



Appeal Decision

Site visit made on 17 October 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2023

Appeal Ref: APP/A2280/W/23/3316704

Former car park, adjacent to 120 Essex road, Halling, ME2 1AX

- 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 Paul Badham against the decision of Medway Council.
 - The application Ref MC/22/2160, dated 5 September 2022, was refused by notice dated 2 February 2023.
 - The development proposed is the construction of three dwellinghouses with associated landscaping and parking.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of three dwellinghouses with associated landscaping and parking at former car park, adjacent to 120 Essex road, Halling, ME2 1AX, in accordance with the terms of the application, Ref MC/22/2160, dated 5 September 2022, subject to the conditions set out in the schedule at the end of this decision.

Preliminary matters

2. The application form described the proposed development as "Erection of 3 no. 2 bedroom houses". The council changed this to the description used in the heading above, as did the appeal form. I have adopted it as it more clearly identifies the development proposed.

Main Issues

3. The main issues in this case are: i) the effect of the proposal on the character and appearance of Essex Road and Stake Lane and the locality; and ii) the adequacy of the amenity for future occupiers that would be provided by the open space proposed.

Reasons

4. The appeal site is a former car park at the eastern end of Stake lane and the northern end of Essex Road, where the 2 streets meet at right-angles. To the north of the site is a social club and allotments, whilst to the east is the Maidstone-Strood railway line with tall trees on the boundary. The site is currently surfaced with tarmac and contains a number of small buildings and a caravan.
5. The appeal site lies within the urban area of Halling, so that Policy H4 of the Medway Local Plan 2003 applies, supporting infill development in urban areas,

whereby a clear improvement to the local environment would result. The site is in a sustainable location, so that the presumption in favour of sustainable development in paragraph 11 of the National Planning Policy Framework (the Framework) applies. In this respect I am told that the council cannot demonstrate a 5-year supply of housing land, which has been a long term circumstance. Thus the presumption of paragraph 11 d) ii is a consideration. Paragraphs 126 and 130 of the Framework emphasise the importance of good design and Policy BNE1 of the Local Plan states that development should be satisfactory in terms of scale, mass and should respect the visual amenity of the surrounding area.

The effect of the proposal on the character and appearance of Essex Road and Stake Lane and the locality

6. The development in Essex Road is a mix of 2-storey detached, semi-detached and terrace housing, of varying architectural styles and design, for the most part with minimal front open space at the back edge of the footway, but with back gardens about 14m long. There is some soft landscaping, where space allows, and some off-street parking. Stake Lane has a minimum of development on its southern side, consisting of a pair of semi-detached and a terraced of three 2-storey houses. The character of these is similar to that of Essex Road. The northern side of the Lane, that immediately abuts the appeal site, is developed entirely with terraced bungalows with reasonably sized front gardens that allow for some planting and off-street parking, and back gardens about 7.5m long.
7. The appeal site is at the transition of 2-storey houses on Essex Road that generally have limited space on the frontages, and the bungalows, with their low pitched gable roofs and more open frontages. The appeal proposal is for 3 no. 2-bedroom houses, 1 detached next to the end bungalow at No.21 Stake Lane, and a pair of semi-detached facing the flank boundary of No.120 Essex Road. As the officer's report acknowledges, the design of these has been carefully considered to match the character of the contrasting styles found along Essex Road and Stake Lane. This is primarily achieved by having catslide roofs, which are sympathetic to the appearance of the bungalows. Consequently, the two-storey element is situated to the rear, thereby, establishing a degree of subservience within the context of the existing built form. Since the site is located within a corner plot, and set well back, there would be very limited views of the development from even the immediate vicinity.
8. However, there is a significant degree of hard surfacing where the access comes off the corner of the 2 streets. To a large extent the view of this would be minimised when coming north up Essex Road, due to the boundary treatment of No.120, and any other boundary enclosure required, which could be required by condition. When travelling towards the site entrance along Stake Lane, I consider that the drive into the development would be only a little more intrusive than the hard standing car parking spaces of the bungalows; and it would only be when transiting the right angle bend in the streets that the extent of hard surfacing would be apparent.
9. It is true that there would be little opportunity for planting to soften the entrance, but the submitted layout does show a planting area next to the boundary with No.120, and also shows paving rather than a tarmac or concrete

surface. The surface of this paving could be controlled to give it some variation in colour. But the main point is that from both the streets, the development would be relatively unobtrusive. As a result, I consider that the council's criticism is an exaggeration of the degree of contrast with the surrounding development.

