

OFFICERS REPORT

Application No: Y16/0456/SH
Location: 7 Bournemouth Road Folkestone Kent CT19 5BA
Proposal Erection of a two storey block of 6 flats, following removal of existing buildings.

ASSESSMENT

Performance data:-

Date application valid: 09.05.16

Applicable 8 week target date: 04.07.16

Planning Performance Agreement (PPA) or Planning Extension Agreement (PEA)? Yes

If Yes, revised 8 week target date: 13.03.17

Is the application being determined after 26 weeks without a PPA or a PEA? No

SITE VISIT

The site visit was carried out on 7th May 2016. The site and proposals were assessed from the public domain to the front of the property, and an accompanied internal inspection was carried out later.

SITE

The application site is located within the Folkestone settlement boundary. The area is a primarily residential densely built up urban area with Victorian architecture consisting of mainly two and three storey terrace dwellings. The application site is situated to the rear of properties in Bournemouth Road, Broadmead Road and Victoria Road and is accessed via a narrow undercroft in Bournemouth Road. The application site forms a triangular shape constrained by the rear brick garden walls of these properties which also form the rear walls of the existing building. There are residential flats above the undercroft which forms the access to the site with the main access doors sited within the undercroft area. The existing building occupies most of the site and is two storey in height around a small central open space. It is timber clad and stained dark brown and has a large mono pitch roof rising to the centre point of the site. The roof covers most of the site and is visible from the back of the surrounding residential properties. The building is an unsound structure and has deteriorated to an extent that it is not currently in a useable state.

HISTORY

The planning history shows:

- o Change of use of existing first floor from store to use for the manufacture of clothes. Approved 21.10.74.

- o Application for an established use certificate for the use of part of the ground floor of the premises for motor vehicle repairs, sales and service. Refused 23.6.77.
- o Change of use from clothes manufacturing to martial arts centre. Approved 05.03.02.
- o Erection of 3 No. 2 storey buildings to provide 6, No. 2 bedroom self contained flats following demolition of existing buildings. Approved with conditions 24.11.04.
- o Erection of six, 2 bedroom maisonettes following removal of redundant workshops. Approved with conditions 10.11.10.

PROPOSAL

The application seeks planning permission for the removal of the derelict existing building last used as a commercial light industrial workshop and offices and construction of a development of 6 residential flats. The development would be built in a triangle form, with three principle buildings creating a central courtyard with the majority of windows having an outlook inwards into the courtyard. It is proposed to be two storey with 3 two bedroom flats on the ground floor and 3 two bedroom flats on the upper floor. The development would have a pitched full hipped roof and be constructed with artificial slate roof tiles, brick and render finished walls and UPVC windows and doors. Access to the development would be off Bournemouth Road, via the existing undercroft passage, as existing.

The application is a resubmission of a lapsed planning permission that was approved in 2010, which itself was of a similar nature to that approved in 2004 for 6 residential units. Neither permission was implemented.

CONSULTATION RESPONSES

Consultation responses are available in full on the planning file.
The main points raised are summarised below.

Folkestone Town Council does not object to the proposal, but have raised concerns about intensity, parking, and bin storage.

Kent Highways and Transportation do not object to the proposal.

Environmental Health has no objection.

Merebrook consultants have provided comments.

Environment Agency does not object to the proposal subject to conditions.

Southern Water has provided comments.

REPRESENTATIONS

6 representations have been received in response to the publicity for the application.

- o Access to the site is very restricted and narrow.
- o Access for emergency vehicles and service vehicles is restricted.
- o Loss of light overshadowing.
- o Loss of privacy.
- o Concerns regarding demolition of existing building.
- o Noise and disturbance during construction.
- o Exacerbate existing parking situation.
- o Maintenance of boundary wall.

PUBLICITY

Neighbours notified by letter. Expiry date 8th June 2016

RELEVANT POLICIES

Shepway District Local Plan Review saved policies: SD1, BE1, BE8, HO1, TR5, TR12, U2, U4, U10a

Shepway Core Strategy Local Plan: DSD, SS1, SS3

NPPF Paragraphs: 15, 17, 56, 57, 64, 66

NPPG

APPRAISAL

The main considerations in determining this application are any material changes in circumstances since planning permission was granted for an identical development in 2010. The principle of the development had been established by the previous grants of planning permission, and the site conditions have seen the existing building deteriorate into a hazardous condition since that time. Since planning permission was granted the introduction of the NPPF has given even greater support for providing sustainable housing developments on 'brownfield' land. Further to this the adoption of the Core Strategy local plan in 2013 reiterates the acceptability in principle of sustainable development on previously developed land. Being a 'brownfield' site within a residential urban area and a sustainable location with good access to local shops, services and transport infrastructure, the proposal is considered to be sustainable development. However, the NPPF and NPPG provide new guidance on residential amenity for occupiers that post date the previous approvals, and as the previous permissions have expired there is no fallback position. The assessment of the schemes in 2004 and 2010 do not address the internal residential amenity of the development and whether it is acceptable in its own right or due to the interlooking between the properties. Therefore, the changes in planning policy are a material consideration that enables the development to be looked at afresh in terms of the future living conditions for occupants.

That aside, in terms of visual impact the site is enclosed by the houses and gardens of Bournemouth Road, Broadmead Road and Victoria Road, therefore this site and the proposed development would predominantly be hidden from public vantage points. Only slim glimpses through breaks in the buildings would be available and as such the visual impact upon the streetscene is deemed to be minimal.

Regardless of the above, on its own merit the design has been previously deemed acceptable and in keeping with the tight urban grain in this locality. The two storey scale and height, would be lower than the existing roof height of the commercial building, and is considered appropriate. Appropriate building materials are also proposed in the form of slate tiles, brick, render and uPVC windows, fascias and soffits which are all regularly used materials within this area. The proposed design is therefore considered to visually interrelate with its surroundings in respect of building form, mass and height whilst including interesting elevation details.

In terms of highways Kent Highways and Transportation raise no objection subject to cycle parking secured by condition. Given the sustainable location, close to transport and town

centre facilities, provision of onsite parking is not a requirement, however it is unclear where secure covered bicycle parking could be provided for 6 properties.

With regard to contamination, given the previous commercial history of the site and the current buildings on site there is a possibility of ground contamination being present. Consequently an updated Phase 1 Environmental Assessment has been submitted. The Environment Agency and the Council's Environmental Health Team concur with the findings in the report and recommend a full ground investigation survey, which can be secured by condition.

In terms of ecology an updated Extended Habitat Report has been submitted, which recommends mitigation and biodiversity enhancements which can be secured by condition.

In terms of the impact upon the residential amenities of neighbouring occupiers. The site currently has a tall retaining wall which forms the back of the existing building. This adjoins the gardens of the houses that back onto this site. It is proposed to retain the wall and therefore most of this development would be behind the wall and have no impact upon the amenities of surrounding occupiers. Only part of the roof section would protrude above the retaining wall and as previously stated the development is lower than the current building. Therefore the development is not considered to result in being overbearing or unduly tall.

In terms of privacy and overlooking, most of the windows look inwards into the courtyard and have no impact externally onto neighbouring properties, with most windows hidden by the retaining wall. The two existing courtyard windows within the wall should be obscured glass, secured by condition as with the previous application. There would be potential overlooking to the flats above the undercroft on Bournemouth Road due to their being sited directly in front of the side elevations of the blocks facing the access way. This nevertheless can be controlled by the imposition of a condition requiring these windows to be obscure glazed. Therefore the development is considered acceptable in terms of external neighbouring residential amenities subject to appropriate conditions.

Nevertheless, notwithstanding the above, the changes in planning policy are a significant material consideration. Therefore, this application needs to be determined against the development plan, and the development plan is clear that the residential amenity of internal occupants is a material consideration. Section 38(6) (Planning Act 2004) says applications must be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance there are no such material considerations which warrant a departure from the development plan and paragraph 17 of the NPPF seeks planning decisions to be genuinely plan-led.

In this instance the development will lead to the creation of a cramped development of 6 two bedroom flats in a very tight awkwardly shaped space, which is deemed overintensive for the limited site area. Due to the close proximity of the buildings within an enclosed densely built up area, the properties would have limited outlook, with no definition between public and private space, and direct interlooking between bedroom and other windows across a small communal entrance courtyard. Furthermore, the amount of light that will get into the properties, due to the size of windows compared to floor area and the nature of the development, would be limited. The proposal therefore represents overdevelopment of the site, leading to unacceptable living conditions for future occupants due to poor residential amenity, interlooking between properties, and a lack of privacy.

In the light of the above, the proposal is contrary to the NPPF, the NPPG, and local plan policies such as SD1, and contrary to adopted guidance set out in the Kent Design Guide. Paragraph 17 of the NPPF seeks planning decisions to improve the places in which people

live their lives, and provide a good standard of amenity for all future occupants of buildings. Reiterated in paragraph 56, which seeks that good planning should contribute positively to making places better for people through good design, and paragraph 57 which seeks high quality inclusive design. As the proposal is considered to fail to meet these national planning guidance expectations, paragraph 64 states planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Whilst the applicant has tweaked the design to include partially obscure window glazing to attempt to overcome concerns regarding residential amenity of future residents, paragraph 66 of the NPPF expects applicants to work closely to evolve designs that take account of the views of the interested parties. Proposals that can demonstrate this in developing the design of the new development should be looked on more favourably. However, in this instance it is considered the design needed a complete re-think to be acceptable rather than a re-hash of an outdated scheme, and that in the context of current planning policy a flatted development of this many units is too much given the limitations of the site.

The NPPG also emphasizes the importance of good design, through for example at paragraph 024 of the 'Design' section which states that there should be a clear definition between public and private space. A buffer zone, such as a front garden, can successfully be used between public outdoor space and private internal space to support privacy and security; and, paragraph 026 continues by stating the size of individual buildings and their elements should be carefully considered, as their design will affect the overshadowing and overlooking of others.

Further to this the in terms of adopted Kent Design Guide chapter 2.2.6 Privacy (p92) the proposal fails to meet with the standards of achieving visual privacy, which links to the high standard of layout and design requirements of saved local plan policy BE1, and saved policy SD1 k) which seeks to safeguard and enhance the amenity of residents.

It is generally accepted in planning that if neighbouring development is characterised by a degree of overlooking, then this will be tolerated in any new proposal. However, case law on overlooking demonstrates that overlooking can be justified to resist inappropriate development. For example in *Dacorum* 31/12/2012 it was found that an inspector could refuse permission for seven dwellings in a conservation area as it would not provide acceptable living conditions for future occupants because of a lack of privacy arising from overdevelopment. The fact that there were other dwellings constructed before the advent of planning control with poor standards of privacy could not logically serve as a precedent for future cramped development. The inspector had found that the restricted outlook and lack of private space, in particular the size of back gardens which were less than 11.5m long, meant that the proposal would not provide acceptable living conditions for future occupants; the layout failed to incorporate adequate landscaping; and in considering the scheme, existing development constructed in the conservation area before planning control was irrelevant. At court it was contended that the inspector was wrong in dealing with the effect on future occupiers' living conditions as a distinct and separate issue from the effect on the character and appearance of the conservation area; treating the garden length as part of a policy requirement; failing to apply the garden length requirement flexibly without evidence on the local provision of open space; rejecting the scheme on privacy grounds yet failing to consider that the development's dimensions were consistent with other locations within the conservation area. The court found that there was no policy justification for the proposition that a lower standard of living conditions was generally acceptable in a conservation area. In addition although the 11.5m requirement for back gardens was not part of the local plan, it was part of an appendix to a saved plan and was a highly relevant material consideration which the inspector had been entitled to take into account. The court considered that the inspector was an expert who had

had the benefit of a site visit and she was therefore entitled, in the absence of evidence from the parties, to make her own assessment of the availability of nearby open space. There was no irrationality in finding that houses constructed before the advent of planning control with poor standards of privacy did not serve as a precedent for the grant of planning permission for houses with a poor standard of privacy. Similarly, the fact that there were other cramped developments constructed before planning control was introduced could not logically serve as a precedent for future cramped development *Holywell Property (St Albans) Ltd v Dacorum BC* 16/1/2014.

Planning permission was withheld for the conversion of offices in a Grade II listed building in a conservation area to five flats because the resultant space failed to ensure adequate living standards for future occupiers. An inspector noted that the five units ranged from one to three bedrooms and three had to some degree failings in respect of the layout of space and lack of privacy. One of the larger units did not have access to a communal amenity area while a second suffered from a lack of privacy due to a dining room overlooking the communal space. A one bedroom unit appeared to be overly cramped with poor levels of natural light. Although high density living might be prevalent in London the proposed design did not translate well to Buckinghamshire, the inspector concluded, noting that overall the standard of accommodation was unacceptable, *Milton Keynes* 15/4/2013.

In refusing permission for the erection of 29 houses an inspector opined that the amenity space proposed would be overlooked by habitable rooms within the dwellings undermining the effectiveness of the space and the privacy of occupiers, see *Wycombe* 22/1/2009.

In conclusion with separation distances between windows of between 3m and 8m it is considered that there would be a lack of privacy for future occupiers, and a lack of outlook, and would not allow adequate light into the rooms of the building, which would be compounded by the applicants suggested reliance on curtains, blinds and obscure glazing. Along with the lack of open private space, this would result in unacceptable living accommodation for future occupiers. The close proximity of the buildings as a result of trying to cram too much into the restricted space is therefore considered to be overdevelopment of the site, and the scale and intensity of the development would need to be significantly reduced to be workable and acceptable.

RECOMMENDATION

Refuse

HUMAN RIGHTS

I have also taken into account the human rights issues relevant to this application. In my view, the assessment section above and the recommendation represents an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) [and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties)] and the wider public interest.

Case Officer:

Report and draft decision notice completed and passed to senior officer.

Name: Paul Howson Position: Senior Planning Officer

Date: 07.04.17

Report and draft decision notice amended (if appropriate)

Name:

Position:

Date:

Senior Officer

Report not agreed. Details of further work required as follows:

Name:

Position:

Date:

Report and draft decision notice agreed and file passed to admin to issue decision.

Name: Ben Geering

Position: Head of Planning

Date: 02.05.17