



Appeal Decisions

Site visit made on 28 September 2021

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an Inspector appointed by the Secretary of State

Decision date: 17th December 2021

Appeal A Ref: APP/A2280/W/21/3270481

Garages adjacent to 176 Grange Road, Gillingham, ME7 2QT

- 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 P Giles (Windmill Construction (Grange Road) Ltd) against the decision of The Medway Council.
- The application Ref MC/20/1737, dated 20 July 2020, was refused by notice dated 18 November 2020.
- The development proposed is the demolition of private garages and the construction of 19 residential apartments with associated parking. Removal of the existing electrical substation.

Appeal B Ref: APP/A2280/W/21/3270499

Garages adjacent to 176 Grange Road, Gillingham, ME7 2QT

- 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 P Giles (Windmill Construction (Grange Road) Ltd) against the decision of The Medway Council.
- The application Ref MC/20/1757, dated 21 July 2020, was refused by notice dated 20 November 2020.
- The development proposed is the demolition of private garages and the construction of 22 residential apartments with associated parking. Removal of the existing electrical substation.

Appeal C Ref: APP/A2280/W/21/3270504

Garages adjacent to 176 Grange Road, Gillingham, ME7 2QT

- 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 P Giles (Windmill Construction (Grange Road) Ltd) against the decision of The Medway Council.
- The application Ref MC/20/1756, dated 21 July 2020, was refused by notice dated 19 November 2020.
- The development proposed is the demolition of private garages and the construction of 24 residential apartments with associated parking. Removal of the existing electrical substation.

Decisions

1. Appeal A, B and C are dismissed.

Procedural Matters

2. All three appeals are applications for outline planning permission with all matters to be determined at this stage, apart from landscaping. Accompanying each application, there are location, site, block, floor and elevation plans showing existing and proposed development. Computer generated image

(CGI) plans of the proposal's frontage in Appeals A and B have been submitted. In Appeal A, there is also an illustrative and annotated composite plan containing amongst other matters, site, elevation, cross section and first floor details. These CGI and composite plans have been treated as indicative.

3. As set out above, there are three appeals which differ in the number of proposed units. In Appeals B (22 units) and C (24 units), there would be a recessed top fifth storey that is absent in Appeal A. In Appeal B, the width of this fifth storey is narrower than that in Appeal C and additionally has a level roof ridge compared to a staggered ridge in Appeal C. Appeal A (19 units) has a maximum storey height of four storeys. With the Appeal C scheme, the part of the apartment building adjacent to 176 Grange Road would also be four storey instead of three storey as in Appeals A and B. In all three appeals, the lower ground floor storey on the frontage would be largely obscured by the higher ground levels adjacent to the road. Each appeal would have a rear hard surfaced area that would provide for the parking and turning for 19 vehicles. Although I have considered each proposal on its individual merits, to avoid duplication, I have dealt with the schemes together, except where otherwise indicated.
4. A car parking survey and a Geo-Environmental Investigation (GEI) contamination report were submitted with the appeals. Additionally, swept path analysis and cycle rack details have been submitted. These reports and details do not materially change the nature of the application and seek to address objections raised by the Council. The Council and third parties have had time to assess this additional information in their representations and their opportunity to make representations has not been prejudiced. The Environment Agency (EA) were additionally consulted in respect of the GEI report. For all these reasons, the GEI report and details have been considered in all three appeals.
5. In its Statement of Case, the Council additionally raises concerns about the lack of provision of social infrastructure in all three appeals. In Appeal A, a Unilateral Undertaking (UU) dated 20 September 2021 has been submitted that concerns the contributions for social infrastructure and Strategic Access Management and Monitoring mitigation measures in relation to the coastal North Kent Special Protection Area (NKSPA). This will be considered in my reasoning. On the 20 July 2021, a revised National Planning Policy Framework (the Framework) was published, and comments of main parties have been considered in this decision where they have chosen to submit correspondence on this matter.

Main Issues

6. For each appeal, the main issues are the effects of the proposal on (a) the character and appearance of the area, (b) the living conditions of the future residents of the flats, having regard to outlook, private/shared outdoor space, and internal space, (c) cycle provision, having regard to planning policy for sustainable transport provision, (d) social infrastructure, (e) the safety and amenity of highway users, and (f) the risk of contaminated land, having regard to groundwater.

Reasons

Character and appearance

7. The appeal site comprises a group of domestic garages, a sub-station and associated hard surfacing for access. It is behind and to the side of two commercial units at 164 Grange Road. On one side of No 164, there is an access road sloping down towards these garages from Grange Road. The surrounding area is mainly residential in nature, with traditional designed terraces with facing brick/render and roof tile. On Grange Road, there are terraced dwellings with projecting bays, ground floor additions and steeply pitched roofs, which are mainly constructed with render/painted exteriors and plain/concrete tiles. Due to topography, there is a graduated increase in height of the roof ridges along this road towards its junction with Ingram Road.
8. In Appeal A, there would be a three to four storey building, with the lower three storey part adjacent to a neighbouring terraced dwelling at 176 Grange Road. In relation to No 176, its three storey part, with its flat roof, would be lower than the ridge of this two storey terraced dwelling. On the frontage, the building would have vertical divisions which would result in a staggered step backs across the façade.
9. However, even within a lower ground floor storey, its four storey part would be considerably greater in scale and extent than the predominantly two storey scale of dwellings along this part of Grange Road and the single storey units at No 164. The high level rendered façade of the upper storeys would also jar awkwardly with the less dominating pitched roofs of neighbouring developments, even after taking into account the topography of the area. Furthermore, there would be substantial glazed openings serving living rooms above the lower ground storey which would be noticeably larger in height and width than the fenestration on the neighbouring dwellings. Such size would visually look out of place with the modest proportioned fenestration of these dwellings and emphasise this overly domineering feel of the development.
10. Additionally, the upper storeys of the building would project forward and behind the units at No 164 and the dwellings along Grange Road. As a result, there would be a considerable flank expanse of render, with little physical built articulation, which would be overbearing especially when walking up and down Grange Road. From the rear, there would be no topography to screen the lower ground storey and thus, the size, massing and bulk would result in a towering building relative to the surrounding predominantly two storey residential development. For all these reasons, this development would be detrimental to the character and appearance of the area, including from the properties on Castlemaine Avenue to the rear.
11. Such an adverse impact would be even worse for the greater sized and scaled Appeal B and C proposals. Both proposals would result in an additional fifth storey and in Appeal C, a fourth storey instead of a third storey adjacent to No 176. Each proposal would similarly have ill-proportioned openings serving living rooms and there would be greater exposed flank expanse, especially in Appeal C with its increased scale. As such, the proposals would result in far greater visual impact on the character and appearance of the area, including from Grange Road and Castlemaine Avenue, than the Appeal A proposal.

12. For all these reasons, each appeal proposal would harm the character and appearance of the area conflicting with Policy BNE1 of the Medway Local Plan (LP) 2003.

Living conditions

13. In all three appeals, there would be five lower ground floor flats, four of which would be single aspect. The single aspect flats would face either the hard surfaced area to the rear, used for vehicle parking and turning, or a raised area before the higher ground level of the pavement of Grange Road to the front. The flats facing the raised areas and the fifth dual aspect flat facing both raised and hard surfaced areas, would have patios, with the fifth having a frontage and rear patio. However, the hard surfaced areas and the raised bank would be overly close and oppressive resulting in poor outlook for occupants for all these flats even for those with patios.
14. In all three appeals, there would be two flats at upper ground floor facing the commercial building at No 164. Here, the windows of secondary bedrooms would face onto a nearby wall. A further flat at upper ground floor level would also directly face the re-sited electricity substation where there would be a window serving a bedroom. Due to proximity, these features would also result in restricted and poor outlook for these flat occupants.
15. Turning to the provision of private outside amenity space, provision would be made for three of the lower ground floor flats in all the appeals and top floor frontage flats in Appeals A and B. In all three appeal schemes, other flats would have no private or shared outdoor space in conflict with that required under the Councils Housing Design Standards (interim) (HDS) 2011. Whilst the HDS is guidance, provision is essential for health and well-being, as well as meeting every day domestic needs, such as private relaxation or clothes drying. There is a nearby public open space, including a children's play space, which is within comfortable walking distance of the site. However, this is not a substitute for providing private outdoor space, which needs to be provided at home in a readily convenient and accessible way. For all these reasons, the lack of provision for private/shared outside space would significantly compromise the living conditions of future occupants.
16. As to internal space provision, the proposed flats in all three appeals would fall just below the gross internal floor area (GIA) requirements of the Technical housing standards - nationally described space standard (NDSS) 2015. Additionally, bedrooms in four of the flats in each scheme would fall just below the relevant NDSS space standard. However, under the Written Ministerial Statement Planning Update March 2015, decision takers should only require compliance with the new national technical standards where there is a relevant current Local Plan policy. There is no relevant local plan policy explicitly setting out the space standard. LP Policy BNE2 provides only very broad requirements on amenity protection and makes no reference to internal space standards. The internal space deficiencies between GIA and the standards in the NDSS would not be great and therefore, internal space provision for the flats in each scheme would be acceptable.
17. Notwithstanding this, the living conditions of the future residents of the flats in these appeals would be harmed through poor outlook and inadequate provision of private/shared outdoor space. Accordingly, the proposal would be contrary to Policy BNE2 of the LP in Appeals A, B and C.

Cycle provision

18. For Appeals A, B and C, there would be an internal shared cycle storage area marked out for four cycles and two further outside areas to the rear. These outside areas do not detail number of cycles stored but these areas are smaller than the internal area, therefore each development would fail to provide one cycle per flat. Each flat should have cycle storage provision to encourage non-vehicular modes of transport to minimise greenhouse gas emissions as well as to encourage healthy lifestyles for people. Accordingly, each proposal would conflict with Policy T13 of the LP.

