



Appeal Decision

Site visit made on 1 August 2016

by Grahame Gould BA MPhil MRTPI

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

Decision date: 2 September 2016

Appeal Ref: APP/V2255/W/16/3148600

Land adjacent to 27 Waverley Avenue, Minster-on-Sea, Kent ME12 2JL

- 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 Mrs S Bagri against the decision of Swale Borough Council.
 - The application Ref 15/506114/FULL, dated 24 July 2015, was refused by notice dated 25 January 2016.
 - The development proposed is new 4 bedroom dwelling with integral garage.
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Decision

1. The appeal is allowed and planning permission is granted for a new 4 bedroom dwelling with integral garage at Land adjacent to 27 Waverley Avenue, Minster-on-Sea, Kent ME12 2JL in accordance with the terms of the application, Ref 15/506114/FULL, dated 24 July 2015, subject to the conditions set out in the Schedule to this decision.

Main Issue

2. The main issue is the effect of the development on the living conditions of the occupiers of 29 Waverley Avenue (No 29), with particular regard to outlook and light.

Reasons

3. The appeal site comprises an overgrown and vacant plot of land between Nos 27 and 29, which are respectively a bungalow and a two storey house. This plot slopes downwards from front to rear and from No 27 towards No 29. Waverley Avenue is characterised by a mix of houses and bungalows of varied designs.
4. The appeal development would involve the construction of a four bedroom, two storey, detached house which would have an integral garage. The new dwelling would project by around 4.0 metres¹ beyond the rear elevation of No 29 and while it would be visible in outward views from some of No 29's windows, I find that there would be no unacceptable loss of outlook from those windows given their positions and the distances involved.
5. The house would similarly be visible from within No 29's rear garden. However, allowing for the new dwelling's height and the differences in levels between the appeal site and No 29's garden level, I find that the dwelling's siting would not have an overbearing presence when viewed from within

¹ Dimension taken from the Council's statement of case

No 29's rear garden. In this respect there would be no unacceptable loss of outlook for the occupiers of No 29.

6. The house would be sited due south of No 29 and consequently there is some potential for that neighbouring property's rear garden to experience some overshadowing. However, I consider that any such overshadowing would be of a limited extent, given the height and siting of the new dwelling, and that this would not adversely affect the living conditions of the occupiers of No 29.
7. There is potential for some overlooking of the rear gardens of No 27 and 29 to arise from the use of the proposed decked patio, given the height of the proposed balustrade. However, this concern could be addressed by the installation of privacy screening and this is something that could be secured by the imposition of a planning condition. With the installation of privacy screening I find that the use of the decked patio would not give rise to any unacceptable loss of privacy for the occupiers of Nos 27 and 29. I am also consider that the degree of physical separation that there would be between the new dwelling and the properties to the rear in The Broadway would be such that no unacceptable overlooking of those properties would arise.
8. For the reasons given above I conclude that this development would not be harmful to the living conditions of the occupiers of the properties adjoining the appeal site. In this respect I find there to be no conflict with Policy E1 of the Swale Borough Local Plan of 2008 in that no demonstrable harm would be caused to residential amenity.

Other Matters

9. Concern has been raised that construction of this dwelling could give rise to subsidence, however, this is a matter that is addressed by the Building Regulations and/or other non-planning legislation and is therefore not for my consideration.
10. I am aware from the Council's committee report of 17 December 2015 that this site is located to the north of the Swale Special Protection Area for Birds (SPA) and Ramsar site and to the east of the Medway Estuary and Marshes SPA and Ramsar site, which are afforded protection under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). The occupiers of this development have the potential to be visitors to the SPAs and activities associated with those visits could cause disturbance to the wildlife occupying the SPAs. To reduce the potential for such disturbance to arise Natural England promotes the collection of developer contributions as a means of funding an Access Management and Monitoring (SAMM) strategy for the designated areas.
11. However, I note that the SAMM strategy promoted by Natural England will involve the participation of several Councils and it remains to be adopted. The Council has also stated that as things currently stand it considers it inappropriate to collect developer contributions for schemes of less than ten dwellings because it may not be cost effective to do so and when the SAMM is adopted the contributions collected from developments of ten or more dwellings will provide a level of mitigation that will address the cumulative effects of the new residential development on the SPAs. The Council's Committee report further advises that Natural England recognises that the SAMM strategy remains to be adopted by the relevant north Kent authorities.

12. The Council determined that it would not be necessary for it to undertake an Appropriate Assessment under the Habitat Regulations because this scheme's implications for the SPA would be 'extremely minimal' and that its contribution to any cumulative effects would be addressed by the collection of contributions from larger schemes in the future.
13. Having regard to the scale of this development and its distance from the SPAs I am of the opinion that it would not of itself have a significant effect upon the designated areas. With respect to any cumulative effects on the SPAs limited information about the scale of future residential development in the area is before me. However, the Council's strategy of seeking SAMP contributions from larger scale developments in the future appears to be an appropriate approach and I am therefore content that this development would not give rise to an adverse cumulative effect upon the SPAs.

Conditions

14. The Council has suggested various conditions and I have considered the need for their imposition, having regard to the provisions of the Framework and the Planning Practice Guidance (the PPG).
15. Apart from the standard time limit condition, I find it necessary that the development should be built to accord with the submitted plans for certainty. In order to safeguard the appearance of the area it is necessary that details of the external materials be submitted for the Council's approval. It is also necessary that the garage and drive are available for use prior to the first occupation of the house and then retained thereafter. I have therefore imposed conditions to address the aforementioned matters.
16. There is some scope for the site to be providing habitat for wildlife, as recognised in the ecological advice received by the Council. I therefore consider it reasonable to impose a condition requiring the submission of a biodiversity method statement for the Council's approval. However, while this site might support nesting birds, I do not consider that the scale of the proposed development justifies a requirement to provide bird nesting boxes.
17. As explained in my reasoning above, it is necessary that details for the installation of privacy screening for the decked patio are submitted to and approved by the Council prior to the first occupation of the house. This site lies in close proximity to other residential properties and there is therefore potential for construction noise to cause disturbance at sensitive times. I therefore consider a condition limiting the hours of construction to 07.30 to 19.00 on Mondays to Fridays and 07.30 to 13.00 on Saturdays to be necessary.
18. Having regard to the restricted nature of this plot and the permitted development rights that are currently available for extensions, I consider it necessary for the rights relating to the construction of extensions to be withdrawn in order to safeguard the living conditions for the occupiers of the neighbouring properties and those of the house. I have therefore imposed a condition to this effect.
19. A condition requiring the submission of details for the use of sustainable construction techniques has been suggested. However, no policy justification for this suggested condition has been provided and the imposition of such a

condition could duplicate matters covered by the Building Regulations. I am therefore not persuaded of the need to impose a sustainable construction techniques condition.

20. The application site is quite modest in scale and I am therefore not persuaded of the need to impose the suggested landscaping conditions with the plans and elevations drawing (drawing 11/1203) showing that the frontage area would be hard and soft landscaped (garden area and drive), with this provision being governed by the condition requiring compliance with the approved application plans. Given the comparatively open nature of the dwelling's frontage and the visibility that there would be for drivers and pedestrians, I consider it unnecessary to impose a condition requiring the provision of visibility splays.
21. The site lies within a Flood Zone 2 and accordingly the application is accompanied by a flood risk assessment (FRA). However, the FRA does not identify any specific need for flood resilience measures to be installed or any managerial measures that should be adopted by the occupiers of this development. Accordingly I find there to be no need to include the FRA as an approved document under the terms of the plans condition. The arrangements for surface and foul water drainage are covered by the Building Regulations or legislation administered by the local water company and I therefore consider the imposition of the suggested drainage condition to be unnecessary.

Conclusion

22. For the reasons given above I conclude that this appeal should be allowed.

Grahame Gould

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) With exception of the arrangements for the enclosure of the decking/patio area shown on drawing 11/1203 the development hereby permitted shall be carried out in accordance with the following approved plans: the unnumbered 1:1250 scale Location Plan; 11/1201 - Site Levels and Sections; and 11/1203 - Plans and Elevations.
- 3) No development shall take place until a biodiversity method statement for the clearance of the site has been submitted to and approved in writing by the local planning authority. Thereafter the site clearance works shall be undertaken in accordance with the approved biodiversity method statement, with those works being overseen by an ecologist.
- 4) No development above foundation level shall take place until details and samples of all external facing materials have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 5) Notwithstanding the details shown on drawing 11/1203 the dwelling hereby permitted shall not be occupied until details for the installation of privacy screening for the rear decking and patio area have been submitted to and approved in writing by the local planning authority. The approved privacy screening arrangements shall be installed prior to the first occupation of the dwelling and shall thereafter be retained for the duration of the development.
- 6) Before the dwelling hereby permitted is first occupied the garage and drive shown on drawing 11/1203 shall be provided and made available for use. The garage and drive shall be retained thereafter and not be used for any purposes other than the parking and manoeuvring of vehicles.
- 7) Demolition and construction works shall take place only between the hours of 07.30 to 19.00 on Mondays to Fridays inclusive and 07.30 to 13.00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling within Class A, of Part 1 of Schedule 2 of the Order shall be carried out.