



Appeal Decision

Site visit made on 30 October 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 7th November 2017

Appeal Ref: APP/U2235/W/17/3180158

11 - 13 Albion Place, Maidstone ME14 5DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Gary Aldridge of Prime Folio against the decision of Maidstone Borough Council.
 - The application Ref 17/501866/FULL, dated 4 April 2017, was refused by notice dated 30 June 2017.
 - The application sought planning permission for development described as an 'outline application for erection of 3 storey building containing 8 flats, and access to car park with 6 car spaces, bin and cycle stores to include access, appearance, layout and scale with all other matters reserved as shown on drawing numbers 14-46-20, 14-46-21, 14-46-24, 14-46-25, 14-46-26 dated November 2015 and 14-46-22 received on 11 January 2016' without complying with a condition attached to planning permission Ref 15/509547/OUT, dated 17 February 2016.
 - The condition in dispute is No 14 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: 14-46-20, 14-46-21, 14-46-24, 14-46-25, 14-46-26; dated November 2015 and 14-46-22; received on 11.01.2016.*
 - The reason given for the condition is: *To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers.*
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Decision

1. The appeal is allowed and planning permission is granted for development described as an 'outline application for erection of 3 storey building containing 8 flats, and access to car park with 6 car spaces, bin and cycle stores to include access, appearance, layout and scale with all other matters reserved' at 11 - 13 Albion Place, Maidstone ME14 5DY in accordance with the application Ref 17/501866/FULL dated 4 April 2017, without compliance with condition number 14 previously imposed on planning permission Ref 15/509547/OUT dated 17 February 2016 and subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. I have altered the description of the development in the formal decision above to remove reference to previous plan numbers, in the interests of clarity.
3. The site address given on the application form is 11 Albion Place but it is apparent from the appeal documents and my visit that the proposal relates to land at the rear of 11 - 13 Albion Place, and I have considered the appeal on

that basis. At the time of my visit construction of the development was substantially underway.

4. The appellant seeks to vary condition 14, which specifies the approved plans, in order to substitute drawings 14-46-A 02A; 14-46-A 07A; 14-46-A 09; and 14-46-A 10 in place of those previously approved. The amended drawings include the addition of several rooflights and two dormer windows. This would potentially facilitate the future provision of an additional unit of residential accommodation in the roof space of the building at fourth floor level, which does not form part of the appeal proposal and the appellant advises would be subject to a subsequent planning application. Drawing 14-46-22C relates to layout and landscaping details submitted in place of 14-46-22, to which the Council has raised no concerns.

Main Issues

5. The main issues are i) whether or not the proposed variation to condition 14 would constitute a minor material amendment to planning permission Ref 15/509547/OUT and ii) the effect of the proposed variation on the character and appearance of the area, including the setting of the Holy Trinity Church Conservation Area (HTCCA) and the setting of nearby listed buildings.

Reasons

Whether the proposal constitutes a minor material amendment

6. The appeal site is situated at the rear of 11 and 13 Albion Place, accessed from and fronting onto Queen Anne Road. The area is mixed in both character and appearance, including large modern blocks of flats, more modest traditional houses, and various offices and shops. The HTCCA runs adjacent to the site at the front and to one side, where neighbouring 9 Queen Anne Road lies within its boundary.
7. 'Minor material amendments' (MMA) to a planning permission may be sought by making an application under Section 73 of the Town and Country Planning Act 1990 to vary or remove a condition attached to that permission. There is no statutory definition of a MMA although the Planning Practice Guidance (PPG) explains that a MMA 'is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved'.
8. While no floor plans for the fourth storey have been provided it is apparent from the appellant's case that their ultimate intention is to provide an additional unit of residential accommodation in the roof space of the new building, albeit they state that this unit would be subject to a future planning application. The Council is principally concerned, in respect of this main issue, that the provision of an additional residential unit would significantly alter the nature of the development from that approved, contrary to the PPG, such that it would not constitute a MMA.
9. It is likely that the proposed front and rear dormers and the various rooflights sought in this appeal, together with the new staircase from the third to the fourth storey shown on proposed section A, are principally sought to facilitate a potential future conversion of the roof space of the building to an additional unit. However, the case before me relates only to the details of the substitute plans proposed, which do not show an additional residential unit, whatever any

subsequent intentions may be. I must determine the appeal on the application and information before me, and not on the basis of some possible future planning application.

