
Appeal Decision

Site visit made on 23 September 2021

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2021.

Appeal Ref: APP/A2280/W/20/3259532

21 Berengrave Lane, Rainham, Gillingham ME8 7LS

- 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 Cherry Acre Developments against the decision of Medway Council.
 - The application Ref MC/20/0804, dated 30 March 2020, was refused by notice dated 24 July 2020.
 - The development proposed is the construction of two storey side extension together with part two storey part single storey rear extension and installation of dormers to front and rear to facilitate the change of use of existing care home (use class C2) to provide 8 Flats with private amenity space, vehicle parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of two storey side extension together with part two storey part single storey rear extension and installation of dormers to front and rear to facilitate the change of use of existing care home (use class C2) to provide 8 Flats with private amenity space, vehicle parking and landscaping at 21 Berengrave Lane, Rainham, Gillingham ME8 7LS in accordance with the terms of the application Ref MC/20/0804, dated 30 March 2020, subject to the conditions set out in the schedule to this decision.

Procedural matters

2. The proposed development appears to be largely complete. The works carried out so far generally reflect the details shown on the submitted drawings.
3. Interested parties raise concern that some of the plans lack clarity and include notation that is incorrect. I have taken this concern into account in my assessment of the proposal, which is based on all of the evidence before me, and an inspection of the site and its surroundings. On that basis, I am satisfied that the details of the appeal scheme as shown on the plans and detailed in the written evidence allow a reasonable assessment of the development sought.

Background

4. The proposal is broadly similar to a development that was recently granted planning permission, which is hereafter referred to as 'the approved scheme'. Because some of the works carried out to the building depart from the details shown on the approved plans, planning permission is now sought for the development, as built. The differences between the proposal and the approved scheme are numerous and varied, as several interested parties point out.

5. Among the main changes proposed are a higher ridgeline to the main building; a different roof form over the part 2-storey, part first floor rear extension; larger dormers and extra roof lights on the front roof slope; larger dormers and an additional dormer to the rear; extra roof lights and the repositioning of the previously approved roof lights to the rear; alterations to several windows and doors; and adjustments to the internal layout.

Main issues

6. The main issues are the effect of the proposed development firstly, on the character and appearance of the host building and the local area; and secondly, on the living conditions of the occupiers of 27 Berengrave Lane with particular regard to privacy.

Reasons

7. The proposed development is to convert, extend and alter the appeal property, which is a large detached building to form 8 self-contained flats with associated landscaping, vehicle parking and gardens. The building is set back from the road behind a garden, driveway and car park. It stands within a large plot in a predominantly residential area wherein buildings vary in style, size and age.
8. The completed building would be noticeably bulkier, taller and larger than previously approved, the effect of which would be visually accentuated by the alterations and additions sought at roof level. At the front, the new dormers are noticeably larger than their approved counterparts. However, these elements of the appeal scheme appear to be proportionate additions and sit comfortably on the front roof slope, which is slightly more substantive in its appearance than the approved scheme due to the higher ridgeline.
9. When seen from the road, the additional built form at roof level and other alterations do not appear overly large or bulky nor do they upset the overall scale and balance of the building. As a result, the architectural character of the building would not be spoiled as a result of the changes sought. Once complete, the building will not look out of place among the varied built form along Berengrave Lane and nearby streets where I saw that properties with sizeable and prominent dormers are a common feature.
10. At the rear, a new 'box-like' dormer is proposed. It is a sizeable flat roof addition that significantly adds to the mass of the building at a high level, as does the other rear dormer that is larger than those previously approved. However, these dormers are largely away from public view at the back of the building and their full extent is not likely to be readily evident from beyond the site. From some nearby properties these rear dormers may be visible although, if so, it would be at some distance and in the context of the much larger host building and its rear projection that also includes dormers.
11. To sum up, the scale and appearance of the building would significantly change as a result of the appeal scheme. However, the cumulative effect of the proposed alterations, including those that relate to the dormers would not result in a markedly awkward design. Taken overall, the proposal would not appear 'top heavy' or result in a building that would be incompatible in its varied residential context. With ample space around the front and rear of the building, the proposal would not appear to be an overdevelopment of the site.

12. On the first main issue, I conclude that the proposed development would be in keeping with the character and appearance of the host building and the local area. As such, it does not conflict with Policy BNE1 of the Medway Local Plan (LP), which aims to ensure that the design of development is appropriate to the character and appearance of the built environment. It also adheres to the provisions of the National Planning Policy Framework (the Framework), which notes that development should be sympathetic to local character.

Living conditions

13. From what I saw, the 2 roof lights placed onto the north-facing roof slope to serve flat 8 would lead to a greater level of overlooking of the back garden of 27 Berengrave Lane than would have been possible from the upper level windows that were previously approved. The use of obscure glazing in these windows and a requirement that the roof lights remain fixed shut would overcome this problem. With a condition imposed to secure these measures, the additional overlooking possible would have no significant impact on the living conditions of the occupiers of No 27.
14. It is true, as the appellant states, that a reasonable distance separates No 27 and the windows that serve flat 8. Moreover, in my experience, overlooking of this type is a common characteristic of the relationship between residential buildings within main built up areas. That said, the views possible from the north-facing roof lights towards No 27 would be both direct and from a high level position that would lead to a loss of privacy for the occupiers of this nearby property. As such, a restriction on the type of glazing and to prevent the opening of these windows is necessary. The roof of the appeal building and the tight angle of view would combine to largely prevent views towards No 27 from the rear-facing window in the additional rear dormer.
15. On the second main issue, I therefore conclude that the proposal would not materially reduce the living conditions of the occupiers of No 27. Accordingly, there is no conflict with LP Policy BNE2 or the Framework insofar as they aim to safeguard residential amenity.

