



Appeal Decisions

Hearing held on 31 July 2012

Site visit made on 31 July 2012

by Elizabeth Fieldhouse DipTP DipUD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 September 2012

Appeal A Ref: APP/A2280/E/12/2173740

Land between Medway Road and Cumberland Road, Medway Road, Gillingham, ME7 1FE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by London and Quadrant Housing Association against the decision of the Medway Council.
 - The application Ref MC/11/2913, dated 22 November 2011, was refused by notice dated 8 March 2012.
 - The works proposed are the installation of a proposed access over and through a listed zone of 'dragon's teeth' tank traps identified as a heritage asset.
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Appeal B Ref: APP/A2280/A/12/2173709

Land between Medway Road and Cumberland Road, Medway Road, Gillingham, ME7 1FE

- 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 London and Quadrant Housing Association against the decision of the Medway Council.
 - The application Ref MC/11/1888, dated 7 July 2011 was refused by notice dated 8 March 2012.
 - The development proposed is construction of 10 dwellings together with parking courtyard, boundary wall and entrance gates.
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Decisions

1. The appeals are dismissed.

Procedural matters

2. The proposal was amended from an application for 11 dwellings to one for 10 dwellings prior to determination by the Council. The proposal as determined and shown on drawing no. 2001.WD.01M no longer includes a boundary wall or entrance gates. The appeals will be determined on this basis. Access to the site is gained through the collection of anti-tank pimples referred to as 'dragons teeth' that were listed as grade II in 2008.
3. The appeal site was allocated for housing on the Proposals Map of the Medway Local Plan 2003 (LP) and the Council raises no objection to the proposed residential use of the site. The National Planning Policy Framework (the Framework) came into force on 27 March 2012. Paragraph 215 advises that saved policies of the local plans should be given due weight according with the degree of consistency with the Framework. The LP policies referenced are

consistent with the broad policy principles of the Framework. Planning Policy Statement 5 *Planning for the Historic Environment* has been replaced by section 12 of the Framework.

4. A signed but undated Section 106 Agreement was submitted at the hearing. Since the hearing minor amendments have been made to the Agreement that do not alter the substance of the provisions. The contents of the Agreement are considered later in the decision.

Main Issues

5. The main issues in both appeals are the effect of the removal and repositioning of some of the grade II listed anti-tank pimples on the special architectural or historic interest of the heritage asset; and implicit in this issue is consideration of whether the proposal would preserve or enhance the character or appearance of the Brompton Lines Conservation Area.

Reasons

6. The group of anti-tank pimples located along the Medway Road frontage of the site consist of a series of truncated concrete pyramids with a base about 1m square that form a south west to north east line approximately 85m in length. They were erected in around 1940 and originally projected about 1.2m above ground level so that the vulnerable underside of tanks would be exposed if they crossed the defence. Barbed wire was attached to top to deter foot soldiers. The anti-tank pimples are roughly in staggered lines, five deep in places, and are of a standard symmetrical form. English Heritage listing indicates that the group of structures was a good surviving group of anti-tank pimples associated with the re-use of the Chatham Lines during World War II. The anti-tank pimples filled the gap in the existing Napoleonic defences which were adapted to form an anti-tank stop-line during the Second World War. The defences were associated with the Nore Command Bunker used in the protection of the entrance to the Port of London as well as traffic up and down the east coast.
7. Nationally the anti-tank pimples are one of 46 good examples and one of only two groups that have been listed in Kent. Some of the structures have been buried under spoil and others are only identifiable by the ivy covered humps. Nevertheless, the line is thought to be largely intact with the only break being a relatively narrow opening for the existing public footpath from Medway Road to Cumberland Road toward the south west end of the site. The proposed access would create a 4.8m wide gap near the road narrowing to 3.2m wide after the first 6m, roughly in line with the fourth row of anti-tank pimples. At least 7 and it is estimated up to 9 anti-tank pimples would have to be removed to allow access. The removed anti-tank pimples would be used to fill areas where there would appear to be gaps particularly near the public footpath.
8. The introduction of a new access through the anti-tank pimples would be at odds with the listed 'buildings' original function which was to prevent access from Medway Road. Therefore the harm to the heritage asset would come not only from the physical act of removing/relocating some anti-tank pimples but also from the loss of the intrinsic historic function of the group. Harm has been caused by the relatively narrow footpath through the anti-tank pimples that was created before the heritage asset was listed. However, the width of the opening that would be necessary to provide vehicular access would damage the understanding of their historic extent and intended purpose. This harm would

- not be overcome by surface marking the missing obstacles in the new access road and referencing them on the proposed interpretation boards.
9. Overall, the loss of the historic functional integrity of the line of anti-tank pimples would lead to substantial harm to the group value of them. Paragraph 133 of the Framework advises that in such a situation consent should be refused unless it can be demonstrated that substantial harm is necessary to achieve substantial public benefits. The substantial public benefits would have to outweigh the harm or, among other points, there is no other viable use of the heritage asset or the benefit of bringing the site back into use outweighs the harm.
 10. The Appellant has proposed a number of public benefits. The anti-tank pimples would be better exposed by the removal of the boundary fence to Medway Road and the cutting back of undergrowth and ivy. There would be future maintenance. A public access footpath would run parallel to Medway Road with seating/picnic area/anti-tank pimple viewing area in the north east. Outside the root protection areas of the frontage trees, buried anti-tank pimples would be exposed. Information boards would be provided that would explain the context of the listed 'building' providing an educational benefit. These matters could be covered by condition.
 11. In addition, the Section 106 Agreement between the Appellant and the Council would provide for a contribution to the Great Lines Heritage Park and the development of affordable housing or market housing with appropriate financial contributions. It is accepted by the Council that only limited financial contributions would be viable in a 100% affordable housing development and the only contribution in such development would be to the Great Lines Heritage Park.
 12. The Appellant is not disputing the charges applied to open market housing and incorporated in the signed Agreement. Nevertheless, noting the contents of the Guide to Developer Contributions Supplementary Planning Document and the responses to the Council's consultations, the contributions identified in the Agreement would meet those desired for a development of 11 dwellings. As the proposal was amended prior to determination to one for 10 dwellings, the contributions required in the Agreement are not directly related to the development proposed or fairly and reasonably related in scale or kind to the development. As a result, the Section 106 Agreement would not meet Regulation 122 of the Community Infrastructure Levy Regulations 2010, added to which the Agreement is not dated. Therefore the Agreement is not taken into account in reaching this decision.
 13. Although the site was designated for housing in the Medway Local Plan 2003 that designation has been post dated by the listing of the heritage asset which has to be considered. The refusal of planning permission may prevent use of the site as proposed but does not necessarily prevent all reasonable or viable uses of the site. Overall, the public benefits that could be achieved would not be so substantial as to offset the substantial harm identified. Even if I had found the harm to be less than substantial in terms of paragraph 134 of the Framework, the public benefits would not outweigh the identified harm from the irrevocable break in the line of 'dragon's teeth' and consequential harm to the integrity of the heritage asset.

14. Turning to the second issue, the anti-tank pimples lie towards the northern end of the Brompton Lines Conservation Area. The Conservation Area Appraisal 2006 was adopted prior to the listing of the group of anti-tank pimples. The appeal site lies within the lower lines area where tree cover and greenery fronting Medway Road are described as contributing to the character. The Appraisal identifies the Lines as one of the few areas where it is possible to appreciate the defences in their original form. Having already identified the harmful impact of the proposed access on the integrity of the line of World War II defences, so too would the proposed access through the anti-tank pimples fail to preserve the character of the Conservation Area.
15. In line with the conclusions on both issues, it follows that the proposal would conflict with the aims of section 12 of the Framework and LP policies BNE12, BNE16 and BNE17.

Other matters

16. The Council raises no objection to the design of the proposed dwellings which reflect nearby listed dwellings. Other concerns relating to the detail of the design have been raised by third parties. Nevertheless, in view of my conclusions on the substantial harm to the grade II listed anti-tank pimples and the character of the Conservation Area, detailed aspects of the design are not considered further. For the reasons given and having regard to all matters raised, the appeals should be dismissed.

Elizabeth Fieldhouse

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Gunne-Jones	Planning and Development Associates – Agents
Jeremy Butterworth BSc(Hons) MA MRTPI	Planning and Development Associates – Agents
Roger Ward	Ward Associates – Architects
Ian Cooper	London and Quadrant Housing Trust – Appellant
John Wafer	London and Quadrant Housing Trust – Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mark Pullin BA MA MRTPI	Senior Planning Officer, Medway Council
Alice Brockway	Conservation Officer, Medway Council
Ben Found	Archaeological Officer, Kent County Council
Cllr Peter Hicks	Vice-Chairman of the Planning Committee

INTERESTED PERSONS:

Keith Gulvin	Trustee Fort Amherst Heritage Trust
Cllr Andy Stamp	Ward Councillor
William MacPherson	Military Adviser to the Mid Kent College and Trustee of Admirals Garden

DOCUMENTS

- 1 Brompton Lines Conservation Area Appraisal April 2006
- 2 Email and attached correspondence from English Heritage dated 1 March 2012
- 3 Email from Ben Found, Kent County Council Archaeological Officer dated 2 March 2012
- 4 Certified copy of the Section 106 Agreement between the Council and London and Quadrant Housing Trust – certified on 30 July 2012
- 5 Medway Local Plan 2003 policies BNE12, BNE13, BNE16, BNE17 and H1
- 6 Request for Developer Contribution for Children’s Services: Schools
- 7 Internal memorandum request for Developer Contributions for off site provision and/or maintenance of Outdoor Open Space
- 8 Supplementary Planning Document - Guide to Developer Contributions

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