



Appeal Decision

Site visit made on 8 August 2023

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2023

Appeal Ref: APP/M2270/W/22/3309540

1 Birch Close, Royal Tunbridge Wells, Kent TN2 3TJ

- 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 S Andrews against the decision of Tunbridge Wells Borough Council.
 - The application Ref 22/02519/FULL, dated 16 August 2022, was refused by notice dated 20 October 2022.
 - The development proposed is the demolition of an existing outbuilding and the erection of 1no. dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of an existing outbuilding and the erection of 1no. dwelling at 1 Birch Close, Royal Tunbridge Wells TN2 3TJ in accordance with the terms of the application, Ref 22/02519/FULL, dated 16 August 2022, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr S Andrews against Tunbridge Wells Borough Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the street scene.

Reasons

4. The site lies in Birch Close, on the corner with the main Birken Road. It comprises the side garden of an end of terrace dwelling in a primarily residential area. Whilst there is some variation in plot sizes, there are similar arrangements of buildings on the opposite side of Birch Close and to the rear of the site along Orchard Close though 10 Orchard Close has a two-storey side extension. The houses facing Birken Road and the sides of the original dwellings on Birch Close and Orchard Close follow a similar building line. The set back of the properties from Birken Road and the front and side gardens alongside this street give a sense of spaciousness which makes a positive contribution to the character and appearance of the area.
5. The proposed two-storey dwelling would be attached to the side of 1 Birch Close and have a similar width and design to the host dwelling and other properties on the street. With a distance ranging from approximately 1-2m from Birken Road, the building would be nearer this road than existing houses

- on Birken Road, Birch Close and 1 Orchard Close, forward of the prevailing building line.
6. The side extension at 10 Orchard Close is closer to Birken Road than other properties in the area, but it has a smaller width than the original house and the proposed dwelling and retains a gap of at least 2.6m to the street boundary, more than the proposed building. Although the house would be set down from the footpath on Birken Road, its size and location close to the boundary would be visible from the public realm and would reduce the open, spacious character of the locality.
 7. The Council's reason for refusal refers to the loss of an important open space although there is limited evidence of a definition for this. Irrespective of whether the site is an important open space, the proposal would erode the spacious appearance of the area.
 8. The appellant refers to a new dwelling at 11 Birken Road located approximately 1.2m from the common side boundary. At my site visit, I observed that this does not project forward of the building line of other buildings on this street and is not a corner site. As such, its impacts on spaciousness are not comparable to the appeal proposal.
 9. Consequently, I conclude that the proposal would cause limited harm to the character and appearance of the street scene. This would be contrary to Policy EN1 of the Tunbridge Wells Borough Local Plan 2006 (LP) and Core Policy 4 of the Core Strategy Development Plan Document 2010 (CS). Together these policies seek to conserve urban landscapes and require proposals to respect the site context and to not result in the loss of significant buildings or related spaces, amongst other things. There would also be some limited conflict with the National Planning Policy Framework (the Framework) where it states that development should be sympathetic to local character.

Other Matters

10. There are no objections to the proposal from neighbouring residents or statutory consultees and no issues in relation to several matters, including the living conditions of future occupiers, parking provision and the design of the proposed house. However, these are only neutral factors in the planning balance.

Planning Balance

11. For the reasons I have already set out, I have identified conflict with Policy EN1 of the LP and Core Policy 4 of the CS which are broadly consistent with the Framework. The appeal proposal would therefore be contrary to the development plan.
12. The Council accepts that its current housing land supply stands at 4.49 years, which represents a shortfall against the required five years. Paragraph 11(d) of the Framework is therefore engaged, and the policies which are most important for determining the application are deemed to be out of date for the purpose of paragraph 11.
13. I have not been made aware that the proposed development would harm any areas or assets of particular importance. Therefore, paragraph 11(d)(i) of the Framework is not engaged.

14. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
15. The development would provide one additional, modestly sized dwelling in a borough where there is an identified shortfall in housing land supply. The Framework seeks to significantly boost the supply of homes, gives substantial weight to the value of using suitable land within settlements for homes and seeks to pursue opportunities to promote walking, cycling and public transport use. In this context, the benefit of an additional dwelling which makes optimal use of the site's potential on unconstrained land in a well-connected urban settlement attracts moderate weight. There would also be some economic benefits during the construction and occupation stages but, given the limited scale of the proposed development, I accord this benefit limited weight.
16. The parties consider that the site is brownfield land. However, the definition of previously developed land in the Framework specifically excludes land in built-up areas such as residential gardens. As the site currently forms part of the garden of the host property and is within a built-up area, I do not agree that the site is brownfield land and therefore do not accord it weight.
17. When assessed against the policies in the Framework, the adverse impacts of the development would be limited and would not significantly and demonstrably outweigh the moderate benefits of the proposal when assessed against the policies in the Framework taken as a whole. As such, the presumption in favour of sustainable development set out in the Framework applies.

Conditions

18. I have had regard to the Council's suggested conditions and considered them against the statutory tests outlined in the Framework and the advice in the Planning Practice Guidance. I have made minor amendments, where necessary, to ensure that the conditions comply with these documents.
19. In addition to the standard time limit condition (1), I have imposed a condition requiring that the development is carried out in accordance with the approved plans (2). This is in the interest of certainty.
20. Conditions relating to external materials (3) and landscaping (4) are necessary to protect the character and appearance of the area. The latter needs to be pre-occupancy to ensure that the landscaping scheme is delivered in a timely manner.
21. I have imposed a condition restricting future development for the new dwelling (5) to ensure satisfactory living conditions and to protect the character and appearance of the area. The Council suggests that this should also apply to the existing dwelling but given that its new curtilage would be similar to the adjacent terraced property at 2 Birch Close which has permitted development rights, this is not necessary or reasonable.

Conclusion

22. The proposed development conflicts with the development plan when read as a whole. For the reasons given above, I have attached limited weight to this

conflict, and there are no other material considerations which would weigh against the proposal. The proposal benefits from the presumption in favour of sustainable development. This is a material consideration of sufficient weight, in this instance, to indicate that planning permission should be granted notwithstanding the conflict with the development plan.

23. I therefore conclude that in the specific circumstances of this case, the material considerations indicate that the decision should be taken other than in accordance with the development plan. Accordingly, the appeal is allowed.

A Wright

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 21-101 Loc; 21-101 01; 21-101 02; and 21-101 03.
- 3) Notwithstanding condition No 2, written details including source/manufacture, of bricks, tiles and cladding materials to be used externally shall be submitted to and approved in writing by the Local Planning Authority before any above ground construction is commenced and the development shall be carried out using the approved external materials.
- 4) Notwithstanding condition No 2, prior to the first occupation of the dwelling hereby permitted, a landscape scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall show all existing trees, hedges and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed. The scheme shall also show details of new planting and this shall be planted no later than the first planting season (October to February) following the completion of the development. Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of the dwelling, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of the same species and size as detailed in the approved landscape scheme unless otherwise agreed in writing by the Local Planning Authority.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no development shall be carried out within Classes A, B, E and F of Part 1 of Schedule 2 of that Order (or any Order revoking and re-enacting that Order) to the new dwelling hereby permitted without prior planning permission from the Local Planning Authority.