



Appeal Decision

Site visit made on 13 August 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th October 2019

Appeal Ref: APP/A2280/W/19/3229251

MCL, Grove Road, Upper Halling, Rochester ME2 1HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Andy Cleugh against the decision of Medway Council.
 - The application Ref MC/18/2040, dated 9 July 2018, was refused by notice dated 8 March 2019.
 - The development proposed is the demolition of existing industrial buildings, builders yard and the construction of 11 no dwellings, associated parking, carports and access.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Outline planning permission is sought but with layout to be considered at this stage. The proposal's appearance, access, scale and also landscaping are matters which are therefore reserved for future consideration. I have determined the appeal accordingly. Drawings showing an indicative appearance of the development were also submitted with the application, and I have considered them on this basis.

Main Issues

3. The main issues are:
 - the effect of the proposal on the character and appearance of the area, including the Kent Downs Area of Outstanding Natural Beauty (AONB);
 - whether or not satisfactory living conditions would be provided for future occupants of the proposed dwellings, with particular regard to privacy and noise and disturbance;
 - whether or not the proposal would make appropriate contributions towards education and open space;
 - whether or not the proposal would provide safe pedestrian routes to nearby public transport facilities.

Reasons

Character and Appearance

4. The appeal site is located on the edge of the rural village of Upper Halling which, on the evidence before me, is within the AONB. It accommodates a

selection of commercial/industrial properties which range in terms of their size and appearance. The site is bound to the north and east by carriageways which serve residential properties, including a new residential development immediately to the north east. However, a large, open, agricultural field wraps around this part of the village and bounds the southern side of the site. Overall, the area has a distinctly rural character. I appreciate that the condition of the existing buildings at the site does not make a positive contribution to this character. That said, established trees along the site's western and southern boundaries ensure that they do not appear overly prominent within the wider rural landscape.

5. This proposal seeks outline planning permission for 11 dwellings. From the drawings provided, these could be up to two and a half storeys in scale. I note that the proposal attempts to promote an active street frontage along both Grove Road and Bradley Road. Nonetheless, it would introduce a considerable amount of built urban form to the appeal site, including a high proportion of hardstanding. This, together with the limited space for soft landscaping, would give this scheme an unduly cramped and harsh urban layout. Although the density of development would appear to be 27.5 dwellings per hectare, I find that such a layout would fail to integrate effectively with the rural setting. Whilst the small gardens at the proposed dwellings would be commensurate with the size of some gardens within the village, in my view they would serve to exacerbate the proposal's harmful arrangement.
6. Furthermore, it would appear that the proposal would result in the loss of existing trees along the site's southern and western boundaries. This would increase the visual prominence of the development within the wider landscape and reinforce its harsh appearance, to the further detriment of the rural surroundings. Taking this and all of the above into account, I am not persuaded that the proposal would harmonise with the character of the area. On the contrary, not only would it be more conspicuous in this sensitive landscape than the existing development at the site, but it would also fail to function well or add to the quality of it, as advocated by the National Planning Policy Framework (the Framework).
7. I appreciate that landscaping is a matter left for future consideration and that additional planting could be provided at Plots 10 and 11. However, I am not satisfied that the proposed would afford enough space for landscaping to sufficiently soften its layout as a whole. In addition, in my view an appearance (including materials palette) and scale for proposed dwellings which harmonised with surrounding built form could be achieved through reserved matters applications. Nevertheless, this would not address the fundamental problem associated with the proposal's unduly intensive layout. Consequently, I am not satisfied that a scheme that would assimilate appropriately with its surroundings could be achieved for this quantum and layout of development through reserved matters applications.
8. For the reasons given, I conclude that the proposal would adversely affect the character and appearance of the area and would not conserve or enhance the landscape and natural beauty of the AONB. It would therefore conflict with Policies BNE1 and BNE32 of the Medway Council Local Plan (LP) which are relevant to this main issue. Amongst other things, these seek to ensure that the layout of developments is appropriate in relation to the character, appearance and functioning of the built and natural environment and that they

conserve the beauty of the AONB. It would also conflict with the guidance within the Medway Landscape Character Assessment insofar as it seeks to screen views of intrusive developments in this particular landscape.

