
Appeal Decision

Site visit made on 13 January 2017

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 30 January 2017

Appeal Ref: APP/U2235/W/16/3157506

Land at Forest Hill, Tovil, Maidstone ME15 6FG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr M Stylianides, Landform Developments Ltd against Maidstone Borough Council.
 - The application Ref 16/502872/FULL, is dated 1 April 2016.
 - The development proposed is the erection of 19 no. detached, semi-detached and terraced houses and 10 no. flats.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was not determined within the prescribed period but the Council has submitted an officer report which sets out the reasons why the application would have been refused had it the opportunity to do so.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area, including its effect on trees;
 - Whether the relationship of the proposed dwellings and the adjacent sports court would be acceptable;
 - Whether the proposal would incorporate suitable sustainable drainage systems;
 - The effect of the proposal on ecology/biodiversity; and
 - Whether the proposal would make adequate provision in relation to affordable housing, education, libraries and open space.

Reasons

Character and appearance

4. The appeal site comprises a strip of land fronting onto Forest Hill alongside the YMCA building and sports court, together with a large rectangular site which extends to the south west towards the houses on Postmill Drive and Millbrook

Close. The proposal involves two separate elements, two blocks of flats on the Forest Hill frontage together with a group of detached, semi-detached and terraced houses in a new cul-de-sac arrangement on the main part of the site.

5. The site frontage along Forest Hill contains several mature trees together with numerous smaller trees, bushes and other vegetation. Although providing a strip of tree cover within the generally built-up area, the undeveloped frontage is unmanaged, overgrown and vulnerable to tipping. The most significant tree is a Horse Chestnut (T1) near the proposed cul-de-sac access, but this appears stressed and in decline, and the Council do not object to its replacement.
6. The other main feature is a group of six Sycamore trees (G13) situated near the corner of Barfreton Close. The Council object to the loss of these trees and have recently issued a Tree Preservation Order to protect them. However, planning permission was granted in 2011 for an access road which would have removed three of these trees and potentially threatened the others, albeit retaining an undeveloped frontage with a narrow landscaped strip. On balance I agree with the appellant's arboricultural report which maintains the individual trees in this group are of mediocre quality, their landscape merit is confined to their group effect, and they could potentially be replaced to better effect.
7. The proposal would remove virtually all of the frontage vegetation and replace it with two blocks of flats with a parking area between. A two storey block would be located hard up to the corner of Barfreton Close, leaving little scope for any planting to soften the impact of the building in this visible location. The building would be open to view on three main sides, with the virtually blank elevation facing the parking area appearing stark in views from Forest Hill. The three storey block would be even more prominent due to its width along the frontage, excessive height, emphasised by front facing gables, its siting close to the road, its location at the highest point of Forest Hill opposite Courteney Road and its context with only single and two storey development nearby.
8. With its lack of important individual trees which merit protection and generally unkempt appearance, the visual contribution of the trees and vegetation along the Forest Hill frontage is not so significant as to preclude any development. However, the proposal would remove nearly all of the existing verdant frontage and replace it with two prominent blocks of flats and a parking area. With little opportunity for any replacement planting with semi-mature trees or other soft landscaping to break up the built frontage, the result would be an unduly hard urbanisation of the street scene in this location.
9. The rectangular part of the site is disused and heavily overgrown with some trees on the site boundaries. Whilst some of this area is flat, the western and southern sides slope steeply down towards the adjacent housing. However, the proposed layout appears to take little or no account of this change in levels, particularly at the steepest western end of the site. No slab levels are provided or any indication of cut and fill to demonstrate how the houses and parking spaces at the end of the cul-de-sac would relate to the slope or how the rear gardens would provide useable amenity space for the occupiers.
10. Whilst the landscaped entrance and bend in the road would partly screen the cul-de-sac from Forest Hill, the almost unbroken line of car parking combined with the lack of landscaping immediately in front of plots 11 to 21 would result in an unduly harsh appearance within this part of the scheme. By comparison, the car parking in front of the houses at Morton Way/Coombe Road nearby is

more broken up, that at Arundel Square/Stafford Gardens has more incidental landscaping and that recently approved at Hartnup Street includes a greater area of landscaping along the two sides of the access road.

11. For these reasons the proposal would cause significant harm to the character and appearance of the area contrary to Policies ENV6 of the Maidstone Borough Wide Local Plan 2000 (MBWLP) and DM1 of the emerging Maidstone Borough Local Plan (EMBLP). These require proposals to retain existing features which contribute to the quality of the area, provide a scheme of new planting of trees, hedgerows or shrubs as appropriate, and to respond positively to the local character, particularly with regard to scale, height, mass and site coverage.

Relationship of dwellings and sports court

12. The proposal would wrap tightly around two sides of the YMCA sports court with the three storey block of flats adjacent to one end of the court and the rear gardens of three houses adjoining one side. The court is currently surrounded by tall chain-link fencing and this would be joined by a 3 m high acoustic boundary fence which would screen two sides of the court.
13. The new boundary fencing and block of flats would increase the sense of enclosure for those using the court but they would not physically inhibit its use for sports purposes. A more open outlook for court users could not reasonably be expected over adjacent land in different ownership.
14. The block of flats would be designed to have communal corridors running along the rear, alongside the court, together with the rear wall of flats 1-3 which would only have their bathroom windows facing towards the court. The occupiers of the flats would not therefore be significantly affected by noise or light spillage arising from the use of the court. However, the three houses on plots 27-29 would back onto the court from just a few metres away, with their rear gardens running up to the acoustic fence along the boundary.
15. The sports court is used up to 22.00 hours and is lit by six floodlights which do not at present have light shields fitted. There is no dispute that excessive light spillage would result into the rear facing windows and gardens of the three houses. The appellant argues that the court would only be floodlit at night when the occupiers would close their curtains and not use their rear gardens but this ignores the periods of dusk and low light when this would not be the case. In any event, suitable mitigation should not rely upon the occupier's own actions each time the floodlights are used. Fitting light shields should however provide the necessary mitigation, and whilst not within the appellant's control, a grampian condition could be imposed to ensure the work is carried out prior to the three houses being occupied.
16. The close proximity of the court to nearby properties would also result in noise disturbance from shouting, cheering, whistles etc. Mitigation by acoustic fencing and enhanced window glazing may meet the appropriate standards for *average* measured noise and avoid a statutory noise nuisance, but this would not prevent annoyance being caused by the *irregular* noise and disturbance which would arise from sports activities taking place at such close quarters. This would be most noticeable during the summer months when nearby occupiers would expect to be able to leave their windows and patio doors open and use their rear gardens for amenity purposes.

17. For these reasons the close proximity of the proposed dwellings to the sports court, particularly those on plots 27-29, would result in unacceptable living conditions for the occupiers in relation to noise and disturbance, and without further mitigation, light spillage. This would be contrary to Policy DM1 of the EMBLP which requires development to provide adequate residential amenities for future occupiers and could lead to pressure to reduce the use of the sports court to its detriment as a community facility. There would not however be any direct conflict with Policies DM22 and DM23 of the EMBLP as these refer to the loss of existing or the provision of new facilities.
18. The appellant refers to a recent planning permission for a games court near to residential property at Greenfield Primary School. However, this court is not proposed to be floodlit, is likely to be used for fewer hours and would be sited further away from the nearest dwellings. It does not therefore set a precedent for the current scheme.

Sustainable drainage systems (SUDS)

19. The appellant submitted a Sustainable Drainage Assessment Report as part of the appeal although this refers to a slightly different scheme. The report deals with the attenuation requirements which should be met by a SUDS scheme for the site and makes a series of recommendations including the need for further soakaway filtration tests to be carried out. The report does not however set out a definitive set of proposals which would meet the necessary requirements and it is not therefore certain that they can be successfully incorporated into the current scheme design. Accordingly the proposal may not satisfy the policy set out in the Written Ministerial Statement dated 18 December 2014 that a SUDS scheme should be put in place.

Ecology/biodiversity

20. The appellant's Phase 1 Habitat Survey is based on information from 2009 updated by further survey work carried out in September 2014. The surveys indicate the presence of reptiles on site and the potential for bat roosting in one tree which would be removed. Whilst the appellant argues that appropriate mitigation measures can be secured by condition, updated surveys are required¹ and thus the details of the necessary mitigation are not yet fully established. These may require an off-site receptor area. Consequently, at present it is not clear that protected species would be adequately safeguarded by the proposal which would be contrary to paragraph 118 of the National Planning Policy Framework and Circular 6/2005.

Affordable housing, education, libraries and open space

21. The appellant states that the 10 flats would comprise affordable housing and also indicates a willingness to agree the infrastructure contributions requested by the Council. However, no unilateral undertaking was submitted by the appeal deadline to secure these commitments and accordingly the proposal would not make adequate provision in this respect. This would conflict with Policy CF1 of the MBWLP together with Policies ID1 and DM13 of the EMBLP which require the provision of community facilities, improved infrastructure and a proportion of affordable housing as part of new development.

¹ Paragraph 4.4 of Prime Environment Ltd report April 2016

Other matters

22. There are disputed rights of way across the site but these are private matter. The YMCA premises have been designed with access from Barfreston Close and are separated by land in separate ownership from Forest Hill. There is no evidence that the visibility of the YMCA premises to passers-by on Forest Hill is essential to its community centre function and in any case continued visibility across private land cannot reasonably be expected.
23. The adjacent planning permission for three dwellings was granted when a cleared, fenced site and thus can be distinguished from the current proposal.

Conclusion

24. The proposal would make good use of a site which is for the most part disused and would provide twenty nine much needed dwellings with important social and economic benefits for the town. The site lies in a sustainable location and would help meet the need for additional housing in the Borough whether or not there is a five year supply of deliverable housing sites. However, the environmental and social objections that have been identified under the main issues significantly and demonstrably outweigh these benefits. This means that the proposal cannot be considered as a fully sustainable development and the presumption in favour of such development does not apply.
25. Having regard to the above the appeal should be dismissed.

David Reed

INSPECTOR