

3.3 REFERENCE NO - 18/506680/FULL			
APPLICATION PROPOSAL Erection of a new detached two storey dwelling with habitable loft space and detached garage.			
ADDRESS Land South of 106 Scrapsgate Road Minster-on-Sea Sheerness Kent ME12 2DJ			
RECOMMENDATION Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The proposed development would have a detrimental impact on the amenities of the neighbouring residential occupiers and in the absence of any mitigation would have an adverse effect on the SPA and Ramsar site.			
REASON FOR REFERRAL TO COMMITTEE Recommendation contrary to Parish Council support.			
WARD Minster Cliffs	PARISH/TOWN COUNCIL Minster-On-Sea	APPLICANT Mr A Brooks AGENT Anderson Design	
DECISION DUE DATE 11/03/19	PUBLICITY EXPIRY DATE 10/06/19		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/500006/FULL	Erection of new detached dwelling and garage	Granted	17.10.2016
The application was approved because it was considered to be in accordance with national and local planning policy, and the development would not have given rise to any significant amenity issues for neighbouring residents.			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site is located on the western side of Scrapsgate Road. It comprises a rectangular parcel of land which currently forms part of the garden of No.106 Scrapsgate Road, a large detached bungalow. The site has a frontage width of 14m, a depth of 45m and an area of approximately 630sqm.
- 1.02 Scrapsgate Road is wholly residential in character comprising a mix of bungalows and two storey houses of varied design and period. The site is bounded by a mixture of bungalows to the north and south; open fields in equestrian use to the west; and, to the east on the opposite side of Scrapsgate Road by a two storey detached house and the rear gardens of two storey semi-detached houses fronting Kent Avenue.

2.0 PROPOSAL

- 2.01 The application seeks planning permission for the erection of a two storey detached house with rooms in the roofspace.
- 2.02 The proposed house would be set back some 25m from the public highway and 2m from the side boundaries with each of the neighbouring bungalows. It would have a

depth of 9.7m, a width of 9.5m and would be finished with a pitched roof having an eaves height of 5.5m and a ridge height of 9.5m. There would be a half width, flat roofed single storey projection to the rear with a depth of 4m and a height of 2.9m. The dwelling would be finished in red face brick with decorative soldier courses and brindle concrete roof tiles.

- 2.03 The accommodation would comprise a lounge, kitchen/dining room, study, bathroom and utility room on the ground floor; three bedrooms and a bathroom on the first floor; and a bedroom, bathroom and storage area within the roofspace. One of the first floor rear facing bedrooms would have a Juliet style balcony and the second would have a pair of glazed doors providing direct access to the flat roof of the single storey rear projection.
- 2.04 Amenity space provision would comprise a 10m deep private rear garden and an additional 10m to 12m deep amenity area to the front.
- 2.05 There would be a detached double garage towards the front of the property set back 6m from the back edge of the footway on Scrapsgate Road. It would have a 5.7m x 5.7m footprint and would be finished with a pitched roof with an eaves height of 2.7m and a ridge height of 4.4m.
- 2.06 The application currently under consideration is a revision to planning permission 16/500006/FULL, which granted consent for the erection of a two storey house and garage towards the front of the plot, roughly in-line with the existing building line. The applicant has indicated that a mains sewer runs across the site (as per Southern Water's comments, below) *'which was going to be rerouted to allow the building to be constructed as indicated on the original application. However, despite lengthy negotiation and dialogue an agreement cannot be reached with Southern Water regarding the house position. The building therefore needs to be repositioned further back on the site to give the necessary clearance from the sewer.'*
- 2.07 The salient differences between the current and previous approved scheme are as follows:
- The proposed dwelling has been set back from the public highway by 25m rather than 15m; and,
 - An attached garage at the front of the building has been replaced by a detached garage.

3.0 PLANNING CONSTRAINTS

- 3.01 Environment Agency Flood Zone 3.

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF)
The NPPF and the National Planning Policy Guidance (NPPG) both advocate the provision of new residential development within sustainable urban locations close to local shops and services, subject to good design and no serious amenity issues being raised.
- 4.02 Bearing Fruits 2031: The Swale Borough Local Plan 2017
ST1 - Delivering sustainable development in Swale
ST2 - Development targets for jobs and homes 2011 – 2031
ST3 - The Swale settlement strategy

ST4 - Meeting the Local Plan development targets
 CP2 - Promoting sustainable transport
 CP3 - Delivering a wide choice of high quality homes
 CP4 - Requiring good design
 DM6 - Managing transport demand and impact
 DM7 - Vehicle parking
 DM14 - General development criteria
 DM19 - Sustainable design and construction
 DM21 - Water, flooding and drainage
 DM28 - Biodiversity and geological conservation

4.03 The Council's adopted Supplementary Planning Guidance entitled "Designing an Extension" is also relevant in as far as it advises that the maximum projection beyond the rear of existing houses should be 3m at ground floor and 1.8m at first floor.

5.0 LOCAL REPRESENTATIONS

5.01 No responses received.

6.0 CONSULTATIONS

6.01 Minster-on-Sea Parish Council supports the application, but does not provide any specific comments.

6.02 Natural England has no objection subject to securing a standard SAMMS contribution to mitigate against additional harm to the Swale SPA brought about by recreational disturbance from new residential development (new residents walking dogs in the SPA, for example).

6.03 KCC Highways and Transportation do not comment save to note that the scale of development falls below their protocol response threshold.

6.04 Environment Agency objects to proposed development "*due to inadequate assessment of flood risk.*" They comment that the site lies within Flood Zone 3 (the highest risk zone) and a full assessment of the implications of potential flooding and consequent finished floor levels within the dwelling must be assessed.

6.05 Southern Water- raise no objection subject to standard conditions and informatives. They have also provided a sewer plan showing the public sewer crossing the site at the point where the dwelling approved under 16/500006/FULL was going to be positioned (hence the reason for this alternative proposal).

7.0 BACKGROUND PAPERS AND PLANS

7.01 The submission documents include existing and proposed site plans, proposed elevations and floor plans, a Design and Access Statement and a Flood Risk Assessment.

8.0 APPRAISAL

8.01 The main considerations in the determination of this application are:

- Principle of development
- Design and visual impact on the locality;

- The impact on the amenities of neighbouring occupiers;
- Standard of accommodation provided for the future occupiers;
- Highways and parking;
- Ecology; and,
- Flood risk.

Principle of Development

- 8.02 The application site lies within the built up area boundary of Minster-on-Sea where new residential development is acceptable as a matter of principle. Planning permission was granted in October 2016 for the erection of a two storey house and garage (Ref: 16/500006/FULL) on the site. Therefore, it is considered that there are no objections in principle to the proposed development.

Design and Visual Impact

- 8.03 Policy CP4 of the Local Plan seeks to ensure that all development will be of a high quality design that is appropriate to its surroundings and Policy DM14 states that all development proposals should be well sited and of a scale, design and appearance that is sympathetic and appropriate to its location.
- 8.04 In its assessment of the earlier scheme the Council considered that although the proposed two storey dwelling would be sited between two bungalows, the varied nature of the townscape was such that this relationship would not appear out of character or be detrimental to the visual amenities of the area. In the current submission the proposed house would be set back a further 10m from the public highway, well behind the front building line established by the neighbouring bungalows. Therefore, it is considered that the house would appear significantly less prominent in the street scene and the contrast in heights between the proposed building and the adjoining bungalows less pronounced.
- 8.05 In terms of its scale, design and external appearance the proposed house is similar to that previously approved. Notwithstanding this, it is recommended that in the event of planning permission being granted, a condition be imposed requiring the submission and approval of materials.
- 8.06 The garage previously approved aligned with the front building line of the bungalow to the south of the site (i.e. No.104). In this case, although the proposed detached garage would project forward by a further 2m, it is not considered that it would appear unduly prominent or out of character within the street scene.
- 8.07 In respect of its design and appearance it is considered that the proposal accords with the aims and objectives of Policies CP4 and DM14 of the Local Plan.

Impact on Residential Amenity

- 8.08 Policy DM14 of the Local Plan seeks to ensure that new development does not adversely affect the amenities of the occupiers of adjoining and nearby properties. It is considered that in its amended position within the site the proposed two storey house would result in harmful levels of overlooking and an overbearing impact upon the neighbouring properties.
- 8.09 In the approved scheme the two storey side elevation of the proposed house would project to the rear of the bungalow to the south of the site (No.104) by 3.8m whilst in

the current application it would project some 14m. It is noted that No.104 has a low single storey outbuilding running along part of the common party boundary with the application premises however, it is considered that with a rearward projection to this depth, and an expansive two storey gable end sited only 2m from the boundary, would create a significant and oppressive sense of enclosure and would lead to an unacceptable overbearing impact upon the occupiers of No.104.

- 8.10 The proposed single storey element to the rear of the dwelling would have a flat roof onto which access could be gained from a first floor bedroom via a set of glazed double doors. It is considered that in the absence of any screen balustrading, the potential use of the flat roof as a sitting out area would give rise to both actual and perceived overlooking to the rear garden of No.104 to the detriment of the privacy of the occupiers.
- 8.11 Although the flat roof of the single storey part of the proposed house would be set back 7m from the boundary with No.106, in the absence of satisfactory screening, it is considered that its potential use as a terrace would give rise to an unacceptable degree of both actual and perceived overlooking to the rear garden of the property, adversely affecting the privacy of the occupiers.
- 8.12 The proposed two storey house would project 5m beyond the rear elevation of No. 106 and would be sited 2m away from the common party boundary with a building to building separation of approximately 3.5m. Given that the proposed house would be located to the south of No.106, it is considered that this spatial relationship would result in an unacceptable level of overshadowing to the rear garden of the property and the nearest rear facing habitable room window.
- 8.13 In conclusion, it is considered that the proposed dwelling, by reason of its size, siting and design, would have a harmful impact on the outlook and privacy of the adjoining residential occupiers, contrary to the aims and objectives of Policy DM14 of the Local Plan.

Standard of Accommodation/ Residential Environment Provided for the Future Occupiers

- 8.14 The dwelling is of a satisfactory size and would provide a good standard of accommodation for the future occupiers. With a rear garden depth of 10m, the size and quality of the amenity space provision would be satisfactory.

Highways and Parking

- 8.15 The proposed access and parking arrangements are comparable to those previously approved and as such, there would be no detrimental impacts on the level of on-street parking or highway safety.

Landscaping

- 8.16 Only limited details of landscaping have been provided in the submitted Design and Access Statement. Therefore in the event of planning permission being granted it is recommended that landscaping and planting details should be secured by condition.

Flood Risk

- 8.17 The application site is located within Flood Zone 3 and is at risk of both tidal and fluvial flooding. The Environment Agency had no objections to the previously approved

scheme. However, in this case it has reviewed the submitted Flood Risk Assessment and has indicated that it provides an inadequate assessment of the potential flood risk and that the ground floor level may not be of sufficient height above the 1 in 200 year design flood level to ensure that ground floor level residential accommodation is both appropriate and safe. This amounts to a reason for refusal.

Impact upon SPA and Ramsar Sites

- 8.18 Since this application will result in a net increase in residential accommodation impacts to the SPA and Ramsar sites may result from increased recreational disturbance. An HRA/AA is set out below. Due to the scale of the development there is no scope to provide on site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £245.56 per dwelling. Given that the application is fundamentally flawed, particularly in relation to its impact on the amenities of neighbouring residential occupiers, the case officer considered that it would serve no material planning purpose to request the applicant to agree to make this mitigation payment.

Other Matters

- 8.19 It is acknowledged that the applicant has been unable to implement the original planning permission due to constructional difficulties arising from the presence of a sewer that runs through the site. However, this is not a consideration of such significance as to outweigh the detrimental impact that the re-positioned dwelling would have on the amenities of the adjoining residential occupiers.

9.0 CONCLUSION

- 9.01 Although the principle of residential development at this site is acceptable, a dwelling of this scale in the proposed position to the rear of existing properties would have an unacceptably harmful impact on the amenities of the neighbouring residential occupiers. In the absence of a commitment by the applicant to provide an appropriate mitigation payment the proposed development would have a harmful impact on the SPA and Ramsar site. For these reasons it is recommended that the application is refused.

10.0 RECOMMENDATION – REFUSE for the following reasons:

- (1) The proposed dwelling would, by reason of its siting, size and design, have a detrimental impact on the residential amenity of the occupiers of Nos.104 and 106 Scrapsgate Road through loss of outlook, overlooking, overshadowing, overbearing sense of enclosure, and loss of privacy contrary to Policy DM 14 of Bearing Fruits 2031: The Swale Borough Local Plan (2017) and the Council's adopted Supplementary Planning Guidance entitled 'Designing an Extension'.
- (2) 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, contrary to Policies CP7 and DM28 Bearing Fruits 2031: The Swale Borough Local Plan (2017) 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) The submitted Flood Risk Assessment provides insufficient information to satisfy the Local Planning Authority that suitable flood mitigation would be

provided to ensure safe residential occupancy at ground floor level contrary to Policy DM 21 of Bearing Fruits 2031: The Swale Borough Local Plan (2017).

The Council's approach to this application:

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/ agents in a positive manner and proactive manner by:

- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/ agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and there were not considered to be any solutions to resolve this conflict.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

APPROPRIATE ASSESSMENT UNDER THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the

impacts of a development on protected area, *“it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.”* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required by way of a financial contribution towards strategic access, maintenance, and management (a SAMMs contribution) of the SPA. No mitigation has been provided in the case of this application, and the development therefore has the potential to harm the integrity and objectives of the SPA. This amounts to a reason for refusal, as set out within the report.

