



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: 29 October 2021

Appeal Ref: APP/A2280/W/20/3264401

364 City Way, Rochester ME1 2BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Arun Jangra against Medway Council.
 - The application Ref MC/20/1139, is dated 18 May 2020.
 - The development proposed is described as 'construction of a new detached house adjacent to church'.
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Decision

1. The appeal is dismissed and planning permission for construction of a new detached house adjacent to church is refused.

Procedural Matters

2. The description of development in the banner heading and my formal decision above is taken from the application form, although I note that it has been expressed differently including on the appeal form and the Council's letter acknowledging the application.
3. The appeal relates to a planning application that was not determined by the Council within the prescribed period. In response to the appeal, the Council has prepared a statement outlining its view that permission should be refused. I have had regard to this statement and the suggested reasons for refusal within it in framing the main issues below.

Main Issues

4. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area including with regard to the effect on trees;
 - ii) the effect of the proposal on the living conditions of the occupiers of 366 City Way with particular regard to outlook and privacy; and
 - iii) the effect of the proposal on the integrity of European Sites of Nature Conservation Importance.

Reasons

Character and Appearance

5. The appeal site is adjacent to St Luke's Methodist Church which comprises a collection of buildings set back from City Way behind areas of parking and landscaping. However, other buildings to this side of City Way are generally similar terraced dwellings which are arranged on strong building lines fronting

the street. Gardens to the rear of the dwellings are typically generous, and in many cases include mature trees which are visible from the street scene in the gaps between buildings. Together with prominent trees lining City Way, this contributes a verdant quality and a somewhat spacious character to the area.

6. As a detached building which is in use as a pharmacy, 364 City Way varies somewhat from the nearby dwellings. Nevertheless, it is of broadly similar footprint and scale, and is positioned on a comparable building line with a long garden to its rear. As a result, it does not noticeably disrupt the characteristic layout of development nearby, and despite the church building, there is a distinctive rhythm and a sense of an overall coherent pattern to the development along the street scene.
7. The appeal proposes a dwelling to the rear of No 364, sharing an access with this building. The dwelling would be readily apparent from City Way across the frontage of the adjacent church, and while the church buildings are set deeper within their site, individual dwellings positioned behind buildings fronting the street are not a characteristic of the area. The presence of the dwelling on the appeal site would therefore be conspicuous. It would also be contrary to Policy H9 of the Medway Local Plan 2003 (LP) which advises that tandem development will not be permitted. In addition, separation between the dwelling and the rear of No 364 would also be fairly small, and the garden to its rear would be much shorter than those to other dwellings on this part of City Way. As a consequence, the development would appear somewhat cramped on the site, and would significantly erode the spacious quality of its surroundings.
8. The very shallow pitch of the roof against the relatively deep and wide footprint of the dwelling would further give it a boxy form, exacerbating its appearance of bulk. Save for the small garage projection, there would also be little other articulation or detailing to add relief to the building. The result would be a rather bland and featureless design at odds with other buildings in the vicinity where the use of different materials and elements such as projecting oriel windows or bays commonly provide distinction and visual interest.
9. For these reasons, I find that the development would relate poorly to the characteristic layout and spaciousness of the area, and it would appear as an isolated and incongruous feature
10. In addition, although at my visit it appeared that there may have been recent works resulting in removal of vegetation from the site, the dwelling would be in very close proximity to large trees that I observed within the garden of 366 City Way. Given the size of these trees, and in the absence of any substantive evidence to the contrary, I consider it likely that there would be a requirement for some works within their root protection areas to accommodate the development. I have no firm evidence demonstrating that such incursions would not harm the health and longevity of these trees, and accordingly I cannot be confident that the proposal would not cause further adverse visual impacts through detriment to the verdant character of the wider area.
11. For these reasons, I conclude on this main issue that the proposal would result in unacceptable harm to trees and to the character and appearance of the area. It would therefore conflict with Policies BNE1, BNE43, H4 and H9 of the LP insofar as they together broadly seek the retention of trees, and development that respects and maintains local character. There would also be conflict with

requirements within the National Planning Policy Framework (the Framework) seeking development which is sympathetic to local character and which adds to the overall quality of an area.

Living Conditions

12. The dwelling would be behind No 364, but it would be very close to the boundary with No 366 and would run alongside a fairly significant proportion of the neighbouring garden. Separation to the neighbouring dwelling itself would also be reasonably limited. The two-storey height of the dwelling would be much taller than the current fence, and even if I were satisfied that trees within the adjacent garden would not be harmed by the proposal, they would not fully obscure the development, and can not in any event be relied on long-term to provide screening. In my judgement, the depth and height of the development would present a highly dominant and overbearing feature when seen at such close range from the neighbouring amenity space and windows, harming outlook for occupiers.
13. In addition, first-floor level windows to the front of the dwelling would provide for views towards windows to the rear of No 366 at close quarters, as well as views down onto the neighbouring garden. Given the proximity at which these views would occur, I consider that the resulting overlooking would be significant, and would cause a harmful loss of privacy.
14. I therefore conclude on this main issue that the proposal would cause unacceptable harm to the living conditions of the occupiers of 366 City Way through loss of outlook and privacy. It would accordingly conflict with Policy BNE2 of the LP which requires, amongst other things, that development protects the amenities enjoyed by nearby properties, and regard for privacy in the design of development. For the same reasons, it would be contrary to the Framework which requires a high standard of amenity for existing users.

Integrity of European Sites of Nature Conservation Importance

15. The North Kent Marshes Special Protection Area (SPA) and Ramsar Sites are protected as European Sites of Nature Conservation Importance. These sites are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 which impose a duty to consider whether a proposed development may have a significant effect on their conservation objectives either alone, or in combination with other plans and projects within the framework of an Appropriate Assessment.
16. The information before me indicates that the appeal site is within 6km of the SPA/Ramsar sites, and that these sites are vulnerable to recreational disturbance to the over-wintering bird interest. The development would be likely to result in additional demand for recreation locally, and while the increase resulting from the development alone would be limited, I must adopt a precautionary approach in exercising my duty to protect the European Sites. From the evidence before me, I cannot be certain that increased recreational activity as a result of the proposal, either alone or in combination with other plans and projects, would not lead to significant effects on the integrity of the SPA/Ramsar sites.
17. To mitigate such impacts, the Council seeks financial contributions towards strategic measures in accordance with a Strategic Access Management and

Monitoring Strategy through a tariff. However, the Council indicates that the appellant has not paid the tariff, and in the absence of the relevant contribution or any alternative mechanism to mitigate the effect of the development, I can only conclude that the proposal would result in significant adverse effects on the SPA/Ramsar sites.

18. The proposal would therefore cause harm to the integrity of European Sites of Nature Conservation Importance, and would conflict with Policy BNE35 of the LP which requires protection for both national and international nature conservation sites. It would also conflict with the Framework's objectives for the protection of biodiversity and conservation of the natural environment.

Other Matters

19. Given the harm that I have identified to European Sites of Nature Conservation Importance, policies within the Framework relating to habitats sites provide a clear reason for refusing the development. In such circumstances, footnote 7 to paragraph 11 of the Framework makes it clear that the presumption in favour of sustainable development would not apply.
20. Be that as it may, the proposal would make effective use of the site to deliver an additional dwelling within an existing built-up area with access to local services and public transport. In light of clear objectives within the Framework to significantly boost the supply of housing, this is an important benefit and 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. Although the appellant comments that the development would provide a dwelling for an occupier of the shop in need of housing, very little detail regarding the need for the accommodation has been provided. The weight that I can afford to this factor is accordingly limited.
21. The appellant also refers to energy efficient lighting and heating systems, and insulation to the dwelling, but no further details have been provided on this matter. The proposal's environmental credentials have not therefore been demonstrated, and this limits the weight I afford to this factor.
22. Conversely, the proposal would result in significant harm to the character and appearance of the area and the living conditions of the occupiers of 366 City Way. In combination with the harm to the integrity of European Sites of Nature Conservation Importance, I find that the clear harm that would arise would significantly outweigh any modest benefits of the proposal.

Conclusion

23. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR