



Appeal Decision

Site visit made on 25 May 2022

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2022

Appeal Ref: APP/U2235/W/21/3272436

Land off Forest Hill, Tovil, Maidstone, Kent, ME15 6FG

- 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 Rouxville Investments Ltd against the decision of Maidstone Borough Council.
 - The application Ref 20/505935/FULL, dated 1 December 2020, was refused by notice dated 24 February 2021.
 - The development proposed is 3 x 4-bedroom dwellings with associated car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission has previously been refused for 4 houses on the appeal site in 2018 and an appeal dismissed in 2019 (ref APP/U2235/W/21/3218708).
3. Planning permission has been granted for 22 dwellings on a larger site including the proposal site (ref 17/502355) and an appeal dismissed for 29 dwellings on this site (ref APP/U2235/W/16/3157509).

Main Issues

4. The main issues are (a) the effect of the development and loss of open space on the character and appearance of the area, (b) the effect of the siting of the northernmost house on the health and visual amenity group of sycamore trees, (c) the effect of activities at an adjacent leisure centre on living conditions of future occupiers of the dwellings and (d) the effect of the development on protected species.

Reasons

Character and appearance

5. The appeal relates to a shallow rectangular shaped plot opposite the junction with Courteney Road. The site is overgrown with several trees and shrubs including a group of large sycamore trees at its northern end. Hoardings to Forest Hill detract from the positive contribution the greenery makes to the appearance of the street scene. The surrounding area is mainly residential in nature. To the rear of the site is a YMCA community centre, car park and outdoor basketball court with external lighting. The court backs on to the appeal site.

6. The proposal would require the removal of one of the grouped sycamore trees and all other trees and shrubs to the south. The houses would be angled to the road to provide triangular front and rear gardens between tandem parking spaces, extending almost to the full depth of the site. The submitted landscape plan shows replacement native hedgerows together with 12 native trees all of which would be planted close to the houses, indicating the relatively cramped nature of the layout for 4-bedroom houses with very small gardens. Should the trees become established to the scale of those lost they would provide an oppressive environment for future occupiers of the houses.
7. There would be a loss of open space, but this point needs to be tempered by the presence of the hoardings that restrict views of the site's openness and the unkempt nature of the land behind. Nonetheless, the proposal would have an unduly urbanising effect with a loss of greenery and open space that would detract from the character of the area and appearance of the street scene.
8. The proposal would thereby be contrary to Policies SP1 and DM1 of the Maidstone Local Plan (2017) (MLP) which requires development to have a high quality design that responds positively to and where possible enhances the local and natural character of an area including green spaces.
9. The proposed dwellings would be similar to those approved on an adjacent site to the south in that they would be set at an angle to the road and located on small sites. I have not been provided with full details on the background to that site, but the greenery presently on the appeal site is a material consideration as it does enhance the appearance of the street scene.
10. The site is within the built-up area of Maidstone close to local facilities. Its use for housing would make a modest contribution to the general need for more homes. However, the Council can currently demonstrate a five year housing land supply and has a favourable Housing Delivery Test result for 2021. As such, the tilted balance set at Paragraph 11 of the National Planning Policy Framework does not apply. The need for the additional homes proposed is outweighed by the harm to the local character.

Trees

11. The six sycamore trees were made the subject of a Tree Preservation Order in 2016, but this was not confirmed, so the trees are not formally protected. The appellant's tree condition survey concludes that five of the trees are only in fair condition (category C), but one is classified as moderate (category B). Some trees are suppressed by other trees and have uneven canopies as a result, but as a group the trees present a prominent and pleasing feature in close and long views along Forest Hill and from Courteney Road, rising to some 13m in height, well above the hoardings to the back of the footway.
12. One of the trees would be removed, but the others retained subject to works to thin or reduce crowns and remove epicormic growth. Notwithstanding these works, unit 1 at the northern end of the site would be close to the group. Future occupiers would be likely to experience shading of the house and small garden as the trees grow back. The fall of leaves and sap on to the garden and parked cars could also be a nuisance. This would be likely to result in pressure for more drastic works to the trees or their removal to improve light to the house, garden and parking area. Such works would be detrimental to the trees' amenity value.

