



Appeal Decision

Site visit made on 25 July 2023

by A James BSc (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/T2215/W/22/3311868

37 Capel Place, Dartford, Kent DA2 7PU

- 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 Gwain Theobald against the decision of Dartford Borough Council.
 - The application Ref DA/22/00128/FUL, dated 2 February 2022, was refused by notice dated 1 June 2022.
 - The development proposed is three bedroom detached property.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council confirms that the emerging Local Plan is well advanced and it provides a list of policies that they consider are consistent with the National Planning Policy Framework (the Framework) and lack unresolved soundness objections. However, with the exception of Policy M11 these are not policies listed on the decision notice. I therefore afford moderate weight to Policy M11 and limited weight to the other relevant policies from the Dartford Local Plan to 2037 Pre-Submission (Publication) Document (Pre-Submission Local Plan) September 2021 in my decision.

Main Issues

3. Having regard to the written evidence, including the submissions of interested parties, the main issues are:
 - i) the effect of the proposed development on the character and appearance of the area;
 - ii) the effect of the proposed development on the living conditions of occupants of 37 Capel Place (No 37), with regard to overlooking and 38 Capel Place (No 38) with regard to outlook; and
 - iii) whether the site is suitable for windfall development, having particular regard to relevant development plan policies.

Reasons

Character and appearance

4. The appeal site lies close to the entrance of the cul-de-sac. Capel Place is characterised by 2 storey, semi-detached and terraced houses of a similar

style. There is a large area of open space at the entrance to Capel Place, which softens the street scene. The front elevations of houses within the cul-de-sac are set back from the highway behind front gardens and/or parking areas. Nos 37 – 41 Capel Place lie perpendicular to the highway, with their front elevations facing their front gardens. The uniformity of the houses and the soft landscaping make a positive contribution to the character and appearance of the area.

5. The appeal site forms part of the front garden of No 37. The plot is long and narrow; however, it does not appear disproportionately large in relation to the existing dwelling or out of character in the locality. It currently contains a caravan, storage container and a small shed. The landscaping within the site is overgrown. While the site's rundown appearance is a detractor, the condition of the site is more a matter of maintenance and could be easily remedied. However, the open nature of the appeal site and the presence of greenery make a positive contribution to the character and appearance of the area.
6. The proposal seeks to provide a new detached dwelling. While the building line along the southern side of Capel Place steps back as one travels along the cul-de-sac, the proposal would be sited closer to the highway than other dwellings in the street and as a result would appear unduly prominent in the street scene. I acknowledge that development opposite the appeal site extends further to the west than on the southern side of the road. However, the properties opposite are set further back from the highway and contribute to the sense of space and openness at the entrance to this cul-de-sac. As a result, the proposal would fail to respect the established pattern of development in the area.
7. Although existing trees to the south and west of the appeal site would provide some screening of the proposed dwelling, given the proximity of the proposed development to the highway and the lack of space to the front for any meaningful soft landscaping to provide screening, the proposal would appear obtrusive in the street scene. The rear elevation would also be visible from the road to the south. While the proposed materials would match that of neighbouring properties, the front and rear elevations would be particularly bland, with large expanses of wall without any relief from windows or other design features, which would equate to poor design. The appellant has attempted to minimise the presence of the building in the street scene, by proposing a shallow pitched roof. The pitch of the roof would be shallower than neighbouring properties and would fail to respect the character of existing dwellings in the street. As a result of its size, design and siting, the proposed dwelling would appear obtrusive in the street scene and would fail to respect the character and appearance of the area.
8. For the reasons given above, I conclude that the proposal would be harmful to the character and appearance of the area and would conflict with Policies DP2 and DP7 of the Dartford Development Policies Plan (DDPP) July 2017. These policies among other things require that development reinforces and enhances the character and local environment of an area, and that development on garden land does not erode the character of an area.
9. Even having regard to my comments in the preliminary matters, the proposal would be contrary to Policy M1 of the Pre-Submission Local Plan, which

requires that development reinforces and enhances positive aspects of the locality and takes opportunities to create high quality and beautiful places.

Living conditions of occupants of Nos 37 and 38

10. The proposal would be sited a short distance away from the boundary with No 37. Two first floor windows are proposed on the east elevation, which would be the sole windows for Bedrooms 2 and 3. These 2 windows would face the front elevation of No 37, which contains a number of windows at ground and first floor level. The proposed development would also directly overlook the outdoor amenity space for No 37 at a very short distance. Consequently, the proposal would result in a harmful level of overlooking to No 37 and its area of outdoor amenity space.
11. The appellant argues that the existing dwellings to the east and south of the appeal site cause overlooking to No 36 Capel Place (No 36). While existing overlooking occurs to the garden of No 36, this is a historic arrangement and precedes the current development plan. In addition, No 36 does not have any first floor windows in its flank elevation. Accordingly, the appeal scheme is not comparable.
12. While not a reason for refusal, the Council and third party raise concerns that the proposal would have an overbearing impact on the living conditions of occupants of 38 Capel Place (No 38). Although the proposal would be sited some distance from the rear elevation of No 38, it would be located very close to its side boundary. As a result of the proposal's size, 2 storey height and siting, it would appear unduly overbearing and harm the outlook from No 38 and its garden.
13. For the reasons given above, I conclude that the proposal would conflict with Policies DP5 and DP7 of the DDPP, which require that development does not materially harm existing residential amenity. The proposal would also conflict with Policies M2 and M11 of the Pre-Submission Local Plan, which follow a similar approach to the adopted development plan, in this respect.

