

MC/17/2603

Date Received: 24 July 2017

Location: 100 Lower Rainham Road Rainham Gillingham ME7 2XS

Proposal: Construction of granny annexe for ancillary residential use

Applicant Mr & Mrs Sawyer

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Ward: Gillingham North Ward

Case Officer: Alison Webster

Contact Number: 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 9th May 2018.

Recommendation - Refusal

- 1 The proposal by virtue of the self contained nature, its location, separateness and independent accessibility, does not appear associated with, or indicate a reliance on the main dwelling and therefore represents a new self contained dwellinghouse located in the countryside. As a new dwelling the proposal fails to meet the terms of paragraphs 49 and 55 of the NPPF and Policy BNE25 of the Medway Local Plan 2003.
- 2 The design of the development as a new dwelling is not considered exceptional or innovative but represents a simplistic and bland architectural approach that fails to provide adequate external amenity. The proposal is considered harmful to the character and appearance of the countryside location and is contrary to paragraphs 14, 17, 55 and 56 of the NPPF and Policies BNE1 and BNE2 of the Medway Local Plan 2003.
- 3 Due to level of internal floorspace proposed, the development as a new dwelling would result in a poor level of amenity for the future occupier(s) contrary to point 4 of paragraph 17 of the NPPF and Policy BNE2 of the Local Plan 2003.

- 4 As a new dwelling, the proposal fails to provide adequate parking provision to serve the development contrary to Policy T13 of the Medway Local Plan 2003.
- 5 As a new dwelling, 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 Planning Appraisal Section and Conclusions at the end of this report.

Proposal

This application seeks full planning permission for the construction of a granny annexe for ancillary residential use.

The development would be rectangular with a pitched roof and gabled at each end. It would measure approx. 15m in width, approx. 4m in depth and approx. 4.8m in height. The development would be raised from ground level due to the location within the tidal flood zone. Access to the front door would be via steps and a ramp.

Internally, the accommodation would comprise two bedrooms (one double, one single), a living area, kitchenette, shower room and boiler.

Measuring between the proposed development and the existing dwelling, the distance between is approx. 24m corner to corner. The proposal would be separate from the curtilage of the existing dwelling by a wall, garage and log cabin.

Site Area/Density

Site Area: 0.11 hectares (0.27 acres)

Site Density: 18 dph (7 dpa)

Relevant Planning History

MC/02/0346	Lawful Development Certificate (proposed) for the construction of a detached double garage to rear Decision Approval with Conditions Decided 25 February 2002
GL/76/47	Change of use of public house to private dwelling. Decision Approval with Conditions Decided 6 May 1976

Representations

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties. The Environment Agency have also been consulted.

The Environment Agency has written to advise they have no objection to the proposal subject to a condition for finished floor levels to be 6.56m AOD.

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

This application raises the question of whether the proposal falls within the planning unit or not. The Council is of the opinion that the proposal falls outside of the planning unit and for this reason, the report sets out the differences and considerations below regarding what constitutes the planning unit and the curtilage and whether the proposed accommodation is ancillary to the main dwelling.

Planning Unit

The lawful use of a property (whatever it is) extends to the whole of the 'planning unit' (i.e. the unit of occupation, unless or until, any part of it can be identified as being physically and functionally separate from the whole). Confusion often occurs in relation to the concept of the domestic 'curtilage'. If land not forming part of the original planning unit is incorporated within that planning unit (for example, a house and the land enjoyed with it for domestic purposes), in other words if its use is changed from (say) agricultural use to domestic use, then that represents a material change of use of that land, but it makes no difference whether the area of land in question was incorporated in what can be described as the 'residential curtilage' of the house; what matters is whether it has been incorporated in the planning unit so as to change its use to domestic use.

The 'domestic curtilage' of a house is not necessarily co-extensive with the planning unit. This particularly applies to houses in the countryside, where the 'curtilage' may extend only to the cultivated garden. However, other land within the planning unit which is not so directly related to the house may in fact fall outside the domestic curtilage. The only significance of the definition of the curtilage for planning purposes is that certain permitted development rights for operational development (outbuildings, extensions and certain

other structures) apply within the curtilage of a single private dwellinghouse, but not to any land within the same planning unit which falls outside the curtilage.

In the vast majority of cases, the whole of a domestic property will constitute a single planning unit, so that the lawful use of the whole of the property will be use as a single private dwellinghouse within Use Class C3 of the Use Classes Order, and this necessarily includes the whole of the land enjoyed with it for domestic purposes, whether it falls inside or outside the slightly narrower definition of 'residential curtilage'.

Three tests for determining the planning unit were laid out by Bridge J in *Burdle v. Secretary of State for the Environment*, as follows:

1. First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.
2. Secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land.
3. Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

The application site constitutes two areas of land which are in the same ownership. There is the area of land to the rear of the dwellinghouse of number 100 Lower Rainham Road which is enclosed on all sides and forms the curtilage. The second area of land is located to the western side of the side boundary to the curtilage. It is within this area that the proposed development would be located. It is noted from the Land Registry document that the area in which the annexe is proposed was not a garden in the traditional sense. Instead it formed something more akin to a communal amenity area with more than one property having the right to use the outdoor space. It is also crossed by several rights of way (which appear to still be in regular use). Neither of these factors would be things you would expect to see within a domestic garden due to their impact on privacy and the householders ability to use the area. This division of the site is further supported by the physical separation between the areas.

Physical separation is a feature of this site with a wall forming a barrier between the curtilage and the application area. There are other elements of separation which increase the sense of division, with a garage and log cabin building being placed on one side of the wall leaving a private garden for number 100 Lower Rainham Road to one side and a more diverse area to the other.

The uses of the two areas are also different, at least to a degree. The area closest to 100 Lower Rainham Road being a domestic garden to this property and the second area which has a more mixed appearance with an area (prior to the construction of the hardstanding) showing a gravel pathway giving access to the adjacent site beyond (to the south) as required by one of the rights of way and the log cabin building. It is unclear exactly what the log cabin building is used for as it has been stated that it is an office but in a later email from the planning agent states that it was erected in the summer of 2013 and is used as a games/hobby room by the occupiers of 100 Lower Rainham Road.

There has been some “domestication” to the more public area with the laying of a lawn and the erection of a low level fence to provide some enclosure but this has taken place within the last 10 years and isn’t enough to overcome the matters set out above. It is also noted that the garage was granted a lawful development certificate as being an outbuilding within Class E rather than through the passage of time. However, this does not in itself provide justification that the two areas form one planning unit.

Taking account all of the above it is concluded that the site constitutes two planning units, the main being 100 Lower Rainham Road itself which has a clear C3 residential use and curtilage and the second being the area in which the annex is proposed which has a use that is less clear.

Ancillary Accommodation

Using case law (*Uttlesford v Secretary of State and White*), it has been established that there are several considerations, individual facts and circumstances, which need to be considered as to whether the annexe would change the original planning unit and whether there would be 2 distinct primary uses (i.e. 2 dwelling houses) or whether the proposal provides an ancillary relationship between the main building and the annexe. Those factors which should be considered include the size, nature and degree of association with the original dwelling and the relationship between the occupiers.

The area of land opposite where the proposed 'annexe' would sit appears to be maintained and used in a domestic manner. There is a small area laid to lawn, opposite the area of hardstanding where the proposal would be located and which is currently being used for the siting of a caravan. There is also a double garage and a log cabin.

The planning statement identifies that the annexe would be occupied by a relative and confirmation in writing has also been received that the utilities and postal address of the main dwelling would be shared with the proposed annexe. The proposed development would share vehicular access with the existing dwelling.

With regard to the size of the proposed annexe, the plans show that the development would be reasonably large, with two bedrooms and facilities to be a wholly self-contained unit. Whilst the planning statement says there is clear reliance on the existing dwelling, the clarity is disputed as the floorplans show it is possible to occupy the annexe with no

degree of reliance on the existing dwelling. Furthermore, there are two bedrooms and there is no justification given for the need for the second bedroom.

