



Appeal Decision

Site visit made on 10 January 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal Ref: APP/A2280/W/22/3291315

Land rear of 31-53 Northbourne Road, Twydall, Gillingham ME8 6QH

- 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 39 Northbourne Road Ltd against the decision of Medway Council.
 - The application Ref MC/21/1892, dated 24 June 2021, was refused by notice dated 31 August 2021.
 - The development proposed is the redevelopment of the site for a residential development comprising 7 residential units with private amenity space, car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council's decision was issued prior to the determination of another appeal¹ for a different proposal at the appeal site. Following the determination of that appeal, the Council has conceded part of its reason for refusing this appeal scheme. The Council no longer claims that the proposal would be unable to provide appropriate landscaping to overcome any loss of trees and biodiversity at the appeal site.

Main Issues

3. Taking the above into account, the main issues are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) whether the proposal would provide acceptable living conditions for future occupiers of the dwellings at plots 1 and 2, with particular regard to outlook; and
 - iii) the effect of the proposal on the living conditions of the occupiers of 53 Northbourne Road, with particular regard to outlook and privacy.

Reasons

Character and Appearance

4. The appeal site is a narrow strip of land to the rear of a row of semi-detached houses and their gardens, which abuts a railway line to the north and rows of garages to the east. It has the appearance of an unmanaged area of open land

¹ APP/A2280/W/21/3275532

with no clear purpose and falls in level from neighbouring gardens towards the railway line.

5. The surrounding area is characterised by a mix of semi-detached and short rows of terraced houses with gardens, off-street parking and communal landscaping separating houses from the highway. Houses are 2 storeys in scale and neatly arranged in a coherent pattern, where garden spaces and communal landscaping create a reasonably spacious residential estate setting.
6. It is proposed to demolish the existing garage to 39 Northbourne Road and create a shared access drive leading to the land adjacent to the railway line at the rear, where 7 dwellings with associated gardens, parking and landscaping would be provided. The confines of the appeal site are such that the proposed dwellings, access road, parking, gardens and landscaping would form a very cramped and contrived layout, distinctly at odds with the more spacious and neatly arranged surroundings.
7. The narrow width of the appeal site would ensure that the proposed dwelling at plot 5 would be a particularly uncharacteristic addition to the area, wedged between the proposed shared access road and the railway. The extent of open land proposed either side of that dwelling would not soften its impact on the surrounding area, and it would appear as an odd form of development, uncomfortably squeezed in front of the railway line. This would be clearly appreciated and incongruous in the street scene.
8. The layout and number of dwellings proposed, in relation to the size and shape of the appeal site, would therefore create an overdeveloped narrow strip of land which would be harmful to the more spacious surroundings. That harm would not be mitigated by the proposed 'area for biodiversity' or garden spaces, which would appear much smaller than many in the surrounding area.
9. The proposed dwellings at plots 1 – 4 would be taller than neighbouring dwellings. They would be located on the edge of the residential estate, set back from neighbouring dwellings, and at a lower land level. In this position, their size and scale would not harm the character and appearance of the area. The proposed dwellings at plots 6 and 7 would be of smaller, but not significantly different, size and scale compared to neighbouring dwellings. Although these houses would be different in design to neighbouring buildings, their appearance would be typical for modern dwellings in a residential estate setting. The size, scale and design of the dwellings proposed at plots 1 – 4 and 6 and 7 would therefore broadly align with the prevailing residential character of the area.
10. For the reasons set out above, the layout and number of dwellings proposed would harm the character and appearance of the area. This would be contrary to Saved Policies H4, H9 and BNE1 of the Medway Local Plan (2003) (LP). These require, amongst other things, development to be appropriate to the character and appearance of the area by being satisfactory in terms of siting and layout and respecting the location of buildings and the visual amenity of the surrounding area.

Living Conditions of Future Occupiers

11. The proposed dwellings at plots 1 and 2 would have what the appellant has described as privacy louvres fitted to the lower parts of the front elevation first floor windows. Those windows would serve bedrooms which would not be

served by any other windows. The privacy louvres would be slatted, which is claimed to provide a filtered outlook from those bedrooms and allow sufficient levels of daylight and sunlight into the rooms.

12. The privacy louvres would significantly reduce outlook from the first floor front elevation windows of the proposed dwellings at plots 1 and 2. They would be very different to blinds or shutters normally fitted to bedroom windows, as any future occupiers would not be able to open them fully or remove them, as doing so would negate their purpose to prevent unacceptable levels of overlooking of the rear garden at 53 Northbourne Road.
13. As the bedrooms served by the front elevation first floor windows to the proposed dwellings at plots 1 and 2 would not be served by any other windows, the level of outlook offered to future occupiers would be poor. This would create unacceptable living conditions for them. That harm would not be mitigated by leaving the upper parts of the windows unobstructed by privacy louvres. The proposed development would therefore fail to accord with Saved Policy BNE2 of the LP, which requires all development to secure the amenities of its future occupiers.

