

MC/16/4425

Date Received: 29 October, 2016

Location: Land Adjacent 37 Dagmar Road, Luton Chatham

Proposal: Construction of a 2-bedroomed dwelling with associated parking

Applicant: Mrs Nelson

Agent: Kingsley Smith KSLAW LLP 81 High Street Chatham ME4  
4EE

Ward Luton & Wayfield

Case Officer Majid Harouni

Contact Number 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 18 January 2017.**

**Recommendation - Approval subject to:**

A) The submission of a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 to secure £223.58 per new dwelling towards Designated Habitats Mitigation.

B) And the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted including the construction slab levels shall be carried out in accordance with the following approved plan:

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Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 No development shall take place 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 approved boundary treatment shall be completed before the dwelling hereby permitted is occupied and shall thereafter be retained.

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 4 No development shall take place until details and samples 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.

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no further windows or similar openings shall be constructed in the flank elevations of the building than as hereby approved without the prior written approval of the Local Planning Authority

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining property, in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification) no development shall be carried out within Class A,B,D and E of part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: To enable the Local Planning Authority to control such development in the interests of amenity, in accordance with Policies BNE1 and BNE2 of the Medway Local Plan 2003.

- 7 Prior to the commencement of the development a Construction Environmental Management Plan (CEMP) shall be 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.

Reason: In the interests of highway safety and amenities and in compliance with Policies BNE1 and T1 of the Local Plan.

- 8 No development shall take place until details of the surfacing and drainage of the vehicle parking area have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details before the parking area is brought into use and shall be so retained at all times thereafter.

Reason: To ensure that the development permitted does not prejudice conditions of amenity and highway safety in accordance with Policy BNE2.

- 9 The area shown on the permitted drawings for vehicle parking shall be kept available for such use and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: To ensure that the development permitted does not prejudice conditions of highway safety, efficiency or amenity in accordance with policies BNE2 and T1 of the Medway Local Plan 2003.

- 10 Prior to the commencement of development, a full reptile survey shall be undertaken in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority, and the results and details of measures and programme for reptile mitigation and conservation should the presence of reptiles be confirmed. The mitigation and conservation measures shall be implemented in accordance with the approved details and programme to the satisfaction of the Local Planning Authority.

Reason: In the interests of protection of protected species and in compliance with part 11 of the NPPF.

**For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.**

## **Proposal**

This application is for the construction of a part two and part single storey 2-bedroomed dwelling house. It is proposed to be set 5.5m behind the back edge of the pavement to provide one on site car parking space.

## **Site Area/Density**

Site Area: .0143ha (.036acres)  
Site Density:69.5dph (27.5 dpa)

## Relevant Planning History

- Case ref:** MC/09/1977 Outline application for construction of a 2-bedroomed house  
**Decision** Refusal  
**Decided** 23/02/2010  
Appeal dismissed 20 July 2010
- Case ref:** MC/07/1336 Outline application for construction of one dwelling  
**Decision** Refusal  
**Decided** 21/09/2007
- Case ref:** MC/06/0089 Outline application for the construction of one dwelling  
**Decision** Withdrawn by applicant  
**Decided** 14/03/2006

## Representations

The application has been advertised on site and by individual neighbour notification.

**3 letters** of representation have been received raising the following issues:

- Narrow piece of land completely unsuitable for any type of dwelling
- Any more parking on the street is totally unacceptable as there is already a major problem
- Faced with a high blank wall every time 39A and 39B exit their properties
- Loss of privacy
- Loss of light
- Reason for refusal in 2009 have not changed, the inspectors reason for refusal still relevant, the proposal cannot address these issues because the site is simply too small for a dwelling
- No vehicular access to the rear, therefore no parking can occur to the rear
- Health and safety impact during construction, access for emergency vehicles could be limited as a result
- Cramped overdevelopment of the site
- Potential earth removal could destabilise the adjoining garden land.
- No room for plant, machinery and building materials or parking contractors vehicles
- Civil works would cause a problem with connection to gas, water, electricity and drainage
- The site is home to birds, family of foxes and slow-warms.

Following submission of the revised drawing, re-consultation has been carried out and the occupiers of the adjoining properties repeated their previous comments.

## Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2012 and are considered to conform.

## **Planning Appraisal**

### *Background*

As can be seen from the planning history, previous applications to erect a dwelling on this site were refused in 2007 and 2009 and the appeal against the 2009 refusal was dismissed by a planning inspector in June 2010.

The Council's ground for refusal of the 2009 application for a detached 2 bedroom house with an integral car port was as follows:

*"The proposal constitutes overdevelopment of the plot and would give rise to a cramped form of development that would be harmful to the character of the surrounding area by virtue of its layout and positioning on the site. The position of the proposed new dwelling on the site would also compromise the amenity of neighbouring properties particularly with regard to loss of outlook and daylight to the flank wall window of No 37 Dagmar Road and loss of outlook and daylight to the front windows of No 39a Dagmar Road. The proposal is therefore contrary to policies BNE1 and BNE2 of the Medway Local Plan 2003."*

Planning inspector in dismissing the appeal made the following comments about the proposal:

In paragraph 3 the inspector states:

*The main issues are the effect of the proposed development on "(i) the character of the area; and (ii) the living conditions of the occupiers of the no 37 and 39a Dagmar Road with particular regard to outlook and day light."*

In paragraph 5 he refers to the effect of the development on the character of the area and states:

*"The principal elements that make up the character of the area are terraced houses, the narrow, heavily parked roads and steep slope. The built form dominates views in the immediate area, although there are also long views across the valley. The proposed house would be detached rather than terraced, but as there are other detached properties in the vicinity this would not appear out of keeping. In any case the house would substantially fill its plot with only limited gaps either side. While the vacant plot fulfils a limited function of providing some relief from the built form, I consider that its development by the erection of a 2 storey dwelling would be in keeping with the established residential character of the area...The size of the plot and the scale, design and form of the proposed house would be in keeping with other houses in the road. In terms of its impact on the character of the area there would be no unacceptable conflict with policies BNE1 or BNE2 of the Medway Local Plan."*

In paragraph 6 he states:

*"the proposed dwelling would have its front wall only 0.5m behind the main front wall of no 37 and over 5m forward of the front wall of 39a".*

In paragraph 7 with respect to the impact of the development on no 37 he states:

*"The proposed house would be sited about 800mm from the window and being 2 storey high with a gable end; would substantially reduce the light that the window would receive and would harm the outlook. However, it is only a secondary window and the room is served by a French window to the rear and so I do not consider that the loss of day light or outlook would justify dismissing the appeal."*

In paragraph 8 the inspector considered the impact on no 39a and states:

*"This house has windows to principal rooms at the front with a projection bay and its main entrance to the side. There is an overgrown hedge along the boundary which undoubtedly restricts outlook and daylight to some extent. However, this has a soft appearance whereas the flank wall of the proposed house would be much more bleak and overbearing. ... I consider that a combination of its scale and its siting forward of no 39a would result in serious harm to the occupiers of that property. It would result in a substantial 2 storey wall, with a gable end to the roof, sited very close to the front window, door and front garden of no 39a. This would be seriously harmful to the outlook of its occupiers and to the daylight that they would receive. This would be contrary to policies BNE1 and BNE2 of the local plan."*

In paragraph 9 he dealt with the issue of car parking and stated:

*"The proposed car port could prove very difficult to manoeuvre in and out....It seems to me that the difficulties such as manoeuvre could make the car port difficult to use safely. This weighs against the proposal."*

### *Principle*

The application site is within the urban boundary of Chatham as defined in the Local Plan. The proposal represents infill development which is acceptable in principle in such locations subject to consideration of matters of detail on street scene, character, amenity and highway issues.

### *Siting, street scene and design*

Consideration has to be given to development plan policy BNE1 of the Local Plan. This policy seeks to ensure that the design of the development is appropriate in relation to the character, appearance and functioning of the built and natural environment by reason of its use, scale, mass, proportion, details, materials, layout and siting. Furthermore, the Local Planning Authority has to be satisfied that the development respects the scale, appearance and location of buildings, spaces and the visual amenity of the surrounding area. In addition to this the NPPF supports the need for good design.

The proposed detached house is of a standard appearance with a front bay window, front canopy and pitched roof over. It is in keeping with the design and siting of the other houses in this road and reflects the character of the wider street scene which is mixed in character.

The ridgeline has been designed to be of a height that complements the ridge heights of the adjacent terraces as the ridgelines step down the road.

Bearing in mind that inspector did not objection to the scale, design and form of the previous scheme and in paragraph 5 of his report said that "the dwelling would be in keeping with other houses in the road". It is considered that the design, scale and form of the current proposal would represent a tangible improvement to the previous design and as such is considered that the proposed dwelling house would be in keeping with the character of the area, street scene and in compliance with Policies BNE 1 and BNE2 of the Medway Local Plan and advice in NPPF regarding good design.

### *Amenity Considerations*

There are flank wall windows at no 37 that relate to the kitchen/dining room and landing. The proposed dwelling house has been designed to be part two and part single storey with a shallower first floor depth along the boundary with no 37 in order to minimise impact on the sun light, day light and address any potential over bearing impact on the occupiers of no 37.

There will be some loss of outlook, daylight and sunlight to both these windows through the siting of the proposed house; however, the landing window does not relate to a habitable room and the kitchen/dining room is served by a set of French doors to the rear of the property. It is considered that the loss of outlook, daylight and sunlight to a secondary window would not be so significant to warrant refusing the scheme. Furthermore, having regard to the inspector's comments that the previous scheme was acceptable with respect to its impact on the amenities of the occupiers of no 37 and went on to say in paragraph 7 that, "I do not consider the loss of day light or outlook would justify dismissing the appeal."

The two storey element would project beyond the back wall of no 37 by 2m and the single storey element over 4.9m. The single storey element would have sloping roof about 3.6m in height reducing to approx. 2.2m. While the single storey element would be visible from the garden of number 37, it is not considered to create such a negative impact with regard to loss of outlook, dominance, and loss of daylight or sunlight due to the height of the building which would be seen above a 2m high boundary fence and be 800mm away from the boundary with no 37.

It is considered that having regard to the orientation, design and siting of the proposed dwelling, less harm would be caused to the amenities of the occupiers of no 37 when compared with the previous design.

Bearing in mind that the planning inspector did not raise any concern regarding the rear aspect of the previous development it is considered that this element of the proposal in relation to no 37 is acceptable.

The inspector in paragraph 8 of his report commented regarding the impact of the 2009 scheme on no 39a. To address the issues raised, the proposed dwelling house has been sited 5.5m back from the back edge of the pavement and about half metre forward of no 39a. As such the 2 storey wall, with a gable end to the roof aspect of the dwelling house mentioned by the inspector would be sited substantially behind the front elevation of no 39a and as such would not result in loss of light, out look or cause over bearing effect on the amenities of no 39a.

Moreover, 39a has no fenestration along its north eastern flank wall, except for the house front door that forms part of the front bay/porch. As such the proposed siting would not result in any adverse impact on no 39a. On balance it is considered that the proposed dwelling would not detract from the amenities of the occupiers of no 39a.

Further more, having regard to the siting and design of the proposed dwelling, the rear elevation at ground and first floor would be about 3m and 5m respectively shallower than the rear wall of no 39a and as such, it is considered that the proposed dwelling would not detract from the outlook, day light or sun light of the occupiers of no 39a.

The bottom section of the rear garden of 39a extends further to the east, there would be some over looking of this area from the first floor bedroom window, however, this area is away from the patio area of no 39a and planning inspector did not raise this as a concern in his assessment of the appeal case.

It is also necessary to consider whether adequate habitable space would be provided for the future occupier of the proposed dwelling house in compliance with the Technical housing standards - nationally described space standards March 2015.

The table below shows minimum gross internal floor area expected against the proposed dwelling floor areas.

	Number of bedrooms	Number of bed spaces(person)	2 storey dwellings m2
standard	2b	3p	61
proposed	2b	3p	81.19

In light of the above the proposed dwelling also complies with the Technical housing Standards March 2015, with respect to bedrooms, lounge and kitchen size area. It is therefore considered that the new dwelling would provide a satisfactory living space. The proposed development would provide a rear garden measuring 42sqm in area which is considered to be acceptable for this small two bedroom dwelling house. It is however recommended that a condition is added to ensure that permitted development rights are removed to ensure that the garden area does not become reduced by extensions in the future

In summary it is considered that the design and layout is acceptable and in accordance with the advice given in Policies BNE1 BNE2 and H4 of the Local Plan and NPPF.



### *Highways*

There is a drop kerb in front of the site and part of the site has hard surface and has been used for car parking. The proposal involves provision of a parking space in front.

The dismissed appeal involved an integral car port. The inspector raised concern about potential difficulty with manoeuvring to and from the car port. It is considered that the use of the front garden for parking would not be materially any different to the current use of the site and as such there would not be any issue with regard to the proposed car parking provision or impact on the highway.

In this respect the proposal is considered to be in accordance with the provisions of Policies T1 and T13 of the Local Plan.

Space for refuse bin store has also been provided in the front garden.

### *Bird Mitigation*

As the application site is within 6km of the North Kent Marshes SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in combination, on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest.

Natural England has advised that an appropriate tariff of £223.58 per dwelling (excluding legal and monitoring officer costs, which separately total £550) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries. The strategic measures are in the process of being developed, but are likely to be in accordance with the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014.

The interim tariff stated above should be collected for new dwellings, either as new builds or conversions (which includes HMOs and student accommodation), in anticipation of:

- An administrative body being identified to manage the strategic tariff collected by the local authorities;
- A memorandum of understanding or legal agreement between the local authorities and administrative body to underpin the strategic approach;
- Ensure that a delivery mechanism for the agreed SAMM measures is secured and the SAMM strategy is being implemented from the first occupation of the dwellings, proportionate to the level of the housing development.

The applicant has agreed to pay this tariff and has submitted a unilateral undertaking. No objection is therefore raised under Paragraph 118 of the NPPF and Policies S6 and BNE35 of the Local Plan.

### *Local Finance Considerations*

There are no local finance considerations relevant to this development.

### *Ecology*

Adjoining neighbour has stated that the land is home to birds, family of foxes and slow-worms. As mentioned above part of the site has been hard surfaced and is being used for car parking and until a few years ago formed part of the side garden of no 37. Existence of any protected wide life would need to be investigated prior to the commencement of the proposed development on site; as such it is recommended that a condition be imposed seeking ecological assessment of protected species and submission of mitigation measures for approval by the Local Planning Authority.

### **Conclusions and Reasons for Approval**

In summary, following the dismissal of the appeal, the applicant has amended the proposal to address previous concerns raised with regard to the impact on the amenities of the occupiers of the adjoining property (39a). The proposed development has, in terms of its impact on the street scene, character of the local area, siting, design and layout, responded to the concerns raised by the planning inspector and the proposed dwelling house is therefore considered acceptable having regard to the day light, sun light and outlook of the adjoining properties. Matters relating to ecology and issues arising during the construction period can be mitigated against by appropriate conditions.

The proposed bespoke designed dwelling is in accordance with the NPPF and the Local Plan and is considered in compliance with Policies BNE1, BNE2, H4, T1 and T13 of Medway Local Plan. Furthermore, having regard to the Inspector's assessment of the previous application, there have been sufficient changes to the design and siting of the proposal to justify permitting a 2 storey 2 bedroom dwelling on this land. The proposal is therefore recommended for approval.

The application would normally fall under Officer delegated powers for determination, but is being reported to Committee due to the number of representations received expressing a view contrary to the recommendation.

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### **Background Papers**

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess.medway.gov.uk/online-applications/>