In respect of the nature and degree of association, the plans show that the proposed development would be located a substantial distance and physically separated from the main dwelling by the wall to the rear garden of the main dwelling. The proposed development can also be accessed completely independently of the main dwelling. An appeal in Chichester highlighted this issue when the Inspector dismissed a proposal for the conversion of an existing garage to residential accommodation for close family members (APP/L3815/A/01/1079596). The Inspector noted that despite being with 1.5m of the dwelling, it would be difficult for the Council to ensure that the occupation of the two bedroom unit, which also had facilities to be self contained and could be accessed independently, generated the necessary degree of dependency upon the host dwelling as to render its use ancillary to the primary residence. The Inspector considered that a condition would not enable the ancillary link to be maintained since it could be breached without the council knowing. Consequently she held that the conversion was unacceptable

The proposal by virtue of the self contained nature, its location and accessibility, does not appear associated with, or indicate a reliance on the main dwelling.

Principle and Sustainable Development

This site is defined on the proposals map of the Medway Local Plan 2003 as lying outside the confines of a rural settlement, within an Area of Local Landscape Importance (ALLI) and falling within the Lower Rainham Farmland character area of the Medway Landscape Character Assessment, 2011 (MLCA). The character of this area is described as flat, mixed farmland with some neglected pockets of land and a gradual trend towards suburbanisation but also with some well managed areas of orchard, shelterbelt, farm buildings, cottages and distinctive rural hedgebanks.

An annexe is ancillary residential accommodation in association with a main dwellinghouse. Although the description of the proposal by the applicant and the planning agent is of an annexe, the residential accommodation in question does not appear to be provided in association with the existing dwellinghouse at 100 Lower Rainham Road. On this basis, it is considered that the building that is subject of this application cannot constitute annexe accommodation. The building therefore has to be considered as a new self contained dwellinghouse.

This site is defined on the proposals map of the Medway Local Plan 2003 as lying outside the confines of a rural settlement, constituting development in the countryside and therefore Policy BNE25 of the Medway Local Plan 2003 is relevant. However, this policy needs to be applied in the context of the more recent policy approach contained within the National Planning Policy Framework (NPPF).

Policy BNE25 Medway Local Plan 2003 seeks to restrict development within the countryside in order to protect the countryside for its own sake. The starting point of this policy is therefore a presumption against development unless justification can be provided. A contrary approach is taken in the NPPF where paragraphs 14 and 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development.

In adopting the approach set out in paragraph 49 of the NPPF, the starting point in this report is therefore a presumption in favour unless it can be demonstrated that the development is not sustainable and/or the development causes harm in relation to other material planning considerations.

Advice set out in paragraph 55 of the NPPF states that *"...to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- *the exceptional quality or innovative nature of the design of the dwelling."*

The proposal is not be required in relation to a heritage asset, nor would it utilise a redundant or disused building. It is clear from the submitted information that the intended occupant of the development does not have particular employment needs that requires them to live permanently at or near a place of work in the countryside and the design of the development is not considered exceptional or innovative. It therefore cannot be argued that the development is justified on this basis of paragraph 55 of the NPPF and is therefore contrary to paragraphs 49 and 55 of the NPPF and Policy BNE25 of the Local Plan.

Design

The design of the building itself is not considered to be of exceptional or innovative design to justify its existence in this location on this basis alone.

In recognising the need for some development in the countryside, the Council produced a 'Guidance Note - The Design of Replacement Dwellings and Extensions in the Countryside'. The guidance provides additional clarification as to how the Policy BNE25 of the Medway Local Plan 2003 should be applied on a case-by-case basis. The objective

of the guidance is to ensure that new development in the countryside is modest in scale and that it does not result in a large, bulky or intrusive building in the landscape.

The development would be considered to be a new dwelling within the countryside. Whilst it is not considered open countryside, the design would be visible from other properties in the locality. The design is simplistic and bland for a new dwelling and the development is considered contrary to paragraphs 55 and 56 of the NPPF and Policies BNE1 of the Medway Local Plan 2003.

Amenity

Residential amenity is considered in terms of the impact on the occupiers of any surrounding residential properties and the impact on the occupiers of the development itself.

Occupier Amenity

Point 4 of paragraph 17 of the NPPF and Policy BNE2 of the Local Plan seek to ensure an adequate level of amenity for the occupiers of proposed residential development. This includes for both internal and external space. For internal space, the Technical Housing Standards - nationally described space standard 2015 is used as a material consideration to assess the adequacy of the provision. The space standard advises that for a 2 bedroom 3 person dwelling over a single storey, 61m² of internal space should be provided and for a double bedroom, the space should be at least 11.5m² and at least 2.75m wide and for a single bedroom, the space should be at least 7.5m² and at least 2.15m wide.

