

APPLICATION: MA/09/0601 Date: 6 April 2009 Received: 8 April 2009

APPLICANT: Mr P Apps

LOCATION: RIVERSIDE COTTAGE, FORSTAL ROAD, AYLESFORD, MAIDSTONE, KENT, ME14 3AS

PROPOSAL: Retrospective planning permission for change of use to moor residential barges from riverbank as shown on plan date stamped 10 June 2009, as detailed in letter dated 9 June 2009 and Flood Risk Assessment dated November 2008.

AGENDA DATE: 15th October 2009

CASE OFFICER: Amanda Marks

The recommendation for this application is being reported to Committee for decision because:

- it is a departure from the Development Plan

POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV26, ENV28, ENV31, ENV34, ED25
South East Plan 2009: C4, NRM1, NRM2, NRM4, CC1, T4,
Village Design Statement: N/A
Government Policy: PPS1, PPS3, PPS7, PPG15, PPS25

HISTORY (most relevant)

MA/02/0657 Riverside Moorings, Forstal Road, Boxley. Change of use of land for the provision of river moorings for residential boats. Withdrawn.

MA/92/0565 Riverside Cottages, Forstal Road, Allington, Boxley. Provision of moorings at 10 metre intervals along 245m of the north bank of the River Medway for residential 'classic' boats including sewage disposal facilities and parking for 15 cars. Approved with conditions.

MA/90/1522 River Medway and Castle View Farm. Moorings of boats, laying out of ancillary car parking and footpath. Refused.

CONSULTATIONS

The Environment Agency have been consulted and raised no objections to this proposal. They issue a reminder that prior written consent from the EA is required for

any works or structures, in, under, over or within 8 metres of the top of the bank of the main river.

The Medway Internal Drainage Board: no response

KCC Footpaths: comment that works were undertaken in January 2005 to the footpath and May 2005 to the riverbank.

English Heritage: response awaited

REPRESENTATIONS

Boxley Parish Council were notified and made the following comments:

'Do not wish to object but some concern about the possible additional use of the footpath and the need to keep it in good condition.'

CONSIDERATIONS

Site location

The site is located within the open countryside, a designated Special Landscape Area and Strategic Gap. Policy ENV28 restricts development in the countryside unless it falls within strict criteria. New residential use is generally unacceptable and as such the proposal is a clear departure from the local plan and has been advertised as such. The proposal has also been advertised as affecting a PRoW (KH45) and the setting of a Listed Building.

Proposal

Retrospective planning permission is sought for residential moorings on a stretch of the northern riverbank of the River Medway 250m upstream of the Allington Lock. The application site comprises a length of 145m of the river, the adjacent river bank and the private land to the east of riverside cottage. There are presently 5 barges moored within the application site, and there is currently room for one more. No operational development is proposed, consent is sought solely for the change of use to residential.

History

Planning permission was previously granted in this location for a change of use to residential for a temporary period in 1992. Under the terms of condition 1 of MA/92/0565 the use should have ceased and the land returned to its former condition on or before 30 September 1997. The reason given for the condition was to enable the Local Planning Authority to review the special circumstances under which this permission is granted. The use, however, has continued unauthorised ever since. The previous permission had a S106 Agreement attached to it which required the applicant to gain approval from the LPA for each type of boat if/when it changed. This was in order to ensure that historic/classic houseboats were moored only. No definition was

established as to what would constitute a historic or classic boat, and in reality this has not been an enforceable term of the planning permission. The justification for controlling the type of boats appears to have related to their tourism interest and a tenuous link to the setting of Allington Castle. The issue of boat type will be further explored later in this report.

The current application differs from the previous in that a stretch of the mooring rights have been sold off and the area in question is now 145m not 245m. The area provided for the residents to park their cars is also different to the 1992 application.

A planning application was also submitted in 2002 to renew the previous permission on a permanent basis. The application was removed from a planning committee agenda due to last minute concern over the erosion of the riverbank possibly caused by the moored vessels. The application was not proceeded with and subsequently withdrawn.

The 1990 planning application referred to in the history was for a site opposite Allington Castle. The application was refused on the grounds of inadequate parking, unacceptable sewage arrangements, impact on the setting of Allington Castle and unacceptable residential development in the countryside.

Planning Considerations

The determining issues for this application are as follows:

- Whether there are exceptional circumstances to override the policy presumption against residential development in the countryside;
- Whether the development affects the setting of a Listed Building;
- The impact of the development on the towpath a designated PRoW;
- Flooding/EA river issues;
- Amenity impact and provision;

Development in the Countryside

New residential development in the countryside is generally unacceptable in policy terms and as per the advice contained in PPS7. Exceptions can be made to this if a dwelling is for the purposes of supporting an agricultural holding or if a case is made for exceptional circumstances. Clearly this proposal is not for traditional residential development in the countryside as it is based on the river not on the land.

There is no specific Development Plan policy for houseboats, however, river traffic including some permanently moored boats is an expected and established feature on main rivers and the River Medway is no exception. In particular, this is a well used and well viewed stretch of the River Medway. In addition to other river craft i.e. rowers, canoeists, motorised pleasure craft and commercial passenger boats, the area attracts a number of visitors on foot who are able to view the currently moored boats. This principle was established i.e. change of use to residential, albeit temporarily, in the

granting of MA/92/0565. The reason for the temporary permission was in order for the Local Planning Authority to assess the special circumstances under which the permission was granted. There have been no significant material changes in circumstances since the temporary permission was granted or the nature of the application.

With the exception of the parking area on land, the moorings do not impact on the character of the countryside and, in my opinion, whilst they may not fall within the criteria of Policy ENV28 they do not therefore undermine the intentions of the Policy to protect and preserve the countryside. The parking area is adjacent to Riverside Cottage and is not readily viewed from outside the site. This area of parking was also previously used under the 1992 application to part meet the requirement for parking. I do not consider that the use of the moorings for permanent residential occupation as opposed to recreational use would give rise to a nature of use that would cause any significantly greater visual harm to the countryside.

The relatively minor nature of the development means that it would have a minimal impact on the appearance and character of the Special Landscape Area or the openness of the Strategic Gap. Therefore there would be no conflict with the respective policies aiming to preserve these designations.

Impact on the Setting of a Listed Building

Allington Castle is a Grade 1 Listed Building which lies on the southern side of the River Medway to the south east of the application site. Policy BE6 of the South East Plan requires local authorities to have regard to the historic environment and support proposals which will enhance, protect and conserve as necessary. Previously when 245m of the river was to be utilised for moorings there may have been limited views of the castle. However, with the reduced length of the application site there are no views afforded to the castle and its setting is more remote from the application site. Therefore, whilst the application has been advertised as affecting the setting of a Listed Building, I am of the opinion that the site is sufficiently distanced not to have a detrimental impact. The Conservation Officer has raised no objection to the application. I have not yet received the views from English Heritage, however the consultation is not due to expire until 14 October. On the previous applications which were on a larger scale the EA raised no objections. I therefore consider there to be no objection in terms of impact on Allington Castle and its setting.

Moorings generally have been a feature within this area of the River Medway for hundreds of years. Policy ED25 of the MBWLP 2000 allows for further small scale and shorter term moorings. The currently moored boats appear to be of historic interest and are grouped within proximity to the other tourist attractions i.e. Kent Life attraction; the Kentish Lady & Allington Belle boat trips; Allington Lock; The Village Hotel and the Malta Inn. Some of the boats have a plaque providing historical information on the vessel and therefore contribute to the tourist attractions in the locality.

Public Right of Way

The condition of the riverbank and towpath in this location were previously very poor. I note that KCC raised objection to the 2002 planning application on the grounds that the moored boats were contributing to the erosion of the riverbank. I have discussed this issue with the Footpath Officer to ascertain whether this is still a concern. I have been advised that the footpath itself was resurfaced by KCC in May 2005 and the bank was reconstructed in specific areas in January 2005 due to slippage. It is difficult to proportion the percentage of erosion that the moorings cause to the riverbank, as the river is used by commercial traffic which generates wash that will always be impacting on the riverbank structure. No objections are raised by either Kent PRow or the Environment Agency with regard to the current application. Boxley Parish Council raise no objection but are concerned about the possible additional use of the footpath and need to keep it in good condition.

Flooding

A flood risk assessment has been submitted with the application. There does appear to be an error in the report which suggests that 400m of the river has mooring rights pertaining to this application – this should read 145m. However, the rest of the report is relevant. In summary the FRA concludes that the development is not at a significant risk of flooding; would not lead to degradation of the environment; would not prevent safe maintenance of the watercourses; and would not increase flood risk elsewhere. The EA are satisfied with the results of the FRA. As such there is no objection on the grounds of flooding.

Amenity Issues

Previously car parking was provided for 15 vehicles and 10 vessels; the current application provides parking for 10 vehicles but fewer vessels. The area shown on the site location plan for car parking is has a tarmac finish with no designated bays as such. The tenants have keys to allow access through the gate to the parking area. Wheelie bins are stored within the applicant's property and collected in the usual manner. The boats all have access to utilities including fresh water.

Other Matters

The site is located within the countryside, however, it is not isolated in its location. The site is approximately 350 metres outside the urban boundary of Maidstone. Therefore it is considered that the residential boats would be in a relatively sustainable location near to Maidstone and the amenities that it offers. The tow path running alongside the river offers a direct route into the town centre for pedestrian and cycle traffic and the Kentish Lady boat offers another form of transport from the nearby Malta Inn into the town centre.

The 1992 planning permission restricted the number of boats to 10 within a stretch of 245m. Pro-rata the current application length of 145m would allow for 6 boats. The

applicant has requested that any condition restricting the number of boats be set no less than 8 due to their varying size and short-term tenancy (6mths). I am of the view that the number of boats will be restricted as a matter of course depending on the type of boats moored at any given time – this is a relatively short stretch of the river and there is a practical limit to how many boats can be accommodated. Considering the size of boats at present I think it unlikely that more than 6 could be accommodated at any one time. The reason for the imposition of the condition limiting the number of boats was in order to prevent the over-intensive use of the riverbank for mooring and to ensure adequate parking provision for the existing craft.

Continuing east along the riverbank there are additional residential vessels moored which largely fall within the remainder of the previous application site (MA/92/0565). These are under separate ownership and are subject to an enforcement investigation.

Conclusion

In light of the above considerations, I consider that there are exceptional circumstances in this instance as to why residential accommodation is appropriate in the countryside. This is not traditional residential development on land however, it is considered the vessels contribute to the character and history of the River Medway; they are of interest to passing visitors and add to the existing tourist attractions/facilities that they sit alongside. There are no objections from statutory consultees and therefore the application is recommended for approval.

RECOMMENDATION

I BE DELEGATED POWER TO GRANT planning permission subject to the following conditions:

SUBJECT TO:

- a) Any new representations received as a result of outstanding statutory advertisements;
1. The maximum number of vessels that may be moored along that part of the riverbank within the application site shall not exceed 6 craft at any time.

Reason: In order to prevent the over-intensive use of the riverbank for mooring of vessels and to ensure adequate parking provision for existing craft in accordance with policies ENV28 and T13 of the Maidstone Borough-Wide Local Plan 2000.

2. No sewage shall be discharged to any surface water drainage system or watercourse.

Reason: To prevent any contamination of the water environment and in accordance with Policy ED25 of the Maidstone Borough-Wide Local Plan 2000.

3. The approved details of the parking/turning areas shall be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety and in accordance with Policy T13 of the Maidstone Borough-Wide Local Plan 2000.

Informatives set out below

The applicant is advised that under the Water Resources Act 1991 and associated byelaws, the River Medway is designated as a 'main river' and as such, the prior written consent of the Agency is required for any works in, over, under or adjacent to the 'main river'. The byelaw margin for non-tidal 'main river' is eight metres from the top of the bank or toe of flood defence embankment or wall.

Although the Agency has a right to enter onto land to carry out maintenance and repairs to the riverbank, it is not under any obligation to do such work. In the absence of any express agreement to the contrary, maintenance or repair of the riverbank and any structure affecting the channel is the responsibility of the riparian owner.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.