

Application No: Y17/0886/SH

Location of Site: Land Adjoining 3 Millfield Folkestone Kent

Development: Section 73 application to vary condition 2 (approved plans) of planning permission Y15/1164/SH (Erection of a terrace of 3 x three-storey town houses) for a change in position of the building and a change to the eave detail to Plot C.

Applicant: Mrs Nola Yarney
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CT20 3AD

Agent: Mr Matthew Gerlack
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CT10 2AE

Date Valid: 15.08.17

Expiry Date: 10.10.17

Date of Committee: 31.10.17

Officer Contact: Miss Louise Daniels

RECOMMENDATION:

- a) That planning permission be refused for the reason set out at the end of this report.
- b) (1) That an enforcement notice be served requiring the building to be demolished.
- (2) That the period of compliance be 3 (three) months.
- (3) That delegated authority be given to the Head of Planning to serve a stop notice requiring work on the unauthorised development to cease immediately if work recommences.
- (4) That the Head of Democratic Services and Law be authorised to take such steps as are necessary, including legal proceedings to secure compliance with the Notices.
- (5) That the Head of Planning be given delegated authority to determine the exact wording of the Notices.

1.0 THE PROPOSAL

- 1.1 Following a complaint during the construction of the development granted planning permission under Y15/1164/SH, it became apparent during a visit to the site that the building was being built closer to the neighbouring property No.3 Millfield than was shown on the approved plans.
- 1.2 This application seeks planning permission to vary condition 2 (approved plans) of planning permission Y15/1164/SH which was for the erection of a terrace of 3 x three-storey town houses, in order to allow the development to be retained as constructed. The changes involve:
 - The building being positioned closer to the neighbouring property No.3 Millfield, resulting in a separation distance of 22.5cm from the side of the building and the neighbouring cladding to the front and a separation distance of 29cm to the rear. It appears from the plans approved under the previous planning permission and from those now submitted, that the whole building has been moved over within the site so it is further away from the north east boundary of the site and closer to the property to the south west.
 - The eaves to Plot C on the south west elevation have been reduced in length. This is because, due to the change in position of the building, when the eaves were constructed as shown on the approved plans they overhung the boundary with No. 3 Millfield. They have now been reduced in length so that they no longer overhang the boundary with 3 Millfield and the plans now submitted reflect this.

2.0 LOCATION AND DESCRIPTION OF SITE

- 2.1 The application site is located at the north eastern end of Millfield, a predominantly residential street within the settlement boundary of Folkestone. To the north-east of the application site is a three-storey building used as a nursery, with a maisonette above (33 Cheriton Road). To the south-west is a four storey building in residential use. The street is characterised by generally three to four-storey Victorian and Edwardian buildings, some of which are in single residential use, some of which have been sub-divided into flats.

3.0 RELEVANT PLANNING HISTORY

- 3.1 Planning permission was granted in February 2014 under Y13/1196/SH for a terrace of three, three storey town houses.
- 3.2 In January 2016 planning permission was granted under Y15/1164/SH for variation of condition 2 of Y13/1196/SH to allow a reduction in the width of the proposed development.

4.0 CONSULTATION RESPONSES

4.1 Folkestone Town Council

Object. The committee object pending the Chair having discussions with the District Officers about the widespread objections of neighbours.

5.0 PUBLICITY

5.1 Neighbours notified by letter. Expiry date 05.09.17

5.2 Site Notice. Expiry date 15.09.17

6.0 REPRESENTATIONS

6.1 6 representations received objecting on the following grounds:

- Maintenance and cleaning problems for 3 Millfield, including loss of light to the downstairs WC.
- Development should be built in accordance with the original permission.
- Parking in the evening will be worse within the street, bringing potentially 6 to 9 vehicles.
- Visual impact of the building being so close to the neighbouring property.
- Two houses would be better than three on this site.

7.0 RELEVANT POLICY GUIDANCE

7.1 The full headings for the policies are attached to the schedule of planning matters at Appendix 1.

7.2 The following policies of the Shepway District Local Plan Review apply: SD1 and BE1.

7.3 The following policies of the Shepway Local Plan Core Strategy apply: DSD

7.4 The following Supplementary Planning Documents and Government Guidance apply:
National Planning Policy Framework (NPPF): Paragraph 17.

8.0 APPRAISAL

Background

8.1 Planning permission was granted under application Y13/1196/SH for the erection of three, three-storey town houses. This application proposed the dwellings to be constructed of predominantly brick, with the front of the properties having two large gable features, bay windows below and entrance

doors to plots B and C to the frontage. The element to the north-east (plot A) had a lower ridge height, designed to look like an extension to the main building, with access into this dwelling from the side. The buildings were designed to be Edwardian pastiche. The building was proposed to be positioned 40cm from the side elevation of the neighbouring building No.3 Millfield (drawing number DJA/019/13-3, dated November 2013 under application Y13/1196/SH) and between 1.7m and 1m from the side boundary with No.33 Cheriton Road as the building is not parallel with the side boundary (drawing number DJA/019/13-1 under application Y13/1196/SH).

- 8.2 An application was later submitted, reference number Y15/1164/SH, to reduce the width of the proposed development although the south-west facing elevation of the development, adjacent to No.3 Millfield, retained the position as previously approved with a 40cm separation when measured on the front elevation.
- 8.3 This current application, seeks retrospective planning permission to move the building to the south-west, to a closer position to No.3 Millfield and away from No.33 Cheriton Road. The development is not parallel with No.3 Millfield and so the separation distance to the front is 22.5cm between the side of the new building and the neighbouring cladding with a separation distance of 29cm to the rear, as labelled on submitted plan number 17/254/JG/PL01 Rev A dated October 2017.
- 8.4 The previously approved application Y15/1164/SH retained a separation distance of 40cm between the side of the development and the neighbouring dwelling No.3 Millfield when measured from the front elevation and therefore this application is assessing the closer position to the neighbouring building No.3 Millfield by 17.5m. This resulted in the eaves and rainwater guttering encroaching over the side boundary with No.3 Millfield and prior to this application being submitted, the eaves of the application building have been amended and reduced in length on site to pull them back within the side boundary and therefore, this application also seeks retrospective permission for this change to the eaves overhang to the south-west facing elevation of Plot C.