10. In light of the above, I am satisfied that the proposed alterations to the design of the roof in this case are of a modest scale and nature that would not result in a development that is substantially different from the one that has been approved. The overall number and scale of residential units provided would be unchanged. I therefore conclude that the proposed variation to condition 14 would constitute a MMA in relation to planning permission Ref 15/509547/OUT.

Character and appearance

11. The new building is clearly visible from Queen Anne Road. However, the proposed front and rear dormers would be subservient in size and scale to their respective roof slopes, and set in from the ridge of the main roof and the eaves. The gently curved roof of the dormers would reflect that of the window below and the dormers would be aligned with the central windows in the front and rear elevations. I saw that the local area has a mixed roofscape, where there are various examples of dormers, including at the adjacent terrace of houses in Queen Anne Road, which lie within the HTCCA. As a result, the proposed front dormer would not be unduly prominent, incongruous, or out of keeping in the street scene. The dormer at the rear would be positioned with limited public views, such as a glimpsed view from Brooks Place, from where it would appear subservient to the host building. I am therefore of the view that the dormers would not harm the character and appearance of the host building or the locality.
12. The existing building includes solar panels and rooflights on the side elevation facing south towards 9 Queen Anne Road. Two additional rooflights are proposed in this elevation. Three rooflights are also proposed in the side elevation facing north. In light of their relatively modest size and subservient nature in relation to the existing roof, the additional rooflights would have a very limited effect on the overall character and appearance of the host building and would not appear prominent or incongruous in the street scene.
13. I note that the Council has refused several applications for the redevelopment of the site which included flats at fourth storey level, and that two cases were subsequently dismissed at appeal¹. While I have not been provided with copies of the relevant plans in those cases, it is apparent from the description and the Inspector's decisions that the first related to a four-storey building, at least in part, and the second related to a building with three full storeys and the fourth storey located within an elevated eaves attic space. On this basis, I am satisfied that the proposal before me, which principally relates to the existing roof of the permitted three-storey building, differs significantly from those previously before my colleague.
14. The Maidstone (Holy Trinity) Conservation Area Character Appraisal 2007 (CACA) advises that Queen Anne Road was a historic route to Sittingbourne, before Albion Place was cut through in 1822. After this, Queen Anne Road was largely relegated to a rear access to houses that developed on Albion Place, a role it generally maintains today. The Maidstone Holy Trinity Conservation Area Management Plan 2010 (CAMP), sets out various principles for

¹ APP/U2235/W/15/3078175 and APP/U2235/W/15/3137076

development control, including that buildings should respect the predominant modest scale of buildings in the Conservation Area and should not exceed three storeys in height, although attic accommodation may be acceptable.

15. Given that I have found that the addition of the dormers and rooflights would not harm the character or the appearance of the area, and considering that the building would not be increased in height, the proposal would not conflict with the general aims of the CACA or the CAMP. While the proposed variation to condition 14 would cause a small measure of perceptible change to the setting of the HTCCA, this would be in the context of a varied street scene and roofscape and would not be of a magnitude to constitute harm to its significance. Thus the effect of the proposal would be neutral and the setting of the HTCCA would be preserved.
16. I have also considered the effect of the proposal on the setting of the Grade II listed buildings in Albion Place, as well as other locally listed buildings nearby. Preserving the setting of a statutorily listed building is a matter of considerable importance and weight and I am mindful of my duty under Section 66(1) of the planning (Listed Buildings and Conservation Areas) Act in this regard. While the proposed development would result in a measure of perceptible change to the settings of nearby listed buildings, and the context in which they are experienced, this would not be of a magnitude to constitute harm given the degree of separation between the site and those listed buildings. Hence, the effect of the proposed development would be neutral and therefore the setting and significance of the nearby listed buildings would be preserved.
17. I therefore conclude that the proposed variation of condition 14 would not harm the character and appearance of the area, including the setting of the HTCCA and the setting of nearby listed buildings. It would therefore generally accord with the requirements of the CACA and the CAMP, and the relevant aims and objectives of the National Planning Policy Framework in this regard.

