



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: 20th September 2022

Appeal Ref: APP/A2280/W/22/3295881

Land at rear of Alton Mews, 313b Canterbury Street, Gillingham ME7 5XN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Frederick Laurie against the decision of Medway Council.
 - The application Ref MC/21/3062, dated 20 October 2021, was refused by notice dated 30 December 2021.
 - The development proposed is proposal for 5no. dwellings with amenity space, cycle storage, and solid waste storage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have used the appellant's name from the appeal form as it is more complete than that provided on the application form.
3. The application was made in outline, with landscaping reserved. I have had regard to the proposed plans for access, appearance, layout, and scale.
4. As the Council has withdrawn its reason for refusal on the Special Protection Areas (SPA) of the Thames, Medway and Swale Estuaries and Marshes, I have addressed this in other matters.

Main Issues

5. 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 outlook and noise;
 - c) the living conditions of its future occupiers, with particular regard to outlook and privacy; and
 - d) highway safety and the living conditions of neighbouring occupiers, with particular regard to traffic generation.

Reasons

Character and appearance

6. Located within the urban area of Gillingham, this part of Canterbury Street is characterised by predominantly two-storey, terraced Victorian properties. Many of the houses are set back from the street behind short front gardens. The

properties have linear rear gardens and back onto a shared alleyway and similar properties and gardens on Rock Avenue.

7. Alton Mews is a later two-storey flatted development which follows the same building line as its terraced neighbours. Alton Mews has a central archway which allows access and limited views through to the rear. Behind the building at Alton Mews, the site extends to adjoin the aforementioned alleyway. The site contains garages, a shed, trees and shrubs, gravelled areas used for parking and a further area which is separated from the parking area by a boundary wall covered in vegetation.
8. The proposed development would comprise an inverted L-shaped group of terraced dwellings. These would be single-storey along the site's southern boundary, rising to one and a half storeys at the site's western boundary.
9. The existing garages are of a modest height and massing. In contrast, the proposed development would result in considerable coverage of the site with built form. This cramped and rather contrived layout would extend along much of the site's length and across its full width. Even though it would be lower than surrounding houses, the scale and massing of the proposed development would be unduly dominant within this backland location and its pitched roofs would be highly visible from neighbouring gardens. Notwithstanding the inclusion of private gardens, cycle and refuse storage, improved landscaping, and high-quality materials, the proposed development would represent a significant visual intrusion in conflict with the area's prevailing character.
10. The Council contends that the proposed development would represent overdevelopment. I recognise the appellant's concerns about potential for such a term to be inappropriate and highly charged. However, this does not alter my concerns about the overall effect on the character and appearance of the area. The appellant also claims that the site may be included in a study on making good use of such sites. However, this is unsubstantiated.
11. I visited examples of backland development at Copenhagen Road, Trafalgar Road, Stopford Road, Canterbury Street, Beresford Road, and Napier Road. While they show ways of developing backland sites, none appear to have identical circumstances to this appeal, being of different site dimensions, layouts, and numbers of dwellings. Although some of these schemes will have come forward prior to the current Local Plan and the National Planning Policy Framework (the Framework), my visits to these sites highlighted the importance of high-quality development respecting its context.
12. In conclusion, the proposed development would harm the character and appearance of the area. It would not comply with Policies BNE1, H4 and H9 of the Medway Local Plan 2003 (Local Plan) and paragraphs 126 and 130 of the Framework. These policies, amongst other things, seek to ensure high-quality design and well-designed places; appropriate design in relation to the character and appearance of the area; maintenance of character and amenity; and provision of a clear improvement in the local environment. Paragraph 71 of the Framework refers to windfall sites, but is focussed on plan-making rather than decision-making. It is therefore not applicable in this instance.

Living conditions of neighbouring occupiers

13. The proposed development would include a wall and multiple pitched roofs along the majority of the southern boundary of the site adjoining the rear garden of 321 Canterbury Street, and would widen to a higher one and half storey element at the site's western end covering the width of the plot.
14. For the occupiers of No 321, this would result in an outlook from rear habitable room windows of an extensive building with a series of roofs of between approximately 5m and 6.2m at their maximum height. Furthermore, the outlook from the garden of No 321 would also be significantly altered from that of relatively modest garages to a lengthy wall and pitched roofs. Taken together, these changes in outlook would be oppressive and overbearing for occupiers of No 321.
15. Reference has also been made by the Council to the effect of the proposed development on the outlook for occupiers of 313 Canterbury Street. While the outlook for occupiers of No 313 would undoubtedly change as a result of the proposed development, I find that it would not have the same oppressive effect as for No 321, by reason of the increased distance of the garden and the building at No 313 from the proposed development.
16. With regard to noise and disturbance, the site is presently used for car parking and for access to existing upper floor flats within Alton Mews. It also serves as amenity space for the occupiers of Alton Mews, though its condition is poor. It is therefore possible that existing occupiers of Alton Mews experience some noise and disturbance from other occupiers walking up the external staircases, and from car doors slamming and vehicles arriving and departing.
17. Although the proposed development would see the removal of any car parking, there would be an increase of up to seven additional occupiers and their visitors who would access the site via the archway and past the properties in Alton Mews. This would increase comings and goings to the rear of the site, albeit on foot or by bicycle due to the lack of parking. As such, I consider that there would be modest harm resulting from the proposed development in respect of noise and disturbance for neighbouring occupiers at Alton Mews, and Nos 313 and 321.
18. I conclude that the proposed development would harm the living conditions of neighbouring occupiers, with particular regard to outlook and noise. As such, it would be contrary to Local Plan Policies BNE2 and H9 and paragraph 130 of the Framework. These policies address the need to secure the amenities of neighbouring residents, including noise and activity levels.

Living conditions of future occupiers

19. The proposed development's siting and the interrelationship between proposed units would result in windows for the five units being generally positioned on the front elevation of the proposed development. Only proposed unit 5 would have fenestration on two elevations. Rooflights would be provided in all of the five units. Units 1 and 2 towards the rear of the site would also have windows at first floor level in their proposed front gables.
20. Unit 4 would have one single bedroom which would not have a window, instead being served by a single rooflight. As bedrooms would generally be considered habitable rooms, the lack of a window to the bedroom would be detrimental to the outlook of the future occupier of unit 4.

21. With regard to units 1 and 2, the Council has raised concerns about the gable windows and rooflights serving units 1 and 2 being at a height which would not allow for sufficient outlook for their occupiers. Given the absence of any sections, it has not been demonstrated that these units would have sufficient outlook from their bedrooms. If it were the case that the proposed gable windows were located to allow for outlook, this would be likely to introduce concerns regarding privacy. I agree with the Council that these potential concerns would not be likely to be successfully mitigated by a condition on obscure glazing as this would further harm outlook from habitable rooms.
22. Turning to the matter of privacy, unit 5 would have a set of glazed doors leading out into its fenced, private garden area to the side of the unit, adjacent to a staircase accessing the rear of Alton Mews. These glazed doors would be the only fenestration serving the kitchen/dining/living area of unit 5, and would face the rear windows of Alton Mews. Despite the proposed 2m high fencing and given the limited separation distance between the proposed unit 5, the building at Alton Mews and its external access staircase, unit 5's kitchen/dining/living area and its garden would be overlooked from both the external staircase and from within the first floor flat at Alton Mews. The loss of privacy would be caused by the height that any resident or visitor to the neighbouring first floor flat at Alton Mews would attain on climbing the stairs.
23. I conclude that the proposed development would have an unacceptable effect on the living conditions of its future occupiers, with particular regard to outlook and privacy. Consequently, it would conflict with Local Plan Policies BNE2 and H9 and paragraph 130 of the Framework. These policies seek to secure the amenities of future occupants, including privacy. Local Plan Policy H9 refers to private amenity space for dwellings, which is of relevance in respect of unit 5.

Highway safety

24. Presently, part of the site is laid out for parking. No alternative provision would be made available for existing users of this parking. Outside the site, Canterbury Street has parking restrictions on one side between 0800 and 2000 Monday to Saturday and preventing parking at any time on the other side. Junctions of neighbouring side roads have double yellow lines preventing parking and a number of neighbouring roads have parking permit restrictions. Some parking is possible on the opposite side of Canterbury Street from the site, though at the time of my site visit there were few gaps in parking.
25. Local Plan Policy T1, amongst other things, permits proposals provided that the highway network has adequate capacity to cater for the traffic generated by the development, accounting for alternative modes to the private car; and that the development will not significantly add to the risk of road traffic accidents. Local Plan Policy T13 confirms that development proposals will be expected to make vehicle parking provision in accordance with the adopted standards. The Council has confirmed that the proposed development would be expected to have six parking spaces, including one visitor space. Local Plan Policy BNE2 deals with amenity of future and existing properties and makes reference to design of development having regard to activity levels and traffic generation.
26. Paragraph 111 of the Framework states that development should only be 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.

27. Located in a densely populated urban area, the proposed development would be located close to services, facilities, and within walking distance of public transport. This would potentially allow for the parking standards to be relaxed as occupiers could cycle, walk or use public transport. However, there would be no restriction preventing existing occupiers of Alton Mews and future occupiers of the proposed development from owning cars and parking them on Canterbury Street and in other unrestricted areas locally.
28. Given the displacement of parking for existing occupiers of Alton Mews as well as the provision of five additional dwellings, it is necessary for the appellant to demonstrate that any additional on-street parking demand would not give rise to parking stress and congestion, with the associated risks to highway safety and living conditions. The absence of parking surveys or photographic evidence indicating parking capacity to accommodate the proposed development and associated displaced vehicles is of considerable concern. This renders the proposed development unacceptable in respect of its effect on highway safety and on the living conditions of neighbouring occupiers, due to the risk of congestion and inappropriate and unsafe parking.
29. While the redevelopment of car parking areas is neither unusual nor anathema, the appellant has failed to provide adequate evidence on parking and highway safety to assuage the Council's and my concerns. Although minimising car use is of importance and the proposed development would reduce some noise and disturbance through the removal of vehicle movements from this backland site, highway safety and living conditions would be harmed in other ways due to displacement of and increased demand for parking.
30. In conclusion, the proposed development would unacceptably affect highway safety and the living conditions of neighbouring occupiers, with particular regard to traffic generation. It would therefore conflict with Local Plan Policies BNE2, T1, and T13 and paragraph 111 of the Framework as set out above.

Planning Balance

31. The appellant has referred to only 55% of housing need being met over the past 3 years, comprising 2,498 dwellings against an objectively assessed need of 4,556 dwellings. The Council has acknowledged the absence of a 5-year supply of housing land. The published 2021-2022 Housing Delivery Test indicates that the Council had only delivered 67% of its target number of dwellings. As it is not possible for the Council to demonstrate a 5 year housing land supply in accordance with paragraph 74 of the Framework, 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.
32. The proposed development would negatively affect the character and appearance of the area, the living conditions of future occupiers of the proposed development and of neighbouring occupiers, and highway safety. In these respects, the proposed development would be contrary to the Framework's aims to achieve good design, a high standard of amenity, and highway safety.
33. Paragraph 60 of the Framework refers to the need to significantly boost the supply of housing, while paragraph 69 of the Framework states that small and medium sized sites can make an important contribution to meeting the housing requirement of an area. Furthermore, paragraph 71 of the Framework refers to

windfall sites, paragraph 120 of the Framework supports making use of under-utilised land, and paragraph 124 of the Framework encourages the efficient use of land. Additionally, I acknowledge the importance placed by the Government on addressing the national shortage of homes. This includes an acute need for homes in the south of the country in places such as Medway.

34. The benefits associated with the appeal scheme would be the provision of five additional small residential units built with modern materials and to current energy efficiency and technical housing standards. It would be located close to local services, facilities, and public transport. Landscaping would be likely to be improved, which might support biodiversity, and occupiers would have access to amenity space on site and at local parks nearby. Altogether, it would provide a modest benefit. While the site is presently in poor condition, I can see no impediment to the improvement of the site's appearance, regardless of the outcome of this appeal. This would not represent a benefit.
35. 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. This leads me to find that the appeal should be dismissed.

Other matters

36. The site lies within 6 kilometres of the Thames, Medway and Swale Estuaries SPA/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 appellant has made a Strategic Access Management and Monitoring Strategy payment of £1269.15 to the Council and that the Council has withdrawn its reason for refusal in this respect. Given my findings on the main issues in this appeal, I have not carried out an AA and reached a finding on this payment.
37. The appellant has commented that the Council has mis-applied its own Local Plan policies, stifled development which should be approved, and relied excessively on strategic sites. However, I have no documentary evidence before me to substantiate this.
38. No objections were received from interested parties at either application or appeal stage. This does not alter my concerns as outlined above.

Conclusion

39. 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