



Appeal Decision

Site visit made on 10 January 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2023

Appeal Ref: APP/A2280/W/21/3280048

218 Main Road, Hoo, Rochester, Kent ME3 9HG

- 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 Michael Massie against the decision of Medway Council.
 - The application Ref MC/20/2945, dated 16 November 2020, was refused by notice dated 3 February 2021.
 - The development proposed is the formation of a drive access from Main Road Hoo to the Rear of 218 Main Road and the erection of seven detached houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application has been made in outline, with all matters relating to access, appearance, landscaping, layout and scale reserved for future consideration. The proposed plans are not marked as being illustrative or indicative, but the submissions suggest that this is how the appellant intended for them to be interpreted, and the Council's officer report refers to them in this manner. In the context of the information provided, the proposed plans can only be sensibly understood as having the purpose of being illustrative/indicative of how the proposal could be developed. The Courts¹ have held that in these circumstances, it is not essential for proposed plans to be marked as illustrative/indicative. I have therefore referred to them as such.

Main Issues

3. The main issues are:
 - Whether the appeal site is an acceptable location for the proposal in principle, with regard to local policies;
 - The effect of the proposal on the character and appearance of the area;
 - Whether the proposed houses would be safe from flooding;
 - The effect of the proposal on the living conditions of neighbouring occupiers of 216 Main Road, with particular regard to noise and disturbance; and
 - The effect of the proposal on highway safety.

¹ Crystal Property (London) Ltd v Secretary of State for Communities and Local Government & London Borough of Hackney Council EWCA Civ 1265 [2016]

Reasons

Location

4. The appeal site is an area of land to the rear of a row of detached and semi-detached houses. It is described by the appellant as being garden land, previously used for horse grazing, with a manège and stable/storage building. This land, beyond established gardens, lies outside the rural settlement boundary of Hoo St Werburgh, as defined by the Medway Local Plan (2003) (LP). The appeal site does not have the appearance of open countryside but Saved Policy BNE25 of the LP clarifies that land outside urban and rural settlement boundaries is defined as the countryside.
5. The appellant has claimed the appeal site comprises 'brownfield' land and has referred to the historic development of land forming part of and around the appeal site. This includes the redevelopment of Homeleigh Nursery and the development of the Hundred of Hoo School and playing field to the north of the appeal site.
6. As land associated with, and occupied by, a manège and stable/storage building, I am satisfied that the appeal site constitutes brownfield/previously developed land, as defined in the National Planning Policy Framework² (the Framework). This status of the land and the historic development of it and its immediate surroundings do not bring the appeal site within the rural settlement boundary, in the context of the LP. Almost all of the appeal site is therefore classified as being within the countryside for the purposes of applying the saved policies of the LP.
7. Saved Policy BNE25 states that development will only be permitted in the countryside if it maintains the character, amenity and functioning of the countryside, offers a realistic chance of access by a range of transport modes, and meets at least one of 6 other criteria. No arguments have been presented to suggest the proposal would accord with any of those 6 criteria. As the proposal would not accord with any of those criteria, it would be contrary to Saved Policy BNE25 of the LP. The proposal would also conflict with Saved Policy S1 of the LP, which seeks to direct new development to land within the urban area.

Character and Appearance

8. Main Road leads from Chattenden and the A228 to Hoo. The houses located on this part of Main Road form the western extremity of Hoo and are arranged as a ribbon form of development, set back from the road behind landscaping and off-street parking areas, with long gardens to the rear. The appeal site's immediate surroundings are therefore characterised by spacious plots comprising generous gardens and landscaping. The appeal site is located between the rear garden boundaries of several houses on Main Road and a stream which runs along the northern boundary, beyond which is a school.
9. The proposal would comprise a 'backland' form of development, which would be served by a proposed access road between 218 and 216 Main Road. The proposed plans show that 7 dwellings and an access road could create a cramped, tightly arranged form of development on account of the appeal site's size and shape. Although the proposed plans show an indicative layout, there

² Annex 2: Glossary

would be very few alternative options for erecting 7 dwellings within the limited confines of the appeal site. The proposed erection of 7 dwellings within the appeal site would therefore be uncharacteristic in the more spacious surroundings.

10. I have been referred to other developments authorised by the Council, where backland development with smaller gardens and shorter separation distances between neighbouring buildings have been permitted. Be that as it may, those developments do not form part of the immediate surroundings of the appeal site, where the prevailing character of the area comprises houses in long, spacious plots. I note a row of houses in more modestly sized plots a short distance to the east of the appeal site, but their general arrangement and layout broadly reflects the character of this part of Main Road.
11. Although the application has been made in outline with all matters reserved, I am unconvinced that it would be possible to erect 7 dwellings within the appeal site without causing harm to the character and appearance of the area. That level of harm could be moderate, due to it being restricted to an area at the rear of long gardens, limiting views from the surrounding area. The proposal would therefore conflict with Saved Policies S2 and H9 of the LP. These require, amongst other things, design standards and the character of the area to be maintained and/or improved.

Flooding

12. A stream runs along the northern outer edge of the appeal site boundary. I have been referred to alleged localised flooding, which the appellant has explained was not caused by the stream or surrounding ground conditions, but which resulted from inadequacies in a foul sewer and inspection chamber which runs through the appeal site. It is claimed that those inadequacies have been addressed. I also note the appellant's claims that the stream to the rear of the appeal site has never flooded in almost 40 years, since he has resided to the front of the appeal site.
13. However, the Lead Local Flood Authority (LLFA) has objected to the proposal on the basis that the appeal site is shown as being at high risk of surface water flooding, according to the Environment Agency surface water flood risk mapping. The appellant has referred to the low risk of flooding shown on the same mapping resource for the existing dwelling, but the appeal site is located to the rear of that location, closer to the stream.
14. Although the appellant disagrees with the advice of the LLFA, the evidence before me indicates that part of the appeal site is at high risk of surface water flooding. The layout of the appeal site indicates that at least some of the proposed dwellings would need to be located close to the stream along the northern boundary, where there is a high risk of surface water flooding. No details of a surface water management scheme or any flood risk analysis have been provided, and as such it is unclear whether the proposal would be at risk, and/or increase risk, of flooding locally. In the absence of such information, I am not convinced that a rainwater harvesting system would sufficiently reduce any flood risk.
15. Paragraph 167 of the Framework explains that, when determining any planning applications, flood risk should not be increased elsewhere and, where appropriate, applications should be supported by a site-specific flood-risk

assessment. Footnote 55 of the Framework clarifies that a site-specific flood risk assessment should be provided where land in Flood Zone 1 may be subject to other sources of flooding and its development would introduce a more vulnerable use. A site-specific flood-risk assessment has not been provided.

16. The Council has referred to Saved Policy CF13 of the LP in its third reason for refusal, which relates to tidal flood risk areas. Although the LLFA advise that the appeal site is at high risk of surface water flooding, there is no evidence which suggests the appeal site is in a tidal flood risk area. As such, I find no conflict with Saved Policy CF13 of the LP. The proposal would, however, conflict with the advice set out at paragraph 167 of the Framework, as referred to above, because it would introduce a more vulnerable use of the land, which the evidence indicates may be subject to flooding, other than those sources mentioned in footnote 55 of the Framework.

Living Conditions

17. The proposed dwellings would need to be served by an access road. The shape of the appeal site means this would have to run between the dwellings at 216 and 218 Main Road. This would provide sufficient width for an access road which could be lined with appropriate boundary treatment. The Council has advised that the proposed plans show the access road would be 2 metres from the side elevation of 216 Main Road, which has windows serving habitable rooms. The nearest windows would be at ground floor level, facing the existing drive of 218 Main Road.
18. In the context of Main Road, the proposal would be unlikely to generate uncharacteristic noise or disturbance for its setting. That would include any noise and disturbance resulting from associated vehicle movements. There would be a change to the living environment at 216 Main Road as a result of those vehicle movements, but it would not be a significant change resulting in material harm to the living conditions of the occupiers of that property. This would be on account of the limited number of dwellings proposed and the significant gap between the side elevation walls of 216 and 218 Main Road. That gap would leave sufficient separation space between where the proposed access road could be positioned and appropriate boundary treatment.
19. The proposal would not therefore conflict with the parts of Saved Policy H9 of the LP and paragraph 130 of the Framework which refer to the need for development to avoid a significant increase in noise or disturbance to adjacent residents from traffic.

Highway Safety

20. The application form confirms that all matters relating to access are to be reserved for future consideration. The proposed plans provide an indicative access road arrangement, full details of which would need to be approved as reserved matters. As outline planning permission is being sought with all matters relating to access, appearance, landscaping, layout and scale reserved for future consideration, no approval is being sought for the proposal's access road arrangements.
21. There is sufficient space within the appeal site to provide different access road arrangements. I therefore consider the appeal site would be capable of

providing an access route with the necessary width to allow vehicles, including those collecting refuse, to pass safely within the appeal site.

22. The proposal would not therefore conflict with Saved Policy T1 of the LP or paragraph 111 of the Framework. Saved Policy T1 supports developments which will not significantly add to the risk of road traffic accidents, amongst other things, while the Framework advises that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

23. The appeal site is located within 6 kilometres of the North Kent Marshes Special Protection Area and Ramsar sites. These are defined as European Sites by the Conservation of Habitats and Species Regulations 2017 (as amended). Those Regulations require that, where a project is likely to have a significant effect on a European Site, either alone or in combination with other plans or projects, the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. As I have found the proposal would be unacceptable for other reasons, it is not necessary for me to undertake an appropriate assessment unless if other considerations indicate planning permission should be granted.
24. The appellant has explained that it would be his intention to sell plots of various sizes within the appeal site to allow individuals to erect self-build dwellings. These would be entered onto the Council's self-build and custom housebuilding register. There is no legal agreement before me which requires any of the proposed dwellings to comprise custom/self-build developments. In the absence of any detailed submissions to suggest otherwise, I am unconvinced that a condition could meet the necessary tests at paragraph 56 of the Framework in this instance to require any of the proposed dwellings to be custom/self-build projects. I therefore attach limited weight to this prospect in favour of the proposal.
25. The proposed dwellings could incorporate rainwater harvesting methods to reduce their impact on the local water and sewer networks. I have not been provided with specific details of such methods, but I do not doubt that it may be possible to integrate schemes which could reduce future occupiers' water use and waste. The benefits of a rainwater harvesting system have not been quantified, and as such I assign limited weight to them.
26. The appeal site comprises previously developed land. The appellant has referred to the Council's intention to develop significant numbers of houses on such land. However, I have not been referred to any specific policies or other relevant considerations which would support the development of previously developed land at the appeal site in the manner proposed. The harm and potential harm identified above would outweigh any benefits of the proposal put forward in support of the appeal.
27. I have been referred to other developments approved in the surrounding area, which are claimed to be contrary to the Council's development plan. Limited details of those schemes have been provided, but the evidence suggests there are significant differences between the sizes and locations of those schemes and the appeal proposal, which would make only a modest contribution to any

targets the Council may have to develop brownfield land. They do not lead me to any different conclusions on the main issues in this appeal.

Conclusion

28. The proposal would be located outside of the urban area, where the Council's development plan seeks to restrict development. In addition, the proposal would harm the character and appearance of the area and it has not been demonstrated that the proposal would not be at risk of flooding and would not increase flood-risk elsewhere. The proposal would therefore conflict with the development plan taken as a whole. There are no material considerations, including the Framework, which indicate my decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

L Douglas

INSPECTOR