



Appeal Decision

Site visit made on 14 July 2021

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal Ref: APP/A2280/W/20/3261117

Land off Eastern Road, Gillingham, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Aitco Ltd against the decision of Medway Council.
 - The application Ref: MC/19/1491 was dated 30 June 2019 and re-validated on 1 November 2019.
 - The development proposed is 5 No. dwellings - land off Eastern Road, Gillingham.
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Decision

1. The appeal is dismissed and planning permission for 5 No. dwellings on land off Eastern Road, Gillingham is refused.

Preliminary Matters

2. Although the application form was dated 30 June 2019, the application had subsequently to be re-advertised because of the unknown ownership of an area of land required for the development proposals. The application was subsequently re-validated on 1 November 2019. I have shown both dates in the header above. Further plans were also received by the Council on 1 November 2019.
3. Since the appeal was submitted and all representations completed, the National Planning Policy Framework (Framework) has been updated in July 2021. Both the Appellant and the Council have been offered an opportunity to comment on the NPPF, and its relevance to this case, and I have taken their further representations into account in my decision. All references in this decision letter are to the July 2021 Framework.

Main Issues

4. The appeal is against the failure of the Council to determine the application within the statutory period. The Council has subsequently advised that had it been in a position to determine the application it would have refused the application on a number of grounds, relating to the effect on the character and appearance of the local area, highway safety issues, and ecological and biodiversity issues. From all that I have read, and seen on my site visit I agree that the main issues in this appeal are:
 - a) the effect of the proposal on the character and appearance of the local area;

- b) whether there would be a safe and suitable means of access to the site;
- c) the impact of the proposals on interests of ecological importance, and
- d) the impact of the proposals on the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and Marshes (SPAs).

Reasons

Issue a) Character and Appearance

5. The appeal site is an overgrown area of land, which I am advised was a former quarry. The site slopes down very steeply from the boundary at the eastern end of Eastern Road. The site, in so far as it is possible to view it, is currently covered in dense vegetation.
6. The surrounding area is predominantly residential with a broad mix of development, ranging from traditional Victorian houses to more modern development. Apart from the entrance at the north west corner of the site, the rest of the appeal site appears to be largely contained by the gardens to surrounding residential development.
7. The proposed development would comprise 5 dwellings with access off Eastern Road, at its eastern end, together with changes to the land levels to accommodate the development and in particular the site access. The boundaries would be planted and the plans indicate that there would be a permanent ecological reserve at the southern corner of the site. The Appellant has referred to providing this facility through a legal agreement, although no details have been provided.
8. The site lies within a predominantly residential area within the urban area, where there is a presumption in support of residential development. There is no objection to the principle of the proposed development.
9. I agree with the Council that within the site, the introduction of built development and the necessary change in levels, together with the removal of much of the existing vegetation would lead to a marked change in the character and appearance of the site. However, there is no information before me to suggest that the site benefits from any designation pertaining to its current character and appearance.
10. Because of the nature of the site and its boundaries, the site does not appear to be particularly visible in the street scene and local area, with views into the site limited to those from some of the private gardens of surrounding properties. Views from the eastern end of Eastern Road are limited to the dense vegetation along the boundaries, but from my site visit and the information before me, I do not consider that there are any trees of individual value or which make a valuable contribution to local character. Most of the planting appears, from what it has been possible to see on the site visit, to be ruderal and scrub vegetation, presumably reflecting the former use.
11. It would be a residential development within a residential area, where there is a wide mix of development, in terms of housing styles. Were there no other matters of concern and planning permission were to be granted, details relating to the scheme could be the subject of conditions, to ensure a high quality scheme which related to the surrounding area, including in terms of boundary

planting treatment, with consideration to the retention of existing trees and planting and supplemented with new planting.

12. I do not therefore consider that the proposed development would adversely harm the character and appearance of the local area. There would be no conflict with Policies BNE1 and BNE43 of the Medway Local Plan 2003 (Local Plan) and Section 12 of the Framework, entitled Achieving well-designed places.

Issue b) Highways Access

13. The access would be from the eastern end of Eastern Road leading to a shared driveway to serve each property with two spaces together with 2 visitor spaces. There would be a turning space on the site and a road along the northern edge for a vehicle to access the proposed ecological belt and reserve.
14. Eastern Road serves a number of residential properties, most of which rely on on-street parking. At the eastern end of the road, the road branches off southwards to a newer residential development, in Marble Close. The easternmost house on the northern side of Eastern Road has parking to the side of its property.
15. There is a small area of the road directly outside the proposed entrance to the site which appears to be beyond the extent of highways adoption and the ownership is unknown.
16. I agree with the Appellants that the number of proposed houses taken together with the existing number of houses in the vicinity would not in itself create a concern in terms of highway safety on the surrounding roads. However, I share the Council's concerns regarding the safety of the access arrangements. The access and parking arrangements within the site would be very tight, with potentially a number of manoeuvres required to ensure that access from the site would be in forward gear. At the site entrance there would be the potential for significant conflict between vehicles entering and leaving the site, as well as those entering and leaving Marble Close, No 17 Eastern Road and generally vehicles seeking to turn at the eastern end of Eastern Road.
17. On the basis of the limited information before me, I am not satisfied that the access would create a safe and appropriate access for all vehicles from the new development and in relation to existing vehicle manoeuvres at the eastern end of Eastern Road. This would conflict with paragraph 110 b) of the Framework and Policies T2 and BNE2 of the Local Plan, all of which seek for safe and suitable access for all users in relation to new developments.
18. The Council has also referenced Policy T13 of the Local Plan relating to vehicle parking standards, but I do not consider that the proposals would be in conflict with this policy.

Issue c) Ecological Interests

19. It is agreed that the site offers a suitable reptile habitat in the form of ruderal and scrub vegetation and from a survey undertaken in July 2019 a low population of slow worms were found on the site, although given the nature of the site, not all of the area could be surveyed.

20. The survey report sets out the principles of a mitigation strategy and the application plans show a permanent ecological reserve. Whilst a number of relevant issues could be addressed by condition, I share the Council's concerns that there is insufficient detail available at the application stage to be satisfied that the proposal would not have an impact on the protected species within the site.
21. Given the lack of adequate information, I am unable to conclude that the proposal would be unlikely to have an impact on protected species within or near the site. There is clear conflict with Policy BN39 of the Local Plan, Section 15 of the Framework and Circular 06/2005 to conserve and enhance biological diversity.

Issue d) SPAs

22. I am advised that appeal site lies within 6km of the North Kent Marshes SPA/Ramsar sites and that as a result the proposed development is likely to have a significant effect, either alone or in-combination, on the coastal SPA/Ramsar sites from recreational disturbance on the over-wintering bird interest. The Conservation of Habitat and Species Regulations 2017 require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects.
23. I have very limited information before me regarding the steps taken by the Council, although the Council has confirmed that in accordance with advice from Natural England, an appropriate tariff per new dwelling should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries.
24. Whilst I do not doubt, in the basis of the representations before me, that the Appellant would be prepared to make the necessary contribution, no such contribution appears to have been made, nor a legal agreement submitted to provide for a contribution in the event of planning permission being granted.
25. I cannot therefore be satisfied on the very limited information before me from the Council as well as the absence of any contribution from the Appellants that there would not be a significant adverse effect on the SPA / Ramsar sites. The development would therefore be in conflict with Conservation of Habitat and Species Regulations 2017 and is contrary to paragraphs 180 and 181 of the Framework and Policy BNE35 of the Local Plan in this regard.

Other Considerations

26. Concerns have been raised by local residents about the ability to construct the development in terms of potential landfill and structural stability, but were no other matters of concern and planning permission were to be granted these matters could be, in part, addressed by condition and would also be addressed under other legislation.

Planning Balance

27. The Appellant has made several references to the need to find more housing sites to accord with the Framework and in particular the government's objective to boost significantly the supply of housing. In the very recent

representations, the Appellant has referred to the Council being unable to demonstrate a five year housing land supply of housing but no further information has been provided by the Appellant or the position clarified by the Council. However, and on the basis of the Appellant's case, with which I have no reason to disagree, it would appear that paragraph 11 d) of the Framework is engaged.

28. Paragraph 60 of the Framework refers to boosting significantly the supply of homes and the scheme before me would make a contribution of 5 additional dwellings to the Council's housing supply. When judged against some of the core planning principles the proposal would perform well in that it would be in an urban area where access to facilities and services is likely to be greatest. In terms of its component dimensions there would be a social benefit in providing five additional units. Economic advantages would also arise from the construction and occupation of these units.
29. I have found that the proposal would not cause harm to the character and appearance of the local area, but this would not outweigh the harm I have concluded with regard the access arrangements and highway safety and to ecological interests, both on and off the site. These are all matters which contribute to sustainable development, as set out under the development plan and the Framework.
30. The harm I have concluded would be significant and as a result the social and environmental roles of sustainable development would not be achieved. When assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

31. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that the appeal should be dismissed and planning permission refused.

L J Evans

INSPECTOR