

**TOWN AND COUNTRY PLANNING ACT 1990
PINS REFERENCE:**

APP/A2280/W/21/3276221

**STATEMENT OF CASE
OF
MEDWAY COUNCIL**

APPEAL BY ESQUIRE DEVELOPMENTS LTD

**LAND AT UPNOR ROAD,
UPPER UPNOR,
MEDWAY**

JULY 2021

Carter Jonas

1.0 INTRODUCTION

1.1 This Statement of Case relates to an appeal made by Esquire Developments Ltd ("the Appellant") against the decision of Medway Council ("the Council") to refuse to grant planning permission for the following development ("the Proposed Development"). It should be read together with the delegated report which set out the Council's basis for refusing permission.

1.2 The scheme, the subject of this appeal, was submitted to the Council on 22 June 2020 and given the application reference number MC/20/1478. Its proposal was for full planning consent, for the:

"Erection of 72 No. residential dwellings including 18 x affordable housing and erection of Children's Nursery (Use Class E(f)) associated car parking and infrastructure; new landscaping and public open spaces including new public rights of way and new bus stop; sustainable urban drainage system and associated earthworks and a new vehicular access from Upnor Road."

1.3 Following its refusal on 26 February 2021, an appeal was submitted and given the reference APP/A2280/W/21/3276221.

1.4 The scheme, the subject of this appeal, was refused for the following reason:

The proposal would establish development and reinforce the presence of built form in open space that crosses to the east slopes of the Hogmarsh Valley, whilst also introducing another new feature in the form of a building and a stack of approx. 6m high as mitigation measures to address the odour arising from the nearby waste water treatment works. The proposals would erode the attractive rural backdrop that currently forms a green buffer separating Frindsbury, Waincott and Upper Upnor contributing to the threat of coalescence between Upper Upnor and the urban areas, devaluing a currently rural image and as well as weakening the currently attractive setting for a major gateway within the borough - the A289. Overall, it is considered that the impact of this proposal is an intrusion into the countryside which results in harm to the character, appearance and function of this important landscape area that would significantly and demonstrably outweigh the benefits of the 72 dwellings and the provision of a children's nursery. The proposal conflicts with Policies BNE25 and BNE34 of the Medway Local Plan 2003 and paragraph 170(a)&(b) of the National Planning Policy Framework 2019.

1.5 The Council notes that the appellant omitted reference to the NPPF paragraph 170(a) from its cited version of the reason for refusal in its statement of case.

1.6 The relevant officers report and delegated Decision Notice were attached to the Council's appeal questionnaire.

2.0 STATEMENT OF COMMON GROUND

- 2.1 The Council is working with the Appellant to produce a Statement of Common Ground in good time before the Inquiry.

3.0 PLANNING POLICY FRAMEWORK

- 3.1 The Council's starting point will be section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 which, read together, require that the appeals are determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 3.2 The relevant Development Plan for these purposes comprises the Medway Local Plan 2003 (the Local Plan).
- 3.3 The Council will draw on those policies in the Development Plan that are relevant to the appeals and will refer, in particular, to those policies listed in its reasons for refusal.

4.0 MATERIAL PLANNING CONSIDERATIONS

- 4.1 In addition to the Development Plan, the Council will draw on national planning policy as set out in the National Planning Policy Framework ("the NPPF") and national planning guidance contained in the national Planning Practice Guidance ("the PPG") as material planning considerations.
- 4.2 The Council accepts that it cannot demonstrate five years' worth of housing development sites. Based on the December 2020 Annual Monitoring Report, for the period 1st April 2020 to 31st March 2025 the Council can demonstrate a 3.03 year supply. It will, if appropriate, update the five year supply figure for the 1st April 2021 to 31st March 2026 period through its evidence and is in any event, engaging with the Appellant to narrow any areas of disagreement in relation to this issue.
- 4.3 The Council will also set out the steps it has taken, and continues to take, to engage with the challenges of housing delivery. In particular, the Council will refer also to the emerging Local Plan and its supporting Housing Infrastructure Funding (HIF) which will provide the strategic, plan-led approach to the delivery of housing, and other necessary infrastructure, in Medway.
- 4.4 The Council may refer to other planning decisions/appeal decisions of relevance to the Proposed Development and appeal, as necessary.

5.0 THE COUNCIL'S CASE

- 5.1 The Council's case is summarised below, referring to the various component parts of the Reason for Refusal in turn, and then expanding upon them.

The proposal would establish development and reinforce the presence of built form in open space that crosses to the east slopes of the Hogmarsh Valley, whilst also introducing another new feature in the form of a building and a stack of approx. 6m high as mitigation measures to address the odour arising from the nearby waste water treatment works.

- 5.1 The Council will show that development on the site would extend across the eastern valley side for a distance of over 400m within what is, at present, two open arable fields, and the proposals also involve additional built development within the adjacent sewage treatment works.
- 5.2 The Council also notes that the appellant does not control the waste water treatment works, so the proposed mitigation in this area – whilst necessary – is not guaranteed in its delivery.

The proposals would erode the attractive rural backdrop that currently forms a green buffer separating Frindsbury, Wainscott and Upper Upnor contributing to the threat of coalescence between Upper Upnor and the urban areas, devaluing a currently rural image and as well as weakening the currently attractive setting for a major gateway within the borough - the A289.

- 5.3 The Council will show that the built development would extend into this attractive and largely rural area. This would reduce the extent of the green buffer between the settlements; adversely affect the role of the landscape as an attractive green backdrop; create an urban intrusion into the countryside; and adversely affecting the role of the site in providing an attractive setting for the A289 at this point.

Overall, it is considered that the impact of this proposal is an intrusion into the countryside which results in harm to the character, appearance and function of this important landscape area that would significantly and demonstrably outweigh the benefits of the 72 dwellings and the provision of a children's nursery. The proposal conflicts with Policies BNE25 and BNE34 of the Medway Local Plan 2003 and paragraph 170(a)&(b) of the National Planning Policy Framework 2019.

- 5.4 The site is within a locally designated landscape, the Hogmarsh Valley Area of Local Landscape Importance (ALLI). The Council considers that an ALLI is a valued landscape within the meaning set out in Paragraph 170a of the NPPF, as recognised by recent Appeal decisions (including):
- APP/A2280/W/18/3214163: Site at 178 & Land North of Brompton Farm Road
 - APP/A2280/W/19/3240339: Land at Orchard Kennels
- 5.5 The Council's evidence will show that the proposed development would lead to a significant adverse impact on the character, appearance and landscape function of the site itself, the surrounding area, and of the ALLI, as well as significant adverse visual effects for a number of receptors.
- 5.6 The Council will also refer to the Landscape and Visual Impact Assessment submitted with the application and will demonstrate that its claims of net beneficial

landscape effects (repeated in section 3.11 of the Appellant's Statement of Case) are significantly overstated - this would be a significant built development within an attractive and designated landscape, and no net benefits would arise - on the contrary there would be significant harm to the local landscape.

- 5.7 The Council will also seek clarity regarding the deliverability of proposed mitigation which is outside of the 'red line' application area.

6.0 SUMMARY AND CONCLUSIONS

- 6.1 The Council will then explain conflicts with the Development Plan.

- 6.2 The Council's case will then turn to the conflict with the NPPF which the Proposed Development presents, and the overall planning balance, having regard to the benefits of the proposal.

- 6.3 The Council will conclude that the Proposed Development is contrary to Development Plan, as well as the National Planning Policy Framework 2019, and that there are no material considerations in this case that justify the grant of permission. Accordingly, the Council will conclude that the appeal proposal should be dismissed.