



Appeal Decision

Site visit made on 11 July 2023

by R Catchpole BSc (hons) PhD MCIEEM IHBC

an Inspector appointed by the Secretary of State

Decision date: 7th August 2023

Appeal Ref: APP/K2230/W/22/3304053

**Junction of Rosebank Gardens and Davis Avenue, Northfleet, Gravesend
DA11 8DR**

- 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 C Adams against the decision of Gravesham Borough Council.
 - The application (Ref: 20220224), dated 28 February 2022, was refused by notice dated 19 May 2022.
 - The development proposed is the erection of a single storey dwelling with associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on the character and appearance of the area and the safe and efficient operation of the highway.

Reasons

3. The site comprises a small strip of unkempt land with a metalled access onto Rosebank Gardens. It is adjacent to the curtilage of a property known as 'Sherwood'. The land currently provides access to a garage and rear garden of No. 1 Davis Avenue. Both of the adjacent properties lie immediately to the north. The southern boundary of the appeal site extends across an unmetalled, vehicular track and abuts the curtilage of No. 1 Rosebank Gardens. The track provides a rear access to properties situated along Davis Avenue and Rosebank Gardens. The western boundary abuts the walkway associated with the latter.
4. The local area is characterised by residential development comprising single and two storey detached, semi-detached and terraced properties. Whilst the house types are varied, the plot sizes of the surrounding properties are relatively generous and typically provide a reasonable amount of open space about the dwellings. Traditional materials and designs predominate with pitched roofs forming a prominent feature. This applies to the dwellings as well as the majority of the garages flanking the track in the immediate vicinity of the appeal site. The area to the rear of the dwellings of Davis Avenue and Rosebank Gardens is characterised by an eclectic range of boundary treatments and generally small garages. It has a disjointed, *ad hoc* appearance but is nevertheless read as a subordinate backland area.

5. The access point for the track is at an acute angle to Rosebank Gardens and crosses a pedestrian walkway. The visibility splay to the south provides a good sightline across an open, adjacent garden. The splay to the north is more restricted by vegetation which could easily be cleared. Rosebank Gardens is a cul-de-sac and Davis Avenue has no through roads apart from backland tracks linking it to the local road network. As such, vehicular movement is predominantly associated with local residents rather than any through traffic.

Character and Appearance

6. The proposed dwelling would take up a large proportion of the appeal site. The rear elevation would form a new boundary along part of the adjoining curtilage of 'Sherwood' and would have a separation distance from this dwelling of approximately 2.3 m at its closest point. The southern elevation would front directly onto the track whilst its western elevation would front directly onto the Rosebank Gardens walkway. A small garden would be located at the western end of the appeal site. There would be no on-site parking and future occupants would need to rely upon on-road parking.
7. The house would comprise a single storey and have a mono pitched roof covered with either a zinc, standing seam material or glass reinforced plastic. The external walls would have a combination of weatherboarding with both horizontal and vertical wood effect elements and smooth panels, with reconstructed stone features. The boundary treatment would include a closeboarded fence surmounted with a trellis. The appellant describes the development as a 'specialised disabled dwelling' suitable for a single occupant requiring the use of a wheelchair in full or in part.
8. Notwithstanding a nearby garage that has a flat roof element, I observed that the proposal would lead to a highly incongruent built form that would appear cramped and significantly at odds with the prevailing plot density. The plot size is such that the elevations facing the track and Rosebank Gardens would not have any setback, unlike the surrounding properties. This would be visually incongruent and axiomatic of the overdevelopment of this site.
9. Whilst I appreciate that the flat roof design was intended to reduce visual impact, it nevertheless introduces an element that adds to the architectural clutter of this backland area. The proposed materials also fail to respond to its wider context and would lead to a prominent addition to the townscape that would be clearly visible to users of the track as well as passing individuals wishing to access Rosebank Gardens.
10. The appellant highlights the fact that outline planning permission was granted in 2004 for the erection of a two storey dwelling on the same site (Ref: 20040711). Although the permission has lapsed and despite the different policy context, the appellant maintains that this justifies the current scheme because of its reduced prominence and the fact that a dwelling of greater scale and massing was previously approved on the site.
11. However, it is an important legal principle that planning decisions must be made in accordance with an extant development plan unless material considerations indicate otherwise and that each case must be determined on its individual merits. Whether or not a proposal accords with a development plan should be based on a straightforward reading of the extant policies in their proper context which does not include superseded policies.

12. In relation to the effect of the proposal on the character and appearance of the local area, the Council states that it is contrary to policies CS15 and CS19 of the Gravesham Local Plan Core Strategy 2014 (CS). The appellant disputes this and points out that it would also be consistent with policy CS14 of the CS.
13. Policy CS15 seeks, among other things, to achieve a minimum density for urban residential development of 40 dwellings per hectare (dph) in sustainable locations. The Council points out that the proposal would exceed this density target and result in a development density equivalent to 57 dph. I accept that this is a minimum threshold and that the proposal would lead to the efficient use of land which is supported by paragraphs 119 and 124 of the Framework.
14. However, policy CS15 is subject to the overriding consideration that any such development achieves good design and does not compromise the distinctive character of an area. Paragraph 126 of the Framework also makes clear that the creation of high quality, beautiful buildings and places is fundamental to the planning process and that good design is a key aspect of sustainable development. At paragraph 130, it goes on to stress that development should be visually attractive and result from good architecture and layout. The efficient use of land is to be encouraged but not at any cost. I consider the cramped, overdevelopment of this site and incongruent appearance of the scheme to be far from satisfactory in these respects.
15. Policy CS19 requires, among other things, that all new development is visually attractive, fit for purpose and locally distinctive. It should conserve and enhance the character of the local built environment and integrate well with the surrounding local area. More specifically it states that the design, layout and form of new development should make a positive contribution to the street scene, the quality of the public realm and the character of an area. It requires account to be taken of the scale, height, building lines, layout, materials and other architectural features of adjoining buildings as well as the wider site context. The scheme falls short in these respects, as already noted.
16. Policy CS14 requires, among other things, new housing development to provide a range of dwelling types and sizes, taking into account the existing character of the area and evidence of local need to create sustainable and balanced communities. The Council accepts that the proposal, through the provision of single storey, wheelchair accessible accommodation, would be supported by this policy but only on the basis that the overall design and effect on existing character is also acceptable. Bearing in mind the effect on the character and appearance of the local area, this is clearly not the case. Even if this were not so, I have no substantiated evidence before me of an established local need for this type of accommodation.
17. Given the above, I conclude that the proposal would harm the character and appearance of the area, contrary to policies CS15 and CS19 of the CS and paragraphs 126 and 130 of the Framework.

Highway Issues

18. Turning to highway issues, I observed that the proposal would lead to a permanent obstruction of the northern visibility splay where the track joins Rosebank Gardens. The western visibility splay of the rear parking of No. 1 Davis Avenue would also be significantly curtailed despite the chamfered corner of the garden fencing. In both circumstances, vehicles would need to

manoeuvre either onto the track or the pedestrian walkway in order for drivers to be able to see oncoming vehicles and pedestrians. By the same token, pedestrians would not be able to see emerging cars until just before they cross the path of emerging vehicles. Although the lack of suitable splays might well 'encourage drivers to emerge more cautiously', an inattentive manoeuvre only has to happen once for a tragedy to occur. As such, the scheme would pose an unacceptable safety risk to pedestrians and could also lead to vehicle collisions.

19. The appellant highlights the limited number of vehicle movements associated with the track and nearby traffic calming measures and maintains that this would help to ensure a suitable level of highway safety. However, I find the baseline observations in the Highway Appeal Planning Statement inadequate because they were only undertaken on a single day for a single hour in the morning.
20. Consequently, these observations do not adequately establish how the track is used at other times or on other days of the week when the garages may experience different patterns of use, i.e. at weekends. Moreover, even though Crash Map data indicates no accidents in the vicinity of the appeal site, it does not follow that this will continue to be the case in the future given the material and permanent change to the visibility splays I have identified.
21. The appellant relies upon a comparison with a previously refused scheme in 2021 (Ref: 20210058) where the Council found the highway impacts to be acceptable. It is suggested that the absence of on-site parking in relation to the current proposal would result in a lower level of vehicular movement and therefore a reduced risk of potential harm. Whilst I understand this reasoning and the view that the Council has not dealt with this issue consistently, I nevertheless have to deal with this case on its individual merits. Moreover, I do not have the full details of the previous scheme before me and I am, in any event, not bound by the planning judgements of the local Council.
22. The appellant points out that there are no local parking controls that prevent on-street parking or any evidence that existing provision is at capacity. As such, it is suggested that an additional parking space would not lead to any significant highway impacts. This is supported by an evening, on-street parking survey that identified available capacity in the immediate vicinity of the appeal site. In the absence of substantiated evidence to the contrary, I find that the dwelling would be unlikely to have a significant impact on existing parking provision bearing in mind the results of the parking survey as well as the limited occupation of the proposed unit.
23. The appellant also highlights the fact that a future occupant with mobility issues would be able to apply for an on-street parking bay and that this could secure the necessary parking provision. The Council points out that Rule 243 of the Highway Code prohibits parking within 10 metres of a junction or in front of an entrance. It suggests that a 'disabled parking bay' near the proposed dwelling would not be acceptable and that a more distant location may not be as suitable for future occupants. It also points out that such spaces cannot be reserved for specific residents. Consequently, suitable provision would not necessarily be secured were the house to be occupied by a person with mobility issues. There is also a wider point in terms of whether any such provision could be secured given the absence of a planning obligation limiting the occupancy of the proposed dwelling to individuals with such needs.

24. The Council has highlighted the lack of a passing place as part of its second reason for refusal. I observed that there is currently no such provision on the appeal site and it is unclear why one would be needed given that future occupants would not require vehicular access and the absence of any on-site parking. As such, I do not find that a failure to provide a passing place weighs against the scheme or is something that could reasonably be expected given the nature of the proposed development.
25. Given the above, I conclude that the proposal would pose an unacceptable risk to highway safety which would be contrary to policies CS11 and CS19 of the CS and saved policies T5 and P3 of the Gravesham Local Plan First Review 1994 (LP). Together these seek to ensure, among other things, that new development mitigates its impact on the highway, car parking is well related to the development it serves, a properly formed access is created to an acceptable standard and that vehicle parking provision is incorporated within development sites. I do not find any conflict with T1 because it considers impacts on the wider transport system and the environment arising from traffic generated by new development, bearing in mind its limited occupancy capacity. Given the unacceptable impacts on highway safety, I also consider the scheme to be inconsistent with paragraph 111 of the Framework.

Other Matter

26. As the site is within 6 km of the Thames Estuary and Marshes Special Protection Area (SPA) and the Thames Estuary and Marshes Ramsar Site, a likely significant effect cannot be ruled out.
27. The appellant has signed a Strategic Access Management and Monitoring Strategy Contribution Agreement and has paid the necessary tariff. The Council suggests that this would secure adequate measures to mitigate any adverse effects on the integrity of this site as well as harm to the Ramsar site.
28. I note that Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) requires me to make an Appropriate Assessment of the effect of the proposal on the conservation objectives of the SPA either alone or in combination with other plans or projects. However, I do not consider this further because I am dismissing this appeal for other reasons.

Planning Balance

29. The Council accepts that it is unable to demonstrate a 5-year housing land supply (HLS) and that the latest published housing land review concludes that it is only able to demonstrate a 3.27-year HLS. As the delivery of housing is substantially below (less than 75%) what is required by the Housing Delivery Test, any restrictive housing supply policies must be regarded as out-of-date. This is common ground between the parties.
30. In these circumstances, the 'tilted balance', as set out in paragraph 11(d) of the Framework, is engaged unless specific policies indicate that permission should be restricted. However, the adverse effects on the character and appearance of the local area and highway safety that I have identified, places the scheme in clear conflict with policies CS11, CS15 and CS19 of the CS as well as saved policies T5 and P3 of the LP. I therefore conclude that the tilted balance does not apply in this instance.

31. As these are relevant development management policies that are not specific to the supply of housing, any conflict is capable of being afforded weight depending on their degree of consistency with the Framework which also makes clear that existing policies should not be considered out-of-date simply due to their age. Policies CS15 and CS19 of the CS were adopted after the first publication of the Framework and the policy conflict consequently carries full weight. Less recent policies are considered below.
32. Policy T5 of the LP deals with access to the highway network. Paragraph 111 of the Framework requires safe and suitable access to sites and the avoidance of any significant impact on highway safety. Whilst the policy requires works to be carried out to an acceptable standard, it does not establish that those standards should reflect current national guidance. As such, I find it to be broadly consistent and that the conflict consequently carries significant weight.
33. Policy P3 of the LP relates to car parking provision. Paragraph 104(e) of the Framework states that parking is integral to the design of schemes. Paragraph 108 goes on to state, among other things, that local authorities should seek to improve the quality of parking so that it is convenient, safe and secure alongside measures to promote accessibility for pedestrians and cyclists. As such, I find it to be consistent and that the conflict consequently carries full weight.
34. Looked at as a whole, I consider the most relevant policies of the development plan are broadly up-to-date and that the normal balance applies which requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended).
35. Benefits capable of weighing in favour of the proposal:
- Contribution to housing need – the proposal would only deliver a single housing unit at a scale suited to a single occupant thus making a negligible contribution. I consequently give this benefit limited weight.
 - Sustainable location – I acknowledge the proximity of local services and the accessibility of alternative transport links. I consequently give this benefit moderate weight.
 - Efficient use of land – I note the exceedance of the minimum housing density threshold but that the proposal would lead to overdevelopment rather than just the efficient use of land. I consequently give this benefit limited weight.
 - Specialist housing provision – the need has not been established in evidence and this provision has not, in any event, been secured for the lifetime of the development through a suitable planning obligation. I consequently give this benefit negligible weight.
36. Harms that weigh against the proposal:
- Character and appearance – the design fails to integrate with its surroundings and would lead to a cramped and incongruent development. I consequently give this harm significant weight.

- Highway safety – the access arrangements would require manoeuvres that would compromise the safety of pedestrians and other road users. I consequently give this harm significant weight.

37. Having considered all the matters in support of the proposal, I conclude that, collectively, they do not clearly outweigh the totality of harm.

Conclusion

38. The development is contrary to the development plan as a whole and there are no other material considerations, including the provisions of the Framework, that outweigh this finding. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Roger Catchpole

INSPECTOR