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# Appeal Decision

Site Visit made on 22 September 2021

**by H Miles BA(hons), MA, MRTPI**

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

**Decision date: 15 NOVEMBER 2021**

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**Appeal Ref: APP/H2265/W/21/3269267**

**Land between 166 and 194 Rocks Road, East Malling, Kent**

- 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 Long and Price against the decision of Tonbridge and Malling Borough Council.
  - The application Ref 20/00483, dated 26 February 2020, was refused by notice dated 21 August 2020.
  - The development proposed is development of 2no. detached houses with associated gardens and parking.
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## Decision

1. The appeal is allowed and planning permission is granted for development of 2no. detached houses with associated gardens and parking at land between 166 and 194 Rocks Road, East Malling, Kent in accordance with the terms of the application, Ref 20/00483, dated 26 February 2020, subject to the conditions set out in the schedule at the end of this decision.

## Applications for costs

2. An application for costs was made by Long and Price against Tonbridge and Malling Borough Council. This application is the subject of a separate Decision.

## Preliminary Matters

3. The application form lists the description of development as being for 3no detached houses. However, this was changed during the application process and therefore the description of development is taken from the decision notice. In the interests of clarity, the site address is taken from the appeal form, rather than the very brief address on the application form.
4. The Council has granted planning permission for a comparable development to that proposed<sup>1</sup>. The plans on which the Council made its decision for this appeal scheme are similar to the approved plans, although the approved scheme included additional information regarding the appearance of the visibility splays. On this basis the Council states that it does not seek to defend the appeal.
5. Amended plans were submitted with the appeal which include repositioning House 1 further from 166 The Rocks Road, and a change in land levels and roof form resulting in an overall reduction in the height of House 1. The Council has raised no objection to these amendments. Having also considered the

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<sup>1</sup> 20/02454/FL

representation from the occupants of 166 The Rocks Road, I am satisfied that it would be appropriate to assess the proposal on the basis of the amended plans. I have therefore determined the appeal accordingly.

### **Main Issue**

6. Having considered the issues raised by interested parties, the main issue is the effect of the proposed development on the living conditions of neighbouring occupiers with particular regard to daylight and sunlight.

### **Reasons**

7. The detailed daylight and sunlight study tests the effect on the windows of 166 The Rocks Road. This study concludes that any loss of daylight or sunlight to the neighbouring property would be acceptable and I agree with these professional findings.
8. Windows to the rear elevations are set back from the neighbouring boundary, and windows to the side elevations would be obscure glazed and obscure glazed panels would be provided to the sides of terraces. This would prevent any direct views towards neighbouring properties. This could be secured by condition.
9. Therefore, the proposed development would not have a significantly harmful effect on the living conditions of neighbouring occupiers. Consequently, it would be in accordance with paragraph 130 of the National Planning Policy Framework (July 2021) (the Framework) which, amongst other things, requires a high standard of amenity for existing users.

### **Other Matters**

#### *Spatial Strategy*

10. The site is outside the settlement boundary of East Malling and is therefore in the countryside for the purposes of the development plan. Policy CP14 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy 25 September 2007 (the Core Strategy) sets specific criteria for development which must be met in this location. The proposed development does not meet these criteria, and therefore it would be contrary to the development plan in this respect.

#### *Character and Appearance*

11. The appeal site is open land set between houses at 166 and 194 The Rocks Road, with residential development opposite. At this point The Rocks Road has a residential, edge of village character. Houses in this area are varied in their design and size but are generally 1 and 2 storeys with pitched roofs and a traditional appearance. The site is some way from the boundary of the East Malling Conservation Area and does not form part of its setting. The proposed conventional two storey properties are therefore appropriate to the character and appearance of this area and would not harm the intrinsic character and beauty of the countryside.

#### *Highway Safety*

12. Additional evidence has been submitted regarding whether it would be possible to achieve the visibility splays required with regard to land ownership.

However, based on the evidence it appears to me that there is a reasonable prospect of the visibility splays being implemented within the 3 year time limit suggested by the Council's conditions. As such this could be controlled via the imposition of a condition. This condition would need to be pre commencement as it would be necessary to be assured that these visibility splays could be provided in order to ensure an acceptable effect on highway safety.

13. The Rocks Road is a narrow lane. I understand the road is well used, including by occupants of nearby recent developments. Nevertheless, I am satisfied that the access, any increase in traffic and parking arrangements would not result in harm to highway safety.

#### *Biodiversity*

14. It is put to me that the site was cleared prior to the survey for the Preliminary Ecology Appraisal (PEA). Any harm to wildlife in this respect would be covered under other legislation and would not be determinative in this case. Although I am told there are ponds present nearby that were not included in the PEA I am not provided with convincing evidence that contradicts the professional findings that amphibians are highly unlikely to be present on the site. Therefore, I do not find harm in relation to biodiversity.

#### *Fallback*

15. Given the similarities between the approved scheme referred to earlier and the appeal proposal, if the appeal were dismissed there is a real prospect that the approved planning permission would be implemented. I therefore afford significant weight to the fallback position of the implementation of this permission.

#### *Planning History*

16. The site was considered for residential development of 5 dwellings as part of the Local Plan process in 2017. An appeal for a single dwelling was also dismissed at appeal in 1992. However, the approval of 2 dwellings on this site in 2021 has resulted in notably different circumstances in relation to the appeal before me now. Consequently, these decisions do not alter my findings above.

### **Planning Balance**

17. The proposed development does not comply with Policy CP14 of the Local Plan which relates to housing outside the defined settlement boundary of East Malling. However, the Council cannot demonstrate a 5 year supply of deliverable housing sites. Consequently Paragraph 11 d) of the Framework is engaged.
18. The proposed development would contribute to the government's target to deliver a sufficient supply of homes. It would result in the small but important social and economic benefits associated with the provision of two new family homes, including the development of a currently unused piece of land.
19. Furthermore, the proposed development would deliver comparable benefits to the fallback position. However, it would be less harmful with regard to the effect on 166 The Rocks Road due to the reduced height and increased distance between house 1 and the shared boundary with No 166. For similar reasons it

would also be less harmful than the original plans submitted with this application.

20. Therefore, the minimal adverse effects of the proposal arising from the conflict with Policy CP14 would not significantly and demonstrably outweigh the important benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development applies in this case.

### **Conditions**

21. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, including ensuring that the conditions would not unnecessarily delay the delivery of development.
22. I am attaching the standard implementation condition, and in the interests of certainty a condition to define the plans with which the scheme should accord.
23. Conditions requiring the submission of details of materials, details of landscaping and boundary treatment, and implementation of the site levels submitted would be necessary to preserve the character and appearance of the area, and, with respect to site levels, also in the interests of the living conditions of neighbouring occupiers. The submitted landscape strategy does not reflect the footprint of the amended development and therefore the submitted information is not sufficient in this regard.
24. Conditions securing obscure glazing to the windows as annotated on the approved drawings and to the terraces is required to ensure an acceptable effect on the living conditions of neighbouring and future occupiers in perpetuity.
25. Conditions requiring the provision and retention of car parking, turning areas and garages for car parking are needed for highway safety reasons. The requirement for details and provision of visibility splays is set out above. I have amended this condition to ensure that it is enforceable and reasonable. However, I have also removed the reference to visibility splays from the Council's condition 4 to avoid duplication. As suggested in the Kent County Council Highways and Transport representation, the provision of electric vehicle charging would be required in the interests of reducing emissions. However, taking into account the relevant land at this site consists of private gardens and the size of the plots, a condition requiring details of cycle parking would not meet the test of necessity.
26. Taking into account the nearby residential development and the nature of the highway in this location, details of construction and demolition management are required in the interests of highway safety and the living conditions of nearby occupiers. This condition would be required to be pre commencement as the management arrangements will apply for the full duration of the development.
27. The officers report refers to a condition restricting permitted development rights for the proposed new dwellings. However, the Framework states that these conditions should not be used unless there is clear justification. I have not been presented with evidence to justify that for this development of two

new dwellings on the edge of a village with reasonable garden space, such a condition would be necessary. Therefore, it is not included below.

28. I am not persuaded that it is likely that the site is of archaeological interest. Therefore, the condition suggested in this regard is not necessary.

### **Conclusion**

29. The proposal would not wholly accord with the development plan. However, in this case the other considerations set out above outweigh the limited conflict with the development plan. Therefore, for the reasons set out above, and subject to the conditions listed, this appeal should be allowed.

*H Miles*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: LOCATION PLAN, 414/75, 76, 150 D, 151F, 152C, 154G, 106C, 153B, 155C
- 3) Prior to the commencement of the development hereby approved, notwithstanding the arrangements shown on plan number 414/106C, details of the required visibility splays of 2.4m x 32m at the access point onto the Rocks Road shall be submitted to and approved in writing by the Local Planning Authority. The details shall include (but not necessarily be limited to) the following:
  - i) A scheme for the management of adjacent hedges to the front of 166 and 197 The Rocks Road
  - ii) How the splays will be kept free of permanent development

No above ground works shall take place until the approved visibility splays have been laid out and provided in accordance with the approved details.
- 4) Prior to the commencement of the development hereby approved, arrangements for the management of all demolition and construction works shall be submitted to and approved in writing by the Local Planning Authority. The management arrangements shall include (but not necessarily be limited to) the following:
  - i) The days of the week and hours of the day when the demolition and construction works will be limited to and measures to ensure these are adhered to;
  - ii) Procedures for managing all traffic movements associated with the demolition and construction works including (but not limited to) the delivery of building materials to the site (including the times of the day when those deliveries will be permitted to take place and how/where materials will be offloaded into the site) and for the management of all other construction related traffic and measures to ensure these are adhered to; and
  - iii) The specific arrangements for the parking of contractor's vehicles within or around the site during construction and any external storage of materials or plant throughout the construction phase.

The development shall be carried out in accordance with these approved details.
- 5) No above ground works shall take place until details of all materials to be used externally have been submitted to and approved by the Local Planning Authority in writing, and the development shall be carried out in accordance with the approved details.
- 6) No above ground works shall take place until details of obscure glazed panels to the sides of the first floor terraces, have been submitted to and approved by the Local Planning Authority in writing. The panels shall be a minimum of 1.8m high. The development hereby approved shall not be

- occupied until the approved obscure glazed panels are implemented in accordance with the approved details.
- 7) The development hereby approved shall not be occupied until the windows on the first and second floor side elevations marked as obscure glazed are fitted with obscured glass and, apart from any top-hung light, are non-opening.
  - 8) The development hereby approved shall not be occupied until details of provision for electrical vehicle charging are submitted to and approved in writing by the Local Planning Authority. The development hereby approved shall not be occupied until electrical vehicle charging is implemented in accordance with the approved details.
  - 9) The development hereby approved shall not be occupied until the areas shown on the submitted layout for vehicle parking spaces, garages, turning, and access onto the highway have been provided, surfaced and drained. Thereafter the garages shall not be enclosed and these areas shall be kept available for such use at all times.
  - 10) The development hereby approved shall not be occupied until a scheme of landscaping and boundary treatment has been submitted to and approved in writing by the Local Planning Authority. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species. The dwelling hereby approved to which the details relate shall not be occupied until any boundary fences, walls or similar structures as may be approved have been erected.
  - 11) The development shall be constructed at the level indicated on the drawing referenced 414/154 Rev G.