



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: 28 October 2021

Appeal Ref: APP/A2280/W/21/3270933

Land Adjacent to Rainbows End, Sundridge Hill, Cuxton, Rochester, Medway ME2 1LF

- 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 Tony Panaser against the decision of Medway Council.
 - The application Ref MC/19/0029, dated 7 January 2019, was refused by notice dated 28 September 2020.
 - The development proposed is demolition of existing garage and construction of a new four bedroom bungalow with pitched roof.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the planning application form, although I note it has been expressed differently including on the appeal form and the Council's decision notice. There are also differences in the spelling of the appellant's name across some of the submitted evidence. I have used the name as it appears on the application form.

Main Issues

3. The main issues are:
 - i) the effect of the proposal on the landscape and the character and appearance of the area;
 - ii) whether or not living conditions for future occupiers of the dwelling would be acceptable with particular regard to noise and disturbance; and
 - iii) the effect of the proposal on the living conditions of the occupiers of Rainbows End.

Reasons

Character and Appearance

4. The appeal site is outside of, albeit adjacent to, the settlement boundary of Cuxton as defined within the Medway Local Plan 2003 (LP). Although the appellant contends that the boundary of Cuxton should have included Rainbows End which neighbours the site and immediately adjacent properties, I must consider the development plan as it has been adopted. On this basis, the site is considered to be within the countryside in planning policy terms. It is also part of the Cuxton Brickfields Area of Local Landscape Importance (ALLI), and a designated 'Strategic Gap'.

5. Policy BNE25 of the LP specifies criteria for development within the countryside including that it is on a site allocated for that use, or comprises development meeting one of a list of defined circumstances. The proposal does not fall within any of these circumstances and the site is not allocated for development. Policy BNE25 further requires that development maintains, and wherever possible enhances, the character, amenity and functioning of the countryside, including the river environment of the Medway and Thames.
6. The appeal site is accessed from Sundridge Hill and includes a single-storey building which is set back from the highway with hardstanding to its front. At the time of my visit, the majority of the remainder of the site was fairly overgrown, and it did not appear to be actively used. From the limited information before me, I am unable to draw any firm conclusions as to whether the site has an agricultural use or would constitute previously developed land as defined within the Framework. However, even if I were to find that the site is previously developed, the existing development is of very modest scale resulting in a relatively unobtrusive visual presence, and there is a significant sense of spaciousness across the site which complements neighbouring areas of open land on the slopes of the Medway valley. Together with the loose relationship of the few other buildings to this side of Sundridge Hill, this provides for a contrast to the tighter knit development opposite, and there is a distinctly open and rural character around the fringe of this part of Cuxton.
7. Although somewhat overgrown, I therefore agree with the Council that the site makes a generally positive contribution to the setting of Cuxton. Moreover, it is consistent with the functions of the ALLI noted within the supporting text to LP Policy BNE34 which include forming a gateway to the urban area and a setting to Cuxton village.
8. The proposed dwelling would be of much larger footprint than the existing building on the site, and it would be of significantly greater overall scale and mass, including as a result of the pitched roof with dormers which would add considerable bulk to the upper part of the building. In combination with the parking, garden and residential paraphernalia that would additionally be likely to accompany occupation of the dwelling, it would give the site a clearly domestic appearance, and there would be a marked loss of openness.
9. Given its elevated position on the valley sides, the development would be prominent in both short and longer-range views along and across the Medway valley, and it would also be readily visible from Sundridge Hill. In these views, the development would be urbanising, and it would erode the generally open and more rural character of the area, with consequent detriment to the setting of Cuxton.
10. Furthermore, the submitted elevations show no level change between the front and rear elevations of the dwelling, but the site is sloping with land levels falling significantly away from Sundridge Hill. In the absence of site section details to demonstrate how the development would respond to the site topography, I am concerned that the drawings may not reflect the true extent of the building as it would appear in views from the south and across the valley. On the other hand, if the elevations show what is intended in terms of the building itself, it would seem that at least some alterations to the surrounding ground levels would be necessary to enable level access to the dwelling. The extent of any necessary works is however unclear based on the available information. In either case,

there could be additional visual impacts associated with the proposal, and I am unable to ascertain whether or not these would exacerbate the overall harm to the character and appearance of the site and its surroundings.

11. Notwithstanding that it may be of similar nature to adjacent development, the proposal would result in a greater spread of built form on this side of Sundridge Hill and I conclude for the reasons above that it would result in an unwelcome and intrusive incursion into the countryside and setting of Cuxton. As a consequence, there would be unacceptable harm to the landscape and the character and appearance of the area, and conflict with Policies BNE1, BNE25 and BNE34 of the LP which include requirements that development maintains the character, appearance and functioning of the countryside, its surroundings and the landscape character and function of ALLIs. The proposal would also be contrary to Policies S1, S2 and H11 of the LP insofar as they direct development to urban areas and the confines of specified settlements, and seek the maintenance and improvement of environmental quality and standards.

