



Appeal Decision

Site visit made on 7 February 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal Ref: APP/H2265/W/22/3302502

Land rear of Royal Oak Public House, London Road, Wrotham Heath, Sevenoaks TN15 7RX

- 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 Mrs Diana Poliak against the decision of Tonbridge and Malling Borough Council.
 - The application Ref 21/01505, dated 24 May 2021, was refused by notice dated 24 May 2022.
 - The development proposed is demolition of existing workshop and erection of 2 x 3bed duplex flats with associated parking, amenity space and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - whether the future occupiers of the proposal would have acceptable living conditions with particular reference to outlook and adequacy of outdoor amenity space; and
 - the effect of the proposal on the living conditions of occupiers of neighbouring properties with particular reference to privacy and outlook of occupiers at Oak Cottage.

Reasons

Character and appearance

3. The appeal site is located in a reasonably secluded location to the rear of the Royal Oak Public House, which has a large car parking area adjoining the site boundary. A single storey workshop building sits within the flat, front part of the site. To the rear of the workshop, the land rises steeply into a raised woodland area, which is accessed via steps. Beyond this area is a railway line. The site is accessed via a narrow single track road, which opens onto a small car parking area which, it is understood, is used by customers of a nearby restaurant as well as visitors to the workshop.
4. A public right of way (PROW) runs to the west of the site and passes below the railway line. To the west of the car park is a small terrace of three storey houses, constructed in a mix of red brickwork and white timber. Oak Cottage, a

residential property, lies immediately to the west of the application site. It has a pitched roof and its elevations are constructed in a mix of red brickwork and black timber.

5. The proposal's footprint would take up a significant proportion of the flat part of the site, and the building would be constructed up to the site's eastern boundary with the public house. Whilst the proposal would have some limited set back from the private road and adjoining car park to the south west, the space around the dwellings would be almost entirely covered by hardstanding and dominated by car parking to both the front and side of the proposed building. There would be minimal space for any landscaping. As a result of the lack of spacing around the house I find that the dwellings would be 'squeezed' onto the site in a manner that would be cramped.
6. The ground floor would have a single storey front projection. As a result, the proposal would have a very deep footprint. This would create expansive side elevations, which would have minimal features to soften their appearance. Whilst the side elevation facing the public house would be largely obscured by boundary fencing, the opposite side elevation would be very prominent in public views. When viewed from the west, including from the PROW, the ground floor of the side elevation would appear as a stark and obtrusive feature within the streetscene.
7. Whilst the proposed materials would be similar to those found in the local area, this alone would not overcome the harm that I have identified.
8. For the above reasons, I conclude that the proposal would harm the character and appearance of the local area. I therefore find that it conflicts with Policy CP24 of the Tonbridge and Malling Borough Council Core Strategy (2007) (CS) and Policy SQ1 of the Council's Managing Development and the Environment Development Plan Document (2010) (DPD), which seek to secure new developments of acceptable scale and appearance. It would also be inconsistent with the principles of the National Planning Policy Framework (2021) (the Framework), which seeks good design that is sympathetic to the local area.
9. The Council also alleges conflict with Policy SQ2 of the DPD. The policy is concerned with the protection of locally listed buildings. The proposal does not affect a locally listed building, and my attention has not been drawn to any words in the policy that are relevant to the character and appearance issues assessed above. The policy has therefore not been determinative in my reasoning on the issue.

Living conditions for future occupiers

10. The proposal would create three bedroom, five person units. Consequently, it seems likely that they could be occupied by families in the future who would value sufficient outdoor space for a variety of uses including sitting out and play. Equally outdoor space is often used for a common range of garden accessories including furniture, play equipment and washing lines. From the details before me, the private external spaces to the rear of the proposal would be very limited in their extent, measuring 5.85 square metres and 5.71 square metres. Ground floor doors from the living area would open onto the outdoor space further reducing the usable area. I therefore find that the private

external amenity space would be of diminished size and very limited practical use for occupiers of the proposal.

11. Occupiers of both residential units would also have access to the large communal woodland area to the rear of the appeal site. However, as this area is heavily wooded it is unlikely to be an attractive location for typical garden activities such as sitting out and dining, nor could the garden accessories listed above be easily accommodated. The woodland area is also at an elevated level reached by a steep staircase, which would be difficult for young children and people with mobility difficulties to access. Overall, the additional communal woodland area would not sufficiently compensate for the very limited private external areas.
12. While the outlook from the front ground floor kitchen windows would be restricted, the front windows on the upper floor would be significantly less restricted and windows on the rear of the residential units would have pleasant views towards the rear woodland area. Given both units' overall generous size, and that both units would have a good number of windows with reasonable views from internal areas, I am not persuaded that people living here would feel that the living environment was oppressive.
13. However, I have found that the external amenity areas for both units would be inadequate. Consequently, the proposal would result in poor quality accommodation for future occupiers. Therefore, in this respect, it would be contrary to the principles of the Framework which seek proposed development that creates places which promote health and well-being, with a high standard of amenity for existing and future users.

Living conditions of neighbouring occupiers

14. Existing views from the ground floor windows within Oak Cottage look towards the fence on the boundary with the Royal Oak Public House and the single storey workshop. It is understood from representations that Oak Cottage's nearest windows serve habitable rooms. Given its proximity to the windows, the proposal would have the potential to affect the neighbouring occupiers' existing outlook. At two storeys high it would be significantly taller than the existing workshop and would create a dominant and oppressive feature which would have an overbearing effect upon outlook from the ground floor habitable rooms.
15. I have taken note of the submitted drawing which shows a 25 degree angle drawn from the neighbouring property's ground floor window. The houses' roofs also follow a 25 degree angle and it has been put to me that this meets the "25 degree rule". However, I have not been referred to any policy basis for this assessment as a method for assessing neighbouring occupiers' outlook. In my judgement, the proposal would appear unacceptably intrusive and overbearing to the neighbouring occupiers.
16. The oriel windows at first floor level would direct views from the front windows away from the adjoining neighbouring property and towards the adjoining public house car park. Consequently, there would not be a loss of privacy to the neighbouring occupiers.
17. The oriel windows are an architectural feature which clearly articulate the direction which the windows face. As a result, it would be evident to

neighbouring occupiers that the windows would not allow direct views towards their properties. Consequently, it is unlikely that neighbouring residents would experience a perception of overlooking.

18. At ground floor level, Oak Cottage's windows look immediately onto the road, with no set back defensible space. Given this existing situation, the proposal's ground floor windows, would not result in an additional loss of privacy to the occupiers of the neighbouring property.
19. However, I have found that the proposal would have an unacceptable impact on outlook for the occupiers of the neighbouring property. Therefore, in this respect, it would be contrary to the principles of the Framework which seeks proposed development that creates places which promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

20. The Framework seeks to significantly boost housing supply and indicates the value of using suitable land within settlements for homes. It also encourages the optimal use of underutilised land. The proposal would contribute to local housing supply and would represent a more efficient use of previously developed land. These matters weigh in favour of the development.
21. I acknowledge that residential development in this general location is acceptable in principle and the proposal may be compliant with various other provisions of the development plan, for instance providing policy compliant car parking and cycle and waste storage. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.
22. The Council refers to Policies NE2 and NE3 of the DPD which are concerned with biodiversity issues. Whilst the impact of the proposal on biodiversity was discussed in the officer report, the Council did not refuse planning permission on the basis of harm to biodiversity and I have not referred to this issue further.

Planning Balance and Conclusion

23. The Council has confirmed that it is unable to demonstrate a 5 year housing land supply. Their recent performance in the Housing Delivery Test has also fallen below 75%. As a consequence of the housing supply and delivery positions, NPPF paragraph 11(d) is triggered as the policies most important for determining the proposal are out of date. NPPF paragraph 11(d)(i) is not relevant as there are no policies in the NPPF that protect areas or assets of particular importance which provide a clear reason for refusing the development. Instead, NPPF paragraph 11(d)(ii) states that 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 NPPF taken as a whole.
24. The Framework expects development to safeguard and improve the environment and ensure safe and healthy living conditions. Policy CP24 of the CS and Policy SQ1 of the DPD are therefore consistent with the Framework. Even taking into account the Council's failure to deliver sufficient housing, the conflict between the proposal and the development plan should be afforded weight.

25. Set against the harm identified there would be limited benefits associated with the proposal, such as making an efficient use of the site. Two additional three bed residential units weighs in the proposals favour. However, in my view, the adverse impacts on the character and appearance of the area and living conditions of existing and future occupiers that I have identified would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
26. While I have not found conflict with all policies drawn to my attention, the harm that I have found leads me to conclude that the proposal would conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR