

Appeal Decision

Site visit made on 28 February 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 29 March 2017

Appeal Ref: APP/V2255/W/16/3165376
9 London Road, Newington, ME9 7NP.

- 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 M Anderson against the decision of Swale Borough Council.
 - The application Ref 16/506230/FULL, dated 4 August 2016, was refused by notice dated 17 October 2016.
 - The development proposed is a chalet type dwelling with detached garage – fronting The Willows.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on the living conditions of future and neighbouring occupiers of the development.

Reasons

3. The proposed dwelling would be sited in the rear garden of 9 London Road which is elevated above the ground floor level of the host dwelling. It would however be accessed from, and seen in the context of, The Willows.
 4. Insofar as the appeal scheme is concerned, Policy E1 of the "*Swale Borough Local Plan 2008*" (the LP) seeks to ensure that new development does not cause demonstrable harm to residential amenity.
 5. It is the relationship of the new dwelling to No 9 that is the issue in this case. According to the Council the separation between the rear elevation of the existing and proposed dwelling would be in the region of 13 metres. It is further stated that the Council would normally expect a distance of 21 metres in such situations. However, neither of the policies cited in the Council's Decision Notice are so prescriptive and I have not been referred to a relevant SPG.
 6. Nonetheless, 21 metres is the generally accepted standard between facing habitable room windows. However, in this case, the rear elevation of the proposed dwelling would be devoid of habitable room windows. It is also pertinent that the orientation between the two dwellings would be skewed by 45 degrees such that any direct over looking into the rear windows of No 9 from the new dwelling would be limited and not at a level to cause demonstrable harm.
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7. I am however less satisfied with the potential overlooking from No 9 to future occupiers of the dwelling. There are habitable room windows at first floor level in the rear of No 9. One of these, a dormer window, would occupy an elevated position facing the small rear garden of the new dwelling. A 45-degree splay line drawn from this window would encompass the majority of the outdoor amenity space to the dwelling. The window would be particularly apparent to future occupiers where it would loom just beyond the shared boundary. Its elevated position would compound the perception of future occupiers being under surveillance.
8. Whilst I accept that a degree of overlooking is inevitable given the site's context within a built-up residential area, I am not persuaded on the evidence before me that this could reasonably be described as typical in this case. I have considered the appellant's view that the harm could be mitigated by landscaping. However, there is nothing before me to demonstrate what this might look like including the height necessary to provide the screening. In any event, this would take a number of years to mature to any reasonable height and in the meantime the occupiers of the dwelling would have to endure unacceptable living conditions.
9. I therefore conclude that the development would cause unacceptable harm to the living conditions of future occupiers. It would thus conflict with Policy E1 of the LP. Although the Council has cited Policy E19 in its refusal reasoning, this is concerned with high quality design and distinctiveness as opposed to living conditions and I cannot find any conflict with the 12 criteria listed under that policy.

Conclusion

10. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

D. M. Young

Inspector