10. The least satisfactory part of the proposal would be the 2 semi-detached houses facing the flank boundary of No.120 Essex Road, looking across a slender planting strip along their front elevations and across their footpath access and a narrow strip of planting at the site boundary. These front elevations are effectively single storey with rooflights in the catslide roof, so that these elevations would have only an entrance door and a window to the kitchen at ground floor. Looking out across the path and planting to a well-designed screen fence or wall need not be unattractive or unwelcoming. Since there is some considerable distance between the boundary of the site and the house at No.120, there would not be a sense of enclosure or an overbearing presence.
11. I conclude that the proposed development would not result in the dwellings appearing cramped and contrived, and whilst to a degree they would be separated from the public realm, this would not be detrimental to the character of the streetscene and the locality.

The adequacy of the amenity for future occupiers that would be provided by the open space proposed

12. The council's case in respect of this issue is based on the requirements of the Medway Housing Standards (interim) November 2011 (MHS). This document is clearly not part of the development plan, nor does it appear to have the status of a supplementary planning document or guidance. Nevertheless, it is the basis on which the council oppose the appeal development in respect of this issue. The MHS requires that gardens measure 10m in depth and 7m when constraints exist. The proposed garden would measure approximately 6.6m in depth and since it is understood that some sites cannot support such standards, flexibility is granted on a site-by-site basis by virtue of the character of the site's locality.
13. The appeal site is an old car park, and clearly is brownfield land which it is highly desirable to bring forward for development. For this reason I consider that there is justification in applying some flexibility. In this respect, the MHS seeks a minimum garden depth of 7m on a constrained site such as this. Depth, of course, is only one dimension of an area, and in this case, the proposal falls some 0.4m short. Set alongside this, the appellant points out that the detached house would have a garden of 85m² whilst the 2 semi-detached houses would have 65m² each. In the circumstances of this site, I consider that the gardens proposed are adequate to provide some outdoor living space and room for planting, etc, to provide for relaxation and visual delight. I therefore find that the open space proposed would provide adequate amenity for future occupiers.

Conclusions

14. I have concluded that the proposed development would not result in the dwellings appearing cramped and contrived and would not be detrimental to the character of the streetscene, and that the open space proposed would

provide adequate amenity for future occupiers. For these reasons I consider that the appeal proposal would not breach the policies BNE1, BNE2 and H4 of the Medway Local Plan 2003, and would be in accord with the Framework. Since I will allow the appeal, it is not necessary for me to consider the matter of paragraph 11 d) ii of the Framework, although that would have been likely to have favoured the case for the development.

Conditions

15. The statutory condition that provides a time limit on the start of development must be imposed. In addition, the council has suggested a number of conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the text and removed some duplication. The council's condition (No.7 in the council's document) seeking to ensure that the permitted dwellings shall remain in use as a dwellinghouses is unnecessary, since a change of use would require planning permission.
16. Conditions 2 to 7 are pre-commencement conditions, and are necessary to protect human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, and living conditions of nearby residents and future occupiers of the development. Any contamination must be dealt with before other work disturbs the ground. The management plan has to be agreed before any construction can start in order that the construction process is not harmful to living conditions of neighbouring occupiers. The impact from noise must also be assessed before development starts because it may affect details of the construction.
17. In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, if the Inspector is minded to grant planning permission subject to pre-commencement condition(s) he/she may only do so with the written agreement of the appellant to the terms of the condition(s). In this case the appellant's agent has clearly stated on the appellant's behalf that the conditions are acceptable.
18. The remaining conditions are necessary for certainty and avoidance of doubt as to the development permitted (No.8), to ensure that any contamination on the site identified during the course of the development is dealt with to protect human health and property (No.9), to ensure that the appearance of the development is satisfactory (Nos.10, 12 and 17), to encourage sustainable travel (Nos.11 and 13), in the interests of highway safety and to avoid on-street parking (No.14 and 18), to enable control of any future development in the interests of visual and neighbouring amenity (No.15), and in the interests of sustainability (No.16).
19. Conditions 14 and 17 do not need the clause, suggested by the council, relating to the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) in view of the restrictions of condition 15

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

Pre-commencement conditions

- 2) Prior to commencement of the development hereby permitted, a scheme shall be submitted to and approved in writing by the local planning authority detailing a desk top study, investigation and risk assessment to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site, in addition to any assessment provided with the planning application. The desk top study, investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report must be completed in accordance with the scheme and shall be submitted to and approved by the local planning authority. The report of the findings must 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
 - archaeological sites and ancient monuments
 - (iii) an appraisal of remedial options, and proposal of the preferred option(s).This must be conducted in accordance with DEFRA and the Environment Agency's 'Land and Contamination Risk Management document' (LCRM).
- 3) Prior to commencement of the development hereby permitted the detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and submitted to and approved in writing by the Local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 4) Prior to the commencement of any development hereby permitted, the approved remediation scheme must be carried out in accordance with its terms. The local planning authority must be given not less than two weeks written notification prior to the commencement of the remediation scheme works.
- 5) Prior to any other development commencing, following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority. This report must provide details of the data collected in order

to demonstrate that the works are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

- 6) Prior to the commencement of the development hereby permitted a Construction Environmental Management Plan (CEMP) that describes measures to control, amongst other matters, hours of working, parking of operative's vehicles, deliveries to the site, noise, dust and lighting arising from the construction phase of the development shall have been submitted to and approved in writing by the local planning authority. The construction works shall be undertaken in accordance with this approved plan.
- 7) Prior to the commencement of the development hereby permitted, an acoustic assessment shall be 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 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.

Conditions that are not pre-commencement

- 8) The development shall be carried out in accordance with drawings Nos.1971 P.01 REV A (Proposed Plans and Elevations), 1971 P.02. REV A (Proposed Plans and Elevations), 1971 P.03 REV A (Water Management Plan and Section) and Block Plan.
- 9) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, development must be halted on that part of the site affected by the unexpected contamination until condition 5 has been complied with in relation to that contamination and it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 2, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 3, which is subject to the approval in writing of the local planning authority.
- 10) No development above slab level shall take place until details and samples of all materials to be used externally, including the paving of the hard surfaced areas, have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details before the occupation of any part of the development.

- 11) No development shall take place above ground floor slab level until details of the provision of three electric vehicle charging points has 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.
- 12) No dwelling hereby approved shall be occupied until a plan indicating the positions, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the Local planning authority, and completed in accordance with the approved details and shall thereafter be retained.
- 13) No dwelling hereby approved shall be occupied until details of secure cycle and refuse storage facilities have been submitted to and approved in writing by the local planning authority. The cycle and refuse storage facilities shall be provided in accordance with the approved details and shall thereafter be retained.
- 14) No dwelling hereby approved shall be occupied until the area shown on the submitted layout as vehicle parking space and garaging has been provided, surfaced and drained. Thereafter it shall be kept available for such use.
- 15) 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, B, C, E and F of that Order unless planning permission has been granted on an application relating thereto.
- 16) The development shall be implemented in accordance with the measures to address energy efficiency and climate change contained in the Climate Statement received 6 September 2023 and prior to first occupation of the development a verification report prepared by a suitably qualified professional shall be submitted to the local planning authority confirming that all the agreed measures have been undertaken which shall thereafter be maintained.
- 17) The areas shown on drawing number 1971 P01 REV A received 12 December 2022 for soft landscaping shall be kept available as such treatment.
- 18) The boundary treatment and landscaping along the southern corner of the site shall be kept at no higher than 900mm above the level of the nearest part of the carriage way for a length of 2.5 metres and thereafter maintained as such. No gate or barrier of any kind shall be erected or installed at a height exceeding 900mm above the level of the nearest part of the carriage way forward of this point.

End of Schedule