
Appeal Decision

Site visit made on 10 January 2023

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Appeal Ref: APP/A2280/W/22/3300058

Ulster, 174 Princes Avenue, Walderslade, Medway, Chatham ME5 8AL

- 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 Michelle Rogers (Classic Property Holdings) against the decision of Medway Council.
 - The application Ref MC/22/0479, dated 21 February 2022, was refused by notice dated 29 April 2022.
 - The development proposed is the erection of 2no. semi-detached dwellings, each comprising 3no. bedrooms with associated parking, access, infrastructure and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An email sent from the appellant to the Council on 7 March 2022 indicates a change in the name of the applicant from Ian Gregory to Michelle Rogers. This has been reflected in the banner heading above.

Main Issues

3. The main issues are:
 - the effect of the proposed development on character and appearance of the surrounding area; and
 - the effect of the proposed development on the living conditions of the occupiers of neighbouring dwellings in relation to privacy and whether it would provide satisfactory living conditions for the future occupiers in relation to outlook.

Reasons

Character and Appearance

4. The appeal site is an area of grassland to the rear of the dwellings on Princes Avenue which was likely to have been used as part of a large residential garden. It is located adjacent to Scotby Avenue, separated by a close boarded fence. The surrounding area is residential in nature with the surrounding built form varied in scale and design. The proposed development is an amended version of two previous schemes¹ which were refused planning permission.

¹ Ref MC/16/1603 and MC/21/1609 (the previous schemes)

5. The appeal site appears as a typical rear garden environment. However, the gap in built form provides pleasant views across the valley and its spacious and undeveloped nature provides an openness in this suburban area which contributes positively to the overall streetscene. Although some views would still be possible either side of the proposed dwellings, the proposed development would appear significant in size and its scale and presence would result in a loss of this existing openness to the detriment of the character and appearance of the area.
6. Apart from several small outbuildings, there are no residential dwellings on the western side of Scotby Avenue. Therefore, the proposed dwellings would appear isolated from other dwellings in the area, contrary to the prevailing pattern of development. This would result in a development which is discordant from its surrounding and a dominant addition to the area. The use of a hipped roof and dormers would reduce the massing, compared to a traditional two-storey dwelling, and it is noted that the proposed dwellings would be set back from the roadside to limit the impact on the streetscene. However, due to their scale and positioning, the proposal would still appear as an overly prominent addition in this undeveloped rear garden environment.
7. Whilst the proposed dwellings would be located adjacent to a two-storey outbuilding in the neighbouring garden of 172 Princes Avenue, this appears as a modest single storey feature within Scotby Avenue. The proposed dwellings would appear much larger than this ancillary outbuilding and would have a greater impact on the streetscene.
8. I acknowledge the appellant's comments that additional planting on the appeal site would be used to partially screen the proposed development, maintain boundary planting and provide a 'green corridor' between the dwellings. However, this would not be sufficient to overcome the harm found to the character and appearance of the area from the location and scale of the proposed dwellings.
9. Consequently, the proposed development would significantly harm the character and appearance of the area and would conflict with Policy BNE1 of the Medway Local Plan 2003. This policy seeks to ensure new development respects the scale, appearance and location of building, space and the visual amenity of the surrounding area. It would also conflict with paragraphs 126 and 130 of the National Planning Policy Framework (the Framework) which states that the creation of high quality, beautiful buildings and places is fundamental to what the planning and development process should achieve and that planning decisions should ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting.

Living Conditions

10. The rear elevation of the proposed dwellings would face the rear gardens and rear elevations of the dwellings on Princes Avenue. Due to the gradient of the appeal site and the surrounding area, the proposed dwellings would be at a much higher ground level than those on Princes Avenue. The proposed dwellings have been altered from the previous schemes and the first floor windows have been replaced with rooflights on the rear elevation to prevent any overlooking into the neighbouring properties from this first floor viewpoint.

A condition could be included to ensure they are set at a certain height in relation to the floor level, to prevent any loss of privacy.

11. The proposed dwellings would both have windows and glazed patio doors on the rear elevation, at ground floor level, which would face the neighbouring dwellings on Princes Avenue. However, these windows would be well separated by a 29 metre gap and any long distance views would be largely obscured by the boundary fence between the properties. Therefore, regardless of the variation in ground level between the properties, as the windows on the rear of the proposed dwellings would be at ground floor level only, they would not result in a direct loss of privacy to the occupiers of the dwellings on Princes Avenue.
12. A window serving a bedroom, on the front elevation of both dwellings, would face the driveway to the front of the dwellings, allocated for off-road car parking. As the adjacent road, Scotby Avenue, is at a higher ground level than the proposed dwellings, this driveway would be set at a gradient and the cars parked on it at a greater height than the bedroom windows on the front elevation. Although parked cars would be in close proximity to these bedroom windows, they are not a permanent features of the appeal site or as impeding to outlook as an opaque structure such as a boundary wall or fence. Therefore, I am not persuaded that cars parked on the proposed driveway would significantly obstruct the outlook from these bedroom windows and the proposal would provide adequate living conditions for the future occupiers of the dwellings in this regard.
13. Therefore, as the proposed development would not harm the living conditions of the occupiers of the neighbouring dwellings and would provide adequate living conditions for the future occupiers of the proposed dwellings, it would not conflict with Policy BNE2 of the Medway Local Plan 2003. This policy seeks to protect those amenities enjoyed by nearby and adjacent properties. It would also comply with paragraph 130 of the Framework which states that planning decisions should ensure that developments with a high standard of amenity for existing users.

Other Matters

14. The Council cannot demonstrate a five year supply of deliverable housing sites, with a significant shortfall of only 3.64 years in December 2021. Furthermore, the housing delivery test indicates that the delivery of housing was substantially below the housing requirement over the previous three years. Therefore, because of the provisions of footnote 8, paragraph 11(d)(ii) of the Framework should be applied.
15. In the context of the development, I have found that the proposed development would be contrary to policy BNE1 of the Medway Local Plan 2003, resulting in significant harm to the character and appearance of the area. The Framework supports the creation of high quality and beautiful buildings and places which add to the overall quality of the area, stating that development that is not well designed should be refused. Therefore, as I have found this policy to be generally consistent with the relevant aims of the Framework, I attached substantial weight to the conflict with it.
16. The development would add to the overall housing land supply through the provision of two additional dwellings in a sustainable location, with regard to

their proximity to services and facilities. In particular, 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 and are often built-out quickly. Economic advantages would also arise from the construction and occupation of new dwellings, along with the environmental benefits from improving the ecological value of the site through new planting. However, given the scale of the scheme, any such benefits would be small.

17. Therefore, even though there is a significant shortfall in housing land supply and delivery, given the harm that I have identified, the adverse impact of granting planning permission would significantly and demonstrably outweigh the limited benefits of two dwellings when considered against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply and does not weigh in favour of the proposed development.
18. The Council has highlighted that the appeal site is within 6km of the North Kent Marshes SPA/Ramsar sites and that the proposed development is likely to have a significant effect, either alone or in combinations, with these European designated sites from recreational disturbance on the over-wintering bird interest. Due to insufficient information provided at the application stage the Council have included a reason for refusal within their decision notice relating to this. However, it is noted that the appellant has agreed to make a payment in relation to the provision of mitigation measures, which has been secured via a unilateral undertaking, and the Council no longer wish to contend this reason for refusal.
19. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, no further evidence has been provided to me on this matter and regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

20. Therefore, for the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR