



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/22/3308955

28 Priory Gardens, Dartford DA1 2BE

- 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 Mark Tighe against the decision of Dartford Borough Council.
 - The application Ref DA/22/00161/FUL, dated 17 February 2022, was refused by notice dated 13 May 2022.
 - The development proposed is new three bedroom house adjoining existing terraced house.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council confirms that the emerging Local Plan is well advanced and provides a list of policies that it considers 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. 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 28 Priory Gardens (No 28), with particular regard to daylight, sunlight and outlook;
 - iii) whether the proposed development would provide acceptable living conditions for future occupants of the dwelling, having particular regard to outlook, privacy and internal and outdoor amenity space;
 - iv) the effect of the proposed development on highway and pedestrian safety; and,
 - v) whether the site is suitable for windfall development, having particular regard to relevant development plan policies.

Reasons

Character and appearance

4. The appeal property is an end of terrace, 2 storey dwelling, which is located at the end of a cul-de-sac, behind a large grass verge. The terrace is symmetrical in form and has a pitched roof, with 2 front gables. No 28 has a moderate-sized rear and side garden, which contains a small shed and detached garage. There is a public right of way (PRoW) adjacent to the side and rear boundaries of the site. The level of land rises slightly as one travels along Priory Gardens and as a result the appeal property is visible from the entrance of the cul-de-sac. The garden of No 28 provides a sense of space to the side and rear of the property. The trees to the rear are visible from Priory Gardens in views to the side of No 28 and above its roof. There are a mix of dwelling styles and sizes in the locality; however, front gables are a strong feature on these dwellings. The appeal property is in keeping with other dwellings in the street and contributes positively to the character and appearance of the area.
5. The proposed dwelling would have a staggered footprint, which would appear as 2 separate elements. Both elements would be set back significantly from the front elevation of the terrace and would fail to respect the historic development pattern in the locality and the existing building line of the terrace. The element adjoining No 28 would be lower in height than the host dwelling, whereas the element to the rear would be the same height as the host dwelling and its roof would be visible over the lower section of the proposal. As a result of the staggered footprint and varying roof form, the proposal would appear incongruous in the street scene.
6. The proposal would be sited closer to the PRoW than the existing dwelling and would extend a considerable way into the rear garden of No 28. Given the height and siting of the proposed dwelling, it would appear obtrusive in views from the PRoW. The proposed development would result in the loss of part of the existing garden for No 28, which currently provides a sense of space to the rear and side of the terrace and makes a positive contribution to the character and appearance of the area. As a result, the local character of the area would be harmfully eroded.
7. While the external walls would be rendered to match the existing dwelling, the proposed glazed doors, with large window above would fail to respect the size and pattern of fenestration on the front of this terrace. The existing terrace and other properties in the locality also have gable features, which are absent on the proposed dwelling. I note that a lawful development certificate has been granted to alter the roof form of No 28 from a hip to a gable, which would slightly disrupt the symmetry of this terrace. However, the proposed dwelling with 2 set back elements, with varying roof heights and differing fenestration would significantly harm and unbalance the symmetry of the host terrace. While a new brick wall would improve the boundary treatment adjacent to the PRoW, this would not mitigate the harm that I have identified.
8. For the reasons given above, I conclude that the proposed development would be harmful to the character and appearance of the area. The proposal would fail to comply with Policies DP2 and DP7 of the Dartford Development Policies Plan (DDPP) July 2017. These policies among other things require that developments: respond, reinforce and enhance the positive aspects of the locality; relate to neighbouring buildings, as well as the wider locality, in terms

of height, mass, form, scale, siting, articulation, detailing and roof form; do not erode local character; and, that the historic pattern and form of development is preserved.

9. Having regard to my comments in the preliminary matters, the proposal would be contrary to Policies M1 and M11 of the Pre-Submission Local Plan, which require that development: reinforces and enhances positive aspects of the locality; takes opportunities to create high quality and beautiful places; and, that development on garden land does not erode local character.

Living conditions of No 28

10. The proposed dwelling would extend significantly into the rear garden, leaving a modest sized garden for No 28. The appellant argues that the L shaped design seeks to avoid any loss of daylight to the rear windows of No 28 and that the proposal would meet BRE sunlight and daylight requirements; however, there is limited technical evidence before me to confirm this. Light is already restricted to the rear facing dining room window of No 28 by its single storey projecting element, which lies to the east of this window. The element of the proposal directly adjacent to No 28 would extend rearwards along No 28's western boundary, causing a harmful sense of enclosure to the rear of No 28. Given the proposal's size, siting and orientation, it would appear unduly overbearing and result in a harmful loss of daylight, sunlight and outlook to the dining room window of No 28.
11. While some shading within a garden can be beneficial, the existing trees already provide an element of shading. The proposal by reason of its size, height, siting and orientation would appear unduly obtrusive and cause a harmful loss of sunlight, daylight and outlook to the rear garden of No 28.
12. For the reasons given above, I conclude that the proposed development would be harmful to the living conditions of occupants of No 28 in terms of daylight, sunlight and outlook. The proposal would be contrary to Policies DP5 and DP7 of the DDPP. These policies among other matters require that development does not materially harm existing residential amenity. The proposal would also be contrary to Policies M2 and M11 of the Pre-Submission Local Plan, which are similar in approach to the aforementioned policies of the DDPP.

Living conditions of future occupants

13. The proposed development would have a small garden that would wrap around the property. The front garden areas are likely to be highly visible from the public realm and would not offer good quality private amenity space for future occupants. The proposal would provide a small rear garden. Existing trees currently overhang the rear part of the site and provide some overshadowing. Given the 2 storey form of the proposed dwelling, the proposed boundary treatment and existing trees, the garden would feel particularly enclosed and dark and would fail to provide a good quality, usable area of private outdoor amenity space for this family-sized dwelling.
14. Although the proposal would provide a disjointed layout, it would meet the requirements of the Nationally Described Space Standards and would provide appropriately sized internal amenity space for future residents. Furthermore, the distance from the living room window to the footway is not dissimilar to that of windows on the host terrace. Future occupants would have a

satisfactory outlook from the living room window over the small front garden. Given the proposed boundary treatment, the scheme would ensure that an acceptable level of privacy is provided for future occupants from the living room window. While the L shaped layout would help to reduce some noise transmission between rooms and the adjacent terrace, this is a neutral factor, as noise attenuation is a requirement of separate legislation.

15. Even though I find that the proposal would provide appropriately sized internal amenity space and provide acceptable levels of privacy and outlook for future occupants, I conclude that the proposed development would be harmful to the living conditions of future occupants of the development, in respect to outdoor amenity space. The proposal would fail to comply with Policy DP8 of the DDPP and Policy CS10 of the Dartford Core Strategy (CS) September 2011, which among other things require that new dwellings provide good quality private amenity space, with good access to daylight and direct sunlight; and, that the benefits of the development outweigh the disbenefits – an assessment of which is set out in greater detail in the windfall section of my decision.
16. The proposal would also conflict with Policy M10 of the Pre-Submission Local Plan, which among other things requires that high quality amenity space is provided for future residents, with good levels of sunlight.

Highway safety

17. It is not within my remit to confirm the route of the PRoW or the lawfulness of vehicular access over it. However, it is clear that the proposal would result in an intensification of use of the vehicular access to the rear of the site. The proposal seeks to provide one parking space for the existing dwelling and another for the proposed dwelling. Given the size of the hardstanding, there would be space for an additional vehicle to be parked centrally or vehicles could be parked in tandem.
18. Based on the evidence before me, it has not been sufficiently demonstrated that a vehicle can manoeuvre on site and exit in a forward gear. In any event, such a manoeuvre would not be possible if vehicles were parked in tandem. Vehicles would have to reverse along the lane to access the highway, where there is a close boarded fence adjacent to the boundary with the corner property on King Edward Avenue, which restricts visibility of the footway. Regardless of whether vehicles exit the site in forward or reverse gear, visibility would be obstructed by existing boundary treatment. The increase in vehicular traffic manoeuvring in and out of the appeal site, over the lane, which at least part of is designated a PRoW, accompanied by the poor levels of visibility would lead to conditions that would be prejudicial to highway and pedestrian safety.
19. For the reasons given above, I conclude that the proposed development would be harmful to highway safety. The proposal would conflict with Policies DP3 and DP4 of the DDPP. These policies among other things require that proposals do not result in a severe impact on the safety of pedestrians and other road-users. The proposal would also conflict with Policy M17 of the Pre-Submission Local Plan, which seeks to promote safe routes which address the needs of users and that development is acceptable in terms of highway safety.

Windfall development

20. Policy CS10 of the CS sets out the development strategy for housing within the borough. It seeks to concentrate the majority of housing on large, previously developed strategic 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.
21. 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 proposes 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 is located in areas with good accessibility to local shops and facilities and that new development promotes walking and cycling.
22. The Council considers 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.
23. The provision of a new accessible and adaptable, self-build dwelling, within a location that has good access to local services, facilities and public transport links would add an existing property to the Council's housing stock and provide social benefits. There would be economic investment from the construction of the development and future residents would help to support local services and facilities. The provision of a well-insulated, new dwelling with an air source heat pump would provide environmental benefits. The proposal would also provide an improved boundary wall and additional surveillance of the PRow, which could help to reduce anti-social behaviour. Overall, the environmental, economic and social benefits are limited due to the fact that the proposal would only provide one dwelling.
24. In terms of the disbenefits, the site is a residential garden within a built up area and is therefore excluded from the definition of previously developed land within the Framework and this counts against the proposal. As outlined above, the proposal would cause harm to the character and appearance of the area and the living conditions of No 28. The proposal would also result in poor living conditions for future occupants and be harmful to highway and pedestrian safety.
25. Although not a reason for refusal, the Council considers that the proposal would harm the living conditions of 52 King Edward Avenue (No 52), in respect to outlook. Given the distance and separation by the PRow, the proposal would not result in a harmful loss of outlook to No 52 and this therefore does not form a disbenefit of the scheme.
26. While the appellant states that a financial contribution could be made towards some trees and soft landscaping in the public green space at the end of Priory Gardens, there is no appropriate mechanism before me to secure such a contribution and I therefore give this alleged benefit very limited weight.

27. Overall, the benefits of the scheme do not outweigh the disbenefits. I conclude that the proposal would not represent a suitable windfall development scheme and would conflict with Policies CS1 and CS10 of the CS and Policies DP2, DP3, DP4, DP5, DP6, DP7 and DP8 of the DDPP. These policies among other things seek to ensure that: the benefits of windfall schemes outweigh the disbenefits; inappropriate development on residential garden land is resisted, particularly where development would erode local character; development protects the living conditions of neighbouring properties; development reinforces and enhances positive aspects of the locality; development provides good quality, useable private amenity space for future residents; and, that new development is not harmful to highway safety.
28. 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 ensure unplanned development does not undermine the Council's housing strategy. Furthermore, the proposal would conflict with Policies M1, M2, M9, M10 and M11 of the Pre-Submission Local Plan, which has a similar approach to the aforementioned policies within the DDPP.

Other Matters

29. The Council confirms that it has a five year housing land supply and that the latest Housing Delivery test was 105%. However, the appellant argues that there is a shortfall in the number of housing completions and as a result a greater number of windfall sites will be required to meet this need. Even if I found that the Council was unable to demonstrate a five year housing land supply, the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits (as outlined in the windfall section above), when assessed against the policies in the Framework taken as a whole. Accordingly, the presumption in favour of sustainable development, as set out at within paragraph 11 d) of the Framework does not apply.
30. The Council considers that the proposal would result in a loss of choice and diversity in the garden stock in this area. It was evident from my site visit that there are a variety of garden sizes in the locality and there is limited evidence before me that the proposal would result in a loss of choice and diversity in the housing stock with gardens in the borough.
31. My attention has been drawn to other infill development in the locality. Neither scheme is comparable in terms of siting, design, relationship to neighbouring properties and access, and therefore do not provide a robust justification for the appeal proposal.
32. While only one objection letter was received from a third party, this does not alter my findings above.

Conclusion

33. 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