

Appeal Decision

Site visit made on 30 June 2022

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH July 2022

Appeal Ref: APP/H2265/W/21/3289015

Land to the rear of the George and Dragon, Shipbourne Road, Tonbridge, TN10 3DN

- 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 Darren Apps against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/21/01947/FL, dated 9 July 2021, was refused by notice dated 27 October 2021.
 - The development proposed is a pair of semi-detached dwellings.
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Decision

1. The appeal is dismissed.

Main issue

2. The main issues in this appeal are:
 - whether the proposed development would provide a satisfactory standard of accommodation for future occupants; and
 - the effect of the proposed development on heritage assets, namely the character and appearance of the Tonbridge Conservation Area and the setting of nearby listed buildings

Reasons

Living conditions

3. The appeal site is an area of hardstanding that lies to the rear of The George and Dragon public house. The proposed development would see a pair of semi-detached houses erected on the land. I saw at my site visit the beer garden to the public house and the rear covered terrace lie very close to the north of the site, with a drop in levels also meaning that the appeal site is set at a higher level than that garden.
4. The appellant's Acoustic Assessment¹ assessed the levels of noise that would be experienced by occupants of the new dwellings from the road, the public house, and the garden to the public house. The Assessment found that, in order to provide a suitable internal noise environment, it would be necessary for double glazing to be installed and that windows to be kept closed. This

¹ Able Acoustics: Acoustics Assessment (June 2021)

raises issues of ventilation to rooms, and a consequent issue of thermal gain. The Assessment states that this matter would need to be addressed separately in order to comply with Building Regulations and, in the matter of thermal comfort, further assessment is needed to consider whether that matter can be addressed with windows remaining closed.

5. I do not have any evidence on these matters before me. It is very important to ensure that an adequate internal noise environment is provided for future occupants, since otherwise the Assessment indicates that quiet areas, such as bedrooms, are likely to experience a level of noise that is unacceptable. Adequate ventilation and thermal performance is of equal importance. On the basis of what I have read I am not reassured that the scheme before me will unequivocally provide that adequate environment in terms of noise, ventilation and thermal comfort. As this is a matter concerning the design and construction of new buildings, in order to address an existing external noise source, I cannot leave this to be decided in the future by way of a planning condition as there is nothing before me that demonstrates such measures can, in principle, be achieved.
6. The Assessment also considers the levels of noise received in the amenity areas to the proposed properties. It states that, with an acoustic fence, there would be adequate mitigation to Plot 1, but a fence could not mitigate noise to all the amenity area for Plot 2. The proximity of the noise source – the public house and garden – is very close to Plot 2, and the type of noise is identified as intrusive, ie voices and laughter of drinkers, amplified music. This would be an intrusion into the private amenity spaces of the house, and unduly disruptive to the living conditions of occupiers.
7. The Assessment refers to BS8233: Guidance on sound insulation and noise reduction for buildings 2014 that states, where guidelines values cannot be achieved and where development is otherwise desirable, then consideration should be paid to other relatively quiet areas of external publicly accessible amenity space. There are two recreation spaces around 600m and 800m from the appeal site. However, I saw at my site visit that this distance means they are not readily accessible. They do not provide convenient and reasonably accessible alternative areas that may provide a realistic alternative to the amenity space of the proposed houses where, due to the nature of the noise from the pubic house, there is likely to be intrusive disturbance in the day, evening and night.
8. Based on what I have read and seen I therefore conclude on the first main issue that the proposed development would result in a development that does not provide a satisfactory standard of accommodation for future occupants. This would be contrary to paragraphs 130 and 185 of the National Planning Policy Framework, which seek to ensure developments have a high standard of amenity and mitigate and reduce potential adverse impacts resulting from noise from new development. It would also conflict with the relevant development plan policy, namely Policy CP24 of the Tonbridge and Malling Core Strategy 2007 (CS) which, amongst other matters, requires proposals to not be detrimental to amenity.

Effect on heritage assets

9. The Council commented at the application stage that, whilst rather basic, no objection was raised to the design and siting of the proposed dwellings. The site lies within the Tonbridge Conservation Area, and under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Area.
10. The Conservation Area encompasses a large part of the town of Tonbridge, and within the Area the original form and the evolution of the settlement can be seen through the street layout, the position of buildings, and the range of architecture and building form that reflect the history of Tonbridge. The significance of the Conservation Area as a heritage asset derives from this.
11. The appeal site is a vacant area of land which is hardstanding and partly fenced. Whilst those features are not inherently attractive, the open character of the site does allow an important feeling of spaciousness across the site. This provides room between the Grade II listed George and Dragon public house and the tall corner building of 15 Shipbourne Road, and the smaller Dairy Cottage to the rear. The latter is a Grade II listed building, linked to the adjoining Dry Hill Farm House, and is of intimate scale with an attractive, large and steeply pitched tiled roof that is visible from Shipbourne Road. Under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a duty to have special regard to the desirability of preserving the setting of a listed building.
12. The design of the proposed houses is functional, rather than being clearly inspired from the local area. The first floor overhangs an in-set covered car parking port. This feature would create an unsympathetic front elevation to the pair of houses not seen in the vicinity, and would be an example where the design of housing has clearly been led by car parking requirements and the small size of the site, rather than informed by the local area.
13. The simple block-form of the buildings would contrast and jar awkwardly with the attractive form of Dairy Cottage and its distinctive roof, largely obscuring views of that building from the road. The height of the dwellings would appear over-dominant to Dairy Cottage. The proximity of the proposed houses to the boundaries of its site, and the small rear garden areas, would compound the impression of cramped houses sitting uncomfortably within an existing and established townscape of identifiable character and the listed buildings of Dairy Cottage and The George and Dragon.
14. The siting, design and scale of the proposed development would thus be unacceptable, and hence conflict with the objectives of Policy QQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and Policy CP24 of the CS which, amongst other matters, require proposals to conserve and enhance the character and local distinctiveness of the area and be well designed.
15. The proposals would thus be harmful to the significance of the designated heritage assets of the Conservation Area and the two listed buildings. Paragraph 199 of the National Planning Policy Framework states that great weight should be given to the conservation of heritage assets, and paragraph

200 says any harm to significance should require clear and convincing justification. I attach considerable importance and weight to this harm. That harm would be less than substantial and so, in accordance with paragraph 202 of the Framework, must be considered against the public benefit of the proposal.

16. The proposal would make the more efficient use of land for housing within the existing settlement of Tonbridge and provide two additional dwellings. This is consistent with paragraph 119 of the Framework, and with paragraph 60 that seeks to significantly boost the supply of homes. However, in this instance it is my judgement that the degree of harm that arises would be of a scale that clearly outweighs any benefit: there would be appreciable, long-term harm to the established character and appearance of the Conservation Area and the setting of the listed buildings, and there is a considerable wider public interest in preserving these matters.
17. I therefore conclude that there are no public benefits arising from the proposed works that would outweigh the harm identified. My conclusions thus remain the same on the second main issue.

Other considerations and planning balance

18. I am informed that the Council cannot demonstrate a five year supply of land for housing. In accordance with paragraph 11d) and footnote 7 of the Framework, this means that the policies which are most important for determining the application are out of date unless two circumstances apply. With regards to d)i), there are no policies in the Framework that protect areas or assets of particular importance that are relevant to the development before me. Paragraph 11d)ii) therefore states that, in such circumstances, 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.
19. The benefit of the proposed development is the provision of two dwellings, which is consistent with the Framework. Balanced against this is the harm to the living conditions of future occupants and to the significance of heritage assets, which conflicts with the Framework. Due to the degree of harm arising on the two main issues it is my judgement that these matters attract more weight than the benefit from the additional dwellings.
20. My assessment of the proposal against the policies of the Framework taken as a whole therefore demonstrates that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Thus, the proposal does not benefit from the presumption in favour of sustainable development as set out in paragraph 11(d) of the Framework. My decision is taken in accordance with the development plan and, for the reasons given earlier, I have found that the proposal conflicts with the development plan as a whole. The appeal is therefore dismissed.

C J Leigh

INSPECTOR