



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: 4th November 2019

Appeal Ref: APP/U2235/W/19/3223447

2-6 Brunswick Street, Maidstone ME15 6NP

- 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 Harshad Kapadia (HSW Holdings Ltd) against the decision of Maidstone Borough Council.
 - The application Ref 18/503485/OUT, dated 29 June 2018, was refused by notice dated 31 August 2018.
 - The development proposed is described as 'outline application for the erection of a four storey building comprising eight 1-bedroom flats with access, layout, scale and appearance to be determined and landscaping reserved for subsequent approval'.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of a four storey building comprising eight 1-bedroom flats with access, layout, scale and appearance to be determined and landscaping reserved for subsequent approval at 2-6 Brunswick street, Maidstone ME15 6NP in accordance with the terms of the application, Ref 18/503485/OUT, dated 29 June 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The description of development given in my formal decision omits some of the text from the description provided on the planning application form. The omitted text simply states that the proposal is shown on submitted plans and drawings which are also given. As such it does not describe acts of development.
3. Outline planning permission is sought but with access, layout, scale and appearance to be considered at this stage. The proposal's landscaping is a matter which is therefore reserved for future consideration. I have determined the appeal accordingly.

Preliminary Matters

4. The Council consider that the proposal should be considered as part of a larger housing scheme which includes development at the adjacent Nos 1-3 Foster Street. It states that such a housing scheme could potentially deliver at least 26 residential units. The Council's assessment in this regard was partly made on the basis that a number of planning applications for residential developments at Nos 1-3 had been submitted. These were pending consideration during its determination of application Ref 18/503485/OUT.

5. However, these applications were closed by the Council following its refusal of this appeal proposal. I have no evidence to show that residential schemes at Nos 1-3 would be re-submitted, neither can I be certain that they would be approved by the Council. Consequently, even if the appeal site and Nos 1-3 once shared a commercial use and they were all in the same ownership, I am not persuaded that they form a single, larger, residential development site for planning purposes at this point in time. I therefore proceed to consider the appeal proposal on the basis that it is a single, stand-alone, development for eight dwellings.
6. The Council refused the application for lack of an obligation to provide contributions towards affordable housing and public open space. It has subsequently confirmed that, for a site of eight dwellings, no contribution towards public open space would be required. I have therefore not considered this matter further as it is not in dispute. For this reason, Policy DM19 of the Maidstone Borough Local Plan (LP), which is referred to in the Council's decision notice and deals with open space provision, is not relevant to this appeal.

Main Issues

7. Taking the above into account, the main issues are:
 - the effect of the proposal on the living conditions of existing residents and future occupants, with particular regard to air quality; and
 - whether or not the provision of affordable housing is necessary to make the proposal acceptable in planning terms.

Reasons

Air Quality

8. The appeal site is within an Air Quality Management Area (AQMA) which covers the entire Maidstone conurbation. This was established in 2008 due to exceedances of the annual mean nitrogen dioxide (NO₂) level and indicates that people are likely to be regularly present in this area and therefore exposed to emissions.
9. The proposal seeks outline planning permission for the construction of a four storey building which would accommodate eight, one-bedroom, dwellings. It follows the approval of what appears to be an identical scheme¹. However, this previous permission was not implemented and has now expired.
10. On the evidence before me, the Council's air quality monitoring shows that the NO₂ concentration within 90m of the appeal site was above the annual mean Air Quality Objective for NO₂ in 2017. However, this data appears to be based upon monitoring sites at Upper Stone Street which is a well trafficked carriageway. The appellant has submitted an Air Quality Assessment (AQA) for Foster Street and Brunswick Street which are less busy roads. I am satisfied that this assessment has been carried out by technical professionals. The Council does not appear to take issue with this AQA and I therefore afford it significant weight in my assessment.

