



Appeal Decision

Site visit made on 30 January 2024

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th February 2024

Appeal Ref: APP/U2235/W/23/3324046

67 St Peters Street, Maidstone ME16 0SN

- 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 Urban Enhance Ltd against the decision of Maidstone Borough Council.
 - The application 22/504367/OUT, dated 5 September 2022, was refused by notice dated 5 May 2023.
 - The development proposed is an outline application (all matters reserved except for access) for demolition of existing buildings and creation of a mixed use commercial and residential redevelopment, comprising 3 no. commercial units (Use Class E) and 75 no. 1 and 2-bed apartments, with two new accesses.
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Decision

1. The appeal is dismissed.

Application for costs

2. There was an application for costs by Urban Enhance Ltd against Maidstone Borough Council. This application is the subject of a separate decision.

Preliminary matters

3. The application sought permission for 80 apartments together with commercial units. This description of the proposed development differs from that on the Council's decision notice, which refers to 75 apartments. As the appeal form uses the same description of development as the officer's report and the decision notice, I have determined the appeal on the basis of that amended description.
4. The application is in outline, with only access to be determined at this stage. Appearance, landscaping, layout and scale would be reserved matters. The application was supported by illustrative plans including floor plans at each level and indicative elevations and site sections. These drawings informed technical assessments, such as a daylight and sunlight study. I have taken the indicative drawings into account, with due regard to their illustrative status.
5. The development plan includes the Maidstone Borough Local Plan 2017 (MBLP). The Council has adopted the Maidstone Town Centre Opportunity Sites – Maidstone Riverside: Planning Guidelines 2020 (MRPG). This is a material consideration which I have taken into account although the Council does not suggest that it has the status of Supplementary Planning Guidance. The Council has published a draft Local Plan Review (LPR) which includes an allocation for Maidstone Riverside (LPRSA148). The LPR is subject to examination so does not have the status of adopted policy. However, the draft plan, and the

associated evidence base, are material considerations to which some weight can be given.

6. As the appeal site is within the setting of the former Tilling-Stevens factory, a Grade II listed building, I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in reaching my decision.

Main issues

7. The main issues are whether the proposal would:
 - support the objective of creating well-designed and beautiful places;
 - make appropriate provision for affordable housing;
 - provide satisfactory living conditions for future occupiers; and
 - be at unacceptable risk of flooding and whether it would increase the risk of flooding elsewhere.

Reasons

Whether the proposal would support the objective of creating well-designed and beautiful places

8. MBLP Policy DM1 seeks to promote high quality design. The National Planning Policy Framework (the Framework) states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. The Framework refers to the National Design Guide (NDG) which sets out the characteristics of well-designed places.
9. The application is in outline so details of the reserved matters are not known at this stage. However, the MBLP, the Framework and the NDG all make clear that good design is not just about the architectural treatment of buildings, it is a broader and more holistic concept which can be considered at this outline stage. Moreover, in this case the illustrative drawings are quite detailed. They are, no doubt, intended to provide an accurate impression of how the proposed quantum of development could be accommodated on the site. It is therefore appropriate to take them into account when assessing the design merits of the outline scheme.
10. St Peters Street is within Maidstone town centre, although it is separated from the greater part of the town centre by the River Medway. Historically, this was an industrial area but it is now an area in transition. It has a character that is mixed, both in terms of land use and building types. The appeal site comprises three single-storey commercial premises. Two are occupied, by a supplier of vehicle parts and a tyre fitting business, and the third is vacant. To the north are further commercial buildings occupied by Jewsons, a supplier of building materials. There is an extensive open yard between the back of the Jewsons buildings and a railway line. This yard, which also extends to the rear of the appeal site, is used for storing building materials. To the south, there is modern residential development at Pevensey Court.
11. On the opposite side of St Peters Street is the Grade II listed former Tilling-Stevens factory, which is used as a business centre known as Powerhub.

