
Appeal Decision

Site visit made on 7 February 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 21 February 2017

Appeal Ref: APP/U2235/W/16/3163017

1 Marsham Street, Maidstone ME14 1EW

- 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 Lall Bray (Mr Naish) against the decision of Maidstone Borough Council.
 - The application Ref 16/506030/FULL, dated 22 July 2016, was refused by notice dated 17 October 2016.
 - The development proposed is erection of apartment block comprising 9no. apartments.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposal on:
 - the character and appearance of the Holy Trinity Conservation Area and the settings of the listed buildings at Holy Trinity Church and 1-9 Marsham Street;
 - the living conditions of the occupiers of 1 and 2 Marsham Street with particular regard to outlook.
 - the long term future of protected trees close the western boundary of the site.

Reasons

Character and Appearance

3. The appeal site was formerly the rear garden of 1 Marsham Terrace. That property has recently been converted to residential use. It forms part of a Grade II listed three storey Georgian terrace whose elegant and formal design makes a strong contribution to the character of the area. Nos 1 to 4 are somewhat larger and more ornate than the other properties in the terrace and had bigger back gardens. The garden of No 1 is the largest and the Council has referred to documentary evidence which suggests that its spaciousness was considered important in the original layout of the area. The atypically large size of the garden is also apparent in the historical maps appended to the appellant's Heritage Statement. The appeal site is currently hardsurfaced and used for car parking. Whilst this use is less attractive than the former garden use, it maintains the essential openness of the area and the car parking is not prominent in public views.
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4. The classically influenced and imposing Grade II listed former Holy Trinity Church is located to the west of the appeal site. Its original church yard is currently used as a public garden and offers views of the appeal site and the rear of the terrace. These listed buildings and associated spaces are important features which individually, and as a group contribute, to the heritage significance of the Conservation Area.
5. The proposed building would extend to almost the full length of the appeal site and would be some 4m from the extension to the rear of No 1. It would be positioned very close to the eastern site boundary and, whilst it would be set back from the western boundary, the building would take up a large proportion of the site area. A gable projection at one end of the west elevation would give the building some articulation, although there would be little relief in the massing of the other elevations. In particular, the lack of articulation and absence of windows in the east elevation would give the building a monolithic appearance in views from Wyatt Street. In this respect it can be distinguished from the more modest recent building to the rear of No 2.
6. Notwithstanding that the walls of the building would be essentially two storeys in height, the eaves level would be raised above the first floor window heads and there would be large dormers in both of the main roof slopes. The effective height of the building would, therefore, be approaching that of a three storey building and the lack of the relief in the elevations would not break up its considerable bulk. Consequently, it would compete in scale with the Marsham Street terrace and would significantly close down the space which contributes positively to the settings of both listed buildings. These impacts would be apparent in views from the public gardens and from Marsham Street through the gap between No 1 and the church. They would outweigh the minor visual harm resulting from the existing car park use of the site.
7. The external materials proposed would be appropriate, there is some symmetry in the fenestration of the western elevation and the sub-division of the windows shows the influence of Georgian architecture. However, the overall form of the building, the size and proportions of the windows and the use of dormers prevent it from being convincingly neo-Georgian in appearance. The appellant's statement considers that the proposal would give 'definition' to the Conservation Area by addressing the church and the Heritage Statement argues that it would 'knit together' the urban fabric of historic buildings. I recognise that the new building would be positioned on the eastern part of the appeal site furthest from the church. Nevertheless, I am not persuaded that its bulk, form or angled alignment would relate well to the church or that the adjoining buildings require further cohesion. Whilst the new building would screen views of the tall Shipley Court block in a narrow range of public views, that building sits outside the Conservation Area and is a reasonable distance from the listed buildings. Therefore, I consider that the claimed benefit would be limited.
8. Planning permission was previously granted for a detached dwelling on the appeal site¹. I understand that the permission has expired. Moreover, the scale and height of that dwelling was very considerably smaller than the current proposal. It would have been sited further from both listed buildings and a larger proportion of the site would have remained open. As such, I consider

¹ Application ref MA/13/1630

that the previous permission does not provide a robust justification for the appeal proposal.

9. Paragraph 17 of the Framework encourages the effective use of previously developed land and weighs in support of the proposal. Nevertheless, it goes on to guard against the use of land of high environmental value. This requirement pulls against the proposal by virtue of the site's contribution to the significance of the heritage assets. The appellant has referred to the density of the proposal compared with other schemes approved in Maidstone town centre. However, I have not been provided with the circumstances of those approvals and, in any event, numerical comparisons are often of less value in relatively small schemes than site specific considerations such as these set out above.
10. Consequently I find that the proposal would have a harmful effect on the character and appearance of the Conservation Area and the setting of the listed church and 1-9 Marsham Street. As such, it would conflict with National Planning Policy Framework (the Framework) paragraph 60 which seeks to promote or reinforce local distinctiveness; paragraph 64 which presumes against poor design that fails to take the opportunities available for improving the character and quality of the area; and paragraph 131 which requires the desirability of sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness to be taken into account.
11. Nor would the proposal meet the requirements of sections 72(1) or 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require the special interest of Conservation Areas and the settings of listed buildings to be preserved or enhanced. The proposal would also conflict with Policies DM1 and DM3 of the emerging Maidstone Borough Local Plan Development Management Policies (LP) insofar as they require development to respond positively to the historic character of the area, with particular regard to its scale, height, bulk and articulation.

Living Conditions

12. The north-facing wall of the single storey extension to No 1 includes a number of windows which appear to serve rooms likely to be used for significant periods of the day. The southern elevation of the proposed building would be located some 4m from these windows. It would be more than 9m long and 6m high to eaves level, with a gable above. As a result of its size and proximity, the proposed building would have an oppressive effect on the outlook from the windows in the northern elevation of No 1.
13. The eastern elevation of the proposed building would be located close to the common boundary with No 2. The elevation would be around 6m high and run most of the length of the rear garden of the neighbouring property. Having regard also to the presence of the existing two storey building at the northern end of this garden, I consider that the proposed building would have an unduly enclosing effect on the outlook of those using the garden.
14. Consequently, I find that the proposal would have a detrimental effect on the living conditions of the occupiers of 1 and 2 Marsham Street by reason of loss of outlook. As such, it would conflict with paragraph 17 of the Framework insofar as it requires development to secure a good standard of amenity for existing occupants of buildings and LP Policy DM1 which has similar aims.

Trees

15. The trees close to the western boundary of the site fall within the Conservation Area and are, therefore, afforded protection. They are prominent view views from the public gardens and contribute positively to the character of the Conservation Area and the setting of the listed church. The proposal is supported by an Arboricultural Implications Appraisal (AIA)². Whilst the Council notes that that proposed building would encroach into the root protection area of tree references T2 (London plane) and T5 (small leaved lime), the appellants tree consultant considers them to be resilient species in an urban setting. The Council's main concern is that the proximity of the building to these trees would lead to undue pressure from future occupiers to have the trees lopped or felled. In this respect, I share the Council's view that the crown spread of tree T2 in particular extends further across the site than is depicted in the AIA.
16. The primary outlook from the proposed flats would be west towards the affected trees. Tree T2 would feature very prominently in views from the bedroom and lounge windows of flats 1 and 4. Although this tree is mature, the AIA finds that it has up to a further 20 years of life and the Council's landscape officer judges that its life may be longer still. It is, therefore, foreseeable that future occupiers of these flats would be concerned about the effect of the tree on the light reaching these rooms and the risks to safety and damage in high winds. In these circumstances, the Council would find it difficult to resist calls for works to the tree which could reduce its contribution to the character of the Conservation Area and the setting of the church. Such an outcome would be contrary to Framework paragraph 131 and LP Policies DM1 and DM3.

Planning Balance and Conclusion

17. Framework paragraphs 7 and 8 require the three roles of sustainability to be considered together. The construction of the development would bring minor, short term, economic benefits and future occupiers would contribute to the Council tax base and support local facilities. The provision of nine dwellings would also make a positive contribution to the social dimension of sustainability. In accordance with Framework paragraph 47, therefore, it merits a measure of support for the proposal.
18. However, I have found that the proposal would be harmful to statutorily designated heritage assets, the character and appearance of the area and the living conditions of neighbouring occupiers. Therefore, whilst the proposal would make a modest contribution to the economic role, it would perform poorly with regard to the social and environmental roles. As such, it would not amount to sustainable development for the purposes of Framework paragraph 14. In terms of the assessment required by Framework paragraph 134 therefore, although the harm to the heritage assets would be less than substantial, the public benefit of the proposal would not be sufficient to outweigh it.
19. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR

² Arborvitae ref: 163MAS/AIA01