Other matters

16. Compared to the approved scheme, the proposal would enable the building to be occupied and visited by more people. However, there is no convincing evidence before me that the resultant living accommodation would feel cramped to future occupiers or that the demand for car parking would significantly increase as result. From the submitted evidence, the proposal would not necessarily manifest itself differently than the approved scheme insofar as the potential to generate extra traffic, noise, air pollution or cause general disturbance to others.
17. Interested parties are critical of the appellant for showing in their view a 'contempt' and a 'flagrant disregard' for the planning system by failing to adhere to the approved scheme and then, in their eyes, expecting to gain a favourable retrospective decision. However, the appellant is entitled to seek approval for the preferred development as much as anyone else. The planning process includes a formal consultation stage within which comments may be made and these are taken into account by the decision-maker. Furthermore, a key principle of the planning system is that each proposal should be assessed on its own merits, whether or not it is (partly) retrospective.

18. I note that concern is raised that the roof tiles used do not match those of the property before the works were undertaken. This is a matter for the Council.

Conditions

19. As the development has started, it is unnecessary to impose the standard time limit condition. It is, however, necessary to impose a condition that requires the development to be carried out in accordance with the approved plans for certainty. To ensure the satisfactory appearance of the development, conditions are imposed to require that external materials match those of the existing building and landscaping details. For the same reason, conditions are imposed to require that the revised roof form to the part 2-storey, part first floor rear extension is in place within 2-months of this decision.
20. A condition that requires cycle and refuse storage facilities be provided before the flats are occupied is necessary to promote sustainable travel choices for future occupiers and to ensure the satisfactory appearance of the development respectively. In the interests of highway safety, I have attached a condition that requires vehicle parking on site to be in place prior to occupation of the flats. To protect the privacy of nearby residents and future occupiers, conditions are imposed to ensure that some windows in the side elevations include obscure glazing, as shown on the drawings, and that the roof lights on the northern roof slope are also fixed shut. For the same reason, a condition is required to ensure that the privacy screen around the balcony of flat 7 is permanently retained.
21. To safeguard the living conditions of future occupiers, a condition is imposed to require that the separating ceilings and floors between each dwelling resist the transmission of airborne sound above a certain level. Where necessary, I have amended the Council's suggested conditions for clarity, concision and to more closely reflect the provisions of the Framework.

Conclusion

22. For the reasons set out above, I conclude that the appeal should be allowed.

Gary Deane

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing numbers CA21-PP-01 Rev A, CA21-PP-02 Rev A, CA21-PP-03 Rev A, CA21-PP-04 Rev A, CA21-PP-05 Rev A, CA21-PP-06, CA21-PP-07, TCP-01 and those with sheet titles 'Existing Site Plan', 'Ground Floor Plan', 'First Floor Plan', 'Second Floor Plan', 'Block Plan', 'Elevations' showing the rear and side elevations, 'Elevations' showing the front and side elevations and 'Elevations' showing the cycle and bin store details.
- 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 3) Within 2 months from the date of this approval, the part 2-storey, part first floor rear extension with a flat roof shall be replaced with a tabletop roof as shown in the approved plans.

- 4) No dwelling hereby permitted shall be occupied until the ground floor and first floor windows on the south facing elevations serving a stairwell; the first floor windows on the south facing elevation serving flat 7 and the roof lights on the north facing roof slope serving flat 8 are fitted with obscure glass and no part of those windows that is less than 1.7 metres above the internal finished floor level of the room in which it is installed shall be capable of being opened. Once installed, the obscured glazing shall be permanently retained thereafter.
- 5) The separating ceilings and floors between each dwelling hereby permitted shall resist the transmission of airborne sound such that the weighted standardised level difference (DnT,W +Ctr) shall not be less than 50 decibels as measured and calculated in accordance with BS EN ISO 16283-1 2014. 
- 6) No dwelling hereby permitted shall be occupied until space within the site has been laid out, drained and surfaced for vehicle parking in accordance with the drawing entitled 'Block Plan'. The vehicle spaces provided shall be kept available for the parking of motor vehicles at all times and shall be permanently retained as such thereafter.
- 7) No dwelling hereby permitted shall be occupied until the cycle storage and refuse storage facilities have been provided in accordance the details shown on the drawings with sheet titles 'Block Plan' and 'Elevations', illustrating the bin store and cycle store. The approved cycle storage and refuse storage facilities shall be permanently retained thereafter.
- 8) No dwelling hereby permitted shall be occupied until hard and soft landscape works have been carried out in accordance with a scheme that has previously been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development or in accordance with a programme previously agreed in writing by the local planning authority.

Any trees, shrubs, hedges or plants that within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 9) The privacy screen to the balcony of flat 7 shall be permanently retained in accordance with the drawing with the sheet title 'Elevations' showing the rear and side elevation of the development hereby permitted.