



Appeal Decision

Site visit made on 16 December 2024

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2024

Appeal Ref: APP/U2235/W/24/3345595

Land rear of 9 Terrace Road, Victoria Street, Maidstone ME16 8JA

- 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 Sean O'Shea on behalf of O'Shea Operations Ltd against the decision of Maidstone Borough Council.
 - The application Ref is 24/501098/FULL.
 - The development proposed is erection of 2 no. 3 bedroom dwellings with integral garages, associated access, hard and soft landscaping, demolition of brick constructed wall.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The revised National Planning Policy Framework (NPPF) was published on 12 December 2024. The application was determined under the December 2023 NPPF. As no relevant paragraphs have been subject to change, apart from altered paragraph numbers, it has not been necessary to consult the main parties with regard to the revised NPPF.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on a) the character and appearance of the area, including the Grade II listed Rocky Hill Terrace and the Rocky Hill Conservation Area; and b) the living conditions of neighbouring and future occupiers, with regard to outlook, privacy and external amenity space.

Reasons

a) Character and appearance

4. Close to the corner of Terrace Road and Victoria Street, the site adjoins the Rocky Hill Conservation Area (the conservation area) and is in proximity to the Grade II listed building at Rocky Hill Terrace. The conservation area's significance stems from its development as an area of grand, high status dwellings that overlooked Maidstone's industrial core from a prominent elevated position. According to the Council's Character Area Assessment for London Road, Bower Mount Road, Buckland Hill Area (2008), the Earl of Romney's land off Rocky Hill was developed from the 1870s and conditions for building were that houses had to be worth at least £800 and have lawns, carriage drives and stables, with business development prohibited.

5. Within the conservation area, there is unsympathetic modern development at Birnam Square, including Nos 6 – 10 which face the site. Despite its setback from Victoria Street and some screening by trees, it represents a negative feature within the conservation area. A more positive feature of the conservation area and of the wider area outside the conservation area is the established pattern of development with large and relatively grand buildings running along London Road and Terrace Road. They generally sit within generous plots. Front and rear gardens are key in separating the grander buildings from the roads and from higher density development at the rear.
6. The listed building at Rocky Hill Terrace runs between Victoria Street and Bedford Place. Set behind a low stone wall, trees and car parking, the 1830s terrace is an elegant white four-storey building with balustrading, moulded architraves, and cornicing. Looking down Victoria Street towards London Road, the classical façade gives way to the terrace's yellow brick flank and rear elevations. The rear elevation exhibits simple uniformity, while the flank elevation facing 9 Terrace Road has an imposing oriel window. Some of the garden remains to the rear of the terrace, enclosed by a stepped brick wall.
7. On the opposite side of Victoria Street, the site was formerly part of the rear garden of 9 Terrace Road, a two-storey Victorian red brick building, built as a large house but now a house in multiple occupation (HMO). While No 9 has later UPVC windows and cladding, it remains a positive feature adjoining the conservation area and has a long flank wall with chimneys, original lintels and door surrounds facing the listed building.
8. The site is covered in hardstanding and located behind a stepped brick wall, with the wall's height increasing away from No 9. The site faces Rocky Hill Terrace's stepped brick garden wall. It also adjoins the parking area of the modern two-storey flatted development at Victoria Court. It is possible to see views of the rear of the building at No 9 and neighbouring Victorian buildings along Terrace Road from outside the site as part of the traditional separation offered by rear gardens along this part of Terrace Road, though there is tree cover adjacent to No 9. Though altered, the properties and gardens along Terrace Road are a positive feature in the setting of Rocky Hill Terrace.
9. The proposed development would comprise a three-storey brick building for two three-bedroom houses. It would have metal windows, cladding and front door canopies. It would provide integral ground floor garages and residential accommodation at first and second floors. Close-boarded fencing would separate it from neighbouring properties.
10. Notwithstanding the presence of modern development at Victoria Court and Birnam Square, the proposed development would cover the majority of the former rear garden of No 9. In doing so, it would partially infill and interrupt an important and established visual gap to the rear of the buildings along Terrace Road and London Road. This would harm the local pattern of development.
11. While there is a mixture of architectural styles, designs and ages of development in the area, the proposed development would be jarring and incongruous. This would be due to a combination of its height, design, materials and excessive footprint within a constrained site in what is a prominent location close to the junction of two roads.