Directly opposite the appeal site there is modern residential development at Scotney Gardens. Further to the south, there is a modern retail park which extends to both sides of St Peters Street.

12. The Council has adopted the MRPG to guide the regeneration of potential development sites along St Peters Street. The illustrative phasing plan within the MRPG places the appeal site in *Area 2 – Maidstone Barracks Station Area*. Area 2 is described as a highly sustainable location, adjacent to a railway station and a footbridge crossing over the River Medway to the town centre, with potential for approximately 25 townhouses and 95 apartments. The LPR includes a draft allocation (Policy LPRSA148) for the development of approximately 650 dwellings, 5,148m² of retail use and 2,574m² employment. This allocation applies to the whole of the Maidstone Riverside area. Neither document has the status of adopted policy but it is important to note that this is an area where the Council is promoting mixed use development.
13. The proposal is for mixed use development with an active frontage to St Peters Street. It is also proposed to set the footway to St Peters Street back behind a verge, which would enable street trees to be planted along the site frontage. These aspects of the proposal would be consistent with the Council's objectives for the area.
14. The principles of good design set out in Policy DM1 include creating designs and layouts that create high quality public realm and are accessible, maximising opportunities for permeability and linkages to the surrounding area. Policy DM19 requires that new housing, including housing in mixed use schemes, should deliver various types of publicly accessible open space, in accordance with specified standards. These policies are consistent with the NDG, which identifies places that are accessible and easy to move around, together with safe, social and inclusive public spaces, as characteristics of well-designed places.
15. The illustrative scheme would comprise a perimeter block arranged around a podium garden at first floor level. It seems unlikely that this design approach would provide any publicly accessible open space. I note that, in certain circumstances, Policy DM19 allows for a financial contribution in lieu of open space. However, there is no evidence that this option has been considered here. Moreover, the proposal would not be permeable because it would comprise a single block of multi-storey development extending across most of the width of the site. The illustrative plans suggest a "*green link*" along the northern boundary. Most of this would be within the Jewsons site, rather than the appeal site. No provision is shown within the appeal site for pedestrian and cycle links to adjoining land within Area 2.
16. Modern residential development to the south of the appeal site and to the west of the railway is generally of four and five stories. The illustrative plans show development of five and six storeys. Whilst it may be possible to achieve a satisfactory design with some six storey elements, it would be necessary to provide sufficient space around the taller elements to avoid a cramped appearance and to create an appropriate transition in scale from adjoining buildings. The illustrative scheme would create a tall elevation, relative to its surroundings, which would be very close to the northern site boundary. This would have a cramped and awkward appearance.

17. The Council characterises the proposal as piecemeal development. The MRPG notes that the area is in multiple ownerships and is occupied by a number of businesses, such that development is likely to come forward in a piecemeal fashion over an extended period. It suggests that Area 2 could be delivered in the medium term (five to ten years). The appeal site, together with the Jewsons site, comprises the whole of Area 2. There is no policy requirement for the appellant to bring forward a master plan for Area 2 as a whole. Moreover, there is no evidence before me to suggest that the Jewsons site is likely to be redeveloped in the near future. Even so, as noted above, this is an area in transition where the Council is promoting mixed use development. In my view it is, therefore, necessary to consider whether proposals for part of Area 2 would unduly constrain the form of development on the remainder, in the interests of achieving good design in Area 2 as a whole.
18. The height and massing shown in the illustrative scheme, together with the proximity to the northern and western boundaries, would constrain the development of the Jewsons site due to the need to allow adequate spacing between buildings. Moreover, although the appellant has submitted a concept model which encompasses the whole of Area 2, this is essentially a study of potential building heights and footprints. There is nothing before me to suggest that matters such as permeability, linkages to the wider area (including the riverside and the station) and the provision of publicly accessible open space have been considered.
19. The Council is concerned about the proposed housing mix. However, I consider that the range of unit sizes is something which could be addressed at the reserved matters stage.
20. The appellant argues that the application is in outline and that not too much weight should be attached to drawings that are illustrative. I appreciate that appearance, landscaping, layout and scale are reserved matters. So, for example, a reserved matters submission might propose more space between the building and the northern boundary. However, the application is for a particular quantum of development. Creating more space in one part of the site would result in less space, or a taller development, elsewhere.
21. My overall assessment is that granting planning permission in the terms sought would be unlikely to result in a satisfactory form of development. I conclude that the proposal would not support the objective of creating well-designed and beautiful places, either on the site itself or on Area 2 as a whole. It would not represent good design and would be contrary to MBLP Policies DM1 and DM19. Moreover, the density of development proposed would be harmful to the character and appearance of the area, contrary to Policies DM5 and DM12.

