
Appeal Decision

Site visit made on 10 January 2017

by Lesley Coffey BA Hons BTP MRTPI

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

Decision date: 30 January 2017

Appeal Ref: APP/A2280/W/16/3157099

15 Haig Avenue, Medway, Rochester ME1 2RZ

- 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 P Durkin & K Durkin against the decision of The Medway Council.
 - The application Ref MC/15/4049, dated 10 November 2015, was refused by notice dated 11 March 2016.
 - The development proposed is a detached dwelling and provision of replacement parking to No 15 Haig Avenue.
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues to be:
 - The effect of the proposal on the character and appearance of the locality;
 - The living conditions of the occupants of 13 Haig Avenue with particular regard to visual prominence; and
 - The living conditions of future occupants with regard to privacy and amenity.

Reasons

Character and Appearance

3. The appeal site forms part of the rear garden to 15 Haig Avenue, an end of terrace property located on a corner where Haig Avenue turns through 90 degrees.
4. The appeal site lies within the urban area where policy H4 of the Medway Local Plan¹ states that residential development, including infilling, will be permitted provided it results in a clear improvement in the local environment. Policy BNE4 requires the design of development to be appropriate in relation to the character, appearance and functioning of the built and natural environment. Paragraph 215 of the National Planning Policy Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.

¹ Adopted May 2003

5. The Framework attaches great importance to good design, which it considers to be a key aspect of sustainable development, and to contribute positively to making places better for people. However, unlike policy H4, it does not require proposals to provide a clear improvement in the local environment. Notwithstanding this, in so far as policy H4 seeks to balance the need to maximise residential development opportunities against the need to safeguard the amenity of local neighbourhoods, I consider it to be broadly consistent with the Framework and afford it significant weight.
6. The proposal would involve the redevelopment of garden land. Paragraph 53 of the Framework does not preclude such development, but states that local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens. The Council does not suggest that the proposal is unacceptable in principle and has not referred me to any policies limiting the development of garden land.
7. The locality of the appeal site is characterised by 1930's style semi-detached houses with pitched roofs and square bay windows. The proposal is for a detached two storey dwelling with a side garden. It would extend slightly forward of the front elevation of 17 Haig Avenue and the flank elevation of 15 Haig Avenue, but would broadly reflect the established building line of both parts of Haig Avenue. The Council acknowledge that the proposal would respect the surrounding dwellings in terms of scale, mass and proportion and would share a similar building line, eaves and ridge level as the neighbouring properties.
8. Although many properties in the locality benefit from long back gardens, this is only noticeable in some end of terrace views, such as that the immediate vicinity of the appeal site, and to a lesser extent from City Way. I therefore do not consider this to be a defining characteristic of the area. The proposed dwelling would reduce the separation between 15 and 17 Haig Avenue, however, there would remain sufficient distance between the proposed dwelling and 15 Haig Avenue to maintain the character of the area.
9. Although the proposal would not provide a clear improvement to the local environment as sought by policy H4, it would not harm the character and appearance of Haig Avenue and would therefore comply with Local Plan policy BNE2 and the objectives of policy H4.

Living Conditions – 13 Haig Avenue

10. The proposed dwelling would be noticeable from within 13 Haig Avenue. Nevertheless, there would be sufficient separation to ensure that it would not have an overbearing impact on the outlook of the occupants of that property.
11. The proposed dwelling would be located close to the side boundary of 13 Haig Avenue, and would extend almost a third the length of the adjoining garden. The open aspect that the occupants of 13 Haig Avenue currently enjoy within their garden would be replaced by a two storey house in close proximity to the boundary. Owing to the height, bulk and proximity of the proposed dwelling to the boundary it would have an obtrusive and overbearing presence when viewed from the garden of 13 Haig Avenue.
12. The proposed first floor windows facing towards the rear garden of 13 Haig Avenue would serve bathrooms and a landing. I am satisfied that these

windows could be obscure glazed and therefore the proposal would not give rise to a loss of privacy.

13. I conclude that although the proposal would not give rise to a loss of privacy, the proposal would harm the living conditions of the occupants of 13 Haig Avenue and would fail to comply with Local Plan policy BNE2 which amongst other matters seeks to safeguard the amenities of adjacent occupants.

Living Conditions – Future Occupants

14. The upper floor windows of 15 Haig Avenue would overlook the garden of the proposed dwelling. There are two windows in the first floor rear elevation of 15 Haig Avenue, one of which would appear to serve a bathroom. As within any urban area, some mutual overlooking occurs between existing dwellings in the locality. The proposed garden would not be overlooked to such an extent that it would fail to provide a satisfactory amenity space for future occupants. Moreover, appropriate landscaping adjacent to the shared boundary could be secured by way of a suitable condition and would limit the extent of any overlooking. Consequently, I conclude that the proposal would provide satisfactory living conditions for future occupants and would comply with policy BNE2.

Other Matters

15. Some local residents are concerned that the proposal would exacerbate parking conditions in the area. The proposal is for a single two bedroom dwelling and would benefit from an off-street parking space. In these circumstances I do not consider that it would significantly affect parking conditions in the locality.
16. The Council advise that the application site is within 6km of the North Kent Marshes Special Protection Areas (SPAs)/Ramsar Sites and that the proposal is likely to have a significant effect, either alone or in-combination, on the coastal North Kent SPAs/Ramsar sites from recreational disturbance on the over-wintering bird interest. In order to mitigate the effect of such disturbance the Council seeks a financial contribution towards strategic measures across the Thames, Medway and Swale Estuaries. The Council state that the appellants have submitted a unilateral undertaking agreeing to pay this tariff, but no undertaking has been submitted with the appeal. Notwithstanding this, insufficient information has been submitted for me to conclude that the contribution sought would comply with Community Infrastructure Levy Regulations 122 and 123(3), or that the proposal would provide adequate mitigation in respect of the North Kent SPA/Ramsar sites.

Conclusion

17. Whilst I have found that the proposal would not harm the character and appearance of the surrounding area, the harm to the living conditions of the occupants of 13 Haig Road is an overriding and compelling objection to the proposal. I conclude that the proposal would fail to comply with the development plan as a whole and the appeal should be dismissed.

Lesley Coffey

INSPECTOR