



The Planning Inspectorate

Appeal Decision

Site visit made on 26 March 2019

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 June 2019

Appeal Ref: APP/V2255/18/3215555

32 The Broadway, Minster-On-Sea ME12 2RR

- 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 & Mrs Raggett against the decision of Swale Borough Council.
 - The application Ref 18/502184/FULL, dated 24 April 2018, was refused by notice dated 17 August 2018.
 - The development proposed is 1 no. new dwelling within sub divided plot(s).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the Council determined the application, the Government has published the results of the 2018 Housing Delivery Test (HDT) measurement and the main parties have been given the opportunity to comment on the implications for this case.
3. The site is located approximately 1.4km from The Medway Estuary and Marshes Special Protection Area (SPA) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not forming part of the Council's reason for refusal, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. It is necessary to consider this matter as a main issue.

Main Issues

4. The main issues are therefore:
 - the effect of the development on the integrity of the SPA;
 - the effect of the proposed development on the occupiers of 28 and 32 The Broadway with regard to outlook, daylight and sunlight, and;
 - whether the proposed development would provide adequate living conditions for future occupiers in terms of privacy.

Reasons

Effect on the SPA

5. The main parties and Natural England are in agreement that the proposed development is likely to have significant effects on the features of interest of

<https://www.gov.uk/planning-inspectorate>

Appeal Decision APP/V2255/18/3215555

the SPA, due to the increased recreational use generated by the proposed development, in combination with other development. I have no reason to disagree with this conclusion. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment is carried out. I have sought further evidence on this matter, and Natural England was consulted in the course of the application.

6. I am aware of a recently dismissed appeal¹ for one dwelling, where the Inspector noted that this SPA was designated due to the international significance of the area for wintering birds, in particular waders and waterfowl, whose numbers were in marked decline, in locations with high levels of public access. I understand from the evidence that the primary causes of bird disturbance include walking, dog walking and predation of birds by cats. In this case, the proposal comprises an additional dwelling with two bedrooms, and due to its proximity to the SPA there is a reasonable likelihood that it would be accessed for recreational purposes by future occupiers of the development. Although this may be minimal by itself, a significant effect on the integrity of the SPA would occur, when considered in combination with other residential development in the surrounding area.
7. 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 provide certainty that the proposal would not adversely affect the integrity of the site. Due to the small scale of the proposed development there is no scope to provide on-site mitigation. However, Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects, in the form of the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Scheme, (SAMMS) which requires financial contributions from developments.
8. The appellant has submitted an agreement pursuant to Section 111 of the Local Government Act 1972, Section 12 and Section 93 of the Local Government Act 2003 and Section 1 of the Localism Act 2011 (the Section 111 Agreement), to deliver a payment towards the cost of measures identified in the SAMMS to mitigate the effects of the development on the SPA. However, that is not the end of the matter as I need to be certain that the payment now paid would be justified and used for its intended purpose as mitigation.
9. The mitigation works would be carried out by Bird Wise, the brand name of the North Kent SAMMS Board, which is a partnership of local authorities, developers and environmental organisations. However, there are no details before me of a mitigation strategy, the justification for the mitigation tariff payment levels, the arrangements for administering the payments for their intended purpose and the nature of the mitigation measures, including effectiveness. Accordingly, I am not satisfied that an appropriate means of securing mitigation has been provided and I cannot therefore be certain that the proposal would not adversely affect the integrity of the site.
10. The evidence before me indicates that there is potential for recreational disturbance to the SPA through additional activity associated with the proposed development, which has the potential to affect the integrity of the SPA. The Habitats Regulations require me to consider whether there are any alternative

¹ APP/V2255/W/17/3188809

Appeal Decision APP/V2255/18/3215555

solutions. However, no such solutions have been put forward for my consideration. I must also consider whether there are any imperative reasons of overriding public interest. The provision of a single dwelling, taking into account the merits of the case, is not sufficient to amount to such overriding public interest. Consequently, having regard to the Habitat Regulations, permission must not be granted. I therefore conclude that the proposed development would result in harm to the integrity of the SPA.

Living conditions of the occupiers of 28 and 32 The Broadway

11. The appeal site is formed of the rear section of the gardens of a pair of semi-detached dwellings on a corner plot. The existing dwellings front onto The Broadway, and the appeal site has a frontage to Abbeyview Drive. The local topography is such that Abbeyview Drive slopes down towards The Broadway, so that the appeal site is set lower than the neighbouring dwellings at 1 Abbeyview Drive, and higher than the existing dwellings on The Broadway.
12. The appeal site contains a double garage with access from Abbeyview Drive. The proposal would replace the garage with a single storey bungalow with a low pitched roof. The resulting rear gardens for Nos 28 and 32 would be significantly shortened and as a result the outlook from the gardens and rear windows of Nos 28 and 32 would be restricted by the new boundary fence with the single storey bungalow behind, which would be set higher than the ground level of Nos 28 and 32. However, due to the single storey nature of the proposed dwelling, with a shallow pitched roof, it would not appear imposing, prominent or overbearing in the outlook from the garden or the rear ground floor windows.
13. The existing rear gardens and rear ground floor windows of Nos 28 and 32 currently benefit from morning sunlight, with some overshadowing being caused by the dwelling at 1 Abbeyview Drive, due to its elevated position and high roof ridge. As a result of the development, some limited loss of morning sunlight would occur to the garden and rear windows of No 32, and to a lesser extent No 28. However, this would be very limited, due to the low height of proposed bungalow and the existing level of overshadowing caused by No 1. The occupiers of Nos 28 and 32 currently benefit from rear gardens that receive sunlight until early to mid-afternoon, depending on the time of year. As a result of the proposal the occupiers would have shorter rear gardens which would therefore lose sunlight earlier in the afternoon. However, I do not find that this would be significantly harmful to the living conditions of occupiers as they would still benefit from sunlight for a large part of the day. Moreover, I note that No 32 has a small area of side garden and both dwellings benefit from front gardens that receive sunlight later in the day. I therefore do not find that the proposed development would cause an unacceptable loss of sunlight to Nos 28 and 32.
14. Some loss of daylight would occur to the rear habitable rooms of Nos 28 and 32, but this would be very limited due to the low height of the proposed dwelling. I have seen no detailed evidence to persuade me that this minimal loss of daylight would result in gloomy living conditions for the occupiers of Nos 28 and 32. Likewise the effect on daylight to the gardens would be limited due to the orientation and low height of the proposed dwelling.
15. For the reasons set out above, I find that the proposed development would not be harmful to the living conditions of the occupiers of 28 and 32 The Broadway

<https://www.gov.uk/planning-inspectorate>

3

Appeal Decision APP/V2255/18/3215555

with regard to outlook, daylight and sunlight. I therefore do not find any conflict with policies CP4 and DM14 of the Swale Borough Local Plan 2017 (the Local Plan), which seek, amongst other matters, to ensure that development causes no significant harm to amenity.

Living conditions of future occupiers

16. The garden of the proposed dwelling would benefit from a degree of privacy due to its elevated position in relation to No 28, and the proposed boundary fence and hedge. In addition, I note that the kitchen would project beyond the main rear elevation of the proposed dwelling, creating a private outdoor amenity space with direct access from the main habitable rooms. I acknowledge that there would be a degree of overlooking from No 28, as well as from 1 Abbeyview Drive, which is not unusual in a built up area such as this, and I am satisfied that this would not be significant due to the separation distances involved.
17. I therefore find that the proposed development would not result in significant overlooking in terms of the new dwelling's private outdoor amenity space. As a result, the proposed development would not conflict with policies CP4 and DM14 of the Local Plan, insofar as they seek to ensure that development is of a high quality design that is appropriate to its surroundings and is not harmful to amenity.

Other Matters

18. I recognise that the dwelling has been proposed and specially designed in order to meet the medical needs of the appellant's family member, and would not be intended to be sold on the open market. While I have sympathy with their circumstances, the dwelling would be self-contained and permanent, and I am not persuaded that they override the harm I have identified, which would be long term. Furthermore, its future occupation would not be restricted following its initial occupation by the family member. It would not be appropriate to grant a personal or temporary permission, given the permanence of the building.

Planning Balance and Conclusion

19. The National Planning Policy Framework (the Framework) is a material consideration in planning decisions. Paragraph 11 states that where policies which are most important for determining the application are out of date, permission should be granted unless specific policies within the Framework provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. The appellant argues that paragraph 11d of the Framework is engaged as the Council cannot demonstrate a five year supply of land for housing.
20. However, the first step is to consider whether there are specific policies in the Framework that indicate that development should be restricted. Paragraph 177 of the Framework makes it clear that the presumption in favour of development does not apply where a proposal is likely to have a significant effect on a SPA, either alone or combination with other projects, unless an appropriate assessment has concluded that it will not adversely affect the integrity of the site. For the reasons already set out, the proposal would be harmful to the

<https://www.gov.uk/planning-inspectorate>

4

Appeal Decision APP/V2255/18/3215555

- integrity of the site. This provides a clear reason for refusing the appeal proposal. As such, the 'tilted balance' in paragraph 11d)ii would not apply.
21. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010. The Act sets out the relevant protected characteristics which includes disability. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the Act. I have also had regard to the rights conveyed within the Human Rights Act, in particular Article 8 of the European Convention on Human Rights which concern a right to respect for private and family life. There would be a serious interference with respect to this right and there would be an adverse impact on an individual with a protected characteristic. The negative impacts of dismissing the appeal will arise from the continuation of current living arrangements which are not ideal for the family member, or the investigation of alternative means of providing appropriate accommodation. However, having due regard to this, and to the need to eliminate discrimination and promote equality of opportunity, in my view the adverse impacts of dismissing the scheme on those with protected characteristics would be justified and the decision would be necessary and appropriate, having regard to the harmful effect of the proposed development on the SPA.
22. Although I have found in favour of the appellant in relation to the second and third main issues, this does not outweigh the harm in relation to the SPA. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

N Thomas

INSPECTOR