



Appeal Decision

Site visit made on 22 December 2015

by Claire Victory BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 April 2016

Appeal Ref: APP/A2280/W/15/3134776

Former St Matthews Playing Field, Borstal Street, Rochester, Kent ME1 3HJ

- 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 King and Johnston Homes Ltd against the decision of The Medway Council.
 - The application Ref MC/15/0958, dated 23 September 2014, was refused by notice dated 2 July 2015.
 - The development proposed is the construction of 18 no. 2 and 3 bedroom houses, with access from Hill Road and Elm Tree Drive and formation of community open space.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 18 no. 2 and 3 bedroom houses, with access from Hill Road and Elm Tree Drive and formation of community open space at Former St Matthews Playing Field, Borstal Street, Rochester, Kent ME1 3HJ in accordance with the terms of the application, Ref MC/15/0958, dated 23 September 2014, and subject to the conditions in the attached schedule.

Procedural Matter

2. The appellant submitted a unilateral undertaking which I have taken into account.

Application for costs

3. An application for costs was made by King and Johnston Homes Ltd against The Medway Council. This application will be the subject of a separate Decision.

Main Issues

4. The sole reason for refusal stated that the scheme would constitute overdevelopment, due to the number and size of the dwellings proposed, the layout and relationship with land levels and neighbouring properties, and the narrow nature and constraints of the road serving the site. Taking the Decision Notice and the Council's statement into account I consider the main issues to be:
 - the effect of the development on the character and appearance of the area; and
 - the effect of the development on the highway network in the vicinity of the site.
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Reasons

Character and appearance

5. The appeal site is a former playing field that once formed part of St Matthew's Infant School. The former school buildings are located to the north of the appeal site. The appeal site is grassed, with some scattered scrub and a band of mature trees spanning the site from east to west broadly at its mid point. There are a number of protected trees on site. Ground levels drop considerably from south-east to north-west across the site in two places, with the effect that there is an upper, middle and lower section. There were some school buildings within the lower section but these have been demolished. The western boundary of the site is formed of trees and hedgerow, and a public footpath runs along this boundary from Hill Road to Borstal Street. There are open fields beyond the footpath, and residential properties to the south and east of the site. Properties in the locality are mostly semi-detached, with some detached and terraced houses.
6. LP Policy H4 of the Medway Local Plan (LP) (2003) states that residential development in urban areas will be permitted in a number of circumstances, including on vacant or derelict land or the change of use or redevelopment of existing buildings no longer required for non-residential use. Paragraph 5.5.19 of supporting text to the policy states that whilst seeking to maximise residential development opportunities within the area, the council will seek to ensure that the amenity of local neighbourhoods is respected and will seek to avoid "town cramming".
7. The development would involve three pairs of semi-detached houses on Hill Road, shown on the plans as plots 1-6. The remainder of the dwellings would be formed of three terraced blocks facing onto a shared parking area and with vehicular access taken from Elm Tree Drive. Dwellings on plots 1-6 have been designed to reflect the scale and form of the properties opposite whilst addressing the change in levels across the site, with a two storey frontage and three storeys to the rear. Properties on the south eastern side of Hill Road are set at a slightly higher level and the submitted plans indicate that the ridge height of dwellings on plots 1-6 would be no higher than that of these properties. Consequently the properties on the Hill Road frontage would be broadly consistent with the character of properties on this section of Hill Road in scale and form.
8. Turning to the number of dwellings proposed on the site, the parties dispute the density of the proposed development. The Council consider houses on Elm Tree Drive and Hill Road are relatively low density. It has calculated that the appeal proposal would be much higher, but this would exclude the parking and turning areas. Taking into account these areas, the residential part of the site would be approximately 40 dwellings per hectare.
9. The National Planning Policy Framework (the Framework) is not prescriptive in terms of density and requires local authorities to set out their own approach to reflect local circumstances. The Council has confirmed in the committee report that the proposed development would be broadly in line with the 30-50 dwellings per hectare set out in LP Policy H5. In addition, LP Policy BNE1 requires development to be satisfactory in terms of use, scale, mass, proportion, details, materials, layout and siting. Whilst most properties in Elm Tree Drive are semi-detached, there are Victorian and Edwardian terraced

properties in the wider area such as Sidney Road and Hillside, and Hill Road is relatively varied in character with examples of more recent terraced housing. Thus the terraced blocks would not be markedly out of character with the surrounding area.

10. The site layout plan shows the hedgerow along the western boundary as retained, although the submitted Tree Report and Arboricultural Impact Assessment indicates that it comprises poor specimens which should be removed and replaced with a greater number of native trees. Tree number T1 as shown on plan number KJH14/03 Rev B, a protected tree, is also recommended to be felled to facilitate the development, but the Council has not objected to the loss of this TPO tree or the replacement of the hedgerow, and full details of works to trees on site could be secured through the use of appropriate conditions, including a requirement for details of tree protection measures during construction for those trees to be retained.
11. The Council's appeal statement states that the site lies within the Nashenden Valley Area of Local Landscape Importance (ALLI). It asserts that the development would form a hard edge to the built up area adjacent to the open countryside, and that the existing 'buffer zone' formed by the trees along the western boundary of the site would not be sufficient to define the boundary between the urban and rural areas. However, no details have been provided of the particular characteristics of this area that should be protected, and LP Policy BNE34, the relevant policy for ALLIs was not referred to in the reason for refusal.
12. The site would be clearly separated from the nearby fields by the public footpath and the replanted hedgerow. The nearby fields are also bounded by a well established hedgerow, and the back gardens of plots 11-18 and 6 would also abut the site boundary. As such, I consider there is would be a sufficient green buffer between the proposed development and the open fields beyond that would reflect the site's location on the edge of a built up area.
13. The south eastern part of the site is designated as open space. LP Policy L3 allows for the loss of such land where an alternative open space provision can be made within the same catchment and is acceptable in terms of amenity value. The Council has declared the playing fields surplus to requirements, and the site currently has no formal public access and is in a relatively poor condition for recreation. The proposed open space, or pocket park, would be within the lower section of the site, with a single pedestrian entrance leading from the public footpath. It would be a simple, low key space for local recreation and wildlife, subject to conditions to secure access and implement biodiversity measures. Whilst there would be no direct access for residents of the proposed dwellings from the site, there is no policy requirement for this and the open space would provide a wider benefit for the local community, linked to the local footpath network. Accordingly, although there would be a small net reduction in quantity, there would be gains in both quality and access, such that the proposal would accord with Policy L3.
14. The Council has pointed out that there would be no access for maintenance vehicles to the proposed pocket park. Due to the ground level changes across the site, it is not certain whether road access to this section of the appeal site from Elm Tree Drive would be practical, but the park is to be a receptor site for

reptiles relocated from the residential development, and would be likely to be have a low maintenance regime to encourage biodiversity.

15. Taking all of the above into account, I conclude that the proposal would not cause harm to the character and appearance of the area, and would accord with LP Policies H4 and LP Policy BNE1, and with the Framework, insofar as it requires a good standard of design in all new development.

Effect on highway network in the vicinity of the site

16. The six semi-detached properties would be accessed from Hill Road, and would have two off-street parking spaces per dwelling, plus two visitor bays, in accordance with the Council's parking standards. There would be a shared parking area with 22 spaces for the remaining 12 houses; a shortfall of 2 spaces against the Council's parking standards, taking account of a requirement for 3 visitor or casual spaces for this part of the development. However a shared space and turning area would be provided within the site that would be sufficient to accommodate the occasional visitor car in addition to refuse and emergency vehicles. Moreover, the site is within the built up area close to bus routes and within walking distance of shops and facilities, offering a choice of alternatives to the private car.
17. The Council is concerned with the narrowness of Hill Road, and there are local concerns regarding existing on-street car parking in the locality and potential for increased traffic congestion, including during construction. However, there has been no objection to the scheme from the Highway Authority. Moreover, there is no compelling evidence before me to indicate that the proposed level of off-street car parking would be inadequate for the development, or that the development would lead to a increase in traffic congestion in the vicinity such as to demonstrate a significant adverse cumulative impact, subject to conditions relating to the provision and retention of car parking spaces and for a construction management plan. On balance I consider the slight shortfall in parking spaces could be accommodated either within the site or on-street within the wider area.
18. I conclude that the development would accord with LP Policies T1 and T2, insofar as they require the highway network to have sufficient capacity to cater for the traffic that would be generated and for the intensification of the highway access to not be detrimental to the safety of vehicle occupants, cyclists and pedestrians. It would also accord with paragraph 32 of the Framework, which requires that a safe and suitable access to the site can be achieved for all people.

Other Matters

19. The Council requires financial contributions towards local infrastructure, in accordance with its Guide to Developer Contributions Supplementary Planning Document (2014). The appellant has provided a signed and executed unilateral undertaking (UU), relating to the provision and maintenance of open space within the site, nursery and primary school place provision at the Elaine School, new facilities at the Hook Meadow Community Centre, local health facilities including but not limited to Borstal Village, Thorndike Surgery, The Delice (Thorndike Branch Surgery) and Rochester Healthy Living Centre), and table tennis equipment and supporting a café at Woodies Youth Centre.

20. The Council has provided evidence to show that there is expected to be a deficit of school places from 2018 onwards in the Rochester school planning area, and it is likely that residents of the proposed scheme would place increased demand on the aforementioned local facilities. In addition there is nothing before me to suggest that these infrastructure projects would be funded from five or more obligations. As such I am satisfied that these contributions would comply with the tests in paragraph 204 of the Framework, and the Community Infrastructure Levy (CIL) Regulations 2010.
21. The UU also makes provision for funding for feature lighting at Great Lines Heritage Park. However, insufficient evidence has been submitted as to the proximity of the Great Lines Heritage Park to the appeal site, and thus I cannot conclude that the suggested contribution would be fairly and reasonably related to the development or necessary for the development to take place. As such I consider it fails the tests in the Framework and the CIL Regulations 2010.
22. The occupiers of No 43 Hill Road to the east are concerned that there would be an adverse impact on the outlook from windows in the flank elevation facing the appeal site, but rooms at both ground and first floor are dual aspect and thus there would be no unacceptable loss of outlook.
23. Residents living opposite the proposed dwellings on plots 1-6 consider there would be a loss of privacy, but there would be sufficient separation of about 20m between these properties across Hill Road so as to avoid undue overlooking.
24. Interested parties have referred to the impact of the development on biodiversity, including sightings of Barn Owls within the appeal site, and the Ecology Report submitted with the application indicated the possibility of foraging bats, badgers and nesting birds being present on the site. Conditions are therefore necessary to ensure a further bat survey is undertaken, for vegetation to be cleared outside of the bird nesting season and for clearance of the dense scrub on site to take place under the supervision of a qualified ecologist and necessary mitigation carried out prior to any further works on site if a badger sett is found.
25. The application was accompanied by a reptile survey of that part of the site proposed for residential development which found evidence of Common Lizard present. As the area for the proposed pocket park is to be a receptor site for future reptile translocation, and has not yet been surveyed, a condition requiring a survey of this area prior to works commencing to create the pocket park, and including a detailed mitigation strategy and management plan is necessary to avoid any harm to protected species.
26. There have also been objections to the appeal site is being developed in isolation from the former St Matthew's school buildings. I acknowledge that the development of the site would prevent access from the south eastern side of the school buildings site. However, due to the significant differential between the middle and lower levels of the appeal site, it is unclear whether vehicular access to the school buildings could be achieved from Elm Tree Drive. Moreover, the school buildings are no longer in the same ownership as the appeal site, and thus there is no certainty that the buildings and former playing fields would be developed in a comprehensive manner as a single site. Accordingly I have given this little weight in reaching my decision.

27. Whilst there have also been concerns regarding a lack of consultation, I have no evidence before me that the statutory requirements for public consultation on the planning application have not been met, and it was evident from the site visit that the scheme had been publicised in the local area. As such this matter has little weight in the appeal.
28. Finally the appellant contends that the Council did not confirm its position with regard to demonstrating a five year supply of deliverable housing sites during the appeal process. Nevertheless, I have found that the development would be acceptable and thus do not need to consider this matter further.

Conditions

29. Having regard to all of the above points I consider that the proposal would accord with the development plan, subject to certain conditions, with slight amendments for accuracy and with due regard to advice in the Planning Practice Guidance (the Guidance).
30. In addition to the standard time limit condition, I have specified the approved plans for the avoidance of doubt. Details of boundary treatments and hard and soft landscaping are necessary to safeguard the character and appearance of the area. A finalised tree retention and removal plan, tree constraints plan, arboricultural impact assessment and arboricultural method statement, are all required to ensure adequate protection of existing trees on site during construction and secure their retention thereafter and to ensure satisfactory landscaping works in the vicinity of the TPO trees along the bank between the proposed dwellings and pocket park. Details of the opening from the footpath to the pocket park, and means of providing access to the bank via the hedgerow are also required to ensure satisfactory access.
31. The Guidance states that permitted development rights for new dwellings should only be removed in exceptional circumstances. However in this case I consider it is necessary to impose such a condition to ensure the gardens for each of these family sized properties retains a reasonable level of amenity.
32. A condition controlling external lighting is necessary given the potential for bat roosts and foraging routes within the site, works to remove vegetation out of the bird breeding season, felling details of Tree T1 and ecological mitigation and enhancement measures to avoid harm to biodiversity interests.
33. Details of the surface water drainage arrangements and diversion of public foul sewers where appropriate are required to ensure the site is properly drained and to reduce surface water run-off to the highway. Vehicle parking, turning and garaging to be laid out and retained as such thereafter in the interests of highway safety. For the same reason I shall require a condition to ensure Hill Road would be widened and for the street light to be 'replaced and relocated' to provide two visitor parking bays.
34. Conditions requiring details of site contamination, investigation, and remediation as appropriate are necessary due to the proximity to a former landfill site and as the site lies within a Source Protection Zone. A construction management plan is required in the interests of highway safety and to safeguard the amenity of neighbouring occupiers.
35. I have imposed conditions relating to ecological mitigation measures within the site but as the pocket park would be provided to the Council with a lump sum

towards maintenance I consider that a condition requiring the appellant to provide a management plan with details of the long term maintenance of the pocket park would be unreasonable. Likewise there is no policy requirement to provide details of a resident's management company and the Council has not explained why this would be necessary so I shall not impose this suggested condition.

Conclusion

36. For the above reasons I conclude that the appeal should be allowed.

Claire Victory

INSPECTOR

Richborough Estates

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: KJH14/01, 02 Rev A, 03 Rev B, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, and 14.
- 3) No property shall be occupied until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the property it relates to is occupied and shall thereafter be retained.
- 4) No development above slab level shall take place until details of all materials to be used externally have been submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting the Order with or without modification) no development shall be carried out within Class A and of Part 1 of Schedule 2 to that Order unless planning permission has been granted on an application relating thereto.
- 6) No development above slab level shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping (hard and soft). 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 completion of the development whichever is the earlier. Any trees or plants which within five years of planting are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) Notwithstanding the details submitted in support of the planning application no development shall commence until there has been submitted to and approved in writing by the local planning authority: a finalised tree retention and removal plan with numbered and colour coded trees identified for retention and removal overlaid onto the proposed site layout plan; a tree constraints plan showing root protection areas and any other relevant constraints plotted around each of the trees to be retained overlaid onto the proposed site layout plan; an arboricultural impact assessment for all trees identified for retention that evaluates the direct and indirect effects of the proposed design, including access, adequate working space and provision for storage of materials, and where necessary recommended mitigation measures; a tree protection plan on a scale drawing, informed by descriptive text where necessary showing trees for retention and illustrating the tree and landscape protection measures; and arboricultural method statements for the implementation of any aspect of development that is in the root protection area or has potential to result in loss of or damage to a tree to be retained, incorporating relevant information from other specialists as required, and with particular attention given to preparatory works for

- new landscaping including works to clear and enhance the aesthetic appearance of the bank southeast of the public open space. All works shall be carried out in accordance with the approved details.
- 8) Prior to the installation of any external lighting on the site details of such lighting including its height, position, external appearance, any shielding, light intensity, colour, spillage (such as light contour or lux level plans showing the existing and proposed levels) and hours of use together with a report to demonstrate its effect on the landscaping of the site (including an overlay of the proposed lighting onto the site landscaping plans) and ecology and of how this effect has been minimised shall be submitted to and approved in writing by the local planning authority. Only the external lighting approved pursuant to this condition shall be used on the site and it shall only be used within the hours approved pursuant to this condition.
 - 9) Development other than that carried out as part of an approved scheme of remediation shall not commence until conditions 10 to 13 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified in writing by the local planning authority until condition 13 has been complied with in relation to that contamination.
 - 10) An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site. The scheme shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report shall be submitted to and approved by the local planning authority prior to the commencement of development. The report of the findings must include: a survey of the extent, scale and nature of the contamination; an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments, and service lines and pipes; an appraisal of remedial options, and proposal of the preferred options. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11.'
 - 11) A 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 historic environment must be submitted to and approved in writing by the local planning authority prior to commencement of the development. 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.

- 12) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of any development (other than development required to enable the remediation process to be implemented) unless otherwise agreed in writing by the local planning authority. The local planning authority must be given not less than two weeks written notification prior to commencement of the remediation scheme works. 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 prior to the bringing into use of the development.
- 13) In the event that contamination is found at any time when carrying out the approved development that was not previously identified 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 10, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 11, which is subject to the approval in writing of the local planning authority. Following completion of the measures identified in the approved remediation scheme a verification report providing details of the data that will be collected in order to demonstrate that the works set out in condition 11 are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action must be prepared, which is subject to the approval of the local planning authority in accordance with condition 12.
- 14) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.
- 15) The dwellings shall not be occupied until the areas shown on the submitted layout as vehicle parking spaces have been provided, surfaced, drained and marked out in accordance with details to be submitted to and approved by the local planning authority. Thereafter they 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 the parking spaces.
- 16) No development shall commence until a Construction Environmental Management Plan (CEMP) is submitted to and approved in writing by the local planning authority. The CEMP shall include amongst other matters: details of construction working; measures to control noise affecting nearby residents; wheel cleaning/chassis cleaning facilities; dust control measures; pollution incident control; lighting; effect on wildlife and habitat and site contact details in case of complaints. The construction works shall thereafter be carried out at all times in accordance with the approved CEMP.

- 17) No development shall commence until the developer has advised the local planning authority (in consultation with Southern Water) of the measures which will be undertaken to divert the public foul sewers. The sewers shall be diverted in accordance with these agreed measures.
- 18) Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by the local planning authority in consultation with Southern Water. The development shall be carried out in accordance with the approved details.
- 19) Notwithstanding the details submitted in support of the planning application, no development shall commence until there has been submitted to and approved in writing by the local planning authority: details of means of access for maintenance into the bank south east of the public open space and the hedgerow on the southwest boundary, adjacent to the public foot path; details of proposals to renovate or replace the hedgerow on the southwest boundary, adjacent to the public footpath; details of landscape works to clear and enhance the appearance of the bank, southeast of the public open space. The works shall be carried out in accordance with the approved details.
- 20) No development shall commence on site until a detailed migration strategy and management plan is submitted and approved in writing by the local planning authority. The translocation must be completed prior to works starting on the development site. The migration strategy and management plan must include the following: reptile population estimate survey (if the receptor site); details of enhancements for the receptor site; translocation methodology; timings of the proposed works.
- 21) Prior to the felling of tree number T1 shown on plan number KJH14/03 Rev B, a bat survey shall be carried out and the results of the surveys including details of any mitigation shall be submitted to and approved in writing by the local planning authority. The recommendations and mitigation detailed in the approved report shall be implemented prior to the felling of the tree.
- 22) Any works to remove vegetation that is suitable for breeding birds must be carried out outside of the bird breeding season (March – August). In the event that this is not possible an ecologist must examine the site prior to works starting and if any nesting birds are recorded all works must cease until all the young have fledged.
- 23) An ecologist shall be present on site when the scrub is cleared. In the event that a badger sett is identified, all works shall cease in that area until details of the necessary mitigation is submitted to and approved in writing by the local planning authority.
- 24) No development above slab level shall take place until full details of the ecological enhancements to be incorporated into the proposed development site, including the public open space, has been submitted to and approved in writing by the local planning authority. The ecological enhancements shall be undertaken prior to first occupation of the development in accordance with the approved details.
- 25) Prior to occupation of any of the dwellings hereby permitted, Hill Road shall be widened and the affected street lighting column replaced and

relocated in order to provide two parking bays parallel to the carriageway, in accordance with drawing KJH14/13.

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