Conditions

18. The PPG makes clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been fully discharged. The Council advises that the majority of conditions to planning permission Ref 15/509547/OUT have been discharged by application Ref 16/505081/SUB. However, while the development has commenced it is not complete and many of the original conditions include ongoing requirements, including in relation to carrying-out, completion and first occupation of the development. I have therefore imposed all those that I consider remain relevant in full or in part. In the event that other details have in fact been discharged, that is a matter which can be addressed by the parties. The varied condition 14 will become condition 13 of the new planning permission, as set out in the attached schedule.

Conclusion

19. For the reasons set out above I conclude the appeal should be allowed.

Catherine Jack

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development shall not commence until approval of the following reserved matters has been obtained in writing from the local planning authority:-
 - a. Landscaping

Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 2) Prior to the commencement of any works above damp proof course level, written details and samples of the materials to be used in the construction of the external surfaces of any buildings and hard surfaces shall be submitted to and approved in writing by the local planning authority and the development shall be constructed using the approved materials. The details and samples of the materials submitted shall include details of swift and /or bat bricks incorporated into the eaves of the proposed building.
- 3) The development shall not commence until details of the proposed slab levels of the building(s) and the existing site levels have been submitted to and approved in writing by the local planning authority and the development shall be completed strictly in accordance with the approved levels.
- 4) Prior to the commencement of any works above damp proof course level, details of all fencing, walling and other boundary treatments shall be submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details before the first occupation of the building(s) or land and maintained thereafter. Boundary details shall include front boundary details to include a dwarf wall with railings above; and rear boundary details should allow for an open aspect to the rear of 11-13 Albion Place.
- 5) The development shall not commence until details of a scheme of foul and surface water drainage for the site have been submitted to an approved by the local planning authority in consultation with Southern Water. The development shall thereafter be carried out in accordance with the approved details.
- 6) Prior to the commencement of any works above damp proof course level, details of the cycle and refuse storage on the site shall be submitted to, and approved in writing by, the local planning authority. The approved facilities shall be provided before the first occupation of the buildings hereby permitted and maintained thereafter.
- 7) Landscaping details submitted pursuant to condition 1 above shall be implemented in the first available planting season. Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, die or become so seriously damaged or diseased that

their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation.

- 8) Prior to the occupation of the approved building the existing vehicle access shall be closed up in accordance with details to be submitted to and approved by the local planning authority.
 - 9) Prior to the commencement of any works above damp proof course level, a scheme to demonstrate that the internal noise levels within the residential units will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - Code of Practice, shall be submitted to and approved in writing by the local planning authority. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation of the premises and be retained thereafter.
 - 10) The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:
 - 1) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
 - 2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - 3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
 - 4) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean.
- Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

- 11) No development shall take place until details in the form of large scale drawings (at a scale of 1:20 or 1:50) of the following matters have been submitted to and approved by the local planning authority:
 - i) Details of the roof overhangs and eaves.
 - ii) Details of window and door joinery and recesses/reveals.
 - iii) Details of balustrades.

The development shall be undertaken in accordance with the approved details and maintained thereafter.
- 12) The development shall not commence until details of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby approved have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and all features shall be maintained thereafter.
- 13) The development hereby permitted shall be carried out in accordance with the following approved plans: 14-46-A 01; 14-46-A 02 rev A; 14-46-A 07 rev A; 14-46-A 09; 14-46-A 10; and 14-46-22 rev C.