12. The proposed development's design is neither innovative in its modernity nor does it effectively use the positive design cues of Terrace Road or Rocky Hill Terrace. Instead, it takes negative features from nearby Birnam Square, where integral garages exist. Unlike Birnam Square, the proposed development would lack ground floor windows, creating a dead frontage. It would be cramped, contrived, and dominant. Though this cramped appearance stems from the sheer height and bulk of the proposal, it would be worsened by the proposal's juxtaposition of bin stores, fencing and limited external space.
13. Furthermore, the existing boundary wall's removal would reduce the uniformity of boundary treatments with the brick wall at Rocky Hill Terrace. This would have a negative effect on the character and appearance of the area and would be detrimental to the setting of Rocky Hill Terrace and the conservation area.
14. NPPF paragraph 212 states that when considering the impact of a proposed development on a designated heritage asset's significance, great weight should be given to the asset's conservation (the more important the asset, the greater the weight). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
15. The proposed development would not preserve the setting of the listed building or the conservation area. As such, it would cause less than substantial harm to the significance of the Grade II listed building at Rocky Hill Terrace and the conservation area. In line with NPPF paragraph 215, it is necessary to weigh the less than substantial harm to the listed building and conservation area against the public benefits of the proposed development.
16. The use of NPPF paragraph 215 does not indicate that the Council considers there to be only limited harm. The Council considers the harm to be at the higher end of less than substantial harm. The Council has referred to legal judgments¹ in this regard.
17. While the proposed development may result in increased spending in the local community by future occupiers and in local employment for the future occupiers and construction contractors, I have no evidence that the scheme would provide affordable housing for local people. As there is no legal agreement in place, this would not be secured.
18. The appellant also asserts that there would be enhancement to social and community networks, demographic diversity, and first-time buyers would be able to remain locally. However, there is little to support these assertions. Furthermore, the proposed development would result in the use of a vacant site and provision of energy efficient homes using sustainable materials. Electric charging points and cycle storage would be neutral, as would adherence to National Minimum Space Standards. The proposal would be in a sustainable location, close to shops and services. Given that the Council has a good track record of housing delivery, has a five year supply of housing land², and the public benefits are poorly evidenced, I afford the public benefits limited weight. The harm to the listed building and the conservation area would not be outweighed by the proposed development's public benefits.

¹ R.(oao James Hall and Company Limited) v City of Bradford Metropolitan District Council and Co-Operative Group Limited [2019] EWHC 2899 (Admin) and City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government and others [2021] EWCA Civ 320.

² As part of the recent Local Plan Examination and at appeal (APP/U2235/W/22/3305441, decision issued 10 March 2023).

19. I conclude that the proposed development would have a negative effect on the character and appearance of the area, including the Grade II listed Rocky Hill Terrace and Rocky Hill Conservation Area. It would contravene Maidstone Borough Council Local Plan Review (March 2024)(MLPR) Policies LPRENV1, LPRHOU2, LPRSP14(B) and LPRSP15, the NPPF, and the National Design Guide.
20. MLPR Policies LPRHOU2 and LPRSP15 require high quality design and respect for the area's character and pattern of development, while MLPR Policy LPRSP14(B) seeks to conserve and, where possible, enhance the historic environment, and MLPR Policy LPRENV1 addresses development affecting heritage assets. NPPF paragraph 131 confirms that high quality, beautiful and sustainable buildings and places are fundamental. Amongst other things, NPPF paragraph 135 requires developments to function well, be sympathetic to local character and history, and establish or maintain a strong sense of place. NPPF paragraph 139 asserts that development that is not well designed should be refused. Additional NPPF paragraphs are referred to above. The National Design Guide outlines characteristics of well-designed places and demonstrates good design in practice.

