



Appeal Decision

Site visit made on 30 May 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/U2235/W/23/3335240

Land off Forest Hill, Tovil, Maidstone, Kent ME15 6FG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Marios Stylianides against the decision of Maidstone Borough Council.
 - The application Ref is 23/504362/FULL.
 - The development proposed is described as '2 x 4-bedroom dwellings with associated car parking and landscaping'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Appellant against Maidstone Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Maidstone Borough Local Plan Review (LPR) was adopted in March 2024, and the 2017 Local Plan policies referred to in the reasons for refusal have been superseded. The relevant LPR policies were detailed in the Council's Statement of Case and the Appellant has had the opportunity to respond. I have had regard to the adopted Local Plan.
4. A Reptile Method Statement¹ was provided on the day the application was decided. Although this was not taken into account at the time, it has been considered by the Council through the appeal process and updated advice from the Council's ecological consultee has been provided. I have also had regard to concerns raised by interested parties about the effect on protected species. I have taken the Reptile Method Statement into account, and I am satisfied that there would be no unfairness to the Council or any interested party as a result.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the area, and
 - whether suitable arrangements would be in place to avoid or mitigate any effect on protected species.

¹ Calumma Ecological Services Reptile Method Statement dated November 2023

Reasons

Character and Appearance

6. The appeal site is a narrow parcel of undeveloped land fronting Forest Hill. It is within a substantially residential area, although there is a community centre with outdoor games court to the rear. According to the Council's Officer Report, the land has been part of a larger site where planning permission was granted for housing, and the appeal site would have provided an area of landscaping and wildlife habitat. However, the larger site appears to be vacant and there is no clear evidence whether this permitted scheme has been implemented or the planning permission has lapsed.
7. The surrounding area is relatively built up, with housing of varied scale and design. There are also a variety of small green spaces, wide verges and mature trees, which collectively make a positive contribution to the street scene. The appeal site is one of these, along with the group of sycamore trees on the adjacent land to the north. The site itself includes some smaller trees but, although it has been more open in the past, it is currently overgrown and enclosed by a rather unsightly timber hoarding.
8. The proposed layout would retain an undeveloped green area at the northern end of the site, next to the group of sycamores. This would allow space for the trees to be safeguarded during construction, as well as ensuring that they would not excessively enclose or overshadow the proposed dwellings. The vegetation in the southern part of the site would be lost, but the retained green space would be a meaningful area which would continue to contribute positively to the street scene. This could be secured through landscaping and tree protection conditions, as could provision of an appropriate form of soft landscaping around the dwellings.
9. The layout would be comparable to two recently built dwellings nearby, which are likewise set close to the highway on modest plots. While I have not been provided with details of the circumstances leading to these dwellings being permitted, they are now an established part of the varied street scene and do not appear excessively prominent or out of place. There would be a reasonable level of lateral separation between the proposed dwellings, and they would back on to open land, in the form of the games court. Therefore, the limited rear gardens would not lead to the dwellings looking cramped. On the basis that the acoustic fencing would be 2.5m high, based on the Appellant's updated evidence, and behind the dwellings, it would not be visually intrusive.
10. While the Inspector who dismissed the most recent previous appeal² commented on the cramped layout, that was in the context of a proposal for three dwellings, which did not strike the same balance between built development and open space. Full details of an earlier appeal have not been provided, but since that application was for four dwellings, it is clear that the amount of development would have been greater.
11. Having taken into account the particular layout proposed, including the scope for securing appropriate landscaping on the retained green space, I conclude that the proposal would not have a harmful effect on the character and appearance of the area. It would not conflict with relevant requirements in

² Appeal Ref: APP/U2235/W/21/3272436, determined 8 July 2022

Policies LPRSP2 and LPRSP15 of the LPR, which include that development should respond positively to the character of the locality, including safeguarding trees and greenspaces which are of value. Neither would it conflict with relevant paragraphs in the National Planning Policy Framework (the Framework), including paragraph 135 which advocates development which is sympathetic to the surrounding built environment, while not preventing appropriate innovation or change.

Effect on Protected Species

12. The application was accompanied by a Preliminary Ecological Assessment³ and Reptile Survey⁴. The latter confirmed the presence of a good breeding population of slow worms on the site. The Reptile Method Statement (RMS) furthermore confirms that the proposed development would destroy the reptile habitat, with no scope to mitigate this harm within the site or on adjacent land. Instead, translocation of the slow worm population to a site approximately 6km away is proposed. A letter has been provided as evidence of the agreement reached between the Appellant and the owner of the receptor site.
13. The Appellant's ecologist and the Council's ecological consultee agree that the proposed receptor site adequately meets Natural England criteria, notwithstanding its distance from the appeal site. On that basis, the Council has not defended the second reason for refusal, although ongoing concern about the effect on protected species has been expressed by interested parties.
14. As detailed in the RMS, habitat enhancement would be required at the receptor site, together with ongoing management and monitoring over a period of several years, supported by appropriate funding. Both the RMS and the owner of the receptor site confirm that funding would be from the developer.
15. Both main parties have suggested that suitable planning conditions could be imposed to secure implementation of the RMS. However, the required measures could not be fully secured by means of planning conditions, since the receptor site is not within the Appellant's control, and payment of funds cannot be required by means of planning conditions. A planning obligation under section 106 of the Town and Country Planning Act 1990 would be required. No such obligation has been submitted or proposed.
16. The effect on other protected species could be mitigated through an appropriate approach to site clearance and measures such as bird and bat boxes within the development. The retained open space could be managed for biodiversity, although there is no clear evidence that a measurable net gain could be secured. In any case, these measures would not outweigh the lack of an effective legal mechanism to implement the RMS. Therefore, based on the evidence before me, I cannot be confident that the proposal would effectively safeguard protected species on the site.
17. Circular 06/2005⁵ confirms that the presence of a protected species is a material consideration when considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. The Circular also confirms that appropriate planning conditions or planning obligations

³ Lewis Ecology Preliminary Ecological Assessment and Biodiversity Assessment April 2023

⁴ Calumma Ecological Services Reptile Survey dated September 2023

⁵ Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System

should be in place before planning permission is granted, to secure any measures required for the long-term protection of the species. The Framework furthermore states in paragraph 186 that where significant harm to biodiversity cannot be adequately mitigated or, as a last resort, compensated for, then planning permission should be refused.

18. For the reasons given above I conclude that suitable arrangements would not be in place to avoid or mitigate any effect on protected species. As such, the proposal would conflict with Circular 06/2005 and the Framework and with relevant requirements in Policies LPRSP2, LPRSP15 and LPRSP14(A) of the LPR. These include that development should contribute positively to biodiversity, informed by technical evidence, and provide for the long term maintenance and management of all natural assets associated with the development.

Other Matters

19. The proposed dwellings may prejudice development of the adjacent site, since the land formed part of a landscaping scheme. However, since it is unclear whether the relevant planning permission remains extant, this is a matter to which I have given limited weight. In the meantime, the proposal would make a small contribution to the supply of housing, in an urban area which is a focus for new development. However, the Council has confirmed that the required housing land supply is in place and this has not been disputed.
20. I have had regard to a letter of support highlighting the deteriorating condition of the site and the effect on the community centre. I saw evidence of the issues described when I visited the site and I acknowledge that there is potential for these matters to be addressed by means of the proposed development.
21. However, the above benefits do not outweigh the harm to protected species, which carries very significant weight in accordance with the statutory duty⁶ on decision makers to have regard to the purpose of conserving biodiversity.
22. Other issues have been raised by interested parties. The Council's Statement of Case also introduces an additional point about the extent of the proposed private amenity space, based on Policy LPRQD7 in the recently adopted LPR. However, the reasons for refusal did not allege any shortfall against required standards or any harm to the living conditions for future occupiers. Since I am dismissing the appeal for other reasons, there is no need for me to consider these matters further.

Conclusion

23. The proposed development would conflict with the development plan when read as a whole. The other material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, the appeal should be dismissed.

Jane Smith

INSPECTOR

⁶ Section 40(1) of the Natural Environment and Rural Communities Act 2006 (as amended).