



Appeal Decision

Site visit made on 11 November 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th November 2019

Appeal Ref: APP/A2280/W/19/3234660

Land to rear of 15-17 Doddington Road, Gillingham, Kent ME8 6SR

- 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 Roger Dudding against the decision of The Medway Council.
 - The application Ref MC/19/0273, dated 19 January 2019, was refused by notice dated 31 July 2019.
 - The development proposed is demolition of 26 lock-up garages and construction of five 3-bedroom town houses with associated parking and refuse storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. An application for an award of costs was made by Mr Roger Dudding against The Medway Council. This application will be the subject of a separate Decision. I have taken the description of development from the decision notice as this more accurately describes the proposal following its amendments.
3. The main issues in this appeal are the effect of the proposed development on:
1) The Medway Estuary and Marshes Special Protection Area¹ and 2) The character and appearance of the area; and 3) Whether the proposal would provide a safe and suitable access.

Reasons

The effect on the Medway Estuary and Marshes Special Protection Area (SPA)

4. The Conservation of Habitats and Species Regulations 2017 (the 'Habitat Regulations') requires that where a plan or project is likely to result in a significant effect on a European site, and where the plan or project is not directly connected with or necessary to the management of the European site, as is the case here, a competent authority is required to make a proportionate Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of its conservation objectives.
5. The qualifying features underpinning the SPA designation are the concentrations of certain species of breeding and non-breeding birds². The conservation objectives for the SPA can be summarised as ensuring the

¹ The SPA is also a Ramsar site

² The list of bird species is provided in the conservation objectives prepared by Natural England – see Paragraph: 002 Reference ID: 65-002-20190722 of the Planning Practice Guide

- integrity of the site is maintained or restored so that it continues, as a habitat, to support the population and distribution of its qualifying features.
6. The Council have referred to its Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM Strategy), which lists several previous scientific studies that indicate the recent reduction in bird numbers at the SPA can be attributed, in part, to recreational disturbance. The SAMM Strategy also refers to evidence that most recreational trips originate from a 6km zone around the SPA. The appeal site is located within this zone.
 7. The SAMM Strategy goes on to suggest that residential development within the 6km zone results in an increase in recreational trips to the SPA and greater bird disturbance as a result of this. The SPA is an attractive and interesting site and is therefore somewhere future residents of the appeal scheme would likely wish to visit for recreation. I am therefore satisfied that residential development would provide a pathway of effect for adverse recreational disturbance that would result in a likely significant effect on the SPA. This is a conclusion supported by Natural England (NE) in its role as the Statutory Nature Conservation Body and has not been challenged by the appellant.
 8. Due to the small scale of the proposed development there is no scope to provide on-site mitigation for the impacts on the SPA. Thus, it is necessary to secure a financial contribution in line with the SAMM Strategy, an approach supported by NE. The contribution would be a 'strategic tariff' used to deliver the specific measures in the SAMM strategy, such as dog fencing and path improvements at the SPA. These measures would help to minimise disturbance by managing visitors and thus conserve the SPA in a favourable condition as a habitat for the bird species listed as qualifying features. I therefore share the view of the Council, the appellant and NE that such mitigation would ensure the proposal would not adversely affect the integrity of the SPA.
 9. Although the appellant has indicated a willingness to pay the contribution and has submitted a SAMMs Mitigation Contribution Agreement, the contribution has not been paid and no other mechanism is before me that would secure it in the future, such as a planning obligation. Accordingly, the significant effect on the SPA would not be mitigated and therefore the proposal would not maintain in a favourable condition the integrity of the SPA. This would fail to adhere to the SPA's conservation objectives.
 10. The appellant has not suggested that there are no alternative solutions to providing unmitigated housing at the appeal site and a scheme for a single dwelling, with the limited support it would provide to housing land supply and the local economy, would not provide imperative reasons of overriding public interest for allowing the appeal. The Habitat Regulations require that I may only give permission for the proposal after having ascertained that it will not adversely affect the integrity of the SPA. As I cannot conclude this, the proposal would be at odds with the Habitat Regulations and Policy BNE35 of the Medway Local Plan 2003 (LP).

The effect on the character and appearance of the area

11. Doddington Road is characterised by two storey dwellings set towards the front of their respective plots and arranged in terraces and semis in a way that frames and creates the street. The comprehensive composition provides a clear frontage building line with verdant garden areas behind. The appeal site

encompasses a collection of garages arranged around a central hard standing and is therefore an unusual built incursion behind the frontage building line. There is a single narrow access into the appeal site from Doddington Road and the garages are low in profile. As a result, the developed nature of the site is not readily apparent from the public realm.

