



Appeal Decision

Site visit made on 1 June 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Appeal Ref: APP/A2280/W/22/3299166

179 Bredhurst Road, Wigmore, Gillingham ME8 0QU

- 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 Jamie Bartholomew against the decision of Medway Council.
- The application Ref MC/22/0328, dated 2 February 2022, was refused by notice dated 12 April 2022.
- The development proposed is described as proposal for 1no. new 5bedroom detached dwelling with parking and gardens to the rear of No.179.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. As part of the appeal submission, the appellant put forward a more detailed rebuttal¹ with regard to the effect of the development on nearby trees. I am mindful that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector at appeal is essentially the same scheme LPA that was considered by the LPA and interested parties at the application stage². I have had regard to the 'Wheatcroft Principles'³ and the interests of fairness. As the rebuttal does not alter the scheme that was applied for and was provided from the outset, I have therefore taken it into consideration and see no reason why any party would be prejudiced against in me doing so.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposed development would provide satisfactory living conditions for the future occupiers with particular regard to outlook; and

¹ Ref: 22044: prepared by Duramen consulting Ltd dated 11 May 2022

² Planning appeals: procedural guide updated 13 June 2023

³ Bernard Wheatcroft Ltd vs Secretary of State for the Environment [JPL, 1982, P37]

- the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Reasons

Character and appearance

5. The appeal site is located within an area comprising a variety of single-storey and two-storey dwellings of different designs and sizes, including dormer bungalows. At the rear of the site is a woodland with large mature trees also extending into a residential garden on the northern boundary of the site. Along the southern boundary lies a well-spaced linear row of impressive, protected lime trees stretching from the road to the rear of the site that draw the eye when travelling up and down this section of the street. This is a pleasing feature.
6. Dwellings in the immediate area are typically set back from the road with open frontages and large rear gardens, which makes a positive contribution to the openness of the area. I saw how the long rear gardens and the well-established trees provide an open and verdant appearance along the rear of this undisturbed section of Bredhurst Road.
7. The appellant states the proposed dwelling would sit centrally within the site behind No 179 Bredhurst Road (No 179). However, as shown on submitted plan 101 it would be closer to the northern boundary than in the centre of the site. As such, it would also be located behind No 177, as this is the adjoining semi-detached property to No 179. Regardless of its position within the site, the appeal scheme would introduce a dwelling which does not reflect the established pattern and grain of development, which is of dwellings with long linear gardens set back from the road on a broadly consistent building line. As a result of its backland position down a long narrow driveway, the introduction of the dwelling would appear as an incongruous addition within the surrounding area that would be out of keeping with the prevailing spacious low-density character of the area made up of dwellings fronting the road.
8. The Council's second reason for the refusal of planning permission states that the proposed scheme fails to demonstrate that it would not have an unacceptable impact on protected trees. It also states that as a result of the siting of the proposed dwelling, there will likely be pressure from future occupiers for either their removal or unsympathetic pruning.
9. Policy BNE43 of the Medway Local Plan (MLP) deals specifically with trees on development sites with the specific aim of protecting trees and other landscape features that make a valuable contribution to local character. The accompanying text to the policy identifies, amongst other things, sites containing trees will likely be subject to negotiation to ensure that tree loss is minimised and that trees of particularly important amenity value are retained. Because of this, consideration of the siting and design of buildings, hardstandings, drainage runs, roads and footways are required. This is to avoid damage to the trees and the likelihood of subsequent requests for the removal of trees intended for long term retention. Accurate tree surveys will in most instances need to be submitted by applicants.

10. The Council have also referred to paragraph 174b of the National Planning Policy Framework (the Framework), which is broad in its coverage of the benefits of trees. Nonetheless, the Framework in paragraph 130(b) advises that to achieve well designed places, planning policies and decisions should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping. The Framework at paragraph 131 also advises that trees make an important contribution to the character and quality of urban environments and adds that existing trees should be retained wherever possible. Both the main parties agree that all works to trees are required to conform to the relevant British Standards.
11. I have already established that surrounding trees make an important visual contribution to the area. At the time of my visit, tree T1, located to the front of the appeal site, as identified within the Arboricultural Report⁴, was trimmed around its trunk, unlike protected trees T2-T8, which had leaf coverage to the ground.
12. The driveway proposed as part of the appeal scheme would run directly adjacent to trees T1-T6. I do not have the full details of the 3-D geotextile to make an assessment if the installation would be possible or to ascertain if there would be any harm to these trees from its installation. Furthermore, there is no information before me to fully demonstrate what works would be required to these trees to facilitate construction as a method statement has not been provided.
13. Based on my site observations, there would, at minimum, be a large amount of pruning required for trees T2-T6 to commence the proposed scheme. Furthermore, the location and subsequent growth of these trees along what would be the driveway and close to the dwelling would leave areas of the house and garden in the shade. There would also be branches and leaf coverage along and above the driveway. This, in my view, would result in pressure for either their removal or unsympathetic pruning.
14. The appellant asserts that the Council could refuse work requests to these trees. I also note the appellant's comments that 3-D geotextile details require special expertise/various suppliers and that services for the site can run above ground. However, these matters are best dealt with during the consideration of the scheme such that mitigation can be sought at the outset particularly as I have some concerns about the Arboricultural Report, which states that there may be a need to raise the level of the proposed dwelling to that of the driveway. This is a matter interested parties would not have been consulted on.
15. Failure to provide these details contradicts BS 5837⁵, which identifies that all special engineering and other relevant construction details should be supplied at the planning application stage. Given the above issues, these matters would, not be appropriately dealt with as a condition. For these reasons, I am of the view that the Council did not have sufficient information to fully assess the impact of the appeal scheme on these trees, contrary to the aims of MLP Policy BNE43. Without such details, there is no certainty that the appeal proposal would not harm the character and appearance of the area through the loss or sympathetic pruning of these protected trees.