Living Conditions of the Occupiers of 53 Northbourne Road

14. The proposed dwellings at plots 1 – 4 would face towards the side of the rear garden at 53 Northbourne Road. Due to the angles and distances involved, it is unlikely that there would be any unacceptable levels of overlooking from the proposed dwellings at plots 3 and 4 into that property's rear garden.
15. The privacy louvres which would be fitted to the front elevation first floor windows of the proposed dwellings at plots 1 and 2 could prevent unacceptable levels of overlooking of the rear garden at 53 Northbourne Road, dependent on their final design. The front elevation second floor windows to the proposed dwellings at plots 1 and 2 would not be fitted with privacy louvres and would offer clear views into the rear garden at 53 Northbourne Road, despite being set back from the first floor. Those windows would not be the only windows to serve the second floor bedrooms of those proposed dwellings. A planning condition could therefore require them to be obscure glazed and of restricted opening to prevent unacceptable levels of overlooking without creating unacceptable living conditions for future occupiers.
16. The Council's reason for refusing the planning application claims the proposal would result in a loss of outlook from 53 Northbourne Road. This is not supported by any of its submissions, including the officer report. Due to the changes in land levels, the distance between proposed dwellings and existing buildings, and the orientation of existing and proposed buildings, the proposal would not have an unacceptable overbearing or enclosing effect on the occupiers of 53 Northbourne Road. The outlook of the occupiers of that property would not therefore be materially harmed by the proposal.
17. The proposal would therefore be capable of avoiding causing harm to the living conditions of the occupiers of 53 Northbourne Road, in accordance with Saved Policy BNE2 of the LP, with regard to protecting the amenities enjoyed by occupiers of nearby properties.

Other Matters

18. The appeal site is located within 6 kilometres of the North Kent Marshes Special Protection Area and Ramsar sites. These are defined as European Sites by the Conservation of Habitats and Species Regulations 2017 (as amended). Those Regulations require that, where a project is likely to have a significant effect on a European Site, either alone or in combination with other plans or projects, the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. As I have found the proposal would be unacceptable for other reasons, it is not necessary for me to undertake an appropriate assessment unless if other considerations indicate planning permission should be granted.

Planning Balance

19. The Council is unable to demonstrate a 5 year housing land supply. Where this is the case, paragraph 11 of the National Planning Policy Framework (the Framework) advises that the policies which are most important for determining the application are deemed to be out-of-date and 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.
20. I have identified harm which would be caused to the character and appearance of the area. The level of that harm would be moderate, but it would be clearly appreciable from neighbouring dwellings and public areas, and it would be long-lasting. As such, I assign significant weight to that harm. I have also found that the proposal would fail to provide acceptable living conditions for the future occupiers of the proposed dwellings at plots 1 and 2, on account of poor outlook. Although the level of that harm would be moderate, it would significantly restrict the quality of life of future occupiers by imposing unacceptable living conditions on them. I therefore assign significant weight to that harm.
21. The Government's objective is to significantly boost the supply of housing and the proposal would provide 7 energy efficient homes in an urban location with adequate access to services. Given the small scale of the proposal, I assign modest weight to this benefit. The proposal would also have a small short-term economic benefit during its construction phase and a small long-term economic benefit through extra households using local services. I assign modest weight to those benefits. I have been referred to environmental benefits which would be created by a net gain in biodiversity, but the information before me suggests such benefits would be modest, and therefore attract modest weight in favour of the proposal.
22. Paragraph 69 of the Framework refers to the important contribution small sites can make to meeting the housing requirement of an area. Paragraph 119 of the Framework explains that planning decisions should promote an effective use of land in meeting the need for homes while ensuring healthy living conditions, amongst other things. Paragraph 126 of the Framework states the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, with good design being a key aspect of sustainable development. Paragraph 130 of the Framework advises that planning decisions should ensure that developments

will function well and add to the overall quality of the area and are visually attractive and sympathetic to local character and optimise the potential of sites to accommodate an appropriate amount of development, amongst other things.

23. Taking all matters raised into account, the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits, when assessed against the policies in the Framework taken as a whole. The proposal would not therefore constitute sustainable development for which the presumption in favour, set out in the Framework, applies.

Conclusion

24. The proposal would harm the character and appearance of the area and fail to provide acceptable living conditions for future occupiers. It would be capable of avoiding causing harm to the living conditions of neighbouring occupiers, but it would remain contrary to the development plan as a whole. There are no material considerations, including the Framework, which indicate my decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

L Douglas

INSPECTOR