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## Appeal Decision

Site visit made on 1 August 2016

by **Grahame Gould BA MPhil MRTPI**

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

Decision date: 2 September 2016

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**Appeal Ref: APP/V2255/W/16/3149881**

**177 Wards Hill Road, Minster-on-Sea, Kent ME12 2JZ**

- 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 and Mrs Timothy Harris against the decision of Swale Borough Council.
  - The application Ref 15/503681/FULL, dated 9 May 2015, was refused by notice dated 26 January 2016.
  - The development proposed is erection of 2 No. detached dwellings to replace existing chalet bungalow.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of two detached dwellings to replace an existing chalet bungalow at 177 Wards Hill Road, Minster-on-Sea, Kent ME12 2JZ in accordance with the terms of the application, Ref 15/503681/FULL, dated 9 May 2015, subject to the conditions set out in the Schedule to this decision.

### Procedural Matter

2. Prior to the application's determination by the Council various amended drawings<sup>1</sup> were submitted to it and I have determined the appeal on the basis of those amended drawings.

### Main Issues

3. Based on the reason for refusal and the Council's appeal case the main issues are the effect of the development on: the living conditions for the occupiers of neighbouring properties, with particular regard to outlook and privacy; and protected species.

### Reasons

#### *Living Conditions*

4. The appeal site is a comparatively large plot and is occupied by a split level bungalow (No 177) and has a vehicular access onto Wards Hill Road, while it backs onto Clovelly Drive. The topography of the area is such that existing dwelling is elevated almost a storey above the road level in Clovelly Drive and its rear garden slopes downwards to that street.

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<sup>1</sup> PL03 rev A, PL04 rev A, PL05 rev A, PL06 rev A, PL07 rev A, PL08 rev A, PL09 rev A, PL10 rev A, PL11 rev B and PL14 (the latter in substitution for drawing PL13)

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5. The development would involve the demolition of No 177 and the construction of two detached, split level dwellings. The replacement dwellings would each in part provide accommodation on three levels, with the upper level being in the roof space, and given the sloping nature of the site they would in part be cut into it. These dwellings would be sited on a slight stagger, between Lyndale and 16 Clovelly Drive (No 16) and these neighbouring properties are both bungalows.
6. While No 16 and Lyndale both have windows in their side elevations, the primary outlook from within the interior of these properties is via glazed areas in their front and rear elevations. I accept that the appeal development would result in some loss of outlook from the neighbouring side windows. However, I consider that effect would not affect the primary outlook from within the interior of No 16 and Lyndale and given that there would be some space between the side elevations of the existing and proposed dwellings, I find that the occupiers of No 16 and Lyndale would not experience an unacceptable loss of outlook or sense of overbearing from within the interior of these properties. In this respect I consider it of note that some of the windows in No 16's side elevation are obscured glazed, restricting the outlook possible from them, while the side window towards the front of Lyndale appeared to serve a room that also has patio type doors in that property's front elevation.
7. No 177 is set behind No 16 and Lyndale and the existing property's siting has some effect upon the outlook from with the rear gardens of these neighbouring properties. I consider that the demolition of No 177 and the siting of the replacement dwellings closer to Clovelly Drive would to some degree improve the outlook from within the gardens of the immediately neighbouring properties.
8. Although the proposed dwellings would stand taller than the immediately neighbouring bungalows, I find that the relative differences in height would be such that the new properties would not have an overbearing presence.
9. Clovelly Drive is a street that is characterised by properties on both sides of the road and some mutual overlooking between the properties is therefore a characteristic of this street. The proposed dwellings would be sited opposite Nos 13, 15 and 17, however, the distance between the front elevations of those properties and the new dwellings, at around 25 metres<sup>2</sup>, would be similar to that found throughout Clovelly Drive. Based upon my observations on site and allowing for the fact that the proposed dwellings would have accommodation on three floors, I find that their presence, including the use of Plot 1's balcony area, would not give rise to any unacceptable loss of privacy for the occupiers of Nos 13, 15 and 17.
10. Concern has also been raised about the loss of light to the interior of No 16. However, given the window arrangement within this property's side elevation and the height and siting of the house within in plot 1, I am of the opinion that the occupiers of No 16 would not experience an unacceptable loss of light within the interior of their property.
11. For the reasons given above I conclude that this development would not be harmful to the living conditions for the occupiers of the properties adjoining No 177. In this respect I find there to be no conflict with Policy E1 of the

<sup>2</sup> Dimension taken from the Planning Committee Minutes of 14 January 2016

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Swale Borough Local Plan of 2008 in that no demonstrable harm would be caused to residential amenity.

*Protected Species*

12. The Council's ecological advisor has commented that the implementation of this development '... has potential to result in ecological impacts' and that a preliminary ecological appraisal of the site and species surveys should be undertaken in advance of the application's determination. The possible presence of bats, in particular, has been highlighted in the advice received by the Council. Despite this advice no ecological information has been submitted by the appellants. However, it appears that the advice received by the Council was offered on a precautionary basis, given that it relied upon an assessment of aerial photographs, local biological records and photographs included with the application, as opposed to a site visit.
13. Paragraph 99 of Circular 06/2005<sup>3</sup> advises that the presence or otherwise of protected species and the effect new development might have upon them should be established before planning permission is granted and the need for ecological surveys should generally not be left to conditions imposed on planning permissions. However, paragraph 99 goes on to advise that '... developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development'.
14. The evidence with respect to the likelihood of protected species, most particularly bats, being present on this site is far from conclusive, with no ecologist representing either the appellants or the Council having visited the site. However, the appellants assert that while they have been resident at the property over the last three years they have been unaware of roosting bats.
15. On the available evidence, and having regard to the provisions of paragraph 99 of Circular 06/2005, I am not persuaded that this is a case where there is a reasonable prospect of protected species being present. I therefore consider that this is an instance when it would not be appropriate to dismiss this appeal because of the absence of ecological survey information. I also consider that it would be inappropriate to impose a condition requiring ecological survey work to be undertaken, given that it has not been demonstrated that there would be a reasonable prospect of protected species being found on site.
16. On this issue I therefore conclude that the development would not be harmful to protected species. With respect to this issue the Council has not drawn my attention to any relevant Local Plan policy or policies. I therefore find that there would be no conflict with paragraphs 109 and 118 of the National Planning Policy Framework (the Framework) in that no significant harm to biodiversity would arise from this development.

**Other Matters**

17. The dwellings would have on-site parking available to them at levels that are typical for modern housing and I see no reason why this development would result in undue levels of on-street parking in Clovelly Drive. Concern has been raised that this development might not make adequate provision for the

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<sup>3</sup> Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system

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disposal of surface water, however, this is a matter that is addressed by the Building Regulations and is therefore not for my consideration.

18. I am aware from the Council's committee report of 17 December 2015 that this site is located approximately 3Km to the north of The Swale Special Protection Area for Birds (SPA) and Ramsar site and 4.2Km to the east of the Medway Estuary and Marshes SPA and Ramsar site, which are afforded protection under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). The occupiers of this development have the potential to be visitors to the SPAs and activities associated with those visits could cause disturbance to the wildlife occupying the SPAs. To reduce the potential for such disturbance to arise Natural England promotes the collection of developer contributions as a means of funding an Access Management and Monitoring (SAMM) strategy for the designated areas.
19. However, I note that the SAMM strategy promoted by Natural England will involve the participation of several Councils and it remains to be adopted. The Council has also stated that as things currently stand it considers it inappropriate to collect developer contributions for schemes of less than ten dwellings because it may not be cost effective to do so and when the SAMM is adopted the contributions collected from developments of ten or more dwellings will provide a level of mitigation that will address the cumulative effects of the new residential development on the SPAs. The Council's Committee report further advises that Natural England recognises that the SAMM strategy remains to be adopted by the relevant north Kent authorities.
20. The Council determined that it would not be necessary for it to undertake an Appropriate Assessment under the Habitat Regulations because this scheme's implications for the SPA would be 'extremely minimal' and that its contribution to any cumulative effects would be addressed by the collection of contributions from larger schemes in the future.
21. Having regard to the scale of this development and its distance from the SPAs I am of the opinion that it would not of itself have a significant effect upon the designated areas. With respect to any cumulative effects on the SPAs limited information about the scale of future residential development in the area is before me. However, the Council's strategy of seeking SAMM contributions from larger scale developments in the future appears to be an appropriate approach and I am therefore content that this development would not give rise to an adverse cumulative effect upon the SPAs.

#### **Conditions**

22. The Council has suggested various conditions and I have considered the need for their imposition, having regard to the provisions of the Framework and the Planning Practice Guidance.
23. Apart from the standard time limit condition, I find it necessary that the development should be built to accord with the submitted plans for certainty. In order to safeguard the appearance of the area it is necessary that details of the external materials and landscaping be submitted for the Council's approval. It is also necessary that the garages and drives are available for use prior to the first occupation of the dwellings and then retained thereafter. I have therefore imposed conditions to address the aforementioned matters.

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24. This is a site that lies in close proximity to other residential properties and there is potential for construction noise to cause disturbance at sensitive times. The Council has suggested that with respect to the undertaking of impact piling that activity should be subject to slightly more restrictive hours than any other general construction works. While I consider it necessary to impose a condition regulating the construction working hours to safeguard the living conditions for neighbouring residents, given the scale of this development I do not consider it necessary to draw a distinction between the hours when piling and other constructions activities can be undertaken. I have therefore imposed a single condition limiting the construction hours to those of 07.30 to 19.00 on Mondays to Fridays and 07.30 to 13.00 on Saturdays.
25. There is potential for dust to be generated during the construction works, which could be prejudicial to the living conditions for the occupiers of neighbouring properties. I have therefore imposed a condition requiring dust suppression details to be submitted to the Council for approval. I, however, do not see the need to impose a condition requiring details of measures to prevent mud or other debris being brought onto the highway during the construction works, because the Highway Authority has not identified a need for such a condition.
26. A condition requiring the submission of details for the use of sustainable construction techniques has been suggested. However, no policy justification for this condition has been provided and such a condition could duplicate matters covered by the Building Regulations. I am therefore not persuaded of the need to impose a sustainable construction techniques condition.
27. This site lies within a Flood Zone 2 area, as identified by the Environment Agency and a flood risk assessment (FRA) has been submitted. However, the FRA does not identify any specific physical flood risk prevention measures that should be incorporated into the design of the dwellings or any managerial measures that should be adopted by the development's occupiers. I therefore find the suggested condition requiring compliance with the FRA would serve no purpose. However, the plans condition referred to above will require the dwellings to be constructed in accordance with the levels shown on the approved drawings. That would ensure that the upper floors and the rear gardens would be above the identified flood level.
28. The Council has suggested a condition requiring Plot 2's side dormer should be fitted with obscured glazing to safeguard the privacy of the occupiers of Lyndale. However that window would illuminate a stairwell and as such would not serve primary habitable accommodation. I am therefore not persuaded that the dormer window needs to be fitted with obscured glazing. I am similarly not persuaded of the need for the rooflights facing towards the dwelling within Plot 1 to be fitted with obscured glazing, because any outward views from them would be towards a roof slope that would be occupied by solar photovoltaic panels.

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### **Conclusion**

29. For the reasons given above I conclude that this appeal should be allowed.

*Grahame Gould*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PL01 - Location Plan; PL03 rev A - Site Plan as Proposed; PL04 rev A - Lower Ground Floor Plans as Proposed; PL05 rev A - Ground Floor Plans as Proposed; PL06 rev A - First Floor Plans as Proposed; PL07 rev A - Roof Plans as Proposed; PL08 rev A - Elevations Sheet 1 of 3 as Proposed; PL09 rev A - Elevations Sheet 2 of 3 as Proposed; PL10 rev A - Elevations Sheet 3 of 3 as Proposed; PL11 rev B - Sections AA & BB as Proposed; and PL14 - Elevations Street Scene.
- 3) No development above foundation level shall take place until details and samples of all external materials have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development above foundation level shall commence until hard and soft landscaping details have been submitted to and approved in writing by the local planning authority. These details shall include: existing trees and shrubs, schedules for new planting, noting species, plant sizes and numbers and densities; planting plans; written specifications for the establishment and cultivation of the plants; and an implementation and maintenance programme. The hard and soft landscaping works shall be carried out in accordance with the approved details, including the agreed implementation programme. Thereafter the planting shall be maintained in accordance with the approved maintenance programme.
- 5) Before the dwellings hereby permitted are first occupied the garages and drive parking spaces shown on the approved drawings shall be provided and made available for use. The garages and drive parking spaces shall be retained thereafter and not be used for any purposes other than the parking and manoeuvring of vehicles.
- 6) Demolition and construction works shall only take place between the hours of 07.30 to 19.00 on Mondays to Fridays inclusive and 07.30 to 13.00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 7) No development shall take place, including any works of demolition, until details for the suppression of dust during the demolition and construction phases of the development have been submitted to and approved in writing by the local planning authority. The approved details for the suppression of dust shall be adhered to throughout the demolition and construction phases of the development.