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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/18/3196311**

**Land between 90 and 92 Barton Hill Drive, Minster-on-Sea ME12 3NF**

- 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 Hussain against the decision of Swale Borough Council.
  - The application Ref 17/506148/FULL, dated 27 November 2017, was refused by notice dated 23 January 2018.
  - The development proposed is a 1 bedroom house.
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### Decision

1. The appeal is allowed. Planning permission is granted for a 1 bedroom house in accordance with the terms of the application Ref 17/506148/FULL, dated 27 November 2017, subject to the conditions set out in the schedule at the end of this decision.

### Procedural Matters

2. During the course of the consideration of this appeal the revised National Planning Policy Framework (the revised 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 Issue

3. Although the application was refused for two reasons, I consider the main issue in this appeal is whether the changes to the rear access road would cause unacceptable harm to the living conditions of neighbouring residents.

### Reasons

#### *Living Conditions*

4. The proposed development would lead to the closure of one end of an unmade rear access road which serves the rear of properties on Barton Hill Drive and Nautilus Drive. Some of these properties have gates, garages and/or parking spaces which are served by this access road.
5. The Highway Authority do not object to the proposal and have commented that the alternative access from Dreadnaught Avenue would be suitable for most vehicles and from my observations I do not disagree with this. I note that in parts the access road is narrow and there are limited places to pass, however due to low vehicular volumes and speeds this would not prevent its use. Also,

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in contrast to the 90 degree bend through the appeal site, there is excellent forward visibility as one travels towards Dreadnought Avenue. Consequently, the closure of the southern access onto Barton Hill Drive would reduce the likelihood of vehicles meeting at the bend and having to undertake lengthy reversing manoeuvres. Therefore I find that the access from Dreadnought Avenue would provide a usable, safe and convenient vehicle access point to the rear of these properties.

6. Both ends of the access road are similar in nature in that they are unmade. Therefore the appeal and convenience of the alternative entrance/exit lies mainly in whether its distance would be so far as to deter residents from using it. The Council has not quantified how many existing dwellings benefit from rear access nor are there any calculations as to how much longer it would take residents to enter/exit via Dreadnought Ave. Without such information I am unclear how the Council came to their view on the issue of neighbour amenity. I note that direct access to the rear of properties is achievable from the existing garages and car parking spaces (so once parked, occupiers would not have to walk back to the main road to enter their property). I do not consider this would be a significant inconvenience. It therefore follows that the development would be unlikely to result in additional on-street parking in the locality.
7. I note concerns have been raised as to the legal right of access via Dreadnought Avenue, however this arrangement appears to have existed for many years and I have not been presented with evidence to demonstrate that it is likely to be withdrawn. This argument therefore attracts very limited weight. The Council also question whether the applicant benefits from any formal access rights to use the rear access road. Notwithstanding that the Council has not presented any evidence to suggest otherwise, I concur with the appellant that it seems reasonable to assume that future occupiers of the dwelling would enjoy the same rights as other properties than back onto the road. Even if I am wrong about that, these would be private legal matters and not a material planning considerations to which I can attribute any degree of weight.
8. A single parking space is proposed to the rear of the proposed new dwelling which would be accessed from the rear vehicle access road. Concern has been expressed about the convenience, usability and access rights to this space, and in these respects my conclusions are the same as those explained above for other residents using this access road. As such I find that this space would not be so inconvenient as to prevent its use.
9. For these reasons I conclude that the development would not cause significant harm to the living conditions of the existing occupiers and that, in this respect, the proposal would be in line with Policies DM7 and DM14 of the Swale Borough Local Plan – Bearing Fruits 2031 which include the aim that development proposals will not cause significant harm to amenity and should provide adequate on-site parking.

#### **Other Matters**

10. Issues including right of access to the appeal site, character and appearance (including in terms of the impact on value of property), effect on living conditions of existing occupiers, the loss of a family house and the combined impact with the neighbouring property have been drawn to my attention. These

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matters are largely identified and considered within the Council officer's report and 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.

#### **Conditions and Conclusion**

11. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the revised Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents.
12. 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 sustainable energy and water conservation measures is required to promote energy and water efficiency. A condition relating to materials is necessary to ensure that the effect of development on the character and appearance of the area is acceptable. A condition in relation to foul and surface water disposal is necessary to prevent pollution of water supplies.
13. In view of the scale of development, its location and likely construction period, I am not persuaded that a Construction Transport Management Plan or relating construction conditions are required and have omitted the suggested conditions accordingly. I have however attached a condition in relation to working hours to protect living conditions of existing occupiers.
14. 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.
15. The Council has recommended a condition restricting permitted development rights for the proposed new dwelling. However, Planning Practice Guidance notes that these conditions should only be used in exceptional circumstances. I do not consider that the circumstances of this case (a single new dwelling in a residential area) amount to exceptional circumstances, nor have I been presented with evidence to justify this. Therefore I do not consider that this condition meets the test of necessity and so it is not included below.
16. For the above reasons, and having regard to all other matters, raised I conclude that the appeal should be allowed.

*H Miles*

INSPECTOR

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**Schedule of Conditions**

- 1) The development hereby permitted shall begin no 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 plan: 1333 01B.
- 3) No development beyond the construction of foundations shall take place until details in the form of samples of external finishing materials to be used in the construction of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.
- 4) None of the dwellings hereby permitted shall be occupied until works for the disposal of foul and surface water shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 5) Demolition or construction works shall take place only between 0730 – 1900 hours on Monday to Friday and 0730 – 1300 hours on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.