



Appeal Decision

Site Visit made on 12 October 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2021

Appeal Ref: APP/A2280/W/21/3271381

142 Napier Road, Gillingham, Medway ME7 4HG

- 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 Raj Gill against the decision of Medway Council.
 - The application Ref MC/21/0088, dated 13 January 2021, was refused by notice dated 2 March 2021.
 - The development proposed was described as construction of 2 new dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a pair of 3-bedroom and 4-bedroom semi-detached dwellings with associated parking at 142 Napier Road, Gillingham, Medway ME7 4HG in accordance with the terms of the application Ref MC/21/0088 dated 13 January 2021 subject to the conditions in the attached schedule .

Procedural Matter

2. The description of development in the banner heading above is taken from the planning application form, but Section E of the appeal form provides a revised description of 'construction of a pair of 3-bedroom and 4-bedroom semi-detached dwellings with associated parking'. This reflects the description stated on the Council's decision notice and I consider it a more accurate and complete description of the proposal. I have therefore used it in my formal decision.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

4. Napier Road is predominantly characterised by semi-detached and terraced dwellings arranged on strong building lines fronting the street. However, the buildings vary somewhat in scale and appearance, and the layout is not entirely uniform, including as a result of some instances of accesses serving development set behind frontage buildings. The appeal relates to a parcel of land served by one such access taken between 138 and 144 Napier Road. This access runs alongside 136 Napier Road and serves a recently constructed group of one detached and 8 semi-detached dwellings, as well as a larger building which has entrance doors numbered as 142 and 142a, albeit I note the Council comments that planning permission which had been granted for the conversion of 142 Napier Road into a pair of semi-detached houses expired.

5. The appeal proposes a pair of semi-detached dwellings on land to the side of No 142. The dwellings would be of broadly similar depth to No 142, but would be significantly narrower than this neighbouring building. Nevertheless, the development would be of similar scale and appearance to other dwellings within the wider site, including the pair numbered as 142c and 142d opposite. Moreover, there is already variation between other dwellings along Napier Road, and I observed some examples of buildings of markedly different form or scale in close proximity to one another. This includes the bungalow at 136 Napier Road visible alongside the appeal site access which contrasts with neighbouring two-storey dwellings.
6. I accept that the dwellings would be seen most closely together with No 142, and the difference in their overall scale against this neighbouring building would be unmistakeable. Nevertheless, given that nearby buildings are not consistent in their form, scale or design, I do not consider that the resulting juxtaposition would be jarring or incongruous.
7. Although there is a reasonably spacious character around the appeal site, this is largely as a result of the wide spaces to the front of the neighbouring buildings behind Napier Road which accommodate parking and access, as well as surrounding long gardens. Separation to the sides of the other buildings served by the access between Nos 138 and 144 is much more limited, particularly between the recently constructed dwellings. The spacing between the proposed dwellings and the side of No 142 and to the boundary with gardens on Nelson Road would be broadly comparable to that between these neighbouring buildings. They would also have relatively long gardens and would not step forward of No 142 so as to encroach on the central spacing between buildings, and No 142 would itself retain generous spacing to its rear. Given these factors, I am satisfied that the dwellings would sit comfortably on the site, and I find that the development would not be cramped or cause harmful erosion of the generally spacious character of its surroundings.
8. For these reasons, I conclude that the character and appearance of the area would not be harmed and I am satisfied that the proposal would make effective use of the site, adding visual interest and diversity to the area without resulting in overdevelopment. I therefore find no conflict with saved Policies BNE1 or H4 of the Medway Local Plan 2003 insofar as they together broadly require that development respects and is appropriate to the character and appearance of its surroundings, and that it provides a clear improvement in the local environment. Similarly, the proposal would accord with requirements within the National Planning Policy Framework (the Framework) seeking high quality buildings and places, and development that is visually attractive and sympathetic to local character.

Other Matters

9. I have taken into account representations by interested parties. The Council advise that parking provision on the site would be in accordance with relevant standards, and there is no firm evidence before me that any additional vehicle movements associated with the development would harm highway or pedestrian safety. I also see no reason that appropriate provision for refuse and recycling could not be accommodated within the site, with details secured by an appropriately worded condition.

10. The development would be visible from neighbouring properties, but given the separation that would be provided and the long rear gardens to dwellings on Nelson Road, I am satisfied that it would not cause an unacceptable loss of light or outlook. Windows to the sides of the dwellings would serve bathrooms and could be conditioned to be obscurely glazed preventing overlooking. The orientation of the development and relationship with neighbouring dwellings also means that there would not be harmful overlooking to residential occupiers from windows to the front or rear of the building. The rear windows would face towards a school, but views would be similar to those already available from No 142. In any event, I am satisfied that the separation provided would be sufficient to avoid unacceptable overlooking of the school site.
11. While I note representations referring to the removal of trees from the site, this is not part of the development before me and I have no firm evidence that they were protected or removed unlawfully. Nor do I have firm reason to find there would be unacceptable harm to trees which make a positive contribution to the character of the area as a consequence of the proposal.
12. There is no substantive evidence to suggest that there is insufficient capacity in local services and utilities to meet needs generated by the development. I acknowledge representations referring to disruption during previous development on the wider site, but any impacts associated with the appeal proposal would be short term and I have no firm reason to find that they could not be mitigated by careful construction management secured by an appropriately worded condition. They would not therefore constitute reasonable justification to withhold planning permission. The boundary of neighbouring properties, and any damage caused to property during construction would be a private matter between the parties involved.
13. I am satisfied that none of the other matters raised, either individually or collectively, would result in a level of harm that would justify dismissal of the appeal, and the comments by interested parties do not alter my findings on the main issue.

North Kent Marshes Special Protection Areas and Ramsar sites

14. The appeal site is within the Zone of Influence of the Medway Estuary and Marshes Special Protection Area (SPA) which is one of 3 SPAs on the North Kent Coastline which are classified for bird species that are rare and/or vulnerable in a European context, and are sites that form a critically important network for birds on migration. The sites are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites).
15. The Conservation of Habitat and Species Regulations 2017 (the Regulations) impose a duty on the competent authority to consider whether a proposed development may have a significant effect on the conservation objectives of such sites either alone, or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). The proposed dwellings would be likely to result in additional demand for recreation locally, and such activity within the SPAs/Ramsar sites could cause disturbance that would be detrimental to over-wintering or breeding birds. While the increase in recreational activity resulting from the development alone would be likely to be limited, it is likely that in combination with other developments, the proposal could have a significant impact on the integrity of the SPAs/Ramsar sites.

16. However, the Council seeks financial contributions from new development to fund measures identified through the North Kent Strategic Access Management and Monitoring Strategy (SAMMS) to mitigate such adverse impacts, and a tariff is specified per dwelling reflecting the cost of delivering mitigation measures in perpetuity. The delivery of mitigation measures is through Bird Wise, a partnership of local authorities and conservation organisations established to ensure that development, considered in-combination, does not have an adverse effect on the integrity of the SPA/Ramsar sites. Natural England has endorsed this approach and confirmed that implementation of the suite of measures covered by the SAMMS, funded by appropriate financial contributions, would be effective and reliable in preventing harmful effects.
17. The Council indicates that the requisite financial contribution has in this case already been paid by the appellant. A completed SAMMS mitigation contribution agreement states that the contribution is towards the mitigation of the effect of development on the North Kent SPAs and Ramsar sites, and the Council confirms that the contribution will be used towards mitigation through Bird Wise. Given the evidence before me, I am satisfied that the mitigation measures have been secured and would be used for their intended purpose, and that the intended mitigation would be effective to adequately overcome any adverse effects of the proposal.
18. In light of the above and following an AA, I find that the proposal would not adversely affect the integrity of the SPA/Ramsar sites.

Conditions

19. I have considered suggested conditions having regard to the tests set out at paragraph 56 of the Framework. As a result, I have amended some where necessary, or for the sake of consistency, brevity or clarity.
20. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. To safeguard the living conditions of neighbouring occupiers and highway safety, I consider that a condition to agree details of how construction will be managed is necessary. This is a pre-commencement condition as details need to be agreed before any works take place to ensure that they are satisfactory, and the appellant has provided written agreement to it.
21. Conditions to address potential contamination on the site are necessary to safeguard the health and the living conditions of neighbouring and future occupiers. I have imposed conditions to require provision for electric vehicle charging points and cycle storage to promote sustainable travel; and a condition to require implementation of parking is necessary in the interests of highway safety. I also note concerns raised by interested parties regarding refuse storage, and while it has not been suggested by the Council I consider that a condition is necessary to require details of refuse and recycling to ensure that there is adequate provision.
22. To ensure a satisfactory appearance, a condition relating to the external materials of the development is necessary. I have also attached conditions to secure implementation of suitable boundary treatment and the use of obscure glazing to flank windows which are necessary in the interests of the living conditions of future and neighbouring occupiers.

23. The Council's officer report suggests that the dwellings could be converted to a small House in Multiple Occupation in the future which may result in a harmful impact to the amenity of neighbouring residents through noise and disturbance and increased parking pressure, and it has suggested a condition to require that the dwellings remain in use as a dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). However, paragraph 54 of the Framework outlines that planning conditions should only restrict national permitted development rights where there is clear justification to do so. No firm evidence has been provided to demonstrate how multiple occupation of the development would be cause for particular concern, and given the nature of the proposal and the relationship of the development with its surroundings, I am not satisfied that such a condition is necessary or justified in this case.

Conclusion

24. For the reasons given above, I find that the proposal would accord with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise amended under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 22.01/A.02, 22.01/A.04, 22.01/A.05, 22.01/A.06, 22.01/A.07, 22.01/A.08, 22.01/A.09, 22.01/A.10, 22.01/A.11 and 22.01/A.12.
- 3) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of:
 - i) delivery, demolition and construction working hours;
 - ii) measures to control noise;
 - iii) wheel cleaning/chassis cleaning facilities;
 - iv) measures to control the emission of dust and dirt during construction;
 - v) pollution incident control and site contact details in case of complaints.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 4) The remediation scheme within the Contaminated Land Assessment (dated 20 March 2017 and approved under the discharge of conditions application ref MC/18/3344 must be carried out in accordance with its

terms prior to the commencement of any development (other than development required to enable the remediation process to be implemented). The Local Planning Authority must be given not less than two weeks written notification prior to the commencement of any outstanding works contained within the remediation scheme. Following completion of the measures identified in the approved remediation scheme and prior to the first occupation of the development hereby approved, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

- 5) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a method statement detailing how this unsuspected contamination will be addressed including how any necessary remediation will be verified has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved method statement.
- 6) No development above ground floor slab level shall take place until details of the provision of 2 electric vehicle charging points have been submitted to and approved in writing by the Local Planning Authority. Details shall include the location, charging type (power output and charging speed), associated infrastructure and timetable for installation. The charging points shall be provided in accordance with the approved details prior to first occupation of the development hereby approved and shall be retained as such thereafter.
- 7) The development shall not be first occupied until details of secure private cycle parking provision have been submitted to and approved in writing by the Local Planning Authority. The cycle parking shall be implemented in accordance with the approved details prior to first occupation of the development hereby approved and shall be retained as such thereafter.
- 8) The development shall not be first occupied until a plan indicating the positions, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details prior to first occupation of the development hereby approved and shall be retained as such thereafter.
- 9) The development shall not be first occupied until details of storage and collection of refuse and recycling on the site have been submitted to and approved in writing by the Local Planning Authority. The storage shall be provided in accordance with the approved details prior to first occupation of the development hereby approved and shall be permanently retained as such thereafter.
- 10) The development shall not be first occupied until the areas shown on drawing number 22.01/A.04 as vehicle parking bays have been provided, surfaced and drained. The bays shall thereafter be kept available at all times for the purposes of parking, and no development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the parking bays.

- 11) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those of the neighbouring dwellings approved under planning permission ref MC/18/0176.
- 12) The dwellings shall not be first occupied until the en-suite and bathroom windows to their side elevations have been fitted with obscure glass and, apart from any top-hung light that has a cill height of not less than 1.7 metres above the internal finished floor level of the room it serves, are non-opening. The windows shall be permanently retained as such thereafter.

End of Schedule