

**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  
The Mount  
The Riviera  
Sandgate  
Folkestone  
CT20 3AD

**Agent:** Mr Matthew Gerlack  
KUDOS Architectural Design & Surveying  
38 Osborne Road  
Broadstairs  
CT10 2AE

**Date Valid:** 15.08.17

**Expiry Date:** 10.10.17

**Date of Committee:** 28.11.17

**Officer Contact:** Miss Louise Daniels

<b>RECOMMENDATION:</b> That planning permission be granted subject to the conditions set out at the end of the report.
--

## 1.0 UPDATE

1.1 This application was originally reported to committee on 31<sup>st</sup> October 2017 with a recommendation for refusal on the following ground:

*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.*

1.2 At this meeting the committee resolved:

- That the application be deferred to seek amended plans for the proposed side elevations and that the application would be reported

back to the Planning and Licensing Committee when the additional information had been sought.

- 1.3 Following the receipt of amended plans, further discussions were undertaken with the Council's legal advisors and following this advice, the recommendation has been amended for reasons which are set out in the 'legal/third party matters' section of this report.

## **2.0 THE PROPOSAL**

- 2.1 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.

- 2.2 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.
- Setting the building further back within the site by 1 metre, from what was approved under application Y15/1164/SH, which brings the rear elevation in line with the rear of the neighbouring property No. 3 Millfield.
- Since the application was deferred at committee on 31<sup>st</sup> October 2017, amended plans have been submitted to show the block work to the side elevation facing 3 Millfield, different to the brickwork as approved under application Y15/1164/SH.

## **3.0 LOCATION AND DESCRIPTION OF SITE**

3.1 The application site is located at the north-east 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.

#### **4.0 RELEVANT PLANNING HISTORY**

4.1 Planning permission was granted in February 2014 under Y13/1196/SH for a terrace of three, three storey town houses.

4.2 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.

4.3 In March 2017 a non-material amendment was granted under Y17/0019/NMC to allow for the creation of 3 No. car parking spaces to the front elevations.

#### **5.0 CONSULTATION RESPONSES**

5.1 Folkestone Town Council

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

#### **6.0 PUBLICITY**

6.1 Neighbours notified by letter. Expiry date 05.09.17

6.2 Site Notice. Expiry date 15.09.17

#### **7.0 REPRESENTATIONS**

7.1 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.

## **8.0 RELEVANT POLICY GUIDANCE**

- 8.1 The full headings for the policies are attached to the schedule of planning matters at Appendix 1.
- 8.2 The following policies of the Shepway District Local Plan Review apply:  
SD1 and BE1.
- 8.3 The following policies of the Shepway Local Plan Core Strategy apply:  
DSD
- 8.4 The following Supplementary Planning Documents and Government Guidance apply:

National Planning Policy Framework (NPPF): Paragraph 17  
National Planning Practice Guidance  
Kent Design Guide

## **9.0 LEGAL/THIRD PARTY MATTERS**

### **Party Wall Agreement**

- 9.1 The Party Wall Act 1996 provides a framework for preventing disputes in relation to party walls, party structures, boundary walls and excavations near neighbouring buildings. The Act covers excavations within 3 or 6 metres of a neighbouring building or structures, depending on the depth of the proposed foundations. Anyone intending to carry out work of the kinds described in the Act must give adjoining owners notice of their intentions. The notice must state whether the intention is to strengthen or safeguard the foundations of the building or structure belonging to the adjoining owner. The Act contains no enforcement procedures for failure to serve a notice, however if works start without having first given notice in the proper way, adjoining owners may seek to stop the work through a court injunction or seek legal redress.
- 9.2 The above is a private matter between two landowners and is not a matter that the Local Planning Authority can control through planning legislation.

### **Maintenance**

- 9.3 Entering onto neighbouring land without the permission of the landowner is defined as trespass and this also applies if a window opens and oversails a neighbouring property or if a soil pipe is located on the neighbouring property. The exact position of the side boundary between the application site and the neighbouring property No.3 Millfield is not known, and in any case, the positioning of the boundary is a private matter between the two landowners and is not a planning issue.
- 9.4 If it is necessary to repair a property by access via the neighbouring land then there is a legal right that allows this under the Access to Neighbouring

Land Act 1992. If it becomes necessary to invoke this legal right because the neighbouring owner will not grant consent for his neighbour to access his land then a court order can be sought under this Act. The Act enables access to adjoining or adjacent land for the purposes of carrying out “basic preservation works” to the property. Basic preservation works includes:-

- Maintenance, repair or renewal of a building;
- Clearance, repair or renewal of a drain, sewer, pipe or cable;
- Filling in or cleaning a ditch;
- Felling, removal or replacement of a tree, hedge or other plant that is dead, diseased, insecurely rooted or which is likely to be dangerous.

9.6 In order to be granted a right of access, proceedings must be commenced in the County Court. The court will grant an access order if it is satisfied that the preservation works are:-

- Reasonably necessary for the preservation of the relevant land; and
- That they can't be carried out, or it would be very difficult to carry out, without entry onto the adjoining land.

9.7 The court can refuse access if it considers this would cause hardship to the occupier or significantly interfere with their enjoyment of the land in question.

9.8 Again, the above is a private matter between two landowners and is not something the Local Planning Authority can control through planning legislation.

## **10.0 APPRAISAL**

### **Background**

10.1 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).

10.2 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.

- 10.3 This current application seeks retrospective planning permission to retain the building in a position to the south west of the site, closer to No.3 Millfield and away from No.33 Cheriton Road, as well as being further back within the site. The side boundary of 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 No.3 Millfield, with a separation distance of 29cm to the rear, as labelled on submitted plan number 17/254/JG/PL01 Rev A, received October 2017.
- 10.4 The previously approved application Y15/1164/SH showed 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 and the setback position of 1 metre from the front elevation within the site. The reduced separation distance between the properties 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 as built to pull them back within the side boundary. 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**

- 10.5 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.
- 10.6 Consequently, 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**

- 10.7 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.

- 10.8 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 some 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. 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 too narrow to enable access between the properties however, the maintenance of neighbouring properties, as set out at the beginning of this report, is a third party issue and not a matter that can be controlled by planning legislation.
- 10.10 The application building as built has been set back further within the site by 1 metre relative to the position approved under application Y15/1164/SH. However, as there is a single storey element to the rear of the application building, there is not considered to be any greater neighbouring amenity impact than that already accepted under the previous applications and therefore the change in position is considered to be acceptable.
- 10.11 The relationship of the application building with the side facing window to the downstairs WC of 3 Millfield has already been accepted under previous applications, and although the separation distance has been reduced, as the application building has moved back within the site by 1m, it is considered that the impact upon this window, which is not classed as a habitable room, is not sufficiently greater than already accepted to warrant a refusal on loss of light.

### **Visual Amenity/Design**

- 10.11 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-west of Millfield has been reduced. The eave details have also been reduced back which creates a slight architectural imbalance 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.
- 10.12 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 readily visible from the street scene, and is considered not to have a significant detrimental impact upon the visual character of the street scene.

## Human Rights

- 10.13 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.
- 10.14 This application is reported to Committee at the request of Cllr Pascoe due to the "adverse impact on the neighbour or street scene, compared to what has previously been approved".

## 11.0 SUMMARY

- 11.1 Acknowledging the resulting detrimental impact upon the occupiers of No.3 Millfield from the development due to the lack of light to the downstairs WC and as any maintenance to the side boundary is now impossible, as set out at the beginning of this report, following Legal advice given to the Council, these are private matters between the two landowners and are not matters that can be controlled by planning legislation. Therefore, in terms of material planning considerations, the setback position of the whole building by 1 metre further from the front of the site, together with the reduction in separation between the development and No.3 Millfield from that previously approved under application Y15/1164/SH, would not result in a significant detrimental impact to the neighbouring amenity in terms of what can be controlled under planning legislation and in assessment against policies SD1 and BE1 of the Local Plan Review and paragraph 17 of the NPPF.
- 11.2 Although considered to be a contrived form of development as a result of construction errors, the changes to positioning of the building, changes to the eave detail and the use of block work to the south west facing elevation are not considered to have a sufficiently detrimental impact upon the street scene to warrant a refusal on visual amenity grounds.

## 12.0 BACKGROUND DOCUMENTS

- 12.1 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:** – That planning permission be granted subject to the following conditions:

1. Submitted plans



2. Water efficiency
3. Materials
4. Refuse/recycling
5. Cycle storage
6. Boundary treatment
7. Wheel washing
8. Removal of PD rights

---

Decision of Committee

