

Appeal Decision

Site visit made on 10 August 2016

by G J Rollings BA(Hons) MA(UD) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 February 2017

Appeal Ref: APP/U2235/W/16/3150714

Mulberry House, 16 Northumberland Road, Maidstone, Kent, ME15 7LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Surrinder Kang against the decision of Maidstone Borough Council.
 - The application Ref 15/505012/FULL, dated 18 June 2015, was refused by notice dated 15 April 2016.
 - The development proposed is a two storey rear extension and conversion of roof space into 14 self-contained flats comprising 10x2 bedrooms, 3x1 bedrooms and 1x3 bedrooms.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appellant and Council have agreed to a change to the description of development as originally given on the planning application form, in light of a revision to the proposed number of dwellings. I have used the updated description in the above heading.
3. A Unilateral Undertaking was submitted by the appellant in December 2016, following my site visit. The Council has had the opportunity to comment and I have considered the submissions in the relevant main issue below.
4. The Council has referred to its emerging Maidstone Borough Local Plan, which has been the subject of consultation and Examination. The Inspector examining the local plan has issued an Interim Findings report dated 22 December 2016. I have considered this matter in more detail within the 'Other Issues' section of this decision.

Main issues

5. The main issues in this appeal are:
 - The effect of the proposed development on the living conditions of surrounding occupiers, particularly in respect of outlook; and
 - Whether the proposal makes adequate provision for any additional need for library, and parks and leisure facilities.
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Reasons

6. The appeal site accommodates a two-storey building which was, until 2014, utilised for community uses. It has a front and rear garden and is abutted by vacant land to its eastern and southern (rear) boundaries. An electricity substation abuts part of the site's western side boundary, with the remainder of this boundary abutting residential property, 14 Northumberland Road. No. 14 is one of a pair of semi-detached, two-storey houses, the other being 1 Cambridge Crescent; this dwelling pair is located on the corner of Northumberland Road and Cambridge Crescent and is offset from the appeal building.
7. The proposed building would be three storeys, one floor higher than the existing building. Its footprint would extend slightly more to the rear when compared with the existing, with the upper floors set back from the rear building line in a tiered arrangement. The flats on the first and second floors would be accessed via an external staircase and terraces on each floor, running along the length of the rear elevation.
8. The existing building is clearly visible from the rear gardens of the dwellings at 14 Northumberland Road and 1 Cambridge Crescent. Due to the increased scale of the rear element of the proposed building when compared with the existing, the additional mass would protrude into the direct views from these dwellings' first-floor, rear-facing windows. Although the additional rear projection at first floor level would be about 4.2 metres greater when compared with existing building's rear wall, this would be sufficient to extend the built form into the line of direct rearward views from the windows of these dwellings. Because of this projection, the new building would appear obtrusive when compared with the relatively unobstructed views currently experienced by the occupiers of these dwellings.
9. This effect would be exacerbated in views from the dwellings' rear-facing ground floor openings and, their patio garden areas. In these views, the additional mass of the proposed buildings second floor, in conjunction with the additional rear projection at first floor level, would be clearly visible near the boundary of No. 14. The new enclosure of the side of this property would be significant, at a scale that would be detrimental to the occupiers' enjoyment of their dwelling and garden. In addition, the proximity and scale of the proposed building would cause it to appear overbearing in these views.
10. These combined effects would result in harm to occupiers' living conditions. Additionally, the proposed building would result in some new overshadowing of the garden at No. 14, although as this is likely to be limited to early mornings in the middle of the year, with the property remaining unaffected during most of the day and for the rest of the year, I do not consider that there would be a significant amount of harm in this respect. However, the proposed buildings effects in respect of their visual aspect, are significant enough to warrant dismissal of the appeal on this basis.
11. I therefore conclude that the proposed development would be harmful to the living conditions of the occupiers of nearby properties, with regard to its effect on outlook. It would conflict with the provisions of the *National Planning Policy Framework* (the Framework), which states that it is important to plan positively for a high quality of development (paragraph 57) and

requires as a core planning principle a high quality design and a good standard of amenity for all existing and future occupants of land and buildings (paragraph 17).

Library, parks and leisure contributions

12. In considering the impact of the proposal on demand for local services and facilities, the Council decided that contributions should be sought to mitigate the effects of any increased demand or pressure on provision that would result.
13. A section 106 planning obligation (unilateral undertaking dated 22 December 2016) has been completed and signed by the appellant. This includes a contribution of £672.22 to mitigate the impact of use of library services by future residents of the opposed development. The contribution would be put towards the provision of additional books at the Shepway Library, which is local to the appeal site. Kent County Council has advised that although this is a 'pooled' form of contribution, pursuant to Regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010, this provision is not already being funded by four or more existing s106 agreements. I am satisfied that there is a need for this requirement, as set out in the County Council's *Strategic Statement 2015-2020 (Increasing Opportunities, Improving Outcomes)* and Policy CF1 of the *Maidstone Borough-Wide Local Plan 2000*.
14. The unilateral undertaking also includes a sum of £22,050 to the Council as a contribution to park and leisure services. This figure has been calculated per the formula set out in the Borough Council's *Open Space Development Plan Document* (2006) (OS DPD). This presents a robust case for the provision of contributions, and on this basis, I am satisfied that contributions are necessary to mitigate the impact of the development. I am mindful that the OS DPD document predates the CIL Regulations and its provisions regarding pooled contributions. In this case, council has advised that the contribution would be used for the enhancement, maintenance repair and renewal of the allotments and Hampshire Drive, which are close to the appeal site. On the basis of the information before me, I am satisfied that this provision is not already being funded by four or more existing s106 agreements.
15. Overall, there is clear evidence that these obligations are necessary to make the development acceptable in planning terms and that they are fairly and reasonably related in scale and kind to the proposal. They therefore comply with the relevant tests having regard to CIL Regulations and the Framework, and the planning obligation is a relevant factor in the determination of this appeal.
16. I therefore conclude that the scheme makes appropriate provision and mitigates adequately for additional library and parks and leisure demand. The proposal does not conflict with Local Plan Policy CF1 or the OS DPD, the reasons given above.

Other issues

17. The Council's new Local Plan was recently the subject of an Examination, with the Examining Inspector's Interim Findings letter issued on 22 December 2016. The new plan has not yet been adopted, nor has the Examining Inspector issued his final report. Prior to the Examination, the Council

submitted to the Inspector its *Maidstone Borough Local Plan Housing Topic Paper 2016*, a copy of which has also been submitted as evidence to this appeal. This is the Council's most up-to-date housing land supply monitoring report, and supports its position that a five-year supply can be demonstrated.

18. In a recent appeal decision supplied by the appellant¹ in respect of another property within the borough, the Inspector in that instance considered the Council's present position, following the 2016 monitoring report. He found that as the Council's full, up-to-date objectively assessed housing needs had not yet been formally demonstrated as part of the examination process, he could not be satisfied that five-year housing land supply existed at the time of that decision.
19. I have considered whether, following the Examining Inspector's Interim Findings, whether an acceptable five-year supply can now be demonstrated. Although the findings refer to reduced objectively assessed overall housing need figure within the new Local Plan, they also refer to potential alterations to site allocation figures, which could significantly affect the supply of allocations in future years. Taking this into account, and given that the Interim Findings did not firmly conclude that there is currently a five-year supply, I cannot be certain that the Council can currently demonstrate a five-year supply of housing land.
20. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply. However, in this instance I do not consider that there any relevant policies affecting the supply of housing, which might have the effect of creating or constraining the supply of housing land, that directly apply to the main issues that I have set out above. I have found in the first main issue that there are specific Framework policies setting out that the proposed development in this case would not represent sustainable development. In balancing this against the lack of an identified five-year housing supply and the other matters set out above, I find in this instance that the harm in respect of the first main issue would outweigh the provision of additional housing on the appeal site.
21. I also considered the appellant's comments that the scheme would represent good use of a previously developed site, and that there were no objections from neighbours, amongst other factors. I acknowledge that the appeal scheme has been significantly reduced in scale, in comparison with previous proposals. However, I cannot be satisfied that the adverse impact of granting permission would be significantly and demonstrably outweighed by the benefits. Additionally, although I have noted the appellant's concerns regarding the councils handling of the planning application, this matter has no bearing on the planning merits of the case before me, on which I have based my decision.

Conclusion

22. I have noted the absence of harm in the proposal's mitigation measures on local facilities and services. I consider that the improvement of these facilities would also have benefits for the wider community. However, in weighing these benefits, along with the absence of a demonstrable five-year

¹ Appeal ref: APP/U2235/W/15/3131945; decision date 24 June 2016.

housing supply, against the harm that I have found in respect of the first main issue, the former would not outweigh the latter. As such, I cannot allow the appeal.

23. Accordingly, on the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Rollings

INSPECTOR