



Appeal Decision

Site visit made on 16 January 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2024

Appeal Ref: APP/U2235/W/23/3317389

1E & 1F King Edward Road, Maidstone, Kent ME15 6PN

- 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 James Mills of CKE Homes Ltd against the decision of Maidstone Borough Council.
 - The application Ref 22/505715/FULL, dated 2 December 2022, was refused by notice dated 17 February 2023.
 - The development proposed is the retrospective use as 2 no. sheltered accommodation studio units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published by the Government on 19 December and updated on 20 December 2023 and accompanied by a written ministerial statement (WMS). Any references to the Framework hereafter in this decision are to the latest version.
3. The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS and none of the revisions to the Framework would be material to this appeal. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.
4. The Government has also published the 2022 Housing Delivery Test (HDT) results. The HDT results show that Maidstone Borough Council has delivered its housing requirement over the latest period. Consequently, the presumption in favour of sustainable development contained within paragraph 11 d) of the Framework would not be engaged. As this was also the outcome of the 2021 HDT results I have not sought further views from the parties on this matter.
5. The Council is currently preparing the Maidstone Local Plan Review (MLPR). The MLPR is undergoing Examination in Public, and the Council has recently consulted on the main modifications to the MLPR that the examining Inspector considers are necessary to ensure it can be made sound in accordance with the Framework. The MLPR is therefore at an advanced stage of preparation but has not yet been adopted by the Council. I have little information to suggest when the plan is likely to be adopted, or if there are any unresolved issues. Accordingly, I attribute limited weight to this plan.

6. At the time of my site visit, I could see that the single storey dwellings were already in situ, and the appeal is therefore being considered retrospectively. Nevertheless, for the avoidance of doubt, I have determined the appeal based on the proposed plans before me.

Main Issues

7. The main issues in this appeal are a) the living conditions for future occupiers of the units at 1E and 1F King Edward Road with specific regard to accommodation standards, outlook and privacy, and b) the living conditions for existing occupiers of the units at 1A and 1B King Edward Road.

Reasons

Living conditions – future occupants

8. 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 studio dwelling which contains a shower room instead of a bathroom requires 37m² gross internal area (GIA). From the information before me the units at 1E and 1F King Edward Road would not meet this requirement.
9. There is no dispute between the parties regarding the undersized GIA of the units in respect to the NDSS requirements. However, the appellant highlights as specialist units for sheltered accommodation, these should not be considered as part of the general housing market. I have no evidence before me in respect to any reduction in the required space standards for specialised sheltered accommodation. Indeed, given that the NDSS figures are minimum standards which are intended to act as a benchmark for high design quality, the shortfall in floorspace is not appropriate, whether it is for sheltered accommodation or not. As such, the accommodation standards would not be considered as acceptable.
10. The appeal site is located to the rear of the two-storey property at 1A and 1B King Edward Road and consists of a tight hardstanding courtyard area which includes parked vehicles. In respect to outlook, the dwellings include a small window serving the kitchen/living/bedroom area, which provides the main outlook for the dwellings. A glazed lantern in the roof also provides further natural light for the residential units. However, any outlook from the lanterns would be limited to oblique views of the sky only.
11. From my site observations, the modest separation distance across the courtyard and lack of parking bays and parking restrictions enables vehicles to park in close proximity to the appeal site. As the front windows would provide the only meaningful outlook from the dwellings, any views from these windows would be dominated by parked vehicles at close quarters, providing oppressively confined and unsuitable living conditions for future occupiers.
12. The tight nature of the site also significantly restricts any private space provided for the existing and future residents. Furthermore, Nos 1A and 1B King Edward Road have several upper floor rear windows located in close proximity to the appeal site. Given their elevated position, modest separation distance between the properties and lack of private space, these windows provide significant overlooking from a higher vantage point to the detriment of the living conditions for any future occupiers at the appeal site.

13. Consequently, for the reasons above the proposed development would have an unacceptably harmful effect upon the living conditions of its future occupiers, with particular reference to accommodation standards, outlook and privacy. The proposal is therefore contrary to the relevant provisions of Policies DM1 and DM9 of the Maidstone Borough Local Plan (MBLP), adopted October 2017 and the Framework which, amongst other things, expects planning decisions to provide good design whilst safeguarding privacy and outlook, to ensure healthy living conditions and create better places to live, indicating that higher densities should not be at the expense of acceptable living standards.

Living conditions – existing occupants

14. The existing building at 1A and 1B contain ground and upper floor windows to the rear of these properties which overlook the appeal site at close quarters. I have no information before me in respect to the layout of these existing units and whether or not these windows serve habitable rooms. As such, I have adopted a precautionary approach.
15. Given the limited separation distance and the lack of any defensible private space, unobscured views of the windows at the rear of 1A and 1B are achievable from the appeal site thus providing increased overlooking to the detriment of privacy for existing residents. Whilst a degree of mutual overlooking is to be expected in a suburban setting, the close relationship would create unacceptable overlooking from the appeal site into these windows and vice versa.
16. For these reasons the proposal would unacceptably harm the living conditions of the adjoining occupiers of 1A and 1B King Edward Road, due to increased overlooking and loss of privacy. Therefore, the proposal would conflict with the objectives of MBLP Policies DM1 and DM9 which seek, among other things, for developments to avoid any adverse impact on the amenity of neighbouring properties. It would also be contrary to Paragraph 135 f) of the Framework which, amongst other things, also seeks a good standard of amenity for all existing occupants of buildings.

Other Matters

17. The appellant highlights that the proposal would meet a need in the area for specialised sheltered housing. The appellant also indicates that the proposal would be occupied by a person with special needs, together with their carer. The evidence is not precise as to exactly what type of specialist accommodation would be provided, or how the intended accommodation could be secured. Nevertheless, even if these matters were to be clarified and I were able to attach a condition which secured the development for the appropriate specialist accommodation, the proposal would only provide a modest addition of specialist housing. As such, this benefit is afforded limited weight.
18. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. One of the residents has a protected characteristic for the purposes of the PSED. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home. In reaching my decision, I have kept these interests at the forefront of my mind. However, these are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.

19. I am in no doubt that the proposal would be beneficial to the appellant as all required accommodation would be provided on the ground floor. Nevertheless, this does not justify development that does not provide satisfactory living conditions for future occupiers and existing residents as set out above.
20. It does not therefore follow from the PSED that the appeal should succeed and a refusal of planning permission is a proportionate and necessary response to the legitimate aims of protecting the living conditions of future occupiers from substandard accommodation, and, the living conditions of neighbouring occupiers in respect to overlooking and privacy.
21. The proposal would also result in some other small social and economic benefits, including the support future occupiers would give to local businesses and services and is in an accessible location. To these benefits I apportion modest weight given the limited scale and nature of the proposed development.

Planning Balance and Conclusion

22. 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.
23. I have found that the proposed development would not provide suitable accommodation standards and would also harm the living conditions for potential occupiers and existing residents which attracts substantial weight against the scheme. There is dispute between the parties as to whether the Council can currently demonstrate a five-year supply of deliverable housing sites and whether the provisions of footnote 8, paragraph 11 d) (ii) of the Framework should be applied.
24. Even if I was to find that there was a deficit in the five-year supply of deliverable housing sites, the benefits that this modest development would provide carry moderate and limited weight in favour of the proposal. However, 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.
25. For the reasons outlined above and having regard to the development plan, and all other relevant material considerations including the provisions of the Framework, the appeal is dismissed.

Robert Naylor

INSPECTOR