Living Conditions – Future Occupiers

12. At the time of my visit, Sundridge Hill as it passes the appeal site was reasonably busy with a fairly constant stream of vehicles, and my impression was that these were generally travelling at or around the 40mph speed limit. The resulting vehicle noise was significant, and was readily apparent for some distance into the site. Notwithstanding the set back of the dwelling, I therefore consider it likely that this noise could be noticeable, particularly within rooms served by windows to the front of the dwelling and its garden.
13. The site is also fairly close to a Household Waste and Recycling Centre, and while noise related to this use was not clearly discernible on the site at the time of my visit, I do not know whether the situation may vary at different times of the day and week. In addition, the Council advises that planning permission has been granted for a battery storage facility close to the site, and from the information before me I do not know whether this would result in additional noise that would be perceptible to occupiers of the development.
14. From my observations at the site, I consider that noise from the above sources has the potential to significantly detract from the living conditions of future occupiers of the development, and is therefore fundamental to consideration of the acceptability of the proposal. In the absence of an objective assessment quantifying noise, the extent of any harm to the quality of life of occupiers on the site through noise is unclear, and I have little certainty that any adverse impacts could be effectively mitigated. Moreover, I do not know how any proposed mitigation measures may affect the design of the development. Given these factors, I am not satisfied that it would be appropriate in this case to defer proper consideration of noise impacts to a planning condition.
15. For these reasons, I am unable to conclude on this main issue that living conditions for future occupiers of the development would be acceptable in respect of noise and disturbance. The proposal would therefore conflict with Policies BNE2 and BNE3 of the LP which, amongst other things, require consideration for noise and that development secures the amenities of future occupants.

Living Conditions – Neighbouring Occupiers

16. Notwithstanding my findings above regarding the land levels on the site and uncertainty as to the full extent of the visual impact of development on the site, the details that have been provided show that the dwelling would not project beyond the front or rear of Rainbows End. The proposed dwelling and Rainbows End are also both set in from the common boundary, and given the separation provided and the relationship with this neighbour, I am satisfied that the development would not cause a harmful loss of light or outlook.
17. The orientation of windows to the front and rear of the development would prevent unacceptable overlooking to Rainbows End. Windows to the side of the building would be at ground floor level, and would be either secondary windows to rooms also served by large windows to the front of the building or would serve a bathroom. Subject to the provision of suitable boundary treatment and obscure glazing which could be required by appropriately worded planning conditions, they would not lead to a harmful loss of privacy.
18. I therefore conclude on this main issue that there would not be unacceptable harm to the living conditions of the occupiers of Rainbows End, and in this regard, I find no conflict with Policy BNE2 of the LP insofar as it requires protection for the amenity enjoyed by adjacent properties.

Other Matters

19. The appeal site is located within 6km of the Medway Estuary and Marshes Special Protection Area (SPA) and Ramsar Site. The additional residential accommodation proposed, either alone or in combination with other developments, is likely to have a significant effect on the SPA/Ramsar site through recreational disturbance to the over-wintering bird interest. The appellant has already paid a tariff collected to fund strategic measures across the Thames, Medway and Swale Estuaries intended to manage and mitigate adverse effects of development. However, given the harm identified above and that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further and in light of the provisions of the Conservation of Habitats and Species Regulations 2017 as it could not alter my decision.
20. I have had regard to representations by interested parties and concerns raised including the effect of the proposal on highway safety. However, none of the matters raised either individually or collectively alter my conclusions on the main issues.
21. There was a significant period between the planning application being made and the Council's decision, but I do not know the reason for the apparent delay, and there is no firm evidence before me that it was the result of unacceptable behaviour by the Council. In any event, while I appreciate that the appellant is dissatisfied with the length of time that it took the Council to determine the application, this is not a factor which alters my consideration of the planning merits of the proposal.

Planning Balance

22. The Council has not disputed that recent housing delivery has fallen short of requirements. It also confirms that it is unable to demonstrate a 5 year supply of deliverable housing sites, and indicates that the current supply position is a little over 3 years. The National Planning Policy Framework (the Framework)

therefore indicates that the policies which are most important for determining the application are deemed out-of-date, and the presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework is 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.

23. The adverse impacts of the proposal are the harm that would be caused to the landscape and the character and appearance of the area and to the living conditions of future occupiers of the development which results in conflict with policies of the LP. The LP is of some age. Nevertheless, the Framework confirms that policies should not be considered out-of-date simply because they were adopted prior to its publication, and that due weight should be given to them according to their degree of consistency with the Framework.
24. In seeking to maintain and improve environmental quality, and to ensure that development is sympathetic to local character and protects residential amenity, I find that the relevant provisions of Policies S2, BNE1, BNE2, BNE3 and BNE34 are broadly consistent with the Framework. I therefore afford significant weight to the conflict with these policies.
25. Policies S1, BNE25 and H11 provide an overall strategy for growth, directing development to within the defined limits of settlements, which, in the absence of a 5 year supply, are not meeting housing needs. This reduces the weight that I afford to the conflict that I have found with these policies. Nevertheless, the objective within Policy BNE25 to maintain and where possible enhance the character, amenity and functioning of the countryside accords generally with the Framework requirement to recognise the intrinsic character and beauty of the countryside, and I therefore afford some weight to the conflict with this policy.
26. Set against the adverse impacts, the provision of an additional dwelling for which there is an acknowledged need is an important benefit of the proposal, and in light of the clear objectives within the Framework seeking to significantly boost the supply of housing and the extent of the shortfall in current supply and past delivery, I afford it great weight. Nevertheless, the very modest scale of the proposal would limit the contribution made to the overall supply of housing and consequently the extent of the benefit. The small scale of the proposal would similarly restrict associated social and economic impacts of the development, and in the absence of substantive information to detail the benefits that would accrue, I afford these limited weight.
27. Even if I were to conclude that the site comprised previously developed land, support within the Framework for the use of such sites is qualified alongside requirements to ensure well designed places with a high standard of amenity for future users, and for the reasons set out above, the proposal would not achieve these objectives. It would harm the character and appearance of the landscape and area, contrary to requirements of the Framework and the development plan, and I find that this is a matter of considerable weight. The failure to demonstrate acceptable living conditions for future occupiers further weighs against the proposal. In the context of paragraph 11(d) of the Framework, I find that these 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.

Conclusion

28. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and that material considerations including the Framework do not outweigh this conflict. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR