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## Appeal Decision

Site Visit made 21<sup>st</sup> October 2020

**by David Prentis BA BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 October 2020**

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**Appeal Ref: APP/H2265/W/20/3249369**

**3 Bridge Place, Aylesford, Kent ME20 7JJ**

- 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 Mrs Stephanie Arnott against the decision of Tonbridge & Malling Borough Council.
  - The application Ref TM/19/02054/FL, dated 30 August 2019, was refused by notice dated 21 October 2019.
  - The development proposed is change of use to garden, including associated enclosure.
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### Decision

1. The appeal is dismissed.

### Main issues

2. The main issues are:
  - the effect of the proposal on community facilities for recreation and leisure; and
  - the effect of the proposal on the character and appearance of the area.

### Reasons

#### *Effect on community facilities*

3. Bridge Place is a cul-de-sac constructed around 2003/2004 located between Station Road and the river Medway. There was a s106 Agreement between the Council and the developer (dated 9 May 2003) which included an obligation to provide an equipped play area in part of the site which is now adjacent to the appellant's dwelling (No 3). However, the developer went into liquidation and the site of the play area is now vested in The Crown Estate. The proposal is to incorporate a part of that land into the garden of No 3.
4. The appellant questions whether the original planning permission and s106 Agreement were ever signed<sup>1</sup>. It is also suggested that the entire development was unlawful because it was not constructed in accordance with the plans and/or because conditions and the s106 Agreement were not complied with. On that basis the appellant contends that the appeal site is simply a piece of vacant land, with no approved planning use, which cannot be regarded as a community facility in the terms of Core Strategy (CS) Policy CP26.

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<sup>1</sup> A copy of a signed and dated version of the S106 Agreement is included in the documents before me

5. Whilst I note that the Council rebuts these claims, I do not think that this is a matter that I need to comment on. This is because the development will have long since become immune from any enforcement action due to the passage of time. Policy CP26 seeks to resist the loss of sites currently or last used for the provision of community services or recreation, leisure or cultural facilities (subject to three exceptions that I return to below). For the purposes of applying the policy, it seems to me that the central issue is whether, as a matter of fact and degree, the land in question is a community facility now.
6. That said, the original intentions for the estate are relevant as part of an overall assessment. It is clear from the s106 Agreement that the original intention was that the open land would be laid out as an equipped play area. The Agreement also sought to provide access for vehicles, cycles and pedestrians from the estate road to the open land. I saw that there is indeed an open grassed area in the same position as that indicated in the plan attached to the s106 Agreement. Moreover, there is a pedestrian gate and a vehicular gate in the location shown as a gate on the s106 plan.
7. The south west side of the space is bounded by a timber fence, in front of which is a row of shrubs. The north east side is bounded by the side garden fence of No 3. The north western side is bounded by a concrete flood defence wall (incorporating a flood gate), beyond which there is a riverside footpath and the river Medway. I saw that the area is in a tidy condition and has been well maintained. It offers attractive views of the riverside and is of sufficient size to function as an informal play area, notwithstanding the absence of play equipment.
8. In the absence of any formal arrangements for the management of this area it appears that several of the residents have co-operated to maintain it in a condition whereby it can be used as a recreational space. The appellant does not dispute that there has been both maintenance and recreational use but states that this has been limited and sporadic. On the other hand, there are several written representations, including representations from the Parish Council, residents of Bridge Place and members of their extended families, that attest to a much greater degree of use over a period of several years. These include representations made on the appeal and representations made to the Council at the time of the application<sup>2</sup>.
9. Having considered the details of these accounts, including the first hand experiences of several of the writers, the balance of the evidence indicates to me that the area in question has been used as recreational space for a period of years. It appears that the most frequent use has been for children's play with occasional use for community events such as Easter egg hunts, barbeques and the like.
10. Drawing together the evidence described above, I conclude that the space in question is properly to be regarded as a site used for community recreation and leisure in the terms of Policy CP26.
11. The appellant also argues that the community has no right to use the land (because it is owned by The Crown Estate) or to gain access to it via a paved area which is said to be in private ownership. It is not for me to comment on

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<sup>2</sup> Personal names and street numbers were redacted in the representations made to the Council but it is possible to see the street name and locality given by those who made these representations

what legal rights over land individuals or communities may or may not have. However, the evidence discussed above indicates that any ownership issues have not prevented the space in question being accessed, maintained and used for community recreation over a period of years. I therefore attach limited weight to this factor.

12. The proposal would result in the loss of a triangular section of the space to community recreation. This would include 10m of river frontage. I estimate that this would amount to around one third of the river frontage of the existing space. In my view that would result in a significant reduction in the area available for community recreation. There would also be a significant adverse qualitative impact. The remaining space would be narrower, with a more tightly enclosed feel and a more constrained view of the riverside.
13. The circumstances in which Policy CP26 allows for loss of a community facility are where an alternative is proposed, where there will be an enhancement to the existing facility or where there is an absence of need for the facility. None of those circumstances apply here. I conclude that the appeal site forms part of a space used for community recreation and leisure which is used and valued by the community. The proposal would cause significant harm to this community facility and would conflict with CS Policy CP26.

#### *Effect on the character and appearance of the area*

14. The site currently makes a positive contribution to the character and appearance of the area. For the reasons discussed above the proposal would diminish that contribution by creating a narrower, more enclosed and less attractive space. Representations in support of the appeal drew attention to the high standard to which the existing garden of No 3 is kept, suggesting that further planting within the proposed garden extension would improve the appearance of the area. I have no reason to doubt that the proposed garden extension would be well kept. However, any planting here would be enclosed behind a garden fence and would have limited impact on the amenity of the remaining recreational land. I consider that any potential benefits would be outweighed by the negative impacts I have identified.
15. I conclude that the proposal would be harmful to the character and appearance of the area, contrary to Policy SQ1 of the Managing Development and the Environment Development Plan Document which seeks to protect the character and local distinctiveness of the area. It would also be contrary to CS Policy CP24 which seeks to protect existing open spaces.

#### *Conclusion*

16. The proposal would conflict with the development plan in that it would cause harm to a community facility and to the character and appearance of the area. I have not identified any factors that indicate that the appeal should be determined other than in accordance with the development plan. The appeal should therefore be dismissed.

***David Prentis***

Inspector