



Appeal Decision

Site visit made on 6 September 2022

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2022

Appeal Ref: APP/A2280/W/21/3286150

139A Nelson Road, Gillingham ME7 4LT.

- 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 J. Tatler & Tithebarn Properties Ltd against the decision of Medway Council.
 - The application Ref MC/21/0442, dated 12 February 2021, was refused by notice dated 4 May 2021.
 - The development proposed is construction of 3 x 2 bed flats and 1 x 2 bed accessible duplex and associated parking and amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined, the current National Planning Policy Framework (the Framework) was published in July 2021. The parties have had the opportunity to refer to the 2021 Framework and I have had regard to it in reaching my decision.
3. The appellants have provided amended plans PL(02) 02 A; PL(02) 03 A; PL(02) 04 Rev A; PL(02) -13; PL(02) 14; PL(02) - 15; PL(02) - 16; and PL(02) - 17 at the appeal stage. While these have not been subject to public consultation, the Council has not objected to their provision and has addressed them in their appeal statement. The amendments are relatively minor in nature, with four of the plans showing visual representations of the proposed development, parking spaces, and a reduction in the number of bedrooms for the duplex unit. As such, I consider that no prejudice would be caused to any parties by my consideration of these plans.

Main Issues

4. The main issues in this appeal are the effect of the proposed development on:
 - a) the character and appearance of the area;
 - b) the living conditions of neighbouring occupiers, with particular regard to garden space, noise, outlook and privacy;
 - c) the living conditions of its future occupiers, with particular regard to floorspace and outlook; and
 - d) highway safety.

Reasons

Character and appearance

5. Nelson Road and the surrounding roads are characterised by two-storey terraced, semi-detached and detached houses with pitched roofs. Many of these houses date from the late 19th century, have large two-storey bay windows, and are set back from roads behind front gardens. Most nearby properties have rear gardens, with some tree cover. Some properties have been converted into flats or housing in multiple occupation, but retain much of their original appearance. Later infill developments have occurred, which generally follow the front building line of the houses.
6. Previously occupied by garage blocks and turning areas, the site once formed part of a dairy distribution centre. It presently contains a couple of derelict buildings formerly used for garaging or storage, hardstanding, rubble and vegetation. It is accessed by and visible from a driveway between 137 and 139 Nelson Road and lies behind Nos 137, 139 and 141. No 139 has been substantially extended upwards and outwards to the rear.
7. The proposed development would infill part of the land to the rear of Nos 137, 139 and 141 with a part single, part two-storey building. The roofs would be large and pitched with standing seam metal cladding, while the building would be clad in timber boarding and light grey render. The anthracite coloured, metal windows would be large, with triangular windows within the roof gables. The proposed development would be visible from the access between Nos 137 and 139 and from surrounding flats, houses and gardens.
8. While the scheme's contemporary design and materials may well be acceptable in this location, the height, bulk and position of the proposed development within an area predominantly made up of rear gardens would represent a dominant and incongruous intervention. Its incongruity would be greater as, when viewed with No 139, there would be little space between buildings. Despite the provision of visual representations, it would not respect the existing character and appearance of the area.
9. I recognise that analysis of the site and its surroundings has taken place, but this does not alter my findings. I also acknowledge that the proposed development would represent a resource efficient development which would seek to address climate change and be thermally efficient for its occupiers. However, this could be achieved by an alternative scheme on this site.
10. I conclude that the proposed development would have an unacceptable effect on the character and appearance of the area. As such, it would conflict with Policies BNE1 and H4 of the Medway Local Plan 2003 (the Local Plan) and paragraphs 126 and 130 of the Framework, insofar as they deal with development creating high quality places, being sympathetic to local character, and providing a clear improvement to the local environment.

Living conditions of neighbouring occupiers

11. The neighbouring properties at Nos 137, 139 and 141 are all within the same ownership as the site and have been confirmed by the appellants to be either flats or housing in multiple occupation. No 137 has previously been divided into flats. Two first floor flats are accessed from a staircase located on the rear wall of the building facing the site. I have been advised that works to No 137,

- including improvements to the external staircase, may come forward under a separate planning application. No 139A is accessed from the appeal site, while No 139B is accessed from the front of the building. Next to the site, there are small, fenced rear gardens located at the rear of Nos 139 and 141.
12. The proposed development would reduce the depth of the garden area at No 139 to 3m and at No 141 to between 5.2m and 8.3m in depth. This would not be in keeping with the guidance provided in the Medway Housing Design Standards (MHDS) which indicates that rear gardens for new build development should be no less than 7m deep on constrained sites and 10m deep on all other sites. Notwithstanding that Nos 139 and 141 are presently occupied and would not be new build, the MHDS provides a helpful indicator of garden depth to allow for reasonable use by the occupants. I find therefore that the effect of the proposed development on garden space would be harmful to the living conditions of those occupying Nos 139 and 141.
 13. The appellants assert that flats and housing in multiple occupation are not generally expected to have garden space and that parks such as Gillingham Park and Fort Amherst are nearby. While existing and future occupiers could use parks, this does not diminish the importance of garden space.
 14. With regard to noise, the proposed development would introduce four further parking spaces and a greater number of comings and goings to the rear of Nos 137, 139 and 141 than would presently be the case. While I appreciate that the site's use for a dairy distribution centre or for parking could have been more intense in the past, I have no detailed comparative evidence before me. The proposed development would accommodate some 14 more people than presently accommodated on site. Given the proximity of existing habitable room windows at Nos 137 and 139 to the access to the site, I consider that there would be a harmful effect on the living conditions of neighbouring occupiers at Nos 137 and 139, with regard to noise.
 15. Furthermore, in terms of outlook, the height and bulk of the proposed development and its proximity to the existing buildings at Nos 139 and 141. would significantly curtail outlook from the rear of Nos 139 and 141. Outlook would be of the side walls and roofs of the proposed development at close proximity. As such, there would be a harmful effect on outlook for occupiers of Nos 139 and 141 resulting from the proposed development.
 16. Turning to the matter of privacy, the proposed development would include large triangular windows in the gables facing the end of the rear garden of 143 Nelson Road. While the window in the first floor gable would serve a void, the windows in the second floor gables would respectively serve a bedroom and a living room. Given their use for habitable rooms and the limited distance between the proposed windows and the garden of No 143, I consider that there would be a negative effect on privacy for the occupiers of No 143.
 17. Local residents have raised concerns about the effect on privacy and light for residents of other properties on Nelson Road and Kimberley Road. Given the juxtaposition of those properties and the distance from the proposed development, I find that there would be no harm in those respects.
 18. The appellants have referred to Local Plan Policies H4, H5, H6 and H7 in respect of the existing buildings at Nos 137, 139 and 141. While I note the size of these buildings, the provision of off-street parking, and their location in a

built-up area close to public transport, services and facilities, this does not alter my findings on this appeal.

19. In conclusion, the proposed development would have a harmful effect on the living conditions of neighbouring occupiers, with particular regard to garden space, outlook, noise, and privacy. This would be contrary to Local Plan Policies BNE2 and H9 and paragraph 130 of the Framework. These policies address the need to protect the amenity of neighbouring occupiers, including specific reference to noise and disturbance, sufficient amenity space for existing dwellings, and privacy for adjoining houses and their back gardens.

Living conditions of future occupiers

20. The proposed development was refused due to the size of the proposed duplex (Unit 2) and the provision of a ground floor bedroom within that unit which would have a window facing a narrow alleyway with the boundary fence for No 139 approximately 1m distant. In order to meet the Government's Technical Housing Standards – Nationally Described Space Standards (NDSS), a two-bedroom duplex unit for three people would be expected to have 70m² floorspace, but the proposed unit fell short by some 9m².
21. The amended plans show that the duplex unit would be altered to form a one bedroom unit for two people and that the former ground floor bedroom window would serve an expanded kitchen area. This would result in the proposed development exceeding the NDSS requirement of 58m². Additionally, as the kitchen would be part of a much larger shared kitchen, dining and living space, it would be served by other windows and doors. I concur with the Council that the outlook for the proposed development would now be acceptable.
22. I note the scope for the two-bedroom duplex to have provided suitable accommodation for disabled residents, including provision of a ground floor bedroom. While this may have been the case, the proposed development would have been smaller than indicative space standards for such development and would have had poor outlook. This would have been particularly important if a disabled resident spent much of their time at home.
23. I conclude that the proposed development would have an acceptable effect on the living conditions of its future occupiers, with particular regard to floorspace and outlook. This would comply with Local Plan Policies BNE2 and H9 and paragraph 130 of the Framework, which protect amenity of future occupiers.

Highway safety

24. The proposed development would be accessed between Nos 137 and 139. Cars would enter in a forward gear. At application stage, the now superseded Plan PL(01) 03 showed that the access would widen to allow space for five additional parking spaces to be provided. Two of these spaces would be located adjacent to two existing parking spaces outside the red line boundary of the site, while two further spaces would be provided next to the rear boundary of the site and one space would be adjacent to the side of No 139. This layout resulted in the Council raising concern that vehicles would not be able to turn safely within the site and exit the site in a forward gear.
25. The appellant's amended plans show that the proposed parking spaces would reduce to four, with only one new parking space adjacent to existing spaces outside the red line boundary. This would allow for vehicles to turn within the

site and emerge from the access between Nos 137 and 139 in a forward gear. Although it would reduce the number of parking spaces, the site is in an urban location close to services and facilities, including public transport. The Council and Highway Authority raise no objections to this reduction in spaces and the Council considers the reason for refusal to have been overcome. Given that safe turning within the site has been demonstrated, I consider that there would be no ill effect on highway safety from the proposed development.

26. While I appreciate that the site would have greater capacity for the parking of vehicles once cleared than the proposed development would, I am required to deal with the appeal before me. In terms of the risk of accidents resulting from vehicles emerging onto Nelson Road, it is likely that they will not be moving at high speed and would have sufficient visibility on joining the carriageway.
27. In conclusion, the proposed development would not negatively affect highway safety. Accordingly, it would comply with Local Plan Policies BNE2, T1 and T13 and paragraph 111 of the Framework. Policy BNE2 addresses protection of amenity, while Policies T1 and T13 respectively deal with highway safety and vehicle parking. Paragraph 111 of the Framework refers to development only being prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Planning Balance

28. The Council cannot presently demonstrate a five year housing land supply in accordance with paragraph 74 of the Framework. No detail has been provided as to the extent of the shortfall. However, the policies which are most important for determining the application are out-of-date and paragraph 11(d) ii of the Framework should be applied.
29. The proposed development would negatively affect the character and appearance of the area, and the living conditions of neighbouring occupiers, with particular regard to garden space, noise, outlook and privacy. In these respects, the proposed development would be contrary to the Framework's aims to achieve good design and a high standard of amenity. I consider this to have significant weight. My findings on the living conditions of future occupiers, with particular regard to floorspace and outlook, and highway safety are neutral in this balance.
30. The scheme would provide four additional units on a previously developed site in the built-up area of Gillingham, close to services, facilities and transport. It would be built to a sustainable design, modern energy efficiency and technical housing standards. One of the units would also be accessible. The proposed development would also be capable of being built by local builders. These represent modest environmental and economic benefits.
31. Consequently, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The appeal should therefore be dismissed.

Other matters

32. The appeal site lies within 6 kilometres of the North Kent Marshes Special Protection Areas/Ramsar sites. The Conservation of Habitats and Species Regulations 2017 requires that a competent authority makes an Appropriate

Assessment (AA) of the implications of the plan or project on the integrity of the sites in view of their conservation objectives. I note that the appellants have made a Strategic Access Management and Monitoring Strategy payment to the Council. Given my findings on the main issues in this appeal, I have not carried out an AA and reached a finding on this payment.

33. The appellants have confirmed that the proposed development was the subject of pre-application advice and was modified, including a reduction in the number of units. This does not alter my findings on the main issues as set out above.
34. Concerns have been raised by local residents about a range of issues, including proximity of bus services, the effect on trees, additional on-street parking on Nelson Road, refuse and recycling, disruption and access during construction. I have not dealt with these matters in any detail given my decision.

Conclusion

35. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal is dismissed.

Joanna Gilbert

INSPECTOR