

Appeal Decision

Site Visit made on 20 April 2021

by G Pannell Bsc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th May 2021

Appeal Ref: APP/A2280/W/20/3261267

The Prince of Wales, 90 Cecil Road, Rochester, ME1 2HS

- 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 Paul Orchard against the decision of Medway Council.
 - The application Ref MC/20/0216, dated 27 January 2020, was refused by notice dated 24 July 2020.
 - The development proposed is erection of a detached 4 bedroom 3 story dwelling on land that was formerly a beer garden.
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Decision

1. The appeal is allowed and planning permission is granted for Erection of a detached 4 bedroom 3 story dwelling on land that was formerly a beer garden. at The Prince Of Wales Public House, 90 Cecil Road, Rochester, ME1 2HS in accordance with the terms of the application, Ref MC/20/0216, dated 27 January 2020, and the plans submitted with it, subject to the attached condition schedule.

Main Issues

2. The main issues are the effect of the development:
 - on the character and appearance of the area; and
 - the living conditions of the occupants of 90 Cecil Road, with regard to outlook.

Reasons

Character and appearance

3. The site comprises the former beer garden of The Prince of Wales Public House, which has subsequently been converted to a House in Multiple Occupation (HMO) and is now known as 90 Cecil Road. The site is vacant and did not form part of the application to convert the Public House.
4. The site lies within a residential street of similar properties, with other dwellings in close proximity to one another. The area is characterised by compact terrace streets and the presence of parked cars along the street leads to a dense urban character.
5. The proposed dwelling would be located close to the frontage of the site, closely following the existing pattern of development with neighbouring dwellings having short front gardens. Parking spaces would be provided to the side of the proposed dwelling, replicating the existing situation whereby vehicles were parked at the time of my visit.

6. The dwelling would extend back into the site to a similar extent to both 90 Cecil Road and the neighbouring terraces. Thereby the overall footprint of the dwelling would be comparable to others within the area. The dwelling would be wider than the neighbouring terraces, but narrower than no. 90 and to some extent would provide a transition between the differing types of development.
7. The increased width of the dwelling, compared to the neighbouring terraces, does not result in an overdevelopment having regard to the overall size of the plot and there remains a good level of spacing between the proposed dwelling and the boundary of 90 Cecil Road. The proposed dwelling would be sited on the boundary of 80 Cecil Road, however as a result of the existing side garden of this property, a degree of separation would remain. Having considered the general character of development within the locality, the overall spacing would not be dissimilar to other examples along Cecil Road.
8. I therefore conclude that the proposal would not have a harmful effect on the character and appearance of the area and would comply with policy BNE1 of the Medway Local Plan 2003 (LP), which sets out general principles for built development.

Living Conditions

9. The proposed dwelling would be located close to the boundary of the neighbouring HMO and the evidence provided indicates that ground floor windows within the side elevation, nearest the appeal site, serve a bedroom and communal kitchen. The site is currently open to the side with those windows having an outlook across the appeal site. However, at the time of my visit, vehicles were parked along the side of the HMO and the outlook from the kitchen and bedroom windows would already be partially restricted if a car was parked in this area. The proposed development would result in a similar relationship in terms of the parking of vehicles in this area.
10. The proposed dwelling would be located to the side of the HMO and as a result of its position and overall height it would reduce the outlook from these windows. However, the separation provided by the proposed parking area would ensure that the impact upon the outlook would be limited. In addition, the outlook from these windows would already be impacted when cars were parked along the side of the property. Therefore, any effect of the proposed development on these windows does not cause unacceptable harm to the living conditions of the occupiers.
11. I have not been provided with any details of how this area was to be subdivided as part of the approval of the HMO and whether consideration was given to the impact of any boundary treatments which may be erected along the side boundary, on those windows. However, the evidence before me indicates that the appeal site was not included within the red line of the HMO and therefore does not have the benefit of this site in terms of amenity space or parking.
12. The Council has suggested a condition requiring details of boundary treatments to be agreed prior to occupation of the dwelling and this would enable control over the height and type of fencing to be erected and the position of any such treatment. Therefore, I am satisfied that having regard to the overall depth of the plot, a private rear amenity space could be provided, with appropriate boundary treatment and that the Council would have control over any fencing

required directly adjacent to the side elevation of the HMO in order to ensure adequate outlook is maintained for the occupier of Bedroom 1 and those using the communal kitchen.

13. Accordingly, I find that the development would not result in harm to the living conditions of existing occupiers in terms of outlook and in this regard it would accord with policy BNE2 of the LP which requires development to protect those amenities enjoyed by adjacent properties.

Other Matters

North Kent Marshes Special Protection Area (SPA) and Ramsar site

14. The appeal scheme proposes a dwelling on a site that lies within the Zone of Influence of the North Kent SPA and Ramsar site. The coastline of North Kent encompasses three Special Protection Areas (SPAs): the Thames Estuary and Marshes SPA, the Medway Estuary and Marshes SPA and the Swale SPA. They are important for bird species, which are rare and / or vulnerable in a European context, and also sites that form a critically important network for birds on migration. All three sites are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites).
15. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
16. Since the development is for one dwelling only, the number of additional recreational visitors would be limited and the likely effects on the SPA site from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
17. The site is within the defined zone of influence for the SPA and at such close distance new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the wider zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
18. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England (NE), I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA site.

19. The appellants have indicated that they have made a per dwelling contribution to fund the SAMMS. The Council has stated that the payment has been made and Natural England has also confirmed that the SAMMS will comprise a package of strategic measures to address such effects which will be funded through these contributions. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
20. The contribution would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

Conditions

21. The Council has suggested 8 conditions. I have considered these in light of the Planning Practice Guide and the tests of the Framework and where necessary amended them for clarity. In addition to the standard implementation condition it is necessary, for the avoidance of doubt, to define the plans with which the scheme should accord. In the interests of the character and appearance of the area a condition requiring the submission of samples of the materials is necessary and reasonable.
22. Given the proximity to other dwellings, I have imposed a condition requiring the submission of a Construction Method Statement to protect the living conditions of the occupiers of such properties. I have also imposed a condition requiring details of the boundary treatment to be submitted, for the reasons outlined above, to ensure that outlook for existing occupiers is adequately maintained.
23. In order to ensure an appropriate level of on-site parking provision for vehicles, I have imposed a condition requiring the parking area to be provided prior to occupation of the dwelling and retained for the life of the development. Furthermore, in order to support the government's objective of increasing sustainable transport I have imposed a condition to ensure an electric charging point for vehicles is provided.
24. Although not listed as part of the Council's suggested conditions, reference is made within their Committee Report of the need for a condition requiring obscure glazing to the side elevations of the proposed dwelling. I have therefore imposed this condition as I consider that this would be necessary in order to protect the amenity of neighbouring properties.
25. I have not imposed a condition removing permitted development rights as the Planning Practice Guidance advises that conditions restricting the future use of permitted development rights "will rarely pass the test of necessity and should only be used in exceptional circumstances". I have not been provided with adequate justification to suggest that there are exceptional circumstances for such a restriction and therefore do not consider it is necessary in this instance.

Conclusion

26. For the reasons given I conclude that the appeal should succeed.

G Pannell

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PO-001 Rev C; PO-003 Rev A; PO-004 Rev B; PO-005 Rev B; PO-006 Rev B; PO-010 Rev A and PO-012 Rev B.
- 3) No development above slab level shall take place until details of the materials to be used in the construction of the dwelling hereby permitted and the surfacing materials of footpaths, driveways and parking areas have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - measures to control the emission of dust and dirt during construction;
 - delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 5) The building shall not be occupied until the area to be provided for parking of vehicles has been drained and surfaced in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and that area shall thereafter be kept available at all times for the parking of vehicles.

- 6) No development shall commence above slab level until details of an electric vehicle charging point (1 per dwelling) has been submitted to and approved in writing the local planning authority. These details shall include:

- Location
- Charging type (power output and charging speed)
- Any associated infrastructure
- Timetable for installation.

The installation shall be carried out in accordance with the approved details in accordance with the agreed timetable for installation and shall thereafter be maintained.

- 7) No development shall commence above slab level until details of hard landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:

- means of enclosure and retaining structures;
- position, design, materials and type of boundary treatments;
- an implementation programme.

The works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- 8) The building hereby permitted shall not be occupied until the windows within the side elevations have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.

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