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## Appeal Decision

Site visit made on 18 September 2024

**by A Knight BA PG Dip MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13 February 2025**

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**Appeal Ref: APP/H2265/W/24/3337526**

**37 Avebury Avenue, Tonbridge, Kent TN9 1TL**

- 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 Jaco Liebenberg of 37 Avebury Avenue Ltd against the decision of Tonbridge and Malling Borough Council.
  - The application Ref is TM/23/00615/FL.
  - The development proposed is a two-storey timber framed extension on top of the existing building to be used as 2 x 2B3P self-contained duplex flats with roof terrace including external alterations to the building.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Since the determination of this application a revised National Planning Policy Framework (The Framework) has been published. I have considered related comments from the main parties and the revised Framework in my decision.

### Main Issues

3. The main issues are the effect of the proposed development on:
  - living conditions for occupiers of 39 and 41 Avebury Avenue (No 39 and No 41) with particular regard to outlook; and
  - the character and appearance of the area.

### Reasons

#### *Living conditions*

4. The appeal scheme includes the increase in height of a detached building currently in use as flats (the building). To the west of the site are No 39 and No 41, two buildings in residential use, positioned on either side of a triangular courtyard garden. No 39 is separated from the appeal site by a narrow passageway. The garden and the passageway comprise the private outdoor amenity provision for No 39 and No 41 (the amenity space).
5. The amenity space is modest in size, and enclosed by external walls of No 39, No 41, and the building. This layout restricts outward views and creates a distinct sense of enclosure. This is most prominent at the eastern side of the amenity space, where the two-storey flank wall of the building forms a stark and imposing visual backdrop. It does, however, permit relatively wide views of the sky above

the building. This is important in mitigating the degree of enclosure to the eastern side of the amenity space.

6. The appeal scheme would increase the height of the building, adding two additional storeys (the 2<sup>nd</sup> and 3<sup>rd</sup> levels respectively). The 3<sup>rd</sup> level would be set slightly back from the western site boundary and include an oversailing flat roof. The rear walls of both levels would terminate some 2.4m beyond the southern wall of No 39. The scheme would also provide rear roof terraces enclosed by privacy screens.
7. Whilst the 2<sup>nd</sup> and 3<sup>rd</sup> levels would not occupy the whole depth of the building, they would nevertheless combine to significantly raise its height, and create a large, imposing expanse of built form on the western site boundary. The benefits of setting the 3<sup>rd</sup> level back from the boundary would be undermined by the limited extent of that set back, and by the intrusion of the overhanging roof back into the space. Views of the sky from the amenity space would be harmfully encroached upon. Overall, the appeal scheme would overpower and dominate the amenity space, creating an oppressive environment therein to the significant detriment of its occupiers' living conditions.
8. The proposed privacy screens could be made using obscured glazing to allow light through. Even so, they would require solid posts, be erected very close to the boundary and, in utilising obscured glazing, prevent views of the sky. They would exacerbate the harms from the additional storeys, therefore.
9. I appreciate that the appeal scheme would not lead to harmful overlooking or overshadowing, or harm living conditions inside No 39 or No 41. These are expectations of policy rather than scheme benefits, and they do not weigh against the harms described above, therefore. Whilst the amenity space is already characterised by a sense of enclosure, the appeal scheme would increase that significantly and harmfully.
10. The proposed development would have a harmful effect on the living conditions for occupiers of 39 and 41 Avebury Avenue with particular regard to outlook. As such it would conflict with Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy (2007) which require, amongst other things, that development preserves the quality of residential amenity. Policy SQ8 of the Managing Development and Environment Development Plan Document (2010) pertains to transport infrastructure, and I do not find it relevant to the appeal, therefore.

