



Appeal Decision

Site visit made on 13 January 2020

by A. Parkin, BA (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2020

Appeal Ref: APP/U2235/W/19/3232563

Land on site of former 51 London Road, Maidstone, Kent, ME16 8JE

- 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 Lebanon Property Trust against the decision of Maidstone Borough Council.
 - The application Ref: 18/506333/FULL dated 5 December 2018, was refused by notice dated 14 March 2019.
 - The development proposed is the erection of a three-storey apartment building, comprising 18 units and 18 parking spaces at basement level.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address of the proposed development from the Council's Decision Notice, which more accurately describes its location.

Main Issues

3. The main issues are the effect of the proposal on:
 - The character and appearance of the area
 - The living conditions of nearby occupiers with particular regard to outlook, privacy and natural light
 - The living conditions of future occupiers of the ground floor flats, with particular regard to outlook
 - Highway and pedestrian safety
 - Affordable housing provision.

Reasons

Character and appearance

4. The appeal site is in a predominantly residential area, containing a mix of different dwellings in generally well landscaped plots of land. The appeal site is a generally rectangular plot, which rises up from London Road towards the rear, and which is largely overgrown with vegetation, including various trees and bushes around much of the boundary. The site previously contained a detached dwelling (No 51), now demolished, which had vehicular and

- pedestrian access to and from London Road, through a ragstone front boundary wall, some 1.4 metres high.
5. The front boundary wall is part of a similar wall positioned along much of the southern side of London Road in this area. The road has a generally southeast/northwest axis that slopes upwards to the northwest, away from Maidstone Town Centre.
 6. There are a limited number of non-residential buildings in the area, such as the Bower Mount Medical Practice (BMMP), a large General Practice centre to the immediate northwest of the appeal site. This comprises a 2-storey traditional brick building with a substantial 2-storey modern extension close to the appeal site. The BMMP centre is at a higher elevation than London Road and the appeal site. It is accessed by steps through the ragstone wall and a landscaped area. The building is largely surrounded by a hard-surfaced car park, with vehicular access from Bower Mount Road.
 7. To the immediate southeast of the appeal site is 49 London Road, a traditional, double gable fronted, 2-storey detached dwelling, also at a higher elevation than London Road. It has a combined stepped and vehicular access through its front ragstone wall and narrow landscape buffer, leading to a hard surfaced area to the front of the dwelling. To the rear are a number of extensions and outbuildings, including a large single-storey, hipped-roofed structure.
 8. To the rear of the appeal site are a number of modern, detached 2-storey dwellings, most of which face onto Whitchurch Close, with their rear elevations and gardens backing onto the site.
 9. The proposed development would be a 3-storey building containing 18 flats, with 18 undercroft car parking spaces beneath it. The front elevation of the proposed building would be of a double gable design, somewhat larger than that at No 49, although set back a similar distance from London Road and with an area of hardstanding between it and the front boundary wall.
 10. The existing vehicular access to London Road would be widened somewhat, which would make the interior of the site more visually prominent. However, the ragstone front boundary wall would be largely retained and extended into the site as part of the proposal. Significant excavation works would be required to enable the provision of the undercroft car park and associated hardstanding, which would be at a similar elevation to London Road. This would also mean that the ground level of the proposed building would be somewhat lower than the ground level of the land to the sides and rear.
 11. The proposed building would occupy a large central part of the appeal site and would have a significantly larger footprint than the demolished No 51. I note the recent planning history of the site, and that the current building is somewhat narrower and less high than the recent proposal that was refused planning permission¹. A 42-bedroomed, 5-storey nursing home proposal² was approved in outline some time ago, with all matters reserved other than Access. However, this approval has now lapsed and I also note that it was determined with regard to a different development plan.

