
Appeal Decision

Site visit made on 27 September 2016

by Alex Hutson MATP CMLI MArborA

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

Decision date: 11th October 2016

Appeal Ref: APP/U2235/D/16/3156876

79 Birling Avenue, Bearsted ME14 4LN

- 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 Dr Sarah Hodson against the decision of Maidstone Borough Council.
 - The application Ref 16/503442/FUL, dated 19 April 2016, was refused by notice dated 20 June 2016.
 - The development proposed is single storey rear extension, and first floor side extension on top of existing garage.
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Decision

1. The appeal is dismissed insofar as it relates to the single storey rear extension. The appeal is allowed insofar as it relates to the first floor side extension and planning permission is granted for a first floor side extension at 79 Birling Avenue, Bearsted ME14 4LN in accordance with the terms of the application, Ref 16/503442/FUL, dated 19 April 2016, so far as relevant to that part of the development hereby permitted and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 16037SH-PP-01; 16037SH-PP-02; 16037SH-PP-03; 16037SH-PP-04; 16037SH-PP-05; 16037SH-PP-06; 16037SH-PP-07; 16037SH-PP-08; 16037SH-PP-09; 16037SH-PP-10; 16037SH-PP-11; 16037SH-PP-12; 16037SH-PP-13; and 16037SH-PP-14.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Procedural matter

2. For the reasons that follow, I find the proposed first floor side extension (hereafter referred to as the 'side extension') to be acceptable and it is clearly severable both physically and functionally from the proposed single storey rear extension (hereafter referred to as the 'rear extension'). Therefore, I intend to issue a split decision in this case and grant planning permission for the side extension.
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3. The Council, on its decision notice, refers to Policy DM1- Principles of Good Design, of the emerging Maidstone Borough Local Plan (MBLP). However, there is no evidence before me to demonstrate that the MBLP has yet been fully examined and found to be sound. In light of this, I cannot, at this time, afford any significant weight to this policy.

Main issues

4. The main issues are the effect of the rear extension on the living conditions of the occupiers of 81 Birling Avenue with particular regard to overshadowing and outlook; the effect of the side extension on the living conditions of the occupiers of 77 Birling Avenue with particular regard to outlook; and the effect of the side extension on the character and appearance of the area.

Reasons

Living conditions in respect of the occupiers of 81 Birling Avenue

5. The appeal property is a semi-detached, chalet style dwelling with rooms in the roof and is located on the north-western side of Birling Road, within a wider residential area. The adjoining dwelling, 81 Birling Avenue, which lies to the north-east of the appeal property, has a set of rear patio doors which face in a north-west direction. These patio doors, which are likely to serve a main habitable room, are set back by approximately 0.7 metres (m) from the shared boundary, which comprises a wooden fence approximately 1.8m in height. Having regard to the path of the sun, which travels in an east to west direction, and the modest height of the boundary fence, the occupiers of No 81 are likely to benefit from a good level of sunlight through these patio doors and into the habitable room during the afternoon and early evening.
6. The rear extension would be 2.8m in height, would extend 3.6m from the rear elevation of the appeal property and would be set back by 0.2m from the shared boundary with No 81. Given that the rear extension would extend a substantial height above the shared boundary fence, this, combined with its length, its orientation and its close proximity to the rear patio doors at No 81, would, in my judgement, result in the considerable overshadowing of the rear patio doors. This would be most apparent during the afternoon and early evening and would therefore be for a substantial part of the day. Moreover, the appellant has not provided any substantive evidence, such as a sunlight study, to demonstrate otherwise.
7. I therefore consider that the rear extension would result in a harmful level of overshadowing to the neighbouring patio doors at No 81 and the habitable room that they serve. This would greatly reduce the occupiers' enjoyment of their home.
8. Turning to matters of outlook, I consider that due to the combination of the substantial height of the rear extension, combined with its length and its close proximity to the rear patio doors of No 81, it would have a considerable overbearing and enclosing effect for the occupiers of No 81 when viewed from these doors. This would cause significant harm to their outlook and would further reduce their enjoyment of their home.
9. The appellant makes reference to other examples of single storey rear extensions in the area. However, no detailed information has been provided to allow an informed comparison to be made between those rear extensions and

the rear extension I am to consider as part of this appeal. In addition, each case must be determined on its own merits.

10. The rear extension would therefore result in significant harm to the living conditions of the occupiers of No 81 in respect of overshadowing and outlook and this would substantially reduce their enjoyment of their home. This would be contrary to saved Policy H18 of the Maidstone Borough-Wide Local Plan 2000 (Local Plan) which requires, amongst other things, extensions and additions to residential properties to respect the amenities of adjoining residents including in respect of sunlight and outlook. The rear extension would also be contrary to the broad aims and objectives of the National Planning Policy Framework (the Framework) which seek planning to secure a good standard of amenity for all existing occupants of land and buildings.
11. The rear extension would also conflict with the guidance of the Maidstone Local Development Framework Residential Extensions Supplementary Planning Document adopted 2009 (SPD). The SPD advises, amongst other things, that an extension should not cause the cutting out of sunlight for a significant part of the day to principal rooms in neighbouring dwellings and should maintain an acceptable outlook from a neighbouring property.

Living conditions in respect of the occupiers of 77 Birling Avenue

12. The neighbouring dwelling, No 77, lies to the south-west of the appeal property. A ground floor side window that serves the kitchen of No 77 faces the existing flank wall of the single storey garage of the appeal property from a distance of approximately 2.5m. A ground floor window within a rear extension at No 77 faces the shared boundary fence between the appeal property and No 77, which is approximately 1.8m in height.
13. The side extension would be constructed above the existing single storey garage and would match the existing pitched roof form and ridge height of the appeal property. Whilst this would result in a change in the view from the kitchen window of No 77, the change would be modest, given that this window already directly faces the flank wall of the garage. This is notwithstanding some modest level changes between No 77 and the appeal property. Moreover, kitchens tend not to be considered main habitable rooms and therefore outlook from the kitchen of No 77 is likely to be less important for the occupiers of this property than outlook obtained from other habitable rooms in the house which are more likely to be used for longer periods of time and for relaxation purposes.
14. Whilst the side window to the rear extension of No 77 serves a habitable room, this window would not directly face the side extension and any views of it would be at an oblique angle. Although there may be a modest change in the view from this window, the side extension, given its siting and that its roof would be at its lowest point nearest this window, would not result in an overbearing form of development in views from this window. In addition, this window does not provide the main aspect to the habitable room it serves, which is provided by other windows that face down the rear garden and which would not be affected by the side extension.
15. I therefore conclude that the side extension would not result in harm to the living conditions of the occupiers of No 77 in respect of outlook and would not have a detrimental effect on their enjoyment of their home.

16. This side extension would therefore comply with saved Policy H18 of the Local Plan, which requires, amongst other things, extensions and additions to residential properties to respect the amenities of adjoining residents including in respect of outlook. The side extension would also comply with the broad aims and objectives of the Framework which seek planning to secure a good standard of amenity for all existing occupants of land and buildings.
17. The side extension would also comply with the guidance of the SPD, which advises, amongst other things, that an extension should maintain an acceptable outlook from a neighbouring property.

Character and appearance

18. Birling Avenue comprises dwellings of a variety of architectural styles, though semi-detached, chalet style dwellings with gable ends and front and rear dormer windows, are a frequent occurrence in the area. I observed that gaps between dwellings along this part of Birling Avenue are not particularly uniform and furthermore, that the existing gap between the first floor of the appeal property and the flank wall of No 77 is considerably larger than most others. Whilst some semi-detached, chalet style dwellings in the area are symmetrical, this is not true of the appeal property and No 81. For example, No 81 has a first floor element above its garage.
19. The side extension would continue the existing roof form and style of dormer windows of the appeal property and would extend over the full width of the garage. It would maintain a gap of approximately 2.5m with No 77.
20. I note that the guidance of the of the SPD advises that side extensions should maintain a 3m gap between buildings and should appear subservient to their host dwellings. Nevertheless, the gap which would remain between the appeal property and No 77 at first floor level would broadly reflect the size of gaps between other dwellings in the vicinity of the appeal property along this side of Birling Avenue. In addition, I consider that the continuation of the ridge line, in this instance, would provide a good level of symmetry between the appeal property and No 81. Indeed, the setting down of the ridge could be more likely to draw the eye and increase the prominence of any side extension in this location.
21. Therefore, whilst the side extension would go against the general advice of the SPD, I consider that on this occasion, it would be an appropriate design solution that would reflect the character and appearance of the appeal property and No 81. In addition it would not, in my opinion, create any harmful terracing effect and would broadly reflect the prevailing pattern of development along this part of Birling Avenue.
22. I therefore conclude that the side extension would not result in harm to the character and appearance of the appeal property, streetscene or area. It would therefore comply with saved Policy H18 of the Local Plan, which requires, amongst other things, extensions and additions to residential properties to be of a scale and design which does not overwhelm or destroy the character of the original property and which complements the streetscene, adjacent buildings and the character of the area. The side extension would also comply with the broad aims and objectives of the Framework which seek planning to secure high quality design and to take account of the different roles and character of different areas.

Other matters

23. I acknowledge that the occupiers of No 77 have raised some concerns, including in respect of a party wall, the ventilation of the water closet and their living conditions in respect of privacy and light. However, party wall matters are not a material planning consideration to which I can afford any significant weight. With regard to ventilation, I have no substantive evidence before me to demonstrate that this could not be adequately achieved in accordance with any relevant building regulations.
24. The Council did not object to the side extension on living conditions grounds beyond the effects on outlook. On the basis of the evidence before me and given that the side extension would be orientated to the north-east of No 77, I am satisfied that there would be no unacceptable loss of light to this property. Whilst a proposed first floor bedroom window may allow some degree over overlooking into the garden of No 77, a level of overlooking is already likely to exist from first floor windows of neighbouring properties. In any case, it is unreasonable to expect total privacy, especially as a degree of overlooking is commonplace in urban areas.

Conditions

25. I have had regard to the planning conditions that have been suggested by the Council. In addition to the statutory time limit, a condition specifying the relevant drawings is necessary as this provides certainty. A condition relating to materials is necessary in the interests of character and appearance.

Conclusion

26. Whilst I have found harm to neighbour living conditions in respect of the rear extension, I have found that no such harm would arise as a result of the side extension. In addition, I have found that the side extension would not result in harm to the character and appearance of the area.
27. Therefore, for the reasons set out above and having regard to all other matters, I conclude that the appeal should be allowed insofar as it relates to the side extension, but dismissed insofar as it relates to the rear extension.

Alex Hutson

INSPECTOR