



Appeal Decision

Site visit made on 22 August 2022

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th September 2022

Appeal Ref: APP/A2280/W/22/3291633

82 Jeffery Street, Gillingham, Kent ME7 1DB.

- 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 B.S Khambay of Legstone Builders Ltd against the decision of Medway Council.
 - The application Ref MC/21/1891, dated 21 July 2021, was refused by notice dated 25 October 2021.
 - The development proposed is demolition of existing building and construction of a pair of two-bedroomed bungalows and one 2.5 storey block of flats, comprising three x 2-bedroomed flats and nine x 1-bedroom flats with associated amenity space, refuse, cycle storage and car parking.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and construction of a pair of two-bedroomed bungalows and one 2.5 storey block of flats, comprising three x 2-bedroomed flats and nine x 1-bedroom flats with associated amenity space, refuse, cycle storage and car parking. at 82 Jeffery Street, Gillingham Kent ME7 1DB in accordance with the terms of the application, Ref MC/21/1891, dated 21 July 2021, subject to the attached schedule of 19 conditions.

Main Issues

2. The main issues in this appeal are:
 - a) the effect of the proposed development on the living conditions of neighbouring occupiers on Victoria Street, with regard to privacy; and
 - b) whether the proposed development would make appropriate provision for infrastructure needs arising from the development, with particular regard to the effect of the development on the North Kent Marshes Special Protection Area (SPA)/Ramsar sites.

Reasons

Living conditions

3. Located on the edge of Gillingham's town centre and surrounded by two and three-storey terraced houses on Jeffrey Street, King Street and Victoria Street, the site is used as a timber merchants. It comprises a two-storey building fronting Jeffrey Street, with a further workshop building and yard to the rear.
4. Planning permission MC/16/1443 was granted in February 2017 for the demolition of existing buildings and construction of a pair of 2 bedroomed detached bungalows and one two storey block of flats comprising 3 two

bedroomed flats and 7 one bedroomed flats with associated amenity space, refuse, cycle storage and associated car parking. This planning permission was not implemented and has now expired. The proposed development would be very similar to the previous planning permission, differing only in respect of changes to the roof form to allow for the provision of two further one-bedroom residential units within the roofspace and dormer windows to the roof.

5. At roof level, the proposed development would have 5 dormer windows in the main flatted building. Of these dormer windows, three would face north towards the proposed bungalows, while two would face east towards Victoria Road. These two dormer windows would serve a sitting room and a bedroom.
6. Both east facing dormer windows would face the shared amenity space serving terraced properties on Victoria Street. These terraced properties have been split into flats and are two-storey on their street frontage with a lower ground floor to the rear, creating a three-storey rear elevation. Some flats are accessed from Victoria Street or Jeffrey Street, with other flats accessed only via the shared amenity space. The shared amenity space is largely grassed with some paving and a washing line. Trees lie adjacent to Jeffrey Street and shrubs and vegetation cover the fenced boundary adjacent to the site.
7. There is a difference of opinion between the appellant and the Council as to the number of properties utilising the shared amenity space. I have followed the appellant's assumptions that the shared amenity space would serve 17 – 27 Victoria Street as this is a greater number of properties and the shared space does appear to extend to No 27.
8. It would be reasonable to assume that a number of properties at Nos 17 – 27 have access to the shared amenity space and that the space would be overlooked by lower ground, ground and first floor windows in other flats. While both east-facing dormer windows would face the shared amenity space, they would be located some 9.5 metres from the site boundary. Given the shared nature of the space, existing overlooking by other flats, the extent of vegetation, and the distance of the proposed dormer windows from the amenity space, I find that the dormer windows would not cause harm to the privacy of neighbouring occupiers.
9. Concluding on this main issue, the proposed development would not have a harmful effect on the living conditions of neighbouring occupiers on Victoria Street, with regard to privacy. It would therefore comply with Policy BNE2 of the Medway Local Plan 2003 (Local Plan) and paragraph 130 f) of the National Planning Policy Framework (the Framework), which seek to protect the amenity of neighbouring occupiers, including having regard to privacy.

Infrastructure provision

10. The appellant has entered into a signed and dated unilateral undertaking under section 106 of the Town and Country Planning Act 1990 on 6 September 2022, which includes obligations which would come into effect if planning permission were to be granted. I have considered the obligations in light of the three statutory tests at Regulation 122(2) of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and paragraph 57 of the Framework. These are that the obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.

11. The legal agreement includes a range of contributions:

- £2,389.94 to improve equipment and facilities at Gillingham Library;
- £7,500 towards development of sustainable transport infrastructure;
- £2,504.32 for provision, improvement and promotion of waste and recycling services;
- £2,695 towards public realm improvements to Gillingham town centre;
- £35,078.08 towards enhancement of open space facilities, including outdoor sports provision;
- £1,846.22 towards enhancement of open space at Great Lines Heritage Park; and
- £9,151.24 towards additional capacity in Primary Care premises.

12. Monitoring of the planning obligations is also necessary to ensure that they are spent appropriately and delivered. All of the aforementioned contributions, including meeting the Council's legal costs, meet the three tests and provide necessary mitigation to address the impact of development.

13. The site lies within 6km of the Thames, Medway and Swale Estuary and Marshes SPA/Ramsar sites (collectively known as North Kent Marshes SPA/Ramsar sites). The SPA/Ramsar sites are protected as Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). All three of the North Kent Marshes SPA/Ramsar sites are classified for their waders and waterfowl. The bird interest features for which each site has been classified vary slightly across the three sites, but all three sites provide passage, overwintering, and breeding habitat for species of European Importance.

14. As confirmed by a judgment¹ in the Court of Justice of the European Union, the decision-maker is required, when considering the effect that a proposal might have on a European Site, to consider avoidance and reduction measures through an appropriate assessment rather than at the screening stage.

15. The Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS) (2014) identifies that there have been marked declines of key bird species, particularly on the Medway Estuary. Disturbance is one potential factor, and studies have shown recreational activities to cause disturbance impacts to birds. Within the Medway, the area with most marked declines is north of Gillingham, including the area around Riverside Country Park. This is one of the busiest areas in terms of recreational pressure.

16. I consider that there remains a probability or risk that the proposed development, in combination with other plans or projects, could have a likely significant effect on the North Kent Marshes SPA/Ramsar sites, as it would be likely to exacerbate existing recreational pressures. I am therefore required to carry out an appropriate assessment.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244.

17. It is necessary for me to consider whether any potential effects could be mitigated. The SAMMS sets out a strategy to address disturbance issues to wintering birds on the North Kent Marshes. This SAMMS and its underlying evidence base has been produced by the North Kent local planning authorities working with Natural England. In accordance with the findings of the SAMMS, strategic mitigation measures are being delivered through Bird Wise, a partnership of local authorities and conservation organisations in North Kent.
18. The legal agreement commits the appellant to provision of £3,553.62 to mitigate against the impact of development on the North Kent Marshes SPA/Ramsar sites. I consider that the mitigation measures would avoid the proposed development having a likely significant effect on the North Kent Marshes SPA/Ramsar sites. This would therefore also meet the three tests.
19. In conclusion, the proposed development would make appropriate provision for infrastructure needs arising from the development, with particular regard to the effect of the development on the North Kent Marshes SPA/Ramsar sites. Accordingly, it would comply with Local Plan Policies S6, BNE2, BNE35, and L4, paragraphs 86, 92, 93, 104, 105, 180 and 181 of the Framework, and the requirements of the Habitats Regulations. Policy S6 deals with planning obligations. Policy BNE2 and paragraphs 104 and 105 of the Framework cover traffic generation and growth, while Policy L4 addresses provision of open space. Policy BNE35 and paragraphs 180 and 181 of the Framework deal with sites of nature conservation importance. Paragraphs 86, 92 and 93 aim to ensure vitality of town centres, and promote healthy, inclusive and safe places with appropriate social and recreational facilities. I have not addressed paragraph 130 f) of the Framework as it does not appear to be relevant.

Other Matters

20. While I am aware that the Council cannot demonstrate a 5 year supply of housing land, it has not been necessary for me to consider this matter in more detail as I am allowing this appeal. Concerns have been raised about any potential effects on a neighbouring property on King Street during construction. Such matters would be addressed by the Construction Environmental Management Plan, which is dealt with by condition.

Conditions

21. It is necessary to specify conditions confirming the time limit for development (1) and approved plans (2) to ensure certainty. Four pre-commencement conditions (3, 4, 5, and 6) are necessary as they should be addressed before construction works begin. The condition for a Construction Environmental Management Plan (3) is necessary to safeguard the living conditions of local residents. Conditions on contamination management (4, 5 and 17) are necessary to avoid any detrimental impacts on the environment or human health. I have amended the contamination and surface water conditions for clarity and succinctness. A further pre-commencement condition (6) deals with surface water drainage during and after construction and ensures that any flood risk is mitigated.
22. Conditions on materials, hard and soft landscaping and boundary treatments (7 and 8) are necessary to ensure that the development maintains local character and appearance and the living conditions of residents. I have merged the conditions on boundary treatments, landscape management plan provision and

hard and soft landscaping to reduce conditions. A condition on lighting (15) is necessary to avoid harm to adjoining residents' living conditions.

23. Given the town centre location, acoustic assessment (9) is necessary to ensure any necessary acoustic protection is provided. This would be necessary to ensure reasonable living conditions for future residents. Conditions on cycle storage, laying out of parking spaces, electric vehicle charging, and parking management (10, 11, 12 and 13) are necessary in the interests of sustainable travel and highway safety, while a refuse storage condition (14) is also necessary in the interests of visual amenity and highway safety.
24. A condition (16) to ensure compliance with the submitted Energy Strategy Statement is necessary to provide sustainable development. Two conditions (18 and 19) removing permitted development rights for housing in multiple occupation and extensions are necessary to avoid harm to future and neighbouring residents' living conditions. I have not included a condition on obscure glazing and opening of first floor windows as I consider this to be unnecessary in light of my findings on the first main issue. It would also affect the living conditions of future occupiers of the relevant unit.

Conclusion

25. For the reasons set out above, and having had regard to the development plan as a whole, the Framework, and all other material considerations, the appeal is allowed.

Joanna Gilbert

INSPECTOR

Schedule of 19 conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; 6052/010 Proposed Ground Floor & Site Plan; 6052/011 - Proposed Ground Floor Plan - Apartments; 6052/012 - Proposed First Floor Plan – Apartments; 6052/013- Proposed Second Floor Plan – Apartments; 6052-014 Rev A Proposed Elevations, Section and Roof Plan; 6051-015 Proposed Plans + Elevations to Units 6 + 7; 6052/16 Proposed Landscaping Plan; and 6052/18 Proposed Block Plan.
- 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 amongst other matters details of hours of construction working; measures to control noise affecting nearby residents; dust control measures; pollution incident control and site contact details in case of complaints. The construction works shall thereafter be carried out at all times in accordance with the approved CEMP.
- 4) No development shall take place until an investigation and assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Land Contamination Risk Management, and shall assess any contamination on the site, whether or not it originates on the site.

The written assessment shall include:

- i) a survey of the extent, scale and nature of contamination;
- ii) an assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - groundwaters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 5) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by

the Local Planning Authority before the development or relevant phase of development is occupied.

- 6) No development shall take place until a scheme showing details of the disposal of surface water during and after construction, based on sustainable drainage principles, has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include:
- i) a Construction Surface Water Management Plan (CSWMP) detailing how surface water and storm water will be managed on the site during construction (including demolition and site clearance operations). The CSWMP shall include method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include temporary drainage systems, measures for managing pollution / water quality and protecting controlled waters and watercourses, and measures for managing any on or offsite flood risk. The CSWMP shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction;
 - ii) details of the design, implementation, maintenance, and management of the surface water drainage scheme;
 - iii) a timetable and construction method statement for its implementation (including phased implementation where applicable);
 - iv) appropriate operational, maintenance and access requirements for each sustainable drainage component;
 - v) proposed arrangements for future adoption by any public body, statutory undertaker or management company and any other arrangements to secure the operation of the scheme throughout its lifetime.

No dwelling shall be occupied until (or within an agreed implementation schedule) a signed verification report carried out by a qualified drainage engineer (or equivalent) has been submitted to and approved by the Local Planning Authority to confirm that the surface water drainage system has been constructed as per the agreed scheme and plans. The report shall include details and locations of critical drainage infrastructure (such as inlets, outlets and control structures) including as built drawings, and an operation and maintenance manual for the unadopted parts of the scheme as constructed.