The proposed development does not comply with the nationally described standard in this regard as the overall floorspace proposed is approx. 51.65m² and the double bedroom would be approx. 11m². The single bedroom would comply with the standards. Whilst this may be acceptable and considered an overprovision for an annexe, as a new dwelling it is considered that the level of internal floorspace is inadequate to meet the needs for a 2b3p unit and would therefore be contrary to point 4 of paragraph 17 of the NPPF and Policy BNE2 of the Local Plan.

For external space provision for new dwellings, the Medway Housing Design Standard 2011 is used as a material consideration. This recommends a minimum length of 10m for private gardens. As the application has been submitted for an annexe, there is no area marked on the plans for private amenity space. As currently laid out the site would offer no private amenity space, however it is possible to simply close the existing access gate and separate off the lawned area for use. This would not offer any privacy but would show an area that is semi-private.

Despite the current layout, it is not impossible to provide private amenity space for the development at a later date, albeit in a disjointed way, should the applicant choose to further enclose the lawned area.

As it is currently proposed, the development fails to provide adequate external amenity space in accordance with point 4 of paragraph 17 of the NPPF and Policy BNE2 of the Local Plan.

Neighbours Amenity

Point 4 of paragraph 17 of the NPPF and Policy BNE2 of the Local Plan also seeks to ensure an adequate level of amenity for the occupiers of neighbouring residential properties. Due to the siting and orientation of the development in relation to other existing dwellings, it is considered there is no detrimental impact on the amenity of the occupiers of any other residential dwelling. The only issue that may impact neighbours is that the steps and ramp providing access to development would be constructed over a right of access. However, this is a civil issue between the relevant parties.

Highways

As the proposal has been submitted as an annexe, the submitted drawings do not show an area marked for parking for the development. As a separate dwelling it is not possible to see where parking and private amenity space could be provided without impinging on access rights and therefore in this context the proposal is considered contrary to Policy T13 of the Local Plan.

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 £239.61 per dwelling (excluding legal and monitoring officer's 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 applicants maintain that the proposal is for annexe accommodation and not a separate dwelling. As a separate dwelling the development should have regard to the Conservation of Habitats and Species Regulations 2010 (The Habitat Regulations). Without a legal agreement in place to secure a contribution towards mitigation 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 SPA which is contrary Paragraphs 109 and 118 of the NPPF and Policies S6 and BNE35 of the Local Plan.

Flood Risk

The application site is within flood zone, however it is within an area benefitting from flood defences to a standard of 1 in 200 years. A Flood Risk Assessment (FRA) has been submitted with the application and proposes a finished floor level of 6.56m AOD. Should planning permission be forthcoming, a condition should be attached to ensure this finished level is achieved. Subject to this condition the proposal would be in accordance with paragraph 100 of the NPPF and Policy CF13 of the Local Plan.

Conclusions and Reasons for Refusal

The proposal by virtue of the self contained nature, its location, separateness and independent accessibility, does not appear associated with, or indicate a reliance on the main dwelling and therefore represents a new self contained dwellinghouse located in the countryside. As a new dwelling the proposal fails to meet the terms of paragraphs 49 and 55 of the NPPF and Policy BNE25 of the Medway Local Plan 2003.

The design of the development as a new dwelling is not considered exceptional or innovative but represents a simplistic and bland architectural approach that fails to provide adequate external amenity. The proposal is considered harmful to the character and appearance of the countryside location and is contrary to paragraphs 14, 17, 55 and 56 of the NPPF and Policies BNE1 and BNE2 of the Medway Local Plan 2003.

Due to level of internal floorspace proposed, the development as a new dwelling would result in provide a poor level of amenity for the future occupier(s) contrary to point 4 of paragraph 17 of the NPPF and Policy BNE2 of the Local Plan 2003.

As a new dwelling, the proposal fails to provide adequate parking provision to serve the development contrary to Policy T13 of the Medway Local Plan 2003.

Finally, as a new dwelling, 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.

This application would normally fall to be determined under delegated powers but has been referred to committee at the request of Cllr Cooper as she feels that the planning issues are most appropriately balanced and considered by the Planning Committee.

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://publicaccess1.medway.gov.uk/online-applications/>