12. The appeal scheme would result in a terraced row of houses in a 'backland' position. The houses would be arranged over three floors with a deep plan and thus a relatively wide gable span. The terrace would appear as a large and imposing structure and therefore an overly conspicuous departure from the existing comprehensive pattern of development. This would be particularly evident from Doddington Road, which is lower than the appeal site. Moreover, there would be little additional landscaping to soften the development in views from Doddington Road and an arboricultural impact assessment has not been provided to demonstrate existing trees would not be harmed by the development because of the level changes. This is important because the scheme is reliant on some existing landscaping to screen views from the north east. The development would be very strident if this landscaping were to fail. Thus, the proposal would harm the character and appearance of the area.
13. That said, the appeal scheme would have several positive features such as the terraced form and the orientation of the houses to front the entrance into the appeal site. These aspects of the design would respond to the terraced development nearby, create a pleasing mews character and present an agreeable environment at the site entrance. However, these elements of the design would not mitigate for the scale and massing of the proposal, which would present an overly conspicuous departure from the local pattern of development, an impact that can reasonably be described as an over development of the site. The density of development would be acceptable, but this is not a useful means in itself of considering the suitability of a development as it does not factor in matters of massing and scale.
14. I therefore conclude that the appeal scheme would harm the character and appearance of the area. This would place the proposal at odds with Policy H9 of the LP, which states that the character and appearance of the area as a whole should be maintained by backland development.

Whether the appeal site would have a safe and suitable access

15. The access into the appeal site would be narrow with insufficient space for two vehicles to pass one another or for a vehicle to comfortably pass a pedestrian. Consequently, there is the risk that vehicles entering the site would need to reverse out into Doddington Road to let those exiting the site pass. This would not be an optimal situation.
16. However, vehicle speeds in Doddington Road are likely to be low due to it being a narrow road with on street parking. This would give motorists time to react to any reversing car. The access is also long standing having been used in association with the existing garages. There is no evidence before me demonstrating it proved to be unsafe in the past when it was in use. Moreover, it is a point of note that the Highway Engineer did not object. Refuse vehicles would not be able to enter the site but adequate measures can be put in place to deal with this, such as those suggested by the appellant. On balance, I am satisfied that in this instance the access would be safe and suitable and therefore a conflict with Policy H9, in respect of this matter, would not occur.

Other Matters

17. The development plan policies I have referred to previously are broadly consistent with Paragraphs 124, 127, 174 and 175 of the National Planning Policy Framework (the 'Framework') and therefore I afford any conflict with them significant weight. I have not been provided with evidence of whether the Council can demonstrate a five-year housing land supply, but Paragraph 177 of the Framework states that the presumption in favour of sustainable development does not apply where the proposal is likely to have a significant effect on the SPA and this would adversely affect its integrity.
18. The appeal scheme would deliver several benefits including support for the local economy through construction jobs and the circulation of funds. However, there is little to suggest this would have more than a limited effect. In addition, the proposal would modestly boost housing supply. The appeal scheme would also make use of previously developed land (PDL) in an urban area. This is a notable point in favour of the proposal. However, in this instance the appeal scheme would have several specific failings that I have found to be determinative. Moreover, many of the foregoing benefits could be achieved with a more sensitively designed redevelopment of the appeal site.
19. I share the view of the Council that some form of development would be acceptable at the appeal site given its status as PDL in an urban area. In this respect, the appellant has directed me to a scheme³ of four two storey homes that has been implemented in a backland position on the site of former garages. This demonstrates that such development can be acceptable. However, it is not entirely like the appeal scheme before me, which proposes five homes, and therefore does not justify it.
20. The proposal would facilitate the redevelopment of garages that have apparently been subject to antisocial behaviour. However, I have seen little evidence explaining why the site could not be secured to prevent this from occurring and generally tidied up. Thus, I do not find this to be a compelling point in favour of granting the proposal.
21. Various concerns have been raised by interested parties including reservations regarding construction noise, the level of parking and the impact on the living conditions of neighbouring residents. However, given my findings above it has not been necessary for me to address these points further as the appeal would fail even if I found no harm, the absence of harm being a neutral matter.

Conclusion

22. The appeal scheme would provide a safe and suitable access. However, the proposed development would have a significant adverse effect on the SPA and harm the character and appearance of the area. It would be contrary to the development plan and Habitat Regulations and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Graham Chamberlain
INSPECTOR

³ Council reference MC/17/2328