



Appeal Decision

Site visit made on 5 October 2022

by Michael Evans BA MA MPhil DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2022

Appeal Ref: APP/U2235/D/22/3300251

Hollymead, 38 Franklin Drive, Weaving ME14 5SY

- 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 and Mrs Paul Watkins, against the decision of Maidstone Borough Council.
 - The application Ref 22/500495/FULL, dated 1 February 2022, was refused by notice dated 1 April 2022.
 - The development proposed is a first-floor side extension.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect on the living conditions of the occupiers of the adjacent dwelling at 40 Franklin Drive, with regard to outlook and overlooking.

Reasons

3. The appeal concerns a two-storey dwelling with a catslide roof at the end, next to the side boundary of the rear garden to the adjacent dwelling at no. 40. The neighbouring house is situated significantly forward of that at the appeal site. Both dwellings are set back from the mutual boundary by pedestrian accesses. In consequence of this relationship the flank of the host dwelling is particularly close to the adjacent back garden and rear habitable room windows. This is the case despite the dwelling extending beyond the rear boundary to the garden at no. 40. There is a patio in the rearmost corner next to the flank of the dwelling at the appeal site. There is no reason to believe it is not well used and, in any event, being part of a relatively small overall amenity space, the impact on its use should not be disregarded.
4. In this situation the first-floor extension above the catslide roof would result in a significant increase in the eaves level and, consequently, the bulk of the host dwelling in unduly close proximity to the neighbouring garden and dwelling. This would give rise to an unpleasant and oppressive sense of enclosure, dominance and visual intrusion, resulting in the extended dwelling appearing overbearing from the adjacent garden and the windows of habitable rooms at the rear of the neighbouring property. The additional bulk arising from the development would give rise to a noticeably greater impact than that arising from the existing dwelling alone.

5. The Appellant points out that the extended dwelling would be adjacent to about 3.8m out of a total rear garden length of 9m at the neighbouring property, therefore projecting parallel to less than half of the boundary. It is also suggested that the distance between the front elevation of the extended dwelling and the back of the adjacent property would serve to reduce the impact.
6. However, the gap between the properties is particularly modest. Furthermore, rather than indicating acceptability, the amount of the extension projecting alongside the garden, with only a relatively limited distance between it and rear habitable windows illustrates the unacceptable nature of the proposal. Moreover, the quality of the environment at the adjacent dwelling is particularly vulnerable to such development given the fairly modest dimensions of the garden.
7. The first-floor front window in the addition would not directly face the nearest upper floor bedroom window or the garden at no. 40. However, the angle would not be sufficiently oblique to prevent an unacceptable loss of privacy from overlooking, given the undue proximity. Because this room would have two windows, the Appellant suggests that this concern could be addressed by a condition requiring the new opening to have obscured glazing and be fixed shut.
8. However, I share the view of the Council that adjacent occupiers would still experience an undue perception and feeling of being overlooked, which is an effect that can be particularly disturbing. It is argued that the effect on privacy would be less harmful than that arising from a back to back siting of opposing dwellings but given that such distances tend to be substantially greater than that found in this case I do not accept the claim.
9. The Appellant suggests that overshadowing and overbearing considerations go hand in hand. In consequence, it is asserted that if there is no objection in the former respect then the impact of any overbearing effect would be no more than limited. However, these are distinct matters with overshadowing relating to the receipt of sunshine, rather than matters such as bulk, enclosure and the dominance of a development which can have a harmful impact regardless of the effect on sunlight.
10. The current proposal is an attempt to address the concerns raised by the Inspector in dismissing an appeal concerning a previous scheme. Aspects of the proposed development that are different include the hipped end of the main roof having a shallower pitch, the omission of the projecting garage at the front and flat front elevation, the absence of any flank windows and re-located French doors at the back. However, the resultant bulk and mass at first floor level has not been significantly reduced despite these differences and there is nothing to show that the eaves level and consequent impact at the point closest to the adjacent boundary would be any different. The revisions to the previous scheme would not therefore justify accepting the appeal.
11. For the above reasons, it is concluded that because of the effect in respect of outlook and overlooking, the living conditions of the occupiers of the adjacent dwelling would be harmed. The scheme would be contrary to Maidstone Borough Local Plan 2017, Policy DM 1 iv, which indicates that proposals should meet a number of criteria. These include respecting the amenities of the occupiers of neighbouring properties with regard to overlooking and visual

intrusion. The Policy is titled "Principles of good design" but this has implications for living conditions and is clearly relevant in this case given the aims referred to above. There would also be conflict with Policy DM 9 iii, which intends, among other things, that extensions should safeguard privacy and maintain a pleasant outlook of adjoining residents.

12. The proposal would also be at odds with the National Planning Policy Framework (The Framework), which indicates that planning decisions should ensure that developments result in a high standard of amenity for existing users.
13. The Appellant argues that the Council's Residential Extensions, Supplementary Planning Document (SPD) 2009, is out of date. Nevertheless, even if the SPD is disregarded, the proposal would be contrary to the development plan and Framework anyway.
14. The Appellant has submitted photographs and background information regarding development that has taken place at 48 and 59 Franklin Drive. The latter case concerns a dwelling that is largely adjacent to the side walls of the properties to either side, unlike the relationship in this case which is not therefore comparable. I agree that the development at no. 48 is in a similar situation to that now proposed.
15. However, this is a single case with permission being granted by the Council about 17 years ago. I also note that the report on the application does not include any consideration of the impact on the outlook of the adjacent occupiers. In these circumstances I do not accept that this case should be used to justify the unacceptably harmful development that would result in this instance.
16. I acknowledge that there have not been any objections to the proposal from the occupiers of no. 40 or any other third party. Nevertheless, this does not, in itself, confer acceptability on the proposal which I have considered on its own merits.
17. The Appellant points out that the proposal raises no objections in respect of considerations such as character and appearance and car parking, while also complying with the aims of relevant policies in the Local Plan, the SPD and the Framework concerning such issues. However, mere acceptability in relation to these matters does not offset the harm that I have found.
18. This is a case where there are relevant development plan policies that are not out of date. As a result of this and because of the conflict with the development plan, the appeal scheme cannot benefit from the presumption in favour of sustainable development set out in the Framework.
19. The Appellant suggests that the proposal would confer benefits in terms of the different aspects of sustainable development identified in the Framework. However, any boost to the local economy in relation to building work and other trades would be fairly limited given the relatively modest scale of the works and their likely duration. Similarly, the contribution to the social objective would not be particularly significant. Moreover, the harm that would arise means there would be conflict with the environmental objective anyway, despite the claim that sustainable materials would be used.

20. I conclude that none of the above considerations, as well as the provision of larger bedrooms and taking account of all other matters raised, would outweigh the unacceptably adverse impact on the living conditions of the adjacent occupiers. It is therefore determined that the appeal fails.

M Evans

INSPECTOR