



Appeal Decision

Site visit made on 19 July 2019

by **R Sabu BA(Hons) MA BArch PgDip ARB RIBA**

an Inspector appointed by the Secretary of State

Decision date: **Wednesday, 30 October 2019**

Appeal Ref: APP/V2255/W/19/3228248

Land to the rear of Hales Cottage, Tunstall Road, Tunstall, Sittingbourne, Kent ME10 1YQ

- 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 Miss Tracey Gammon against the decision of Swale Borough Council.
 - The application Ref 18/504925/FULL, dated 19 September 2018, was refused by notice dated 15 November 2018.
 - The development proposed is described as, 'demolition of the existing garage, to be replaced with a one bedroom Lodge with basement'.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing garage and erection of a single storey one bedroom dwelling with basement at Land to the rear of Hales Cottage, Tunstall Road, Tunstall, Sittingbourne, Kent ME10 1YQ in accordance with the terms of the application, Ref 18/504925/FULL, dated 19 September 2018, subject to the attached Schedule of Conditions.

Procedural Matter

2. In the interests of clarity, I have used the description of development from the decision notice in the decision above.

Main Issues

3. From the evidence before me the main issues are:
 - whether the proposed development would accord with the development plan strategy for housing with particular regard to the settlement boundaries and Important Local Countryside Gap (ILCG);
 - whether the proposed development would provide a suitable living environment for future occupiers with particular regard to internal size and outlook; and
 - the effect of the proposed development on The Swale Special Protection Area (SPA).

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Reasons

Settlement boundaries and ILCG

4. The site lies outside the defined built up area boundary of Sittingbourne and within the ILCG in the terms of Policies ST3 and DM25 of the Bearing Fruits 2031 The Swale Borough Local Plan Adopted July 2017 (LP). The ILCG seeks to retain the individual character and setting of settlements by preventing their merging. Tunstall is a satellite village of Sittingbourne and the appeal site is situated to the north of the village in an area of the ILCG where the two settlements are particularly close. To the south of the site lies Hales Cottage and to the west lies the rear garden of Hales House. Therefore, the site is not isolated in the terms of the National Planning Policy Framework (Framework).
5. From the evidence before me and my observations during the site visit, No 120 Park Drive lies to the north of the appeal site and the land to the north of Hale House has been developed through the implementation of planning permission adjacent to No 120 Park Drive¹ (No 120) for a dwelling and garage. While I note that that scheme was largely within the built-up area of Sittingbourne and outside the ILCG, the rear boundary of that garden is nevertheless shared with the rear boundary of Hales House. Moreover, the Council states that the ILCG at this point contains a number of domestic outbuildings in what are essentially large gardens. Therefore, from the evidence before me, the separation of Sittingbourne and Tunstall in the vicinity of the appeal site is largely reliant on the rear gardens of properties in either settlement.
6. I note the Council's comments that the principle of an independent domestic dwelling on this site is contrary to policy and is therefore unacceptable. However, LP Policy DM25 which relates to the ILCG, states that within these gaps, unless allocated for development by the Local Plan, planning permission will not be granted for development that would undermine one or more of their purposes. The LP also states that the purposes of ILCGs are to maintain the separate identities and character of settlements by preventing their merging; safeguard the open and undeveloped character of the areas; prevent encroachment and piecemeal erosion by built development or changes to the rural open character; and influence decisions on the longer-term development of settlements through the preparation and review of Local Plans.
7. The proposal would involve the demolition of an existing garage and the erection of a single dwelling with basement that would be in a similar position, and height as the garage and with a slightly larger footprint. Therefore, the difference between the existing site and the proposed in terms of built development above ground would be limited and the difference in the gap between buildings in either settlement would be negligible.
8. While the change of use of the site to a dwelling and domestic garden may increase the activity on the site, the proposed use would be in line with the adjacent Hales House and the properties immediately to the north of the site such that the ILCG in this area would continue to be reliant on gardens to serve its purpose of separating the settlements. Furthermore, the increase in activity