Relevant Material Planning Considerations

- 8.5 Planning permission has previously been granted with the most recent planning permission granted in 2016 under application Y15/1164/SH. Therefore the acceptability of this development has already been established and there have not been any significant changes to legislation or policy which would result in a different decision to that previously granted if the scheme was identical. As such, the previous planning decisions for this site form material planning considerations.
- 8.6 The only issues for consideration under this application are the impact of the new position of the building on neighbouring amenity and the visual impact upon the street scene.

Neighbouring Amenity

- 8.7 One of the 12 core principles of the NPPF is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy SD1 of the Local Plan states that all development proposals should take account of the broad aim of sustainable development – ensuring that development contributes towards ensuring a better quality of life for everyone, now and for generations to come. Section (k) of policy SD1 seeks to safeguard and enhance the amenity of residents. The policy states that development proposals that would significantly conflict with this would only be permitted where it can be shown that there is an overriding economic or social need and where negative impacts are minimised as far as possible.
- 8.8 It is acknowledged that the previous planning applications accepted the building within close proximity of the neighbouring property No.3 Millfield. However, the 40cm separation would have allowed access and maintenance of the side of No.3 Millfield. There is a side opening window to the downstairs WC of No.3 Millfield which faces the side elevation of this development, as well as a waste pipe which exits from the side of No.3 Millfield. In addition there is white cladding along this side elevation at ground and first floor, and rainwater guttering, all of which require maintenance.
- 8.9 Whilst the reduction of this gap by 17.5cm could be considered to be a minimal amount, the resulting reduced separation gap of 22.5 - 29cm between the two buildings is now too narrow to enable access between the properties. So it will no longer be possible for the occupant of No. 3 Millfield to maintain the side of his property and the blockwork wall to the new property will have to remain as it is, rather than the brickwork finish shown on the approved plans. The NPPF and policy SD1 seek to safeguard and enhance the amenity of existing and future residents and it is considered that due to the closer proximity to No.3 Millfield the development would have an unacceptable oppressive and enclosing impact which would have an adverse impact upon the maintenance and reasonable enjoyment of the neighbouring property No.3 Millfield. As such, it is considered that the development would be detrimental to the residential amenity of the occupants contrary to policy SD1 and paragraph 17 of the NPPF.

Visual Amenity/Design

- 8.10 Due to the closer position of the building to the neighbouring property No.3 Millfield, the visual separation between the new block of three dwellings and the end of the terrace of properties to the south-east of Millfield has been reduced. The eave details have also been reduced back which creates a slight unbalance to the building. However, this site is not within a specially designated area, and as such, it is not considered that the repositioning of the building on the site, together with the eave detail changes, would be sufficiently detrimental to warrant refusal on visual amenity grounds.

8.11 It should also be noted that due to the close proximity of the development to No.3 Millfield, the south-west facing elevation has been finished with blockwork to the middle area of the side elevation and this would have to be retained as the side is not accessible. However, due to the close position adjacent to No.3 Millfield, this is not visible from the street scene, and due to this, would not have a detrimental upon the visual appearance of the street scene.

8.12 However, policy BE1 requires a high standard of layout and given the problems set out above which are due to the poor positioning of the building within the plot, it is not considered that this has been achieved. The development is, therefore, considered to be contrary to policy BE1.

Other Issues

8.13 It is not considered that the change to the position of the side elevation, or eave detail would have any impact upon highway safety issues.

Human Rights

8.14 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

8.15 This application is reported to Committee as authorisation is requested to serve an enforcement notice and a stop notice.

9.0 SUMMARY

9.1 In conclusion, it is considered that the reduction in separation between the development and No.3 Millfield from that previously approved, and that currently proposed, would result in the development having an unacceptable oppressive and enclosing impact upon the residents of No.3 Millfield by having an adverse impact upon the future maintenance and reasonable enjoyment of the neighbouring property No.3 Millfield. As such, it is considered that the development would have a detrimental to the residential amenity of the occupants and results in poor layout contrary to policies SD1 and BE1 of the Local Plan Review and paragraph 17 of the NPPF.

10.0 BACKGROUND DOCUMENTS

10.1 The consultation responses set out at Section 4.0 and any representations at Section 6.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

RECOMMENDATION:

- a) That planning permission be refused for the following reason:
- The building as constructed, by virtue of its closer proximity to No.3 Millfield has an unacceptable oppressive and enclosing impact and, due to the proximity, adversely affects the maintenance and reasonable enjoyment of that property and as such is of a poor layout within the site and detrimental to the residential amenity of the occupants of No. 3 Millfield contrary to policies SD1 and BE1 of the Shepway District Local Plan Review and paragraph 17 of the NPPF.
- b) (1) That an enforcement notice be served requiring the building to be demolished.
- (2) That the period of compliance be 3 (three) months.
- (3) That delegated authority be given to the Head of Planning to serve a stop notice requiring work on the unauthorised development to cease immediately if work recommences.
- (4) That the Head of Democratic Services and Law be authorised to take such steps as are necessary, including legal proceedings to secure compliance with the Notices.
- (5) That the Head of Planning be given delegated authority to determine the exact wording of the Notices.

Decision of Committee