Whether the proposal would make appropriate provision for affordable housing

22. MBLP Policy SP20 requires housing sites of 11 units or more to deliver affordable housing, with a target of 30% in the Maidstone urban area. This is accepted in the Planning Statement submitted with the application, which states that the proposal includes 24 affordable housing units, consistent with Policy SP20. It goes on to say that the affordable housing could be secured through a s106 Agreement, should the Council require the affordable provision.
23. The context for that qualification was that emerging LPR Policy LPRSP10(B) introduces a "*low value zone*" where major housing development is not

required to provide affordable housing. This would include the appeal site. However, the LPR is subject to examination and, to my mind, the emerging policy is not of sufficient weight to outweigh the conflict with SP20.

24. The Council's reasons for refusal do not mention the lack of affordable housing, although the first reason for refusal does allege conflict with Policy SP20. The Council's appeal statement includes the following:

"However, affordable housing to comply with policy SP20, the Council's Affordable Housing SPD and the Government policy on First Homes would need to be secured via a s106 planning obligation with associated monitoring fees. No draft s106 appears to have been submitted with the appeal. The expectation is a 30% provision, which should be capped at that level."

25. Although the Council did not expressly refer to affordable housing in its reasons for refusal, I have a duty to consider the appeal against the policies of the development plan. The appellant is aware, from the Council's statement, that this is a live issue and has addressed it in their final comments. Whilst the Planning Statement made an offer of affordable housing, there is no mechanism before me to secure delivery. Moreover, there is no evidence of any other considerations that indicate that Policy SP20 should not be applied in this case.

26. I conclude that the proposal would fail to make appropriate provision for affordable housing. It would therefore conflict with Policy SP20.

Whether the proposal would provide satisfactory living conditions for future occupiers

27. The Council is concerned about noise and disturbance from the Jewsons premises. However, there is no evidence that these premises generate a level of noise that would be harmful. The application was supported by a noise assessment which identified road traffic as the main source of environmental noise affecting the appeal site. The site was assessed as having a moderate level of external environmental noise. The report identified appropriate mitigation measures that could be secured by a planning condition.
28. Some of the proposed flats would look out over the roof of the Jewsons buildings or the external storage yard. Whilst this would not offer a particularly attractive view, it is not uncommon for such views to be experienced in urban areas in transition. That said, the north-facing flats at level one would have a very restricted outlook, due to the proximity of the Jewsons buildings. This would not provide for satisfactory living conditions.
29. The application was supported by a sunlight and daylight assessment. Based on the illustrative floorplans, all of the windows at level one were tested and most were assessed as meeting the Building Research Establishment criteria for vertical sky component. However, some windows did not meet the criteria, including north-facing windows looking at the Jewsons buildings and some windows looking into the internal courtyard, which would be affected by a suggested central block spanning between the eastern and western perimeter blocks. The presence of the suggested central block would also be likely to result in overlooking between flats within the appeal scheme.

30. The illustrative plans show that the apartments would have private outdoor amenity space, in the form of balconies, and there would also be a communal podium garden at level one. The Council has not suggested that the area of private amenity space would be insufficient.
31. Residents arriving at the site on foot would be able to use stairs from street level up to the podium level, from where access could be gained to other stairwells. However, this route would not be available to those with limited mobility, who would need to enter the under-croft car park to reach the various lifts. This would be an unattractive route which would not be conducive to good living conditions.
32. As noted above, the application is in outline and it may be that some of these issues could be resolved at reserved matters stage. Nevertheless, as also noted above, resolving one issue may worsen another. For example, setting the development further from the northern boundary (to improve daylight and outlook) would be likely to make the internal courtyards smaller. My overall assessment is that, whilst the majority of the apartments would provide acceptable living conditions, it is likely that some apartments would not. I conclude that the proposal would conflict with Policy DM1 which seeks to ensure that proposals will provide adequate residential amenities for future occupiers.

Whether the proposal would be at unacceptable risk of flooding and whether it would increase the risk of flooding elsewhere

33. The application was supported by a flood risk assessment (FRA) which identifies that the site is in Flood Zone 2 and is at risk of fluvial flooding from the River Medway. The FRA concluded that the need to create an active frontage at ground floor level along St Peters Street means that the flood risk for the commercial development is considered acceptable, particularly as, at a flood depth of less than 0.3m, a water exclusion strategy could be implemented. Residential development at first floor level would be well above the design event flood level. Other sources of flood risk were considered, together with hazards during a flood event.
34. The FRA goes on to identify appropriate flood risk management measures. These include raising floor levels, flood warning systems, flood resilient construction and management of the development runoff. These measures could be secured through planning conditions. The FRA considers the potential for displacement of flood water elsewhere and concludes that no such displacement would occur.
35. The Council does not dispute the findings of the FRA. Its objection is that the appellant has not carried out a sequential test which, it is suggested, conflicts with the Framework. Paragraph 172 of the Framework states that, where planning applications come forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again. However, it does not follow that a sequential test must be applied for a proposal on a site, such as this, that is allocated in an emerging plan. In such cases it is necessary to look at the situation in the round.
36. The appeal site has been considered in the Strategic Flood Risk Assessment (SFRA) that was carried out in support of the LPR. As noted above, the evidence base for the LPR is a material consideration. It is reasonable for me to

assume, for the purposes of this appeal decision, that the Council would not be promoting this site for mixed use development if it believed that the site was unsuitable in flood risk terms. It is not therefore necessary to carry out a further sequential test. Moreover, it is not necessary to carry out an exceptions test because the site is for commercial and residential uses in Flood Zone 2¹.

37. I conclude that the proposal would not be at unacceptable risk of flooding, nor would it increase the risk of flooding elsewhere. Appropriate flood risk management measures could be secured by planning conditions. The proposal would accord with the policies of the Framework which relate to flood risk.

Other matters

Effect on the Grade II listed former Tilling-Stevens factory

38. The former Tilling-Stevens factory is located to the north east of the appeal site, on the opposite side of St Peters Street. The listing description notes that this former motor vehicle factory was built in 1917. It has historic interest as the earliest surviving factory by the practice of Wallis, Gilbert and Partners, the foremost factory architects of the inter-war period. It has technical interest as one of the few surviving examples of English factories built using the Kahn Daylight System. The listing description states that the building also has architectural interest in that the front elevation employs decorative motifs which became synonymous with the work of the architects, whilst the powerful rationality of the other elevations expresses the modern approach to industrial architecture. From what I saw, all of these features continue to contribute to the special interest of the building.
39. The factory is five storeys high with a small attic storey. The floor to ceiling heights are greater than those of modern residential buildings, such that the factory is a prominent and imposing feature in the locality. It is notably taller than the modern four and five storey apartments at Scotney Gardens. The special interest of the building is largely vested in its history, design, fabric and architecture. This is an asset for which setting makes a relatively small contribution to overall significance. That said, the surroundings do enable the viewer to stand back and appreciate the scale and form of the building, for example in views northwards along St Peters Street.
40. The appeal proposal would not have any impact on the key features of special interest described above. Even at six storeys, the proposal would be subservient to the listed building. Moreover, it would not compete with or distract from views of the listed building along St Peters Street. I conclude that there would be no harm to the special interest of the listed building or its setting. The proposal would accord with Policy DM4, which seeks to conserve the significance of designated heritage assets, and with those policies of the Framework that relate to the historic environment.

Highways

41. Local residents have raised concerns about highway safety and capacity issues, drawing attention to traffic congestion that is experienced in the locality. The application was supported by a transport statement which compared the traffic that would be generated by the appeal scheme with that generated by the existing land uses. This analysis, which was accepted by Kent County Council

¹ PPG Reference ID: 7-079-20220825 (Table 2)

as highway authority, concluded that the proposal would have a negligible impact on the highway network. The Council has not objected to the proposed provision for car and cycle parking.

42. Vehicles currently access the three commercial premises at various points along the site frontage. The proposal is to rationalise the access arrangements with a single “in” and a single “out.” Servicing and refuse collection would be from St Peters Street, so any larger vehicles would not need to enter the site. The highway authority has no objection to this general approach and I see no reason to take a different view. The officer’s report sets out the outstanding concerns of the highway authority as follows:

- confirmation of which of the accesses would be used as a “out;”
- confirmation of what measures would be implemented to prevent vehicles using the “out” access to enter the development; and
- submission of a stage 1 Road Safety Audit.

43. Before the application was determined, the appellant submitted further information in response to the matters that had been raised by the highway authority. It was subsequently confirmed that this information addressed the residual concerns, from the perspective of the highway authority. No evidence was provided with the Council’s statement of case in support of the highways reason for refusal.

44. The highway authority is satisfied with the information that has been submitted. From what I saw, these access arrangements would be an improvement on the existing situation. I conclude that the proposal would not be harmful to the safety of those using the public highway. It would accord with Policy DM1, insofar as that policy deals with highway safety.

Surface water drainage

45. The Council objects to the absence of a surface water drainage strategy. However, surface water drainage was considered in the FRA, which noted that the site is currently comprised almost entirely of buildings and impervious hard standings. The proposal would reduce the amount of impervious surface area, thereby reducing runoff. In these circumstances, there is no reason why details of surface water drainage could not be controlled by a planning condition.

Biodiversity net gain

46. The Council submits that the appellant has not demonstrated biodiversity net gain (BNG). There are some trees along the southern and eastern boundaries, some of which are self-seeded specimens of poor form which are recommended for removal on arboricultural grounds. Most of the others would be retained and supplemented by new planting. Aside from the trees, the site appears to be devoid of any ecological value. Although no ecological survey has been submitted, none was requested at application stage. Policy DM3 states that ecological evaluations will only be required where appropriate. Amongst other matters, Policy DM3 seeks to protect and enhance the natural environment by incorporating measures to create habitats where opportunities arise. Given the low baseline in this case, there would be ample opportunity to incorporate some ecological enhancements. This is a matter that could be controlled by a condition.

Agent of change

47. I attach limited weight to the Council's submissions relating to the agent of change principle, given the lack of evidence that any existing businesses would have a harmful effect on future occupiers of the appeal site.

Interested parties

48. Local residents made objections to the application and the appeal and there was one letter of support. The main issues of concern have been discussed above.

Conclusion

49. Whilst the proposal would accord with Policy DM1 in respect of highway safety, it would conflict with that policy in relation to design and the living conditions of future occupiers. These conflicts are of sufficient weight that the proposal would conflict with the policy as a whole. For the reasons given above, the proposal would also conflict with Policies DM5, DM12, DM19 and SP20.
50. Although the proposal would comply with some other policies, or compliance could be secured by conditions, I consider that the policy conflicts that I have identified are of such importance that the proposal would conflict with the development plan as a whole. I have not identified any considerations that indicate a decision other than in accordance with the development plan. It follows that the appeal should be dismissed.

David Prentis

Inspector