¹ LPA Ref. 18/501160/FULL

² LPA Ref. 08/1990

12. The design and scale of the front elevation of the proposed building, and its set-back position, would not be out of keeping with the mixed character and appearance of this part of London Road, and would be partly screened from view by the front ragstone wall and retained vegetation.
13. The 3-storey height of the proposed building, together with its large footprint, means that its massing would be substantial. The reduction in height and massing as a result of the pitched roof towards the rear of the proposed building and to a lesser extent to the sides, together with its somewhat sunken position within the site, means it would have a similar visual impact to the BMMP building in views from the rear.
14. Whilst it would have a significantly larger height and massing than No 49, particularly the single storey hipped roofed building to the rear, the reduced ground floor level and the amenity areas surrounding the proposed building, together with appropriately mature landscaping along the boundaries, means that it would not cause unacceptable harm to the mixed character and appearance of the area.
15. The submitted drawings³ show that the existing trees to the front and rear are to be retained, with most of the trees to the sides to be removed. New trees would be planted to screen the development from the rear and new native hedgerow planted to the side boundaries. However, amongst the trees to be removed would be category B trees⁴ on the northwestern boundary which are of moderate quality and which would be expected to live for at least another 20 years, at the time of the tree survey in 2016. There is to be no direct replacement of these trees.
16. The evidence includes details of Tree Preservation Orders (TPOs) at both the appeal site and at the BMMP site next door. With reference to evidence none of the four TPO protected trees within the site remain. However, the protected Lime Tree⁵ within the BMMP site and next to the boundary of the appeal site is still present.
17. The submitted tree survey shows a Root Protection Area for this tree, said to have been agreed with the Council with regard to a larger (refused) scheme at the appeal site in 2015. Provided that this is fully adhered to, I have no reason to believe that the construction of the proposed development would cause unacceptable harm to this protected tree.
18. Parts of the front and side of the proposed building would be close to the protected tree. However, this tree was similarly positioned to the former building on the appeal site and does not seem to have been significantly affected by this. There is no compelling evidence to show that the protected tree would be unacceptably harmed by the proposed development, including from future occupiers of the appeal development wishing to undertake works to it.
19. The appellant has not directly addressed the proposed loss of the category B trees or the Council's concerns regarding the impact of the proposed building and access arrangements on retained mature trees, other than to disagree with them. I note the appellant's statement that such concerns were not raised with

³ Including drawing DHA_12489_11V2

⁴ Trees 4B (Holly) and 6B (a row of Yew trees)

⁵ Tree T5 in TPO No.3 of 2011 – Trees at 1 Bower Mount Road, Maidstone

previous, larger schemes at the appeal site. However, concerns have been raised regarding the appeal development.

20. The category B trees make a generally positive contribution to the character and appearance of the area. However, a suitably mature, replacement native hedgerow, whilst smaller than the category B trees, would still, on balance, be sufficient to mitigate their loss, in terms of the character and appearance of the area.
21. It is not clear from the evidence what impact the proposed access arrangements would have on the retained trees to the front and front/side of the site. However, they would be similarly positioned to the existing access, and notwithstanding the issues with the proposed access arrangements, which I address later, there is no substantive evidence to show that any of the existing trees would be unacceptably harmed by this element of the proposed development.
22. For these reasons, the proposed development would have an acceptable impact on the character and appearance of the area. It would not, therefore, conflict with Policy DM1 (principles of good design) contained in the Maidstone Borough Local Plan 2017 (MBLP) and with guidance contained in the National Planning Policy Framework 2019 (the Framework), in this regard.

Living conditions of nearby occupiers

23. The proposed 3-storey building would be somewhat sunken, due to the changes in levels to facilitate the undercroft car park. It would also be separated from its next door neighbours to the side and rear by small amenity spaces and boundary planting. The two side boundaries would be largely cleared of existing vegetation, with replacement native hedges provided in their place. Some trees would be retained by the rear boundary, which would be supplemented by some further tree planting.
24. The appeal building would contain flats with habitable rooms at its rear and along both of its flank elevations, at ground, first and second floor level. These habitable rooms each contain windows, some of which are described as oriel windows, facing towards the next door properties on each floor, although for some of the second floor rooms these would be rooflights.
25. The dwellings to the rear are at a somewhat higher elevation than the appeal building would be. Together with the stated separation distances and the proposed screening vegetation, I am satisfied that the design, height, massing and position of the proposed development would not cause unacceptable harm to the occupiers of these dwellings in terms of overlooking or reduced outlook.
26. However, the habitable room windows on the southeastern side of the appeal building, at first and second floor levels, would face towards the dwelling at No 49. From the evidence I am not satisfied that the changed ground levels within the site, the proposed window designs, the boundary wall or the proposed boundary hedge and separation distances, would prevent harmful overlooking of No 49 and its curtilage from these upper floor windows.
27. Furthermore, the height, massing and position of the proposed development relative to No 49 would mean it would appear overbearing and would reduce the outlook from the various habitable rooms on the northwestern side of No 49.

28. No substantive evidence has been provided that there would be any significant loss of natural light to the nearby dwellings as a result of the proposed development. From its scale and position, and the scale and position of other nearby buildings, it is unlikely that the proposed development would cause unacceptable harm to the occupiers of nearby dwellings, in this regard.
29. For these reasons, whilst the proposed development would not adversely affect the living conditions of nearby occupiers with regard to natural light, it would significantly affect the occupiers of No 49 in terms of loss of privacy and outlook. It would, therefore, conflict with Policy DM1 contained in the MBLP and with guidance contained in the Framework, in this regard.

