

Appeal Decision

Site visit made on 22 November 2016

by Nicola Davies BA DipTP MRTPI

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

Decision date: 22 December 2016

Appeal Ref: APP/A2280/W/16/3154372

Land rear of 129 & 131 Marshall Road, Rainham, Gillingham ME8 0AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr John Williams against the decision of The Medway Council.
 - The application Ref MC/16/0711, dated 2 February 2016, was refused by notice dated 30 June 2016.
 - The development proposed is described as 'Build 2 new dwellings'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address provided on the application form (129 Marshall Road) has been replaced by a more accurate version in subsequent documents. I consider this to be usefully more precise and have thus employed it here.

Main Issues

3. The main issues in determining this appeal are the effect of the proposed development on: -
 - (a) The character and appearance of the surrounding area;
 - (b) The living conditions of adjoining occupiers; and
 - (c) Protected and non-protected trees.

Reasons

The character and appearance of the area

4. Marshall Road is characterised by single and two-storey detached and semi-detached houses that are set behind front gardens which front, with regularity to their alignment, on to the highway. The properties in the area have long gardens to the rear. These characteristics define the character of the area.
 5. The proposed development would be two detached single-storey bungalows positioned in the rear garden of No 129 which extends behind the existing garden of No 131. These would be accessed by a new drive between these properties. There are no large structures within rear gardens in the area. Considered in isolation the size, design and materials of the proposed bungalows are generally acceptable. Moreover, they would not be visible from
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the surrounding highways. However, notwithstanding this, the proposal would fail to maintain the distinctive street frontage pattern of existing development in the area, and, therefore, would be intrusive and incongruous.

6. For these reasons I conclude that the proposal would be harmful to the character and appearance of the area. The proposed development would be contrary to saved Policies BNE1, H4 and H9 of the Medway Local Plan 2003 (LP), which seek development to be appropriate in relation to the character, appearance and functioning of the built environment, amongst other matters. The proposed development would also be contrary to paragraphs 53, 56, 60 and 64 of the National Planning Policy Framework (the Framework) that seek to promote or reinforce local distinctiveness and attach great importance to the design of the built environment.

The living conditions of adjoining occupiers

7. Both Nos 129 and 131 have windows in their side elevations that serve habitable internal living spaces and face the short driveway that serves currently No 129's garage. Existing vehicular activity in front of the garage must presently impact to a limited degree on the amenities of the occupiers of No 131. However, I consider the creation of a new access would result in the increased vehicular and pedestrian movements by occupiers of two new households and service providers between the existing properties in close proximity to their windows, as well as to the back gardens of Nos 129 & 131. I consider the proposed access would, therefore, be used more intensively throughout the day and into the evening. Vehicle noise and associated disturbance would impinge on the quite enjoyment of both sets of adjacent occupiers to an unacceptable degree.
8. Despite the side windows being double glazed, this increased movement would be substantially more noticeable to the adjoining occupiers from their internal living areas. The appellant has suggested an acoustic fence could be erected to mitigate against noise and disturbance. However, no details of this fencing have been provided. I cannot therefore be certain that it would mitigate noise and disturbance to an acceptable level or that it would not impinge upon the light and outlook of the adjoining habitable rooms.
9. For these reasons I conclude that the proposal would be harmful to the living conditions of adjoining occupiers. The proposed development would be contrary to saved LP Policies BNE2, H4 and H9, which seek to ensure no significant increase in noise or disturbance to adjacent residents would occur from traffic using an access, amongst other matters.

Protected and non-protected trees

10. There are a number of trees along the boundary of the appeal site and within the rear garden of both Nos 129 and 131. Section 197 of the 1990 Act as amended imposes a duty on the decision-maker to ensure that adequate provision is made for the preservation of trees.
11. The most prominent trees are located within the rear gardens of Nos 129 and 131, noted as T01 (Turkey Oak), T02 (Field Maple) and T03 (Common Walnut) within the Tree Survey Report. They are of considerable size, height and have wide crown spreads. Their amenity value to the setting of the rear gardens is considerable and contributes to the verdant feel of the area. They are clearly

visible to surrounding occupiers and their canopies can be seen over the roof tops of houses in Marshall Road.

12. The appellant's Tree Survey recommends that all of the above except for T01 be retained. The latter is in fact the only tree subject to a Tree Preservation Order (TPO) and its removal has recently been approved by the Council (planning permission reference TPA/16/1464). However, that approval is subject to a requirement that it be replaced with an equivalent specimen in close proximity. There are 4 trees along the south western boundary of the site, one of which is identified to be dead (T06). However, the Leylandii (T07), Cypress (T09) and Common Ash (T11), although recommended for removal, are identified to have 10 years or more life expectancy. The remaining trees to the north and east boundaries are to be retained. Collectively all of the trees contribute to the verdant character of the rear gardens. For this reason the trees, whether recommended for removal or not, with the exception of that which is dead, are worthy of retaining.
13. The dwellings are proposed close to the existing trees within the site and those along the side boundaries. The trees, including that of the replacement TPO'd Turkey Oak even if grown 2m from that of the existing tree, given their proximity to the proposed dwellings would have canopies that would shadow the gardens and habitable rooms of the proposed dwellings. The living accommodation of the dwellings would be gloomier as a result and the gardens would be heavily shaded.
14. For this reason the trees are likely to be under increased pressure from occupiers of the proposed dwellings to be removed to eliminate shading and improve light for enhanced enjoyment of their homes and gardens. Whilst the majority of the trees are not protected, the proposal would escalate the pressure to removal the trees. This pressure would not be so immediate if the gardens were to remain undeveloped. I therefore consider there would be an increased likelihood that the trees would succumb to pressure to be removed if the development were to proceed.
15. For these reasons I conclude that the proposal would be harmful to trees. The proposed development would be contrary to saved LP Policies BNE41, BNE43 and H9, which seek development to retain existing natural features, such as, trees that provide a valuable contribution to local character, amongst other matters.

Other Matters

16. The appellant has drawn my attention to examples of development behind street frontages. However, each proposal falls primarily to be assessed on its own merits. In any event, although I do not know the full circumstances of these other cases, it is readily evident that in a number of them the existing dwelling was set deeper into the plot with the new development on the street frontage rather than vice versa, with no adverse implications for habitable rooms or trees. Therefore, neither these nor any other matters are of such significance as to outweigh the considerations that have led to my conclusions on the main issues.
17. The appellant indicates that he would be prepared to enter into a legal obligation to provide mitigation for any adverse impact on the ecological interests of the nearby North Kent Marshes Special Protection Area that might

arise from the proposal. However, no agreement or unilateral undertaking to that effect has been provided. Contrary to the appellant's understanding, I must have a completed obligation before me if I am to take such mitigation into account. As financial payments would be involved, the matter could not be dealt with by condition. Although this issue has not been cited by the Council as a reason for refusing planning permission it would, nonetheless, merit exploration were it not for the fact that I am dismissing the appeal for other, unrelated reasons. In view of the latter there is no need to address the question of wildlife mitigation further.

Conclusions

18. For the reasons given above, I conclude that the appeal should be dismissed.

Nicola Davies

INSPECTOR