



Appeal Decision

Site visit made on 13 February 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024

Appeal Ref: APP/A2280/W/23/3328739

Avenue Tennis Club, Glebe Road, Medway, Gillingham ME7 2HU

- 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 Parpid Saron against the decision of Medway Council.
 - The application Ref is MC/22/2965.
 - The development proposed is the erection of 7no dwellings and 1no bungalow with associated access and parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 7no dwellings and 1no bungalow with associated access and parking at Avenue Tennis Club, Glebe Road, Medway, Gillingham ME7 2HU in accordance with the terms of the application, Ref MC/22/2965, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023, which I have had regard to as a material consideration in my decision making. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the site and the surrounding area.

Reasons

Character and Appearance

4. The appeal site is land previously occupied by a tennis club to the rear of dwellings on First Avenue, Second Avenue and Glebe Road. The surrounding area is urban and residential in nature largely comprised of dwellings with a close-knit and uniform layout. The appeal site is currently being redeveloped to accommodate 7 two-storey dwellings, for which planning permission was granted at appeal¹. As well as the 7 dwellings currently under construction, the proposed development includes an eighth dwelling on the appeal site, a bungalow on land previously identified as open space.

¹ APP/A2280/W/21/3277702 (the previous permission)

5. Both parties have confirmed that the design and layout of the 7 dwellings approved under the previous permission has not changed and during my site visit, I noted that these had largely been constructed. Therefore, this part of the proposed development would not be detrimental to the character and appearance of the site or the surrounding area.
6. The height of the proposed bungalow would be smaller than many of the surrounding properties, including those on the appeal site itself. Although visible from some of the neighbouring properties, it would have limited visibility from the public realm and therefore little impact on the existing streetscene. Although it would result in the loss of an area intended to be open space, an urban high density layout would not be out of keeping with the existing development in the surrounding area. The proposed bungalow would also have sufficient space either side of the dwelling for access and landscaping and an adequate garden space to the rear. As such, it would not appear cramped in its surroundings and would assimilate well into this urban residential environment.
7. It is noted that previous applications and appeal decisions may have found residential development proposed on this site cramped in appearance. However, the Inspector in the previous permission found that the proposal would provide greater dwelling spacing from the boundaries and the addition of the proposed bungalow would not alter this finding. The Inspector for the previous permission also found the appeal site would be supplemented by new landscaped areas. However, this does not make specific reference to the open space where the proposed bungalow would be located and, even without this area, the proposal still provides good levels of landscaping and garden areas to soften the overall appearance.
8. Therefore, for the reasons above, the proposed development would not harm the character and appearance of the site or the surrounding area. It would therefore accord with Policies BNE1, H4 and H9 of the Medway Local Plan 2003 (the LP) which permit the use of vacant land within urban areas for residential development and seeks to ensure that new development is satisfactory in terms of use, scale, mass, proportion, details, materials, layout and siting and backland development maintains the character and amenity of the area. It would also accord with the general design objectives of the National Planning Policy Framework.

Other Matters

North Kent Special Protection Areas (SPAs) and Ramsar Sites

9. It has been highlighted within the Council's committee report that the appeal site is within 6km of the North Kent Special Protection Areas (SPAs) and Ramsar Sites. The coastline of North Kent encompasses three SPAs: the Thames Estuary and Marshes SPA, the Medway Estuary and Marshes SPA and the Swale SPA. They are important for bird species, which are rare and/or vulnerable in a European context, and also sites that form a critically important network for birds on migration. All three sites are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites).
10. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPAs and

Ramsar sites. The effects arising from the proposal need to be considered in combination with other development in the area, adopting a precautionary approach.

11. The development as a whole would result in eight dwellings with a consequent increase in local residents living within 6km of the SPA and Ramsar sites. This would be likely to result in additional recreational activity in these areas, causing disturbance to protected bird species that over-winter or breed on the forementioned SPA and Ramsar sites. Therefore, the proposed development is likely to have a significant effect on these European Sites. As the competent authority, it is necessary for me to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the SPAs and Ramsar sites.
12. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of a European site, such as the North Kent SPAs and Ramsar sites. I may consider measures to secure mitigation with a view to ensuring that the proposal would not adversely affect the integrity of the SPA and Ramsar sites. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England (NE), I am satisfied that the measures would adequately overcome any adverse effects of the proposal on these European Sites.
13. The appellants have indicated that they have made a per dwelling contribution to fund the SAMMS. The Council have confirmed that the payment has been made and Natural England has also confirmed that, subject to the appropriate financial contribution being secured, they are satisfied that the proposal will mitigate against the potential recreational impact of the development on the sites. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
14. The contribution would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites. I therefore find within my AA that, with the provided mitigation, the proposal would not have an adverse effect on the integrity of the North Kent SPAs and Ramsar Sites. The development would therefore comply with the Habitats Regulations.

Third Party Objections

15. A number of objections were received from third parties relating to highway safety concerns, the loss of wildlife and the impact upon the living conditions of neighbouring occupiers. The previous permission raised no concerns with regard to these matters. The addition of one dwelling, to the 7 dwellings which already have planning permission and are under construction, would not result in a significant increase in traffic which would be harmful to highway safety and

suitable parking provision has been provided. Due to its limited scope and height, the proposed bungalow would also not result in harm to the living conditions of the occupiers of neighbouring dwellings in relation to loss of privacy, loss of outlook or an increase in noise and disturbance. Furthermore, the appeal site is already under development and one additional dwelling would not alter the impact on existing wildlife in the area, subject to the mitigation previously secured by condition.

Conditions

16. All conditions suggested by the Council were included on the previous permission and therefore have been included to ensure consistency. This includes several pre-commencement conditions as, whilst the construction of the 7 dwellings has begun, they relate to the pre-commencement of the scheme for 8 dwellings.
17. I have attached a condition requiring the development to accord with the approved plans, as this provides certainty and precision. Conditions relating to external materials, hard and soft landscaping and its management, boundary treatments and tree protection are necessary to ensure an appropriate appearance for the development. To protect the living conditions of neighbouring occupiers a condition to secure a construction environmental management plan is also necessary as well as a condition requiring obscure glazing in the stairway window of plot 6.
18. To manage surface water and prevent flooding, conditions are necessary to secure site drainage plans and strategies, including a verification report. To reduce transport emissions and ensure the development is built to high energy efficiency standards, a condition relating to the provision of electric vehicle charging points has been included as well as a condition ensuring the development complies with the submitted energy statement. A condition requiring the provision and retention of parking spaces is also necessary to ensure highway safety.
19. A condition requiring compliance with precautionary mitigation measures for reptiles contained within the relevant survey is necessary to prevent harm to protected species. A condition relating to biodiversity enhancements is also necessary to secure ecological enhancements on the site.
20. Paragraph 54 of the Framework advises conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In the interests of the character and appearance of the area, given the nature of the dwellings and the depths of the rear gardens there is clear justification for the withdrawal of permitted development rights under Classes A, B and E of Part 1. To ensure each development does not result in high levels of occupancy and associated car ownership prejudicial to highway safety, a condition is necessary to restrict the use of each dwelling to the C3 Use Class.

Conclusion

21. For the reasons set out above, the appeal is allowed.

E Grierson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three year from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3449-002 Rev C, 3449-005 Rev B; 3449-006 Rev B, 3449-008 Rev A.
- 3) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall include amongst other matters details of: hours of construction working; measures to control noise affecting nearby residents; wheel cleaning/chassis cleaning facilities; dust control measures; pollution incident control and site contact details in case of complaints. The construction works shall thereafter be carried out at all times in accordance with the approved Construction Environmental Management Plan unless any variations are otherwise first submitted to and approved in writing by the Local Planning Authority.
- 4) No development shall take place until a scheme based on sustainable drainage principles, has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. Those details shall include (where applicable):
 - i. Details of the design of the scheme (in conjunction with the landscaping plan where applicable).
 - ii. A timetable for its implementation (including phased implementation).
 - iii. Operational maintenance and management plan including access requirements for each sustainable drainage component.
 - iv. Proposed arrangements for future adoption by any public body, statutory undertaker or management company.

The development shall be undertaken in accordance with the approved details and thereafter be maintained.

- 5) No development shall commence until details of a Construction Surface Water Management Plan (CSWMP) detailing how surface water and storm water will be managed on the site during construction (including demolition and site clearance operations) is submitted to and agreed in writing by the local planning authority in consultation with the LLFA. The CSWMP shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction. The approved CSWMP and shall include method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include:
 - i. Temporary drainage systems.

ii. Measures for managing pollution / water quality and protecting controlled waters and watercourses.

iii. Measures for managing any on or offsite flood risk associated with the development.

- 6) No development shall take place until tree protection measures have been put in place, in compliance with the tree protection measures and methods of working set out in the tree protection plan (drawing Ref: 3449-004 Rev B) and the Arboricultural Report (ref: SA/1592/19). Such measures shall be retained for the duration of the construction on site.
- 7) No development above slab level shall take place until details and samples of all materials to be used externally have been submitted to and approved in by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 8) No development shall take place above ground floor slab level until details of the provision of electric vehicle charging points (1 per dwelling) 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.
- 9) No development shall take place above ground floor slab level until details of a hard and soft landscape scheme have been submitted to and approved in writing by the Local Planning Authority. The submitted details should include:
 - i. Plans and information providing details of existing and proposed finished ground levels, means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, all paving and external hard surfacing, lighting and services (including drainage), tree grilles, minor artefacts and structures (seating, refuse receptacles and raised planters). Soft landscape works, including details of planting plans, tree positions, planting build ups, written specifications (including cultivation and other operations associated with grass, tree and planting establishment, aftercare and maintenance); schedules of plants, noting species, plant sizes, root treatments and proposed numbers/densities where appropriate.
 - ii. Details for the design and specification of tree planting to enable healthy establishment at maturity. Information should provide details for the planting environment (including within hard landscape, raised planters, podium decks and green roofs), calculated soil volume, tree support and tie specification, guards and grilles, aeration and irrigation systems, soil build-up information (avoiding the use of tree sand), tree cell systems (to street tree planting environments).
 - iii. A timetable for implementation.

The development shall be implemented in accordance with the approved details and timetable 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.

- 10) No development shall take place above ground floor slab level until details of how the development will enhance biodiversity have been submitted to, and approved in writing by, the local planning authority. The approved details shall be implemented prior to first occupation of any dwelling and thereafter retained.
- 11) The development shall be implemented in accordance with the measures to address energy efficiency and climate change set out within the energy statement, by Mark Carter Associates dated December 22. 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 and will thereafter be maintained on site.
- 12) No part of the development shall be occupied until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.
- 13) No dwelling 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. The boundary treatment shall be completed in accordance with the approved details before any dwelling is occupied and shall thereafter be retained.
- 14) Prior to the first occupation of the development herein approved, a Landscape Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Landscape Management Plan shall include long-term design objectives, management responsibilities and maintenance schedules for all hard and soft landscape areas, including communal amenity space (except for small, privately owned, domestic gardens) for a minimum period of five years and arrangements for implementation. The development shall thereafter be managed in accordance with the approved details.
- 15) Prior to first occupation (or within an agreed implementation schedule) a signed verification report carried out by a qualified drainage engineer (or equivalent) shall be submitted to and approved in writing by the Local Planning Authority to confirm that the agreed surface water system has been constructed as per the scheme and plans approved pursuant to condition 4. The report shall include details and locations of critical drainage infrastructure (such as inlets, outlets and control structures) including as built drawings, and an operation and maintenance manual for the unadopted parts of the scheme as constructed.

- 16) Notwithstanding the submitted plans, the stairway window on the side elevation of plot 6, shall be fitted with obscure glass and shall be non-opening. This work shall be completed before the dwelling is occupied and shall be retained thereafter.
- 17) From the commencement of works (including site clearance), all precautionary mitigation measures for reptiles are to be carried out in accordance with the details contained in the walkover survey (KB Ecology January 2021).
- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and reenacting that Order with or without modification) no development shall be carried out within Schedule 2, Part 1 Classes A, B and E of that Order unless planning permission has been granted on an application relating thereto.
- 19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and reenacting 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.