



Appeal Decision

Hearing held on 31 January 2023 and 13 February 2023

Site visit made on 31 January 2023

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 27th March 2023

Appeal Ref: APP/A2280/W/22/3293828

Patman's Wharf, Upnor Road, Lower Upnor

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Alan Patman of Patman Trust against the decision of Medway Council.
 - The application Ref MC/19/2361, dated 11 September 2019, was refused by notice dated 27 August 2021.
 - The development proposed is change of use from boat storage yard to residential, erection of six x 3 bed terraced houses and two x 2 bed apartments with associated landscaping and parking.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from boat storage yard to residential, construction of six 3-bed terraced houses and two 2-bed flats with associated landscaping and parking at Patman's Wharf, Upnor Road, Lower Upnor in accordance with the terms of the application, Ref MC/19/2361, dated 11 September 2019, subject to the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by Mr Alan Patman of Patman Trust against Medway Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposal would provide a suitable living environment for future occupiers with regard to noise.

Reasons

4. The reason for refusal states that the proposed development would fail to secure the amenities of the future occupants of the development with regard to noise. However, during the appeal process, a number of Noise Impact Assessments were submitted by both parties. An updated Statement of Common Ground was submitted during the hearing which states that a noise mitigation solution has been arrived at, which both parties agree would provide an acceptable noise climate for future residents of the scheme.
5. Accordingly, the Council confirmed during the hearing that it no longer defends the reason for refusal stated in the decision notice.

6. The proposed noise mitigation scheme includes windows to living rooms and bedrooms facing the river to have a minimum acoustic performance. These spaces would also need to be provided with a suitable ventilation system to avoid the need to open windows for ventilation and to avoid overheating. In addition, tall screens would need to be provided along the quayside and separating each garden area.
7. A number of high noise levels that were recorded during a noise survey in 2020 were not recorded during subsequent noise surveys. In addition, the Council have not received any noise complaints since 2020 including post-pandemic. Moreover, from the evidence, noise-generating activities on the wharf appear to be limited, and activities such as grinding and hammering generally occur on the jetty some distance from the site.
8. Therefore, I see no reason why the proposed mitigation measures could not adequately mitigate any undue noise from the adjacent site. These measures could be controlled via suitably worded conditions.
9. Therefore, the proposed development would provide a suitable living environment for future occupiers with regard to noise. As such, the proposal would not conflict with Policy BNE2 of the Medway Local Plan Adopted May 2003 (LP) which seeks development that would secure the amenities of its future occupiers with regard to noise among other things.

Other Matters

10. I note local concerns including the effect on traffic congestion and highway safety and the effect on doctors' surgeries and schools. Given the limited number of dwellings proposed, there would not be undue harm in these respects.
11. I also acknowledge concerns regarding the loss of river frontage and marine businesses, and the effect on local businesses. However, given the modest scale and traditional forms and materials of the proposed dwellings, the scheme would not harm the character and appearance of the area. In addition, there is little substantial evidence before me to indicate that the scheme would result in adverse effects on local businesses.
12. Since all habitable rooms would be above ground level and impermeable areas would reduce significantly within the site as result of the proposed development, there would be no undue effect with respect to flooding.

Special Protection Area/Ramsar Site

13. The site lies within 6km of the North Kent Marshes Special Protection Area (SPA)/Ramsar Sites. New housing development within this distance would be likely to increase the number of recreational visitors to the SPA/Ramsar site, potentially resulting in disturbance to the integrity of the habitats of qualifying features.
14. The number of additional recreational visitors from 8 dwellings would be limited, and the likely effects on the SPA/Ramsar site from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the SPA and Ramsar site. Consequently, an Appropriate Assessment (AA) is necessary to ascertain the implications for the site.

AA

15. The qualifying features include the over-wintering bird interest. The Appellant has completed and signed a Strategic Access Management and Monitoring Strategy and paid an appropriate financial contribution towards mitigation. On this basis I am satisfied that the proposal would not adversely affect the SPA and Ramsar site and would not conflict with the National Planning Policy Framework in this regard.

Conditions

16. The conditions regarding time limits and specifying plans are necessary in the interests of certainty. Conditions regarding external materials and landscaping are necessary to safeguard the character and appearance of the area.
17. A condition relating to a Construction Environmental Management Plan is necessary to in the interests of the living conditions of neighbouring occupiers. It needs to be pre-commencement as it would affect the early stages of construction.
18. Conditions relating to details of windows, boundary treatments and ventilation systems are necessary to safeguard the living environment of future occupiers. A condition relating to electric vehicle charging is necessary in the interests of sustainability and a condition regarding vehicle parking spaces is necessary for highway safety.
19. The suggested condition removing permitted development rights including the enlargement, improvement or other alteration of a dwellinghouse is necessary given the limited plot sizes to safeguard the character and appearance of the area. However, porches, hard surfaces and chimneys are of a limited scale such that they would not harm the character of the area. Therefore, removal of permitted development rights in these respects have not been included in the condition.
20. Given the potential for contamination as identified in the Phase 1 Desk Study, a related condition is necessary.
21. The suggested condition restricting the use of the dwellings is necessary to safeguard the living conditions of neighbouring occupiers.

Conclusion

22. For the reasons given above, the appeal should be allowed.

R Sabu

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan (ref: 1172-LPB);
 - Location Plan (ref 1172.01B);
 - Roof Plan (ref 1172.20C);
 - Ground Floor Plan (ref 1172.21B);
 - 1st Floor Plan (ref 1172.22B);
 - 2nd Floor Plan (ref 1172.23B);
 - Site Sections/Elevations (1172.24B);
 - Terrace Elevations (1172.25B)
- 3) 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 arising from the construction 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.
- 4) 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.
- 5) No development above slab level shall take place until details of the windows to living rooms and bedrooms facing the river to achieve a minimum acoustic performance of 38dB Rw have been submitted to and approved in writing by the local planning authority. These approved details shall be implemented prior to first occupation and maintained thereafter.
- 6) No development above slab level shall take place until details of a suitable ventilation system to be installed in living rooms and bedrooms facing the river (which shall avoid the need to open windows for ventilation and avoid overheating) shall be submitted to and approved in writing by the local planning authority. These approved details shall be implemented prior to first occupation and maintained thereafter.
- 7) No development above slab level shall take place until details of boundary treatments, including a 1.8m high screen (minimum), shall be submitted to and approved in writing by the local planning authority. These details shall include materials, size, type and exact location of the proposed treatment including quayside and boundaries between gardens. The approved details shall then be implemented prior to first occupation and maintained thereafter.
- 8) The dwellings hereby approved shall not be occupied until the area shown on the submitted layout as vehicle parking space(s) has been provided, surfaced and drained in accordance with details submitted to and

approved in writing by the Local planning authority. 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 (as amended) (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or such a position as to preclude vehicular access to this reserved parking space or garage.

- 9) The dwellings hereby approved shall not be occupied until details of the provision of a minimum of 1 electric vehicle charging point per unit have been submitted to and approved in writing by the local planning authority. Details shall include the location, charging type (power output and charging speed), associated infrastructure and timetable for installation. The development shall be implemented in accordance with the approved details and shall thereafter be maintained in working order.
- 10) The dwellings hereby approved shall not be occupied until full details of both hard and soft landscape works 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 any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
- 11) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification) no development shall be carried out within Schedule 2, Part 1, Classes A, AA, B, C and E of that Order unless planning permission has been granted on an application relating thereto.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification) all dwellinghouses herein approved shall remain in use as a dwellinghouse falling within Class C3 only of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order amending, revoking and re-enacting that Order with or without modification) and for no other purpose.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Alan Patman	Patman Trust
Mark Buxton	Planning Director - RPS
Clive Bentley	Partner - Sharps Acoustics
Ian Mutch	Chartered Architect

FOR THE LOCAL PLANNING AUTHORITY:

Hannah Gunner	Senior Planner - Medway Council
Edward Crofton-Martin	Principle Acoustic Consultant – Able Acoustics
Stuart Steed	Environmental Protection Officer – Medway Council

DOCUMENTS

Decision Notice Ref: MC/13/1804
LP Policies BNE2 and BNE3
Updated Statement Of Common Ground – Noise dated 9th February 2023
Schedule of Conditions with Agreed Noise Conditions (Nos. 5 – 7)