

APPENDIX 2

Planning Committee Report - 13 October 2016

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2.6 REFERENCE NO - 16/505663/OUT			
APPLICATION PROPOSAL Outline application for the erection of 1 detached 2 bedroom bungalow with all matters reserved for future consideration.			
ADDRESS 82 Church Lane Newington Kent ME9 7JU			
RECOMMENDATION Grant subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION The proposal entails development within the built up area boundary which is acceptable as a matter of principle. There is sufficient space on the site to accommodate the dwelling and its parking demands. The impact on residential amenity would be minimal and acceptable.			
REASON FOR REFERRAL TO COMMITTEE Newington Parish Council objects.			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Newington	APPLICANT Mrs Deborah Greene AGENT	
DECISION DUE DATE 20/10/16	PUBLICITY EXPIRY DATE 30/08/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/505653/OUT	Outline application for the erection of 2 no. 3 bedroom Semi-detached houses with all matters reserved for future consideration	Also on this agenda.	Na

1.0 DESCRIPTION OF SITE

- 1.01 The site is located to the north of the Railway bridge in Newington. It is accessed via a private road which leads to a small garage court. The site forms part of the rear garden of 82 Church Road and extends to the rear of 80 Church Lane. It is flat with typical domestic landscaping in place.
- 1.02 The site fronts on to the private access road. There are two storey modern estate dwellings to the north and north west. To the west is 82 Church Lane, a modest bungalow also owned by the applicant. To the south are the gardens of the dwellings fronting on to Church Lane. To the east of the site is a terrace of two storey dwellings known as St Matthews Close.

2.0 PROPOSAL

- 2.01 This is an outline planning application with all matters reserved for future consideration for the erection of a detached 2 bedroom bungalow. The indicative plan shows an 'L' shaped bungalow measuring a maximum of 9.5m deep by 10m wide. It would have two side by side car parking spaces to the front. The rear garden would be 10m long. The remaining garden for 82 Church Lane would be 12m long.

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3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	0.03ha	0.03ha	0
No. of Storeys	0	1	+1
Parking Spaces	0	2	+2
No. of Residential Units	0	1	+1

4.0 PLANNING CONSTRAINTS

4.01 The site is located within the built up area boundary of Newington.

5.0 POLICY AND OTHER CONSIDERATIONS

5.01 The National Planning Policy Framework (NPPF);

“Achieving sustainable development

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At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.....

For decision-taking this means:10

- approving development proposals that accord with the development plan without delay; and*
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
- specific policies in this Framework indicate development should be restricted.9”*

“6. Delivering a wide choice of high quality homes

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Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.

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Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

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Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”

- 5.02 Development Plan: Policies SP1, SP4, TG1, SH1, E1, E19, H2 and T3 of the Swale Borough Local Plan 2008.
- 5.03 Policies ST1, ST3, CP3, DM7, DM14 and DM19 of the Council’s emerging Local Plan entitled Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications June 2016.
- 5.04 Supplementary Planning Guidance entitled ‘Designing and Extension: A Guide for Householders’ which sets out the Council normally expects a rear to rear separation distance between dwellings of 21m.

6.0 LOCAL REPRESENTATIONS

- 6.01 15 letters of objection have been received from local residents which are summarised as follows;
- The proposal will exacerbate existing traffic, road safety, congestion and parking problems on Church Lane and the A2. Church Lane reduced to 1 lane by parking.
 - It is not in keeping with neighbouring houses.
 - The proposal will interfere with parking in garage court.
 - The proposal does not have the legal right to access the driveway.
 - Development in residential gardens is not allowed under the NPPF as should be avoided by the Council as it causes harm to the local area.
 - The proposal will result in loss of light, overlooking and noise issues for neighbouring dwellings.
 - Construction traffic will cause problems.
 - Objectors concur with the applicants own objections to previous proposals in the area which highlighted problems with shortfalls in infrastructure, sewerage capacity, utilities and traffic. For the applicant to apply for planning permission when he has objected to so many applications in Newington is hypocritical and the Council should look at the wording of his objections on highway grounds to nearby proposals.
 - Will exacerbate lack of school places.
 - Lack of public transport i.e. buses and trains are crowded and infrequent.
 - There are problems with air quality that will be exacerbated.
 - Nowhere for children to play on the north side of Newington.
 - Council should consider improvements to road safety and parking facilities.
 - Newington has no job opportunities.
 - The development is too dense.
 - Dust and smell issues will arise from construction near our dwelling.
 - Loss of property value.

7.0 CONSULTATIONS

- 7.01 Newington Parish Council objects for the following summarised reasons;
- The application site is an appropriately sized garden for 82 Church Lane. Such gardens are popular with homebuyers.

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- The NPPF is clear Council's should resist windfall sites in domestic gardens.
- The proposal will exacerbate traffic, congestion and parking problems on Church Lane.
- There is confusion as to whether the applicant has the right to access the development via the shared driveway to the side of 82 Church Lane and who is responsible for maintenance of the road.
- This is a very sketchy outline application and the lack of detail makes it impossible to make detailed comments. NPC reserves the right to make further comment should a full application be submitted.

7.02 The Council's Environmental Health Manager raises no objection subject to an hours of construction condition.

7.03 KCC Highways and Transportation notes that as the access is via a private road it has no record of rights of access and suggests that residents investigate their property deeds which may contain more information.

7.04 Southern Water requires a formal application for connection to the public foul sewer. There are no public surface water sewers in the area therefore the development should find an alternative means of draining surface water, not via the public foul sewer. A condition securing the means of foul and surface water sewerage disposal is requested.

8.0 BACKGROUND PAPERS AND PLANS

8.01 The application includes a hand drawn proposed development layout plan, proposed block plan and site location plan.

9.0 APPRAISAL**Principle of Development**

9.01 I note the objections of local residents and Newington Parish Council, some of which state that garden development is contrary to paragraphs 48 and 53 of the NPPF as quoted above. However, it is clear from the wording of paragraph 48 that residential gardens should not form part of a windfall allowances in calculating a five year supply of housing land as required by the NPPF. This does not mean a planning application for the development of dwelling houses in a residential garden is unacceptable as a matter of principle. With regard to paragraph 53, the NPPF makes clear Council's should consider the case for setting out policies to resists inappropriate development of residential gardens, for example where development would cause harm to the local area. The Council has not adopted such a specific policy but it does have several other policies such as E1 and E19 of the adopted Local Plan that require all developments not to cause harm to amenity. This is discussed in full below but in my opinion the proposal would not cause harm to the local area sufficient to warrant the refusal of planning permission.

9.02 The site is located within the built up area boundary of Newington as defined by the Proposals Map of the Swale Borough Local Plan 2008. As set out in policy H2 the principle of development is acceptable. Whilst residential gardens have been removed from the definition of brownfield land it remains preferable to make efficient use of land within built up areas instead of developing greenfield sites in the countryside. The site

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is considered to be located in a sustainable central location with access to the services, facilities and transport options Newington has to offer. For these reasons, the principle of the proposal is acceptable in my opinion.

Residential Amenity

- 9.03 This outline application does not provide details of the scale, appearance or layout reserved matters of the bungalow. Notwithstanding the above, the impact of a bungalow is inherently less significant than a two storey dwelling. Single storey development surrounded by standard residential fencing creates very little overlooking. The indicative plan submitted with the application demonstrates that it is possible for the site to accommodate a single bungalow that secures a 27m separation distance between the rear elevation and that of 5 St Matthews Close, noting only 21m is required by the Council's SPG on domestic extensions. The proposal would be a minimum of 9m from the side elevation of 4 St Matthews Close and the proposal is positioned in such a way in relation to this neighbouring property that there would be no harm to residential amenity. The front elevation of the proposal would be 21m from the main two storey rear elevation of 7 St Stephens Close to the north which is sufficient distance to prevent harm to residential amenity. The proposal would be 20m from 92 Church Lane and set at an angle to it which would result in no harm to residential amenity. There would be a gap of approximately 15m between the side elevation of the proposal and the rear elevation of the host property, 82 Church Lane which is sufficient distance to prevent harm to residential amenity. The separation distance to 80 Church Lane is 25m which again prevents harm to residential amenity.
- 9.04 The small footprint and low profile of the bungalow combined with the proposed gaps between it and the application site boundary, including a 10m long rear garden, serve to further reduce any potential impact from loss of light, overshadowing and overbearing, contrary to the objections received. The proposal entails accommodation that would provide an acceptable level of amenity for future occupants. The remaining garden space serving 82 Church Lane is acceptable. The resulting impact on residential amenity would be acceptable in my opinion.

Highways

- 9.05 I note the significant level of objection to the impacts of the development on highway safety and convenience. KCC Highways and Transportation no longer provides advice on such small scale proposals. The current vehicle parking standards entitled 'Kent Design Guide Review: Interim Guidance Note 3: Residential Parking' require that a two bedroom dwelling in a village location has a minimum of 1.5 car parking spaces. This is rounded up to two spaces for single dwelling proposals. The proposal provides 2 car parking spaces in accordance with these standards. There is sufficient space on the site for the car parking spaces to be of an appropriate size i.e. 5m long by 2.5m wide or 2.7m wide if up against a boundary. The position of the dwelling and visibility splays is such that should the vehicles parked in the proposed car parking spaces enter the private access road in a forward or reverse gear, there would be no harm to highway safety and convenience in my opinion. It is important to note the very slow vehicle speeds on the private access.
- 9.06 The spaces are sufficiently removed from the existing garages and parking spaces to the front that there would be no interference with the spaces.

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Other Matters

9.07 I note the objections regarding the legal right to access the development via the private road. It is well established that the Council is free to grant planning permission for a development and it is the applicant’s responsibility to ensure that they have the legal right to access the development. Should these rights not exist there would effectively be a ransom strip around the site, but this is for the applicant to overcome outside of the planning system and Members should be aware that the legal right to access a proposal is not a material planning consideration.

9.08 The hours of construction and foul and surface water drainage conditions recommended by consultees are attached to prevent harm to amenity and flooding.

10.0 CONCLUSION

10.01 The proposal entails development within the built up area boundary which is acceptable as a matter of principle. There is sufficient space on the site to accommodate the dwelling and its parking demands. The impact on residential amenity would be minimal and acceptable.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

- (1) Details relating to the layout, scale and appearance of the proposed building, the access thereto and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (3) The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (4) Prior to the commencement of development, details of the means of foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be incorporated into the development prior to its first occupation.

Reason: To secure appropriate foul and surface water drainage.

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- (5) Prior to the commencement of development, details shall be submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development as approved.

Reason: In the interest of promoting energy efficiency and sustainable development.

- (6) Upon completion, no further development, whether permitted by Classes A, B, C or D of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order) or not, shall be carried out without the prior permission in writing of the Local Planning Authority.

Reason: In the interests of the amenities of the area.

- (7) The details submitted pursuant to condition (1) above shall show adequate land, reserved for the parking of 2 cars (in accordance with the currently adopted Kent County Council Vehicle Parking Standards) which land shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not shall be carried out on such land or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling hereby permitted.

Reason: Development without adequate provision for the parking of cars is likely to lead to car parking inconvenient to other road users and in a manner detrimental to highway safety and amenity.

- (8) The sight lines shown on the approved plans shall be provided prior to the occupation of the dwelling hereby permitted and thereafter maintained clear of any structure, tree, plant or other obstruction which exceed 0.6 metres above carriageway level within the approved sight lines.

Reason: In the interests of highway safety.

- (9) Prior to the commencement of development, a programme for the suppression of dust during the construction of the development shall be submitted to and approved in writing by the Local Planning Authority. The measures approved shall be employed throughout the period of construction unless any variation has been approved by the Local Planning Authority.

Reason: In the interests of residential amenity.

- (10) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-

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Monday to Friday 0800 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (11) Prior to the commencement of development, details of ecological enhancements at the site such as bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be incorporated into the development prior to its occupation.

Reason: To secure ecological enhancements.

INFORMATIVES

The developer should contact Southern Water to arrange for a connection to the public sewerage system by calling 0330 303 0119.

Habitat Regulations Assessment Screening

This HRA has been undertaken without information provided by the applicant.

The application site is located approximately 2km south of the Swale Special Protection Area (SPA) and Ramsar site both of which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species.

Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of the Habitat Regulations require a Habitat Regulations Assessment. NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It goes on to state that when recording the HRA the Council should refer to the following information to justify its conclusions regarding the likelihood of significant effects; financial contributions should be made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG); the strategic mitigation will need to be in place before the dwellings are occupied.

In terms of screening for the likelihood of significant effects from the proposal on the SPA features of interest, the following considerations apply:

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which

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are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement would cost substantially more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on single dwellings upwards will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment. I acknowledge that the mitigation will not be in place prior to occupation of the dwelling proposed but in the longer term the mitigation will be secured at an appropriate level, and in perpetuity.

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was acceptable as submitted and no further assistance was required.

The applicant/agent was provided formal pre-application advice.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

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NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.