



Appeal Decision

Site visit made on 25 July 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/U2235/W/22/3304516

La Torre, Boxley Road, Walderslade, Kent ME5 9JE

- 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 F Fard against the decision of Maidstone Borough Council.
 - The application Ref 22/501592/FULL, dated 25 March 2022, was refused by notice dated 14 June 2022.
 - The development proposed is Erection of detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council has indicated that the Local Plan Review is in the process of being examined. However, the Council has not alleged any conflict with any emerging policies in their representations on this appeal. As such, and given the absence of any further detail on the precise status of the plan, this is not a matter to which I attribute any significant weight.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the living conditions of occupiers of the three flats at La Torre and the neighbouring dwelling known as Swiss Cottage, with particular regard to the effect on outlook and access to natural light.
 - The effect of the proposed development on the character and appearance of the area.

Reasons

Living Conditions

4. There are several windows in the northwest facing elevation of La Torre which would directly face the proposed dwelling. Whilst some of these windows are obscure glazed others are not, including the kitchen window of the first floor flat and a second floor window. The scale of the proposed development would be particularly overbearing when viewed from this neighbouring window, given the very close proximity between it and the two-storey flank wall of the proposal. Furthermore, whilst some windows are obscure glazed, no substantive evidence has been provided to establish that there would not be a harmful loss of access to natural light for the occupiers of these three flats.

5. Given the close proximity of the proposed dwelling to the numerous windows in the northwest elevation of La Torre, I consider it likely that the occupiers of the existing flats would suffer from a harmful reduction in access to natural light. Whether or not these windows serve 'habitable rooms' is not the determinative factor. Indeed, there are a significant number of rooms served by windows in the northwest elevation (including a kitchen) and many are only served by one window. I also observed during my site visit that these windows allow light through into other parts of the first floor flat. For these reasons, in the absence of any substantive evidence to demonstrate otherwise I consider that there would be an unacceptable adverse impact on the living conditions of occupiers of the three flats.
6. The appellant has suggested that a planning condition could be imposed which would allow for any such impact to be mitigated through alterations to these windows. However, alterations, bricking up, obscure glazing, replacement with roof lights or other changes all have the potential to worsen the access to natural light. There is therefore no certainty that such a condition would mitigate the impact on outlook. As such, it would not be appropriate in this instance to impose a condition to mitigate the overbearing impact of the proposal.
7. Although the proposed dwelling would be set back from the rear building line of Swiss Cottage, it would only be visible from oblique angles from the rear windows of this neighbouring property. As such, it would not have an overbearing impact nor an adverse impact on loss of light when viewed from the rear of this neighbouring dwelling. Furthermore, the proposed separation distance between the new dwelling and this neighbouring garden is sufficiently wide to avoid any adverse impact on outlook or loss of light to the rear garden of this neighbouring property.
8. There is also a window in the south-east facing elevation of Swiss Cottage which does not appear to be obscure glazed and directly faces the location of the proposed dwelling. However, the impact of the development on this window is not referred to by the Council in the reasons for refusal. Nonetheless, given that I am dismissing this appeal on the grounds of its impact on the living conditions of occupiers of the three flats at La Torre, it is not necessary for me to consider this matter further.
9. In summary, the proposed development would result in an unacceptable adverse impact on the living conditions of occupiers of the existing flats at La Torre, because of the overbearing impact on the occupiers and the loss of access to natural light. It would therefore conflict with Local Plan¹ policies DM1, DM9 and DM11 insofar as these policies seek to ensure that new development respects the amenities of occupiers of neighbouring properties.
10. There would also be a conflict with Framework Paragraph 130f, which requires planning decisions to ensure that new development results in a high standard of amenity for existing users.

Character and Appearance

11. The surrounding area typically comprises of linear residential development of vary architectural styles and differing scales. Building lines are not overly

¹ Maidstone Borough Local Plan – Adopted 25 October 2017

consistent. The character of the area is verdant and rural and most of the residential buildings are detached. However, dwellings are typically located in relatively close proximity to each other, with minimal separation to the sides. Despite this the area retains a spacious character which is created by the significant set back of properties from Boxley Road.

12. The appeal site comprises a multi-storey building which is set into the slope of the land and appears to have been subdivided into three separate flats. The garden surrounding the building is unusually spacious. This is largely because the gaps to either side of the property are much larger than those typical within the surrounding area.
13. The proposed development would be set within the slope of the land such that its maximum height would be comparable with the dwellings located either side. Whilst the gap between the proposed dwelling and those either side would be reduced significantly, it would nonetheless reflect the broader pattern and density of development prevalent in the wider surrounding area. The proposal would not be overly prominent or obtrusive and the overall scale, bulk and massing would assimilate well with neighbouring buildings. The proposed dwelling would also be set back significantly from Boxley Road. As such, whilst the land rises from the road the proposal would not be a prominent or harmful feature of the street-scene.
14. The Hornbeam tree referred to by the Council appears to have already been removed. Indeed, the site currently contributes little to the character of the surrounding area. The Council implies that the appeal site comprises a green visual gap. However, the proposal would still afford views from the highway towards the ancient woodland to the rear of the appeal site. As such, the existing gap is not particularly important and is actually an uncharacteristic feature of the area.
15. For these reasons the proposed development would be in keeping with the character and appearance of the surrounding area. It would therefore accord with Local Plan Policies DM1, DM3, DM9 and DM11 insofar² as they seek to ensure that new development responds positively to local character, including landscape character (DM3).
16. The proposal would also accord with the relevant provisions of the framework in relation to character and appearance including Framework Paragraph 130c.

Other Matters

17. There would be social and economic benefits associated with the proposal as a result of the increase in the housing stock. I also recognise that the Framework emphasises the importance of windfall sites and the use of underutilised land. Notwithstanding this, and even taking account that neighbouring boroughs might have a shortfall in housing supply, only one dwelling is proposed. As such, the benefits of the proposal would be limited in scale³ and would not be sufficient to outweigh the significant harm which the development would cause and the associated conflict with the development plan policies.
18. The Council has referred to issues pertaining to biodiversity but these were not referred to in the reasons for refusal. Local residents have also objected to the

² Notwithstanding the conflict in relation to Living Conditions

³ Even taking into account the 'great weight' to be afforded under Framework Paragraph 69

proposal for reasons beyond the main issues of this appeal. Whilst I acknowledge these representations, given that I am dismissing the appeal on other grounds it is not necessary to consider these matters further.

19. The Council's Officer Report outlines that in the context of a five-year housing land supply any infill development within the urban area will only be allowed in 'exceptional cases' where proposals fulfil the criteria set out in the remaining policies. I do not concur with this statement given the reference to 'exceptional cases'. However, this is not a matter which is directly relevant to the main issues and not one which I have attributed weight to in this appeal.
20. For clarity, Local Plan Policy DM9 does apply, as it refers to 'redevelopment of a residential property'. Residential property does not have to comprise a building it can also encompass land. In any case, even if Policy DM9 did not apply, there would remain a conflict with other development plan policies which would be sufficient to warrant dismissal of this appeal.

Conclusion

21. Whilst there would be no harm to the character and appearance of the surrounding area, the proposal would be harmful to the living conditions of occupiers of the three flats at La Torre. It would therefore conflict with the development plan taken as a whole. None of the material considerations raised warrant a decision other than in accordance with the development plan. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR