



Appeal Decision

Site visit made on 22 August 2018

by H Miles BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2018

Appeal Ref: APP/V2255/W/18/3199746
47 Brier Road, Sittingbourne, Kent ME10 1YJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Paul Muehlthaler against the decision of Swale Borough Council.
 - The application Ref 17/502909/OUT, dated 1 June 2017, was refused by notice dated 24 November 2017.
 - The development proposed is the erection of a two bedroom detached dwelling.
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Decision

1. This appeal is allowed. Planning permission is granted for the erection of a two bedroom detached dwelling in accordance with the terms of the application, Ref 17/502909/OUT, dated 1 June 2017, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matters

2. Outline planning permission is sought with all matters reserved. I have determined the appeal on this basis. Submitted drawings (1221/II and 1221/IB) include some illustrative details of access, appearance, landscaping, layout and scale. These are considered on an indicative basis only.
3. The decision notice refers to Grove Park Road rather than Grove Park Avenue. Based on the evidence submitted and my observations, the correct street name appears to be Grove Park Avenue and as such this has been used in this decision.
4. During the course of the consideration of this appeal the revised National Planning Policy Framework (the Framework) has been published. I have invited both main parties to submit comments on the relevance of the revised Framework to this case. I have taken any comments received into consideration and I have assessed this appeal in light of the revised Framework.

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the area, in particular on Grove Park Avenue.

Reasons

6. Grove Park Avenue is a residential no-through road. The part closest to the appeal site forms a T shape at the end of the road and is fronted by two storey

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residential houses, mainly semi-detached but with some detached properties. Due to the bends in the road the width of these properties' frontages are varied. Evidence submitted shows that garden sizes also vary, particularly at this end of the road. However, the extent of these garden areas is not visible in the streetscene. Furthermore, I note that land slopes upwards from the entrance to Grove Park Avenue to the appeal site.

7. When viewing the site from Grove Park Avenue, the front garden and hardstanding to No. 24, which is partly enclosed by what appears to be a retaining wall, adjoin on one side. Between the site and No. 23 are the end of the rear gardens to Brier Road properties. These sit at a higher level than Grove Park Avenue with boundary treatment including fencing and planting visible. This results in a domestic character to this part of Grove Park Avenue.
8. The majority of the appeal site is in use as the rear garden to 47 Brier Road. The land has been built up so the garden is broadly level with the ground level of the host property, which results in a retaining wall and steeply sloping grass verge fronting Grove Park Avenue. A public footpath runs along the side of the property.
9. Based on what I have seen and read, I find that two storey detached dwellings form an integral part of the character of this area. Furthermore, I acknowledge that as a result of the bends in the road, the size of the plot frontages and accesses and the orientation of dwellings relative to the road vary. Whilst the detailed design would be secured at reserved matters stage, I find that a dwellinghouse on this site would accord with these characteristics and make a positive contribution to the pattern and form of development in this location.
10. Matters of layout and scale are also not for determination at the outline stage. Therefore, the detailed layout of the proposal would be considered as part of a reserved matters application. However, I find that the plot would be of a sufficient size and shape to accommodate a dwellinghouse without being cramped.
11. From the evidence presented, I find that there is an assortment of sizes and shapes of garden areas in the part of Grove Park Avenue that forms the immediate context for the proposed development. This variety is a key part of the character of the area. Consequently, I find that the size of the garden area proposed would enhance this variety and therefore the character of the locality.
12. I note that indicative drawings have been submitted showing that the land could be excavated, which would ensure that the proposed dwelling would be at a similar level to Grove Park Avenue properties. This provides me with assurance that development at this level could be achieved. As such, I consider that a dwelling of the size shown on the illustrative drawings would be similar in height to nearby houses. Furthermore, given the reasonable separation distances from the closest properties I find that the proposed dwelling would not be overbearing. The topography of the street is a positive part of its character and the indicative proposals to further reveal this difference in levels would, in my view, celebrate this relationship.
13. The proposed dwelling would have a more direct relationship with Grove Park Avenue than Brier Road, and would be viewed as part of this backdrop of existing built form by occupiers in Brier Road. Furthermore, I observed that nearby properties on Brier Road have a relationship with 23 Grove Park Avenue

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similar to that proposed. Therefore, within this existing context, the proposed dwelling would not result in a harmful loss of openness to the rear of Brier Road properties, and as such the development would not harm this aspect of the character of the area.

14. Therefore, in these respects I conclude that the proposal would have no significant detrimental effect on the character and appearance of the area. As a result, it would not be contrary to policies CP4 and DM14 of the Swale Borough Local Plan – Bearing Fruits 2031(2017). Amongst other matters, these policies seek to ensure that development is of a high quality design, appropriate to its surroundings and set general development criteria including the reflection of the positive characteristics and features of the site and locality.

Other Matters

15. Issues including the principal of residential development on this site, effect on living conditions of existing occupiers including overlooking and loss of privacy, air quality, the impact on the adjoining footpath, parking, water run off and quality of the living conditions for future occupiers have been drawn to my attention. These matters are largely identified and considered within the Council officer's report and the Council did not feel that these were reasons to refuse the application, noting that this is an outline application with all matters reserved. Moreover, I have been provided with no substantive evidence which would prompt me to disagree with the Council's original conclusions on these matters.
16. I note comments in relation to the impact on property values. However, it is a long established principle that planning is concerned with land use in the public interest. Therefore, the protection of purely private interests such as property values should be afforded little weight. I have also had regard to concerns raised relating to precedent. Notwithstanding this, each proposal must be considered on its own merits and I confirm that I have determined this appeal accordingly. As a result, these other matters do not lead me to differ from my overall conclusion.

Conditions and Conclusion

17. I have attached conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying the relevant plans as this provides certainty.
18. I have also attached conditions which set out guiding principles for reserved matters, these conditions include providing details on access, landscaping appearance and scale of the proposal. Moreover, a condition relating to the details of site levels is required in the interests of character and appearance. Conditions regarding windows and the maintaining of separation distances are necessary in the interests of the living conditions of existing and future occupiers.
19. The Council has recommended part of a condition restricting permitted development rights for the proposed new dwelling. However, Planning Practice Guidance notes that these conditions should only be used in exceptional circumstances. I do not consider that the circumstances of this case (a single new dwelling in a residential area) amount to exceptional circumstances, nor

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have I been presented with evidence to justify this. Therefore I do not consider that this condition meets the test of necessity and so it is not included below.

20. As issues of landscaping and access are reserved matters, the details as suggested within the Council's conditions relating to landscaping and parking would be included in the subsequent determination of these reserved matters. Therefore these conditions would not meet the test of necessity so are not included. The Council have recommended a condition requiring details of retaining walls to ensure adequate foundations are in place. These details would not be relevant to planning and therefore the condition is not attached.
21. In view of the scale of development, its location and likely construction period, I am not persuaded that a Construction Method Statement is required and as such, I have omitted the suggested condition accordingly. I have however attached conditions in relation to working hours and hours for impact pile driving to protect living conditions of existing occupiers.
22. For the reasons above, and subject to the conditions listed, I conclude that the appeal should be allowed.

H Miles

INSPECTOR

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Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") of the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1221/II, Site Plan – 17/502909/OUT – 47 Brier Road.
- 5) The details submitted pursuant to condition (1) above shall show that the new dwelling shall not be sited less than 21 m from the nearest first floor rear (north facing) window of 47 Brier Road, and the new property shall not include any rear (south facing) window above ground floor level serving a habitable room. The development shall then, be completed strictly in accordance with the approved details.
- 6) The details submitted pursuant to condition (1) above shall include cross-sectional drawings through the site, of the existing and proposed site levels. The development shall then be completed strictly in accordance with the approved levels.
- 7) Demolition or construction works shall take place only between 0730-1900hours on Monday to Friday and 0730-1300hours on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 8) Any impact pile driving in connection with the construction of the development shall take place only between 0900-1700hours on Monday to Friday and shall not take place at any time on Saturdays, Sundays or on Bank or Public Holidays.