



Appeal Decision

Site visit made on 23 July 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th August 2024

Appeal Ref: APP/A2280/W/23/3329104

Land Between 46 and 52 Cliffe Road, Strood, Rochester, Kent ME2 3DR

- 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 Sukh Rana (Sadhra Property Limited) against the decision of Medway Council.
 - The application Ref is MC/23/0213.
 - The development proposed is described as 'construction of semi detached properties consisting of 4 residential units with associated parking'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have used the description given on the application form. The description on the Council's decision notice refers more specifically to flats on the ground floor, with maisonettes above, which accurately describes the proposed internal layout.
3. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. On the same date, the Secretary of State made a written ministerial statement entitled 'Building the homes we need'. Both parties have had the opportunity to comment on any implications for the appeal and I have taken comments received into account.

Main Issues

4. The main issues are:
 - whether the proposed development would provide suitable living conditions for future occupiers, with particular regard to the amount and layout of private amenity space, and
 - the effect on biodiversity.

Reasons

Living Conditions

5. The appeal site was previously part of the rear garden of a dwelling fronting Goddington Road. There are some significant changes in ground level in the surrounding area and the site is elevated above Cliffe Road, with a retaining wall along the boundary and access via a flight of steps.

6. The plots to either side have been excavated to street level and the site would similarly be excavated to create a level plot, including a rear garden for each of the proposed dwellings. These would generally extend just over 5 metres from the rear elevation. The gardens for the maisonettes would also include land to the side, measuring just under 8 metres in the longest dimension.
7. The interim Medway Housing Design Standards (MHDS) were adopted in 2011, initially as interim planning guidance, with an expectation that they would be adopted as a Supplementary Planning Document (SPD) following adoption of a Core Strategy. However, there is no reference in the Council's evidence to a Core Strategy having been adopted, or adoption of the MHDS as an SPD in its own right. As such, these standards do not carry the weight which would be attached to equivalent requirements in the development plan or an SPD. Nevertheless, they provide a useful starting point for consideration of the suitability of the proposed garden layouts for future occupiers.
8. The MHDS distinguishes between garden provision for houses and flats, but does not include any specific standards for maisonettes. Although they have some characteristics normally associated with flats, being elevated above the ground floor units, the maisonettes would extend across three storeys, with three double bedrooms and a generous open plan living space. Their scale and layout would be suited to family occupation and very comparable to the layout of houses designed for that purpose. On that basis, reference to the MHDS guidance for houses is not unreasonable.
9. By virtue of the generally narrow streetscape and steep gradients, application of the reduced standards for a constrained site is reasonable. The maisonette gardens would exceed the minimum 7 metre requirement in their longest dimension. However, they would be narrow in comparison with the width of the maisonettes and would be a rather awkward shape, wrapped around the rear corner of the building. They would also lack direct access, or even a particularly direct outlook, from the living areas. Consequently, they would provide inconvenient and poor-quality outdoor space for the maisonettes, despite the technical compliance with the required minimum dimension.
10. The other two gardens would have a more convenient relationship with the ground floor flats. However, they would be directly under the sliding glazed doors at the rear of each maisonette. These large first floor openings would provide an all-encompassing outlook over the gardens below, which would consequently be entirely lacking in privacy. Furthermore, the proposed Juliet screens are likely to encourage occupiers to keep the sliding doors open and linger in the opening, looking directly out over the neighbouring garden.
11. It is not unusual for upper flats to overlook gardens below, and some mutual overlooking is to be expected in an urban area. It has been suggested that the neighbouring properties have a similar, or worse, relationship, although the evidence does not demonstrate whether their internal layout is comparable. In both the other developments referred to by the appellant, the upper flats would have much more modest bedroom windows at the rear, which would be less intrusive than the large living room openings proposed in this case.
12. While there is a recreation ground nearby, suitable for active play and relaxation, the availability of private amenity space on site remains a valuable resource for future occupiers of the proposed dwellings. For the reasons given

above, the proposed layout would provide a poor-quality outdoor environment for all four units, lacking a suitable standard of privacy or functionality.

13. I conclude that the proposed development would not provide suitable living conditions for future occupiers, with particular regard to the amount and layout of private amenity space. This would conflict with Policies BNE1 and BNE2 of the Medway Local Plan 2003 (MLP) which require, amongst other things, that development is satisfactory in terms of its layout, and that all development should secure the amenities of its future occupants having regard to issues including privacy. The proposal would also conflict with relevant paragraphs in the Framework, notably paragraphs 131 and 135 which advocate good design to ensure, amongst other things, that development functions well and provides a high standard of amenity for future users.
14. Policy H4 of the MLP is supportive in principle of redevelopment and infilling within existing residential areas. However, this policy does not refer to the quality or suitability of new housing for future occupiers, so is of limited relevance in relation to this particular aspect of the proposed development.

