



Appeal Decision

Site visit made on 10 May 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2022

Appeal Ref: APP/A2280/W/21/3285224

10 Arnhem Drive, Wayfield, Chatham ME5 0JG

- 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 Lee Brown against the decision of Medway Council.
 - The application Ref MC/21/1363, dated 11 May 2021, was refused by notice dated 21 July 2021.
 - The development proposed is construction of a 2 bedroomed detached dwelling with associated parking on subdivided plot - demolition of side projection to 10 Arnhem Drive.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the decision notice and appeal form because the wording used reflects the amendments made to the proposed development during the Council's assessment of the planning application.

Main Issues

3. The main issues are the effects of the proposed development on:
 - the character and appearance of the area;
 - the living conditions of residents of 12 Arnhem Drive with particular regard to privacy; and
 - the integrity of the North Kent Marshes European sites.

Reasons

Character and Appearance

4. The appeal site comprises part of the garden of 10 Arnhem Drive, a two-storey semi-detached dwelling occupying a corner site within a residential area. Space around the dwellings in the immediate vicinity varies, although those occupying corner sites generally have relatively more space around them than other dwellings. These more spacious plots provide a degree of openness to the street scene and contribute positively and distinctively to the character and appearance of the area.
5. The proposed residential use and the design and materials proposed would be generally consistent with dwellings in the area. However, the location of the

proposed dwelling within the site would not sit comfortably in the street scene. It would reduce the gap between the properties at 10 and 12 Arnhem Drive such that the visual separation between them would be substantially and unacceptably reduced. This would result in a development that would appear visually cramped to the passer-by. The small size of the plot proposed together with its configuration would also contribute to the appearance of a visually cramped development. As a result, the proposal would appear as an incongruous form of development within the street scene, materially harming the open and spacious character of this part of the street.

6. I acknowledge that the size of the amenity areas of the nearby properties identified by the appellant may be similar to the proposed development. However, these are not corner plots and so do not have the same configuration as the appeal site, nor do they make the same positive contribution to the openness of the area.
7. The appellant has drawn attention to a number of nearby developments that he considers raise similar issues to the appeal scheme. The examples on corner plots appear to relate to an extension to an existing dwelling rather than a new house. The other two examples are located on sites at the end of a road and do not appear to have the same plot configuration or relationship with the adjoining property as the appeal scheme. The examples are not therefore directly analogous to the appeal proposal, and, in any event, I have determined this appeal on its individual planning merits having regard to the positive contribution that the site makes to the character and appearance of the area.
8. For the above reasons, I conclude that the proposed development would have a significantly harmful effect on the character and appearance of the area. As such, it would be contrary to Policy BNE1 of the Medway Local Plan, adopted 2003 (the Local Plan) which seeks to protect the character of an area, and Policy H4 which requires that infilling in existing residential areas makes a clear improvement in the local environment. It would also conflict with the design objectives of paragraphs 126 and 130 of the National Planning Policy Framework (the Framework).

Living Conditions

9. The proposed dwelling would be located close to 12 Arnhem Drive. Whilst there may not be a loss of light to no. 12, the orientation of the proposed dwelling would allow future occupiers to overlook directly and from a close distance much of its garden area from the proposed first floor bedroom window. Residents of no. 12 would therefore be overlooked when in the garden, given the proximity, height and orientation of this proposed first floor window.
10. There is already a degree of mutual overlooking from dwellings in the vicinity. However, the exacerbation of the effects of overlooking of the garden of no. 12 from an additional viewpoint and at a close distance would be harmful to the living conditions of the residents of this property. I recognise that the overlooking would be from a bedroom, but there is nothing before me to suggest that such accommodation would not be used for prolonged periods of time.
11. The appellant has suggested that the window could be angled offset, and this could be the subject of a condition as could other similar mitigation. However, in the absence of plans to demonstrate whether an alternative design solution

would adequately address the identified harm and what effect such changes would have for the appearance of the proposed dwelling and the living conditions of future occupiers, I cannot be certain that such mitigation would be appropriate. In other words, this is not a matter that is suitable to be controlled by condition.

12. I note that the resident of no. 12 endorses the proposal without objection. Nevertheless, the living conditions of both existing and future occupiers should be protected, and this lack of objection does not outweigh the harm that I have identified.
13. I conclude that the proposed development would have a significantly harmful effect on the living conditions of residents of 12 Arnhem Drive with particular regard to privacy. As such, the proposed development would conflict with the residential amenity requirements of Policy BNE2 of the Local Plan. Whilst noting the appellant's comments that the proposed dwelling has been designed to be safe, inclusive and accessible, it would nevertheless also conflict with the residential amenity requirements of paragraph 130 f) of the Framework.

North Kent Marshes European Sites

14. The Council identifies that the site lies within 6km of the North Kent Marshes Special Protection Areas (SPAs)/Ramsar Sites¹. The SPAs are European sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Paragraph 181 of the Framework confirms that listed Ramsar Sites² should be given the same protection as European sites. The Habitats Regulations require the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from a proposal, either alone or in combination with other plans or projects.
15. The European sites are classified for their waders and waterfowl and provide on passage, overwintering and breeding habitat to an array of species of European importance. The evidence indicates that over-wintering birds are at risk of disturbance from recreational activities.
16. The European sites are an important recreational resource. Due to the proximity of the proposed development, there is a reasonable likelihood that the European sites would be accessed for recreational purposes by future occupiers. Although the number of additional recreational visitors would be limited given the nature of the proposal, when considered in combination with other development in the area, there would be a likely significant effect on the qualifying features of the European sites, particularly to over-wintering birds through increased disturbance as a result of recreational activity.
17. As the competent authority, it is therefore necessary for me to conduct an AA in relation to the effect of the proposal on the integrity of the European sites. Considering the conservation objectives, there would be adverse effects on the integrity of the European sites from the proposed development through increased disturbance to the qualifying features from recreational activity. I must therefore consider whether measures could be put in place to avoid or mitigate the impacts.

¹ The designated sites that make up the North Kent Marshes are the Swale, Medway Estuary and Marshes, and Thames Estuary SPAs and Ramsar Sites

² listed under the Ramsar Convention

18. The Council identifies that it is developing strategic measures to mitigate impacts on the European sites. These will likely be in accordance with the Category A measures identified in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM). Whilst it develops such measures, the Council is requesting an interim tariff for developments relating to new dwellings within the influence of the European sites. The interim tariff should be collected in anticipation of an administrative body being identified to manage the strategic tariff collected by the local authorities; a memorandum of understanding or legal agreement between the local authorities and administrative body to underpin the strategic approach; and to ensure that a delivery mechanism for the agreed SAMM measures is secured and the SAMM strategy is being implemented.
19. It is unclear from the evidence before me as to the status of the strategic measures to mitigate impacts and whether Natural England has endorsed them. Therefore, based on the evidence before me, I cannot conclude that the payment of the tariff would provide appropriate mitigation for the proposed development. Even if I was able to determine that mitigation in the form of the tariff payment would adequately overcome the adverse effects of the proposed development on the European sites, and with support from Natural England, I would still not be able to conclude that the proposal would not have an adverse effect on their integrity. This is because, although the appellant has indicated a willingness to make the Council's required financial contribution towards the SAMM mitigation measures, there is no mechanism in place by which the mitigation can be secured and controlled, for example by means of the submission of a completed planning obligation.
20. No other alternative solutions have been put to me that would avoid or reduce the effects on the European sites. I must also consider whether there are any imperative reasons of overriding public interest. The provision of a single dwelling, taking into account the merits of the case and the modest scale of the development, is not sufficient to amount to such overriding public interest.
21. Consequently, having regard to the Habitats Regulations, permission must not be granted. The evidence is that the proposed development would have an adverse effect on the integrity of the European sites, without suitable mitigation, and hence it would be contrary to the habitat and biodiversity requirements of Policy BNE35 of the Local Plan and paragraphs 180 and 181 of the Framework.

Other Matters

22. There would be social and economic benefits such as additional residents supporting shops, businesses and community facilities in the area. However, the benefits stemming from one dwelling would be limited and would not alter or outweigh my conclusions on the main issues.
23. I note the comments made about the communication with the Council. However, in determining this appeal, I am only able to have regard to the planning merits of the case.

Conclusion

24. The proposed development would conflict with the development plan taken as a whole as well as the Framework. There are no material considerations worthy

of sufficient weight that would indicate a decision otherwise than in accordance with it. The appeal should therefore be dismissed.

F Wilkinson

INSPECTOR