b) Living conditions

21. Amongst other things, MLPR Policy LPRSP15 expects proposals to respect the amenities of neighbouring occupiers and uses and provide adequate residential amenity for future occupiers with regard to overlooking or visual intrusion. MLPR Policy LPRHOU2 deals with redevelopment within the built-up area. It highlights that there should not be unacceptable loss of privacy or outlook to adjoining occupiers, amongst other things. NPPF Paragraph 135 f) seeks to ensure that places are safe, inclusive and accessible and promote health and well-being, with a high standard of amenity for existing and future users.
22. The proposed development would deliver two houses in part of the former rear garden of No 9. No 9 is an HMO and has ground and first floor windows on its rear elevation, the closest part of which would be some 2.6m from the proposed development's flank elevation. There is dispute between the main parties as to what rooms the relevant windows currently serve. The Council has provided approved plans (Ref 23/502055/FULL) for the HMO which indicate that the closest windows at No 9 should serve a ground floor kitchen and a first floor bedroom. The appellant asserts that the rooms are used for an office for staff, utility rooms and for storage, but has not provided plans. At the time of my site visit, a timber fence blocked the ground floor window from view.
23. The proposed development would have a large three-storey blank brick flank elevation facing No 9's rear elevation and a footprint spanning much of the width of the limited external amenity space available to the occupiers of No 9. In the absence of compelling evidence from the appellant on the disposition of rooms within No 9, the proposed development would be unduly close to the windows of rooms within No 9 and the proximity of such a large flank elevation would be harmful to the outlook of the occupiers of No 9.
24. Turning to privacy and outlook in respect of 7 Terrace Road, the proposed development would have an extensive rear elevation located just over 2m from No 7's rear garden. The proposed development's rear elevation would have eight first and second floor windows, which would serve two living rooms and four bedrooms. These windows would allow future occupiers to look out over No 7's rear garden, subject to foliage on existing trees.

25. No 7 is occupied by Hemsley House Nursery School. Though No 7 is not a residential property, it is no less important that privacy and outlook is afforded to its users. Indeed, the nursery's operators have confirmed that the nursery uses the garden through the year and that the children's daily curriculum involves outdoor play every morning and afternoon. This is consistent with my experience of children's day nurseries, where outdoor play is a key part of child development. Even with trees providing screening, the proposed development's bulk, scale and fenestration close to No 7's rear garden would detrimentally affect the users of No 7's rear garden in terms of both privacy and outlook.
26. Given that the proposed development's rear elevation would be south-facing and would be positioned near the existing trees at No 7, it is also possible that the proposed development's future occupiers would seek removal or reduction of the trees. If that were the case, the proposed development would likely have a greater negative effect on the privacy and outlook of No 7 itself and upon other neighbouring occupiers along Terrace Road.
27. MLPR Policy LPRQD7 addresses amenity space standards. This states that new houses should have rear gardens at least equal to the ground floor footprint. The proposed development would have a limited set back from Victoria Street, which would include bin stores. To the side of each proposed house, there would be an alleyway, which would be accessed by walking past each bin store. Adjoining each house's rear elevation, the respective alleyways would culminate in an external space little wider than the alleyways. This space would accommodate bike stores for each house and space for sitting out.
28. The proposed development would provide two three-bedroom houses over three storeys. These are not small houses. Given their size, proximity of boundary treatments, and the arrangement of fenestration, the proposed external amenity spaces would be extremely poor and would fail to meet the needs of future occupiers. Given the limited separation distances between the proposed development and Nos 7 and 9, the restricted external amenity space would also risk further detrimental effects on neighbouring and future occupiers in respect of privacy and potentially noise.
29. The appellant confirms that the space would be suitable for the drying of clothes, outdoor seating, bike storage and a small planting area. However, the proposed external amenity spaces are simply inadequate for houses which could be occupied by families. Furthermore, the proximity of local parks and allotments would not overcome the lack of external amenity space.
30. In conclusion, the proposed development would have a harmful effect on the living conditions of neighbouring and future occupiers, with regard to outlook, privacy and external amenity space. Consequently, it would conflict with MLPR Policies LPRSP15, LPRHOU2 and LPRQD7 and the NPPF as outlined above.

Conclusion

31. For the reasons given above, the appeal should be dismissed.

Joanna Gilbert

INSPECTOR