
Appeal Decision

Site visit made on 18 July 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 2 August 2017

Appeal Ref: APP/A2280/W/17/3173056

Land rear of 114 Skinner Street, Gillingham ME7 1LG

- 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 J Copeland against the decision of The Medway Council.
 - The application Ref MC/16/2030, dated 3 May 2016, was refused by notice dated 4 October 2016.
 - The development proposed is the demolition of existing garage and replacement with one bedroom detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - The character and appearance of the area;
 - The living conditions of neighbouring residents, with particular regard to outlook;
 - The North Kent Marshes Special Protection Area (SPA);
 - The living conditions of future occupiers, with particular regard to internal and external space; and
 - Highway safety, with particular regard to parking.

Reasons

3. 114 Skinner Street (No 114) is an end of terrace dwelling situated on the corner with Cross Street. To the rear there is a modest garden area and single-storey garage building that faces onto Cross Street. It is proposed to demolish the garage and erect a two-storey, single bedroom, detached house with a private amenity area to one side. The site lies in a predominantly residential area within the urban extent of Gillingham, where various shops and services are accessible.

Character and appearance

4. The general character and appearance of the area is mixed, including a high proportion of terraced houses, some large flatted developments and occasional infill development including a detached bungalow in nearby Jubilee Terrace. The existing garage is principally constructed of breeze blocks and is of no particular merit in the street scene and its removal would not be harmful to the

character and appearance of the area. There are no other garages in this part of Cross Street, albeit there are garages adjacent to the site, accessed from Jubilee Terrace.

5. The proposed plot would be notably smaller than most in the vicinity, where the prevailing pattern is of houses fronting the street with gardens behind. The new dwelling would occupy a significant majority of its modest plot, with an approximately 8m² gated outdoor space to the side, of which part would be occupied by storage. As a result, the new dwelling would appear cramped and alien in the street scene and generally out of keeping general pattern of development nearby. While I note the various infill developments, including the two dwellings of semi-detached appearance at the opposite corner of Cross Street with Jubilee Terrace, the effects of the proposal would be exacerbated because it would be the only two-storey detached house in the vicinity, and significantly more visually prominent than the existing garage.
6. For these reasons, I conclude that the proposed development would harm the character and appearance of the area. It would conflict with saved Policies H4 and BNE1 of the Medway Local Plan 2003 (MLP), which respectively, and among other things, seek to ensure that residential infilling would result in a clear improvement to the local environment, and that development should respect the scale, appearance and location of buildings. While these policies pre-date the National Planning Policy Framework (the Framework), they are generally consistent with its overall objectives in relation to good design and I give them significant weight for the purposes of this appeal.

Living conditions of neighbouring residents

7. The elevation identified on the drawings as the 'right flank' would present towards the rear elevation of No 114 where several windows face the appeal site from the position identified as the 'line of existing property'. The provision of the outdoor amenity space for the new house would result in a modest reduction in the depth of the rear garden to No 114. The two-storey house would significantly add to the height and bulk of built form at the site, where there is currently a single storey garage with a shallow mono-pitched roof. The new building would therefore be significantly more dominant in the outlook from the rear of No 114 and the modest rear garden area that would remain at that property, to the detriment of the living conditions experienced there.
8. I conclude that the proposed development would harm the living conditions of neighbouring residents, with particular regard to outlook. It would therefore conflict with saved MLP Policies H4, which among other things seeks to ensure that infill development would result in a clear improvement in the local environment; BNE1 which among other things seeks to ensure that development would respect the scale, appearance, location, spaces and visual amenity of the area; and BNE2 which among other things seeks to ensure that development would protect the amenities enjoyed by nearby properties. While these policies pre-date the Framework, they are generally consistent with the core principle of always seeking a good standard of amenity for all existing and future occupants of land and buildings and I give them significant weight for the purposes of this appeal.

Special Protection Area

9. I note that the site lies within 6 km of the North Kent Marshes SPA/Ramsar Sites, where it is established that development resulting in a net increase in dwellings, without mitigation measures, would be likely to have a significant effect on those protected sites, within the meaning of the Conservation of Habitats and Species Regulations 2010, arising from residential disturbance to the over-wintering bird interest.
10. The Council advises that mitigation in the form of a financial contribution of £223.58 towards Strategic Access Management and Monitoring would be required. The appellant accepts that the contribution is necessary, advising of his intention to enter into a legal agreement in this regard at a later date, and seeks a condition to secure that position. I note the examples given of conditions having been imposed to this end in other cases.
11. The Planning Practice Guidance (PPG) sets out that a negatively-worded condition should be used only in exceptional circumstances and in the case of more complex and strategically important development. The provision of one dwelling does not meet these requirements. On this basis, I consider that the use of such a condition in this case would not be reasonable and would conflict with the PPG. The PPG is also clear that positively worded conditions requiring the payment of money or a S106 planning obligation should not be imposed. Therefore, in the absence of a completed S106 planning obligation, there is no mechanism before me for securing the necessary mitigation.
12. Given the importance of the protection of the SPA, the regulations require me to take a precautionary approach. Notwithstanding the appellant's intentions, without the necessary mitigation being secured I cannot be satisfied that there would be no likely significant effects arising from the development and that it would not adversely affect the overall integrity of the SPA. Consequently I must conclude that the proposal would harm the North Kent Marshes SPA/Ramsar sites. It would therefore conflict with Paragraph 118 of the Framework.

Living conditions of future occupiers

13. The new dwelling would provide a lounge/kitchen and toilet on the ground floor, one bedroom and a shower room on the first floor and a private outdoor space. The appellant is of the view that the house would be occupied by one person. The Council considers that it could be occupied by two people, that the living space provided would not meet the government's Nationally Described Space Standard for two person occupancy, and that it would not be practical to regulate single occupancy. However, the Written Ministerial Statement of 25 March 2015 makes it clear that such standards can only be applied where there is a relevant current development plan policy. In this case there is no current policy before me and, consequently, this is not a matter which carries any significant weight against the proposal.
14. I note that the outdoor space would be limited and could be overlooked to a degree from nearby properties. While modest, the scheme would provide some private outdoor space for use by the occupier(s), together with storage such as for bins and bicycles. I am of the opinion that a property of the proposed scale and nature would be unlikely to be occupied by a young family. Furthermore, the extent of potential overlooking would not be likely to result in significant harm by lack of privacy, particularly given the fairly close-knit urban nature of the area.

15. I therefore conclude that the proposed development would not be likely to result in significant harm to the living conditions of future occupiers, with particular regard to internal and external space. I therefore find no conflict with saved MLP Policies H4, which among other things seeks to ensure that infill development would result in a clear improvement in the local environment; BNE1 which among other things seeks to ensure that development would respect the scale, appearance, location, spaces and visual amenity of the area; and BNE2 which among other things seeks to ensure that development would protect the amenities enjoyed by nearby properties. While these policies pre-date the Framework, they are generally consistent with the core principle of always seeking a good standard of amenity for all existing and future occupants of land and buildings and I give them significant weight for the purposes of this appeal.

Highway safety

16. The parties generally agree that the proposed one bedroom dwelling, situated in a location reasonably accessible to the services and facilities of Gillingham, would not be likely to give rise to substantial parking demand, and that one parking space on-site parking space would generally be required. No on-site parking provision is proposed for the development and I note that the existing garage associated with No 114 would be demolished, potentially increasing the on-street parking demand associated with that property.
17. I noted during my site visit that surrounding streets are subject to controlled parking zones and that much on street parking provision is limited to resident permit holders. I note the Council's concerns that the development would result in additional competition for parking on the highway. However, there is no significant evidence before me that the modest parking demand arising would increase parking pressure in the area to a significant degree, including during evening and weekend periods, or that this would result in a significant adverse effect on the character of the area or on highway safety. Saved MLP Policy T13 sets out vehicle parking standards and I note that it pre-dates both the Framework and the parking related content of the Written Ministerial Statement of 25 March 2015, which advises that local planning authorities should only impose local parking standards where there is a clear and compelling justification that it is necessary to manage the local road network.
18. I conclude that the proposed development would not have a significant effect highway safety, with particular regard to parking. It would therefore not conflict with saved MLP Policies BNE2, which among other things seeks to ensure that development has regard to activity levels and traffic generation; or T13, the relevant requirements of which are set out above.

Planning balance

19. The appellant asserts that the council cannot currently demonstrate a five year housing land supply, and this is not significantly disputed by the Council. The provision of one additional home would make a positive, albeit very modest, contribution to local housing supply. It would also be make use of a vacant garage site in an accessible location, close to the services and facilities available in the town, and without harm to the living conditions of future occupiers or highway safety. This weighs in favour of the appeal. Moreover, a significant shortfall in housing land supply is a matter to which I attach significant weight.

20. However, in exercising a precautionary approach, I have identified harm in relation to the SPA. Footnote 9 of Paragraph 14 of the Framework shows that policies related to sites protected under the Birds and Habitats Directives are included as specific policies that indicate that development should be restricted. Paragraph 119 of the Framework therefore applies in relation to the SPA, and so the presumption in favour of sustainable development is not engaged in this case. The harms I have identified in relation to the character and appearance of the area, the living conditions of nearby residents, and the SPA are therefore not outweighed by other material considerations.

Conclusion

21. For the reasons given, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR