



Appeal Decision

Site Visit made on 12 October 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Appeal Ref: APP/A2280/W/21/3275532

Land rear of 31-53 Northbourne Road, Twydall, Gillingham, Medway ME8 6QH

- 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 39 Northbourne Road Ltd against the decision of Medway Council.
 - The application Ref MC/20/3048, dated 20 November 2020, was refused by notice dated 5 March 2021.
 - The development proposed was originally described as redevelopment of site for 9 residential units with private amenity space, car parking and landscaping'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. While the description of development in the banner heading above is taken from the planning application form, the appeal form gives a revised description of 'construction of 8 residential units with new access road, private amenity space, car parking and landscaping'. This reflects amendments made to the proposal prior to the determination of the application, including a reduction in the number of dwellings proposed to 8, and is consistent with the description stated on the Council's decision notice. It is clear from the evidence before me that the Council dealt with the proposal with reference to these amended plans, and I have determined the appeal on the same basis.
3. In the period since the appeal was submitted the Government published a revised version of the National Planning Policy Framework (the Framework). The main parties have been able to comment on any implications for the appeal of this change, and I have had regard to the representations made.
4. Within its officer report and reason for refusal, the Council refers to loss of outlook and privacy to 51 Northbourne Road. However, the Council has confirmed that this is an error, and that the concern relates instead to 53 Northbourne Road. Both main parties have considered the effect of the proposal on No 53 within their evidence, and I am satisfied that no prejudice would be caused by my consideration of the appeal in this light.

Main Issues

5. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) whether or not living conditions for future occupiers of the dwellings on plots 5 and 6 would be acceptable with particular regard to the provision of amenity space; and

- iii) the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings with particular regard to outlook, and in the case of 53 Northbourne Road with additional regard to privacy.

Reasons

Character and Appearance

6. Northbourne Road is predominantly characterised by terraced and semi-detached dwellings of generally similar overall scale and appearance. There is some variation in the relative positions of different groups of dwellings, but they are typically set back from the street and have reasonably generous rear gardens that are appreciable in gaps between buildings. Together, these factors provide for an attractive spacious character to the area and there is a sense of coherence and rhythm to the street scene.
7. The appeal proposal includes 8 dwellings on a parcel of land that sits between the rear of properties at 31-53 Northbourne Road and a railway line, served by an access that would run to the side of 39 Northbourne Road. Although there are no other examples of dwellings set behind neighbours fronting Northbourne Road, nearby commercial units run behind dwellings close to the site and are apparent from the street scene. There are also garages adjacent to the appeal site with an access from Northbourne Road alongside No 31. Given these existing features of the area, I do not find that the presence of development to the rear of Nos 31-53 would necessarily be conspicuous or out of keeping.
8. For the most part, the rear section of the site is currently open and comprises low level vegetation, but I note reference by the Council and interested parties to fairly recent works which have seen trees removed. From the evidence before me and given the size of a number of tree stumps and some felled timber that I observed at my visit, I have no reason to doubt that the removed trees may have included fairly large specimens that would have been likely to be visible from the street scene.
9. However, a landowner is free to manage their land and remove trees through a number of lawful means and I have no firm evidence demonstrating that trees were removed unlawfully from the site. Saved Policy BNE43 of the Medway Local Plan 2003 (LP) outlines that development should seek to retain trees, woodlands, hedgerows and other landscape features that provide a valuable contribution to local character. Nevertheless, I can only assess the impact of the development on the basis of the site as it exists at present. While the loss of trees from the site may be regrettable, it has already occurred and is not part of the appeal before me. On this basis and having regard to the submitted evidence, I am not persuaded that there would be an overriding policy requirement for replacement planting as part of the development. Moreover, I saw fairly few examples of large trees within other gardens or around dwellings nearby. Although the Council is concerned that some of the landscaping indicated as part of the development may not be realistic, I am satisfied that it would be possible to accommodate planting in keeping with that usually found in the vicinity of the site. In this context, I do not consider that provision for landscaping on the site would in itself be unacceptable.
10. That said, the dwellings on plots 5 and 6 would sit on very shallow plots. The buildings would fill a substantial proportion of the depth of the plots, leaving unusually short gardens to their rear. I note that these gardens would extend

some way to the side of the dwellings, but much of the additional space would be of similarly restricted depth with awkward sections that I consider would appear squeezed in between the dwellings, their parking and the railway line, depriving the dwellings of a proper setting. Despite the relatively large width of the gardens, their overall area would still be relatively small in comparison to the more generous plots to other dwellings nearby. In combination with the overall coverage of the plots by built form and the exceptionally close proximity of the buildings to their rear boundaries, I consider that this would result in an incongruous lack of spacing around the dwellings, causing the development on plots 5 and 6 to appear cramped.

11. In addition, the dwellings on plots 7 and 8 would face towards the side of plot 6 in fairly close proximity. Their three-storey height would contrast with the two-storey scale of the dwelling on plot 6 and the typical height of development nearby, increasing their visual presence on the site and emphasising the apparent lack of space between the buildings. While I have had regard to the appellant's suggestion that parking between plots 6 and 7 could be repositioned away from the front of plot 8, this would not alter the uncharacteristically tight relationship between these buildings.
12. For these reasons, I find that these elements of the proposal would relate poorly to the general pattern of surrounding development and would be strikingly at odds with the characteristically spacious settings of other dwellings nearby. The development would be partly screened from Northbourne Road by the existing frontage dwellings, but there would still be some views of it including in the spaces between buildings and along the access. In these views, I consider that the development would be discordant, and it would detract from the distinctive spacious qualities of its surroundings.
13. Accordingly, I conclude on this main issue that the proposal would cause unacceptable harm to the character and appearance of the area. It would therefore conflict with Policies BNE1, H4 and H9 of the Medway Local Plan 2003 (LP) insofar as they together broadly seek high standards of design and development that respects and maintains local character. It would also conflict with requirements within the Framework seeking development of high quality design which is sympathetic to local character and which adds to the overall quality of an area.

Living Conditions – Future Occupiers

14. The appellant suggests that the gardens to the rear of the dwellings on plots 5 and 6 would be around 4-5.4m deep. This is slightly greater than the depths cited by the Council, but would nevertheless fall well short of the minimum depth of 7m across the width of dwellings which the Council advises is sought by the Medway Housing Standards (interim) 2011 where constraints exist. Moreover, the sections of the gardens to the rear of the deeper projections of these dwellings would be of even lesser depth.
15. I appreciate that the total area of the plot 5 and 6 gardens would be some of the largest within the development, and that their total width of around 20m would exceed the minimum depth standard. Nevertheless, they would comprise a series of sections, with an area of very restricted depth between the parking and boundary with the railway, an area of restricted width between the parking and bin stores and then shallow stepped sections behind the dwellings. These dimensions and the irregular layout of the spaces would limit the functionality of

the gardens and their potential to practically accommodate a range of activities, and I consider that the available spaces would also feel confined and hemmed in between the dwellings and boundaries. In addition, the shallow depth of the majority of the gardens means that a large proportion of the outdoor space would be likely to be heavily influenced by noise from the adjacent railway line. Taken together, these factors would significantly constrain the attractiveness and usability of the intended gardens, and I find despite their overall area and width that they would be of limited value to occupiers of the dwellings which would be to the detriment of their quality of life.

16. I therefore conclude on this main issue that amenity space to serve the dwellings on plots 5 and 6 would be inadequate, and that the proposal would as a result fail to provide acceptable living conditions for occupiers of these dwellings. Given this, the development would conflict with Policies BNE2 and H9 of the LP which require, amongst other things, adequate private amenity space and that development secures the amenities of its future occupants. It would also be contrary to the Framework which outlines that development should provide a high standard of amenity for future users.

Living Conditions – Neighbouring Occupiers

17. While the Council's reason for refusal refers to impact on neighbour amenity through a loss of outlook, the basis for this concern is not clearly explained further within its submissions. The dwellings on plots 1-4 would be visible alongside the rear garden to 53 Northbourne Road, but views to the rear would remain open and I am satisfied that the separation provided would ensure that the development would not be unduly dominant or enclosing. The dwelling on plot 1 would extend beyond the rear of 55 Northbourne Road and would not have windows to its side. However, outlook directly to the rear of this neighbour would not change, and given the relatively limited depth of the development along the side of the plot to No 55 I find that the set in from this neighbour would be sufficient to avoid it appearing overbearing. Spacing between the development and other neighbours would be even greater, and given these relationships I do not consider that the proposal would cause a harmful loss of outlook for neighbouring occupiers.
18. However, the dwellings on plots 1-4 would have fairly large windows to their front elevations at both first and second floor levels, with those to the dwelling on plot 1 facing the rear garden to No 53 at a distance of around 8m. The windows would serve bedrooms, and while the appellant suggests that the rooms would be likely to be used at different times to the garden, neither the use of the rooms nor whether occupiers fitted or closed blinds or curtains could be controlled. I accept that some mutual overlooking is not unusual in residential areas. However, this is not typically at such close quarters as would result in this case where outlook from the windows would be directly towards the neighbouring garden affording clear views down into this space. Given the very close proximity at which these views would occur and the size and number of windows from which they would be available, I consider that there would be a significant and intrusive loss of privacy for occupiers of No 53.
19. For these reasons, I conclude on this main issue that while the proposal would not harm outlook for the occupiers of neighbouring dwellings, it would result in a significant loss of privacy causing unacceptable harm to the living conditions of the occupiers of 53 Northbourne Road. It would accordingly be contrary to

saved Policies BNE2 and H9 of the LP which require, amongst other things, that development does not result in loss of privacy and that amenities enjoyed by nearby properties are protected. For the same reasons, it would conflict with the requirement within the Framework for a high standard of amenity for existing users.

Other Matters

20. The appeal site is located within 6km of the North Kent Marshes Special Protection Area (SPA) and Ramsar Sites which are protected as a European Site of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations).
21. The Council considers that the proposal, either alone or in combination with other developments is likely to have a significant effect on the SPA/Ramsar sites through recreational disturbance to the over-wintering bird interest. However, it advises that the appellant has paid a tariff collected to fund strategic measures across the Thames, Medway and Swale Estuaries intended to manage and mitigate adverse effects. Had I found the proposal to be otherwise acceptable, I would need to consider further its effect on the integrity of the SPA/Ramsar sites and the potential for mitigation within the framework of an Appropriate Assessment in accordance with the requirements of the Regulations. However, given the harm that I identified above and that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further as it could not alter my decision.
22. Interested parties have raised concerns additional to those of the Council. I have had regard to the representations made, but none of the other matters raised alter my conclusions on the main issues.

Planning Balance

23. The Council confirms that it is unable to demonstrate a 5 year supply of deliverable housing sites, and that the results of the 2020-21 Housing Delivery Test indicate only 55% of the required housing had been delivered over the previous three years. The presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework is therefore engaged. This provides 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 the Framework taken as a whole.
24. The Framework identifies an objective to significantly boost the supply of housing, and highlights that small and medium sized sites such as the appeal site can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. It also indicates that great weight should be given to the benefits of using suitable sites within existing settlements for homes.
25. The proposal would make effective use of the site to deliver 8 dwellings within an existing built-up area with access to local services and public transport. In light of the clear objectives within the Framework and the housing undersupply position, the provision of additional homes here for which there is an acknowledged need is an important benefit, and I afford it great weight. Nevertheless, the modest scale of the proposal would limit the contribution

made to the overall supply of housing and consequently the extent of the benefit.

26. There would additionally be some short-term economic benefits associated with construction of the development, as well as support for the local economy by future occupiers, with associated social benefits to the community. I also note the suggested inclusion of energy and resource efficiency measures as part of the development. These benefits would also be restricted by the small scale of the development though, and I afford them limited weight.
27. I appreciate that previous clearance works to the site may have had some impact on biodiversity. However, this is not part of the proposal before me, and there is no substantive evidence to establish that protected species or priority habitat have been affected, nor that wildlife generally has not successfully relocated within the surrounding area. The appellant's Extended Phase 1 Ecological Habitat Survey Report outlines that the site offers low potential for protected or notable species. It identifies potential measures to enhance biodiversity including through planting and provision of swift/swallow nest boxes and bat roost boxes or tubes, and I have no firm reason to find that these would be ineffective or would be unable to support a net gain from the existing situation. Be that as it may, the extent of any improvement to biodiversity has not been demonstrated which limits the weight that I afford to this factor.
28. Against these benefits, the Framework identifies achieving well-designed places as a key aspect of sustainable development and the proposal would conflict with requirements seeking development that is sympathetic to local character and a high standard of amenity for existing and future users. It would also conflict with saved Policies BNE1, BNE2, H4 and H9 of the LP. Insofar as these policies also seek development that is sympathetic to local character and which protects residential amenity, they are broadly consistent with the expectations of the Framework. I afford these matters significant weight.
29. In the context of paragraph 11(d) of the Framework, I find that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development within the Framework.
30. The proposal would conflict with the development plan when it is read as a whole, and material considerations including the Framework do not indicate that a decision contrary to the development plan should be reached.

Conclusion

31. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR