
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: 2nd September 2019

Appeal Ref: APP/A2280/W/19/3227782

60 Tyler Drive, Parkwood, Gillingham ME8 9LU

- 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 K Karagoly against the decision of The Medway Council.
 - The application Ref MC/17/3915, dated 10 November 2017, was refused by notice dated 26 November 2018.
 - The development proposed is described as, '1 no 2 bedroom detached house next to No 60 Tyler Drive'.
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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 and
 - the effect of the proposed development on highway safety.

Reasons

Character and appearance

1. The site is located at one end of Tyler Drive near the meeting of the road with Mierscourt Road. Tyler Drive has detached and semi-detached properties in a linear pattern of development with regular plot widths and similar forms and front gardens and driveways that give the area a spacious unified feel. While the wider area has more varied patterns of development, given the position of the site adjacent to No 60 Tyler Drive (No 60), it has a closer relationship to Tyler Drive than to Mierscourt Road and the wider area. Given that the site is

mostly grass with planting and trees at the boundary, it contributes to the green and spacious character of the area.

2. The proposal would introduce a detached dwelling adjacent to No 60 on a triangular shaped site. The private amenity space to the rear of the site would be triangular in shape and would appear substantially smaller than others in the area. While there would be space to the side of the proposed dwelling, it would be an unusual shape that would limit its usability. I note that the total usable private amenity space may be larger than a number of other gardens in the area. However, as detailed landscaping drawings or indication of the extent of the private amenity space to the side of the dwelling compared with the publicly visible area to the front of the house are not before me, it is unclear how much of this space would be private. Nevertheless, given the limited size of the various spaces around the proposed building, it would appear overly large for the size of the plot, detrimentally affecting the spacious character of the area.
3. The proposed building would have a hipped roof in contrast to the majority of dwellings on Tyler Drive that have gabled roofs. While the shallow pitch may reduce the expanse of roof that would be visible from the street, it would nevertheless be incongruous in an area where the similar roof forms of the dwellings provide a significant contribution to the unified character and appearance of the area.
4. The proposed materials may be in keeping with the materials on other buildings in the area and the proposed building would be in line with the prevailing building line along Tyler Drive. However, the lack of harm in these terms do not override the detrimental effects of the form of the proposed building and size and shape of the private amenity areas of the proposal on the character and appearance of the area.
5. Turning my attention to the proposal removal of a tree on the site. This tree is a Common Ash and is subject to a Tree Preservation Order. I note that the tree is multi-stemmed from the base, the extent of decay at pollard points is unclear from ground level and there is tip dieback throughout the crown. However, the Tree Survey (Arbtech BS5837:2012 Tree Survey) identifies the tree as Category C with a life expectancy of at least 10 years. Given the significant height and position of the tree near the front of the site I find that it is of significant amenity value and its removal would harmfully diminish the green aspect of the site, thereby adversely affecting the character and appearance of the area. While the Council may have approved the removal of a tree in the area, each case must be determined on its individual merits.
6. Consequently, the proposed development, including the loss of a tree, would harm the character and appearance of the area. Therefore, it would conflict with Policies H4 and BNE1 Medway Local Plan Adopted May 2003 (LP) which permits the redevelopment of existing residential areas and infilling in such areas (providing that a clear improvement in the local environment will result) and requires developments to respect the scale, appearance and location of buildings, spaces and the visual amenity of the surrounding area respectively. The proposal would conflict 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.

Highway Safety

7. The proposal includes an extension to an existing crossover to No 60 in order to facilitate access to the proposed dwelling. The extension would be closer to the junction of Tyler Drive with Mierscourt Road and given that the access would serve an additional house, the access would be very likely to be used more frequently. Given the close proximity to the junction, and the bend in Mierscourt Road, it is likely that vehicles travelling to Tyler Drive from Mierscourt Road would not have adequate visibility of the access to react to vehicles exiting the site and vice versa. While the appellant has stated that sufficient visibility splays can be achieved, there is no demonstration of the required visibility splays in the evidence before me. Furthermore, there appears to be no turning area within the site, and vehicles leaving the appeal site would be likely to reverse onto the junction where oncoming vehicles from the two roads would be more focussed on traffic approaching from the junction than on vehicles reversing onto the highway. This would increase the risk of collisions at the junction.
8. I note drawing BLC/60 Tyler Drive/01A that was submitted as part of the appeal. I acknowledge that this drawing has not been consulted upon, and even if I were to have regard to it, given the increase in the width of the access towards the junction and increased use of the access, the proposal would increase the risk of collisions such that there would be an unacceptable impact on highways safety.
9. Consequently, the proposed development would have an unacceptable effect on highway safety. Therefore, it would conflict with LP Policies T1 and T2 which seek development that will not significantly add to the risk of road traffic accidents and proposals which involve the formation of a new access, or an intensification in the use of an existing access which are not detrimental to the safety of vehicle occupants, cyclists and pedestrians. It would also conflict with the Framework in this regard.

Other Matters

10. 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.
11. 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 stage¹. 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 and highway safety, 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.

¹ People Over Wind v Coillte Teoranta (C-323/17) EU:C:2018:244, [2018] P.T.S.R. 1668, [2018] 4 WLUK 111

Planning Balance

12. The proposal would provide a limited contribution of a single dwelling 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.
13. However, the proposal including the loss of a tree would result in harm to the character and appearance of the area and to highway safety. I therefore attach significant weight to these harms.
14. 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

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

RSabu

INSPECTOR