

MC/15/4129

Date Received: 24 November, 2015

Location: Land Adjacent 2 & 4 Laburnum Road Strood

Proposal: Construction of 3 x one bedroom and 3 x two bedroom self contained flats with provision for 9 parking spaces

Applicant: Dudrich Developments Ltd

Agent: Mr C Barnes Architecture Design 17 Glenhurst Rise Upper Norwood Croydon London, Surrey SE19 3XN

Ward Strood South

Case Officer Chris Butler

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 12 April 2017.**

### **Recommendation - Refusal**

- 1 The proposal fails to secure a contribution towards strategic mitigation measures within Special Protection Areas, and in the absence of this contribution or adequate information to inform an Appropriate Assessment, the development fails to comply with the requirements of the Habitat Regulations and Section 11 (specifically paragraphs 109 and 118) of the National Planning Policy Framework and Policy BNE35 of the Medway Local Plan 2003.

**For the reasons for this recommendation for refusal please see the background and current position section of this report immediately below**

### **Background**

This application was reported to the Members of the Council's Planning Committee on 3 March 2016 where they granted the Head of Planning delegated authority to be approve this proposed development, subject to:

- A) the prior completion of a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) to secure £1,341.48 towards the interim measures required by Natural England to secure 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, including any associated costs 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; and

B) The imposition of conditions, as set out on the draft decision notice.

### **Current Position**

Despite the Council's repeated attempt to secure the above mentioned legal agreement, under Section 106 of the Town and Country Planning Act 1990 (as amended), the applicant has failed to enter into such an agreement. Without this agreement in place and in the absence of information for an appropriate assessment to be undertaken, the Local Planning Authority cannot be satisfied that the proposal would put in place adequate measures to mitigate potential significant adverse effects on the North Kent Marshes Special Protection Area (SPA) which is contrary Paragraphs 109 and 118 of the NPPF and Policies S6 and BNE35 of the Local Plan. In the absence of such an agreement, the development is considered to be unacceptable and the proposal is recommended for refusal accordingly.

### **Proposal**

This application seeks full planning permission for the construction of six self-contained flats being: three one bedroom residential units, two, two bedroom residential units and one, two/three bedroom residential units. In addition to the above-mentioned self-contained flats, the proposal also seeks to provide ten off-street car parking spaces and other related ancillary works.

### **Site Area/Density**

Site Area: 0.089 hectares (ha) (0.22 acres)

Site Density: 27.3 dph (11.05 dpa)

### **Relevant Planning History**

MC/01/0268	Construction of a two detached 3-bedroomed houses and a pair of 3-bedroomed semi-detached houses. Decision Refusal Decided 26/06/2001
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### **Representations**

This application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

**Seventeen representations** from or on behalf of local residents have been received from sixteen separate addresses. These representations raise the following summarised concerns / objections:

- Highways safety - There is a significant level of on-street parking in the vicinity of the site, as well as a large number of off street private driveways. Vehicles already have difficulty turning at the ends of the road and delivery lorries have a long way to back up if they are unable to turn within the road. This causes at times bottlenecks and it is not un-common to have traffic jams. Further restrictions in parking and an increased numbers of residential units will result in increased traffic and chaos. This development will only add to existing congestion and parking problems and result in a increased danger to pedestrians, especially school children;
- Concern with regard access for emergency and service vehicles. This already exists due to inadequate and poor parking and this development will only make it worse;
- Lack of parking provision related to the development. Whilst nine off-street parking spaces are proposed, each flat is likely to require two off-street spaces, which will result in more vehicles being displaced onto the public highway in an area where on-street parking is already stretched to capacity. This will result in a development that has a detrimental impact on the local area;
- Laburnum Road is not wide enough to allow access to construction / delivery vehicles. Lorries / delivery vehicles will be unloaded in the road and there will be a constant stream of construction vehicles, skip lorries, trying to get to the site;
- The access to the site is narrow and being located next to the footpath / alley will make it dangerous for pedestrians and cyclists;
- The proposal will, if permitted, result in an overdevelopment of this small site, contrary to good design practice in both national and local policy;
- Loss of outlook due to height and scale of the development, as well as loss of privacy to adjoining gardens;
- The proposal will, if permitted, result in a loss of amenity to the occupiers of adjoining properties, due to loss of privacy, light and overlooking. In terms of overlooking, the proposed development will be much higher than the surrounding properties and therefore overlooking must occur;
- Weekend working will cause a loss of amenity to adjoining occupiers;
- The positioning of the bin store in such close proximity on numbers 2 and 4 Laburnum Road, will attract flies and vermin to the detriment of the amenities of adjoining occupiers;
- The proposed design of the development will be out of keeping with the surrounding area and will result in a negative impact on the visual amenities of the area;
- Noise and air pollution caused by construction and construction vehicles;
- Development will restrict disabled access to an adjoining property;
- Wash from the site will run off into the adjoining road gullies and block them;
- Impact on birds and wildlife;
- Proposal would be contrary to the Medway Local Plan;
- Inadequate provision of local services, especially education in terms of provision of primary and secondary school places, and
- Development of this site was previously refused in 2001. Since that time car ownership has increased, more driveways have been built, further loss of on-street

parking has occurred and, if permitted, this development will create an additional two cars per dwelling resulting in more parking being displaced onto the public highway.