#### *Character and appearance*

11. The western end of Avebury Avenue is predominantly residential, with much of it occupied by blocks of flats. On the same side of the road as the building, immediately to the east, is a development of four blocks respectively named Copper, Steel, Iron, and Bronze. All but one are four-storey buildings in which the top floor is rendered and set back from the outermost flank walls, making them visually distinct from the rest of the buildings, save for inset central sections above their main entrances. Amenity space is provided by projecting balconies, and by roof terraces outside the top floors.
12. On the opposite side of the road to the appeal site are a series of three and four-storey blocks with dual-pitched roofs and staggered gable walls. The rear roof slopes include dormers and inset terraces. To the west are a cluster of detached

buildings of varying style and design, including No 39 and No 41. Red brick is a common feature in the flats on either side of Avebury Avenue, but there is variation in the colours of window frames and entrance doors, and in the style of external features such as window guard rails. In all, whilst Copper, Steel, Iron, and to an extent, Bronze House display strong visual cohesion, Avebury Avenue overall does not.

13. In addition to the creation of two new storeys, the appeal scheme involves external alterations to the building. The principal elevation would include a combination of vertically aligned windows and surrounds. The top floor would be clad in timber, as would an external central section running from the 1<sup>st</sup> level to the underside of the roof. These features would be created using a limited, consistent palette of materials and finishes, the finer points of which could be controlled through planning conditions. Whilst the proposed arrangement is relatively simple, it would provide a reasonable degree of architectural completeness to the building. In addition, and in the context of agreement between the main parties that the existing building does not make a positive contribution to the street, I find that the appeal scheme would improve its appearance.
14. The height of the building, as extended by the appeal scheme, would be consistent with those around it to the east and north. In that respect it would adhere to its surroundings. The top floor of the building, whilst not set back as far as those to the east, would nevertheless appear distinct from the other floors. That, and the use of one external material throughout both the top floor and the vertical, central section, would be sufficient to avoid harmful incongruity alongside the flats to the east. Whilst the proposed rear terraces and privacy screens would be larger than neighbouring examples this, and the appearance of the building overall, would not be at odds with the character of the surrounding area given the mix of buildings contained therein.
15. The proposed development would not harm the character and appearance of the area and, as such, would adhere to Policies CP24 of the Tonbridge and Malling Borough Core Strategy and SQ1 of the Managing Development and Environment Development Plan Document in that regard.

### **Other Matters**

16. Third parties have raised objections to the effect of the appeal scheme on living conditions for occupiers of dwellings beyond No 39 and No 41. The Council has not identified a reason for refusal in these respects, and I see no reason to take a different view.
17. My attention has been drawn to a previous appeal decision at the site<sup>1</sup>. Whilst I have considered the findings therein, I have assessed this appeal scheme on its own merits.

### **Planning Balance**

18. The provisions of paragraph 11(d) of the National Planning Policy Framework (the Framework) are engaged. The Council advises that housing land supply has decreased from 4.26 years as of December 2023 to 2.89 years as of December 2024. This is a significant shortfall.

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<sup>1</sup> Appeal Ref: APP/H2265/W/21/3282136

19. The appeal scheme would provide two dwellings towards the shortfall and could be built out quickly. The development would be in a sustainable location and make effective use of previously developed land at a site that is physically well-related to existing settlements. It would use the airspace above an existing residential premises for new homes. In each respect, the scheme is expressly supported by the Framework. These benefits carry significant weight, though it is tempered by the modest scale of the proposal in this instance.
20. The appeal scheme would result in economic benefits during and after construction, though these would be modest given the scale of the proposal. I have found the scheme to be well-designed insofar as the character and appearance of the area is concerned. In that respect, it would secure a well-designed place.
21. At the same time, the Framework requires that developments create places which promote health and well-being, with a high standard of amenity for existing and future users. The harm caused to the living conditions for occupiers of 39 and 41 Avebury Avenue with particular regard to outlook would be of such a magnitude as to significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies in the Framework taken as a whole.

### **Conclusion**

22. The proposal conflicts with the development plan and material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal is dismissed, therefore.

*A Knight*

INSPECTOR