

Appeal Decision

Site visit made on 24 January 2017

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 02 March 2017

Appeal Ref: APP/U1430/W/16/3161054

5 Cross Lane Gardens, Ticehurst TN5 7HY

- 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 Deklands Ltd against the decision of Rother District Council.
 - The application Ref RR/2016/2161/P, dated 12 August 2016, was refused by notice dated 4 October 2016.
 - The development proposed is erection of detached dwelling and creation of new access.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed development would provide acceptable living conditions for future occupiers with regard to the provision of private amenity space; and
 - the effect of the proposed development on the living conditions of the occupiers of 6 Cross Lane Gardens with particular reference to privacy.

Reasons

Living Conditions for Future Occupiers

3. The appeal site forms part of the garden of 5 Cross Lane Gardens. Cross Lane Gardens is a cul-de-sac with no. 5 located on the south western side. The rear and side garden of 5 Cross Lane Gardens backs onto High Street. Due to changes in level across the site, the house is in an elevated position compared to High Street. Along the High Street frontage the rear gardens of properties in Cross Lane Gardens are screened by vegetation. A highway verge on High Street includes a mature hedgerow and some trees which largely screen the appeal site from the road.
 4. To the north east of the appeal site is 6 Cross Lane Gardens, the rear and side garden of which also extends down to High Street. Further south east of the site are residential properties located reasonably close to the frontage with direct access to High Street.
 5. The proposed development would involve the erection of a detached four bedroom two storey house within the garden of 5 Cross Lane Gardens.
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Additional accommodation would be provided within the roofspace which would have front dormers and a rear rooflight. The proposed layout of the new dwelling would comprise a front part which would reflect the building line of properties fronting High Street and a rear part stepped towards 5 Cross Lane Gardens. A new access from High Street would be provided to the east of the proposed new dwelling.

6. Vegetation on the south western boundary of the appeal site both within the site and within the adjoining verge contributes to the verdant character of the frontage which extends as far as Firholme. Whilst the proposed dwelling would be set back from the boundary by a similar distance to Firholme and Old Forge House the extent and height of vegetation on the front boundary at the appeal site would have a greater impact on the proposed dwelling in terms of loss of light than that which occurs at neighbouring properties.
7. At ground floor level although the living room would be served by windows in two other elevations the principal south western elevation would experience shading of the house and would appear dark and gloomy as a result of the proximity of the boundary trees.
8. At first floor level, apart from windows serving the landing and bathroom, the only window in the south western elevation serving a habitable room serves a room which also has a triple aspect. However, the proximity of trees to this south facing window would also adversely affect occupiers of this room, making this aspect dark and gloomy.
9. At second floor level the dormer windows would be higher and set further back than other windows in the south western elevation thereby potentially allowing greater light than at lower levels. Although the appellant indicates that bedrooms are used predominantly at night and therefore outlook and light are less important than other habitable rooms, bedrooms can serve other functions such as for study. Moreover, with the dormers providing the principal light to the bedroom I consider that the room would also be gloomy.
10. Whilst principal ground and first floor rooms have alternative aspects these too are limited by the presence of boundary trees and shrubs. Consequently I find that the effect of vegetation would be to make the living conditions for occupiers of the proposed property oppressive. Whilst it would be possible to cut back the canopies of trees on the south west boundary without harm to the species as suggested by the appellant, the need to consider this further demonstrates that the proposed property is too close to the front boundary.
11. The rear garden area which would serve the proposed development would have a maximum width of approximately 11 metres and a maximum depth of approximately 9.5 metres with the area reduced by the angle of the boundary. Doors from the kitchen/dining room and lounge would open onto this main part of the rear garden. In addition to the main rear garden area, there would be a further area north of the kitchen with approximately 4 metres between the rear wall and the site boundary. A kitchen window would look out over this area.
12. The rear garden would be an unusual shape, primarily defined by the site boundary to the north east, cutting across the site. The proposed retaining wall to the north west, and boundary planting would mean that the garden was flanked by tall structures. As a result of the boundary trees and shrubs the rear garden would experience a degree of shade and enclosure providing

seclusion and privacy. Although there would be a sense of enclosure for users of the rear garden I do not consider this would be to an extent which was oppressive.

13. With regard to the relationship with the 5 Cross Lane Gardens the main windows of the neighbouring property are in the south eastern elevation and oblique views would be blocked by the proposed house. In addition, there are windows within the flank wall of the property at ground and first floor levels which would afford the possibility of looking into the rear garden of the proposed house. Nevertheless, given the rooms which these windows serve and the layout of the proposed house with the projecting rear kitchen I consider that only a small area of the rear garden would be overlooked but this would not result in material harm to the privacy of future occupiers.
14. Notwithstanding the lack of material harm I have found in respect of the size and enclosure of the rear garden, and overlooking from 5 Cross Lane Gardens I find that the proposed development would not provide acceptable private amenity space for future occupiers. It would therefore conflict with Policy OSS4 of the Rother Local Plan Core Strategy, 2014 (the Core Strategy) which sets out general development considerations. In particular there would be conflict with Part (i) which requires development to meet the needs of future occupiers, including providing appropriate amenities.

Living Conditions for Neighbouring Occupiers

15. The rear garden of 6 Cross Lane Gardens extends to the rear and side of the property towards High Street. Like no. 5 the house is in an elevated position with the garden sloping towards High Street.
16. At first floor level the proposed new dwelling would have windows in the south eastern elevations serving the master bedroom and bedroom three. These would look out towards the south eastern part of the garden of no.6. First floor windows in the north-eastern elevations serving the master bedroom and bedroom three also look towards the house and garden of 6 Cross Lane Gardens.
17. The proposed house would be at a much lower level than 6 Cross Lane Gardens and boundary planting between the two properties would restrict views into the garden. Boundary planting is largely evergreen and primarily within the garden of no.6 which would enable the screening to be maintained to the benefit of the occupiers of that property. In addition the appellant suggested that the section of the garden of no. 5 to the side of the appeal site was less sensitive than the garden immediately adjoining the house. I do not accept the suggestion that this part of the garden is less important and sensitive to the property. In any event it does not lessen the need to protect the garden from overlooking.
18. The distance from windows to the boundary and the presence of vegetation on the boundary would limit overlooking of the neighbouring property. However it should not be for the neighbouring occupier to have to maintain the boundary planting to ensure that there was no overlooking of their garden. Accordingly I find that there would be unacceptable overlooking of the neighbouring garden leading to a loss of privacy and a reduction in the enjoyment of the secluded private garden.

19. The proposed house would generally be set lower than the garden of 5 Cross Lane Gardens and would be over 20 metres from the side elevation of Firholme. Consequently I find that there would be no harm to the living conditions of those properties in respect of privacy.
20. Accordingly I find that the proposed development would be harmful to the privacy of the occupiers of 6 Cross Lane Gardens and therefore would be contrary to Policy OSS4 (ii) of the Core Strategy which seeks to avoid harm to the amenities of adjoining properties.

Other Matters

21. The appellant indicated that the Council cannot demonstrate that it has a five year supply of deliverable housing sites as required by the National Planning Policy Framework (the Framework). However, even if there were a shortfall, the single dwelling proposed would have a negligible impact upon it and the adverse impacts on the living conditions for future occupiers of the dwelling and neighbouring occupiers would significantly and demonstrably outweigh the benefits of the proposed development. In addition, that harm would also outweigh the support for windfall sites set out in Policy RA1 of the Core Strategy.
22. In addition to concerns raised by neighbours and Ticehurst Parish Council which I have already addressed, concern was also raised about the proposed access. However, many other properties along High Street have direct access to the highway and the proposal would not give rise to a level of traffic generation which would impact on road safety. I also note that the highway authority raised no objection to the proposed development. However, this has not led me to any different overall conclusion.

Conclusion

23. For the reasons set out above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Kevin Gleeson

INSPECTOR