



Appeal Decision

Site visit made on 19 July 2019

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 2 September 2019

Appeal Ref: APP/A2280/W/19/3227780

598 Mierscourt Road, Rainham, Gillingham ME8 8RQ

- 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 & Mrs J Singh against the decision of The Medway Council.
 - The application Ref MC/17/3909, dated 10 November 2017, was refused by notice dated 21 November 2018.
 - The development proposed is described as, 'proposed demolish the existing 4/5 bedroom chalet bungalow and construct 4no 3 bedroom linked detached dwellings with associated garages and parking'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I note that the appellant has submitted a Unilateral Undertaking (UU) as part of the appeal. However, the UU is incomplete as it is not signed and does not refer to North Kent Marshes SPA/Ramsar Sites. Therefore, I have not taken the UU into account as part of my consideration of the case.
3. I have consulted the main parties regarding the revised National Planning Policy Framework (Framework) published in February 2019 and the Housing Delivery Test and taken into account the comments that were received.

Main Issues

4. The main issues are:
 - the effect of the proposed development, including the loss of trees, on the character and appearance of the area;
 - the effect of the proposed development on the living conditions of nearby occupiers with particular regard to privacy; and
 - whether the proposed development would provide a suitable living environment for future occupiers with particular regard to light and outlook.

Reasons

Character and appearance

5. The site is located at the meeting of Mierscourt Road with Tyler Drive. These adjacent roads have terraced, semi-detached and detached properties in a linear format with similar spacing along the road with front gardens and driveways that

give the area a spacious unified feel. There are mature trees and green open space on Mierscourt Road opposite the appeal site and along the road such that the vicinity around the site has a green and spacious character. The appeal site is a large triangular shaped plot with a large detached dwelling that is out of keeping with the prevailing pattern of development. However, given the space around the dwelling and the trees on the site, it contributes to the green and spacious character of the area.

6. The proposal would introduce four dwellings in the form of two blocks of link detached dwellings in a line set back from the prevailing building lines of the adjacent roads with a shared driveway and landscaping to the front of the houses. I note that the design and scale of the proposed dwellings would be similar to others in the area. However, the front of Block B would be in close proximity to the proposed boundary fence on two sides and would be partially obscured by it. The northern most dwelling would have limited front garden space and parking area adjacent to the property as a result. This dwelling would therefore appear constrained and would adversely affect the spacious character of the area.
7. I note that there is a varied pattern of development in the area and that the full extent of the site would not be readily apparent from the street. I also note that the rear private garden areas would be of an adequate size compared to others in the area. However, given the close proximity of the front of the northern most dwelling to the boundary fence with No 60 Tyler Drive (No 60), the proposal would appear cramped and overdeveloped, detrimentally affecting the open character and appearance of the site and surrounding area.
8. I note the proposed car parking spaces on the site. However, since some landscaping is indicated on the plans and that paved driveways are part of the character and appearance of the area, this aspect of the proposal would not in isolation have an adverse effect on the character and appearance of the area.
9. While I acknowledge the comments relating to Policy H9 of the Medway Local Plan Adopted May 2003 (LP), as part of the development lies to the rear of an existing residential property, this policy is relevant to the proposed development. Since this Policy requires backland development to maintain the character and amenity of the area as a whole and given the adverse effect on the spacious character of the area, the proposal would conflict with this Policy.
10. Turning my attention to the removal of trees on the site, the proposal would require the removal of four trees along the northern boundary which are subject to Tree Preservation Orders. While the trees have limited visibility from Mierscourt Road and Tyler Drive, they are visible from the rear of neighbouring properties. I note that the Tree Survey¹ categorises two of these trees as Category C and two as Category B.
11. The two Category B trees are both Sweet Chestnut trees with a life span of at least 20 years and both are in good physical condition with Tree 5 in particular being of significant height. While the trees may have an asymmetrical crown distribution, from the evidence before me, they are otherwise healthy and could live for many years. One of the two Category C trees is a Sweet Chestnut and while I note the vertical suppression from the neighbouring tree, it nevertheless

¹ Arbtech BS5837:2012 Tree Survey

has a life span of at least 10 years, is in good physical condition and has a significant height. The other Category C tree is a Common Holly and while it is noted as being 'fair' in terms of its physical condition, its longevity is nevertheless at least 10 years. Consequently, given the size and health of the trees proposed to be removed and the significant contribution of the site to the green spacious character of the area, I find they are of significant amenity value and their removal would harmfully diminish the green aspect and individuality of the site, thereby adversely affecting the character and appearance of the area.

12. While a number of trees are proposed to be planted across the site in order to mitigate the removal of the existing trees, details of these trees or a detailed landscaping scheme is not before me. As such there is no demonstration that the proposed trees would mitigate the harm to the character and appearance of the area and it is likely that the trees would take some time to grow. Therefore, there is no certainty that a condition would mitigate the harm to the character and appearance of the area that would result from the removal of the trees.
13. I note the discrepancy between the drawings in terms of the position of a number of the trees at the front of the site and the trees that are proposed to be removed. The appellant confirmed in their appeal statement that the trees near the front of the site are not proposed to be removed and the revised drawings submitted as part of the appeal indicates that the trees at the front of the site are proposed to be retained. However, from the evidence before me and my observations during the site visit, as the revised drawings indicate that some of the trees are located on the pavement, they appear to be shown in incorrect positions. Therefore, even if I were to have regard to these drawings, I cannot be certain that the measures set out in the Arboricultural Method Statement Rev B would be effective. It therefore has not been demonstrated that the proposed development would not harm the protected trees at the front of the site. While the Council may have approved the removal of a tree in the area, each case must be determined on its individual merits.
14. Consequently, the proposed development including the loss of trees would harm the character and appearance of the area. Therefore, it would conflict with LP Policy H4 which permits the redevelopment of existing residential areas and infilling in such areas providing that a clear improvement in the local environment will result. It would also conflict with LP Policy H9 which relates to backland development. In addition, the proposal would conflict with LP Policy BNE1 which among other things seeks development that respects the spaces and the visual amenity of the surrounding area, and with LP Policy BNE43 which seeks development that retain trees, woodlands, hedgerows and other landscape features that provide a valuable contribution to local character. The proposal would also conflict with the Framework in this regard.

Living conditions

15. The site is surrounded by adjacent properties on all sides. The northern most proposed dwelling would be located behind No 60. Since the front of this dwelling would be in close proximity to the boundary, overlooking from the first floor of the proposed house to the rear garden of No 60 would be likely. I note that the appellant has submitted revised drawings as part of the appeal which propose angled bay windows at first floor. Even if I were to have regard to these drawings, given the close proximity of the boundary fence to the front of the proposed dwelling and that only part of the windows at first floor would be

obscured, while overlooking to No 58 Tyler Drive and No 600 Mierscourt Road would be reduced, some overlooking into the rear garden of No 60 would still be likely such that the privacy of the occupiers of No 60 would be adversely affected.

16. While the proposed dwellings would have rear gardens of moderate depth, Nos 13, 14 and 15 Hunstanton Close have gardens of limited depth and the trees along this part of the rear boundary are significantly tall such that views of the gardens of these properties would be unlikely. Even if views of these gardens were possible from the proposed dwellings, given the moderate depth of the proposed rear gardens, there would not be a significant loss of privacy as a result. Nos 16 and 17 Hunstanton Close have larger rear gardens such that even if views of the garden from the proposed dwellings were possible, given the moderate depth of the proposed rear gardens, the privacy of neighbouring occupiers of these properties would not be unduly impacted.
17. However the lack of harm with respect to the privacy of the occupiers of the dwellings on Hunstanton Close does not override the adverse effects on the privacy of the occupiers of No 60.
18. Consequently, the proposed development would adversely affect the living conditions of nearby occupiers with particular regard to privacy. Therefore, it would conflict with LP Policy BNE2 which among other things requires developments to have regard to privacy. It would also conflict with the Framework in this regard.

Living Environment

19. The front of the northern most proposed dwelling of Block B would be in close proximity to the boundary where a tall fence is proposed. This fence would be in close proximity to the window of the lounge. While the appellant has stated that the layout is open plan, from the evidence before me, the lounge space would have no other windows that would provide an alternative source of light. While the dining room would have patio doors, even if the double doors separating the two spaces were glazed or left open, the depth of the space would be significant such that little daylight would reach the lounge area from the patio doors. Consequently, the proposed development would result in inadequate levels of daylight for future occupiers.
20. The close proximity of the fence and the front of the northern most proposed dwelling would dominate the outlook from the lounge window. Since the lounge is likely to be occupied for significant parts of the day, it is likely that the living environment of future occupiers would be adversely affected. While the appellant has indicated that the height of the fence would be slightly reduced from the height indicated on the drawings, the fence would still dominate the outlook from the lounge. Although the appellant suggested alternative options involving moving the proposed dwelling or the location of the fence in order to resolve these issues, I have assessed the proposal based on the evidence before me.
21. Consequently, the proposed development would not provide a suitable living environment for future occupiers with particular regard to light and outlook. Therefore, it would conflict with LP Policy BNE2 which requires developments to secure the amenities of its future occupants and have regard to light among other things. It would also conflict with the Framework which seeks a high standard of amenity for existing and future users.

Other Matters

22. I note local concerns including regarding highway safety. However, as I am dismissing the appeal for other reasons, I have not considered these matters any further. I note the concerns regarding the service provided by the Council. However, I have considered the case on its planning merits.
23. I note evidence regarding the North Kent Marshes SPA/Ramsar Sites. From the evidence before me it appears likely that the proposed development would give rise to at least some harm to the North Kent Marshes SPA/Ramsar Sites were that harm not to be mitigated. I acknowledge the willingness of the appellant to provide financial contributions towards the mitigation measures.
24. In April 2018 the Court of Justice of the European Union (CJEU) held that the decision maker must consider mitigation measures intended to avoid or reduce the harmful effects on a protected site within the framework of an AA, rather than at the screening stage². This responsibility now falls to me as the competent authority. Had I found the appeal development to be acceptable in terms of the character and appearance of the area, the living conditions of neighbouring occupiers and the living environment of future occupiers, I would have found it necessary to investigate this matter in greater detail as part of my appropriate assessment. However, in the circumstances of this case this has not proved to be a determinative matter given the harm identified above that would arise from the development.

Planning Balance

25. The proposal would provide a moderate contribution of four dwellings to the local housing supply as well as temporary economic benefits during the construction phase and future occupiers would provide social benefit through contribution to the local community.
26. However, the proposal including the loss of trees would result in harm to the character and appearance of the area, adverse effects on the living conditions of nearby occupiers with particular regard to privacy and would not provide a suitable living environment for future occupiers with particular regard to light and outlook. I therefore attach significant weight to these harms.
27. I acknowledge the evidence relating to the five-year housing land supply. Even if the Council was not able to demonstrate a five-year housing land supply, given the significant weight attached to the harms that would result from the proposal, the adverse effects would significantly and demonstrably outweigh the benefits.

Conclusion

28. For the reasons given above the appeal is dismissed.

R Sabu

INSPECTOR

² People Over Wind v Coillte Teoranta (C-323/17) EU:C:2018:244, [2018] P.T.S.R. 1668, [2018] 4 WLUK 111