



Appeal Decision

Site visit made on 12 November 2020

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/H2265/W/20/3250885

209-211 Rochester Road, Burham, Rochester, Kent, ME1 3SE

- 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 Richard Wood against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/19/00739/FL, dated 20 March 2019, was refused by notice dated 15 October 2019.
 - The development proposed is described as the erection of a pair of semi-detached houses in rear garden with associated parking and turning space.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. For the avoidance of any doubt I confirm that this decision relates to the substitute drawing reference 2141/SKO4 dated July 19, upon which the Council based its decision. It does not relate to or address drawing reference 2141/02 which was originally submitted with the planning application.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the settlement pattern and built environment.

Reasons

4. The Appeal site is located within the confines of Burham village, which is a small settlement with a range of local community facilities including a school, village hall, playing fields and a number of commercial businesses. There is a bus route running through the village and the settlement is conveniently located in relation to Chatham and the strategic road network. The village is defined in policy CP13 of the Tonbridge and Malling Core Strategy 2007 (CS) and policy LP5 of the Tonbridge & Malling Borough Council Local Plan Regulation 22 Submission (DLP), as a rural settlement where development appropriate to the scale and character of the village can be supported.
5. Most of the development within the village is concentrated on the southern side of Rochester Road. From the historic maps submitted by the appellant it is apparent that until the C19th the development was centred around the junction of Church Street and Rochester Road. In the early C19th the linear housing

along Rochester Road, to the southeast of Church Street was developed, along with part of Bell Lane and beyond. Residential developments took place in small cul-de-sacs to the rear of the dwellings fronting Church Street and Rochester Road and the primary school was constructed. The school and its playing field are sited to the rear of some of the dwellings that front onto Rochester Road.

6. It is noted that the school, its playing field and the adjacent field are shown as being allocated for housing development in the DLP. Due to the draft status of the DLP I give this allocation only a modest amount of weight.
7. Notwithstanding the more recent housing developments in the village, Rochester Road retains its traditional and linear character and appearance. This linear character and appearance is also evident to the rear of the dwellings due to their elevated siting and the way the gardens fall away to the rear. In views from New Lane the rear elevations and the top sections of the gardens of Nos.161 to 235 Rochester Lane are visible and seen as a continuation of the dwellings which have shorter gardens on either side of them. The lower half of the longer gardens are screened from New Lane by the modern housing development at St Mary's Walk and the garage structure just to the east of that development. Despite this, they add to the sense of space between New Lane and Bell Lane and the rear environment as a whole.
8. From Bell Lane the deep rear gardens are screened by the dwellings fronting Bell lane and the school. From Court Road and from the bridleway the more modern housing developments in the village are clearly visible and provide a sense of depth to the development within the village. The central linear row of dwellings is evident in the distance despite being partially screened by mature planting.
9. The appeal site is located within this row of dwellings with long rear gardens. The gardens contain a diverse range of outbuildings which vary in size but are all modest in height. The gardens are separated from each other by a variety of walls, fences and planting which collectively add to the informal appearance of the rear garden environment.
10. Together and amongst other things policies CP1 and CP24 of the CS and policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 (DPD) and policy LP14 of the DLP, seek to meet the housing needs of the borough, whilst protecting and enhancing the natural and built environment. Development will be concentrated at the highest density compatible with the local environment, focusing on previously developed land and rural settlements with a reasonable range of services. New development should be well designed and preserve and where possible enhance the character and local distinctiveness.
11. These policies are consistent with sections 11 and 12 of the National Planning Policy Framework 2019 (Framework), which seek to meet local housing needs and make full and effective use of sites. New development should be designed to a high standard, be sympathetic to local character and history and safeguard the environment, whilst not preventing appropriate change.
12. Whilst it is noted that the CS and DPD are in excess of ten years old, paragraph 213 of the Framework, provides that existing policies should not be considered out-of-date purely because they were adopted prior to its publication. Weight

should be given to development plan policies depending on their consistency with the policies in the Framework.

13. The property in which the appeal site is located includes a pair of semi-detached houses, one of which is used for a dwelling and the other comprises a small bakery shop at ground floor level. There is a long narrow projecting wing to the rear of the shop, which is used for a commercial bakery and the land around the bakery and to the rear of the dwelling is hard surfaced and used for parking. Beyond this parking area the land drops away steeply and comprises an area of lawn, with trees and shrubs beyond.
14. Access to the proposed development would be from the existing vehicular access, which is one of several located along this stretch of Rochester Road. The existing parking area would be extended and the pair of semi-detached dwellings would be sited at a lower level and some 35 metres from the main rear elevations of the dwellings fronting Rochester Road. The catslide roof at the front of the dwellings would add to the sense of space between the existing and proposed dwellings.
15. The proposed dwellings would follow a similar building line to the gable end of a pair of semi-detached houses in New Lane and the 'backland' building at 8 Bell Lane. Also, the distance between the proposed dwellings and the existing dwellings in Rochester Road would be comparable to that of some of the dwellings in New Road/Baker Street and Rochester Road. Whilst this consistency would be evident from New Road, due to their height, depth and distance from other two storey dwellings in New Lane or Bell Lane the proposed dwellings would appear prominent, isolated and totally out of keeping with their setting.
16. Similarly, due to their combined siting within the row of deep rear gardens, together with their overall height and bulk, the proposed pair of semi-detached dwellings would appear highly prominent and incongruous within the rear garden environment and in the outlook from nearby dwellings. In particular, their first floor and gable roof would result in the pair of dwellings appearing unduly tall, bulky and out of keeping with the spacious and linear form of the existing rear garden environment. Whilst it is acknowledged that the dwellings would sit at a lower level to the dwellings fronting Rochester Road, they would nonetheless appear visually intrusive due to their combined height and mass.
17. It is acknowledged that the external materials to be used would respect those of the existing dwellings and that the existing planting along the rear boundary of the site would be retained. Any views of the proposed development from Rochester Road would be limited to fleeting glimpses into the extended parking area and the upper part of the westernmost dwelling. From Court Road, any glimpses of the proposed dwellings would be seen against the elevated dwellings in Rochester Road. However, this would fail to outweigh the harm identified above.
18. Overall, due to the nature of the harm that would be caused by the proposal, it is not a matter that could be satisfactorily addressed through the imposition of conditions. Further, such harm would outweigh the benefits of providing two family dwellings in an established and accessible residential area.
19. I have taken into consideration the various 'backland' developments referred to by the appellant, although none are directly comparable to the appeal proposal.

Whilst they clearly show that 'backland' developments can be acceptable, they also highlight the need to ensure that such developments blend in appropriately with their surroundings. In this instance I find that the appeal scheme would fail in this respect.

20. I conclude on the main issue that the proposed development would unacceptably harm the existing settlement pattern and local distinctiveness and would fail to blend in appropriately with the character and appearance of the area. Accordingly, it would conflict with policies CP1, CP13 and CP24 of the CS, policy SQ1 of the DPD and sections 11 and 12 of the Framework.

Other matters

21. The proposal is for just two dwellings and includes the provision of five on-site parking spaces and on-site turning to serve the development. Two on-site parking spaces would be provided for the existing dwelling. The proposal would make use of an existing vehicular access and the site is within walking and cycling distance of the community facilities and services within the village, including bus stops. In addition, the traffic movements likely to be generated by two dwellings is highly unlikely to result in a significant increase in vehicular movements, or have a materially adverse impact on highway safety.
22. The proposed dwellings would be sited at least 35 metres from and would sit at a lower level to the adjacent existing dwellings in Rochester Road. Also, the rear projecting wing of the existing building at 211 Rochester Road would partially screen the development from the dwelling at 213 Rochester Road. For these reasons the proposed dwellings would not result in a material loss of privacy or loss of daylight or sunlight within the adjacent dwellings.
23. Due to the two-storey nature of the proposed dwellings their occupation would result in some overlooking of the rear gardens of the adjoining gardens, from bedroom windows. However, the rear gardens are already overlooked from the rear facing windows of the dwellings in Rochester Road and the additional overlooking would be restricted to the bottom sections of the gardens. As such it would not amount to a reason for dismissing this appeal.
24. It has been suggested that the proposed development would encroach onto the neighbouring property. The submitted survey drawing shows the width of the site to be in excess of 15 metres. Notwithstanding this, part of the boundary between the appeal site and 213 Rochester Road is open and would need to be determined. This is a private matter for the owners of the land concerned.
25. Concerns have been raised that the appeal site may be used by various protected species and birds, although no survey details have been submitted with the appeal documents. The rear section of the appeal site is overgrown and although it is used in part for bonfires, it has the potential to be used by birds and other species. Circular 06/2005 states that the presence of a protected species is a material consideration and that it is essential that the presence or otherwise of protected species, together with the extent to which they may be affected by a development, is established before planning permission is granted. Otherwise all relevant material considerations may not have been addressed in making the decision. As such, this is not a matter that could be dealt with by condition.

26. Had I found in favour of the appellant on the main issue this is a matter about which I would have sought further information from the appellant and the Council to establish if further investigations should be carried out.
27. Finally, whilst existing ground levels are provided, the proposed ground and floor levels are not stated. Had I found in favour of the appellant on the main issue, this is a matter that could have been dealt with by the imposition of a levels condition.

Planning Balance and Conclusion

28. Both the Council and the appellant advise that the Borough does not have a deliverable supply of sites to provide a minimum five-years supply of housing sites. In addition, the Council has not disputed the Borough's housing land supply position stated by the appellant as between 2.3 and 2.5 years. Therefore, the tilted balance as set out in paragraph 11d of the Framework is engaged.
29. Whilst there is no identified local need, the proposed scheme would provide two family dwellings and as such would make a very small contribution to the supply of homes in the District. In view of the level of shortfall in the Borough's housing land position this is a benefit of the scheme to which I give moderate weight in the planning balance.
30. The construction of the dwellings would provide employment and the occupiers of the proposed dwellings would support local services and facilities. In these ways the proposal would support the economic and social objectives of sustainable development. Having regard to the modest nature of the proposal this is a benefit to which I give a small amount of weight in the planning balance.
31. I have found that due to their combined siting, height and mass the proposed dwellings would appear incongruous and out of keeping with the character and local distinctiveness of the appeal site and its surroundings. As a consequence, the proposal would be contrary to various environmental policies in the CS, the DPD and the Draft LP, which are consistent with sections 11 and 12 of the Framework. For the reasons set out above I give this harm and conflict significant weight.
32. As stated above, the presence or otherwise of protected species, together with the extent to which they may be affected by a development has not been established. Such information is essential to ensure that all relevant material considerations have been addressed and that current legislation relating to habitats and protected species is complied with. In this instance this is a matter to which I give neutral weight in the tilted balance. This is because it is something that could well be resolved by the appellant.
33. Overall, for the reasons set out above the proposal would conflict with the environmental objective of sustainable development. This weighs heavily against the proposal.
34. The lack of a five-year supply of housing and the level of shortfall stated does not automatically lead to the grant of planning permission. In this instance the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits resulting from the proposal when assessed

against the policies in the Framework taken as a whole. I therefore find that the presumption in favour of sustainable development should not be applied.

35. The proposal would conflict with the development plan and this conflict is not outweighed by other material considerations, including the provisions of the Framework and in particular paragraph 11. Accordingly, for the reasons stated above and taking all other matters into consideration, I conclude that the Appeal should be dismissed.

Elizabeth Lawrence

INSPECTOR