Social infrastructure

19. New residents would generate additional demands on local infrastructure. LP Policy S6 states that conditions on planning permissions or legal agreements with developers will be required to provide for new physical infrastructure, social, recreational and community facilities, where mitigation is impossible or inadequate on its own, where the need for these arises directly from the development concerned. In this regard, the Council identified local needs and requirements for financial contributions to youth services, greenspaces, libraries, and NHS.
20. A viability assessment details that the schemes would not be viable if all the contributions were to be paid to meet these needs and requirements. Such a view is confirmed by independent assessors employed by the Council and therefore, the appellant has agreed a smaller contribution in line with the viability assessment. In Appeal A, the UU provides a social infrastructure contribution in accordance with the Council's requirements. Based on the Council's Compliance with Community Infrastructure Regulations 2010 (as amended) report, a contribution would thus be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to it.
21. Therefore, the Appeal A proposal would comply with LP Policy S6. However, in Appeals B and C, there is no planning obligation before me or any other alternative mechanism, such as a workable suggested condition, to secure social infrastructure. Accordingly, Appeal B and C proposals would conflict with LP Policy S6.

Safety and amenity for highway users

22. There would be 19 vehicle parking spaces for residents and visitors on the site, and the proposals would result in the loss of existing private garages on the site. The surrounding area largely comprises terraced housing with a mixture of road and off-street parking. Many properties on Grange Road have frontage on-site parking. Under Appendix 6 of the LP, the parking standard is 1.5 space per dwelling in an urban area. Under the standards, there would be parking space shortfalls in all three appeals, with the greatest for the Appeal C scheme for 24 units. In addition, there would be the loss of the existing garages which are potentially available for local residents.
23. There has been significant third party objections based on the lack of parking in the area, especially in the evening, weekends and when the takeaway use at No 164 is in use. The appellant has carried out a parking survey on an afternoon in September in 2021 that consists of photographs of Grange Road

and neighbouring streets which show spaces available for on street parking. This survey is limited to one restricted time period and does not address the key sensitive times identified by residents.

24. However, Grange Road is on a main bus route into and out of the town, with a bus stop outside the site and most of the units would be one bedroom within the appeal schemes. There are convenience retail stores and public open space within easy walking distance of the site. On this basis, the need for parking from residents using this accommodation would not be great and there is no substantiated evidence on parking capacity problems detailed by the Council to support its objections. It is appreciated that residents may not be able to park their vehicles close to their homes but in the absence of detailed evidence, it has not been demonstrated that this is a frequent and widespread occurrence detrimental to amenity.
25. Taking all these considerations into account, there would be no unacceptable impact on highway safety and the residual cumulative impacts on the road network would not be severe. Any harmful impacts of local residents' amenity have not been proven. Accordingly, each appeal proposal would comply with Policies BNE2, T1 and T13 of the LP (in respect highway of safety and amenity).

Contamination

26. The EA and the appellant's GEI have confirmed historic use of the site as a landfill and its location within a sensitive aquifer zone. The GEI detailed above normal concentrations of two pollutants but these were localised and within the topsoil of the site. The latter would be removed as part of constructing the development and capped by the built development itself preventing any pathways to people. The GEI also identified a lack of any significant mobile organic contamination. On this basis, the evidence demonstrates that this issue can be resolved by way of a planning condition, through an approved watching brief. Subject to this requirement, the proposals would comply with Policy BNE23 of the LP.

Other matters

27. The Council does not have a five year housing land supply. The Council has scored poorly over the last three years in its Housing Delivery Test results. Each of the proposals would make a modest contribution to housing supply and so accord with paragraph 60 of the Framework that states a significant boost should be made to housing supply. The proposals would make effective use of a brownfield site in a location which has good accessibility to services and facilities.
28. However, the developments in each appeal would not be visually attractive as result of good architecture or sympathetic to local character, including the surrounding built environment, in conflict with policy at paragraph 130 of the Framework. They would not create a place that promotes health and well-being, with a high standard of amenity for future users, as required in the same paragraph. Whilst the Framework promotes the effective use of land at paragraph 119, this is subject to the environment being safeguarded and improved and safe and healthy living conditions being ensured which has not been secured here in any of the appeals.

29. For all these reasons, in each appeal, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Accordingly, the presumption in favour of sustainable development would not apply.

Development plan balance and conclusion

30. In each appeal proposal, there would be economic, social and environmental benefits but the harm to the character and appearance of the area would be considerable. The schemes would also fail to ensure good amenity for future residents in a significant way. Inadequate cycle provision for residents would be provided conflicting with sustainable transportation and healthy lifestyle policy goals. In Appeals B and C, there would also be a failure to provide a contribution to provide social infrastructure. The scale of benefits would increase with greater flat numbers as in Appeals B and C, but the greater harms, especially in respect of character and appearance, would still be overriding. For all these reasons, the proposals would conflict with LP policies in a significant way and the development plan taken as a whole.
31. There are no material considerations of sufficient weight or importance that determine that the decisions should be taken other than in accordance with the development plan and therefore, planning permission should be refused for all three proposals. As there are substantive reasons to dismiss the appeals, there is no requirement to consider the effect of the proposals on the integrity of the NKSPA, taking into account the UU in respect of Appeal A.
32. For the reasons given above and having regard to all other matters raised, including support, I conclude that the appeals should be dismissed.

Jonathon Parsons

INSPECTOR