

Tonbridge
Judd

17 March 2023

TM/23/00615/FL

Proposal: Two storey extension on existing building to create 2 x 2 bedroom duplex flats with roof terrace and external alterations
Location: 37 Avebury Avenue Tonbridge Kent TN9 1TL
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1. Description:

- 1.1 Planning permission is sought for the erection of a two-storey roof extension and alterations to the front elevation. The proposed roof extension would add two. Duplex flats, each with two bedrooms. The top floor would be set back slightly from the existing front elevation. In contrast, the rear wall of the two-storey extension would be set 5m further forward of the existing rear elevation of the building, and this would allow for roof terraces to the lower levels of the duplex apartments (second floor). The drawings show that the roof terraces would be enclosed by privacy screening.
- 1.2 The application shows external alterations to the fenestration, entrances and facing materials of the building to include painted brickwork, render and timber cladding to upper elevations).

2. Reason for reporting to Committee:

- 2.1 The application is reported to Committee at the request of Cllr Hood to consider the potential overbearing impact upon neighbouring dwellings.

3. The Site:

- 3.1 The site lies to the south side of Avebury Avenue within the urban area of Tonbridge and to the west of the town centre. It comprises a two-storey, flat roofed building formerly occupied as a gym but works subject to conversion to three duplex flats. It is of brick construction with rendered first floor elevation.
- 3.2 Avebury Avenue runs westward from the High Street to the east and Barden road to the west and forms part of the Tonbridge Central Area to which the Tonbridge Central Area Action Plan (TCAAP) refers. The site is situated at the transition between higher density town centre development to the east and lower density, smaller scale development to the west. The eastern side of Avebury Avenue includes commercial properties and three- and four-storey residential blocks of flats. In contrast, the western section of Avebury Avenue comprises a mix of commercial properties and residential dwellings, and the area to the south and west of the site is made up of predominantly two-storey semi-detached dwellings.
- 3.3 It is located within Flood Zones 2 and 3 and within an area designated as a ground water vulnerability zone (minor).

4. Planning History (relevant):

TM/11/02509/FL Approved 15 November 2011
Change of use of existing building from B1 (office) to D2 (leisure) use (personal training studio and physical rehabilitation clinic)

TM/21/00812/PDVOR Requires Permission 13 May 2021
Prior Notification: change of use from Offices (Class B1(a)) to Dwellinghouses (Class C3): conversion, of the existing office space at No.37 into 5 x self contained flats, with the creation of associated bin and bike stores

TM/21/01678/FL Non-determination 2 September 2021
TM/21/00041/NONDET appeal - Dismissed
Demolish existing commercial building and build six new one bedroom flats

TM/22/00702/PDVMA Prior Approval Approved 31 May 2022
Prior Notification under class MA of part 3: change of use from Gymnasium (Class E) to 3 no. self-contained duplex flats. The units have been designed as 3 duplex units with suitable bedroom space, storage space and kitchen/living space as per the Nationally Described Space Standard requirements. Refuse/recyclable waste storage enclosure and cycle storage provided as shown on accompanying proposals

4.1 In dismissing appeal 21/00041/NONDET, the Inspector concluded:

I have found that the proposed development would harm the character and appearance of the area, would harm the living conditions of neighbouring occupants at 39 and 41 Avebury Avenue, and would fail to contribute towards the provision of off-site open space. I have also found that it would not harm the living conditions of future or other neighbouring occupants, and the risk of flooding can be satisfactorily addressed. Since these latter issues are neutral considerations in my decision, I conclude that the development would conflict with the development plan when taken as a whole.

5. Consultees:

5.1 EP: No objection. Informatives are recommended.

5.2 EA: No objection.

5.3 Private Reps: 16/0X/0S/14R: There were fourteen representations received from eleven third parties which object to the proposal on the following grounds (summarised)

- Loss of privacy and light to neighbouring residential properties

- Overbearing visual impact to neighbouring residential properties
- Noise and disturbance from the proposed roof terrace.
- Additional height will exacerbate existing damp issues at neighbouring residential properties.
- The enclosure of the roof terraces is out of keeping and would reduce cohesion and sense of shared space.
- Odour from waste/refuse storage area situated close to 35 Avebury Avenue.
- Absence of refuse storage
- Increase in traffic and absence of curtilage parking
- Increased pressure on utilities
- Risk of flooding
- Inadequate detail of drainage. Drains have overflowed in the area.
- Limited area for cycle storage
- Loss of property value
- Non-compliance with the Party Wall Act
- Fire safety concerns pertaining to timber cladding
- Problems during current and future construction due to noise, disturbance and congestion
- Contribution to housing supply not justified due to negative impacts and given existing developments in the vicinity.

6. Determining Issues:

Principle of the development

- 6.1 Under the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the Local Planning Authority is required to determine planning applications and other similar submissions in accordance with the Development Plan in force unless material considerations indicate otherwise. The Development Plan currently in force for this area comprises the Tonbridge and Malling Local Development Framework Core Strategy (TMBCS) adopted in September 2007, the saved policies of the Tonbridge and Malling Borough Local Plan 1998 (TMBLP), Development Land Allocations DPD (DLA DPD) adopted in April 2008 and the Managing Development and the Environment DPD (MDE DPD) adopted April 2010. The National Planning Policy Framework (“NPPF”) and the associated National Planning Practice Guidance (“NPPG”), National Design Guide (2021) and National Model Design Code (2021) are important material considerations.
- 6.2 The Council cannot currently demonstrate an up-to-date five-year supply of housing when measured against its objectively assessed need (OAN). This means that the presumption in favour of sustainable development as set out at paragraph 11 of the NPPF (2021) must be applied. For decision taking this means:
- c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

6.3 In this case, none of the policies referred in 11(d)(i) apply to the site. As such, pursuant to paragraph 11(d) (ii) of the NPPF, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when the proposal is assessed against the policies in the Framework taken as a whole.

6.4 The NPPF states at paragraph 7 that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 of the NPPF states that the planning system has three overarching objectives to achieving sustainable development, these being an economic objective, such as ensuring adequate land is available to support growth and enable the provision of infrastructure; a social objective, such as ensuring a sufficient number and range of homes can be provided to meet the needs of present and future generations as well as accessible services and open spaces; and an environmental objective, ensuring that effective use is made of land, helping to improve biodiversity and protecting and enhancing the natural, built and historic environment.

6.5 The location of the site and the type of development proposed would be considered sustainable development under paragraph 8 of the NPPF, and this is set out in greater detail throughout this report as necessary.

6.6 Development plan policy CP11 of the Tonbridge and Malling Borough Core Strategy ("TMBCS") seeks to direct development to urban areas in order to accord with the principles of sustainability set out in policies CP1 and CP2 of the TMBCS. This policy accords with the aims of the NPPF to maximise opportunities for the supply of housing in appropriate locations that can contribute towards the supply and maintain and enhance the vitality of existing communities. The policy is up-to-date, and the proposed development broadly accords with these aims and the requirements of this policy. The principle of residential development within this site is therefore acceptable.

Overall design and character considerations

6.7 Paragraph 130 of the NPPF sets out that planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- d) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- e) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

6.8 Development of poor design that fails to reflect local design policies and government guidance on design should be refused as detailed in paragraph 134 of the NPPF.

6.9 Policy CP24 of the TMBCS seeks to ensure that all development is well designed and respects the site and its surroundings. This aim is echoed in paragraph 58 of the NPPF which seeks to ensure that development will function well, create attractive, safe places in which to live and work, optimise the potential of the site, respond to the local character of the surroundings and be visually attractive. In addition, policies SQ1 of the MDE DPD and TCA1 of the TCAAP require development to reflect the local distinctiveness, context, condition and sensitivity to change of the local character areas. These policies are broadly in conformity with those contained within the Framework which relate to quality of new developments.

6.10 The existing building is not of considerable architectural merit, and its flat-roofed form and brown brick and rendered elevation stands in contrast to the predominantly red-bricked elevations of neighbouring development. The proposal would considerably increase the height of the building, but this would be similar to development to the east and north. The alterations to the front elevation would introduce painted brick at ground floor level with light render and timber cladding to the upper stories. Subject to the selection of materials, which could be subject to approval by condition, this could provide a cohesive and well-designed frontage. There are examples of buildings with similar materials in the wider locality, notably at River Lawn to the east. As such, whilst the building would contrast with development in the immediate vicinity, this would not be to the detriment of the street scene or overall visual amenity of the area.

6.11 The proposed flats include adequate internal habitable accommodation which would meet the minimum size standards as set out in the Technical Guidance: Nationally described space standards. Whilst this is not a policy requirement, the guidance provides a reasonable reference for assessment of habitable spaces. The inclusion of roof terraces also ensures that the future occupants of the flats will benefit from outdoor amenity space, which is not always available within a town centre context. For these reasons, it is considered that the proposal would provide satisfactory living conditions for future occupants in accordance with design requirements set out in the NPPF and the National Design Guide 2021.

Residential amenity considerations

6.12 Policy CP1 of the TMBCS sets out that in determining planning applications, residential amenity should be preserved and, wherever possible, enhanced. Section (f) of paragraph 130 of the NPPF requires planning policies and decisions to create places that are safe, inclusive and accessible, and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

6.13 Paragraph 185 of the NPPF requires inter alia that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment and to mitigate and reduce such impacts to a minimum.

6.14 The proposed development would increase the height and bulk of the existing building raising the overall height to 12.8m. This is 3m higher than the scheme dismissed at appeal (TM/21/01678/FL). Although the rear elevation of the extension is stepped back from the rear of the existing building, the proposal includes the erection of a privacy screen around the roof terrace. This would raise the height of the building at the rear to would raise to 9.3m, just short of the 9.7m height of the appeal scheme.

6.15 With regard to the impact upon 39 and 41 Avebury Avenue, the proposed extension would project 2.6m to the rear of the neighbouring properties. Combined with the privacy screening to the rear (which would be secured by condition to prevent overlooking in the event of a permission), the development would present a three- and four-storey flank wall adjacent the garden of the neighbouring garden. The existing building limits light to the neighbouring garden. As such, the proposal would not result in detrimental overshadowing. The absence of windows in the west elevation and the inclusion of a privacy screen around the roof terrace would also limit overlooking. However, the proposed flank elevation would have an unduly prominent and overbearing effect upon the small area of private amenity space of the neighbouring residents. This would result in significant harm to the

amenities and living conditions of the neighbouring residents contrary to policy CP1 of the TMBCS and paragraph 185 of the NPPF.

- 6.16 The application building and Copper House (35 Avebury Avenue) are separated by a distance of 2m at their front corners narrowing to 0.8m at the rear. The proposed extension would include a single window for a bathroom at third floor level, and this would be subject to a condition requiring obscured and fixed glazing should permission be granted to prevent overlooking of the neighbouring properties. The proposed extension would not significantly affect the outlook or light to windows of neighbouring flats at ground and first floor levels which face the existing flank wall of the application site. It would, however, noticeably affect the outlook and light to windows at the flats at second and third floor levels at Copper House. However, plans for Copper House as approved under TM/14/04251/FL show that each of the habitable rooms with windows facing the site have further windows facing to the front or rear. As such, the habitable rooms have further sources of outlook and light. Moreover, this visual relationship would be akin to that of flats at lower floor level, which was deemed acceptable at the grant of permission. Whilst the inclusion of roof terraces would result in some outdoor activity to the rear of the property, it is not considered that this would result in detrimental levels of noise and disturbance to neighbouring occupiers given their size and screening. For these reasons, it is considered that the proposal would not result in adverse harm to the amenities of the neighbouring residents to warrant an objection.
- 6.17 Turning to the impact of the proposal upon neighbouring dwellings to the south/southwest at Barden Road, the rear elevation of the proposed flats would be stepped back from the existing rear elevation and the roof terrace would include privacy screening. As such, it is considered that the proposal would not result in harmful overlooking of the neighbouring properties.
- 6.18 It is noted that the site is within an urban area and construction activities may result in temporary noise and disturbance. As such, should planning permission be granted, a condition should be imposed to require details of a construction environment management plan to ensure that these operations are carried out with the minimum disruption.
- 6.19 The application does not detail refuse storage. Although this is an existing building, the cumulative effect of the conversion of the lower floors and the proposal, would alter the refuse activity and storage. However, should planning permission be granted, this could be controlled by condition requiring the submission and approval of refuse storage areas.

Flood risk

- 6.20 Paragraph 167 of the NPPF states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a

site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

6.21 The site is in flood zones 2 and 3a, with medium to high probability of flooding. The proposal is for residential development, which is defined as “more vulnerable” in the flood risk vulnerability classification set out in Annexe 3 of the NPPF. More vulnerable development within flood zone 3a should be supported by a site-specific flood assessment and should be subject to sequential and exception testing.

6.22 The exception test is formed of two parts. The first requires that the development should provide wider sustainability benefits to the community which would outweigh the flood risk. The second part requires that the development should be safe for its lifetime without increasing flood risk elsewhere and, where possible, reducing flood risk overall.

6.23 In this instance the development would contribute to a net gain of two dwellings within the Borough at a time when it cannot demonstrate a five-year housing land supply. The dwellings would be in a location with good access to services and sustainable methods of transport, which aligns with the strategic aims of sustainable development set out in the TMBCS and the NPPF. Policy CP10 of the TMBCS acknowledges that redevelopment (including windfall development) within the built-up area may be at medium to high risk of flooding, and the aim should be to minimise and manage flood risk in the detailed design of the development. Development in these areas is preferable to developing sites outside built-up areas which may be at lower risk of flooding but may be less favourable in relation to other planning considerations.

6.24 The application includes a flood risk assessment (FRA) which states that the site is within a medium risk of surface water flooding according to Environment Agency (EA) data. The FRA recommends that the finished floor levels should be set no

lower than 24.00mAOD and that sleeping accommodation should be at first floor level and above the calculated flood level. It notes that owners and occupiers living in the properties should sign up to EA flood warning and alert services to enable protection and evacuation measures to be followed as necessary. The EA has reviewed the FRA and raised no objections. As such, it is considered that the proposal would meet the sequential test and the first part of the exception test.

6.25 The development is for an upward extension of the building and would be elevated with respect to potential flood levels even with an additional allowance for climate change. A flood event would affect access and egress, but there would be sufficient time to warn occupiers and allow safe evacuation, particularly if the recommendation to subscribe to flood alerts set out in the FRA is followed. As the development would not increase the footprint of the buildings, it would not result in greater displacement of water or disrupt the flow of flood water when compared to the existing site. Although the proposal would not reduce flood risk, this is a desirable rather than essential part of the exception test. As such, it is considered that the development would be safe for its lifetime and would not increase flood risk elsewhere and the second part of the exception test is met.

6.26 For these reasons, the proposal complies with Policy CP10 of the TMBCS and paragraph 167 of the NPPF.

Highway safety and parking provision

6.27 Policy CP2 of the Core Strategy states that development should be well located in relation to public transport, cycle and pedestrian routes and have good access to town centres. It should also minimise the need to travel through the implementation of Travel Plans. Policy SQ8 of the MDEDPD requires new development not to significantly harm the highway safety, and that traffic generated by the development can be adequately served by the highway network.

6.28 Paragraph 110 of the NPPF requires development to promote sustainable transport modes, provide safe and suitable access to the site, the design of any road layout to reflect current national guidance and any significant impact on the highway to be assessed. Paragraph 111 continues to state that development should only be refused on transport grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts of the development would be severe.

6.29 The site does not include any vehicular access and there is no proposal for on-site parking. Concerns have been raised by local residents regarding the lack of parking provision and existing traffic congestion in the area. Whilst Policy TCA15 of the TCAAP states that parking within the Central Area of Tonbridge will accord with County parking policies/standards, this policy is out-of-date with respect to current policies promoting sustainable transport methods. The site lies within the town centre close to shops, facilities and public transport links. It is therefore within

a highly sustainable location where the provision of on-site parking is not a necessity. The proposal is therefore acceptable in this regard.

6.30 Furthermore, the proposal provides for two additional cycle storage bays, providing a total of five spaces when combined with existing cycle storage. This would further support sustainable transportation methods and accord with the aims of policies, including Policy TCA17 of the TCAAP which requires that developments incorporate provisions for cyclists.

6.31 Notwithstanding the above, should planning permission be granted, it is recommended that a condition be imposed to require the submission and approval of a travel plan aimed at ensuring the occupants maximise use of sustainable transport.

Open space provision

6.32 It is acknowledged that prior approval has recently been approved (TM/22/00702/PDVMA) for the conversion of the existing building to three flats. Although this proposal would result in a cumulative gain of five residential units within the site, it would not trigger the requirement for open space contributions as set out in Policy OS3 of the MDE DPD in its own right.

Climate Change

6.33 Paragraph 153 of the NPPF requires Development Plans to take a proactive approach to mitigating and adapting to climate change. It encourages new development to avoid increase vulnerability to the range of impacts associated with climate change. Where there are proposals in vulnerable areas care is to be taken to mitigate and consider green infrastructure. In addition, proposals should help to reduce greenhouse gas emissions and increase the use of renewable and low carbon energy.

6.34 The Government has adopted the Future Homes and Building Standards in line with its commitment to achieve net zero emissions by 2050. This seeks to reduce CO2 emissions from new homes by 75-80% from 2021 standards, and new homes will need to be “zero carbon ready”, meaning that no further retrofit work will be necessary to enable them to become zero-carbon homes. The first stage of this transition towards the decarbonisation of buildings came into force on 15 June 2022 via a suite of revised Building Regulations, which require that CO2 emissions from new build homes must be 30% lower than under previous standards. The Building Regulations relevant sections are:

- Part L (Conservation of Fuel and Power) Volume 1 Dwellings;
- Part F Ventilation;
- Part O Overheating;
- Part S Electric Charging points.

6.35 The efficiency levels now required encourage the installation of zero-carbon technology through Building Regulations. Thus, no conditions or informatives are recommended in relation to the incorporation of zero carbon technologies.

6.36 The amended Building Regulations under Approved Document S also require that new developments must include spaces with access to electric vehicle charging points equal to the number of new dwellings and that cable routes/infrastructure should be provided to other parking spaces. Where charging points would have previously been secured by condition, this is no longer reasonably required.

Other matters

6.37 Third party concerns regarding party wall and fire safety are noted. However, these are subject to separate legislation/regulation and are therefore not material planning considerations. Similarly, the value of and problems with damp at neighbouring properties is also not a material consideration.

6.38 Details of drainage have not been supplied, but this is an existing building with existing drainage connections, and there are mains sewers in the area. Therefore, it is not considered that this proposal would result in significant harm to drainage within the area. However, a condition could be imposed to require such details should permission be granted.

Conclusion

6.39 The proposal would result in the net increase of two dwellings to the Borough's housing supply. This would be achieved through development of an existing built-up site in a sustainable location. As the Council cannot demonstrate a five-year housing land supply, this is afforded substantial weight. Alongside this contribution would be a temporary economic benefit arising from construction activity. These benefits are moderate weight.

6.40 However, the proposal would result in a significant overbearing impact upon the residential amenity of 39 and 41 Avebury Avenue. As such, whilst the proposal would result in a more efficient use of land, this should not be done at the expense of living standards, as set out in paragraph 125(c) of the NPPF. This harm would significantly and demonstrably outweigh the benefit. As such, the presumption in favour of residential development is not engaged and refusal is recommended.

7. Recommendation:

7.1 **Refuse** planning permission for the following reason:

Reason

1. The proposed development by reason of its siting, design, bulk and height would result in an unacceptable overbearing impact on the residents of 39 and 41 Avebury Avenue. The proposal therefore fails to preserve residential amenity

and does not constitute high quality design contrary to policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007, Policy SQ8 of the Managing Development and Environment Development Plan Document 2010 and paragraphs 125, 130 and 185 of the National Planning Policy Framework 2021.

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