



Appeal Decision

Site visit made on 29 February 2023

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Appeal Ref: APP/G2245/W/22/3304519

Rough Close Swan Lane, Edenbridge, TN8 6AJ

- 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 Alan Fuller against the decision of Sevenoaks District Council.
 - The application Ref 21/03271/FUL, dated 27 September 2021, was refused by notice dated 11 May 2022.
 - The development proposed is described as proposed construction of 1 new detached house, including new access road.
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Costs

1. An application for costs was made by the Appellant against Sevenoaks District Council. This application is the subject of a separate decision.

Decision

2. The appeal is dismissed.

Preliminary matter

3. During the processing of the appeal application the applicant submitted drawing (AAS118SK01 PL2), which shows an alternative crossover from Swan Lane. This drawing is referred to in the officer report and included in the list of drawings upon which the council made its decision. However, in an email dated 7 April 2022 the appellant confirmed that this drawing was only issued for review by Kent Highways in the event that they required an alternative perspective. The appeal has been determined on this basis.

Main Issues

4. The first main issue is the effect of the proposal on the character and appearance of the local area. The second main issue is the effect of the proposal on highway safety. The third main issue is whether the proposal would conserve or enhance biodiversity.

Reasons

Character and appearance

5. Rough Close is located in a verdant and semi-rural area on the edge of the built up area of Edenbridge. The area is described in the Edenbridge Character Assessment as including late Victorian to present day single to three storey

dwelling primarily constructed from brick with tile hanging. Many of the property boundaries are formed by mature hedges and trees.

6. Rough Close is located within a row of family houses that occupy particularly large mature landscaped plots, with deep rear gardens. These gardens include an abundance of mature hedges, shrubs and trees within and around them. The surrounding plots are smaller, although still generous sized and mature landscaped. The dwellings within this row vary in size and height and are characterised by their informal building lines, front projections and mixed palette of external materials.
7. There is one 'backland' house within this group of dwellings. It is situated to the rear of the three dwellings to the east of Rough Close and is orientated East/West, with access along the eastern side of 'Badgers'. Due to its distance from Swan Lane, the mature planting along its boundaries and muted palette of materials, this 'backland' dwelling is largely screened from the back garden environment and Swan Lane. There is another 'backland' dwelling between the slightly more intensive development between Swan Ridge and Crown Road. It is only one and half storeys tall and is constructed from brown bricks and roof tiles. For these reasons it appears subservient to the frontage houses.
8. Rough Close comprises a two-storey family house with white painted rendered walls under a pitched tiled roof with gable ends. To the front of the dwelling is a two-storey brick built gable feature and on the east side is a wide single storey wing with a flat roof. Overall, the existing dwelling has limited architectural merit. It sits within the front third of the site; has spacious gaps on either side; and is set back from the highway behind a spacious front garden. The boundaries around the site primarily comprise mature hedges and trees.
9. Together and amongst other things Policy SP1 of the Sevenoaks District Council Core Strategy (CS), Policy EN1 of the Sevenoaks Allocations and Development Management Plan (DMP) and paragraph 130 of the National Planning Policy Framework (the Framework), require new development to be of high-quality design and to respect the character of the site and its surroundings. It should respond to the distinctive character and add to the quality of the area, whilst optimising the potential of the site. Proposals should take account of local character area assessments. Paragraph 134 of the Framework states that development that is not well designed should be refused.
10. The proposed dwelling would be sited just within the rear third of the existing rear garden, where it would be closer to the adjacent dwellings fronting Swan Lane than the adjacent 'backland' house. Also, its front elevation would face directly towards the existing dwelling at Rough Close. Access to the dwelling would be off a driveway running adjacent to the eastern boundary of the site.
11. The proposed dwelling would be two storeys in height and would be materially wider than the two-storey part of the existing dwelling at Rough Close. It would have white rendered walls under a grey hipped tiled roof. On the front elevation would be a two-storey glazed entrance area with a small gable roof. Although the glazed entrance would project slightly forward of the front building line, the front elevation would appear flat. Two of the large first floor windows on the front elevation would be obscure glazed and the western flank elevation would be plain, other than a ground floor glazed door and a high-level

horizontal window that would sit just under the eaves. This would emphasise the flat elevations and horizontal lines of the dwelling.

12. Overall, due to its combined siting, height, mass, lack of articulation and use of white rendered walls, the proposed dwelling would appear uncharacteristic and totally out of place within its spacious and verdant back garden setting. For the same reasons it would also appear unduly tall, bulky and intrusive in views from Swan Lane, where it would be visible over the single storey wing of the existing frontage dwelling. It would unacceptably harm the character and appearance of the site, the back garden environment and the street scene.
13. Having regard to the nature and level of harm that would be caused by the proposal it is not a matter that could be satisfactorily addressed through the imposition of conditions. It would also outweigh the benefits of providing an additional family dwelling in this established residential area.
14. The above harm could well be exacerbated by the removal or reduction in height of the front boundary hedge to achieve the required visibility splay to serve the proposed crossover and the removal of shrubs and trees within the site. No landscape scheme has been submitted to demonstrate that the resultant landscaping would maintain the existing verdant character and appearance of the site and its setting. In view of the importance of soft planting to the character of the locality, this is a matter that should form an integral part of the scheme, rather than dealt with by condition.
15. The appellant has referred to advice given by the council in relation to an earlier proposal, which related to a scheme for the redevelopment of the site for two frontage and one 'backland' dwelling. The officer expressed concern about the scale and proportions of the rear unit and that it should be subservient to the front unit. They also advised that a centred pair of semi-detached houses at the front of the plot may open opportunities for a larger dwelling to the rear of the site. With the appeal proposal the scale and proportions of the dwelling are similarly larger and more dominant than the existing frontage dwelling.
16. Finally, in view of the distance between the proposed built development and the Oak tree along the western boundary of the Rough Close, I am satisfied that the proposal would not result in harm to this tree, which is the subject of a Tree Preservation Order.
17. I conclude on the first main issue that the proposal would unacceptably harm the character and appearance of the local area. It would therefore conflict with DMP Policy EN1, CS Policy SP1 and paragraph 130 of the Framework.

Highway safety

18. Swan Lane is a winding lane with few pavements or verges. It is a bus route, provides a link between the B2026 and B2027 and is subject to a 30mph speed limit. In the vicinity of the appeal site overtaking is permissible; there are bends in the highway in both directions; no pavements; and no meaningful verges for refuge.
19. The proposed crossover to serve the proposed development would be sited close to the northeast corner of the site, which would involve the removal of part of the boundary hedging. Due to the constraints of the highway in the immediate area, forward visibility of the proposed crossover by approaching

motorists and cyclists is restricted. For this reason adequate visibility splays are essential to maximise both forward visibility of and visibility from the proposed crossover.

20. Visibility splays of 2.4 x 43 metres were requested and shown on the drawings originally submitted, although the latest amended drawing (AAS118/602 PL3) provides 2 x 43 metre visibility splays. The highway authority has not commented on this change, although the appellant has advised that the change was considered acceptable by the highway authority officer. Manual for streets advises that a minimum set back of two metres may be considered in very light trafficked and slow speed situations, although it would mean that the front of some vehicles would protrude slightly into the highway. As such the ability of drivers and cyclists to see this overhang from a reasonable distance and to manoeuvre around it without undue difficulty should be considered.
21. The proposed access driveway would be lightly trafficked. However, this part of Swan Lane includes bends, is comparatively narrow and enclosed, overtaking is allowed and forward visibility of the proposed crossover would be restricted. Accordingly, in the absence of a survey drawing which establishes forward visibility, sight lines and stopping distances I am not convinced it would be safe to reduce the depth of the visibility splay to two metres. Drivers or cyclists approaching from the east, who needed to move into the northern half of the carriageway to manoeuvre around a vehicle exiting the crossover may not see or be readily visible from vehicles and cyclists approaching from around the bend in the road to the west.
22. With both the original and suggested alternative access points visibility splays of 2 x 42 metres or 2.4 x 43 metres could be achieved subject to the following requirements. The front boundary hedge at Rough Close was removed or maintained at a maximum height of 900mm as shown on drawing No: AAS118/602 PL3. Also, the visibility splays to the front of 'Marl Ridge', 'Three Gables' and 'Copper Beech' should be either maintainable by the highway authority, or the consent of the owners of the dwellings concerned is obtained.
23. From the submitted drawings it is evident that 2.4 x 43 metre visibility splays would affect land within the control of the owners of the above properties. No evidence has been submitted to demonstrate that the consent of the owners of those properties has been agreed. Whilst the appellant has stated that the 2 x 43 metre visibility splays would fall within land that is maintainable by the highway authority, this is reliant on an Ordnance Survey plan provided by the highway authority. No survey drawings with measurements are provided and the highway authority has not confirmed that the full visibility splays would be maintainable by them. In this instance, because full splays are essential for highway safety reasons, their achievability needs to be fully established before planning permission is granted.
24. As stated in paragraph 11 of the Framework, development should be prevented on highway grounds if there would be an unacceptable impact on highway safety.
25. Whilst queries have been raised regarding refuse and waste storage and collection points, they are clearly shown on Drawing No. AAS118/602 PL3. I find that these facilities would be satisfactory. This together with cycle storage and electric car charging points are matters that could be secured through the imposition of conditions.

26. For these reasons, I conclude on the second main issue that the appellant has failed to demonstrate that the proposal would not unacceptably impact on highway safety. Accordingly, the proposal would conflict with DMP Policy EN1, which requires the provision of satisfactory means of access for vehicles and pedestrians.

Ecology

27. Amongst other things paragraph 174 of the Framework states that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity. Consistent with this, CS Policy SP11 states that the biodiversity of the district will be conserved and opportunities sought for enhancements to ensure no net loss of biodiversity.
28. Together Circular 06/2005 (ODPM) and the standing advice of Natural England and the Department for Environment, Food & Rural Affairs (updated September 2022) advise that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. As such, it is essential that the presence or otherwise of protected species and the extent to which they may be affected by a proposal is established before planning permission is granted. Without such information all relevant material considerations may not have been addressed prior to determining an application for planning permission.
29. Paragraph 99 of the ODPM goes on to advise that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.
30. The updated preliminary ecology report is in excess of a year old and so its contents can no longer be relied on. We do know from the past two PEAs that bats do use the site and that it is likely used by great crested newts and various other amphibians, reptiles and hedgehogs. Also, that the site is within the risk zone of a site of special scientific interest. In addition to this, the submitted drawings do not show all existing planting on the site and which planting will be removed as part of the proposal. Although the appellant has stated that new planting will take place, the amount, type and location of any new planting is not shown.
31. Rather than undertake specific great crested newt surveys the updated preliminary ecology report (PEA) submitted with the appeal application states that the appellant would be applying for District Level Licensing relating to great crested newts. This is designed to assess impact and mitigate any harm, thus removes the need for applicants/developers to undertake their own great crested newt surveys.
32. The standing advice given by Natural England for *How to join the great crested newt district level licencing scheme* (Updated January 2023), advises that a developer/applicant must include a copy of the countersigned *Impact Assessment and Conservation Payment Certificate* (IACPC) with the planning application to show they have agreed to join the scheme. Natural England will send the developer/applicant an IACPC once they have received the application form and details; assessed the effect of the proposal on great crested newts

and the cost of dealing with the impact through new or improved ponds for great crested newts.

33. In relation to the appeal scheme no IACPC has been submitted and so the impact of the proposal on great crested newts and any necessary mitigation has not been demonstrated.
34. Taking all the above factors into account, from the information submitted, including the Construction Environmental Statement of Intent, the presence or otherwise of protected species and the extent to which they may be affected by a proposal is not known. Without this information the suitability of the suggested mitigation proposals set out in the updated PEA is unknown. This means that all relevant material considerations may not have been addressed prior to determining an application for planning permission. This is not something that could reasonably be dealt with by the imposition of conditions.
35. The Natural Environment and Rural Communities Act 2006 and paragraph 174 of the Framework state that biodiversity should be maintained and enhanced through the planning system. Paragraph 7.7 of the submitted updated preliminary ecological survey refers to several ecological and biodiversity net gains.
36. The submitted Construction Environmental Statement of Intent states an intention to retain trees, tall shrubs and habitat and to provide the suggested enhancement features. However, without full details of all trees and shrubs to be removed, together with full details and precise locations of any new planting it is not possible to assess whether such measures would deliver biodiversity gains.
37. For these reasons I conclude on the third main reason that on the basis of the evidence submitted it has not been demonstrated that the proposal would provide adequate ecological mitigation or conserve or enhance biodiversity. Accordingly, the proposal would conflict with CS Policy SP11 and the Conservation of Habitats and Species Regulations 2017.

Other matters

38. The submitted layout plan shows that the parking area has ample room for the parking of several cars and that it would meet the councils current parking standards. Swept paths have been submitted which demonstrate that the site would be accessible to and would have adequate turning facilities for a fire appliance. Whilst the concerns raised relating to foul and surface water drainage are noted, they are matters that could be dealt with by condition and under other legislation. Any covenants on the land are a private legal matter which fall outside the scope of this appeal.
39. Regarding privacy, having regard to the distance between the proposed dwelling and the adjacent dwellings at 'Three Gables' and 'Marl Ridge', together with the use of obscure glazing in the outer first floor front windows, the proposal would not result in an unacceptable loss of privacy for the occupiers of those properties.
40. The proposed dwelling would be sited in excess of 25 metres from the rear boundary of the appeal site and there would be potential to add to the soft planting along the rear boundary. Consequently, notwithstanding the fall in ground levels towards Ridge Way, the proposal would not result in a material

and unacceptable loss of privacy for the occupiers of the adjacent dwelling in Ridge Way. Also, as a single dwelling in an established residential area, there is no reason why the occupation of the proposed dwelling would result in undue noise or disturbance for any nearby residents.

41. Finally, although I note the concerns expressed by the appellant regarding the handling of the appeal application, they are not material to the merits of the appeal proposal. They are something that could be pursued directly with the council.

Planning Balance and Conclusion

42. The council has confirmed that the district does not have a deliverable supply of sites to provide a minimum five-years supply of housing sites. Therefore, the development plan policies that are most important for determining the appeal are out-of-date and the tilted balance as set out in paragraph 11d of the Framework is engaged. However, as stated in paragraph 11 d) and d) i. of the Framework, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 clarifies that such policies include those relating to protected species and biodiversity.
43. Accordingly, having regard to my conclusion on the third main issue, the tilted balance set out in paragraph 11 of the Framework is not applicable to the appeal proposal.
44. I conclude that whilst I have found in favour of the appellant on some matters, the conclusion on the main issues amount to compelling reasons for dismissing this appeal, which the imposition of conditions would not satisfactorily address.

Elizabeth Lawrence

INSPECTOR