



Appeal Decision

Site visit made on 5 December 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/A2280/W/23/3317671

47A Land Adjacent To 47 Castlemaine Avenue, Gillingham, ME7 2QA

- 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 Alex Iwuoha against the decision of Medway Council.
 - The application Ref MC/22/2908, dated 10 December 2022, was refused by notice dated 1 February 2023.
 - The development proposed is a new dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development cited in the planning application form differs to that contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. In the interests of clarity, I rely upon the description of development as taken from the application form for the purposes of the heading above.
3. As part of the appeal, the appellant has provided additional information in response to the Council's reasons for refusal. This includes an assessment in respect to potential contamination onsite¹ and a financial contribution to mitigate against the impacts to the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and Marshes. I am not aware that this information has been subject to any public consultation. However, given that the Council have had the opportunity to provide comments in relation to the additional information supplied, I am satisfied that no injustice would occur should I determine the appeal on the basis of this information.
4. The Council has indicated that, in light of the above, it is satisfied that subject to a legal agreement and the provision of suitable planning conditions, the proposal would be acceptable in both regards and as such it will not be pursuing its third and fourth reasons for refusal. Consequently, I will assess the proposal on the remaining reasons for refusal only.

Main Issues

5. The main issues are the effect of the proposed development on i) the character and appearance of the area; and ii) the living conditions for potential occupiers with specific regard to internal space standards and privacy.

¹ Contaminated Land Risk Assessment Phase 1 Desk Study Report prepared by STM Environmental Consultants Ltd
Ref: PH1-2023-000010 dated 17/02/2023

Reasons

Character and appearance

6. The surrounding area is mainly residential with a regular rhythm and form to the traditional styled terrace dwellinghouses, providing a pleasant suburban feel. The appeal site is located at the end of a row of terrace houses in Castlemaine Avenue, consisting of a modest, underutilised and partially self-seeded piece of land. The appeal site is relatively narrow adjoining an accessway with single storey garages at the rear. The narrow and linear arrangement of the appeal site thus limits the scope for development.
7. The proposal would provide a small two-storey 1 x 1-bedroom dwelling off-set to the rear of No 47 Castlemaine Avenue with a single storey garage adjoining the flank elevation at No 47. Planning permission has previously been refused² for a modern single storey dwellinghouse to the front of the site adjoining the flank elevation at No 47. The appellant has sought to address the previous concerns of the Council by providing a low-density form of development at the rear, which would be sunk into the ground to minimise its appearance. However, the rear location means that the garden area would be located to the front of the development, providing a tight layout, at odds with the character of neighbouring dwellings in the immediate area.
8. It is acknowledged that there are several other rear structures in the vicinity, which include purpose-built garages and other domestic outbuildings, however the proposed dwelling would be a larger structure than the existing ancillary outbuildings. Furthermore, despite being sunk into the ground, the size and bulk of the proposal would appear disproportionate in this ancillary context given the accommodation in the roof and provision of the bulky rear box-dormer window.
9. Whilst the scale of the proposal would be subservient in comparison with the existing terraced buildings, this would not make the proposal any less dominant within the rear ancillary context in which it would be located and viewed. Given the position within the rear of the plot, compared to the consistent nature of the terrace properties fronting the street scene, this would compound its incongruous nature. The proposal would result in a cramped and discordant form of development at odds with the area's prevailing pattern and form of development.
10. For these reasons, I conclude that the proposed development would fail to harmonise within the local context resulting in a cramped and contrived form of development. As such, the proposal would be in conflict with Policy BNE1 of the Medway Council Local Plan (MLP), adopted May 2003 which seeks development to be satisfactory in terms of scale, mass, proportion, layout and siting amongst other things. The proposal would also conflict with the National Planning Policy Framework (the Framework) insofar as it requires development to be of a high-quality design and sympathetic to local character.

Living conditions

11. The Government's nationally described space standard, March 2015 (NDSS) contains the minimum internal space requirements for new dwellings. Under the NDSS requirements, a 1-bedroom 2-person dwelling laid out over two

² Medway Council Planning Ref: MC/22/2112

storeys requires 58m² gross internal area (GIA). The NDSS further highlights that any area with a headroom of less than 1.5m is not counted within the GIA unless used solely for storage.

12. There is dispute between the parties in respect to the GIA figures for the proposed development and in particular the percentage of the floor area within the roof space which is over the 1.5m NDSS requirement. It is unclear from the evidence before me, what proportion of roof space of the dwelling would be in excess of this requirement. Nevertheless, even if I was to apply the more generous appellants figures in respect to the proposed unit (54m²) this still highlights that the proposal would not meet the required space standards. Given that these figures are minimum standards which are intended to act as a benchmark for high design quality, the shortfall in floorspace is not appropriate. The proposal would provide oppressively confined and unsuitable living conditions for future occupiers.
13. In regard to privacy, it is acknowledged that the proposed dwelling would be sunk into the ground, and the provision of a suitable boundary treatment could mitigate some overlooking and loss of privacy from the proposal to the adjoining property at No 47. However, No 47 has several upper floor rear windows located in close proximity to the proposal, which given their elevated position, coupled with the modest garden size and separation distance between the properties, would provide significant overlooking from a higher vantage point. Consequently, this would provide a loss of privacy to the detriment of the living conditions for any potential occupiers.
14. As a result, the living conditions of potential occupiers would be unsuitable due to inadequate internal space and an increased level of overlooking leading to a loss of privacy. As such, the proposal would not comply with the Framework, the NDSS and MLP Policy BNE2 which seek, among other things, to achieve good living standards for future users of proposed development.

Other Matters

15. The appellant draws my attention to other single storey and chalet bungalow developments in the local vicinity. Indeed, I had regard to these properties during my site observations. However, I have been presented with little substantive evidence relating to their planning history or any planning policy in place at the time when these dwellings were built, thus I am unable to directly compare these examples. Furthermore, these limited examples do not provide an overriding influence over the character of the area. In my view, the character, prominence, and scale of development of each site also varies, along with how they relate within the street scene. I have therefore dealt with the appeal proposal on its individual merits.

Planning Balance and Conclusion

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
17. I have found that the proposed development would harm the character and appearance of the area and the living conditions for potential occupiers which attracts substantial weight against the scheme. It is not disputed that the Council cannot currently demonstrate a five-year supply of deliverable housing

sites. Consequently, because of the provisions of footnote 8, paragraph 11 d) (ii) of the Framework should be applied.

18. Therefore, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme. I find that the development would offer potential benefits in terms of providing a single modest dwelling to the Council's housing stock, given that this is a small site and could be brought forward relatively quickly. It would also have environmental, economic and social benefits, through potential energy efficiency measures, employment opportunities during the construction phase of the development, and future residents accessing and supporting local services. I have attached moderate weight to these factors in favour of the proposal.
19. Taking all of the above into account, in applying paragraph 11 d) (ii) of the Framework, the extent to which there would be adverse impacts of granting planning permission, relating to my findings on the main issues above, would significantly and demonstrably outweigh the above benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.
20. 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.

Robert Naylor

INSPECTOR