Following the receipt of revised plans, re-consultation was undertaken and **two responses** were received from writers who had already made representation, reiterating their previous comments. Those comments are already summarised above.

## **Development Plan**

The Development Plan for the area comprises the Medway Local Plan 2003. 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**

### *Principle*

This site is located within the urban area, as defined by the Development Plan, which is made up from predominantly two storey semi-detached and terraced style housing. Policy H4 of the Medway Local Plan 2003 allows for residential development within such areas, including the use of vacant or derelict land. Furthermore, Paragraph 49 of the NPPF states that housing applications should be considered in the context of a presumption in favour of sustainable development and Paragraphs 17 and 111 of the NPPF support the development of previously developed land provided it is not of high environmental value.

This site was formally on-block garages; these have since been demolished and the fenced-off site has a poor appearance in the wider area and is detrimental to the wider character of the area as a whole.

In terms of sustainability, the site is located reasonably close to public transport connections and there are various retail and other infrastructure facilities, doctors' surgeries, schools and local shopping facilities within a reasonable distance to the proposed development site. Bearing these points in mind, the proposed development is considered to be in a sustainable location and subject to the assessment of the detailed matters of the application, including design, appearance, impact on the street-scene, impact on the amenities of adjoining occupiers and the perspective occupiers of this proposed development and highway and pedestrian safety matters, the principle of proposal is considered to be in accordance with Policy H4 of the Medway Local Plan 2003 and Paragraphs 17 and 111 of the NPPF.

### *Street-scene and Design*

The site is considered to be of a size that is capable of accommodating a development of this nature, within the terms of the NPPF, NPPG and existing adopted Local Planning Policy. The proposal's design and the relationship to the adjoining properties and street-scene is such that it is not considered that there will be any resultant loss of

amenity to the character and appearance of the surrounding street-scene or the character of the adjoining area in general. The siting of the development is considered to be acceptable in relation to its proximity to the highway, the adjoining dwellings and the street-scene in general. The design and size of this single block of six properties is considered to be acceptable in terms of its layout and amenity space provision. The height of the structure is acceptable in relation to the adjoining dwellings and appropriate in this setting.

### *Residential Amenity*

#### *Impact on surrounding residents*

The proposal is located in such a position to the adjoining dwellings so as to provide adequate privacy distances between primary facing elevations containing habitable room windows.

Due to the orientation of the site, the proposed layout and design, together with the positioning of adjoining properties and existing ground levels, it is not considered that a loss of general amenity, overlooking or overshadowing of the adjoining properties would occur to such a degree as to make the proposed development unacceptable. Any overshadowing or loss of general amenity that does occur is not considered to be sufficient to warrant a recommendation for refusal.

The development, as revised, is not considered to result in any unacceptable, adverse impact on the amenities of any of the occupiers of the proposed development or adjoining dwellings in general.

Due to the close proximity to other residential properties, it is considered to be prudent to impose a planning condition requiring the submission and written approval of a Construction / Environmental Management Plan (CEMP) to ensure that during the building operation the development is undertaken in an acceptable manner.

Bearing all of this in mind this development is considered to be acceptable in terms of policies BNE1 and BNE2 of the adopted Local Plan.

#### *Impact on future residents:*

Whilst housing in urban areas is generally encouraged, particularly the re-use of vacant or derelict land in existing residential areas, the dwelling units need to be of an adequate standard to attract and retain population in urban centres. Adequate amenity standards need to be applied and a housing mix that offers alternatives is required to achieve this. Policy BNE2 of the Local Plan seeks this and in its implementation, the Government's Technical Housing Standards 2015 (THS15) and the Medway Housing Design Standards 2011 (MHDS) are used to demonstrate that proposed new dwellings meet adequate acceptable standards. The table below shows the proposed development, as revised, when assessed for compliance against the Government's THS15:

Flat/ Maisonette Number	Type of dwelling unit	Total house size (Area in square metres (m <sup>2</sup> )).	THS15 specified house size (m <sup>2</sup> ).	Bedroom Size (m <sup>2</sup> ).	THS15 Bedroom Size (m <sup>2</sup> ).	Bedroom Width in metres (m).	THS15 Bedroom Width in (m)
1	1B2P	50m <sup>2</sup>	50m <sup>2</sup>	12.33m <sup>2</sup>	11.5m <sup>2</sup>	2.764m	2.75m
2 & 3	1B2P	51.3m <sup>2</sup>	50m <sup>2</sup>	12.18m <sup>2</sup>	11.5m <sup>2</sup>	2.864m	2.75m
4	2B4P	79.2m <sup>2</sup>	79m <sup>2</sup>	B1 - 15.65m <sup>2</sup> B2 - 12.00m <sup>2</sup>	B1 - 11.5m <sup>2</sup> B2 - 11.5m <sup>2</sup>	B1- 3.850m B2- 2.719m	B1- 2.75m B2 - 2.55m
5 & 6	2B4P	81.6m <sup>2</sup>	79m <sup>2</sup>	B1 - 19.00m <sup>2</sup> B2 - 12.18m <sup>2</sup>	B1 - 11.5m <sup>2</sup> B2 - 11.5m <sup>2</sup>	B1- 4.253m B2- 2.864m	B1- 2.75m B2 - 2.55m

