
Appeal Decision

Site visit made on 2 August 2023

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 9th August 2023

Appeal Ref: APP/A2280/W/23/3316780

Land off Berengrave Lane, Rainham, Kent

- 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 J Bateman against the decision of Medway Council.
 - The application Ref MC/22/1339, dated 24 May 2022, was refused by notice dated 22 November 2022.
 - The development proposed is "the erection of 8 no. residential dwellings and associated private amenity space, landscaping and parking".
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Decision

1. The appeal is allowed and planning permission is granted, for the erection of eight dwellings with associated private amenity space, landscaping and parking, on land off Berengrave Lane, Rainham, Kent, in accordance with the application, Ref MC/22/1339, dated 24 May 2022, subject to the conditions set out in the attached schedule.

Planning context and background

2. The local plan for the area is the Medway Local Plan (the MLP), adopted in May 2003. The appeal site is located outside any of the urban and rural settlement boundaries, and therefore within the countryside, and is also within the Gillingham Riverside Area of Local Landscape Importance (ALLI).
3. Policy S1 states that the priority for development is to be on reinvestment in the urban fabric, with a focus on the Medway riverside and town centres. Outward peripheral expansion is to be severely restricted. In the rural area, Policy H11 restricts housing to minor development, within the confines of villages and settlements.
4. Outside settlement boundaries, Policy BNE25 limits development to certain defined categories, including allocated sites, agriculture, forestry or recreation, and re-use of existing buildings; none of these apply to the appeal proposal. In addition, schemes are also required to maintain the character, amenity and functioning of the countryside, and to offer a range of transport modes.
5. In the ALLIs, Policy BNE34 restricts development to that which does not materially harm the landscape character and function of the area; or alternatively, that which offers economic and social benefits which outweigh the landscape considerations. In all cases, development should also minimise any harm to the ALLI, by means of design and landscaping.

6. With regard to housing, Policy H9 sets out criteria for backland development, which is defined as landlocked, vacant or neglected sites to the rear of existing residential properties. On such sites, development should not be piecemeal or tandem, and should not hinder any prospect of a more comprehensive development. Schemes must also have acceptable vehicular access, protect the amenity of neighbouring properties, and maintain the character and amenity of the area as a whole.
7. In the present case, the appellants accept that the appeal proposal would conflict with Policy S1, due to its location in the countryside. To my mind, it follows from this that the development is also in conflict with Policies H11 and BNE25. But on the other hand, the Council does not appear to dispute that the development meets the criteria for backland development under Policy H9, although this is disputed by other parties.
8. In any event, it is common ground that the District does not currently have a 5-year supply of deliverable housing sites, as required by the National Planning Policy Framework (the NPPF). According to the appellants, the most recent assessment shows 3.64 years; this figure has not been disputed. In these circumstances, the NPPF requires that the policies that are most important for determining the appeal should be treated as out of date. In this context, the Council is willing to accept that Policies BNE25 and BNE34 should carry limited weight, due to their effects on housing delivery.

Main issue

9. In the light of the above, and the Council's reason for refusal of the application, the single main issue in the appeal is the effect of the proposed development on the character and appearance of the area, with particular regard to the local landscape.

Effects on the character and appearance of the area

10. As discussed above, MLP Policy BNE34 seeks to protect the landscape character and quality of the ALLIs. The Gillingham Riverside ALLI is described in the MLP as a rural landscape of orchards and arable fields, with country lanes, mature hedgerows and farm groups. Together these are said to provide a green buffer around the nearby towns, a green backdrop to views from the Medway estuary, and an attractive setting for the area's conservation areas, transport routes and country park. From what I saw on my visit, even though some changes have occurred in the 20 years since the MLP was adopted, this broad-brush description of the ALLI still appears generally accurate and relevant.
11. In the NPPF, paragraph 174 states that planning decisions should contribute to and enhance the natural environment by, amongst other things, protecting and enhancing valued landscapes, and by recognising the intrinsic character and beauty of the countryside. Paragraph 175 goes on to say that plans should distinguish between the hierarchy of international, national and locally designated sites.
12. To my mind, MLP Policy BNE34 is clearly aligned with these aims. The policy seeks to recognise the role of certain landscapes that are seen as important in a local context, and to give a measure of protection to these, whilst not imposing a blanket ban on development. Notwithstanding the Council's contrary view, I am satisfied that, for the purposes of this appeal, Policy BNE34

is generally consistent with national policy, and thus capable of carrying full weight. But nevertheless, the policy seems designed primarily to protect the character of the landscape of the ALLI as a whole, rather than each and every parcel of land within it.

13. In the present case, the appeal site comprises a smallish paddock of rough grassland and scattered scrub, said to have been formerly part of a horticultural nursery. These are land use types that are not noted as important contributors to the ALLI's landscape character. The land itself is flat, featureless, and visually unremarkable. On two sides, the site is enclosed by residential development, in Berengrave Lane and the recently built cul-de-sac Queencourt Close. On its third side, it is bounded by a substantial hedge, beyond which are two further small paddocks and then more housing, in Nuthatch Place and Lower Rainham Road. Consequently, although the short north-western boundary is unfenced, the site as a whole is well contained. Furthermore, the site is publicly visible only from the turning head of Queencourt Close, and even then, only in the context of the surrounding built development. Overall therefore, the site's contribution to the wider landscape is negligible.
14. The site is undeveloped greenfield land, and the development now proposed would result in the loss of its current openness. But given that the site is not in any designated green belt, this alone would not amount to significant harm, and particularly in a situation where land has to be found to make up the acknowledged shortfall in supply.
15. With regard to the proposed scheme itself, the development would comprise a mixture of detached and semi-detached dwellings of relatively modest size and height, reasonably well spaced on the site, with adequate room for gardens, parking and landscaping. To my mind, the scheme's design and landscaping are unobjectionable, and would help to further minimise the development's overall impact.
16. Based on this assessment, I conclude that the proposed development would not harm the landscape character and function of the Gillingham Riverside ALLI, nor would it materially harm the character or appearance of the area in any other way. In this regard the development would therefore involve no conflict with Policy BNE34 or any other identified policy.

Other matters

Effects on protected sites

17. The appeal site is said to lie within a 6km buffer zone, around the North Kent Marshes Special Protection Area (SPA) and Ramsar Site. The appellant has made a financial contribution towards measures to mitigate the impacts of recreational disturbance in those areas, in accordance with the Council's draft Strategic Access, Management and Monitoring Strategy and interim tariff. Natural England has confirmed that it is satisfied with the amount and form of mitigation thus provided. These matters are not in dispute between the parties. On the evidence before me, I am satisfied that the development would not affect the relevant protected areas or their conservation objectives.

Effects on traffic and local roads

18. I note the comments of local residents regarding problems of congestion, parking and air quality on local roads, and I appreciate that traffic levels in the area are likely to have increased in recent years as a result of new house-building. In percentage terms however, the additional impact arising from the eight dwellings now proposed would be marginal, at most. I appreciate that residents' concerns are partly also about the prospect that if this scheme is permitted, further developments may follow, but I can only consider the appeal that is before me.
19. Access is available via Queencourt Close, which is a very recently constructed new road, apparently designed to meet modern highway standards. The access from there onto Berengrave Lane seems to me to have reasonable visibility, and I see no reason to consider it unsafe. The proposed development would provide on-site parking and garaging to meet its own needs, together with visitor parking, and again I have no reason to believe that this would be inadequate. The local highway authority does not appear to have raised any objection, and I too find no valid reason to refuse permission on these grounds.

Privacy of neighbouring occupiers

20. The rear windows of the new dwelling on Plot 8 would face towards the neighbouring properties in Berengrave Lane, but the distance from that dwelling to the boundary would be around 20m, and views would be partly screened by a proposed new garage in Plot 8's rear garden.
21. The dwelling on Plot 7 would be orientated sideways-on to the boundary, and thus would have only oblique views; the only side window at first floor level would serve a bathroom, and would be obscurely glazed. In both of these cases, views towards the Berengrave Lane properties or gardens would be further obscured by the existing boundary vegetation, which is proposed to be retained and supplemented with new planting.
22. On all of the other new plots, the dwellings would face away from existing properties and gardens. On this basis, I am satisfied that the development would not be likely to give rise to any unacceptable overlooking or loss of privacy.

Other matters raised by local residents

23. Whilst it is to be expected that any new housing development will increase the pressure on existing health services and other local facilities, this impact has to be set in the context of the established need to increase the supply of housing in the District. There is no evidence to suggest that development at the appeal site would affect local services to any greater extent than development elsewhere in the District.
24. Any impacts in relation to wildlife, light pollution and construction processes can be adequately controlled by way of planning conditions.
25. I note the criticisms raised in relation to the Council's consultation procedures, but this is a matter for the Council itself, and is not directly relevant to my decision. As far as I can tell, there is no evidence that anyone has been left in a position of being unable to comment on either the application or the appeal.

Compliance with Policy H9

26. The appeal site falls within Policy H9's definition of a backland site, by virtue of being a landlocked, vacant plot of land, to the rear of existing properties. The scheme would not comprise tandem development, and for the reasons already discussed, I am satisfied that the matters raised relating to privacy, access and the effects on the area's character and amenity are unfounded. Furthermore, there is no evidence that the development would give rise to any significant noise issues, or involve the loss of any significant natural features, nor that it would lack adequate amenity space.
27. I appreciate that the proposal to develop the present appeal site, following after the Queencourt Close site, might be said to represent part of an incremental approach. But these two developments seem to me to be reasonably well coordinated. And there is no suggestion that the scheme now proposed would hinder or prevent the future development of any other adjoining land, if that were considered to be appropriate in the light of future housing needs. For the purposes of Policy H9 therefore, I do not consider the appeal scheme to constitute piecemeal development.
28. So far as I am aware, there is nothing in Policy H9 itself, or its supporting text, that prevents the policy from being applied within the District's rural areas. Indeed the Council does not dispute the policy's relevance to the present appeal, nor that the scheme complies.
29. In the light of the above, I agree that the appeal proposal is compliant with MLP Policy H9 regarding backland development, and benefits from the positive support that that policy gives to such development in appropriate circumstances.

The planning balance

30. The proposed development would be located outside any settlement boundary, and would therefore conflict with the strategy for the location of housing in the District as set out in MLP Policy S1, and with the MLP's main policies for rural areas and the countryside, Policies BNE25 and H11. However, the scheme would cause no significant harm to the area's character and appearance, or to the landscape of the Gillingham Riverside ALLI, thus avoiding conflict with Policy BNE34. Furthermore, as an acceptable backland site, it would conform with Policy H9. The policies of the development plan therefore pull in different directions.
31. However, in the light of the shortfall in the District's 5-year housing land supply, NPPF Footnote 8 requires that the most important policies for determining the appeal are to be treated as out of date. In the present case this seems to me to include all of the above policies. Furthermore, no NPPF policies provide a clear reason for refusing permission, and therefore NPPF paragraph 11(d)(ii) is engaged, which requires that permission be granted except where the adverse impacts would significantly and demonstrably outweigh the development's benefits. In this case, for the reasons explained above, I have found that the development would give rise to no significant adverse impacts of any kind.
32. The proposed development would provide eight new dwellings, with attendant social and economic benefits, in terms of housing provision, employment, and

increased local spending and support for local businesses. In the absence of any demonstrable harm, or any clear conflict with the development plan, these benefits outweigh the conflict that I have found with Policies S1, H11 and BNE25.

Conditions

Conditions to be imposed

33. In granting permission, I consider that a number of conditions are needed, and those that I intend to impose are set out in the Schedule that appears at the end of this decision. These are based on the draft list suggested by the Council, edited in some cases for reasons of conciseness and clarity.
34. The suggested conditions relating to reptile mitigation, ecological enhancements, and control of lighting, are all needed, to protect wildlife and to achieve net gains in biodiversity. However, it is not necessary for these conditions to be over-prescriptive. A Construction Environmental Management Plan is also necessary for the same reasons, as well as to protect the amenity of neighbouring residents during construction.
35. Conditions relating to materials and landscaping are necessary to ensure a high-quality appearance. In the latter case I have simplified the conditions' requirements to avoid excessive detail. A further requirement for a landscape management plan is needed to ensure that the new planting becomes properly established, and that the benefits will endure for the longer term.
36. Requirements as to boundary treatments and obscured glazing are necessary to protect the privacy and living conditions of neighbouring occupiers and future residents. A condition relating to contamination is needed to protect the health of future occupiers, and of the construction workforce.
37. A condition to secure the provision of the proposed parking spaces and garages is necessary, to avoid obstruction and visual clutter, and to minimise risks to highway safety. A requirement for charging points is justified to accord with national policy, as set out in NPPF paragraph 112(e).
38. Finally, a condition specifying the approved plans is needed, to ensure certainty, and to avoid unnecessary delays or obstacles to the consideration of any future minor changes.

Rejected conditions

39. I have carefully considered the Council's suggested condition relating to energy efficiency and climate change measures, which would require the incorporation of various measures contained within the appellants' supporting statement on climate change. However, the condition as currently drafted lacks precision; based on the draft wording, it would not be reasonably possible to determine what was required to be done. Furthermore, some of the measures suggested within the appellants' statement, whilst potentially desirable, appear to exceed the requirements of any current national or local planning policies. The condition therefore fails the tests set out at NPPF paragraph 56, including those relating to necessity, reasonableness and precision.

40. The Council's suggested condition restricting the new dwellings to residential use within Class C3¹, also fails the tests of necessity and reasonableness. In so far as the condition is intended to prevent the use of any dwelling within the development as a house in multiple occupation (HMO) within Class C4, such changes are normally permitted development², and there is no clear justification for the withdrawal of that right in this case. Any other changes of use would require permission in any event.

Conclusions

41. For the reasons set out above, I have found the proposed development to cause no harm to the local landscape, or to the area's character and appearance. Whilst the scheme would conflict with development plan policies relating to the District's housing strategy and the protection of the countryside, it would meet the criteria for backland developments, in accord with Policy H9. Given the lack of a 5-year supply of housing land, the conflict with some development plan policies is outweighed by the need for housing, and the development's social economic benefits.
42. I have taken account of all the other matters raised, but none outweighs these conclusions. The appeal is therefore allowed.

J Felgate

INSPECTOR

¹ Part C, Schedule 1 of the Town and Country Planning (Use Classes) Order 1987

² Class L, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions:

- 1) The development hereby permitted shall be **commenced** not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following **approved plans**:

PL/685/01 (Rev. A)	Proposed Site Layout
PL/685/10	Plans and elevations - Plot 1
PL/685/11	Plans and elevations - Plots 2 and 3
PL/685/12	Plans and elevations - Plots 4 -7
PL/685/13	Plans and elevations - Plot 8
PL/685/14	Plans and elevations - Garages
- 3) The development shall not be commenced, nor any site clearance or site preparation works in connection with the development, until a **Construction Environmental Management Plan** (CEMP) has been submitted to the local planning authority and approved in writing. The development shall thereafter be carried out in full accordance with the CEMP, as thus approved. The CEMP shall include details of the following:
 - Hours of working
 - Noise control measures
 - Dust control measures
 - Pollution incident control measures and procedures
 - General precautionary ecological mitigation measures
 - Site contact details and complaints procedure
- 4) The development shall not be commenced, nor any site clearance or site preparation works in connection with the development, until a detailed mitigation strategy specifically for **reptiles** (in addition to the general ecological mitigation measures required under Condition 3 above) has been submitted to the local planning authority and approved in writing. The reptile strategy shall include full details of the measures and sequence of works to be undertaken to enable any reptiles present within the site to be relocated to other land outside the site boundary, in accordance with the method described in paragraphs 6.4.14 – 6.4.17 of the Preliminary Ecological Appraisal report by Greenspace Ecological Solutions, dated July 2022 (Revision B). Thereafter, the development shall be carried out in full accordance with the reptile mitigation strategy, as thus approved.
- 5) No building work above ground floor slab level shall take place until a detailed scheme of **ecological enhancements** has been submitted to the local planning authority and approved in writing. The scheme shall contain details of ecological enhancement measures to be incorporated into the proposed buildings and elsewhere on the site, generally in accordance with the recommendations set out in paragraph 7.1 of the Preliminary Ecological Appraisal report by Greenspace Ecological Solutions, dated July 2022 (Revision B). The scheme shall also include a timetable for the implementation of these measures. Thereafter, the scheme of ecological enhancements shall be carried out in full accordance with the details and timetable thus approved.

- 6) No building work above ground floor slab level shall take place until samples of the **facing materials** to be used on the external surfaces of the proposed buildings have been submitted to the local planning authority and approved in writing. Thereafter, the development shall be carried out in accordance with the details thus approved.
- 7) No building work above ground floor slab level shall take place until a scheme for the provision of **electric vehicle charging points** has been submitted to the local planning authority and approved in writing. The scheme shall provide for a minimum of one charging point per dwelling, and shall include details of each with regard to their location, power output, charging speed and associated infrastructure. Thereafter, no dwelling within the development shall be occupied until the charging point for that dwelling has been installed and made operational, in accordance with the details thus approved.
- 8) No dwelling within the development shall be occupied until the **parking spaces and/or garaging** for that dwelling, and the three proposed visitor spaces, have been laid out as shown on the approved layout plan, No PL/685/01 (Rev. A), and surfaced and drained in accordance with further details which shall have been submitted to the local planning authority and approved in writing. Thereafter, the parking spaces shall be retained and kept available for the parking of vehicles in accordance with the approved details.
- 9) No dwelling within the development shall be occupied until a detailed scheme of **hard and soft landscaping** has been submitted to the local planning authority and approved in writing. The landscaping scheme shall include details of all existing trees and hedgerows to be retained, and measures for their protection during the development, together with full details of all new planting, seeding, turfing and hard surfacing to the front gardens and communal areas. The scheme shall also include a programme for the implementation of these works. Thereafter, the landscaping scheme shall be carried out in accordance with the details and programme as thus approved. After planting, and within a period of 5 years from the date of completion of the landscaping works, any trees or plants which die, become seriously damaged or diseased, or are otherwise lost or removed, shall be replaced with others of similar size and species, within the next planting season.
- 10) No dwelling within the development shall be occupied until a **landscape management plan** has been submitted to the local planning authority and approved in writing. The landscape management plan shall set out details of proposed maintenance schedules for all hard and soft landscaping in the communal areas, for a minimum period of 5 years, starting from the date when the first landscaping works are carried out. The plan shall also identify the body or organisation which will be responsible for managing and implementing the scheduled maintenance works over this period. Thereafter, the landscape management plan shall be carried out as approved.
- 11) No dwelling within the development shall be occupied until the plot and site **boundaries** relating to that dwelling have been enclosed by fencing and/or hedging, in accordance with a scheme of boundary treatments that shall have been submitted to the local planning authority and approved in writing. Thereafter, the boundary treatments thus approved shall be retained, and

- periodically renewed or replaced on a like-for-like basis, unless otherwise approved in writing by the local planning authority.
- 12) The proposed dwelling on Plot 7 shall not be occupied until the first floor bathroom window in the side elevation has been fitted with **obscure glazing**. Any part of that window which is less than 1.7m above the finished floor level within the room shall be designed to be non-opening, without any hinges or opening mechanism. Thereafter, the window shall be retained in that form at all times.
- 13) If, during the course of carrying out the development, any **soil contamination** is found to be present at the site, then all works shall stop, and no further works shall be carried out, until a contamination treatment method statement has been submitted to the local planning authority and approved in writing. The method statement shall set out in detail how the identified contamination is to be either removed or rendered harmless, and the site made safe for residential occupation. Thereafter, development shall proceed only in accordance with the measures and procedures specified in the method statement, and no dwelling shall be occupied until a verification report to that effect has been submitted to the local planning authority and approved in writing.
- 14) Within the communal areas of the development, no **external lighting** shall be installed, except in accordance with a lighting scheme, which shall have been submitted to the local planning authority and approved in writing. Any such scheme shall be designed to minimise the impact of lighting on wildlife, including bats and nocturnal animals, and shall include full details of locations and specifications. Any lighting thus installed shall be maintained so as to ensure that the installation continues to adhere to the approved details throughout its lifetime.

[END OF SCHEDULE]