



Appeal Decision

Site visit made on 26 November 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2024

Appeal Ref: APP/T2215/W/24/3342658

9 Birchwood Road, Wilmington, Dartford DA2 7HF

- 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 Brooks against the decision of Dartford Borough Council.
 - The application Ref is DA/23/01046/FUL.
 - The development proposed is described as the construction of a new family dwelling to the rear of 9 Birchwood Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal form states that the description of development has not changed from that entered on the application form. Nevertheless, a different description is entered in Part E of the appeal form. I have not been provided with confirmation from either party that a change to the description of development has been agreed. Accordingly, I have used the original description in my banner heading above.
3. The Council's notice of refusal of planning permission refers to the relevant policies of the Dartford Core Strategy (2011) and the Dartford Development Policies Plan (2017). These have since been replaced, on its adoption in April 2024, by the policies of the Dartford Local Plan to 2037 (DP). My determination of the appeal proceeds on the basis of the Development Plan as it stands at today's date.
4. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (Framework) and a written ministerial statement. While these proposed changes can only be given limited weight at this stage, those parts most relevant to the appeal are not proposed to be amended. As a result, I consider that there is no requirement for me to seek further submissions in respect of these matters, and I am satisfied that no parties interests would be prejudiced by my taking this approach.

Main Issues

5. The main issues are:
 - i) the effect of the proposal on the character and appearance of the surrounding area;

- ii) the effect of the proposal on living conditions, with particular regard to overlooking and noise and disturbance; and
- iii) the effect of the proposal on highway safety.

Reasons

Character and appearance

6. The appeal site lies to the eastern side of Birchwood Lane and is currently occupied by a detached two-storey dwelling set back from the highway. Despite a variation in architectural design, the area is characterised by two-storey detached and semi-detached properties fronting the highway with a wide range of boundary treatments and long, verdant rear gardens. Whilst the rear garden is wider than the majority of plots along Birchwood Road, its length is reflective of those properties immediately to the south of the site.
7. The proposal would introduce a dwelling in a backland position which would fail to replicate the road fronting pattern of development in the area. While there are several large dwellings to the north, these properties front Hook Green Lane and are viewed in a different context.
8. The subdivision of the existing garden would result in an uncharacteristically small plot. Whilst the proposal would provide sufficient outdoor amenity, parking and turning space, the site's development with a two-storey dwelling would appear cramped when viewed in relation to the surrounding large, verdant gardens.
9. Due to the presence of existing built form, and the narrow driveway, I consider that from Birchwood Road there would be likely to be only glimpsed views of the proposed dwelling. Whilst views of the proposed dwelling may be likely, beyond the single storey properties that front Hook Green Road, the distance from the highway combined with the presence of mature landscaping would not result in a dominant view that would be harmful to the streetscene.
10. There are examples of single storey outbuildings located within the rear gardens of dwellings close to the appeal site. They are, however of a smaller footprint than the proposed house and appear as outbuildings rather than self-contained residential accommodation.
11. The proposed dwelling would be of a high-quality design and would sit comfortably within the context of other property designs. Nevertheless, this would not outweigh the harmful impact to the pattern of development in the area.
12. My attention has been drawn to nearby developments. While the full details of the cases are not before me, in respect of No 80 Birchwood Road the evidence indicates that the proposal did not represent backland development and that the appeal site lies on the opposite side of Birchwood Road where the pattern of development differs. In respect of land to the rear of No 49 A Leyton Cross Road¹ this related to a larger quantum of development and there were existing

¹ DA/20/00455/FUL

buildings on the site. Accordingly, I am not satisfied that the site context is comparable.

13. The appellant questions citing Policy DP2 in the Council's reason for refusal on the basis that it mainly relates to height, mass, scale and form. This policy has since been superseded by Policy M1 of the DP. Whilst it may include reference to matters of scale and design, overall, it is a design policy which encompasses matters of good design, including form, siting and layout relative to neighbouring buildings and the wider locality. This policy is therefore applicable to the appeal proposal.
14. For the reasons stated, I conclude that the proposal would harm the character and appearance of the area, in conflict with Policies M1, M2, M9 and M10 of the DP. Collectively, amongst other things, these policies require developments to respond to, reinforcing and enhancing positive aspects of the locality and be suitable in terms of siting and not erode local character.

Living Conditions

15. While it is not uncommon for driveways to be located next to property boundaries, the proposed access would extend significantly into the site with the driveway running close to the boundary of No 7 and the parking and turning areas proximate to the boundary of the neighbouring property, No 11.
16. Although only a single dwelling, the proposal would introduce a source of noise which would be incongruous with the rear garden environment. The introduction of activity in a backland location, particularly noise associated with comings and goings and glare from headlights of vehicles in periods of darkness when a quieter living environment could reasonably be expected would result in unacceptable disturbance for neighbouring occupiers, in particular No 11 due to the location of the parking and turning areas immediately adjacent the shared boundary.
17. The appellant submits that the existing detached garage is unrestricted in terms of its use by occupants and therefore the proposal would not lead to a material increase in terms of general activity or vehicle movements. I have no substantive evidence in this regard. Nevertheless, the location of the existing garage differs significantly to the proposed access and parking areas for the proposed dwelling, and therefore, does not represent a comparable situation in terms of impact on living conditions of neighbouring occupiers.
18. The appellant has indicated that they would be agreeable to a condition for an acoustic fencing along the access road. However, to leave such a matter to a condition would leave serious doubts over the appearance and effectiveness of the screening, as sufficient details are not before me. It could also potentially substantially alter the nature of the development proposed. Moreover, to allow details to be submitted to the Council for its approval, there is no assurance that an acceptable form of screening would be approved by the Council. I am therefore not persuaded that it would be reasonable to apply such a condition.
19. Turning to matters of privacy, the appeal property is in an urban area where some degree of intervisibility between properties is to be expected. However, every proposal has to be considered on its particular planning merits. In this instance, due to its backland position, the windows in the front elevation would face the rear of the properties fronting Birchwood Road.

20. The proposed dwelling would be positioned proximate to the rear garden of the existing dwelling, No 9, just a short distance beyond an area of hardstanding. Whilst the imposition of boundary treatments would overcome any overlooking from ground floor windows of the proposed dwelling, there would be overlooking from first floor windows over the rear private garden to No 9. This would be materially harmful to the living conditions of the occupiers of this property. It is recognised that an appropriate separation distance would be achieved between habitable rooms windows between properties. However, this does not overcome the harm identified in respect of living conditions.
21. I observed mature landscaping to the boundaries to the neighbouring gardens. Whilst existing landscaping may afford some privacy between properties landscaping can rarely be relied upon in the long term with regards to its maintenance, retention and survival. In any case, some of the landscaping is on neighbouring land under the control of third parties. Nevertheless, given the orientation of the windows in relation to the adjacent gardens of Nos 7 and 11, I find the proposal would be acceptable and would not materially harm the living conditions of neighbouring properties in terms of overlooking.
22. I am satisfied that the size of the retained garden to No 9 would be sufficient to meet the health, recreation and functional needs of occupants of both the dwelling. There is no substantive evidence before me that the proposal would result in an unacceptable loss of residential garden land or diversity of housing in the Borough. However, this does not overcome the harms identified.
23. For the reasons stated, I conclude that the proposal would have a harmful effect upon the living conditions of the occupiers of neighbouring properties, with particular regard to overlooking and noise and disturbance. Conflict arises with Policies M2, M9 and M10 of the DP. Collectively, amongst other things, these policies seek a good standard of amenity for existing occupants of buildings.

Highway Safety

24. The appeal proposal would result in the provision of a new waste collection point some 60 metres from the highway where they would be collected. This is twice the distance recommended. Nevertheless, I am satisfied that bin dwell areas could be located within the parameters of the appeal site much closer to the highway. This could be secured by the imposition of a suitably worded condition had I been minded to allow the appeal.
25. During the processing of the application the Council raised concerns regarding tracking drawings indicating that there would be conflict between construction vehicles and the northern boundary. In their appeal submission the appellant has sought to provide additional clarity in this regard.
26. Subject to the imposition of suitably worded conditions the proposal would accord with the general aims of policies M2 and M16 of the DP. Collectively, amongst other things, these seek provision for loading, unloading and the turning of service vehicles to ensure highway and pedestrian safety.

Other Matters

27. The appellant asserts that potential purchasers of the property have raised concerns around the existing large garden. I have no evidence before me to contradict this assertion. However, I am not satisfied that the proposed

dwelling is the only means of securing maintenance of the garden. This is therefore a neutral factor in the determination of the appeal.

28. It is not disputed that the proposal is located outside of the designated Green Belt, that there are no ecological concerns, would provide for an appropriate provision of parking and would meet Nationally Described Space Standards. A lack of objection from the Council's archaeologist and arborist is also noted. However, these matters do not overcome the harms I have identified.
29. The Council's ability to demonstrate a 5-year housing land supply is not disputed. However, set against the harm identified, the proposal would deliver a net gain of one new dwelling. The scheme would be an efficient use of land, within a sustainable location. This would support the Government's aim of significantly boosting the supply of homes. However, the addition of a single dwelling would provide a limited contribution in this context, and I attach minor weight to this benefit.
30. There would be temporary and ongoing economic benefits from the development through construction and use of local shops and services, but given the single additional dwelling, those benefits would be limited.
31. The proposal is an unplanned windfall site. The development plan supports development where the benefits outweigh the harm. However, in this circumstance, having regard to the proposal as a whole, the benefits would be limited and would not overcome the harms identified.
32. The appellant questions the relevance of Policy DP7 cited by the Council. This policy no longer forms part of the current development plan.

Conclusion

33. The proposal would conflict with the development plan as a whole and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given, the appeal should be dismissed.

R Gee

INSPECTOR