
Appeal Decision

Site visit made on 10 September 2019

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th November 2019

Appeal Ref: APP/A2280/W/19/3231943

Avenue Tennis Club, Glebe Road, Gillingham ME7 2HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr Colin Jarvis against the decision of Medway Council.
 - The application Ref MC/18/3114, dated 12 October 2018 was refused by notice dated 20 February 2019.
 - The development proposed is the construction of eight new detached dwellings and associated parking together with the demolition of the existing extension of no. 26 Second Avenue to allow for adequate access.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Colin Jarvis against the Council in connection with this appeal. This application is the subject of a separate Decision.

Preliminary Matter

3. In the interests of brevity, I have amended slightly the description of the proposed development from that given on the planning application form.

Main Issues

4. The three main issues relevant to this appeal are the effect of the scheme on:
 - a) the living conditions of current and future neighbouring occupants;
 - b) the character and appearance of the area; and
 - c) vehicular and pedestrian access to and from Second Avenue.

Reasons

Living Conditions

5. The appeal site comprises three former lawn tennis courts and a small pavilion and associated buildings located to the rear of residential properties along First Avenue, Second Avenue and Glebe Road in Gillingham. Vehicular and pedestrian access to the site would be from Second Avenue. Use of the tennis courts has now ceased following the relocation of the club to a nearby site.

6. The proposed development consists of 6 two-storey dwellings (plots 1-6) and 2 three-storey dwellings (plots 7 and 8), associated car parking, part demolition of no.26 Second Avenue and the creation of a new vehicular access to Second Avenue. The area surrounding the former tennis club is generally well established and the properties overlooking the site largely comprise semi-detached properties (First Avenue) and terraced family properties (Second Avenue and Glebe Road). An exception to this however is a more recent development of 4 three-storey town houses built on land to the rear of Glebe Road and overlooking the south-eastern boundary of the site following planning permission granted in 2017.
7. The 2 three-storey properties within the development are located close to the rear of the properties along Glebe Road. During my visit I had the opportunity to visit one of the properties that might be affected by the development proposal. I estimate that there would be around 30 metres of separation between the respective principal facing windows of the existing and the proposed properties, and around 10 metres of separation between the existing garden and the proposed properties. Although there were some established trees within the curtilage, I consider that due to overlooking from the upper floors from the proposed development there would be a substantial loss of privacy in the gardens of the Glebe Road properties for current and future occupants.
8. The 3-two storey properties proposed on plots 1-3 will overlook the rear of properties along Second Avenue. Again, the level of separation between principal facing windows is around 30 metres but considerably less between the windows of the new dwellings and the gardens of the existing ones. There is some degree of visual mitigation provided by the fencing. Nevertheless, I find that the loss of privacy that would be experienced by current and future occupants in the gardens of the relevant Second Avenue dwellings would be unacceptable. As regards those properties on First Avenue, the issue of potential loss of privacy does not arise because of the length of their rear gardens, meaning that the new (plots 4-6) and existing properties would be around 40-45 metres apart.
9. In response to these concerns the appellant argues in his statement (paragraph 5.11) that if it is considered that the proposal will result in the loss of privacy for existing and future neighbours then the Council should consider including a condition requiring frosted glass to be used for the relevant windows in the proposed dwellings. I do not consider such a condition to be either practical or desirable. Further, it would create the impression of being overlooked which is unacceptable. I note that the second and third storeys of the new dwellings will accommodate bedrooms facing the rear. Similarly, I note that the second storey rear facing room on plots 1-3 would also be a bedroom. Installing such a window would be detrimental to the living conditions of the future occupants and, by virtue of its incongruity, would harm the character and appearance of the area. For this reason, I dismiss the suggestion for such a condition.
10. Consequently, I conclude that the proposed dwellings at plots 1-3 and 7-8 will result in an unacceptable loss of privacy in the gardens of the relevant properties along Second Avenue and Glebe Road, contrary to saved policies BNE1 ('General Principles for Built Environment'), BNE2 ('Amenity Protection'), H4 ('Housing in Urban Areas and Town Centres') and H9 ('Backland and

Tandem Development') of the Medway Local Plan 2003 as well as to paragraphs 124 and 127 of the Framework.

Character and Appearance

11. The site is hidden and virtually invisible to those passing along the three thoroughfares which bound it. For neighbouring occupants, however, the former lawn tennis courts present a haven of tranquillity surrounded by shrubs and trees and high ivy-entwined fencing.
12. The introduction of 8 dwellings onto the site will change the character and appearance of the area. The appellant contends that the density of the proposal is consistent with the surroundings and that, anyway, the Government recognises that increased densities might in some cases be appropriate (paragraph 127(c) of the Framework). As I have already noted, many of the surrounding properties are terraced and thus have quite high development densities. Nevertheless, because of the small back gardens I consider that the proposed development is too cramped for the site. I also find that, notwithstanding the 4 recently constructed townhouses to the rear of Glebe Road referred to earlier in this decision, the introduction of 2 three-storey dwellings will be very dominant and incongruous and thus harmful to the character and appearance of the area.
13. With the above points in mind I conclude that the proposal will breach saved policies BNE1 ('General Principles for Built Environment'), BNE2 ('Amenity Protection'), H4 ('Housing in Urban Areas and Town Centres') and H9 ('Backland and Tandem Development') of the Medway Local Plan 2003 as well as paragraphs 124 and 127 of the Framework.

Vehicular and Pedestrian Access

14. Access to the development will be via a new road onto Second Avenue between nos. 26 and 28. According to the submitted design and access statement the access road will be 4.8 metres wide. Whilst it will be wide enough for emergency access there is no provision for any pedestrian pavement or pedestrian refuges, presenting a daunting prospect for those negotiating its length. I note the appellant's observation that the Highways department did not express any concern about the proposed access arrangement.
15. During my visit I noted that many cars were parked along Second Avenue. Several of the objectors commented in their written submissions about the safety hazard currently presented by on-street parking along Second Avenue, in particular at the intersection with Glebe Road, which they contend will be exacerbated by the introduction of more housing and an additional junction. Although the on-site car parking provision fails to meet the required level, I concur with the Council that the shortfall is only marginal and thus immaterial. However, I do find that the lack of a pavement linking the site to Second Avenue, combined with the existing level of on-street parking, is likely to present an unacceptable safety hazard to pedestrians walking to and from the scheme. Consequently, I conclude that the proposal breaches saved policies T1 ('Impact of Development') and T2 ('Access to the Highway') of the Medway Local Plan 2003 as well as paragraph 109 of the Framework.

Other Matters

16. The appellant referred in his statement to some other residential schemes that have been approved in the area on the grounds that they are closely comparable. Consistency in decision making is obviously important in order to ensure fairness to all parties and to sustain public confidence in the planning system. Nevertheless, each planning application is considered upon its own merits and inevitably the factual circumstances prevailing will vary between proposals.
17. I was not provided with any details about each of the other residential schemes other than an address and a picture. Thus, I was unable to make any informed assessment as to the extent to which issues arising in those might be relevant to the instant case. The decision taken in this appeal is based upon the scheme before me, the site and its surroundings and the prevailing legal and policy framework. I conclude that the scheme conflicts with the development plan as a whole and with the Framework.

Conclusions

18. Having had regard to all the documents put before me I dismiss this appeal.

William Walton

INSPECTOR