¹ MA/13/1385

11. The AQA indicates that the annual mean NO₂ concentration would be below the annual objective for this pollutant. Overall, it shows that there would be no exceedances of either short term objective for NO₂ or particulate matter. This is so even if there are no improvements to pollutant concentrations or road transport emissions between 2017 and the likely first year of the occupation of the proposal (2021). Consequently, the AQA concludes that no mitigation is required as the air quality objectives are predicted to be met. I have no substantive evidence before me to suggest that such a finding is incorrect.
12. In addition, the appellant's evidence shows that noise mitigation measures, such as mechanical ventilation, would be incorporated within the proposal. These measures would further reduce the risk of future occupants being exposed to harmful pollutant levels and could be secured through the imposition of an appropriately worded condition. Taking this, and all of the above into account, although the site would be within 15m of the carriageway, I am not persuaded that local air quality would compromise the living conditions of future occupants.
13. Turning to the proposal's impact upon air quality, the scheme would not provide any car parking areas. There would therefore be no increase in pollutants from vehicular movements at the site. Whilst there would be some effect on air quality during the construction period, this would only be temporary. Accordingly, although I acknowledge the objection from the Council's Environmental Protection Team, I am satisfied that the proposal would not have a negative long term impact on local air quality. An Air Quality Impact Assessment (including an Air Quality Emissions Reduction Calculation Assessment) is therefore not required with regard to Policy DM6 of the LP.
14. For the reasons given, I conclude that the proposal would afford satisfactory living conditions for future occupants and would not harm the living conditions of existing residents in terms of air quality. It would therefore accord with Policies DM1 and DM6 of the LP and the Council's Air Quality Planning Guidance. Amongst other things, these seek to ensure that developments do not have a negative impact upon air quality and provide adequate living conditions for future occupants and respect living conditions at neighbouring properties in terms of air pollution. The proposal would also accord with National Planning Policy Framework (the Framework) insofar as it seeks to ensure a high standard of amenity for existing and future users.

Affordable Housing

15. Policy SP20 of the LP states that housing sites of 11 residential units or more, or which have a combined floorspace of greater than 1,000sq.m, in urban areas are required to deliver 30% affordable housing. The quantum of proposed development (eight dwellings) would not trigger a requirement to provide affordable housing in line with Policy SP20 of the LP. This is confirmed by the Council in its Appeal Statement. In addition, I have no evidence to show that the proposal would have a combined floor area in excess of 1,000sq.m.
16. For the reasons given, I conclude that the provision of affordable housing is not necessary to make proposal acceptable in planning terms. It would therefore not conflict with Policies ID1 and SP20 of the LP. Amongst other things, and when read together, these seek to secure appropriate levels of affordable housing. Additionally, the proposal would not conflict with the advice of the Framework insofar as it seeks to achieve a similar objective.

Other Matters

17. There is no substantive evidence before me that the proposal would lead to parking problems in the surrounding area, and the Council have not raised any concerns in this regard. I see no reason to take a different view in this case.
18. Although the appellant has stated that he wishes to reserve the right to claim costs, no such costs application has been received. I have therefore not taken this matter any further.

Conditions

19. I have considered the conditions put forward by the Council. Having regard to the tests set out in paragraph 55 of the Framework, I have amended the wording where necessary in the interests of clarity and simplicity. Conditions setting reasonable time limits and the provision of details on the reserved matter are necessary as the application made is for outline permission. I have also imposed a condition specifying the approved plans for reasons of certainty.
20. As landscaping is the reserved matter, it is not necessary to impose conditions requesting a landscaping scheme, which would include details of species and boundary treatments, and details of the implementation and management of such a scheme. I have, however, imposed conditions requiring the submission of details specifying the materials to be used for the external surfaces of the proposal and details of the proposed finished floor levels. These conditions are necessary in the interest of the character and appearance of the area.
21. The appeal site is adjacent to a Roman road and is within the historic core of Maidstone. To ensure that the proposal does not deleteriously impact upon features of archaeological significance, it is necessary to impose a condition requiring the submission of an archaeological field evaluation, including a programme for post investigation assessment. In addition, I have imposed a condition requiring side facing windows within the proposal to be obscure glazed. This is necessary in the interest of the living conditions of future occupants.
22. In the interest of the health of future occupants, it is necessary to impose a condition requiring the investigation and remediation of contamination on the site. Furthermore, it is necessary to impose a condition requiring the submission of a biodiversity enhancement scheme in the interest of ecology.
23. The Council has requested a condition requiring the submission of a supplementary acoustic report. However, on the evidence before me, its Environmental Protection Officer is satisfied with the content of the original acoustic report submitted by the appellant. On this basis, and as the Council raises no objection in terms of noise and disturbance, I see no good reason to impose such a condition. Instead, it is necessary to impose a condition requiring details of the mitigation measures outlined within the submitted acoustic report to be submitted in the interest of the living conditions of future occupants.
24. The Council has also requested a condition requiring an air quality assessment, a scheme for any necessary mitigation in this regard and an assessment of the effect of the proposal on local air quality. However, a comprehensive air quality assessment has been submitted by the appellant which concluded that no mitigation would be required. In addition, I have found that the proposal itself

would not affect local air quality. Consequently, it is not necessary to impose such a condition.

Conclusion

25. For the reasons set out above, the appeal scheme would adhere to the development plan and there are no other considerations which outweigh this finding. Accordingly, the appeal should be allowed.

M Heron

INSPECTOR

Schedule of Conditions

- 1) No development shall commence until details of the landscaping (hereinafter called 'the reserved matter') have been submitted to and approved in writing by the local planning authority (LPA). Development shall be carried out in accordance with the approved details.
- 2) Application for approval of the reserved matter shall be made to the LPA not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the reserved matter.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (scale of 1:1250), 024, 2037/1 rev. D and 2037/2 rev. D.
- 5) No development shall commence above slab level until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the approved details.
- 6) No development shall commence above slab level until details of the mitigation measures outlined in the submitted acoustic report entitled 'PPG24 Assessment' have been submitted to and approved in writing by the LPA. Mitigation measures shall be fully implemented in accordance with the approved details prior to the first occupation of the development hereby permitted.
- 7) No development shall commence above slab level until a scheme for the enhancement of biodiversity at the site has been submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until a scheme for an archaeological field evaluation has been submitted to and approved in writing by the LPA. The scheme shall include the programme and methodology of site investigation and the recording and the programme for post investigation assessment. Development shall be carried out in accordance with the approved details.
- 9) The development hereby permitted shall not be commenced until a scheme to deal with any contamination of land has been submitted to and approved in writing by the LPA and until the measures approved in that scheme have been implemented. The scheme shall include all of the following measures:
 - i) A desk-top study carried out to identify and evaluate all potential sources of contamination and the impacts on land relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). Two full copies of the desk-top study and a nontechnical summary shall be submitted to the LPA without delay upon completion.
 - ii) If identified as being required following the completion of the desk-top study, a site investigation shall be carried out to fully and effectively characterise the nature and extent of any land contamination. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor

principle, in order that any potential risks are adequately assessed taking into account the sites existing status and proposed new use. Two full copies of the site investigation and findings shall be forwarded to the LPA without delay upon completion.

iii) Thereafter, a written method statement detailing the remediation requirements for land contamination affecting the site shall be submitted to and approved in writing by the LPA, and all requirements shall be implemented and completed to the satisfaction of the LPA. No deviation shall be made from this scheme. If during redevelopment contamination not previously considered is identified, then the LPA shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing by the LPA.

iv) two full copies of a full closure report shall be submitted to and approved in writing by the LPA. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post-remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met.

- 10) The development hereby permitted shall not be occupied until the windows formed in the side elevations of the development have been fitted with obscured glazing, and no part of these windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.
- 11) No development above slab level shall commence until details of the proposed finished floor levels have been submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the approved details.

End of Schedule of Conditions