⁴ BS5837 Arboricultural Report ref: 21024, prepared by Duramen Consulting dated 22 October 2021.

⁵ BS 5837: 2012 Trees in relation to design, demolition and construction - Recommendations

16. The appellant has drawn my attention to other developments with dwellings erected in rear gardens. Whilst I do not have full details of these schemes, I note the example at No 267 Bredhurst Road is surrounded by residential development on all sides and seen in connection with other dwellings from most views. Similarly, the example at 108 Woodside was for two dwellings in a garden which is back to back with other residential gardens. The development to the rear of No 127 Bredhurst Road was for two dwellings of a smaller scale than the dwellings in front. As such, they have an almost outbuilding appearance from the minor views they can be glimpsed from.
17. Where other examples given may share similar characteristics, they are located some distance from the appeal site and would not be seen in connection with the appeal scheme. In this regard, existing developments are materially different to the appeal proposal, and therefore I cannot draw any direct comparison that weighs in favour of the proposal.
18. I conclude that the proposed developments would result in unacceptable harm to the character and appearance of the area. Accordingly, the proposals would conflict with the relevant provisions of Policies H9 and BNE43 of the MLP. These policies seek, amongst other things, the character and amenity of the area as a whole is maintained and trees that provide a valuable contribution to local character are retained or conserved. The proposals would also conflict with the provisions of the Framework, where they seek to ensure that development is sympathetic to local character and existing trees are retained.

Future Occupiers

19. As shown on submitted plan 102, Bedroom 5/study would be served only by a pair of rooflights along the northern/side roof slope. The appellant states that these windows will provide for greater natural light than vertical windows and would allow views of the sky and trees. However, I find that the height, angle and positioning of these rooflights would, given the proximity of nearby trees, which are of substantial height, create a constrained outlook, negatively impacting the enjoyment and useability of this room and harming the living conditions of future occupiers.
20. I conclude therefore, that the proposed development would have an unacceptable effect on the living conditions of its future occupiers, with particular regard to outlook. Consequently, it would conflict with MLP Policies BNE2 and H9, which seek to secure the amenities of future occupants. The proposed development would also conflict with Paragraph 130 of the Framework, which seeks a high standard of amenity for future users.

Existing occupiers

21. The proposed vehicular access between No 179 and 189 Bredhurst Road would not be typical in design terms of what is evident nearby on this section of the road, with driveways located to the immediate front/side of nearby dwellings. Nevertheless, a close relationship between vehicle movements in close proximity to houses and gardens would not be particularly unusual for a residential area.
22. It is unlikely that there would be a large number of vehicular movements associated with the single dwelling proposed, even though it would contain 5 bedrooms. The noise and disturbance levels likely to emanate from associated

vehicle movements and occupiers of the proposed dwellings would be commensurate with what one might expect in a residential area. As such, even taking into account the orientation of the windows and garden at No 179, I do not consider that there would be any unacceptable impact on the living conditions of the occupiers of this neighbouring property through noise or other nuisance.

23. For these reasons, the proposed development would not further conflict with Policies BNE2 and H9 of the MLP, which seek in part to secure the amenities of neighbouring residents from unacceptable noise, activity levels and traffic generation. The proposed development would also comply with Paragraph 130 of the Framework, which seeks a high standard of amenity for existing users.

Other Matters

24. The Council has indicated that the site is within 6km of the North Kent Marshes Special Protection Area/Ramsar sites. However, as I am dismissing the appeal, there is no need for me to consider the implications upon them because the scheme is unacceptable for other reasons.
25. Based on the information before me and my findings above, there is nothing to suggest the Council's consideration of the proposal has been solely related to the consideration of trees. Additionally, matters of record keeping of protected tree works are a matter for the Council to address outside of this appeal.
26. There is some dispute over the T1-T4 lime trees identified as Category A rather than Category B. In the absence of any further tree surveys to the contrary, I have no compelling evidence to suggest that the assessment is inaccurate or otherwise misleading.

Planning Balance

27. It is common ground between the parties that the Council cannot demonstrate a five-year supply of deliverable housing sites.
28. The provisions set out in paragraph 11 of the Framework are relevant in this case. I also acknowledge, the MLP is of some age nonetheless, the Framework states existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
29. The Framework refers to boosting significantly the supply of housing. The proposal would allow for one dwelling on an unallocated site which would contribute towards the Council's housing stock. This would be in an accessible location close to shops and services, with the new dwelling being built to modern efficiency standards. The proposal would also have environmental benefits through a green wall, hedgerow planting, and bat/bird boxes, as well as economic benefits through the construction and occupation of the dwelling. Still, these would be limited by the small scale of the proposal.
30. However, I have found that the proposal would amount to considerable harm to the character and appearance of the area and would not provide acceptable living conditions for future occupiers. As such, the adverse effects of allowing the appeal would significantly and demonstrably outweigh the benefits, when

assessed against the policies taken in the Framework as a whole. There are no material considerations of such weight to lead me to conclude otherwise.

Conclusion

31. The proposal would not harm the living conditions of nearby occupiers nonetheless, the proposed development conflicts with the development plan when considered as a whole, and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
32. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

A Hickey

INSPECTOR