A minimum of 50 m<sup>2</sup> is expected for a 1 Bedroom 2 Person flat (1B2P), whilst 79m<sup>2</sup> is expected for a 2 Bedroom 4 Person Maisonette (2B4P). As can be seen from the table above, the proposed floor-space meets the Government's THS15 for dwelling units of the type proposed and the design is considered to comply with the requirements of the THS15. In fact, the size of each dwelling unit would be above these recommended standards and is therefore considered to be acceptable. Correspondingly, adequate room sizes are met and the storage spaces shown within the dwellings meets the THS15 storage requirements.

In addition to the above, the level of private amenity space to the rear of the proposed dwellings units is considered to comply with the Council's external amenity space standards contained in the MHDS, which are adopted for Development Management purposes. It is considered the amenity offered to future occupiers is acceptable.

#### *Land Contamination*

The planning submission was supported by a Desk Study Report, which includes a site history, site walkover, information on the geology and hydrogeology at the site. A conceptual site model has been developed for the site and whilst access to the garages was limited (due to most of them being locked) so conditions inside garages could not be assessed, it was considered that due to their use over the years, there could be the potential for contamination to be an issue. As the site is also partly within a water source protection zone 2, it is considered appropriate to take the precautionary approach and impose standard contaminated land conditions. Subject to the imposition of such contaminated land conditions, the development is considered to conform with Paragraph 121 of the NPPF, the NPPG entitled 'Land affected by contamination' and Policy BNE23 of the adopted Local Plan.

#### *Highway Considerations*

In terms of the level of off-street parking related to the development proposed and vehicular and pedestrian access / egress, the proposal is considered to provide an acceptable level of parking, which would be in accordance with the Council's adopted Interim Parking Standards 2010. The utilization of the existing access to this former

site of garages is logical and in its former use for garages could have produced significant traffic movement. The vehicular access is considered to be acceptable. Adequate pedestrian access is considered to be provided in a manner which would be acceptable in terms of highway and pedestrian safety.

Additionally, the Council's adopted parking standards indicate that a total of nine off-street parking spaces should be provided for a development of this nature. The proposal indicates the provision of ten off-street spaces, which more than adequately meets the Council's adopted residential parking standards. The site is located within the urban area and in relatively close proximity to a bus route and accessibility to both the town and local shopping areas.

The off-street parking arrangements are considered to be acceptable, as are the access and egress arrangements for both vehicular and pedestrian access. It is considered that a condition should be imposed requiring the parking areas detailed on the submitted plans to be reserved for the parking of vehicles. It is also considered appropriate to impose a condition requiring details of secure bicycle storage. Subject to the imposition of these conditions and for these reasons set out above, this development is considered to be acceptable in terms of policy T1, T2, T4 and T13 of the adopted Local Plan.

#### *S106 matters - 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 initially agreed to pay this tariff and had submitted a draft Unilateral Undertaking. No objection was therefore raised under Paragraph 118 of the NPPF and

Policies S6 and BNE35 of the Medway Local Plan 2003.

However, as stated above, despite the Council's repeated attempt to secure completion of the above mentioned legal agreement, the applicant has failed to enter into such an agreement. Without this agreement in place and in the absence of information for an appropriate assessment to be undertaken, the Local Planning Authority cannot be satisfied that the proposal would put in place adequate measures to mitigate potential significant adverse effects on the North Kent Marshes Special Protection Area (SPA) which is contrary Paragraphs 109 and 118 of the NPPF and Policies S6 and BNE35 of the Local Plan. In the absence of such an agreement, the development is considered to be unacceptable and the proposal is recommended for refusal accordingly.

#### *Local Finance Considerations*

None relevant

### **Conclusions and Reasons for Refusal**

The proposed development would be acceptable in terms of its impact on the character and appearance of the street-scene and the surrounding area in general. The proposed development is considered to be sympathetically related to the context provided by the setting and the proposal is appropriate with regard to the scale, height, proportion and detailing proposed; consistent with the existing street and would have no adverse impact on the surrounding area, or the street-scene. However, the applicant has not completed the necessary legal agreement to mitigate the impact of the development on the nearby SPA nor undertaken an appropriate assessment. On that basis the application is contrary to policies S6 and BNE35 of the Local Plan and paragraphs 109 and 118 of the NPPF and the application is accordingly being put back to Committee with a recommendation for refusal.

The application would normally be determined under delegated powers but is being reported back to Planning Committee due to their previous involvement in consideration of this submission.

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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/>