
Appeal Decision

Site visit made on 14 February 2017

by L Gibbons BA (Hons) MRTPI

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

Decision date: 16 March 2017

Appeal Ref: APP/A2280/W/16/3162421

32 Gorse Avenue, Weeds Wood, Chatham ME5 0UG

- 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 Miss Lauren Smith against the decision of The Medway Council.
 - The application Ref MC/16/3269, dated 29 July 2016, was refused by notice dated 21 September 2016.
 - The development proposed is the demolition of outbuilding and conservatory and the construction of a 3 bed house and associated parking.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site has a planning history that includes an appeal in 2013¹, which was dismissed. I have considered the previous Inspector's findings and recognise the need for consistency. The main issues in that case related to the living conditions of No 13 Rosemary Close in respect of privacy and the future occupiers in respect of the outdoor space to be provided, and also the effect of the scheme on the character and appearance of the area. I acknowledge that the scheme before me seeks to overcome the concerns of the previous Inspector and the Council. This includes changes to the design of the window on the rear elevation facing towards 13 Rosemary Close.
3. Although not referred to on the Council's decision notice, the Council have advised that the proposal would require mitigation for the effect of the proposal on the North Kent Marshes Special Protection Area (SPA).
4. Taking the above background into account, the main issues are:
 - i) The effect of the proposed development on the North Kent Marshes Special Protection Area (SPA); and,
 - ii) The effect of the proposed development on the living conditions of the occupiers of 30 Gorse Avenue in respect of privacy.

¹ APP/A2280/A/13/2203032

Reasons

North Kent Marshes

5. The Council have advised that the proposal would require mitigation for the effect on the SPA. This is referred to in the Council's officer report. This would be in respect of the effect of new residential development within 6 kilometres of the SPA on recreational disturbance to over-wintering birds. A tariff has been agreed between Natural England and the affected planning authorities, and the Council indicate that a contribution would be required towards Strategic Access Management and Monitoring. It is anticipated that this would be secured in the form of a Unilateral Undertaking.
6. I note that the appellant does not contend that in the absence of mitigation measures the proposal would not have the potential to harm the SPA. I acknowledge that the appellant has previously indicated a willingness to enter in to an undertaking to provide for the contribution although this has not been provided. I note the appellant's concerns about the Council's handling of the process for the SPA, and the application of monitoring and legal fees. Nevertheless, from the evidence before me I consider a contribution would be necessary. The appellant considers that a direct payment to the Council could be made instead of an undertaking. However, I am not persuaded that there would be a sufficient legal guarantee that the contribution would be used for its intended purpose. There is therefore no mechanism before me by which the contributions would be secured.
7. Consequently, I cannot be certain that a scheme would be put in place that would provide adequate measures to avoid or mitigate potential adverse effects on the SPA. The proposed development would be in conflict with saved Policy BNE35 of the Medway Local Plan (LP) 2003, and would be contrary to the National Planning Policy Framework where it relates to conserving and enhancing biodiversity.

Living Conditions

8. The appeal site includes the side garden of No 32 Gorse Avenue. The garden is currently used as hardstanding. It is opposite the side garden of No 30. In between the two properties is a fairly wide public access to the rear of properties which are along Harebell Close and Rosemary Close. The side garden of No 30 is bounded by a very low front wall, which means it is fairly exposed to public view from pedestrians passing along Gorse Avenue and the rear access way. There is a fairly large tree within the side garden and some small shrubs. No 30 also has a private rear garden which is bounded by a high close boarded fence.
9. The proposal would include a clear glazed bedroom window which would face towards the side elevation and side garden of No 30. There would be some overlooking of the side garden at No 30 from the bedroom window. The large tree within the side garden could be removed. Nevertheless, it would provide some additional screening for the side garden at No 30 as long as it is in place. In any event, the distance between the two side elevations would be over 15 metres and would be sufficient that the occupiers would not perceive a significant increase in overlooking. Furthermore, the existing situation is such that the side garden is not private at all given its proximity to the public highway and low front boundary, and there is a very private garden to the rear.

These factors lead me to conclude that the position of the window would not give rise to a material loss of privacy for the occupiers of No 30. The design of the window to the rear elevation of the proposed dwelling would ensure that there would be no overlooking towards the garden of No 13 Rosemary Close.

10. For the reasons given above, I conclude that the proposed development would not cause harm to the living conditions of the occupiers of No 30 in respect of privacy. It would not be in conflict with saved Policy BNE2 of the LP which seeks to protect those amenities enjoyed by nearby and adjacent properties.

Other matters

11. The Council refer to the provision of parking space within the proposed development. The amount to be provided would fall short of the Council's parking standards with a space each for No 32 and the new dwelling. I note that a number of front gardens have not been converted to parking and hardstanding. However, the road can accommodate parking on the roadside, and there is concrete hardstanding along the other side of the road which is wide enough to accommodate cars. This allows for free movement along the pavements and adequate space for manoeuvring of cars. At the time of my site visit during late morning, there were very few cars parked in the area. I accept that this is only a snapshot in time. Nevertheless, it seems to me that there would be sufficient capacity within the area for additional parking without harmful effects to pedestrian and highway safety. The scheme would therefore be acceptable in that regard.

Conclusion and balance

12. I have found that the proposal would be acceptable in terms of the effect on the living conditions of the occupiers of No 30 Gorse Avenue, and in respect of parking provision. However, I have found that the scheme would fail to put in place adequate measures to avoid or mitigate potential adverse effects on the SPA, and this is sufficient reason to dismiss the appeal.
13. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

L Gibbons

INSPECTOR