Windfall development

14. Policy CS10 of the Dartford Core Strategy (CS) September 2011 sets out the development strategy for housing within the borough. It seeks to concentrate the majority of housing on large, previously developed sites. Policy CS10 also sets out the criteria for windfall sites. It requires a consideration of the sustainability of a site for housing development and whether the benefits of the development would outweigh the disbenefits. Policy DP6 of the DPP requires that unplanned windfall residential development is assessed in accordance with Policy CS10 of the CS.
15. The CS and DPP predate the latest Framework, which supports the development of windfall sites and gives great weight to the benefits of using suitable sites within existing settlements for homes. The Council propose a similar approach in the emerging Local Plan. Policy CS10 of the CS is largely consistent with the Framework, which seeks to ensure that new housing development is located in areas with good accessibility to local shops and facilities and that new development promotes walking and cycling.
16. The Council considers that the accessibility of the site to local services, facilities and public transport links is acceptable. Based on the evidence before me and

my site visit, I have no reason to reach a contrary conclusion on this matter. The appeal therefore turns on whether the benefits of the scheme outweigh the disbenefits.

17. While the Council currently has a 5 year housing land supply, the provision of a new dwelling within a location that has reasonable access to local services, facilities and public transport links would make effective use of this site and add an existing property to the borough's housing stock, which are benefits of the scheme. The appellant asserts that the proposal would increase the diversity of the local housing stock with gardens; however, there is limited evidence before me that there is a shortage of 3 bedroom dwellings with gardens in the borough.
18. The appellant argues that the proposal would provide a small dwelling, which would be suitable for elderly residents. The proposal seeks to provide a 3 bedroom dwelling, which would have first floor accommodation and would appear more akin to a family dwelling. I therefore give this argument limited weight. Furthermore, the appellant ascertains that the proposal would provide a comparatively affordable home; however, there is insufficient evidence before me to demonstrate that the proposed market dwelling would be affordable to those on lower incomes. While the proposal would meet housing, highways and parking standards and provide outdoor amenity space and refuse storage, these are policy requirements and not benefits of the scheme.
19. There would be economic investment from the construction of the development and future residents would help to support local services and facilities. The proposed development would have environmental benefits by tidying up the site; however, as stated above, this is more a matter of maintenance and I give this benefit limited weight.
20. The appellant asserts that the Council tax income would provide a further economic benefit. Section 70(2) of the Town and Country Planning Act 1990 (as amended) states that a local planning authority must have regard to a local finance consideration as far as it is material. The national Planning Practice Guidance makes it clear that it is not appropriate to make a decision based on the potential for a proposal to raise money for a local authority. Accordingly, I ascribe little weight to this suggested benefit. Overall, given that the proposal would only provide one dwelling, I give the social, economic and environmental benefits of the scheme limited weight.
21. In terms of the disbenefits, the site is not previously developed land, which counts against the proposal. As set out above, the proposal would harm the character and appearance of the area and the living conditions of occupants of Nos 37 and 38. The proposal would leave No 37, which is a 4 bedroom property with a small garden. The reduction in size of the garden for No 37, would be a further disbenefit of the scheme.
22. Overall, the benefits of providing a new dwelling do not outweigh the disbenefits of the scheme in respect to the harm to the character and appearance of the area and harm to the living conditions of neighbouring properties. Even if I were to exclude the harm to No 38 from my assessment, the benefits of the scheme would not outweigh the disbenefits.
23. I conclude that the proposed development would not represent a suitable scheme for windfall development. The proposal would conflict with Policies CS1

and CS10 of the CS and Policies DP2, DP5, DP6 and DP7 of the DDPP. These policies among other things seek to ensure that the benefits of windfall schemes outweigh the disbenefits; that inappropriate development on residential garden land is resisted, particularly where development would erode local character; the Borough's environment is protected and that development reinforces and enhances positive aspects of the locality. The proposal would also conflict with the Council's Housing Windfall Supplementary Planning Document (SPD) October 2014. This SPD seeks to focus new housing development on previously developed land and requires that development accords with Policy CS10 of the CS.

24. Furthermore, the proposal would conflict with Policies M1, M2, M9, M10 and M11 of the Pre-Submission Local Plan. These policies seek to concentrate residential development on brownfield land within the urban area; require that residential development will be supported where the benefits of the proposal outweigh the disbenefits; require that development reinforces and enhances the positive aspects of the locality; that development protects the environment and amenity; and that development does not harm existing residential amenity.
25. I find no conflict with Policy DP8 of the DDPP, which relates to residential space standards and amenity spaces for new development.

Other Matters

26. The appellant argues that the presumption in favour of sustainable development applies. While paragraph 11 c) of the Framework requires that decision makers approve development proposals that accord with an up-to-date development plan, for the above reasons, I have found that the proposal would clearly conflict with the development plan. Accordingly, the presumption in favour of sustainable development does not apply in this case.

Conclusion

27. For the reasons given above, the proposal would conflict with the development plan as a whole and there are no other material considerations, including the Framework, that would outweigh that conflict. Therefore, I conclude that the appeal should be dismissed.

A James

INSPECTOR