



Appeal Decision

Site visit made on 18 March 2025

by **A Wright BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Appeal Ref: APP/V2255/W/24/3350747

Land to the rear of 21 Middletune Avenue, Sittingbourne, Kent ME10 2HX

- 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 Robert Sted-Smith against the decision of Swale Borough Council.
 - The application Ref is 24/500547/FULL.
 - The development proposed is described as 'proposed single aspect 2 bedroom dwelling with parking spaces'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised, and the 2023 Housing Delivery Test (HDT) results were published in December 2024. As these could affect the issues and matters in this case, the Council and the appellant were invited to make further comments. Only the appellant responded. My decision reflects the latest versions of these documents, and the response received on them.

Main Issues

3. The main issues in this appeal are:
 - the effect of the proposal on the living conditions of the occupiers of 21 Middletune Avenue, with particular regard to outlook and light; and
 - whether the proposed development would provide acceptable living conditions for future occupiers, with particular regard to the provision of amenity space.

Reasons

Living conditions – neighbouring occupiers

4. The appeal site comprises vacant land in a residential area largely characterised by two storey dwellings in various sized plots. It lies behind 21 Middletune Avenue (No 21) and is enclosed by close boarded fences. The house at No 21 lies close to the appeal boundary, with a rear conservatory and other rear glazed openings on its ground and first floors. Its private outdoor space wraps around the side and rear of the building.
5. The proposed dwelling would have a partly hipped roof sloping away from No 21 and a low eaves height. Nevertheless, it would be sited only a short distance from

the garden and rear face of the dwelling at No 21, project higher than the eaves of the adjacent house and extend across much of the neighbouring rear boundary. Due to its proximity to the neighbouring property, its significant overall height and substantial depth, the proposed building would dominate the outlook from the rear outdoor space and rooms at No 21, creating an unacceptable sense of enclosure.

6. Information showing existing shading and overshadowing from the proposed house at different times of the day in March, June, September and December has been submitted. Existing buildings and boundary fences already cause some overshadowing of the garden at No 21, particularly in the late afternoons throughout the year. The proposal would cause loss of sunlight to a large portion of the neighbouring outdoor space in early afternoons in winter. However, at other times of the year when the garden is more likely to be used, large parts of it would retain sunlight during the mornings and early afternoons. As such, the proposal would not cause harmful overshadowing or loss of light to the garden at No 21.
7. The Council previously approved the conversion of a garage on the site to an ancillary annexe (planning permission ref 19/502196/FULL). Although this did not create unacceptable overlooking or overshadowing of neighbouring properties, that building was considerably smaller and further from No 21 than the proposed house. As such, it is not comparable to the proposed development.
8. Therefore, whilst the proposal would not cause a harmful loss of light to No 21, it would result in a harmful loss of outlook. This would be contrary to Policies CP4 and DM14 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) where they require developments to be appropriate to their surroundings and to cause no significant harm to amenity.

Living conditions – future occupiers

9. The proposed private outdoor space would be located between properties on Middletune Avenue and Newbridge Avenue. The Council does not raise concerns about the size of the proposed garden. However, it is concerned that overlooking from some neighbouring first floor windows would result in no meaningful private space being provided for future occupiers.
10. The external amenity area would be visible from rear upper floor windows at No 21. There would also be some oblique views into it from rear first floor openings in houses to the south.
11. Nevertheless, the L-shape of the proposed building would provide privacy to the part of the outdoor space outside the living/dining room in upper floor views from No 21, and the boundary fences would provide further privacy to the proposed garden. Further, a degree of overlooking from rear facing first floor rooms is not unusual in a residential area. As such, the garden would be sufficiently private and of acceptable quality to meet the needs of future residents.
12. Consequently, I conclude that the proposed development would provide acceptable living conditions for future occupiers, with particular regard to the provision of amenity space. In this respect, it would comply with Policies CP4 and DM14 where they require developments to provide comfortable places and cause no significant harm to amenity.

Other Matters

13. The Council did not find harm or development plan conflict in relation to several other matters, including the principle of development, flood risk, heritage assets, character and appearance, overlooking of existing occupiers, internal space provision, noise, parking and highways, nor did any consultees object. 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.
14. It is stated that an electric vehicle charging point would be provided, but as this is a requirement for all new houses, it does not weigh in favour of the scheme.
15. The proposed development would be likely to have a significant effect, either alone or in combination, on the Thames, Medway and Swale Special Protection Areas. However, notwithstanding the SAMMS¹ Mitigation Contribution Agreement and fee payment, given my conclusion below there is no need to consider the implications of the proposal on the protected sites because the scheme is unacceptable for other reasons.

Planning Balance and Conclusion

16. The appellant states that Swale continues to experience a significant disparity between the number of homes delivered against the required housing supply number and that a large proportion of delivery arises from allowed appeals. It is indicated that currently the Council can demonstrate a 3.98 year housing land supply. This represents a significant shortfall and therefore paragraph 11(d) of the Framework is engaged.
17. 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, having particular regard to key policies including directing development to sustainable locations, making effective use of land and securing well-designed places.
18. The Framework seeks to boost housing supply and highlights the important contribution small and medium sized sites can make. The scheme would make a modest contribution of one home to the supply of housing, making better use of an underutilised site in the tier 1 urban centre of Sittingbourne with access to a range of services and public transport. It would contribute towards Swale's housing supply, making a modest difference to addressing the shortfall, and therefore I attribute moderate weight to this benefit.
19. There would also be some economic benefits during the construction phase when the development would contribute to the local economy and employment, and once occupied when future residents would support local services. There is also reference to ecological and landscape enhancements. Nonetheless, given the small scale of the proposal, these benefits would be limited.
20. The appellant considers that the site is previously developed land. However, as it was previously part of the residential garden for No 21 and is within a built-up area, it is not clear that it meets the Framework's definition of previously developed land which limits the weight I can attribute to this.

¹ Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy July 2014

21. In contrast, the proposal would result in a harmful loss of outlook to No 21. I have concluded that the proposed development would conflict with Policies CP4 and DM14 of the LP. This matter carries significant weight against the scheme.
22. Consequently, the adverse impact 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.
23. For the reasons 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. The appeal is therefore dismissed.

A Wright

INSPECTOR