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## Appeal Decision

Site visit made on 18 July 2018

by H Miles BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4<sup>th</sup> September 2018

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**Appeal Ref: APP/V2255/W/17/3191039**

**Land to rear of 31 The Leas, Minster on Sea, Kent**

- 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 Jack Brown against the decision of Swale Borough Council.
  - The application Ref 17/503867/FULL, dated 21 July 2017, was refused by notice dated 29 September 2017.
  - The development proposed is the erection of a single storey dwelling using existing access, garage and vehicular turning area.
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### Decision

1. The appeal is allowed. Planning permission is granted for the erection of a single storey dwelling using existing access, garage and vehicular turning area in accordance with the terms of the application Ref 17/503867/FULL, dated 21 July 2017, subject to the conditions set out in the schedule at the end of this decision.

### Procedural Matters

2. Queries have been raised about the accuracy of some material in the appellant's appeal statement. This appeal has been assessed on the basis of all submitted information and has also been informed by a site visit. I am satisfied that I have a clear understanding of the site and surroundings on which to base my decision.
3. During the course of the consideration of this appeal the revised National Planning Policy Framework (the Framework) has been published. I have invited both main parties to submit comments on the relevance of the revised Framework to this case. I have taken any comments received into consideration and I have assessed this appeal in light of the revised Framework.

### Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area, and the effect on the living conditions of existing occupiers, particularly in relation to noise, disturbance and overlooking from the access.

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## Reasons

### *Character and Appearance*

5. The Leas is characterised by (mainly) residential properties on one side, with an open aspect towards the beach on the other. There are a variety of different styles of property, some with large rear gardens, generally one or two storeys in height. I observed at my site visit that there are some buildings in the rear gardens surrounding the site of varying type, scale and size.
6. An unmade section of Minster Drive is in close proximity to the site and includes dwellings sited perpendicular to the adjoining main roads (The Leas and Southsea Avenue). The properties in this area also have smaller sized rear gardens.
7. 31 The Leas is a single storey dwelling with a large rear garden. A driveway runs between number 31 and 32 which provides rear access (including to garages and parking) for some of the adjoining dwellings.
8. Given that in very close proximity to the site there are properties which, although they do front the unmade part of Minster Drive, do not front the main roads, and that there are properties which do not benefit from large rear gardens, I consider that this variety in garden size, orientation and road frontage form part of the character and appearance of the area. As such, the subdivision of the rear garden would not cause harm to the character of the area, which I find already has similar plots.
9. The proposed new dwelling would not have a road frontage to The Leas. However, I have addressed above that I consider similar development to Minster Drive to form part of the character of this area (albeit that Minster Drive is a slightly wider, but partly unmade, through road). Furthermore, I do not find that this area is characterised by development solely fronting the main roads. Therefore I do not consider the proposed dwelling's lack of frontage to the Leas to be harmful to the character and appearance of the area.
10. The single storey scale is in keeping with the height of development in the surrounding area. Due to site levels, which slope upwards away from the road, the ridge of the roof of the proposed new dwelling would be higher than the host property. However, given the land continues to fall away to the road and the beach beyond it is likely that the proposed ridge height would be screened by the host property in any public views.
11. Taking all this into consideration, I conclude that the proposed development would not cause harm to the character and appearance of the area, and would in this respect be in accordance with Policy DM14 of the Swale Borough Local Plan – Bearing Fruits 2031 (the Local Plan) which in part requires development to reflect the positive characteristics of the site and locality, and to be appropriately sited and designed.

### *Living Conditions*

12. The driveway is currently used to provide access to parking spaces and garages. Therefore there is an existing situation with noise and disturbance, and passing overlooking to the rear of the adjoining properties, from those using the driveway.

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13. As a result of this proposal, 31 The Leas would no longer have access to car parking at the rear of their property. Therefore the number of households using this access route would not change.
14. Concerns are raised that movements along the driveway would increase due to the change from the access serving an ancillary garage/parking space to a dwelling. However I am not presented with evidence to confirm the existing nor expected number of movements. Given the access would continue to serve the same number of properties and parking spaces, I am not lead to conclude that the number of movements would notably increase.
15. Therefore I find that the change in comings and goings, is unlikely to result in a significant increase in overlooking, noise or disturbance over and above the existing situation. Consequently I conclude that the proposed use of the driveway would not cause harm to the living conditions of existing occupiers. As such, in this respect, I find the proposals to be in accordance with Policy DM14 of the Local Plan which, in part, states that development should cause no significant harm to amenity.

#### **Other Matters**

16. Comments have been made regarding what could be built under permitted development at this site. I have not been presented with an application or decision for a certificate of lawfulness. Therefore I do not consider there to be a reasonable prospect of such an alternative development coming forward. As such I afford this fallback position limited weight.
17. With regard to the issue of precedent, the appeal has been considered on the evidence before me and on its own merits, and future applications and appeals would be considered on this basis.
18. The effect on living conditions of existing occupiers has been drawn to my attention. This matter is largely identified and considered within the Council officer's report. Concerns have also been raised regarding access for emergency services vehicles. The Council did not raise concerns with this in their officer's report, nor am I presented with any objection on this ground from transport or highways officers. The Council did not feel that these were reasons to refuse the application. I have been provided with no substantive evidence which would prompt me to disagree with the Council's conclusions on these matters.
19. I have had regard to comments relating to access to the site during construction, and a condition is proposed to ensure impacts during construction are considered in relation to the living conditions of neighbouring occupiers and highway safety.

#### **Conditions and Conclusion**

20. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents.
21. Conditions setting a time limit for commencement of development and for it to be carried out in accordance with the approved plans are necessary to provide certainty. A condition relating to materials is necessary to ensure that the

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effect of development on the character and appearance of the area is acceptable. A condition relating to implementation and use of the car parking is required to ensure adequate provision of car parking is provided. A condition requiring specific details in relation to management during the construction phase is necessary in the interests of highway safety and living conditions, and these details are required prior to commencement to ensure these measures are implemented from the outset. I have attached a condition in relation to working hours to protect living conditions of existing occupiers.

22. The Council has requested a condition relating to landscaping. However, as the relevant land at this site consists of private gardens and as the area is not significant in landscape terms, I do not consider that this would meet the test of necessity. I have also omitted the suggested condition in relation to sustainable construction techniques as I am not provided with evidence to demonstrate that such measures would meet the test of necessity in this case.

23. For the above reasons, and subject to the conditions listed, I conclude that the appeal should be allowed.

*H Miles*

INSPECTOR