
Appeal Decision

Site visit made on 18 March 2025

by **I A Dyer BSc (Eng) FCIHT**

an Inspector appointed by the Secretary of State

Decision date: 31 March 2025

Appeal Ref: APP/H2265/W/24/3350610

Ross Cottage, 114 Leigh Road, Hildenborough, Tonbridge, Kent TN11 9AG

- 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 and Mrs A Ravenscroft against the decision of Tonbridge and Malling Borough Council.
 - The application reference is 24/00920/PA.
 - The development proposed is conversion of existing annex to independent residential property.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs A Ravenscroft against Tonbridge and Malling Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the Council's determination of the application, the Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024 and updated it on 7 February 2025. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
4. The Decision Notice issued by the Council included, in the second, reason for refusal, a typographical error, in as much as it referred to "overlooking from number 14 towards the limited front amenity space for the proposed property". This is clearly intended to reference overlooking from 114 Leigh Road (No 114). The appellants are aware of the erroneous reference, and I have determined the appeal on this basis.

Main Issues

5. The main issues in this appeal are: -
 - Whether the proposed development would provide acceptable living conditions for future occupiers;
 - The effect of the proposed development on the living conditions of occupiers of 114 Leigh Road with particular reference to noise and disturbance; and: -

- The effect of the proposed development on the character and appearance of the site and the surrounding area.

Reasons

Living conditions of future occupiers.

6. The proposal would provide two main private outdoor amenity areas for future occupiers of the proposed dwelling. One would be to the rear of the dwelling, provided by demolishing an existing part of the rear structure of the outbuilding, and the other to the front, provided by dividing the rear garden between the outbuilding and the main dwelling.
7. The area to the rear would be north-east facing, fairly level, of regular shape and would offer some privacy. Whilst having some attributes, the area would be very shallow in depth and would seem crowded and uncomfortable for future occupiers. Its restricted size would provide limited opportunity for outdoor activities. Further, its position behind the proposed dwelling, which could serve as a small family home, would be in shade for much of the day. It is likely, therefore, that future occupiers would choose to spend outdoor time in the area to the front of the proposed dwelling.
8. In response to concerns about overlooking of the amenity space associated with the reasons for refusal for a previous application¹ for a similar proposal, a rear balcony on No 114 would, as part of this proposal, be removed. However, the door accessing the existing balcony would be replaced by a window. This window looks out directly towards the existing outbuilding and, notwithstanding the erection of a fence between the buildings, would have views over the front garden of the proposed dwelling.
9. I have identified, above, that the front garden area of the proposed dwelling would, in all likelihood, provide the principle outdoor amenity area for the residents. Given the elevated viewpoint, the proposed fence between the rear garden of No 114 and the front garden of the proposed dwelling would not prevent occupiers of No 114 looking down into the garden of the proposed dwelling.
10. Whilst the proposal has been amended by the appellants, in response to the concerns raised by the Council, in regard to overlooking from the balcony, the replacement of the door onto the balcony by a window would still allow such overlooking.
11. The short separation distance from the second storey window of No 114 and the front garden of the proposed dwelling and overlooking that would result would intrude significantly upon the privacy of the principal outdoor amenity area of the proposed dwelling. I therefore find that the views from the first-floor rear window of No 114 would intrude upon the privacy of occupants of the proposed dwelling to an unacceptable degree.
12. Within the dwelling the proposal would provide two bedrooms on the upper floor. Each of these would have a rooflight and a window in their respective gable wall of the building. The window in the gable end for the north-eastern bedroom is obscure glazed and only openable in an emergency, as required by a condition of

¹ Council Ref: 23/03126

the planning permission² which allowed the partial use of the outbuilding as a residential annex. Thus, whilst persons spending time in this room would have natural daylight and views up into the sky, they would otherwise lack any outlook onto their surroundings. This is particularly important as those living there may include children whose health and well-being would be affected by the poor outlook. Whilst the room is already used as residential accommodation, its use is restricted to accommodation ancillary to the main residential use. Residents of a main dwelling would reasonably expect a higher level of amenity within their home. Therefore, living conditions for future occupiers would not be satisfactory.

13. Whilst the form of glazing could be controlled through the imposition of a suitably worded planning condition, the use of obscured glazing and fixing of the windows was considered necessary to allow the use of the outbuilding as ancillary residential accommodation. There is, therefore, no certainty that this would provide a solution to the matter.
14. I therefore conclude that the proposal would result in harm to the living conditions of future occupiers with particular reference to outlook and privacy. The proposal would, therefore, be contrary to Policy CP 24 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy (2007) (the CS) in as much as, amongst other things, this seeks to prevent development that would be detrimental to amenity.

Living conditions of occupiers of 114 Leigh Road

15. Currently the access to the side of No 114 serves a building with permission for a recording studio and accommodation for use in association with the occupation of No 114. The building currently incorporates a garage space, although this would be converted into living accommodation. Two parking spaces and a turning space would be provided for the use of future occupiers to the front of the proposed dwelling. The proposal would result in the access being used by a separate household, independent of the occupation of No 114.
16. Whilst the site currently provides access to a recording studio, I have no figures for the number of movements associated with that use. This notwithstanding, as the access runs over land controlled by the appellants and, given that occupation of the residential accommodation within the outbuilding is linked to the main dwelling, the occupiers of No 114 would have a degree of control over the use of the access. Further, there is a time restriction on the use of the recording studio. For the building to function as a dwelling independent of No 114, access to the building would need to be possible at all times throughout the day and night. It is further likely that a separate, independent household would engender a higher number of trips to the outbuilding than the current residential occupancy, as the number of linked trips would likely reduce and the use as a dwelling would be likely to result in frequent, regular vehicular activity.
17. The width of the side access would result in motor vehicles passing close to the south-western elevation and the rear garden of No 114. The rear garden is likely to provide the principal outdoor amenity space for No 114. The manoeuvring space is immediately adjoining the garden on two sides. Therefore, the noise from vehicles passing and manoeuvring on the driveway and turning area would carry to the garden and side rooms of No 114.

² Council Ref: 1000121/FL

18. The appellants would provide a close boarded fence to attenuate the noise and disturbance. There is currently no boundary treatment between the existing access and No 114 or its garden. There is a small window at ground floor level in the flank wall of No 114.
19. The fence could have some effect in reducing the noise that would be heard by the occupiers of No 114 from vehicles going to and from the development and turning within the site. Nonetheless vehicle noise would disturb residents in rooms adjacent to the driveway and, as the rear garden lies behind the fence, in the principal open amenity area for residents.
20. The drive is currently surfaced in loose gravel. It may be that the noise from traffic movements could be addressed by conditions controlling landscaping and choice of materials for the driveway. However, I have no convincing evidence that the approval of particular materials for the surface finish of the driveway would materially affect the level of noise and disturbance which, in any event, is likely to come as much from engine noise and frequency of movement.
21. I therefore conclude that the proposal would result in harm to the living conditions of occupiers of 114 Leigh Road with particular reference to noise and disturbance. The proposal would, therefore, be contrary to Policy CP 24 of the CS and Policy SQ1 of the Tonbridge and Malling Borough Council Managing Development and the Environment Development Plan Document (2010) (the MDEDP), in as much as, amongst other things, these policies together seek to prevent development that would be detrimental to amenity and protect, conserve and, where possible, enhance the prevailing level of tranquillity.

Character and appearance

22. The appeal site lies in an established residential area of one-and two-storey mainly detached dwellings of varying, but traditional, appearance. The dwellings maintain a consistent pattern of development, with the main building set back behind a generous front garden on a similar building line, with larger gardens to the rear, albeit that no 114 has a shorter garden than its neighbours to the north-east. Overall, this provides a consistency of design and development pattern that is a positive feature of the area.
23. No 114 is the last property before the road passes under a railway line. A public footpath runs along the boundary between the site and the railway line.
24. The plot includes a substantial, one-and-a-half storey barn-like outbuilding, set to the rear of the main dwelling. This is accessed by a gravelled side passage wide enough to allow the passage of a car.
25. The proposal would convert the outbuilding into a separate dwelling, with occupiers living independently of No 114 and make minor changes to the front of the existing outbuilding. As the outbuilding lies behind No 114, the changes to the appearance of the building would not be discernible from the street. The boundary towards the neighbour to the north-east, 112 Leigh Road, is formed by a high, evergreen hedge and so the neighbours' views of the proposal are limited.
26. The vehicular access to the side of No 114 is already in use and gives access to the outbuilding. Thus, whilst the presence of a substantial building to the rear of a dwelling and the subdivision of the plot is atypical of the grain of development in

the area, there would be no appreciable change in the street scene and the pattern of development in the area would not be further undermined. The use of the existing side access, would, again not result in any appreciable visual change.

27. I therefore conclude that the proposal would not result in harm to the character or appearance of the site and the surrounding area. The proposal therefore accords with Policy CP 24 of the CS and Policy SQ1 of the MDEDP in as much as, together, amongst other things these require development to be well designed and protect, conserve and, where possible, enhance the character and local distinctiveness of the local area and the pattern of settlement

Other Considerations

28. The Council acknowledge that they are unable to demonstrate a five-year supply of deliverable housing sites in line with Government expectations. Their current supply of housing land stands at 2.89 years. This amounts to a significant shortfall of dwellings and the single dwelling proposed would go a small way towards provision.
29. The appeal site is previously developed land as defined by the Framework and within the built-up area of Hildenborough. The Framework identifies that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. The Framework supports the development of windfall sites and of under-utilised land. Great weight should be given to the benefits of using suitable sites within existing settlements for homes and substantial weight to the value of using suitable brownfield land for that purpose. There would be minor economic benefits associated with the construction period and in terms of support provided to local services and facilities by the additional household. These considerations therefore weigh in favour of the proposal.
30. The site has previously been proposed for a similar development, and the appellants have made changes seeking to address the Council's previously identified concerns. Whilst taking all this into account, I have made my own assessment. It is understandable that the view of the Council that the changes have not overcome their objections to the proposal are a matter of frustration to the appellants. However, this has little bearing on the outcome of this appeal.

Final Balance

31. Whilst the proposal would not harm the character and appearance of the area, because of its design and the living conditions of future and existing occupiers would be inadequate. There would be conflict with Policies CP 24 and SQ1 and no policies have been cited that support the proposal. These policies accord closely with the aims of paragraph 135 of the Framework, which seeks to ensure that development create places that promote wellbeing, with a high standard of amenity for existing and future users and so conflict with them carries full weight in my deliberations. The proposal would therefore not accord with the development plan as a whole and this is a matter that counts significantly against allowing the appeal.
32. However, the Government's objective is to significantly boost the supply of homes. Other provisions of the Framework give support to the development of brownfield land within settlements and observe that small sites can make an important

contribution to meeting the housing requirement. In Tonbridge and Malling there is an insufficient future supply of housing land. Because of this, paragraph 11 d) of the Framework is engaged.

33. The policies in the Framework seek to deliver both a sufficient supply of homes and achieve well-designed places. However, the creation of high-quality places is central to what the planning and development process should achieve. That would not be the case here. Although there is considerable support for new housing in this location the benefits in terms of the overall position in the Borough would be limited. Thus, in this case the importance of good design eclipses the provision of an extra windfall home.
34. Therefore, the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

35. The proposed development would be contrary to the development plan and there are no other material considerations, including the provisions of the Framework, that outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

I A Dyer

INSPECTOR