



Appeal Decision

Site visit made on 14 April 2015

by **J Dowling BA(Hons) MPhil MRTPI**

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

Decision date: **14 May 2015**

Appeal Ref: APP/V2255/W/14/3001764

Land adjacent to 25 Wells Way, Faversham, Kent ME13 7QP

- 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 Billy McQuoid against the decision of Swale Borough Council.
- The application Ref 14/501632/FULL, dated 4 June 2014, was refused by notice dated 11 December 2014.
- The development proposed is erection of new bungalow on land between 25 and 27 Wells Way, Faversham.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a new bungalow on land adjacent to 25 Wells Way, Faversham, Kent ME13 7QP in accordance with the terms of the application ref 14/501632/FULL, dated 4 June 2014 subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Billy McQuoid against Swale Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. The list of suggested conditions attached to Appendix A of the Council's statement were submitted in error. The Council have confirmed that they should be replaced by the list of conditions included in the Planning Committee report dated 9 October 2014. I have therefore considered the appeal on this basis.

Main Issues

4. The main issues are:
 - The effect of the development on the character and appearance of the wider area and loss of open space.
 - The effect on living conditions of Nos 25 and 27 Wells Way and future occupants of the proposal taking particular account of overlooking and overshadowing.

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Reasons

Character and appearance and loss of open space

5. Wells Way forms part of a 1960's housing estate which consists of a mix of brick built bungalows and two storey houses. The estate is a relatively low density development which is reflected by the sizes of the plots and the areas of green space found throughout the estate. Due to the curvature of Wells Way some properties are arranged in clusters fronting onto triangles of green space which combined with the largely unfenced front gardens and pockets of grassed space give an open character to the estate.
6. The proposal is for the erection of a detached bungalow on a triangular plot of land between Nos 25 and 27 Wells Way. This area is currently grassed, contains two small trees and although in private ownership is unfenced and open to use by the general public. The proposed bungalow would be constructed of brick and tiles to reflect the design and materials of adjoining properties.
7. I note from the documentation submitted that there is a disagreement as to whether the pockets of green space within the estate, which include the appeal site, are part of the original planned layout of the estate or whether it is space left over after planning. Whilst I have no conclusive evidence either way, it is evident from my site visit that these areas do contribute positively to the character and appearance of the estate. However, I also acknowledge that whilst these spaces may appear to provide public open space they are in fact privately owned.
8. The National Planning Policy Framework (the Framework) encourages the effective use of land and advocates that housing applications should be considered in the context of the presumption in favour of sustainable development. The proposed bungalow would be located adjacent to the boundary with No 25, with the garden and parking area located adjacent to No 27. A substantial open garden area including replacement tree planting is proposed to the front and south eastern side of the building which would reflect the existing street pattern. Therefore, I consider that the proposal would be laid out in such a way as to maintain the open character of the frontage whilst enabling the more effective use of the site and thereby maintaining the character and appearance of the area.
9. I note from my site visit that the estate benefits from a formal area of public open space which is located a short distance from the site at the junction of Giraud Drive and Bysing Wood Road. Therefore, whilst the proposal would result in the loss of an informal area of open space I consider that given that most of the properties within the area have access to their own private rear gardens and that there is a formal public open space in close proximity to the site that the loss of this grassed area is acceptable.
10. I therefore conclude that the proposal is in accordance with Policy E1 of the Swale Borough Local Plan (2008) (the Local Plan) which requires development to be well sited and appropriate to its location and Policy E19 which requires development to be of a high quality design. The purposes of these policies are consistent with Framework which seeks, among other things, to secure good quality design.

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Living conditions

11. The proposed bungalow would be to the north of No 25 and would be a substantial distance from the boundary with No 27 as a result I consider that neither of these properties would be overshadowed by the proposed bungalow. Whilst No 27 would overshadow some of the parking area and end of the garden of the proposed new unit, due to the orientation this would be late evening sun and would be of a short duration and limited effect.
12. Whilst both No 25 and No 27 have windows in their flank elevations facing the site I noticed from my site visit that these windows are mainly obscure glazed and in the case of No 25 are screened by a close boarded fence along the mutual boundary.
13. With regards to overlooking between the gardens of the existing properties and the proposed new garden, I consider given the current more public use of the site the proposal would improve privacy to both Nos 25 and 27 by enclosing the site adjacent to their boundaries. Furthermore, I note from my site visit that the gap between the garage and house at No 27 is screened by a high level fence and consequently views into the rear garden of this property from the appeal site are not possible. As a result I consider that the proposal would not result in overlooking of either of the adjoining properties.
14. In terms of the impact on the living conditions of future residents of the property whilst a bathroom window is proposed in the elevation adjacent to No 25 I consider that a condition requiring this to be obscure glazed would address concerns regarding overlooking. Given the exposed nature of the site I agree that without the benefit of the appropriate boundary fencing overlooking of the garden area would result. However, a condition requiring this area to be fenced off would address these concerns. Therefore subject to these conditions I consider that the proposal would not adversely affect the living conditions of future residents.
15. Consequently I conclude that the proposal would not affect the living conditions for the residents of No 25 and No 27 or the living conditions of future residents and is therefore in compliance with the requirements of policies E1 and E19 of the Local Plan which advocate that development should not harm residential amenity. The purposes of these policies are consistent with Framework which seeks to secure a good standard of amenity for all existing and future occupants of buildings.

