



Appeal Decision

Site visit made on 17 November 2022

by C Hall BSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2023

Appeal Ref: APP/A2280/W/22/3298841

Berkeley Mount, Old Road, Chatham ME4 6BW

- 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 Thomas Draper against the decision of Medway Council.
 - The application Ref MC/21/0355, dated 8 February 2021, was refused by notice dated 5 May 2021.
 - The proposed development is an outline application with all matters reserved for the demolition of garages to facilitate the construction of a block of flats consisting of 4 one-bedroom flats with associated parking.
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Decision

1. The appeal is allowed and planning permission is granted for an outline application with all matters reserved for the demolition of garages to facilitate the construction of a block of flats consisting of 4 one-bedroom flats with associated parking at Garages at Berkeley Mount, Old Road, Chatham ME4 6BW in accordance with the terms of the application Ref MC/21/0355, dated 8 February 2021, subject to the conditions in the attached schedule.

Preliminary Matter

2. I have used the Council's description as contained in the decision notice as it better reflects the development proposed.

Main Issue

3. The main issue is whether the proposal would result in an over-development of the site.

Reasons

4. Submission of layouts, whether labelled as indicative or not, are commonly utilised to demonstrate to the decision maker that the level of proposed development can be likely be accommodated within the site with final designs requiring submission at reserved matters stage.
 5. From the evidence before me, I am satisfied that the Council has consistently throughout the application process treated the plans as indicative. The Committee report makes numerous references the indicative nature of the plans and states that detail of access, layout, landscaping, scale and appearance have been reserved for consideration at a later date and are not subject to the outline planning application. Consequently I find that the proposed plans should clearly be considered as indicative.
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6. The proposal is for 4 one-bedroom flats, whilst this would introduce a larger structure on the site, the built form would reflect the scale and extent of the block of flats on the adjacent site to the west. The plans are illustrative only; an alternative layout could be agreed to accommodate the scheme should that be considered suitable. I am satisfied that the proposed level of accommodation could be facilitated by this site. The exact layout of the scheme would be agreed at reserved matters stage, it is not before me for determination.
7. In terms of the surrounding landscape, including the adjacent New Road Chatham Conservation Area (CA), I consider that the proposed residential development of this site could be achieved without adversely affecting the character of the local townscape or the CA. The Committee report states that the specific design and appearance of the scheme would need to be addressed at the reserved matters stage, again it is not before me for determination.
8. I do not consider it possible to make a detailed assessment of residential amenity at this stage given that layout, scale and appearance are all reserved matters. However, in principle the illustrative plans identify that the development could be located to ensure that adequate levels of privacy and outlook would be provided for future occupiers. Off-street parking and a cycle store could be provided at ground level.
9. I find that the appeal site would be able to accommodate 4 one-bedroom flats and that the development could be designed and constructed in a manner that would provide an acceptable standard of amenity for future occupiers and represent an efficient use of land. As the proposal would not result in an over-development of the site, it would comply with Policies H4, BNE1, BNE2 and BNE14 of the the Medway Local Plan May 2003, which collectively require proposals to seek efficient use of land but reflect the characteristics of the site and local area. It would also be consistent with the National Planning Policy Framework, which states that good design is a key aspect of sustainable development.

Planning Obligations

10. The appellant has entered into separate signed and dated unilateral undertakings under section 106 of the Town and Country Planning Act 1990, which include obligations that would come into effect if planning permission were to be granted; the Council has confirmed that the agreements are complete. 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 first legal agreement secures funds towards highways improvements, being a barrier between the development and The Mount. Monitoring of this planning obligation is also necessary to ensure that it is spent appropriately and delivered. To my mind the contribution meets the three tests and provides necessary mitigation to address the impact of development.
12. 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.

13. As decision-maker I am 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.
14. The Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy 2014 (SAMMS) 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.
15. 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.
16. 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 North Kent local planning authorities in conjunction with Natural England. In accordance with the findings of the SAMMS, strategic mitigation measures are being delivered via a partnership of local authorities and conservation organisations.
17. The legal agreement commits the appellant to provision of monies 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 outlined above.

Conditions

18. I have considered the imposition of conditions in light of advice in Planning Policy Guidance and the National Planning Policy Framework. I have altered the wording of some of the conditions suggested by the Council in the interests of clarity and necessity. In addition to the standard conditions relating to the submission of reserved matters, the approved location plan is listed for certainty.
19. Specific details relating to landscaping would ensure a satisfactory appearance, and the provision and retention of vehicle parking within the site would help to prevent hazardous on-street parking in the area. A management plan would minimise the effect of construction on local amenity, and conditions in respect of the installation of electric vehicle charging points, air quality mitigation measures and energy efficiency are imposed in the interests of sustainability.

20. Acoustic assessment and protection would ensure no adverse harm to living conditions and cycle parking is necessary to secure on-site provision. A condition restricting the use of the dwellings would ensure that the Council retains control over the building and in the interests of amenity. Condition 14 ensures that any ground contamination at the appeal site is appropriately remedied.

Conclusion

21. Based on the above and all matters raised, the appeal is allowed.

C Hall

INSPECTOR

Schedule of conditions

- 1) Details of the access, appearance, layout, scale and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan
- 5) The details submitted in pursuance of condition 1 shall be accompanied by a scheme of landscaping (hard and soft) and a timetable 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.
- 6) The details submitted in pursuance of Condition 1 shall show land reserved for parking or garaging in accordance with the adopted Parking Standards. The building shall not be occupied until this area has been provided, surfaced and drained in accordance with the approved details. Thereafter no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved vehicle parking area.
- 7) No development shall take place, including demolition of existing garages, until a Construction Environmental Management Plan that describes measures to control, amongst other matters, hours of working, noise, dust and lighting

arising from the construction phase of the development has been submitted to and approved in writing by the Local Planning Authority. The construction works shall be undertaken in accordance with this approved plan.

- 8) No development shall take place above ground floor slab level until details of the provision of 1 electric vehicle charging point per space 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.
- 9) No development shall take place above slab level until an air quality mitigation scheme has been submitted to and approved in writing by the Local Planning Authority. The mitigation scheme shall be prepared in accordance with the Medway Air Quality Planning Guidance, and shall include full details of the installation of low NOx gas fired boilers. The development shall be implemented, and thereafter maintained, entirely in accordance with the details set out in the approved mitigation scheme.
- 10) The application for reserved matters shall be supported by a Climate Change and Energy Efficiency Statement that incorporates measures to address energy efficiency and climate change for consideration. 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. The measures shall be maintained thereafter.
- 11) No development shall take place above slab level until an acoustic assessment has been undertaken to determine the impact of noise from transport related noise 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 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 (LAmax) 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.
- 12) No part of the development shall be occupied until details of secure private cycle parking in the form of individual lockers has 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 shall thereafter be retained and maintained.
- 13) 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.

- 14) 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 a 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 or continued.