
Appeal Decision

Site visit made on 12 June 2017

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 28th July 2017

Appeal Ref: APP/A2280/W/17/3170999

Land adjacent to 29 Sheldon Drive, Rainham, Gillingham, Kent ME8 8JH

- 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 S Potter against the decision of The Medway Council.
 - The application Ref MC/16/4537, dated 4 November 2016, was refused by notice dated 30 December 2016.
 - The development proposed is the construction of a detached bungalow with associated parking (demolition of existing garage).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are :
 - (i) the effect of the development on the character and appearance of the area;
 - (ii) whether the development would provide adequate living conditions for its future occupants with particular regard to outlook; and
 - (iii) the effect of the development on the North Kent Marshes Special Protection Area.

Reasons

Character and appearance

3. The appeal site is located in a predominantly residential area at the corner of Sheldon Drive and Mierscourt Road. Sheldon Drive is characterised by detached and semi-detached bungalows of differing designs, whilst Mierscourt Road generally has a mix of houses and bungalows which are detached and semi-detached properties. There is a bus stop and shelter on Mierscourt Road immediately adjacent to the appeal site.
4. The site itself is largely covered by an area of hardstanding with a sizable double garage located towards 14 Mierscourt Road. There is also a row of conifer trees between the garage and the boundary to No 14.
5. In contrast to the previous schemes on this site which were refused planning permission and dismissed at appeal¹, the current proposal has the bungalow

¹ APP/A2280/A/14/2213598, APP/A2280/W/14/3001341 & APP/A2280/W/16/3142677

sited close to the boundary with No 14 and the private garden area adjacent to 29 Sheldon Drive. The alteration to the siting of the bungalow is clearly in response to the issues raised in the previous appeal decisions.

6. However, the front door for the bungalow would be located directly behind the bus shelter which would be in close proximity. This, combined with the staggered access path to the front door to negotiate the bus shelter, would result in a development which would appear to have been unacceptably squeezed into the available space to the detriment of the streetscene of Mierscourt Road.
7. In coming to that view, I acknowledge that the design and appearance of the proposed bungalow is not objectionable, and reflects the nature of the surrounding development. However, this does not overcome the harm I have identified.
8. For the above reasons, the proposed dwelling would harm the character and appearance of the area contrary to Policy BNE1 of the Medway Local Plan (2003) (LP) which amongst other matters seek to protect the character and appearance of the area. It would also be at odds with the design aims and objectives of the National Planning Policy Framework (the Framework).

Living conditions

9. In common with the effect of the development on the character and appearance of the area, the principle living conditions concern relates to the juxtaposition of the proposed dwelling to the bus shelter. In this respect, I share the views of the Council that the outlook from the front door of the proposed dwelling is severely compromised by the location of the bus shelter. As a consequence, the proximity of the bus shelter would give rise to an unacceptable outlook for the future occupants of the dwelling.
10. Turning to the outlook from the habitable rooms of the proposed dwelling, it is noted that the living room has a dual aspect (to the garden area and Mierscourt Road), the kitchen window would be facing the boundary to No 29, and the bedroom faces onto Mierscourt Road.
11. In respect of the living room, I consider that the outlook from this part of the dwelling would be good. The kitchen window would be located in the region of two metres away from the boundary fence with No 29. Whilst the outlook from this room would not be ideal, it would nevertheless be satisfactory. Finally, outlook from the bedroom would be partially constrained by the proximity to the bus shelter. However, given the offset between the window and the shelter itself it would not give rise to an unacceptable outlook.
12. The Council have also raised concerns over the effect of the development on the living conditions of the occupiers of No 29 owing to the relationship between the existing and proposed dwellings. However, it is noted that the low pitch of the proposed dwelling and its siting further away from the boundary than the existing garage would therefore limit its impact on outlook and the availability of light. Considering the above, the development would not have any unacceptable effects on the living conditions of No 29. However, that would not outweigh the harm I have already identified.
13. For the above reasons, the proposed development would not provide an acceptable standard of living conditions for its future occupier as a result of the

proximity of the bus shelter contrary to Policy BNE2 of the LP which amongst other matters seeks to secure the amenities of the future occupants of the dwelling.

Special Protection Area

14. From the evidence before me the site lies within 6km of the North Kent Marshes Special Protection Area/Ramsar Sites and that there is a need to provide mitigation from recreational disturbance to on the over-wintering bird interests. The need for mitigation is not disputed by the Appellant, but it has been requested that this could be dealt with by means of a planning condition or that any decision should be delayed to allow time for a legal agreement to be completed.
15. The Government's Planning Practice Guidance (the PPG) advises that 'A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed' (Paragraph: 010 Reference ID: 21a-010-20140306).
16. The PPG also goes on to note that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence 'may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk'. However, I am not of the view that the scheme represents such development. Consequently, I consider that it is not appropriate in this case to secure the requirement for the Appellant to enter into a Section 106 agreement by a planning condition.
17. Given the above, and in accordance with paragraph 118 of the Framework, I am obliged to take a precautionary approach. Consequently, in the absence of a suitable planning obligation, or any other bespoke mitigation scheme, the appeal development would (in combination with other development) be likely to have a significant adverse effect on the North Kent Marshes Special Protection Area contrary to the EU Habitats Directive and Policies S6 and BNE35 of the LP.

Conclusion

18. Taking all matters into consideration I conclude that the appeal must be dismissed.

Chris Forrett

INSPECTOR