

MC/18/1317

Date Received: 1 May 2018

Location: Builders Yard At 7 Napier Road Gillingham Medway ME7 4HB

Proposal: Change of use of builders yard with construction of 6 one bedroom flats - demolition of existing workshops and outbuildings - resubmission of MC/16/4497

Applicant Mr A Gill

Agent Mr Martin Potts 91 King Street
Maidstone
Kent
ME14 1BG

Ward: Gillingham South Ward

Case Officer: Doug Coleman

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 1st August 2018.

Recommendation - Approved Subject to:

A) The applicant entering into a Section 106 agreement to secure the following:

- i. Precluding future occupiers from obtaining parking permits, including if required an undertaking to pay the Council's costs in regard to amending the relevant Traffic Regulation Order to preclude future occupiers of the development from obtaining such parking permits;
- ii. A contribution of £1,437.66 (£239.61 per unit) towards appropriate mitigation measures within Special Protection Areas.

B) Subject to 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 shall be carried out in accordance with the following approved plans:

Drawing number P769/1 Rev C received on 1 May 2018.

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

- 3 Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not take place until conditions 4-6 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 7 has been complied with in relation to that contamination.

Reason: Required before commencement of development to avoid any irreversible detrimental impact on human health and/or water courses as a result of the potential mobilising of contamination and in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 4 No development shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been 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:

(i) a survey of the extent, scale and nature of contamination;

(ii) an assessment of the potential risks to:

- human health
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes.
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason: Required before commencement of development to avoid any irreversible detrimental impact on human health and/or water courses as a result of the potential mobilising of contamination and in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 5 No development shall take place until 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 historical environment has been prepared and submitted to and approved in writing by the Local Planning Authority. 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.

Reason: Required before commencement of development to avoid any irreversible detrimental impact on human health and/or water courses as a result of the potential mobilising of contamination and in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 6 No development shall take place (other than development required to enable the remediation process to be implemented) until the approved remediation scheme has been carried out in accordance with its terms. The Local Planning Authority must be given not less than two weeks written notification prior to the 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 produced, and submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development.

Reason: Required before commencement of development to avoid any irreversible detrimental impact on human health and/or water courses as a result of the potential mobilising of contamination and in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 7 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

4, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 5, 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 6 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 in writing of the Local Planning Authority in accordance with condition 6.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 8 No development shall take place until a Construction Environmental Management Plan (CEMP) that describes measures to control, amongst other matters, hours of working, deliveries to the site, noise, dust and lighting, wheel/chassis cleaning and the effect on wildlife and habitats arising from the demolition and construction phase of the development has been submitted to and approved in writing by the Local Planning Authority. The construction works shall be undertaken in accordance with this approved plan.

Reason: Required before commencement of development in order to minimise the impact of the construction period on the amenities of local residents, the countryside, wildlife and habitat and with regard to Policies BNE2 and BNE35 of the Medway Local Plan 2003.

- 9 No part of the development hereby permitted shall be occupied until a plan indicating the positions, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details before any dwelling and/or building 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.

- 10 No development above slab level 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. The development shall be implemented 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.

- 11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no windows or similar openings shall be constructed in the north and south facing side elevations of the building without the prior written approval of the Local Planning Authority.

Reason: To regulate and control any such further development in the interests of amenity and protection of privacy for neighbouring properties, in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 12 Prior to the installation of any external lighting on the site, details of such lighting shall be submitted to and approved in writing by the Local Planning Authority. Details shall include 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 how the scheme has taken account of the recommendations of the Bat Conservation Trust. Any external lighting shall be implemented in accordance with the approved details.

Reason: In order to limit the impact of the lighting on nearby residents and wildlife and with regard to Policies BNE1, BNE2, BNE5 and BNE39 of the Medway Local Plan 2003.

- 13 No development shall take place until a scheme showing details of the disposal of surface water, based on sustainable drainage principles, including details of the design, implementation, maintenance and management of the surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. Those details shall include:

- i. a timetable for its implementation, and
- ii. a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

The development shall be implemented in accordance with the approved details and shall thereafter be retained.

Reason: Required before commencement of the development in order to manage surface water during and post construction and for the lifetime of the development in accordance with Paragraph 103 of the NPPF.

- 14 No part of the development herein approved shall be occupied until the area shown on the approved layout drawing P769/1 Rev C as vehicle parking space and garaging has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space and garaging.

Reason: Development without provision of adequate accommodation for the parking or garaging of vehicles is likely to lead to hazardous on-street parking and in accordance with Policies T1 and T13 of the Medway Local Plan 2003.

- 15 The secure private cycle parking provision shown on approved drawing number P769/1 Rev C shall be implemented in accordance with the approved details before any part of the development herein approved is occupied and shall thereafter be retained.

Reason: To ensure the provision and permanent retention of bicycle spaces in accordance with Policy T4 of the Medway Local Plan 2003.

- 16 Prior to the first occupation of any part of the development herein approved, full details of the hard landscape works to the front of the development and a timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and shall thereafter be maintained.

Reason: To ensure a satisfactory external appearance and provision for landscaping in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 17 No vegetation clearance or development shall take place during the bird nesting season (March to September inclusive) unless a suitably qualified ecologist has first confirmed that no nests or dependent young are present (nesting bird checks within 24 hours of work commencing).

Reason: Required before commencement to ensure satisfactory arrangements are made to safeguard the habitats in the interests of ecology in accordance with Policy BNE37 of the Medway Local Plan 2003.

- 18 Prior to the first occupation of any dwelling herein approved, the refuse storage arrangements for the development, including provision for the storage of recyclable materials, shall be submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved refuse storage arrangements for the development are in place and all approved storage arrangements shall thereafter be retained.

Reason: In the interests of visual amenity and to ensure a satisfactory provision for refuse and recycling in accordance with Policy BNE2 of the Medway Local Plan 2003.

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

Proposal

The proposal is to demolish the existing buildings, change the use of the land from a builder's yard and to construct a three storey block of six 1-bedroom flats.

The proposed building would measure approx. 7.5m wide by approx. 13.5m deep and would occupy roughly the same building line as the two neighbouring buildings (5 & 9 Napier Road) which are both flat blocks. It would project approx. 2.3m further to the rear than the neighbouring flat block to the north (5 Napier Road) and approx. 4m further than the flat block to the south (9 Napier Road). It would have a shallow mono-pitched roof and vary between approx. 9m and approx. 9.3m in height corresponding with the height of the neighbouring buildings. There would be two flats on each floor, one at the front and one at the back, with the entrance to the block on the north side elevation.

Three car parking spaces are shown at the front of the site. A bin store and cycle store would be located to the rear. There would also be an amenity courtyard to the rear.

Site Area/Density

Site Area: 0.04 hectare (0.1 acre)
Site Density: 148 dph (60 dpa)

Relevant Planning History

MC/16/4497	Change of use of builders yard with construction of a block of 6x one bedroom flats together with and a separate block of 2x one bedroom flats - Demolition of existing workshops and outbuildings Refused 20 April 2018
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Adjoining site

MC/07/2212 Construction of a two storey block comprising of one 1-bedroom apartment and one 2-bedroom maisonette with associated parking
Approved with Conditions 04/02/2008

Representations

The application has been advertised on site and in the press and by individual neighbour notification to the owners and occupiers of neighbouring properties. KCC's Biodiversity Officer has also been consulted.

Three letters have been received raising the following objections:

- Inadequate parking;
- Overlooking/loss of privacy;
- Bin stores close to adjoining properties;
- Communal area is hidden and will attract undesirables;
- Plans do not show existing trees;
- Impact on wildlife.

Other matters raised are non-material.

KCC's Biodiversity Officer has written making the following comments:

- Agree that none of the trees and buildings on site offered potential for roosting bats and thus no further survey work is recommended with regards to bats. The Bat Conservation Trust's Bats and Lighting in the UK guidance should be adhered to in the lighting design for the proposed flats;
- It is considered that the site has high potential to support breeding birds. A condition is recommended regarding clearance works.
- The site is within 1.4 km of the Medway Estuary and Marshes SPA, Ramsar and SSSI and an appropriate contribution is sought;
- Opportunities for bio-diversity enhancement should be sought;

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 is a re-submission of MC/16/4497 which was refused on 20 April 2018 for the following reasons:

- 1 *The proposed development would fail to provide satisfactory living conditions for future occupiers, arising from the proximity of the backland building to the trees. It would therefore be contrary to Policy BNE2 of the Local Plan, which seeks to*

ensure that future occupants of development have adequate amenity, including access to daylight and sunlight. It would also fail to comply with point 4 of paragraph 17 of the NPPF to secure a good standard of amenity for all existing and future occupants of land and buildings.

- 2 *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.*

The current proposal seeks to address these reasons for refusal by removing the rear building from the proposed development and the applicant has agreed in principle to pay the bird mitigation contribution

Principle

The core principles set out in Paragraph 17 of the NPPF, alongside paragraph 49, which states that there should be a presumption in favour of sustainable housing development to support the provision of housing to meet the needs of the area.

At local level, Policies S1 and H4 of the Local Plan support the principle of residential development in urban area, including the use of vacant or derelict land and residential infilling. Policy H5 of the Local Plan contains a presumption in favour of higher density development in or close to town centres.

The site is within a predominantly residential area, although there are some commercial uses in the vicinity. The site is close to Livingstone Circus which is identified as a local shopping centre under Policy R11 of the Local Plan and also within walking distance of Gillingham Town Centre and railway station. It is also located close to a bus route.

Having regard to the above considerations, the proposed development would be in accordance with Policies S1, H4 and H5 of the Local Plan, and Paragraphs 17, 23 and 49 of the NPPF. As such, it is considered that the proposed development is acceptable in principle and in land use terms subject to all other material considerations in this report.

Design and appearance

Policy BNE1 of the Local Plan states that the design of new development should be appropriate in relation to the character, appearance and functioning of the built environment in terms of use, scale, mass proportion, details, materials layout and siting. Paragraph 56 of the NPPF promotes good design, whilst Paragraph 58 states that developments should respond to local character and history and reflect the identity of

local surroundings and materials whilst not preventing or discouraging appropriate innovation.

This application relates to an L-shaped area of land with a frontage to Napier Road of approx. 9m and a depth of approx. 34m. The site wraps around the rear of the neighbouring property to the north (7 Napier Road) for a depth of approx. 12.5m and a width of approx. 16.5m. The site was formerly used as a builder's yard but is now empty and overgrown. There are some old derelict buildings on the land.

The proposal is for a contemporary building to be located to the front of the site which has been designed to respect the height, scale and bulk of the two neighbouring properties. The building would be constructed in yellow multi-stock bricks which would complement the neighbouring buildings, but imitation timber cladding would be added to the facades, to reflect the boarding on the flats at 9 Napier Road. The choice of materials would be an important consideration and in this regard high quality materials would be sought and a condition is recommended. Subject to this condition, no objection is raised in terms of design and appearance under Policy BNE1 of the Local Plan and Paragraphs 56 and 58 of the NPPF.

Residential Amenity

Occupier Amenity

The Nationally Described Space Standard specifies minimum GIAs of 37 sq m for a one bedroom/one person unit with shower; 50 sq m for a one bedroom/two person unit. The Standard also specifies minimum bedroom sizes of 7.5 sq m (single) and 11.5 sq m (double).

The six flats would each have a GIA of 38 sq. m. and a bedroom of 11.3 sq. m. The proposal would, therefore comply with the standards for a one bedroom/one person unit. Shared amenity areas are to be provided to the rear of the building. No objection is therefore raised in terms of the Nationally Described Space Standard under Policy BNE2 of the Medway Local Plan 2003 and Paragraph 17 of the NPPF.

Neighbour Amenity

In terms of the side elevations, there are no windows in the south side but there are windows proposed for the north facing elevation. These windows serve the landings and communal stairway to the proposed flats. All habitable room windows would face towards the front and rear, and therefore there would be no overlooking towards either of the neighbouring properties.

There are two small windows in south facing elevation at first floor level of the neighbouring building to the north (No. 5), one serving a bathroom and the other serving a living/dining room. However, the window serving the living/dining room would be a secondary window with the main window facing to the rear. Accordingly, any light loss to

that window would not be such as to justify a refusal of planning permission. The proposed building would project approx. 2.3m further to the rear than the neighbouring building and be sited approx. 1.4m from the flank wall. There would, therefore be some additional overshadowing to the garden and the rear kitchen window during the late morning, but it would not be significant.

There are no windows in the north facing elevation of the property to the south (No. 9) and therefore there would be no loss of light to the side of that property. The proposed building would project approx. 4m further to the rear than the existing building and there could be some loss of daylight. However, as the proposed building would be to the north, there would be no loss of sunlight.

Having regard to the above considerations, no objection is raised in terms of neighbour amenity under Policy BNE2 of the Local Plan and Paragraph 17 of the NPPF.

Highways

The Council's Interim Residential Parking Standards require a minimum provision of one space for one bedroom units, plus 0.25 space per unit for visitors, making a requirement of 7.5 spaces to serve the proposed development. The submitted drawing shows 3 spaces, which would fall short of the standards. However the Standards state that reductions of the standard will be considered if the development is within an urban area that has good links to sustainable transport and where day-to-day facilities are within easy walking distance, which applies in the case of the proposal. Nevertheless, the proposal could add to pressure on-street parking in nearby roads, and it is, therefore, recommended that the applicant enter into a Section 106 agreement to the effect that no on street parking permits are issued to occupiers of the proposed flats.

Subject to this agreement, no objection is raised under Policy T13 of the Local Plan.

Trees

The site has become overgrown, with weeds, scrub etc. There are no trees on the application site, but immediately to the rear, in the garden to 1 Barnsole Road, there are four sycamore trees, close to the site boundary.

It was concerns regarding these trees that resulted in the previous application being refused. The proposed building to the rear, under that scheme, would have been close to the boundary. The trees overhang the existing buildings the tree survey showed that the trees would overhang the proposed building and in all probability, the root protection areas of the trees would encroach under the proposed building. Whilst these trees are not protected and are not considered to be worthy of retention, they were outside the control of the applicant and could not be removed without the consent of the owner of the land on which the trees are situated. The applicant was unsuccessful in attempts to contact the owner to discuss the removal of these trees.

The current proposal, by removing the rear building from the scheme, has addressed this issue. The proposed building would be approx. 14.5m from the rear boundary, and as such would not be affected by or impact upon these trees. No objection is, therefore, raised in this regard under Policy BNE43 of the Local Plan.

Ecology

Paragraph 109 of the National Planning Policy Framework states that “*the planning system should contribute to and enhance the natural and local environment by...minimising impacts on biodiversity and delivering net gains in biodiversity where possible.*” Whilst Policies BNE37 and BNE39 of the Local Plan seeks to safeguard undesignated wildlife sites and protected species, where appropriate. Due to the current condition of the site, an ecological appraisal was submitted with the application.

There is limited potential for protected/notable species to be present therefore no additional ecological information is required prior to determination of the planning application. It is considered however, that the site has high potential to support breeding birds within the trees, scrub and ivy and recommendations are given in the ecological report for enhancement measures to be incorporated into the development. Conditions are recommended if planning permission is granted.

Finally, the report concludes that none of the trees in close proximity and buildings present on site offer potential for roosting bats and therefore no further survey work is recommended. However, the Bat Conservation Trust’s *Bats and Lighting in the UK’s* guidance should be adhered to in the design of any lighting on the site.

No objection is, raised in terms of ecology under Policies BNE37 and BNE39 of the Local Plan and Paragraph 109 of the NPPF.

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 have agreed to pay this tariff and have submitted a unilateral undertaking. No objection is therefore raised under Paragraphs 109 and 118 of the NPPF and Policies S6 and BNE35 of the Local Plan.

Other matters

In view of the previous use of the site as a builder's yard, conditions are recommended to address any contamination issues arising on the land. In addition a condition is recommended requiring the submission and approval of a Construction Environment Management Plan (CEMP) to address any potential impacts on nearby residents arising from the construction phase of the development. Subject to these conditions, no objection is raised under Policies BNE2 and BNE23 of the Local Plan and Paragraph

Conclusions and Reasons for Approval

The principle of the proposed development is acceptable and no objection is raised in terms of design and appearance, the Nationally Described Space Standard, neighbour amenity, highways/parking and ecology. No objection is, therefore, raised under Policies S1, S6, H4, H5, BNE1, BNE2, BNE35, BNE37, BNE39 and T13 of the Local Plan and Paragraphs 17, 49, 56, 58, 109 and 118 of the NPPF

The application would normally be determined under delegated powers but is being referred for Committee determination due to the number of the representations received expressing a view contrary to officer's recommendation.

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/>