
Appeal Decision

Site visit made on 9 March 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 March 2020

Appeal Ref: APP/A2280/W/19/3239297

51-57 The Street, High Halstow, Rochester ME3 8SJ

- 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 Michael Bull of MHS Homes against the decision of The Medway Council.
 - The application Ref MC/19/0988, dated 28 March 2019, was refused by notice dated 2 August 2019.
 - The development proposed is described as demolition of existing built form, comprising 4 x bedsit accommodation and erection of 8 x residential dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application form gives the site address as 53 The Street. However, both the appeal form and the decision notice, as too the materials submitted in support of the application and appeal, give the site address as 51 - 57 The Street. As this appears to be the correct version of the address, I have used it in the banner heading above.

Main Issues

3. The main issues are:
 - the effect of the development on the character and appearance of the area;
 - the effect of the development on the living conditions of occupants of neighbouring dwellings, with particular regard to privacy;
 - whether the development would make adequate provision for parking; and
 - biodiversity.

Reasons

Character and appearance

4. The building within which Nos 51-57 are accommodated is one of a group of 4 buildings of similar size and design. Each is reasonably well spaced, set back from and faces the street. Other, predominantly semi-detached dwellings along The Street, do the same. Thus, whilst there are some variations in the design of individual buildings, the layout of development within the setting of the site follows a generally consistent pattern.

5. Both the appeal site, and dwellings to the north and south, stand on spacious plots with long back gardens. These back onto smaller gardens attached to bungalows which line Goodwood Close to the east. Together the adjoining gardens combine to form a substantial block of green space. This is appreciable from within the gardens themselves, through gaps in the street frontages, and in general views from the sports field and footpaths to the south. The block forms an attractive feature of the area, and aside from outbuildings and boundaries, this has a strongly open character.
6. The proposed development would see replacement of the existing building with a more substantial terrace of 3 dwellings (terrace A), and construction of a second terrace of 5 dwellings (terrace B) within the current back garden space. Terrace B would be positioned perpendicular to The Street.
7. The position of terrace A would accord with the established general pattern, however the position of terrace B would be acutely at odds. The atypical positioning of terrace B would be accentuated by its substantial mass and the fact that it would cut across the block of garden space. It would be further emphasised by the significant area taken by the access driveway and adjacent parking to its front, which would run the full length of the plot. The visual intrusion caused would be clearly perceived from The Street, from other gardens within the block, in longer views from the south, and by anyone accessing the development. In each regard terrace B would appear harmfully incongruous.
8. The plot sizes of the proposed dwellings would also be smaller than is typical of dwellings both adjoining, and within the immediate setting of the site. This would be the case even taking into account the comparatively small plot sizes of bungalows to the east relative to those of dwellings to the north and south. This, viewed in conjunction with the substantial combined massing of terraces A and B, would cause the development to appear cramped in context. Whilst it may be possible to find developments with a similar plot density elsewhere in the broader area, none appears to lie within the immediate setting of the site. Such developments therefore have little bearing on the way in which the proposed development would be perceived.
9. The site currently contains a number of trees which are of varied size, and whose appearance is generally consistent with the character of surrounding garden space. The development would lead to the loss of some of these trees. The appellant's tree survey however identifies that only 2 are of note, and the Council agrees that the majority of trees are otherwise unremarkable. I see no reason to disagree with this general assessment. However, of the 2 notable trees identified, one has since been felled, and, insofar as it was possible for me to ascertain during my visit, the other appears to be dead. Therefore it appears that no trees of any importance would be lost as a result of the development.
10. Insofar as planting might be relied upon to mitigate the visual impact of terrace B, it is however apparent that potential is limited on account of the small plot sizes, the size of terrace B itself, and the extent of hard landscaping to its front. In this regard the diminished presence of trees and other soft landscaping within the site would again act to accentuate the intrusive nature of the development viewed within its immediate setting.

11. The decision notice additionally states that the development would not make efficient use of land. In terms of the simple ratio of number of units to space, this is incorrect. Indeed, considered solely on a mathematical basis the proposed development would clearly make more efficient use of the available space than the existing development. This is encouraged by paragraph 122 of the National Planning Policy Framework (the Framework) which states that decisions should support the efficient use of land. Paragraph 122 however adds the proviso that in doing so the desirability of maintaining an area's prevailing character and setting (including residential gardens) should be taken into account. Thus, whilst the development would make more efficient use of the site, it would not do so in way that maintained the area's prevailing character and setting, but instead caused it significant harm. Consequently, paragraph 122 of the Framework does not provide support for the proposed development.
12. I note that the appellant has, in general terms, questioned whether or not compliance with certain aspects of Policy H9 of the Medway Local Plan 2003 (the Local Plan) is possible. Amongst other things Policy H9 states that backland development will be permitted only where the character and amenity of the area as a whole is maintained. Given that not every backland site, setting or development would share the characteristics of those involved in the current appeal scheme however, I see no reason to consider that conflict would be inevitable in every case, or therefore to question the validity of the policy.
13. For the reasons outlined above I conclude that the development would cause significant harm to the character and appearance of the area. It would therefore conflict with Policy H9 of the Local Plan, as outlined above.

Living conditions

14. The current arrangement of dwellings fronting The Street to the north and south of the site gives rise to some mutual overlooking. This is generally via oblique views from the first floor windows of neighbouring dwellings. Such overlooking is not significant, out of the ordinary, or particularly intrusive, particularly when taking into account the overall size and length of most of the gardens in question.
15. As terrace B would stand to the rear of, and perpendicular to dwellings on the street frontage, it would introduce the potential for direct overlooking of neighbouring garden spaces. This would affect neighbours to both the north and the south of the site, however the principal impact would be on 59 The Street to the north. Given the length of terrace B, and the number of first floor windows involved, the effect would be intense. I acknowledge that some of the windows in question would serve bathrooms, and that the others would serve bedrooms. I also acknowledge that some occupants might install blinds. However, this would not wholly remove the potential for overlooking, and nor would it relieve the perception of overlooking which would be accentuated by the generally intrusive, and atypical positioning of terrace B relative to its setting. In each regard the development would cause significant harm.
16. The installation of a tall fence and planting has been proposed as a means of preventing overlooking. However, on the basis of the evidence presented, and in view of my reasons above, I am not convinced that this would be wholly effective, or necessarily appropriate in itself. Indeed, given the limited space available, the scale of the boundary treatments required to provide comprehensive screening could themselves give rise to other forms of harm.

17. For the reasons outlined above I conclude that the development would cause significant harm to the living conditions of occupants neighbouring dwellings due to loss of privacy. The development would therefore conflict with Policy BE2 of the Local Plan, which states that all development should secure the amenities of nearby and adjacent properties; Policy H9 of the Local Plan, which states that backland development will be permitted when there is no loss of privacy from overlooking their back gardens; and related provisions of the Framework, which seek to ensure that developments provide high standards of amenity.

Parking

18. The Medway Interim Parking Standards 2010 (IPS) sets out the number of parking spaces required in relation to residential development. The development would comply with the standard insofar as 13 dedicated parking spaces would be provided. No provision has however been made for visitor parking. Whilst the officer report notes the shortfall as 4 spaces, given that the requirement is for 0.25 spaces per dwelling, the shortfall would be 2 spaces.
19. The IPS does not indicate that it is essential for visitor parking to be accommodated off-road. In this context it is apparent that very little dedicated off-road parking space is currently provided in relation to the existing 4 units on site. At most it might be possible to park 2 vehicles off-road. All other vehicles must be parked on-street. Such parking is unrestricted. In this regard the appellant's Transport Statement estimates the current level of overspill on-street as amounting to 3 vehicles. I consider this to be a reasonable assessment.
20. The site has a very broad street frontage across which it appears that it would be possible to park up to 4 vehicles. A substantial proportion of this frontage space would be retained, and this would be more than sufficient for the parking of 2 vehicles. With this in mind, I consider it unlikely that the pressure for on-street parking space arising from the proposed development would be any greater than it is at present, or therefore that the 2 required visitor spaces could not be simply accommodated on-street.
21. Consequently, there should be no increase in competition for on-street parking space, or any related adverse impact on the amenity of other residents which might arise from such competition. In view of this finding, and in the absence of any specific evidence to the contrary, there is also no reason for me to believe that on-street parking in relation to the development would give rise to any adverse impact on the safe or efficient use of the highway.
22. For the reasons outlined above I conclude that the proposed development would make adequate provision for parking. It would not therefore conflict with Policy T3 of the Local Plan, states that development will be expected to make vehicle parking provision in accordance with the adopted standard; and the IPS, which sets out the standard.

