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# Appeal Decision

Site Visit made on 12 October 2021

**by S Harley BSc(Hons) M.Phil MRTPI ARICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 October 2021**

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**Appeal Ref: APP/K2230/W/21/3271956**

**55 Rochester Road, Gravesend, DA12 2JN**

- 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 RDS Property Services Ltd against the decision of Gravesend Borough Council.
  - The application Ref 20201258, dated 10 December 2020 on the revised application form, was refused by notice dated 4 February 2021.
  - The development proposed as described on the revised application form is relocation of 5 no. car parking spaces and proposal of 3 no. dwellings and 3 no. additional car parking spaces at 55 Rochester Rd, Gravesend, DA12 2JN.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The proposal was amended during the course of the planning application. A revised application form was submitted with the description of development as set out above. The Council has confirmed that the second reason for refusal should include the word "light" and read "...inadequate level of natural light to habitable rooms...". I have considered the appeal on this basis.
3. The revised National Planning Policy Framework July 2021 (the Framework) was addressed in the Council's Statement of Case. This was available for the appellant's Final Comments.

## Main Issues

4. The main issues are: the effect of the proposal on the character and appearance of the area; whether adequate living conditions would be provided for future occupiers of the proposed dwellings; the effect on the living conditions of occupiers of Nos 55 and 53 Rochester Road; and the effect on the Thames Estuary and Marshes Ramsar site and Special Protection Area (the Estuary and Marshes (the North Kent Marshes)).

## Reasons

5. The appeal site is within the urban area of Gravesend. The area is mainly residential in character although there is a school opposite the site. Additional residential development of either flats or houses is acceptable in principle provided other planning policies and material considerations are satisfied.

### *Character and appearance*

6. Most of the nearby properties are a mixture of detached bungalows on spacious plots and two storey terraced dwellings. No 55 was a bungalow that was redeveloped as a block of flats. The proposed flats together with six parking spaces would occupy most of the rear of No 55. At present this is a garden for Flat 1; a communal garden beyond; and five parking spaces enclosed by a tall wall and gates. At the time of my visit there were two vehicles parked in the spaces. Two parking spaces would be provided at the front of No 55.
7. The proposed building would have two floors with first floor accommodation in a hipped roof with box dormer. In external appearance the building would not be dissimilar to No 55 and nearby bungalows. As it would be sited behind No 55 it would not be harmful to the appearance of Rochester Road. Nor, due to its siting and scale and intervening buildings, would it intrude on, or be harmful to, the setting of St Marys Church, a Grade II listed building a little further along Rochester Road.
8. The building would not have a direct frontage to Rochester Road, often called back land development. This would be different to the majority of properties in the immediate area but as there are other examples of back land development nearby, the proposal would not be so out of character with the local area as to justify refusal on that matter alone. However, the building would be very close to the rear wall of No 55. It would also extend a significant way along, and be close to, the boundary with No 53 Rochester Road. Such a layout would amount to a cramped and contrived form of over development which would not be a well-designed, beautiful place in terms of the National Planning Policy Framework (the Framework). It would be harmful to the more spacious character of the surrounding area. I acknowledge that nearby buildings are in some cases as close to the boundary as the proposed building would be. However, none are so close on three sides and/or so close to main windows.
9. I conclude that harm would be caused to the spacious character of the area. Accordingly there would be conflict with Policies CS14, CS15 and CS19 of the Gravesham Local Plan Core Strategy September 2014 (the CS) which, amongst other things seek to protect the character of the area, and with those principles of the Framework that seek well designed beautiful places.

### *Living conditions for future occupiers*

10. Three flats are proposed; two would be on the ground floor and one on the first floor. Even though the appellant says the intention is for three bedroom four person flats, the floor plans show each would contain two double bedrooms and one single bedroom. Accordingly I am more inclined to the Council's view as I consider it probable that occupancy would be five persons. On this basis the proposal would fail to meet the Nationally Described Space Standard (NDSS) for residential accommodation.
11. As the land to the rear is at a lower level the ground floor of the proposed building would be lower than that of No 55. As a result the outlook from the living room windows of Flat A and the dining and living room windows of Flat B would be very limited and natural light would be poor as these would face onto the boundary wall separating the site from No 55, and would also be fitted with partial frosted glass. Furthermore, with the exception of one of the bedrooms, the bedrooms and corner of the kitchen of Flat C would only have rooflights

and the living and dining area would have no windows at all. These cramped and contrived arrangements would result in gloomy living conditions with an unsatisfactory outlook and inadequate natural light to serve these habitable areas and adds to the concerns about over development identified above.

12. For the reasons set out above I conclude the proposal would not provide adequate living conditions for occupiers of the proposed flats and would not be beautiful homes. Accordingly there would be conflict with Policy CS19 of the CS and with those principles of the Framework that seek a high standard of amenity for existing and future users.

*Living conditions of occupiers of adjacent properties*

13. There appears to be five flats in the existing building at No 55. The proposal would result in the loss of the garden of Flat 1, which I observed is used by the occupiers. There is a communal garden area beyond this which, as it appears to be unfinished, may not be well used at present. A much smaller communal garden is proposed. It is not clear whether this would be available to residents of No 55 as well as of the proposed flats. If so, it would be much smaller and shared by more people; would be awkward in shape and less useable as the proposed bike storage would intrude upon it. If not, there would be no private rear garden space available to occupiers of No 55. I conclude the proposal would be harmful to the living conditions of occupiers of No 55 due to the loss of useable outdoor amenity space for day to day domestic activities.
14. The building would be wider than No 55 and positioned some 1.7m from its rear elevation. Even though at a lower level; part of the proposed rear wall and the sloping roof, in such close proximity to main windows and patio doors at No 55, would create an unacceptably gloomy and oppressive outlook for the occupiers of No 55 and would result in loss of skylight to ground floor openings.
15. Parts of the rear wall of the adjacent bungalow at No 53 Rochester Road are already overlapped by the side wall of No 55. The proposed building would be only a path width from the shared boundary and would project well beyond the rear wall of No 53. Although the eaves would be below the existing boundary wall, the roof would be much higher. I acknowledge that the roof has been designed to slope away from the boundary. However, due to its height, length and closeness to the boundary, I consider it would create a gloomy and oppressive outlook from the windows and garden of No 53.
16. For the above reasons I conclude that the proposal amounts to a cramped and contrived form of development that would be harmful to the living conditions of occupiers of Nos 53 and 55. These matters add to the concerns about over development identified above. Accordingly there would be conflict with Policy CS19 of the CS and with those principles of the Framework that seek a high standard of amenity for existing and future users.

*The North Kent Marshes*

17. The North Kent Marshes have internationally important bird interest features. The Thames Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy 2014 (the SAMM Strategy) sets out a strategy to resolve disturbance on the North Kent Marshes wetlands and its watering and migrating birds from additional recreational pressure from cumulative new development. It is regrettable that the Council did not raise with the appellant

at application stage that new development is expected to contribute towards the implementation of the mitigation measures in the SAMM Strategy. This would normally be by way of an upfront payment, using the Council's Strategic Access Management and Monitoring Strategy (SAMMS) Contribution Agreement form, or through the completion of a formal deed under section 106 of the Town and Country Planning Act 1990.

18. The appellant has suggested that the SAMMS contribution could be secured by condition. However, the national Planning Practice Guidance advises that no payment of money or other consideration can be positively required when granting planning permission. It may be possible use a negatively worded condition to prohibit until a specified action has been taken (for example, the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure). However, this is unlikely to be appropriate unless there are exceptional circumstances in relation to land interests that would otherwise put the delivery of a large development at serious risk which is not the case here<sup>1</sup>.
19. In the light of my conclusions in respect of the other main issues, I do not consider it reasonable to put the appellant to the time and expense of formally securing the SAMMS mitigation contribution in relation to this appeal proposal. In its absence I conclude the proposal, in conjunction with other development, would be harmful to the North Kent Marshes. Accordingly the proposal conflicts with Policy CS12 of the CS and those principles of the Framework that seek to protect and enhance the local and natural environment by protecting sites of biodiversity commensurate with their statutory status.

### **Other Matters**

20. The appellant has expressed dissatisfaction with the way in which the Council handled the planning application. However, that in itself does not affect the material planning considerations of the proposal and I have reached my own decision based on the evidence including my observations during my site visit.
21. The stated intention is that the appeal site would be put into separate ownership should the proposal be permitted. Consequently it is not clear what arrangements would be in place for the occupiers of No 55 to access either the proposed parking to the rear or the communal garden. Had I been minded to allow the appeal I would have sought clarification on these points. However, in view of my conclusions on the main issues it is not necessary for me to do so in the context of this appeal.
22. There is little established vegetation within the appeal site and little evidence of habitats likely to support protected species. Suitable landscaping and other measures to attract wildlife would add to biodiversity within the site. However, these are matters that would be expected for any development and do not add weight in favour of the proposal or lead me to any different conclusion on the planning merits of the proposal.
23. The appellant considers the existing parking spaces are not well used. However, the arrangements for unlocking the gates are not clear so this may be more a matter of management than evidence of lack of demand.

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<sup>1</sup>Paragraph: 010 Reference ID: 21a-010-20190723

## **Planning Balance and Conclusion**

24. The Council advises it is able to demonstrate only a 3.27 year housing land supply for this appeal and that the delivery of housing was substantially below the 75% required by the Housing Delivery Test set out in the Framework. Accordingly the housing delivery element of Core Strategy Policy CS02 must be regarded to be out of date. On this basis Paragraph 11(d)ii of the Framework states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole: the so-called tilted balance.
25. The proposal would increase the local stock of housing in an accessible location outside any identified flood risk area. As the addition would be relatively small this attracts moderate weight in terms of the local shortfall of housing. There would be economic benefits from employment during construction and from spend by additional residents in the local economy although these benefits attract moderate weight due to the small scale of the proposal.
26. On the other hand the proposal would be harmful to the character of the area; would not provide adequate living conditions for future occupiers of the proposed flats; would have a significantly harmful effect on the living conditions of occupiers of No 55 and a harmful effect on the occupiers of No 53. The proposal would not amount to the beautiful development sought by the Framework. I give these adverse impacts considerable weight. I conclude that these adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
27. In this case, in fairness to the appellant, I have applied the tilted balance because the effect on the North Kent Marshes could be mitigated and therefore would not provide the clear reason for refusing the development proposed in terms of Paragraph 11(d)i of the Framework and footnote 7.
28. For the reasons set out above I conclude that the appeal should not succeed.

*S Harley*

INSPECTOR