



Appeal Decision

Site visit made on 11 July 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Appeal Ref: APP/U2235/W/22/3298510

Land on Site of Former 51 London Road, Maidstone, Kent, ME16 8JE

- 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 Lebanon Property Trust (1936) against the decision of Maidstone Borough Council.
- The application Ref 21/503713/FULL, dated 19 July 2021, was refused by notice dated 24 February 2022.
- The development proposed is 'residential development comprising the erection of a three storey apartment building comprising 14 no. units and associated landscaping and ancillary works including the creation of no. 7 parking spaces, cycle shelter and bin stores, with creation of new pedestrian access and use of existing vehicular access from London Road.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. Both parties have been provided with sufficient opportunity to make representations on the revisions.
3. The appeal site includes an extensive planning history. Of most relevance is a previous appeal concerning a proposal for an apartment building comprising 18 flats. This appeal was dismissed in January 2020¹. The conclusions reached by the Inspector in dismissing this appeal are a relevant to the consideration of the current proposal. That said, it is acknowledged that the appellant asserts that it has sought to address the previous reasons for refusal and I have considered this current proposal on its own merits.
4. Outline planning permission was also granted under Council reference 08/1990. However, the Inspector considering the previous permission outlined that this permission has now lapsed and that it was considered in a different development plan context. On that basis, it has no significant bearing on my conclusions.

Main Issues

5. The main issues are:
 - The effect of the proposed development on the living conditions of the occupiers of 49 London Road, with particular regard to privacy and outlook.

¹ PINS Reference: APP/U2235/W/19/3232563

- The effect of the proposed development on the character and appearance of the area.
- Whether the proposed development would provide an acceptable number of vehicle parking spaces.

Reasons

Living Conditions

6. Directly to the south east of the appeal site is 49 London Road, which is a large detached neighbouring dwelling with a long flank wall which faces towards the site. During my site visit I noted that there are several windows at ground and first floor level which would directly face the proposed development. Whilst some of these neighbouring windows are obscure glazed, many are not. The evidence indicates that at least some of these serve living space.
7. The previous appeal was dismissed partly on the basis that it would 'significantly affect the occupiers of No 49 in terms of loss of privacy and outlook'. As a result, the appellant has made various amendments to seek to address the Previous Inspector's concerns. The entire south-eastern flank of the proposed development would be located further away from this neighbouring property. However, this change in distance is marginal and the development would still be located in close proximity to the site boundary and the flank wall of No 49. A further set-back has been incorporated within the central element of the flank wall, however this only represents a very small proportion of the length of the wall. Furthermore, the proposed building has a reduced depth and would be set-back further from the front of No 49 than the previous proposed development.
8. The fourth storey of the proposed building would be set back and the ground level would be lowered such that the building would not appear as a four storey development when viewed from the neighbouring dwelling. Nonetheless, the long extent of the flank wall, its close proximity to this neighbouring property and the fact that numerous neighbouring windows at ground floor and first floor would face the development are all factors which would lead to a significant harmful overbearing impact on the occupiers of No 49.
9. Furthermore, the ground level of this neighbouring dwelling is located well below the existing adjacent ground level of the appeal site which would compound the harmful effect even further. Within this context, the fact that there is an existing boundary wall and fence would not effectively mitigate the harmful impact of the development.
10. In relation to privacy, the appellant has reduced the number of windows proposed in the south-eastern elevation since the Previous Appeal was dismissed. Furthermore, they are all proposed as either obscure glazed, angled or both. Indeed, this could be controlled by planning condition. Similarly, the appellant proposes a balcony screening condition to mitigate the effect of overlooking from the proposed balconies.
11. Despite these revisions, the south-eastern flank wall would still contain a significant amount of fenestration. The windows are also very large, particularly within the central (set-back) core of the building. Furthermore, these windows would be in close proximity to the neighbouring windows of No 49 which face directly towards the appeal site. As such, the proposal would cause significant

detriment to the living conditions of the occupiers of No 49, as a result of the perception of loss of privacy which would be experienced.

12. For these reasons the proposed development would have a significant harmful effect on the living conditions of occupiers of No 49. It would therefore conflict with Local Plan² Policy DM1, which seeks in part to ensure that development respects 'the amenities of occupiers of neighbouring properties'.
13. It would also conflict with Framework Paragraph 135f, which seeks to ensure that new development provides a high standard of amenity for existing 'users'.

Character and Appearance

14. In considering the Previous Appeal, the Inspector concluded that the proposal would have an acceptable impact on the character and appearance of the area. The current proposal is of a far more contemporary and modern appearance. Nonetheless, the surrounding area is characterised by development incorporating a mixture of designs. Indeed, there are some large-detached properties on London Road, which have a traditional appearance and incorporate ragstone. However, there are also examples of far more modern buildings, such as the adjacent doctor's surgery.
15. Within this context, the contemporary appearance of the proposal assimilates well with surrounding development. Indeed, it would comprise a cleaner appearance than the more complicated design of the previously proposed building.
16. The bulk, scale and massing of the proposed development would not be dissimilar to that previously proposed, albeit it has been reduced marginally. Whilst the massing would not be graduated through roof design, the third floor would be set back which would have a similar effect. Whilst the building would have four stories, it would be set into the slope of the land, reducing its prominence and giving a three-storey appearance when viewed within the street scene. Whilst taller than adjacent buildings, there would be a slight reduction in height compared to the previous proposal.
17. Furthermore, the proposed building would not be prominent within the street scene, given the set-back within the site, the lowering of ground levels and existing and proposed planting. As such, the contrast in appearance, scale and bulk when compared to No 49 would not be obviously apparent from public vantage points.
18. The building would be laid out such that it would sit relatively centrally within the appeal site, leaving space for meaningful and acceptable levels of hard and soft landscaping. Indeed, for this reason, the sylvan and spacious character of the area would be reflected despite the significant scale of the proposal.
19. Taking all of these considerations into account, I consider that the proposed development would not be harmful to the character and appearance of the area. It would therefore accord with Local Plan Policies DM1 and DM3, which seek to ensure that new development respects local character. It would also accord with Framework Paragraph 135 which seeks in part to achieve the same aims.

² Maidstone Borough Local Plan (2017)

20. It is not particularly clear what harm the Council is alleging in terms of its assertion that there would be a lack of sufficient landscaping to improve biodiversity. I have already concluded that there would not be any harm to the character and appearance of the area. In terms of biodiversity, the applicants Preliminary Ecological Appraisal indicates that opportunities could be utilised to improve biodiversity and this could be controlled by planning condition. For these reasons, the proposal would not conflict with Local Plan Policies DM1 or DM3 in these terms.

Parking

21. Policy DM23 and Appendix B of the Local Plan set out parking standards to be applied to new development. These standards differ depending on whether the site is within a 'Town Centre', 'Edge of Centre', 'Suburban' or 'Suburban edge/Rural Village' location. The policy text, sub-text and appendix do not define any of these areas. However, the appeal site is just 600 metres (approximately) from Maidstone Train Station in the Town Centre. As such, at worst the appeal site is located within an edge-of-centre location.
22. Based on the parking standards, 1 space per unit is the maximum guidance. Therefore, the maximum standard is 14 units. However, the Local Plan sets out various circumstances where a lower provision might be acceptable, including where this would make the most efficient use of land, where flats are proposed (and parking can be shared) and/or where properties are rented. The proposal would provide 7 car parking spaces and these could be unallocated. Furthermore, given the content of the Unilateral Undertaking it is likely that a proportion of the dwellings would be rented. Finally, the appeal site is in easy walking distance of a train station which reduces the likelihood of car ownership. These factors combined mean that the provision of 7 car parking spaces would be sufficient to ensure that the development complied with Policy DM23.
23. It is not clear what harm the Council alleges with regard to the alleged shortfall in parking provision. Nonetheless, given my conclusions, there would be no adverse increase in pressure for on-street parking as a result of the proposal. For this reason, the level of parking provision proposed would not result in an adverse impact on highway safety and it would not unduly inconvenience the future occupiers of the proposed development. The proposed development therefore accords with Local Plan Policy DM3.

Other Matters

Interested Parties

24. Neighbouring residents have made representations in relation to matters beyond the main issues of this appeal. However, given that I am dismissing the appeal it is not necessary to consider these matters further.

Planning Obligation

25. The appellant has submitted a Unilateral Undertaking with the appeal. Given that I am dismissing the appeal it is not necessary to consider whether the obligations meet the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). Notwithstanding this, in terms of the provision of affordable housing, I have taken this into account as a benefit of the proposal.

Benefits

26. The proposed development would make an efficient use of land in a town centre location, delivering market and affordable housing (4 units). There would also be economic benefits associated with the increase in population and resultant support for services and facilities in the local area. Temporary economic benefits would also be accrued as a result of support for construction jobs. The benefits would be consistent with the emphasis in the Framework on significantly boosting the supply of housing. However, given that only 14 dwellings are proposed, these benefits would be relatively small scale and they would certainly not outweigh the harm caused to the living conditions of the occupiers of 49 London Road.
27. Furthermore, whilst the appellant has indicated that there is evidence to suggest that the Council's Housing Land Supply position is close to five years, there is no evidence to suggest that it falls below the five years advocated within the Framework. Whilst a five-year supply does not represent an absolute bar to new housing, the benefits associated with housing provision are not as great as they might have been were there to be a shortfall.
28. The appellant has cited the benefits associated with CIL payment and highway improvements. However, these would only have a neutral effect as they would be required to make the development acceptable (in terms of infrastructure and highway safety).

Conclusion

29. The proposed development would not be harmful to the character and appearance of the area. Furthermore, there would be no unacceptable harm in respect of highway safety or biodiversity. However, there would be significant harm to the living conditions of the occupiers of 49 London Road. As such, the proposal conflicts with the development plan taken as a whole.
30. There are no material considerations raised of sufficient weight to warrant a decision other than in accordance with the development plan. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR