existing house. The side elevation of Plot 1 would be seen across half of the rear garden with the mass and bulk highly visible to the occupiers of No 23. The rest of the development would be noticeable due to the staggered layout. In such a context, the introduction of built development would be easily apparent to the occupiers of No 23. In combination, the orientation of the rear garden, proximity and nature of the layout would result in the development appear overbearing to the occupiers of No 23 when within their rear garden and when viewed from the first floor.
8. In terms of the siting of the development in relation to other properties the four dwellings would be positioned so that they would be seen very clearly from the majority of the garden at No 21. Even with small gaps in between the houses, I consider that the combined mass and bulk of the dwellings would appear dominant and intrusive to the occupiers of No 21 when within their garden.
9. For the reasons given above, I conclude that the proposed development would cause considerable harm to the living conditions of the future occupiers of Plots 3 and 4 and the occupiers of No 23 Chapel Road in respect of the quality of outdoor space to be provided and retained. It would also cause harm to the

living conditions of the occupiers of adjacent properties in respect of outlook. It would be in conflict with saved Policies BNE1 and BNE2 of the LP, these amongst other things seek new development that should be appropriate in relation to the character, appearance and functioning of the built environment, and protect those amenities enjoyed by nearby and adjacent properties. It would be contrary to the provisions of the National Planning Policy Framework (the Framework) in respect of the need for high quality design.

Parking provision

10. The proposal would incorporate parking spaces for two cars to park in tandem at the side of each new dwelling. The space is sufficient to be able to accommodate two cars satisfactorily. Doggetts Row where the houses would be accessed from is wide enough for one pavement, and traffic is able to pass along the road safely. I note that the route is used by children getting to and from school, and also by vans and lorries. However, although the road has a gentle bend visibility along the road and pavement is good in both directions. The speed of traffic was slow as the road is short in distance.
11. There are a number of semi-detached houses on Doggetts Row with parking and hardstanding at the front of the properties. There are no features which would obscure the view of drivers entering or leaving these properties. I accept that there would be some manoeuvring which would occur as a result of the nature of the proposed parking provision. However, taking account of the number of cars and likely vehicles movements resulting from the scheme, and the good visibility I consider this would not be so significant to result in material harm to the occupiers on Doggetts Row. There would be no conflict with policy BNE2 of the LP in this regard.

North Kent Marshes SPA

12. The Council have advised that the proposal would require mitigation for the effect on the SPA. This would be in respect of the effect of new residential development within 6 kilometres of the SPA on recreational disturbance to over-wintering birds. A tariff has been agreed between Natural England and the affected planning authorities, and the Council indicate that a contribution would be required towards Strategic Access Management and Monitoring. It is anticipated that this would be secured in the form of a Unilateral Undertaking. From the evidence before me I consider a contribution would be necessary to make the development acceptable.
13. I note that the appellant does not contend that in the absence of mitigation measures the proposal would not have the potential to harm the SPA and provided an Undertaking to the Council. I note that the Council raised concerns about some aspects of the undertaking, and I have not been provided with a copy. There is no mechanism before me by which the contributions would be secured. Consequently, I cannot be certain that a scheme would be put in place that would provide adequate measures to avoid or mitigate potential adverse effects on the SPA. However, as I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the parties.

Other matters

14. The Council does not raise any objection in terms of the detailed design of the individual dwellings including scale and proportions. The design of dwellings and use of materials in the area is very mixed, and the scheme would be appropriate in that context. However, this does not outweigh the harm I have found.

Conclusion and balance

15. The appellant refers to saved policies BNE1 and BNE2 of the LP as having not been replaced promptly. The Framework at paragraph 211 sets out that the policies in the Local Plan should not be considered out of date simply because they were adopted prior to the publication of the Framework. Policies BNE1 and BNE2 have a considerable degree of consistency with the Framework where it relates to the need to secure high quality design and a good standard of amenity for all existing and future occupiers.
16. The Council refer to a recent appeal decision within the area which concluded that they were unable to demonstrate a five year supply of housing land. In the absence of a five year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up to date. Policy BNE1 of the LP could be considered to be such as policy as it sets out that development should be appropriate in relation to the character, appearance and functioning of the built and natural environment which could restrict the supply of housing.
17. In these circumstances, paragraph 14 of the Framework sets out how the presumption in favour of sustainable development should be applied and indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. The Council indicate that the general principle of residential development in the area is acceptable. The appeal site is located close to some services and facilities, and is in a reasonably accessible location. Future residents would be likely to make use of the services and facilities that do exist. The proposal would also make a small contribution to the supply of housing land within the area. These are small benefits that weigh in favour of the appeal proposal. The proposal would not cause harm to the living conditions of the occupiers of Doggetts Row in respect of the parking provision.
18. Paragraph 8 of the Framework states that the three sustainability roles should not be undertaken in isolation, because they are mutually dependent. In this instance the considerable harm to the living conditions of existing and future occupiers leads me to conclude that the proposal is not sustainable development. The impacts significantly and demonstrably outweigh the benefits.
19. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

L Gibbons

INSPECTOR