Living conditions of future occupiers of the ground floor flats

30. The proposed side boundaries of the appeal site, to the rear of the front elevation, would contain vegetation in the form of a native hedgerow. Part of the function of this hedgerow would be to screen the development and its neighbours. The boundary with No 49 also includes an existing brick wall.
31. The appeal proposal has been developed in light of previous refusals of planning permission and is said to have a greater focus on amenity space, both private and shared, to the sides and to the rear. However, the somewhat sunken position of the proposed building, and the short distance from the side elevations to the side boundaries, means that the four ground floor, single-aspect flats would have a very limited outlook.
32. I note the Council's further concern with '...the poor relationship between upper ground floor bedroom windows and external amenity areas...'. However, from the evidence, and in the absence of any specific details, I am not satisfied that this relationship would be likely to cause harm to future occupiers.
33. For these reasons the proposed development would adversely affect the living conditions of future occupiers of the single aspect ground floor flats, with particular regard to outlook. It would, therefore, conflict with Policy DM1 contained in the MBLP and with guidance contained in the Framework, in this regard.

Highway and pedestrian safety

34. Vehicular and pedestrian access to the proposed development would be from the existing opening in the ragstone wall by London Road, which would be widened somewhat. There would be no separation between pedestrians and vehicles using the access.
35. London Road is two-way with footpaths on both sides. There are two side road junctions nearby to the northwest of the appeal site, at Kingsdown Close and Bower Mount Road. There are also two bus stops in close proximity to the appeal site on both sides of London Road and there is a controlled pedestrian crossing in front of the appeal site, a short distance to the southeast of the existing access.
36. London Road forms part of routes to and from Maidstone town centre and from my observations in the early morning and at mid and late afternoon, it was a busy thoroughfare.

37. On 11 January 2019, the Highway Authority objected to the proposal on a number of grounds, including the close proximity to a pedestrian crossing; the absence of an appropriately scaled drawing to demonstrate safe visibility splays; the absence of swept path analysis to demonstrate that medium-sized service vehicles could enter, turn and then egress back onto the public highway in a forward motion, and the absence of the number of traffic movements associated with the existing use and the proposed use.
38. The appellant did not respond to this objection prior to the application being refused planning permission on 14 March 2019. However, an additional drawing, dating from before the application was made, was submitted with the appeal⁶. This drawing shows that an estate car could enter and leave the appeal site in a forward gear, by way of a turning area within the undercroft car park.
39. Government guidance is clear that the appeal process should not be used to evolve a scheme, and that if *an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application*⁷. No explanation has been provided by the appellant as to why they did not respond to the Highway Authority's objection during the application process.
40. I note that the additional drawing shows a significantly different undercroft layout to that shown on drawing DHA/12489/12V2, which is also inconsistent with other submitted elevation drawings, including with regard to the pedestrian entrance to the proposed building. Given these inconsistencies I am not satisfied that the undercroft layout shown on the additional drawing is one that could be achieved as part of the proposed development.
41. I have not, therefore, had regard to the additional drawing. I have determined this appeal on the basis of the scheme that was refused planning permission by the Council and to which the Highway Authority objected. Furthermore, even if I were to accept the additional drawing, it does not address the Highway Authority's stated concerns.
42. Consequently, I am not satisfied that the proposed development would be acceptable in terms of highway and pedestrian safety. It would, therefore, conflict with Policy DM1 contained in the MBLP and with guidance contained in the Framework, in this regard.

Affordable housing provision

43. It is not disputed by the parties that 30% of the proposed dwellings should be *Affordable Housing*, which would be consistent with the requirements of Policy SP20 (Affordable Housing) of the MBLP. A total of six flats (33.33% of the total provision) would be classed as affordable units. This ratio would be controlled by way of a Section 106⁸ Planning Agreement, a signed and certified copy of which was provided during the appeal process, dated 17 January 2020.
44. From the evidence, I am satisfied that the Agreement meets the three tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended).

⁶ 12489 T-01 Rev P1

⁷ Paragraph M.1.1 – Procedural Guide Planning Appeals – England, August 2019

⁸ Of the Town and Country Planning Act 1990

45. Consequently, the proposed development would have an acceptable impact in terms of affordable housing provision and would accord with Policy SP20 of the MBLP and with the Framework in this regard.

Conclusion

46. Whilst the impact of the proposed development on the character and appearance of the area and in terms of affordable housing provision would be acceptable, this would be outweighed by the harm to the living conditions of nearby and future occupiers and with regard to highway and pedestrian safety, as set out above.
47. For these reasons, and taking into account all matters raised, I conclude that the appeal is dismissed.

Andrew Parkin

INSPECTOR