



Appeal Decision

Site visit made on 21 May 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal Ref: APP/H2265/W/23/3334514

Land rear of 119 and 121 Teston Road, West Malling, Kent ME19 6FT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous technical details consent was granted.
- The appeal is made by Mrs Neve against the decision of Tonbridge and Malling Borough Council.
- The application Ref 23/01738/TDCMIN, dated 14 August 2023, was refused by notice dated 9 November 2023.
- The application sought technical details consent for 3 dwellings and associated works following the grant of stage 1 Permission in Principle under planning reference TM/20/00277/PIP (Permission in principle for up to 3 dwellings).
- The condition in dispute is No 10 which states that: The development shall be carried out in accordance with the plans listed in the section of this decision notice headed 'This was approved in accordance with the following submitted details'.
- The reason given for the condition is: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 6 June 2024.

Decision

1. The appeal is allowed and technical details consent is granted for 3 dwellings and associated works following the grant of stage 1 Permission in Principle under planning reference TM/20/00277/PIP (Permission in principle for up to 3 dwellings) at Land rear of 119 and 121 Teston Road, West Malling, Kent ME19 6FT in accordance with the terms of the application, Ref 23/01738/TDCMIN, subject to the conditions in the attached schedule.

Preliminary Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published, however the changes do not materially alter the sections of the Framework most relevant to this appeal. Any references to the Framework hereafter in this decision are to the latest version.
3. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages. The first stage (permission in principle (PIP)) establishes whether a site is suitable in principle. The second stage (technical details consent (TDC)) is

when detailed proposals are assessed. This appeal relates to the second of these 2 stages.

4. Section 73 of the Town and Country Planning Act 1990 (s73) permits the grant of planning permission for development of land without compliance with conditions subject to which a previous permission was granted. If an appeal is allowed following a s73 application, a new planning permission is created and the original permission remains extant and unaltered. The appellant can then choose which permission to implement.
5. There is nothing preventing an application to be made under s73 to vary or remove a condition on an approval of TDC, however the legislation only permits a new planning permission to be granted.
6. Where the conditions in question are attached to an approval of reserved matters, the approach would be to combine the outline permission and reserved matters to create a single full planning permission. However, in this instance planning permission is only granted once TDC has been approved and therefore, the decision heading above reflects this.
7. During my site observations, construction works had commenced with the three detached dwellings appearing at an advanced stage of completion. The garages at the rear of Plots 1 and 2 had not been completed, albeit foundations and concrete pads had been laid. For the avoidance of doubt, I have determined the appeal based on the proposed plans before me.

Main Issue

8. The main issue is the effect of the proposed variations of condition 10 (plans) of TM/23/00436/TDCMIN on the character and appearance of the area.

Reasons

Character and appearance

9. The appeal site consists of a rectangular plot to the rear of Nos 119 and 121 Teston Road, albeit with the proposed dwellings fronting and accessed via St Leonards Street. The surrounding area is rural with verdant fields and open areas near the site. Nevertheless, the appeal site is located within a small residential settlement consisting of detached and semi-detached properties providing a more built environment. It is within this context that the application is to be assessed.
10. The proposal seeks to vary the approved plans, to enlarge the detached garages at Plots 1 and 2 to provide ancillary habitable accommodation for multi-generational families. The ridge heights of the approved garages would be raised, and the footprints increased significantly from those originally approved. Whilst the proposal could be considered large in comparison to other domestic garages in the locality, these would be proportionate to the scale of the dwellinghouses approved at the front of the site.
11. Whilst the height and footprints have been increased, the positioning within the site remains relatively unchanged which was previously found to be acceptable. Only glimpse views would be achieved from the street view given the prominent position of the main dwellings, and the pitched roofs on the garages provide a distinctly subordinate appearance to the larger properties fronting

the street. The rear location of the garages restricts views of them from most public vantage points. Furthermore, the dwellinghouses are situated within generous plots and as such the increase to the garages would not appear cramped or as an overdevelopment.

12. The location of the garages would not introduce a more suburban form of development or lower the established spatial standards of the surrounding area, and the units would retain a subordinate feel to the host property, despite their increased size. However, in order that the garages maintain their ancillary relationship to the host properties at the front, a condition would be necessary to ensure that the use remains ancillary to these units.
13. I conclude that the proposed variation of condition 10 of the TDC would not result in any unacceptable harm to the character and appearance of the area. Consequently, I find that the increased footprint and first floor extensions to the garages complies with Policy SQ1 of the Tonbridge and Malling Borough Council Development Plan Document (DPD), adopted April 2010 and Policy CP24 of the Tonbridge and Malling Borough Council Core Strategy (CS), adopted September 2007 which amongst other things, requires all new development to be of high quality, protecting the character, local distinctiveness and pattern of development whilst respecting the site and its surroundings. The proposal would also comply with the Framework insofar as it requires development to be sympathetic to local character.

Other matters

14. The Council have raised concerns in respect to whether the proposed amendments to the scheme would conflict with or amount to a fundamental change to the description of development set out in the original PIP. The PIP was granted by the Council on 5 March 2020 for "Permission in principle for up to 3 dwellings" under reference TM/20/00277/PIP. The Council question whether the TDC subject to this application would be in accordance with the terms of the original PIP, as advised in the PPG¹.
15. The application which is the subject of this appeal was submitted under s73 of the Town and Country Planning Act, 1990 to vary condition 10 by substituting a different set of plans to those approved. The differences proposed have been highlighted above. The PPG states s73 applications "*can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission*"². The operative part of the permission is the description of development, and this is supported by case law³.
16. Whilst it is acknowledged that the scope of the development works proposed have the capabilities to create a separate residential unit, the buildings have nevertheless been designed with shared services, have associated links with the main house, and are within the same plot under the same land ownership. Whilst land ownership does not necessarily correlate with the use of land,

¹ PPG - Paragraph: 003 Reference ID: 58-003-20190615

² PPG - Paragraph: 013 Reference ID: 17a-013-20230726

³ *Finney v Welsh Ministers & Carmarthenshire County Council*, *Energiekontor (UK) Ltd* [2019] EWCA 1868; [2020] JPL 524

where it relates to a self-contained unit, it would not be unusual for the land owned to be used for incidental or ancillary residential purposes.

17. As such the proposed use of the garages would be incidental or ancillary to the residential occupation of the main dwellings at Plots 1 and 2, and I consider that they would each form part of a single planning unit. Furthermore, the provision of suitable planning conditions would ensure that the accommodation within the garages is only occupied for purposes ancillary to the residential use of the host dwellings.
18. There is no requirement for a description of development to include every aspect or detail of a proposal and it is reasonable to expect dwellings of this size to have detached outbuildings within the grounds. Consequently, given that the garages would be ancillary to the main dwellings, the proposal would still provide only three dwellings. I therefore find no change to the original description of development would be necessary and there would be no conflict from the appeal scheme with it. Imposing a revised plans condition reflecting the alterations sought, and conditions ensuring the development is ancillary would not fundamentally alter the approved development. As such, based on the evidence before me in relation to the specific appeal scheme and the description of development, the proposed alterations to the garages fall within the scope of the s73 application.

Conditions

19. The PPG makes it clear that decision notices for the grant of planning permission under s73 should also restate the conditions imposed on earlier permissions that continue to have effect⁴. However, the Council have suggested amended and updated conditions to reflect the works undertaken at the site. As I have limited information before me about the status of the conditions imposed on the previous TDC permission (TM/23/00436/TDCMIN), I have used the Councils suggested conditions as a starting point. In the interest of clarity, I have made some minor alterations to some conditions, however my amended wording does not alter their fundamental purposes.
20. As the development has been substantially completed, it is not necessary to impose a condition requiring commencement within a set period, as such I have removed condition 1. I have attached the condition relating to approved plans as it is necessary to specify the amended list of approved drawings as this provides certainty and defines the permission.
21. Conditions relating to materials and landscaping treatments are necessary to secure the satisfactory appearance of the proposal within its immediate setting.
22. In the interests of highway safety, I have imposed a requirement for adherence to the approved Construction Management Plan. I have also attached conditions relating to vehicle parking areas and the retention of visibility splays for vehicles which are again both necessary for highway safety.
23. I have attached conditions restricting specific permitted development and a restrictive occupation condition which are necessary to ensure the use of the developments remains ancillary to the main houses.

⁴ PPG - Paragraph: 015 Reference ID: 17a-015-20140306

24. As there could be features of archaeological interest on the site, it is necessary to secure the submission and implementation of a watching brief for archaeological work.
25. The condition relating to contaminated land is necessary to mitigate the risks of contamination to construction workers, future users of the land, and offsite receptors including neighbouring occupiers and water and ecological systems.

Conclusion

26. For the reasons given above the appeal should be allowed.

Robert Naylor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development shall be carried out in accordance with the following plans: APPROVED ACCESS AND VISIBILITY SPLAYS, APPROVED GROUND FLOOR PLAN, APPROVED FIRST FLOOR PLANS, APPROVED ROOF PLANS, APPROVED PLANS AND ELEVATIONS PLOT 1, APPROVED PLANS AND ELEVATIONS PLOT 2, PROPOSED ROOF PLANS 103F, PROPOSED ACCESS AND VISIBILITY SPLAYS 104B, PROPOSED GARAGE PLANS AND ELEVATIONS 122, PROPOSED GROUND FLOOR PLANS 101E and PROPOSED FIRST FLOOR PLANS 102E.
- 2) The external surfaces of the development hereby permitted shall be constructed in the materials shown on the approved plans.
- 3) The construction works shall be carried out in accordance with the Construction Management Plan and Construction Management Strategy received 9 June 2023 and approved under TM/23/01247/FL.
- 4) The development shall be carried out in accordance with the landscaping and boundary details submitted under drawing titled Soft Landscape Plan received 9 June 2023 and approved under TM/23/01247/FL. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate.
- 5) Prior to the first occupation of the dwellings hereby permitted the area shown on the submitted layout referenced 21-121-102 D received 9 June 2023 approved under TM/23/01247/FL as vehicle parking and turning space has been provided, surfaced and drained. 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 and turning space.
- 6) The access shall not be used until the area of land within the vision splays shown on the plans referenced 21-121-104 A received 9 June 2023 as approved under TM/23/01247/FL has been reduced in level as necessary and cleared of any obstruction exceeding a height of 0.6m metres above the level of the nearest part of the carriageway. The vision splays so created shall be retained at all times thereafter.
- 7) The garages hereby permitted shall be occupied only in conjunction with the original dwellinghouses known as Plots 1, 2 and 3 as single dwellinghouses and shall not be used, let or sold at any time as a separate unit of living accommodation.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending,

- revoking and re-enacting that Order) no new fences, gates, walls or other means of enclosure shall be erected.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no new hardstanding for vehicles shall be constructed on, nor means of vehicular access to the highway be formed, laid out or constructed within the site.
- 10) If during construction works items or features of archaeological and historic importance are discovered, all development shall cease. It will then be necessary for the applicant, or their agents or successors in title, to secure the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed, and items of interest and finds are recorded. The watching brief shall be submitted to Local Planning Authority immediately on discovery of any historic item or feature.
- 11) (a) If during development, significant deposits of made ground or indicators of potential contamination are discovered, the work shall cease until an investigation/remediation strategy has been agreed with the Local Planning Authority and it shall thereafter be implemented by the developer.
- (b) Any soils and other materials taken for disposal should be in accordance with the requirements of the Waste Management, Duty of Care Regulations. Any soil brought onsite should be clean and a soil chemical analysis shall be provided to verify imported soils are suitable for the proposed end use.
- (c) A closure report shall be submitted by the developer relating to (a) and (b) above and other relevant issues and responses such as any pollution incident during the development.

END OF SCHEDULE