9. Turning to the Framework, this encourages the development of previously developed land (PDL). It also states that windfall developments, in the right location, can make a contribution to meeting housing requirements by making efficient use of land. However, this should not be at the expense of achieving high quality development which is sympathetic to local character, including the surrounding landscape setting. I have found that the proposal would not achieve this. There is therefore conflict with the design objectives of the Framework. In addition, in line with paragraph 172 of the Framework, the harm to the AONB should be given great weight in the planning balance.

Living Conditions

10. The Council's Officer report shows that it considers that the proposal would preserve the living conditions at surrounding properties in terms of access to daylight, overshadowing, privacy and outlook. Having visited the site, I see no reason to conclude otherwise on these matters. In addition, I have no substantive evidence to show that future planting at the site would result in the unacceptable shading of proposed dwellings and their gardens.
11. However, proposed properties at Plots 9 and 10 would be within close proximity of Plot 11. From the evidence before me, these are likely to be two storey dwellings with first floor rear windows serving habitable rooms. These windows would afford direct and close distance views of the rear elevation of Plot 11 and its rear garden. Consequently, although the Council considers that the plot sizes themselves would not harm the character and appearance of the area, I find that the proposed layout would unacceptably harm the privacy of the future occupants of Plot 11.
12. To overcome this, the appellant appears to suggest that the rear extension of Plot 11 could have no north facing windows. However, this is likely to result in a large, unbroken, expanse of brickwork on this property. This would be indicative of poor design and would reinforce the proposal's cramped appearance. In addition, it would not diminish the overlooking of the garden of this property. Such a design approach would therefore not appropriately overcome the harm identified above.
13. Furthermore, the proposed parking area positioned towards the centre of the development would be within close proximity of the rear elevations and gardens of Plots 9, 10 and 11. I appreciate that vehicles utilising these spaces would be moving slowly and that the light emitted from their headlights would be screened by boundary fences. Nonetheless, in my view they would still cause noise and disturbance to these Plots through the starting of engines and the slamming of car doors. This adds further to the harm to the living conditions of future occupants identified above. This harm would not be diminished as a result of the natural surveillance of parked vehicles from proposed dwellings.
14. For the reasons given, I conclude that the proposal would provide unsatisfactory living conditions for future occupants in terms of privacy and noise and disturbance. It would therefore conflict with Policy BNE2 of the LP which seeks to ensure that all developments secure the amenities of future

occupants. It would also conflict with the Framework insofar as it seeks to ensure that developments provide a high standard of amenity for future users.

Contributions Towards Education and Open Space

15. The Council show that the proposal would increase demand for nursery, primary, secondary and sixth form education places. This is uncontested by the appellant. Consequently, it has requested an education contribution of £78,959.09 to mitigate the proposal's impact in this regard. In addition, the Council has requested a sum of £27,387.03 to mitigate the proposal's impact upon open space facilities such as Upper Halling Recreation Ground and Great Lines Heritage Park. This calculation was based on a figure of £2,489.73 per dwelling which appears to be set out in the Medway Developers Contributions Guide (2018).
16. I have no evidence to show that these requested contributions would not be in line with the Council's guidance, the tests set out at paragraph 56 of the Framework or Regulation 122(2) of the Community Infrastructure Levy Regulations. I note that the appellant has no objection to providing these contributions and has submitted a Unilateral Undertaking with this appeal. However, this appears to be in draft form and remains unsigned. Consequently, I am not satisfied that there is currently a suitable legal mechanism for providing the requested contributions. Neither do I consider it appropriate to secure them through the imposition of conditions.
17. I therefore conclude that the proposal would bring about the need for investment in education and open space. In the absence of a legal agreement, it would not secure the appropriate contributions towards them, which would lead to an unacceptable burden on local services and facilities, contrary to Policy S6 of the LP. The proposal would also conflict with the Framework insofar as it seeks to secure appropriate planning obligations where they are necessary to make development acceptable in planning terms.

Routes to Public Transport Services

18. The nearest public transport services appear to be along The Street and are relatively close to the appeal site. However, the Council has raised concern that future residents would not have a safe and pleasant route to such services. I note that the route that future residents would take could involve private roads which are unlit and in a somewhat poor condition. Nevertheless, it is likely that these roads are currently utilised by existing residents close to the appeal site. I have no substantive evidence to show that this has made accessing public transport services any less attractive or prejudiced highway safety, even in hours of darkness and during winter months.
19. Moreover, the optimum use of the existing commercial buildings could result in a considerable number of vehicular trips, including HGV movements, to and from the site. I have no substantive evidence to show that the proposal would significantly increase the frequency of vehicular trips compared to this existing situation. Additionally, it would remove the movements of larger commercial vehicles to and from the site following construction. Consequently, I am not persuaded that vehicular movements associated with the appeal scheme would compromise the safety or condition of routes to nearby transport services. Taking this and all of the above into account, in my view it would not be

necessary for the appellant to upgrade the adjacent roads to an adoptable standard as requested by the Council.

20. For the reasons given, I conclude that the proposal would afford safe pedestrian routes to nearby public transport services. It would therefore accord with Policies T1, T2 and T3 of the LP. Amongst other things, these seek to ensure that developments provide safe access to the highway, do not add to the risk of road traffic accidents and maintain safe pedestrian routes related to the site. It would also accord with paragraphs 8, 102, 117 and 127 insofar as they seek to ensure that developments foster a safe built environment and safe living conditions and promote opportunities for public transport use. I have also been referred to paragraph 105 of the Framework. However, this concerns parking standards and is not relevant to this main issue.

Other Considerations

21. On the evidence before me, the appeal site falls within the Green Belt. The Council has referred me to Policy BNE30 of the LP and paragraphs 143 and 145 of the Framework which are relevant to this designation. It would appear that it considers that the proposal would represent development that is not inappropriate within the Green Belt. If I had been minded to allow the appeal, it would have been necessary for me to go back to the parties to seek further clarification on this matter. However, as I am dismissing the appeal for other reasons, I have not taken the matter further as it is not determinative to my decision.
22. I have also had regard to the comments made by third parties. However, none of these alter my conclusions on the main issues above.

Planning Balance

23. The Council accepts that it is unable to demonstrate a five year supply of deliverable housing land. However, the application of policies in the Framework that protect assets of particular importance (in this case the AONB) provides a clear reason for refusing the development proposed. Consequently, the presumption in favour of sustainable development does not apply.
24. I attach significant weight to the conflict between the appeal proposal and the development plan in relation to the harm to the AONB. I have also found that the proposal would not afford satisfactory living conditions for future occupants. Moreover, it would place an unacceptable burden on local services and facilities as a result of the lack of an appropriate mechanism to secure required financial contributions.
25. The proposal would afford safe pedestrian routes to nearby public transport services. It would also be acceptable in other respects. For example, in terms of flood risk. However, these are requirements of the development plan and are neutral factors in the overall balance.
26. Set against the harm identified, the proposal would utilise PDL to provide 11 dwellings in a fairly accessible location. This would make a modest contribution to the Council's housing stock. In addition, there would be economic benefits through the construction and occupation of these dwellings. These factors weigh in favour of the proposal.

27. Overall, although the principle of the loss of an employment use would be acceptable, I conclude that the adverse impacts of the scheme would outweigh the benefits associated with the provision of 11 dwellings. The proposal conflicts with the development plan when read as a whole and there are no material considerations, including the advice of the Framework, which outweigh this conflict.

Conclusion

28. Having regard to the above reasons and to all other matters raised, I conclude that this appeal should be dismissed.

M Heron

INSPECTOR