



Appeal Decision

Site visit made on 15 May 2018

by N A Holdsworth MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2018

Appeal Ref: APP/V2255/W/17/3188809

Cromas, Callaways Lane, Newington, ME9 7LX

- 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 Paton of TSP Property Developments against the decision of Swale Borough Council.
 - The application Ref 17/503997/FULL, dated 31 July 2017, was refused by notice dated 16 October 2017
 - The development proposed is the construction of a detached, single residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The building adjacent to the site of the proposal is described by the appellant as "Cromas", and the Council as "Cromac". I have used the description by the appellant, as reflected on the planning application form and in the appeal statement.
3. The revised National Planning Policy Framework ("the Framework") was published on 24 July 2018. Both main parties have had the opportunity of commenting on this document in the course of this appeal.

Main Issue

4. The main issues in this appeal are the effect of the development on:
 - i) the character and appearance of the area, including consideration of whether the proposed development would preserve or enhance the character or appearance of the Newington Manor Conservation Area; and
 - ii) the integrity of the Medway Estuary and Marshes Special Protection Area.

Reasons

Character and Appearance

5. The building would be constructed on a parcel of land to the south of the building known as Cromas. The surrounding buildings along Callaways Lane primarily appear as detached chalet bungalows, but differ in terms of their appearance and detailed design.

6. As a detached dwelling, the proposal would reflect the prevailing pattern of development. I accept that it would have a front facing gable wall, unlike many of the other properties which have long horizontal ridge lines facing the road. However, it would be set back away from the road and would be broadly aligned with the other buildings facing Callaways Lane. In this context, it would not appear unduly out of place.
7. There would be less space between the building and its boundaries than other properties found along Callaways Lane. However there is sufficient space around the building to avoid appearing cramped. Overall, I consider that the orientation of the building is an effective design response to the proportions of this corner plot, and the new building would not diminish the setting of any nearby residential buildings.
8. The vehicular access largely reflects the arrangement approved by the Council in a previous decision on the site¹. That approval involved enlarging Cromas to create 2 semi-detached dwellings. Whilst the enlarged building in that case would more closely replicate the bulk of surrounding properties, it would be split in to two dwellings, and in that regard would noticeably depart from the prevailing pattern of development. Consequently, I do not agree that it represents an improvement compared with this proposal. I consider that the proposal before me would relate well to the proposed dwelling² across the country lane to the immediate south of the site.
9. The site falls within the wider setting of the Newington Manor Conservation Area. The special character and significance of this area is derived from Newington Manor, and the historic buildings connected with it. The proposed building would follow the prevailing pattern of modern built development on the approach towards the Conservation Area on Callaways Lane. It would not appear unduly conspicuous, cramped or out of place in this context. There would be no harm to the setting of the Conservation Area.
10. I therefore conclude that there would be no harm to the character and appearance of the area. Both the character and the appearance of the Newington Manor Conservation Area would be preserved, under these proposals. There is no conflict with policies CP4, DM14 and DM33 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 ("Local Plan") which requires that, amongst other things, development will be of a high quality design that is appropriate to its surroundings, preserving or enhancing the features that contribute positively to the special character of Conservation Areas.

Special Protection Area.

11. The application site is located within around 2.8km of the Medway Estuary and Marshes Special Protection Area and Wetland of International Importance under the Ramsar Convention (hereafter referred to as the "SPA"), which is a European designated site. This is due to the international significance of this area for wintering birds, in particular waders and waterfowl. The evidence before me indicates that there have been marked declines in the number of birds using the SPA, which can be directly linked to those locations with high levels of public access. The proposal is not directly connected with or necessary to the management of the SPA. The Council identifies the potential for bird

¹ 17/500525/FULL

² 17/501702/FULL

- disturbance within the SPA, arising from the likelihood of increased recreational disturbance (including dog walking) as a consequence of this proposed development.
12. The proposal comprises one additional dwelling with 2 bedrooms. I note that there are local areas of public open space close to the site, including Newington Recreation Ground, and an extensive network of public rights of way in the surrounding countryside. However, the site's distance to the SPA means that there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of the development. Although this may be minimal of itself, a significant effect would occur, particularly when considered in combination with other new residential development in the surrounding area.
 13. This reflects the position of Natural England, to which I attach significant weight. It is also a view shared by the Council. In these circumstances, the Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations") requires that an Appropriate Assessment is carried out. I have sought further evidence from the main parties on this matter, and Natural England has been consulted in the course of this appeal. Further public consultation is not appropriate on this occasion.
 14. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European site. I may give consideration to any conditions or other restrictions which could secure mitigation and so enable it to be ascertained that the proposal would not adversely affect the integrity of the site. This could potentially include a financial contribution secured through a planning obligation to be used for suitable works or management practices. However, whilst Natural England suggest that mitigation could be secured by an appropriate financial contribution to the Thames, Medway and Swale Strategic Access, Management and Monitoring Strategy, there is no method before me of securing such a contribution. Similarly, whilst the Council may not yet have put in place the full measures to achieve mitigation, that is not in itself a reason to absolve the appellant of the need to provide such mitigation.
 15. In this case, on the evidence before me, I consider that there is a potential for recreational disturbance to the SPA through additional activity associated with this residential development, which would affect the integrity of this European site. The evidence before me suggests that such activity has the potential to intensify the decline of bird populations within these areas. The lack of any acceptable mitigation means that the proposal would affect the integrity of this European site.
 16. The Habitats Regulations requires me to consider whether there are any alternative solutions. However, no such solutions have been put forward for my consideration.
 17. The evidence before me indicates that priority habitat or species on the site would be adversely affected by this proposal. I must also consider whether there are any imperative reasons of overriding public interest. In this case the development involves the provision of a single dwelling. It would fulfil a housing demand and is well located, in an existing settlement in close proximity to services and public transport links. A good standard of accommodation is provided, with vehicular parking in accordance with the relevant requirements of the development plan. For the reasons set out in the

first main issue of this appeal, the development would have an appropriate appearance in relation to its surroundings and would not lead to any harm to the setting of nearby designated heritage assets. However, these considerations are not, even cumulatively, sufficient to amount to an 'imperative reason of overriding public interest'. Consequently, having regard to the Habitats Regulations, permission must not be granted for the development proposed. In these circumstances the presumption in favour of sustainable development, set out in paragraph 11 of the Framework, does not apply.

18. The appellant points to the Habitats Regulation Assessment carried out by the Council in its officer report. This concludes that mitigation measures are required, but does not identify any specific actions that would fulfil such a requirement. It suggests that mitigation will be achieved in the future through developer contributions applying to other future schemes that would retrospectively cover the impact of development such as this.
19. However, an intention to achieve mitigation in the future is not sufficient as I cannot be certain when or if it would be in place. Furthermore, any planning obligations imposed on future development would be subject to the test, set out paragraph 56 of the Framework that they are directly related to the development in question. An obligation imposed on future development that seeks to retrospectively address the impact of development previously approved by the Council would be unlikely to meet this test. The various actions being discussed by the Council would not address the impact of the development and do not amount to mitigation for the purposes of the Habitats Regulations.
20. I appreciate that the Council does not want to overburden small developers with financial obligations, and that such agreements consume significant resources on all parties concerned. However, these considerations do not overcome the need to comply with the Habitats Regulations and address potential harm to protected sites.
21. My attention is drawn to another circumstance where an Inspector allowed an appeal within the same authority³, where the Council took a similar approach to the Habitats Regulations Assessment to that set out above. However, case law⁴ in the intervening period has emphasised the need to carry out an Appropriate Assessment where mitigation measures are proposed. My findings reflect the Appropriate Assessment I have carried out in this decision. In doing so I consider that I have correctly applied the requirements of the Habitats Regulations.
22. I therefore conclude that the proposed development would result in harm to the integrity of the Medway Estuary and Marshes SPA, having an adverse effect on this European site without any mitigation. It conflicts with Policies CP7 and DM28 of the Local Plan which seek to, amongst other things, protect natural assets and restrict development that has an adverse effect on the integrity of a European site.

³ APP/V2255/W/17/3168745

⁴ Court of Justice of the European Union (CJEU) 12 April 2018: People over Wind & Sweetman v Coillte Teoranta

Other Matters

23. I note that there are objections to the proposal from interested parties. However, as the appeal is failing, I have not considered them further.

Conclusion

24. I have found that the proposed development is acceptable in terms of its effect on the character and appearance of the area and the setting of nearby heritage assets. However, it would lead to unacceptable harm to the Medway Estuary and Marshes SPA, and conflicts with development plan policies in this regard. There are no other considerations that indicate that the proposal should be determined other than in accordance with the conflict with the development plan. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal shall be dismissed.

Neil Holdsworth

INSPECTOR