

Appeal Decision

Site visit made on 17 October 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal Ref: APP/H2265/W/24/3338610

Otford Tool & Gauge Co, Maidstone Road, Platt, Kent, TN15 8JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by OTG Precision Engineering Ltd against Tonbridge and Malling Borough Council.
 - The application Ref is 23/01317/FL.
 - The development proposed is the redevelopment of the site to provide 9no. new residential dwellings with associated hard and soft landscaping.
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Decision

1. The appeal is dismissed and planning permission for the redevelopment of the site to provide 9no. new residential dwellings with associated hard and soft landscaping is refused.

Application for costs

2. An application for costs was made by OTG Precision Engineering Ltd against Tonbridge and Malling Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal is against the non-determination of a planning application. The Council's appeal statement indicates that it would have refused planning permission for reasons relating to the living conditions of future occupiers and the effect on protected trees. The main issue below is therefore taken from the Council's appeal statement.
4. A draft National Planning Policy Framework was published in July 2024. The proposed changes would not materially affect the main issues in this case, so the parties were not invited to make further comments. As the feedback from the recent consultation on the draft document is currently being analysed, it carries very little weight.

Main Issue

5. The main issue in this appeal is whether the proposed development would provide acceptable living conditions for future occupiers and its effect on the character and appearance of the area, with particular regard to the provision of external amenity space and its impact on protected trees.

Reasons

6. The L-shaped appeal site comprises a business premises fronting Maidstone Road between Platt Memorial Hall and a small residential estate. Close to the boundary, within the grounds of Millside House, are a mature oak and a semi-mature yew with substantial canopies extending into the appeal site. These are protected by a Tree Preservation Order (TPO) and provide a landscaped backdrop to the commercial buildings and parking, visible from Maidstone Road and Long Mill Lane.
7. The Arboricultural Report (AR) indicates that the oak is 13m high with the yew being 8m high, each with significant crown spread in all directions. It assesses these trees as being in good condition with a long life expectancy. The AR outlines various tree works to accommodate the proposal, though works have since been carried out to reduce their crown spread into the site, albeit there is contention on whether these accord with the consents granted by the Council. Nevertheless, the trees retain substantial canopies which, along with their significant height, good condition, expected lifespan and visibility from the road, form a distinctive and prominent natural feature which contributes positively to the local character of the area.
8. Proposed units 1-5 would have small rear gardens abutting the property at Millside House, with units 2 and 3 being sited directly south of the oak and yew trees. There are no minimum garden size standards, and the proposed rear spaces would be larger than those for units 6-9 and some dwellings in the scheme previously approved by the Council¹, providing areas for children and for drying washing. There would be some sky views from the gardens, particularly in winter when the trees have shed their leaves, and the parts of the outdoor spaces closest to the houses would be outside their canopies.
9. Nevertheless, the rear gardens for units 2 and 3 would be very close to the sizeable trees, with the tree canopies overhanging large sections of these outdoor spaces. As such, the protected trees would dominate these external amenity areas, causing perceived overshadowing and creating very enclosed, poor quality gardens, resulting in unsatisfactory living conditions for future occupants. As the rear gardens for units 1, 4 and 5 would be further away from the protected trees and having regard to the layout of the approved development, the quality of the proposed external spaces for these houses would be acceptable.
10. I note that the trees are outside the site, but anyone can apply for consent for works to trees protected by a TPO, including future occupiers of the proposed dwellings. The existing commercial building is within the root protection areas and various tree protection measures would be implemented to ensure that construction works would safeguard the tree roots. The proposed scheme would also provide soft landscaping. However, due to the proposed layout relative to the existing trees, the scheme would result in dark, enclosed and unappealing rear gardens to units 2 and 3. This is likely to create pressure from future occupiers for the protected trees to be further pruned or even removed, adversely affecting these distinctive landscape features which positively contribute to the area's character.

¹ Planning permission ref TM/22/00542/FL 'the previous scheme/approved development'

11. The approved development included dwellings in the area now proposed for units 1-5. The communal garden for the two central flats in the previous scheme was significantly wider than those currently proposed for units 2 and 3 and included outdoor space away from the trees, providing a more open, less contained area than now proposed for these houses. Therefore, the appeal proposal would create greater pressure on the protected trees than the previous scheme.
12. Consequently, I conclude that the proposal would provide unacceptable living conditions for the future occupiers of units 2 and 3 and would harm the character and appearance of the area, with particular regard to the provision of external amenity space and its impact on protected trees. This would be contrary to Policy CP24 of the Council's Core Strategy 2007 (CS) and Policies SQ1 and NE4 of the Managing Development and the Environment Development Plan Document 2010 (MDEDPD). Together, these require development to be well designed, to respect the site and its surroundings, and to maintain the extent of tree cover, amongst other things.
13. The Council also alleges conflict with saved Policy Annex PA4/12 of the Tonbridge and Malling Borough Local Plan 1998 which relates to residential extensions. As the appeal scheme is for new dwellings rather than a residential extension, this policy annex is not determinative in respect of the proposal.

Other Matters

14. The Council did not find harm or development plan conflict in relation to several other matters, including the principle of residential development, highways and parking, refuse and cycle storage, contamination, noise, the scale and appearance of the proposed buildings, internal space standards, flood risk, and the living conditions of neighbouring occupiers. In relation to an open space contribution, the Council sought an increased amount which the appellant subsequently included in a planning obligation dated 20 May 2024. However, even if I were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposal.

Planning Balance and Conclusion

15. The Council accepts that it cannot currently demonstrate a five year housing land supply required by the National Planning Policy Framework 2023 (the Framework). The Council's current position is that it has a 4.36 year housing land supply. This represents a significant shortfall and therefore paragraph 11(d) of the Framework is engaged.
16. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
17. The Framework seeks to boost housing supply and highlights the important contribution small and medium sized sites can make, whilst supporting development which makes efficient use of land. The proposal would make a modest contribution of nine additional family dwellings to the supply of housing, making better use of previously developed land in a location with access to services and public transport. It would contribute towards Tonbridge

and Malling's housing supply, making a modest difference to addressing the shortfall, and therefore I attribute modest weight to this benefit.

18. In contrast, the proposal would provide unacceptable living conditions for future occupiers and would harm the character and appearance of the area. The Framework requires development to provide a high standard of amenity for future users and recognises the important contribution that trees make to the character and quality of urban environments. I have concluded that the proposal would be contrary to Policy CP24 of the CS and Policies SQ1 and NE4 of the MDEDPD. These matters combined carry significant weight against the scheme.
19. Consequently, the adverse impacts I have identified would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It therefore follows that the proposal does not benefit from the presumption in favour of sustainable development.
20. For the reasons given above, the proposal would conflict with the development plan and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed, and planning permission is refused.

A Wright

INSPECTOR