
Appeal Decision

Site visit made on 26 July 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 18 October 2016

Appeal Ref: APP/A2280/W/16/3147398

132 Cooling Road, Strood, Rochester ME2 4RT

- 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 Andy Wilmot against the decision of The Medway Council.
 - The application Ref MC/15/3751, dated 21 October 2015, was refused by notice dated 10 March 2016.
 - The development proposed is the erection of a 2 bedroom chalet bungalow.
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Decision

1. The appeal is allowed and permission is granted for the erection of a 2 bedroom chalet bungalow at 132 Cooling Road, Strood, Rochester ME2 4RT, in accordance with the terms of the application, Ref MC/15/3751, dated 21 October 2015, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Mr Andy Wilmot against The Medway Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - whether the proposed access would be suitable;
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on the living conditions of nearby occupiers.

Reasons

3. The appeal site comprises a rectangular parcel of land that fronts onto Princes Walk, a shared private drive. The site currently forms part of the garden of No 132 Cooling Road, a single storey bungalow which sits in an unusually large, L shaped plot. The proposal is for a narrow width, two-bedroom chalet bungalow fronting Princes Walk; it would have two parking spaces to the front and one dormer window to the side facing No 132.

Access

4. Princes Walk is a relatively narrow private drive with a block paved carriageway and no footways. As such it only provides single lane access and has a steep slope up from the nearest public highway, Cooling Road. Whilst not ideal, it nevertheless currently serves as a main or rear access to a number of existing

properties on the northern side of the lane and the additional traffic generated by one more relatively small dwelling would not be significant. The highway authority do not object to the proposal provided there is adequate visibility where the site access joins the private drive; this can be secured by condition.

5. The Council claim that the proposal would be inappropriate backland development because it would not have frontage onto an adopted highway. However, the proposal would not affect the maintenance arrangements for the lane which are a private matter. It would not be backland development as it would have its own road frontage and would therefore not be 'behind' No 132. The status of the lane, adopted or otherwise, is not a planning issue in itself.
6. For these reasons the proposed access to the dwelling would be suitable and would comply with Policy H9 of the Medway Local Plan 2003 (the Local Plan). This requires new development to have acceptable vehicular access.

Character and appearance

7. The proposal would result in the subdivision of the existing plot of No 132, resulting in a smaller garden for that property. However, the retained garden and that of the new property would both be a reasonable size. The chalet bungalow, whilst a relatively narrow building, would still have a sufficient gap on each side to not appear cramped on its plot when seen from Princes Walk. The width of the plot would be similar to two other properties further along the lane. The loss of this particular garden space would not affect the overall character of the area which comprises a variety of different building types.
8. For these reasons the proposal would not cause significant harm to the character and appearance of the area and would comply with Policy BNE1 of the Local Plan. This requires development to be satisfactory in terms of scale, mass, proportion, layout and siting, and to respect the visual amenity of the surrounding area.

Living conditions

9. Whilst the garden of No 132 would be subdivided, the size of the garden to be retained would still be sufficient for the living conditions of the occupiers not to be seriously affected. The property to the west, No 16 Larkin Close, even with its conservatory, is set away from the common boundary and would not suffer a significant loss of light or outlook compared to the current position with a tall cypress hedge along the boundary. The proposal is for a modest, single storey bungalow with only a rooflight facing No 16 at first floor level and a small dormer window, obscure glazed, facing No 132. The proposal would not therefore be cramped, overbearing, dominant or enclosing when seen from nearby properties, or lead to a loss of privacy.
10. For these reasons the proposal would not cause significant harm to the living conditions of nearby occupiers and would comply with Policy BNE2 of the Local Plan. This requires development to protect the amenities enjoyed by nearby and adjacent properties, including with regard to privacy, daylight and sunlight.

Other matters

11. The appeal site lies within 6 km of the North Kent Marshes SPA/Ramsar sites which have been identified for their importance as habitat supporting certain protected species. Within the 6 km zone an assessment has concluded that

visitor pressure resulting from new housing development is likely to have a significant effect (either alone or in combination with other schemes) on the SPA/Ramsar sites unless it is properly mitigated. An interim mitigation strategy, the Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy, has identified a series of habitat management measures and Natural England have advised that a tariff of £223.58 per dwelling (plus legal and monitoring costs) would fund these measures.

12. A signed and dated unilateral undertaking has been submitted offering these contributions and the Council has agreed that the terms of this are acceptable. Even the visits generated by one house would be likely to have an incremental impact on the SPA/Ramsar sites and in these circumstances the contributions would be necessary, directly related to the development and fair and reasonable in scale and kind¹. The mitigation strategy does not comprise the provision of infrastructure and the contributions do not therefore conflict with the limit of five or more obligations towards an infrastructure project. I am therefore satisfied that the proposed contributions would be both necessary and legitimate in this case, and would avoid any conflict with Policy BNE35 of the Local Plan which seeks to protect nature conservation sites.
13. No 130 Cooling Road is a Grade II listed building but the proposal lies at the end of its rear garden and sufficiently far away for its setting to be preserved.
14. I have carefully considered all the other objections raised. The noise and disturbance from vehicles using the parking area would be minimal and the two spaces proposed would meet the highway authority's standard for a dwelling of this size. An arboricultural report has been submitted demonstrating how the important trees would be retained and the arrangements for their protection could be secured by condition. Suitable boundary treatment could also be secured by condition. The visual appearance of solar panels and a blank wall would not be unusual in a built up area and the plans are sufficiently accurate to judge the impact of the scheme. No objections have been received from the emergency services. Any covenants relating to the site or Princes Walk are a private matter and property values not a direct planning concern. Finally, the disturbance from construction would only be for a limited period and would be controlled by a construction environmental management plan.

Conditions

15. The Council has suggested a number of conditions should the appeal be allowed and I have assessed these against the relevant tests, making adjustments as necessary for clarity. I have also attached a condition to require visibility splays as requested by the highway authority in the interests of highway safety, a landscaping scheme to secure replacement planting at the front of the site and a condition requiring adjustments to the windows and garden of No 132 to allow for the development. Given the constrained site it is also necessary to limit permitted development rights to extend or alter the building in order to retain planning control in future.
16. In addition to the standard implementation time limit it is necessary to define the plans which have been approved in the interests of certainty and proper planning. Conditions to control boundary treatments, ensure first floor side

¹ The three tests in the Community Infrastructure Regulations 2010 and paragraph 204 of the National Planning Policy framework.

facing windows are obscure glazed/non opening and to require a construction environmental management plan are necessary to protect the amenities of adjoining occupiers. A condition to protect existing trees is needed to safeguard the appearance of the area and conditions are also necessary to ensure that parking/turning space is laid out and then retained on site in the interests of highway safety.

Conclusion

17. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Existing – Proposed Floor Plans and Elevations DP/2400/ES-1
 - Proposed Block Plan DP/2400/ES-2
 - Proposed Floor Plans and Elevations DP/2400/ES-3
 - Existing and Proposed Elevations DP/2400/ES-5
 - Existing and Proposed Elevations DP/2400/ES-6
 - Arboricultural report by GRS Arboricultural Consultant dated 14/12/15
 - Tree Protection Plan DP/2400/ES/2
- 3) No development above slab level shall take place until details (and samples if required) of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
- 4) The bathroom and landing windows on the first floor of the proposed bungalow to both the east and west elevations shall be fitted with obscure glass and apart from any top-light, any windows that have a cill height of less than 1.7 metres above internal finished floor level shall be non-opening. This work shall be carried out and completed before the dwelling is first occupied and shall be retained at all times thereafter.
- 5) Prior to first occupation of the dwelling hereby permitted visibility splays shall be provided each side of the access in accordance with details to be submitted to and approved in writing by the local planning authority. The splays shall thereafter be kept free of any obstruction above 0.6 m high.

- 6) Prior to first occupation of the dwelling hereby permitted the west facing window of No 132 Cooling Road shall be relocated and the private garden extended eastwards in accordance with details to be submitted to and approved in writing by the local planning authority.
- 6) No development shall take place until full details of fencing, walling and/or other boundary treatments, including the design of foundations for the boundary treatment, have been submitted to and approved in writing by the local planning authority. Such boundary treatment shall then be erected as approved prior to first occupation of the dwelling hereby permitted and retained at all times thereafter.
- 7) The following measures shall be put in place to protect retained trees.
A "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs a) and b) below shall have effect until the expiration of 5 years from the date of first occupation of the dwelling hereby permitted.
a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any pruning approved shall be carried out in accordance with British Standard 3998 (Tree Work).
b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time as may be specified in writing by the local planning authority.
c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made without the written consent of the local planning authority.
- 8) No development above slab level shall take place until full details of all hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. All such works as may be approved shall then be fully implemented in the first planting season following completion of the development hereby permitted and completed strictly in accordance with the approved details. Any plants or species which within a period of 5 years from the time of planting die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing by the local planning authority.
- 8) No development shall take place until a construction environmental management plan that describes measures to control the noise, dust, and lighting impacts arising from the construction phase of the development has been submitted to and approved in writing by the local planning authority. All construction works shall then be undertaken in accordance with the approved plan.

- 9) Notwithstanding the submitted plans, the proposed front parking area shall not be brought into use until it has been formed from permeable surfacing materials in accordance with details to be submitted to and approved in writing by the local planning authority. The surfacing so provided shall be completed in accordance with the approved details prior to first occupation of the dwelling hereby permitted and shall be maintained as such thereafter.
- 10) The dwelling hereby permitted shall not be first occupied until the area shown on the submitted layout for vehicle parking has been provided. The parking area shall then be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to these parking spaces.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting that Order) no building, structure or alteration permitted by Class A, B or C of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage of the dwelling hereby permitted without the prior approval in writing of the local planning authority.