Other Matters

16. Local residents have raised a number of issues in relation to this appeal some of which including the loss of open space, character of the area and designation of the land I have already considered. In addition concerns have been raised regarding loss of trees, grassed land, the water table and flooding; the need for the development; noise and disturbance from parking to No 27; visibility for car drivers; precedent and the effect on property values.
17. Whilst the existing trees and grass contribute both to the character of the area and in absorbing rainfall the trees currently do not have the benefit of any statutory protection and could be lopped or felled without the need to seek approval. However, although the proposal would result in the loss of one tree, two replacement trees are proposed and a large proportion of the site would

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remain grassed. I also note that the site is not within an area at risk of flooding and consequently I therefore consider it unlikely that the proposal would lead to flooding.

18. Whilst, I acknowledge that new housing development may be occurring elsewhere in Faversham no evidence has been submitted to demonstrate that the housing targets have been met and that additional housing is not required.
19. The proposed parking area for two cars would be located adjacent to the existing driveway for No 27. Consequently, I consider that given the limited amount of parking and the existing drive that the proposal would not result in noise and disturbance to the residents of No 27.
20. I note from my site visit that the appeal site is not located adjacent to any road junctions and that whilst the road curves, due to the open frontages visibility for car drivers along Wells Way is good. The appeal proposal would maintain an open frontage and as a result I consider that visibility for car drivers would not be compromised. Furthermore, I note from the documentation submitted with the appeal that Kent Highway Services raised no objection to the proposal.
21. Whilst I understand that residents are concerned regarding the possibility that the development of this site might set a precedent for other sites in the area, these sites are in different locations and would therefore be perceived in different contexts. As a result I consider that this appeal would not set a precedent should these sites come forward for development in the future.
22. I note the concerns from residents with regards to property values. However, planning is concerned with land use in the public interest, the protection of private interests such as property values are not a material consideration.

Conditions

23. Paragraph 206 of the Framework sets out a number of tests that conditions need to meet. I have considered the conditions suggested by the Council against paragraph 206 and have adjusted their wording where necessary in the interests of clarity. I have attached a condition that the development is carried out in accordance with the approved plans as I consider this is necessary for the avoidance of doubt and in the interests of proper planning.
24. To ensure the development respects its setting I have imposed conditions concerning materials and landscaping. To ensure the living conditions of nearby residents are protected adequately I have imposed conditions concerning obscure glazing, boundary treatments and construction times.
25. Due to the limited size of the plot I consider that it would be reasonable to restrict permitted development rights to further extend the property in the interests of the living conditions of adjoining residents. Highway safety will be secured by conditions for the provision of visibility splays and precautions against depositing mud on the highway during construction.
26. No policy justification has been provided for the need for conditions requiring sustainable construction techniques and cycle storage. As the matter of sustainable construction can be secured via the Building Regulations and that cycles could be securely stored within the garden I consider that these conditions are not required.

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27. I do not consider a condition requiring a properly consolidated and surfaced access is required as this would be covered by the materials condition.
28. I do not consider a condition requiring the parking space to be reserved for parking at all times and the restriction of development in this area is necessary as this is captured by the approved plans condition and the removal of permitted development rights.

Conclusion

29. For the reasons above, and having regard to all other matters raised, the appeal should be allowed.

Jo Dowling

INSPECTOR

Attached – Schedule of conditions



Costs Decision

Site visit made on 14 April 2015

by **J Dowling BA(Hons) MPhil MRTPI**

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

Decision date: 14 May 2015

Costs application in relation to Appeal Ref: APP/V2255/W/14/3001764 Land adjacent to 25 Wells Way, Faversham, Kent ME13 7QP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Billy McQuoid for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a new bungalow on land between 25 and 27 Wells Way, Faversham.
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Decision

1. The application is allowed for a partial award of costs in the terms set out below.

Reasons

2. National Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has acted unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process. Unreasonable behaviour can include preventing or delaying development which should clearly be permitted
3. Authorities are expected to produce evidence to substantiate each reason for refusal with reference to the development plan and all other material considerations, showing clearly why the development cannot be permitted.
4. The Planning Committee decided to refuse the application contrary to the advice of their professional officers who produced a written report analysing the effects of the proposal. Whilst the Planning Committee is not bound to accept the recommendations of their officers, if their technical advice is not followed, then reasonable planning grounds for taking a contrary decision need to be provided supported by relevant evidence.
5. I recognise that consideration of planning applications often involves matters of judgement which at times are finely balanced. In this appeal the representations of local residents on this proposal emphasise the concerns regarding the effect on the character and appearance of the area. It was not, in my opinion, therefore unreasonable for the Local Planning Authority, where the issues are balanced, to give substantial weight to objections received from the Town Council and local residents rather than to the recommendations of its Officers to grant planning permission. I also note that prior to making their decision that the Committee visited the site in order to be able to assess the effects more fully.

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6. Whilst I have found against the Council in respect of the effect on the character and appearance of the area I consider that the Council has provided a detailed appeal statement adequately addressing this matter in response to the appeal.
7. However, with regards to the effect on the living conditions of Nos 25 and 27 Wells Way and future residents of the proposed bungalow the technical advice of Officers was that residential amenity was not affected. However, for the reasons detailed in my decision I have concluded that the proposal would not adversely affect the living conditions of neighbouring properties or future occupants and that this was not a justifiable reason for refusal given the technical advice provided to the Committee. I therefore consider that this amounts to unreasonable behaviour and that the appellant has had to undertake this aspect of the work for the appeal which it should not have been reasonably necessary to do.
8. In light of my conclusions, I find that the Council has acted unreasonably in relation to the issue of living conditions, which has resulted in wasted time and unnecessary expense. Therefore a partial award of Costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Swale Borough Council shall pay Mr Billy McQuoid, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to dealing with living conditions.
10. The applicant is now invited to submit to Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jo Dowling

INSPECTOR