
Appeal Decision

Site visit made on 14 September 2016

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 10 October 2016

Appeal Ref: APP/A2280/W/16/3151528

45 Church Street, Gillingham, Medway, ME7 1SR

- 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 Mr David Tadman against the decision of The Medway Council.
 - The application Ref MC/16/0825, dated 17 February 2016, was refused by notice dated 28 April 2016.
 - The development proposed is erection of a new two storey dwelling at the rear garden boundary with Margret Close with off road parking.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development and grounds of appeal refer to 'Margret Close'. The plans and design and access statement refer to 'Margate Close'. I have used the latter.

Main Issues

3. The main issues are:
 - The effect of the proposal on (a) the character and appearance of the area and (b) the living conditions of existing occupiers, with particular regard to privacy;
 - Whether the new dwelling would (a) provide acceptable living conditions for future occupiers, with particular regard to privacy and internal space standards; and (b) be likely to have a significant effect on the nearby Special Protection Area (SPA).

Reasons

Character and appearance

4. The dwellings in Church Street have long gardens that extend to Margate Close at the rear. The appeal site would be formed from part of the rear garden of No 45 Church Street. As such the new dwelling would have a frontage to Margate Close.
 5. The appellant describes this area as 'wasteland' and considers that the dwelling would represent a new 'precedent' for the area. I appreciate that at present this side of Margate Close is typified by the rear garden fences, gardens and
-

associated outbuildings for the properties in Church Street. I also note that there are some buildings and that the condition of the gardens and buildings varies. I was also made aware of a large building in the garden of a nearby property. However, these are single storey in form and associated with the main dwellings in Church Street. Overall the character is of rear garden areas that offer space and setting to the existing dwellings. This is in distinct contrast to the remainder of Margate Close that is typified by groups of terraces of two storey properties.

6. The site would be narrow and deep. This would dictate the footprint and appearance of the dwelling. The appellant considers that the design of the new dwelling would fit in with local vernacular. However, due to site constraints, the resulting form would be a dwelling with a narrow front elevation and a hipped roof facing the road. This would not reflect the wider frontages of the terraces in Margate Close or the gable roof of No 45 which is also visible. In addition a new dwelling would intrude into the area. Being two storey in height it would stand out when viewed alongside the existing single storey buildings and open rear garden areas. Therefore, whilst appropriate materials could be secured, this would not overcome the fundamental issues with the siting and form of a new dwelling in this location.
7. I therefore conclude that the proposal would be harmful to the character and appearance of the area. It would be in conflict with policies BNE1, H4 and H9 of the Medway Local Plan (LP) which seek well designed new development that maintains the character of the area and respects the street scene and surrounding area.

Living conditions of existing occupiers

8. The new dwelling would be positioned to the rear of existing properties on Church Street. No 45 is occupied as two flats and No 43 is adjacent. No 47 is separated from the site by a pedestrian access way. Subdivision of the existing plot would create shorter garden areas for both No 45 and the proposed dwelling.
9. The dwelling would be narrow and deep in footprint. It would have two rear facing ground floor windows and one rear facing first floor window. The first floor window would be the sole window to serve one of the bedrooms. The plans show that it would be a three pane clear glazed window. This window would face directly toward the rear garden of No 45. It would be positioned above any boundary treatment that could be provided for the subdivided garden area. Overall, due to its size, position and proximity to the existing dwelling, it would have views of the rear garden of No 45 and be visible from this property.
10. I therefore conclude that the proposal would have a harmful effect on living conditions of existing occupiers, with particular regard to privacy. It would be in conflict with LP policies H9 and BNE2 which, amongst other things, when considering new development seek to protect the amenities enjoyed by adjacent properties and prevent loss of privacy from overlooking adjoining houses and/or their back gardens. It would also be in conflict with the National Planning Policy Framework (the Framework) which seeks to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Living conditions of future occupiers

11. The relationship described above would also have impacts for future occupiers of the new dwelling. In particular No 45 has rear facing first floor windows and No 43 has both first floor and dormer windows. The plot would be sub divided to form a new garden area. These windows would be visible from the new garden area. New boundary treatment would not mitigate this. They are sizeable and face toward the site for the dwelling and its associated garden area. As such the garden area would not be a pleasant private space.
12. The Council have referred to the *DCLG Technical Housing Standards – Nationally Described Space Standard 2015*. This sets out a requirement for a two bed three person dwelling to have a minimum floor area of 70m². The Council estimate that the appeal proposal would be about 62m² and this is not disputed by the appellant.
13. I appreciate that the appellant considers that this house design has been used before. Further I am conscious of the need to avoid the inflexible application of numerical standards. Nevertheless, in this case, the form and therefore floor area of the dwelling would be dictated by the constraints of the site. Taken alone a floor area below the standard may not be decisive. However, when considered alongside the resultant layout and its adverse impacts in terms of privacy for future occupants. I consider that it would in this case add to my concerns about living conditions for future occupiers of the development.
14. I therefore conclude that the proposal would not provide acceptable living conditions for future occupiers, with particular regard to privacy and internal space standards. It would be in conflict with LP policies H9 and BNE2 in so far as they seek to secure the amenities of the future occupants of developments and resist schemes where there would be loss of privacy. It would also be in conflict with the Framework which seeks to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Impact on SPA

15. The site is located within 6km of the Thames Estuary and Marshes and Medway Estuary and Marshes SPA areas. The Council's third reason for refusal was that, in the absence of a completed legal agreement necessary to secure the implementation of mitigation measures, it could not be assured that the proposal, either on its own or in combination with other plans and projects would not adversely affect the European designated habitats. The concern relates to recreational disturbance related to residents making leisure trips to the SPA. This concern is shared by Natural England. I note that the appellant has not disputed the need for the mitigation measures and that he would have provided the information as part of the application if requested.
16. Whilst I appreciate that the appellant has indicated that he would agree to contributions towards the mitigation of any harmful impacts arising from the development there is no mechanism before me by which this would be ensured. Consequently, I cannot be satisfied that there would be adequate measures to avoid or mitigate potential adverse effects from recreational use of the SPA by future residents. Therefore the proposal would be in conflict with LP policy BNE35 and paragraph 118 of the Framework which seek to resist development that would have an adverse impact on protected species or their

habitats and seek to use planning obligations to provide appropriate mitigation and compensatory measures.

Other matters

17. The appellant has highlighted that the development would make appropriate provision for parking, that the main objection to the scheme is not from a nearby resident and that the dwelling could be accessed for refuse and fire requirements. However, none of these matters alters or outweighs my findings on the main issues.

Conclusion

18. For the reasons given and having regard to all other matters raised the appeal is dismissed.

D J Board

INSPECTOR