Biodiversity

15. A Preliminary Ecological Appraisal¹ (PEA) and Reptile Survey² were submitted with the application. Both are now of some age and the PEA refers to an earlier proposal for three dwellings. Nevertheless, the condition of the site at the time of my site visit broadly corresponded with the description in the PEA, although there had been some clearance of scrub and the vegetation did not have the 'impenetrable' character noted on the survey plan.
16. Based on the above reports, the biodiversity value of the site is typical of unmanicured garden land within an urban area, and it attracts small wildlife consistent with that environment. Representations from interested parties confirm that birds and other wildlife use the site, and their presence is valued by those living nearby. However, the Reptile Survey did not find evidence of reptiles, and measures are proposed to mitigate the effect of development on other protected species, notably hedgehogs and birds.
17. All of the remaining vegetation would be eliminated, since the site would be excavated to street level. To offset the loss of biodiversity value, the landscaping proposals include features such as green walls, replacement trees and ornamental planting. Small habitat enhancements, such as bird boxes, are proposed and precautionary measures are detailed to minimise the risk of harm to protected species during construction. Once completed, the site would include areas of garden land, although they would be much smaller in size and there is little certainty about whether they would be managed with biodiversity in mind.
18. The evidence does not clearly demonstrate whether these features would provide a comparable level of biodiversity value, but they would have some benefit and could be secured by condition. While paragraph 180 of the Framework says that development should minimise impacts on, and provide net gains for biodiversity, the proposal is not subject to the statutory requirement for biodiversity net gain, as the application was made before the relevant date. The policies referred to in the reason for refusal do not relate to

¹ United Environmental Services Ltd Preliminary Ecological Appraisal dated December 2021

² Ecoassistance Reptile Presence/Absence Survey dated June 2022

effects on biodiversity and no such policies in the MLP have been brought to my attention. The habitat on the site is of a limited and localised nature and there is no evidence that protected species would be harmed.

19. The public open space nearby includes seating and areas planted with wildflowers. As such, while the vegetation and wildlife on the appeal site is no doubt appreciated by those living nearby, there are other convenient opportunities for residents to engage with nature to support mental wellbeing.
20. Taking all the above considerations into account, I conclude that the effect on biodiversity would be acceptable, subject to the imposition of conditions to secure the avoidance, mitigation and enhancement measures set out in the PEA and landscaping proposals. Based on the evidence before me, this aspect of the proposal would not conflict with the development plan, and would respond adequately to relevant requirements in the Framework.

Other Considerations

21. Evidence from both parties indicates that the Council lacks a five year supply of housing land and therefore paragraph 11d of the Framework is relevant.
22. The proposal would contribute four dwellings of varied size to the supply of housing. Efficient use would be made of a small site in an urban area, where development could be delivered quickly, and future occupiers would have good access to services and facilities. However, the Framework's focus on bringing forward such sites is not at the expense of ensuring that all development is well designed. Furthermore, the proposed reforms and written ministerial statement published 30 July 2024 continue to include a focus on ensuring good quality development.
23. There would be some economic benefit as a result of the construction process and economic activity by future occupiers. However, Council Tax revenue is a neutral consideration, since this relates directly to the additional needs arising from the development itself and not to any additional net economic benefit.
24. The site is currently unoccupied and has been severed from the host dwelling, which has direct access to the street at the rear. Therefore, while the reduced ground level would be necessary to provide access to the proposed dwellings, it would not be of wider benefit. Although the site is overgrown, it is not unsightly, being seen as a small green space between the adjacent dwellings. As such, the introduction of built development would not be of particular benefit to the street scene.
25. There is no dispute that the proposed dwellings would comply with the Nationally Described Space Standards or that drainage and highways requirements could be addressed. However, these are neutral considerations which weigh neither for nor against the proposal. Provision of an ecological enhancement plan is also a neutral consideration, since this would be necessary to compensate for biodiversity loss as a result of the development.

Planning Balance

26. For the reasons given above, the proposal conflicts with Policies BNE1 and BNE2 in the MLP. The relevant requirements in those policies are consistent with the Framework's focus on achieving well-designed development. As a result of the shortfalls in the quality of the outdoor amenity space, the

development would not provide good quality housing and the effect on living conditions for future occupiers would be enduring. I have accordingly given this harmful aspect of the proposal significant weight.

27. The benefits are inherently modest, given the small number of dwellings proposed. Furthermore, since the harm derives from the detailed design, rather than the principle of the development, benefits of a comparable scale could potentially be achieved by means of an alternative approach. Therefore, the benefits of this particular proposal carry modest weight.
28. Consequently, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposal does not benefit from the presumption in favour of sustainable development, as articulated in paragraph 11d of the Framework.

Other Matters

29. Residential development in this location is likely to have a significant effect, either alone or in combination with other development, on European Sites on the North Kent coast³, as a result of increased recreational disturbance. Mitigation is proposed in the form of a financial contribution towards access management and monitoring, as required in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy 2014. Evidence has been provided that a direct payment has been made to that effect. However, as I am dismissing the appeal for other reasons, it is not necessary to address the effect on European Sites in any further detail.

Conclusion

30. The proposed development would conflict with the development plan. No other material considerations, including the provisions of the Framework, indicate that a decision should be made otherwise than in accordance with the development. Accordingly, the appeal should be dismissed.

Jane Smith

INSPECTOR

³ Thames Estuary and Marshes Special Protection Area/Ramsar Site, Medway Estuary and Marches SPA/Ramsar Site and The Swale SPA/Ramsar Site