13. Unit 1 would also be built within the root protection area for the nearest trees. Whilst the appellant has specified 'no dig construction' over the parking spaces alongside the house, it is likely that there would be some damage to tree roots, particularly in the change in level for the access from Forest Hill. Other than the aim to make full use of the site for housing, no justification has been provided for building so close to the trees. Whilst the use of specialised foundations may limit damage to roots within the root protection area, the default position in BS5837:2012 (Trees in relation to construction) is for structures to be located outside the root protection areas.
14. The proposal would be likely to reduce the visual amenity value and longevity of the sycamore trees through the initial works during construction and in subsequent pressure for additional works to the trees. It would thereby be in conflict with Policies SP1, DM1 and DM3 of the MLP which seek to protect and enhance the natural environment including trees with significant amenity value.

Living conditions

15. The houses have been designed with side facing bedroom windows in many instances to reduce disturbance from activities from the community centre at the rear of the site. The Council accept that spillage of light from external lighting around the games court is unlikely to qualify as a significant environmental nuisance. I have no reason to disagree with this finding.
16. Nevertheless, the houses and their small gardens would be very close to the games court. The regular lawful use of this area for ball games and other activities with associated shouting and cheering, sometimes illuminated and carrying on late into evenings, would be likely to become a source of nuisance for future occupiers of the houses. This could result in complaints and tensions between residents and operators of the community centre. The noise and disturbance would be of a different kind to the regular passing of traffic at the front of a house or for houses backing on to a more distant school playing field. The proximity of the houses and their small gardens to the games court would be likely to result in an adverse effect on the living conditions of future occupiers through noise and disturbance. The proposal would therefore not be compatible with Policy DM1 of the MLP which requires the design of new housing to ensure that future occupiers are not exposed to excessive noise, activity and vehicular movements.
17. The appellant has commented that perceived noise intrusion "*would largely be a matter for each prospective purchaser of the houses*" and also points to the approval of flats on the southern boundary of the games court within the permission for housing on a larger site including the appeal site. It would not be responsible planning for a likely noise nuisance issue to be left to a 'buyer beware' approach. The permission for the larger site included an acoustic report with mitigation measures, something lacking from the present proposal.

Protected species

18. The appeal site was identified as a receptor site for the translocation of reptiles as a requirement of a planning condition to the permission for development of the larger site including the appeal site. The current proposal includes a Preliminary Ecological Assessment (PEA) dated November 2020 for the appeal site. The PEA refers to a previous survey for reptiles in 2017 in association with the permission on the larger site.

19. This revealed the presence of a small population of slow-worms on the current appeal site and larger site. The PEA surmises that habitat suitability for reptiles within the current appeal site has not changed since the time of the earlier report and that it is therefore unlikely that population levels or the species composition of reptiles will have changed significantly. A mitigation strategy is recommended for reptiles on the appeal site and adjacent larger site.
20. The appellant refers to discussions with a nearby golf course as a suitable off-site receptor for slow-worms for both the appeal site and larger site and suggests use of a planning condition to control this. However, there is no assurance that either the golf course site or an alternative site can be found. In my judgement, it would be inappropriate to grant permission for residential development on the appeal site with this uncertainty remaining. Moreover, the mitigation should include the larger site, beyond the curtilage of the current appeal site. For ecological reasons the entire population of reptiles on the appeal site and adjacent larger site should be captured and translocated simultaneously to an agreed receptor site with financial and management arrangements in place to safeguard the longevity of translocated reptiles. It would therefore be more appropriate for the mitigation to be in the form of a planning obligation to include land beyond the current planning unit and to provide certainty on arrangements at the new site.
21. The appeal submission does not include such an obligation. It has not adequately demonstrated that protected species would not be adversely impacted by the proposal. The development would thereby be contrary to Policies SP1, DM1 and DM3 of the MLP which require development proposals to incorporate measures to provide adequate mitigation for wildlife where significant harm cannot be avoided by that development.

Conclusion

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

Rory MacLeod

INSPECTOR