Biodiversity

23. The decision notice raises biodiversity concerns specifically in relation to the effect of the development on trees. However, no explanation has been provided of why the trees on site are held to hold importance in this regard. The trees are living organisms which, like all such organisms form part of a broader

ecosystem. But except insofar as the trees add some diversity to the block of garden land within which they stand, their biodiversity value otherwise appears to be limited. Moreover, whilst there may be limited scope for replacement planting, other measures could be secured which would ensure that development made a positive contribution to local biodiversity.

24. For the above reasons I conclude that the proposed development would not have an unacceptable effect on biodiversity. The proposal does not therefore conflict with paragraph 170 of the Framework which amongst other things states that decisions should protect and enhance sites of biodiversity value. No development plan policies were otherwise cited which specifically relate to this matter.

Other Matters

25. The development would involve the provision of what is described as 'affordable housing'. I have not been provided with any specific indication of the current level of local need for such housing, and the type proposed has not been defined. Furthermore, no planning obligation been submitted that would secure its status. I have therefore considered the possible use of a condition. In this regard the Planning Practice Guidance states that the use of a negatively worded condition to require an applicant to enter into a planning obligation or other agreement is unlikely to be appropriate except in exceptional circumstances. No exceptional circumstances are apparent in this instance.
26. Given that the provision of affordable housing would not be secured, there is no certainty that it would be provided. Furthermore, even if it was provided, there would be no certainty that the housing would retain its affordable status into the future. Thus I cannot conclude with any certainty that the scheme would provide affordable housing, either in the short term, or the long term. In view of this, I attach limited weight to the provision of affordable housing.
27. The appellant states that the Council lacks a demonstrable 5-year supply (5YHLS) of deliverable housing sites. Though his point is not addressed in any detail by the Council, I note that the Council has nonetheless made an assessment of the scheme against the tilted balance set out in paragraph 11 of the Framework. I have been provided with no indication of what the level of 5YHLS actually is. Nonetheless, given the acknowledged shortfall it follows that the policies most important for determining the application should be considered out-of-date, and that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, or if specific policies within the Framework that protect areas or assets of particular importance provide clear reasons for refusal.
28. In this case I am satisfied that even if there was a substantial shortfall in the 5YHLS, the combined harm that would be caused by the development to the character and appearance of the area and the living conditions of neighbours would significantly and demonstrably outweigh the combined social and economic benefits that would be generated by the construction of an additional 4 dwellings, including the limited contribution this would make in helping to address the shortfall in 5YHLS.
29. In assessing the scheme the Council considered that the development would have a significant effect on the integrity of the North Kent Marshes Special Protection Area (SPA) and Ramsar sites due to increased recreational pressure.

This was because increased visits to the sites would result in harmful disturbance of the bird species for which they have been designated. These sites were not however referenced in the decision notice, which instead named the Thames Estuary and Marshes SPA, and Medway Estuary and Marshes SPA.

30. Though no Appropriate Assessment (AA) of the scheme was undertaken, the officer report identified the need for a mitigatory financial contribution which would be used to fund strategic access management and monitoring measures. Planning permission was partly refused on the basis that no contribution had been secured, however, as noted above, the named habitats sites are inconsistent. In this regard the appellant has provided a partially completed Section 111 agreement in relation to payment of a contribution. However, the Council has confirmed that no contribution has in fact been received.
31. Had I been minded to allow the appeal and the circumstances thus existed in which planning permission could be granted, it would have been necessary for me to seek further information, and to undertake an AA of the scheme in consultation with Natural England. This would have been to assess both the likely impact of the development, and the need for, and effectiveness of any proposed mitigation. As I am dismissing the appeal for other reasons however, it is not necessary for me to consider this matter any further.

Conclusion

32. In view of my findings above, material considerations do not indicate that the appeal should be determined other than in accordance with the development plan. I conclude therefore that the appeal should be dismissed.

Benjamin Webb

INSPECTOR