



Appeal Decision

Site visit made on 27 October 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2023

Appeal Ref: APP/Z2260/W/22/3312740

2 Tidewell Mews, Westgate-On-Sea, Kent CT8 8PX

- 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 Nicholas Wells against the decision of Thanet District Council.
 - The application Ref F/TH/22/0449, dated 27 March 2022, was refused by notice dated 21 October 2022.
 - The development proposed is erection of 1No three-storey three bedroom detached dwelling adjacent to No.2 Tidewell Mews.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description on the application form is different to the appeal form and decision notice. I have taken the description of the development in the banner heading from the decision notice as this reflects the approach agreed between the parties.
3. As part of the appeal submission, the appellant has put forward revised plans that alter part of the ground floor layout and design to the front elevation of the property. However, I am mindful that 'The Procedural Guide to Planning Appeals – England' states that the appeal process should not be used to evolve proposals and if amending the application will overcome the reasons for refusal a fresh application should be submitted. In this regard, I have been referred by the appellant to the judgement under Wheatcroft but have also given consideration to the more recent Holborn judgement¹. Taking all these matters into consideration, I find that the proposed amendments would not involve a "substantial difference" or a "fundamental change" to the application, nor would they cause unlawful procedural unfairness to anyone involved in the appeal. Consequently, I have considered the amended plans in my assessment.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the living conditions of future occupants with particular regard to noise, disturbance, outlook, light and external amenity space; and
 - the character and appearance of the area.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Reasons

Living conditions

5. Located on the edge of the public footway at the rear of the proposed dwelling is a mature protected Norway Maple tree. The tree's trunk slightly leans away from the appeal site to the south. Given the age and size of the tree, it has a well-established crown that hangs over the footway and road.
6. At the time of my visit, which I appreciate was only a snapshot in time, the tree had lost much of its leaf coverage. When viewed from within the garden of 2 Tidewell Mews, particularly closest to the southwest boundary its height and crown cover resulted in an enclosing effect on this part of the garden.
7. As a result of the limited depth of the garden, a short separation distance between the proposed dwelling and the rear boundary of the site would exist. The protected tree which is outside of the appellant's control is of such a height and close distance that it would appear as an overbearing and imposing feature enclosing the small garden area and views out of this rear elevation, thereby providing an unsatisfactory outlook for future occupiers of the proposed dwelling. Based on my observations, this enclosing feeling would be substantially increased when the tree is in full leaf.
8. Additionally, based on the submitted plans, a significant proportion of the light into the ground floor living space would be gained through the glazed windows and door on the rear elevation. In the absence of any substantive evidence to the contrary, such as a daylight or sunlight assessment, I am not convinced that the ground floor living area would receive adequate levels of natural light, resulting in inadequate living conditions for future occupiers.
9. The open plan ground floor would see a window serving the kitchen area. As this area would be less used than the remaining living space on this floor, it would provide an acceptable level of outlook when in use.
10. Vehicle movements in close proximity to houses and gardens would not be particularly unusual for a residential area. Indeed, the present layout within Tidewell Mews contains parking spaces close to existing dwellings such that vehicle noise and other disturbances are already experienced.
11. Furthermore, the parking space to be allocated for No 2 would face the window serving the WC. It is unlikely that there would be a significantly large number of vehicular movements associated with No 2. The noise and disturbance levels, including from vehicle lights, likely to emanate from associated vehicle movements of No 2 would be commensurate with what one might expect in a residential area and would largely only be noticeable from within the WC.
12. As such, even taking into account the limited increase in vehicle numbers and the orientation of the windows of the proposed dwelling, I do not consider that there would be any unacceptable effect on the living conditions of future occupiers of this property through noise and disturbance.
13. For the above reasons, the proposed development would not result in a harmful effect on outlook from the front of the property or through noise or other nuisance. Nevertheless, it would not provide appropriate living conditions for future occupiers with regard to light, outlook and private external amenity space. It would fail to accord with Policies SP35 and QD03 of the Thanet

District Council Local Plan (TDLP). In addition, it would be contrary to the National Planning Policy Framework (the Framework), where it seeks to achieve a high standard of amenity for future users.

Character and appearance

14. The appeal site currently forms part of the garden of a three-storey detached dwelling within a mews development located off Harold Avenue. The northside of Harold Avenue is characterised by dwellings and a block of flats which vary in age, style and design. Buildings on this northern side gradually transition from single-storey, to three-storey buildings. There are also variously sized gaps on this side of the road, which, combined with existing streets and landscaped front gardens, gives this side of the street an open and pleasant character.
15. The opposite side of Harold Avenue has a more uniform and consistent appearance. It comprises two-storey dwellings formed by a short terrace row and well-sized detached properties separated by evenly spaced gaps.
16. The proposed dwelling would be sited within a smaller plot than many nearby dwellings. It would also fail to retain a comparatively sized gap found between many properties on Harold Avenue. However, the proposed dwelling would be seen from most views on the street and the surrounding area alongside No's 2 and 3, which also share a relatively small gap. As a result of the dwelling's broadly matching design, separation gap and garden size similar to No's 2 and 3, the introduction of the proposed dwelling would not appear incongruous or cramped in this location.
17. Furthermore, despite some erosion of the gap between the appeal property boundary and 11 Harold Avenue, a sufficient gap would remain so that the spacious character on this side of the road remains. The retained gap would also ensure that the transition in building heights is retained and can be appreciated within the street scene.
18. For the above reasons, the proposal would not cause harm to the character and appearance of the area. It would therefore accord with Policy QD02 of the TDLP which seeks, amongst other things, to ensure that development proposals promote or reinforce the local character of the area. For similar reasons, the development would accord with the provisions of the Framework insofar as development proposals should be sympathetic to local character.

Other Matters

19. The proposal would have a likely significant effect on the Thanet Coast and Sandwich Bay Special Protection Area (SPA) through recreational disturbance. However, as the appeal is to be dismissed, there is no need to undertake an appropriate assessment or to give consideration to the Conservation of Habitats and Species Regulations. In any event, this would have mitigated harm and would not have amounted to a benefit.
20. The appeal site is located within Westgate on Sea South Conservation Area (CA). As such, I have had regard to the statutory duty to pay special attention to the desirability of preserving or enhancing its character or appearance. The character and appearance of the CA, and thus its significance, is in part derived from the variety and architectural styles and layout of its historic buildings and spaces.

21. Having regard to the position, nature and design of the proposed dwelling, it would have a neutral effect on, and would therefore preserve, the character and appearance of the CA as a whole. As such, the proposed works would not harm the significance of this designated heritage asset. I note the Council has no concerns in these respects. Nevertheless, this weighs neither for nor against the appeals and does not alter my conclusions on the main issue.
22. Requirements for replacement tree planting lie outside the scope of this appeal and are a matter between the Council and the appellant.

Planning Balance and conclusion

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the Act) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
24. There is no dispute between the main parties that the Council cannot demonstrate a 5-year supply of deliverable housing land for the area. As such, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits inherent in providing one additional dwelling to assist the Council in addressing its undersupply as set out in Paragraph 11 of the Framework.
25. The proposal would enable the delivery of an additional dwelling in an established residential area close to shops and services according with the Frameworks objective to significantly boost the supply of housing. There would be social and economic benefits associated with employment during construction and as future occupants would buoy up the local economy. Nonetheless, the benefits of a new dwelling would be confined to an incremental numerical addition, and other benefits similarly limited given the scale of the scheme. Accordingly, the benefits attract moderate weight in favour of the scheme.
26. Against these benefits is the detrimental harm that would be caused to the living conditions of future occupiers. This matter attracts substantial weight given the harm identified would be contrary to the Framework which seeks a high standard of amenity for future users.
27. Compliance with design policies would amount to a neutral matter in the planning balance.
28. Bringing the above together, when assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. It follows that the presumption in favour of sustainable development does not apply.
29. For the reasons outlined above and having regard to the development plan as a whole, and all other relevant material considerations including the provisions of the Framework, the appeal is dismissed.

A Hickey

INSPECTOR