- 7) No development above slab level shall take place until details of all external materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 8) No development above slab level shall take place until full details of hard and soft landscape works and boundary treatments and a timetable for implementation have been submitted to and approved in writing by the Local Planning Authority. These details shall include but not be limited to:
- a) existing and proposed levels;
 - b) hard landscaping material specifications/layout;
 - c) a plan indicating the position, design, materials and type of boundary treatment;
 - d) street furniture/accessories (e.g. seating, tree pits, tree grilles etc.);
 - e) detailed planting plans and planting specifications;

- f) tree pit details (including soil build-up, tree cells, supports and accessories) and planting/substrate construction details;
- g) a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for landscape areas for a minimum period of 5 years and arrangements for implementation.

The development shall be implemented in accordance with the approved details and any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

- 9) No development above slab level shall take place until an acoustic assessment has been undertaken to determine the impact of noise from transport related sources and shall be made in accordance with BS8233 2014: Guidance on Sound Insulation and Noise Reduction for Buildings. The results of the assessment and details of a scheme of acoustic protection shall be submitted to and approved in writing by the Local Planning Authority.

The scheme shall include details of acoustic protection sufficient to ensure internal noise levels (LAeq,T) no greater than 30dB in bedrooms and 35dB in living rooms with windows closed and a maximum noise level (LAm_{ax}) of no more than 45dB(A) with windows closed. Where the internal noise levels will be exceeded with windows open, the scheme shall incorporate appropriate acoustically screened mechanical ventilation. The scheme shall include details of acoustic protection sufficient to ensure amenity/garden noise levels of not more than 55dB (LAeq,T). All works, which form part of the approved scheme, shall be completed before any part of the development is occupied and shall thereafter be maintained in accordance with the approved details.

- 10) No dwelling shall be occupied until details of cycle storage facilities have been submitted to and approved in writing by the Local Planning Authority. The cycle storage facilities shall be implemented in accordance with the approved details and thereafter retained.
- 11) No dwelling shall be occupied until the area shown on plan 6052/010 as vehicle parking spaces has been provided, surfaced and drained in accordance with details submitted to and approved in writing by the Local Planning Authority. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to any parking space.
- 12) No dwelling shall be occupied until details of the provision of 11 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 development shall be implemented in accordance with the approved details and shall thereafter be maintained in working order.
- 13) No dwelling shall be occupied until a Parking Management Plan (PMP) has been submitted to and approved in writing by the Local Planning Authority. The PMP shall contain details of how the on-site parking provision is to be managed and

how residents and their visitors will be prevented from parking on street. The PMP shall be implemented in accordance with the approved details prior to the first occupation of the residential unit and shall thereafter be retained.

- 14) No dwelling shall be occupied until the refuse storage facilities have been implemented in accordance with plans 6052/010 and 6052-014 Rev A and shall thereafter be retained.
- 15) Prior to the installation of any external lighting, details of lighting shall be submitted to and approved in writing by the Local Planning Authority. Details shall include height, position, external appearance, any shielding, light intensity, colour, spillage (light contour or lux level plans showing the existing and proposed levels) and hours of use together with a report to demonstrate its effect on nearby residential properties, and of how this effect has been minimised. Any external lighting shall thereafter be implemented and maintained in accordance with the approved details.
- 16) The development hereby approved shall incorporate the measures to address energy efficiency and climate change as set out within the Energy Strategy Statement (dated July 2021). The development shall not be occupied until a verification report prepared by a suitably qualified professional has been submitted to and approved in writing by the Local Planning Authority confirming that all the approved measures have been implemented.
- 17) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and an investigation and risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed.
- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification) all dwellinghouses herein approved shall remain in use as a dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order amending, revoking and re-enacting that Order with or without modification) and no change of use shall be carried out unless planning permission has been granted on an application relating thereto.
- 19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification) no development shall be carried out within Schedule 2, Part 1, Classes A, AA, B, C and E of that Order unless planning permission has been granted on an application relating thereto.