



Appeal Decision

Site visit made on 31 March 2025

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2025

Appeal Ref: APP/K2230/W/24/3354687

Rear garden of 40 Cross Lane East, Gravesend, Kent DA12 5HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Singh against the decision of Gravesend Borough Council.
 - The application Ref is 20240680.
 - The development proposed is the construction of 2 x 1-bed flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form states that the site address is '40 Cross Lane East', whereas the decision notice and appeal form refer to the site as 'Rear Garden of 40 Cross Lane East'. I have taken the address from the decision notice and appeal form as this is more precise. I do not consider that this has prejudiced any of the parties and I have proceeded on this basis.
3. The description of development in the heading above has been taken from the planning application form. On the appeal form it is stated that the description of development on the application form is still correct. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the description given on the original application form.
4. The appeal site is within the Zone of Influence of the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site. The Council has confirmed that a financial contribution towards strategic mitigation measures within the SPA has been secured and that this overcomes the second reason for refusal. I therefore do not address this matter in the reasoning below, however, as the competent authority, it is necessary for me to conduct an Appropriate Assessment (AA). I shall return to this later in my decision.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the living conditions of the occupants of No 38 and No 40 Cross Lane East, with regard to privacy and outlook; and

- whether suitable living conditions would be provided for future occupants of the development, with regard to privacy and external amenity space.

Reasons

Character and appearance

6. The appeal site is part of the rear garden of No 40 Cross Lane East (No 40), a two-storey end-of-terrace dwelling. Development in the area predominantly comprises two-storey terraced dwellings fronting the roads, which are arranged in a grid layout. Gardens extend to the rear where development includes single-storey outbuildings. There are few gaps in the frontage development, however the site is part of a more spacious area formed by the rear gardens of dwellings fronting Cross Lane East and Portland Avenue. The limited development to the rear gardens and the Central Avenue frontage, provides a relief to the intensive built form of the rows of typically terraced buildings in the area.
7. The proposal is for a building within the rear garden of the existing dwelling at No 40. The building would occupy part of the space between No 40 and the dwelling at No 113 Portland Avenue (No 113). The building would front Central Avenue reflecting the layout of development in the area, which typically addresses the roads. Nonetheless, the building would erode the open and spacious character to the rear of the frontage development in the area. Moreover, the one-and-a-half storey scale of the building would jar with the single-storey outbuildings within the neighbouring rear gardens as well as the primarily two-storey scale of frontage development in the area.
8. The development would provide two homes at a density that would reflect that of the urban context of the site. However, the proposal would occupy a considerable proportion of the site with limited space to either side. The restricted space to the side and rear of the building would make it appear cramped within its plot and would jar with the otherwise spacious character of the area to the rear gardens of development fronting Cross Lane East and Portland Avenue.
9. The building would have a half-hipped roof with two dormer windows within the front roof slope. The half-hipped roof form and diminutive dormer windows would be out-of-character with the predominantly pitched roof and unbroken front roof slopes in the area. These features, in addition to the uncommon scale and standalone position of the building, would accentuate the incongruous appearance of the proposal. Consequently, while the proposal would use a simple palette of materials reflecting those used in neighbouring buildings, the discordant scale and position of the development would harm the character and appearance of the area.
10. I conclude that the proposal would harm the character and appearance of the area. The development therefore conflicts with Policy CS19 of the Gravesham Local Plan Core Strategy 2014 (CS), which requires that new development will be visually attractive, fit for purpose and locally distinctive and integrate well with the surrounding local area, making a positive contribution to the street scene.

Living conditions

11. The proposed building would face towards the rear of No 38 Cross Lane East (No 38). The site is separated from No 38 by Central Avenue and the boundary fence of No 38 adjacent to the footway. The building includes two dormer windows

serving the bedrooms at first floor level. The windows would allow for direct views of the rear garden of No 38, including the area immediately to the rear of the dwelling. While a degree of overlooking would be expected in an urban area, the elevated position of the windows would provide unobstructed views towards the private area to the rear of No 38. The resulting overlooking would lead to a harmful loss of privacy for the occupants of No 38.

12. The appellant has suggested that the first floor windows could be fitted with obscure glazing that would be non-opening below 1.7 metres above the floor of the bedroom, and that this could be secured by way of a condition. Whilst this may limit the harm caused, the presence of the windows would lead to a sense of overlooking experienced by the occupants of No 38. I therefore consider that the use of alternative glazing or opening restrictions would not overcome the totality of the harm identified.
13. The building would occupy the majority of the width of the rear boundary of No 40 and would present a stark elevation towards the existing dwelling. The existing dwelling would retain a suitable garden area for the occupants of No 40. However, the considerable elevation would present a blank façade that would dominate the outlook from the rear of No 40. The proposal's enclosure of the rear boundary would comprise an oppressive and unneighbourly form of development that would harm the outlook of the occupants of No 40.
14. I conclude that the proposal would harm the living conditions of the occupants of No 38 and No 40, with regard to privacy and outlook. The development therefore conflicts with Policy CS19 of the CS, which requires that new development will be located, designed and constructed to safeguard the amenity, including privacy, of those of neighbouring properties and land.

Living conditions – future occupants

15. The proposal is for two one-bedroom homes with a communal garden area primarily to the rear of the building. The garden would be accessed via a gate to the side of the building and from glazed doors in the rear elevation of each unit. There is no dispute that the external area would measure 34 square metres.
16. The Residential Layout Guidelines Supplementary Planning Guidance 2 amended 2020 (SPG2) sets out the guidance for private amenity space and/or communal garden space. The appellant contends that the proposal is for two flats and that the provision of external space should be considered against the standard for flats, which the development would exceed. While I have not been directed to a definition of what constitutes a flat, I note that accommodation forming a flat is typically on a single floor rather than spread across two floors as set out in the proposal. Consequently, the private amenity space would fall below the minimum of 37.2 square metres for each 1-2 bedroom dwelling as set out in Table 2 of the SPG2.
17. Even if I were to accept that the proposal is for two flats, the confined space to the rear of the building would restrict the practical use of the area. The limited space would be further constrained by the position of the cycle storage area and would not incorporate adequate opportunities for seating, relaxation and exercise, as required by the Design for Gravesham Design Code Supplementary Planning Document 2024. Moreover, the amenity space would be overlooked from the first-

floor windows of neighbouring properties, including No 40, which would result in a poor level of privacy for future occupants of the development.

18. I conclude that suitable living conditions would not be provided for future occupants of the development, with regards to privacy and external amenity space. The development therefore conflicts with Policy CS19 of the CS, which requires that new development will be located, designed and constructed to safeguard the amenity, including privacy, of its occupants and will provide appropriate levels of private amenity space.

Other Matter

19. The appeal site is within 6km of the Thames Estuary and Marshes SPA and Ramsar site. The SPA is important for bird species, and in particular supports numbers of wintering and migrating birds which are rare and/or vulnerable in a European context.
20. The Conservation of Habitat and Species Regulations 2017 (the Habitats Regulations) require that the Competent Authority ensures that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA and Ramsar site. The effects arising from the proposal need to be considered in combination with other development in the area, adopting a precautionary approach.
21. The development would result in two dwellings with a consequent increase in local residents living within 6km of the SPA and Ramsar site. This would be likely to result in additional recreational activity in these areas, causing disturbance to protected bird species that over-winter or breed on the SPA and Ramsar site. Therefore, the proposed development is likely to have a significant effect on the European Sites. As the competent authority, it is necessary for me to conduct an AA in relation to the effect of the development on the integrity of the SPA and Ramsar site.
22. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of a European site, such as the Thames Estuary SPA and Ramsar site. I may consider measures to secure mitigation with a view to ensuring that the proposal would not adversely affect the integrity of the SPA and Ramsar sites. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA and Ramsar site.
23. The Council have confirmed a per dwelling contribution payment to fund the SAMMS has been made by the appellant. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
24. The contribution would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites. I

therefore find within my AA that, with the provided mitigation, the proposal would not have an adverse effect on the integrity of the SPA and Ramsar site. The development would therefore comply with the Habitats Regulations and Policy CS12 of the CS, which states that sites designated for their biodiversity value will be protected.

Planning Balance

25. The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance with the aforementioned policies of the CS, with the associated conflict reflecting harm to the character and appearance of the area, the living conditions of occupants of neighbouring properties and the unsuitable living conditions for future occupants of the development. The proposal conflicts with the development plan as a whole and should be refused unless other material considerations indicate otherwise.
26. The Council states that it is unable to demonstrate a five year supply of deliverable housing sites. It is also failing to deliver its housing requirement for the purposes of the Housing Delivery Test. As such, paragraph 11 d) of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
27. The proposal would make a positive contribution to housing supply and delivery with associated social and economic benefits during the period of construction and once the dwellings are occupied. This is particularly the case given the Council's housing supply and delivery positions. The Framework explains that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. However, the contribution of two additional dwellings to meeting housing need in the Borough through a more efficient use of land in an urban area and the associated benefits are nevertheless limited by the scale of development proposed.
28. In the particular circumstances of this case, I have concluded that the proposal would harm the character and appearance of the area and the living conditions of occupants of neighbouring properties, would provide unsuitable living conditions for future occupants of the development, and would conflict with the relevant policies of the development plan and the Framework. The adverse impacts would therefore significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. Therefore, the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

29. The proposal conflicts with the development plan. The material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

J Pearce

INSPECTOR