¹ Council ref: 17/502544/FULL

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- on the site and access would be likely to be limited given that the proposal consists of only one bedroom and a limited number of future occupants.
9. Consequently, the proposal would not result in actual or perceived coalescence of settlements, would not result in loss of a critical part of the gap and the extent of land remaining undeveloped would be similar to existing such that it would continue to maintain the sense of separation. Moreover, while I note the comments relating to permitted development rights in conservation areas, a suitably worded condition would be necessary to prevent the extension of the proposal that would be likely decrease the gap between buildings and increase built development in the ILCG. Therefore, the proposal would be unlikely to result in pressure for future development that would be difficult to contain.
 10. I acknowledge the comments of the Inspector for the appeal case at No 120². While I agree with the Inspector that the protection of the countryside gap at this point is important to prevent harm to the individual character of the settlements of Tunstall and Sittingbourne, I note that that proposal was for five houses whereas this proposal would replace a garage with a dwelling of a similar footprint. Therefore, although the Inspector for that case found that that development would result in the countryside gap being removed, since this scheme would not significantly increase the amount of built development, it is not directly comparable with that proposal. While I note the Council's concern that the proposal would set a precedent for future development, each case must be determined on its individual merits.
 11. LP Policy ST3 states that outside the built-up area boundaries, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. The appearance of the proposed dwelling is not an area of dispute and from the evidence before me I do not consider that the design of the proposed dwelling would be harmful to the character and appearance of the area. Since the adjacent properties are dwellings with associated gardens, any increase in activity on the site would be likely to be in line with the character and appearance of the surrounding area. Therefore, the proposal would accord with this Policy.
 12. While I note the comments of the Inspector for the case at Lower Halstow³, that case involved a substantially extended building that would have filled the full width of the plot. Since the proposal subject of this appeal would only slightly increase the footprint of the existing garage, that appeal case is not directly relevant to this proposal.
 13. Consequently, the proposed development would accord with the development plan strategy for housing with particular regard to the settlement boundaries and Important Local Countryside Gap (ILCG). Therefore, it would not conflict with LP Policy ST3 which restricts development outside the built-up area boundaries unless it would contribute to protecting the intrinsic value of the countryside among other things. It would also not conflict with LP Policy DM25 which restricts development in the ILCG that would undermine one or more of their purposes.

² Appeal ref: APP/V2255/W/16/3145709

³ Appeal ref: APP/V2255/W/18/3217204

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Living conditions

14. The proposed dwelling would have a smaller floor space than that required under the Technical Housing Standards: Nationally Described Space Standards 2015 (NDDS). However, from the evidence before me, the NDDS is not adopted under the LP, and the internal size of the proposed rooms would provide accommodation that while not spacious, would be functional and meet the needs of future occupiers, given that the proposal is for one bedroom only and would have a limited number of occupants.
15. Turning my attention to outlook, the bedroom in the basement would have a somewhat restricted outlook to an external stair area. However, given that future occupiers are unlikely to spend substantial portions of the day in this space or the bathroom, the proposal would not cause undue harm to the living environment of future occupiers in this regard.
16. I note the Council's concerns regarding the proposal setting a precedent for future development. While I consider that, given the particular circumstances of this case, the proposal would be unlikely to influence decisions on the longer-term development of settlements, in any event, each case must be determined on its individual merits.
17. Consequently, the proposed development would provide a suitable living environment for future occupiers with particular regard to internal size and outlook. It would therefore not conflict with LP Policy DM25 which relates to ILCGs and seeks to restrict development where resultant pressure arising from a development or an allocation that would be difficult to contain. It would also not conflict with the Framework in this regard.

The Swale SPA

18. The appeal scheme proposes a single dwelling on a site that lies within 6km of The Swale SPA site. New housing development within this distance of the SPA would be likely to increase the number of recreational visitors to the site, potentially resulting in disturbance to the integrity of the habitats of qualifying features.
19. Since the appeal proposal is for a one-bedroom dwelling and the number of additional recreational visitors would be limited, the likely effects on the SPA from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the SPA. Consequently, an Appropriate Assessment (AA) is necessary to ascertain the implications for the site.

Appropriate Assessment

20. The Swale SPA was classified for rare and vulnerable birds and for regularly occurring migratory species such as waders and waterfowl. The Thames, Medway and Swale Estuaries - Strategic Access Management and Monitoring Strategy (SAMMS) sets out detailed mitigation measures that would be funded by S106 contributions at a specified tariff per dwelling. Since this includes a range of habitat-based measures such as education and communication, and has been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on The Swale SPA.

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21. As part of the appeal, the appellant submitted a signed and dated Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 that would ensure that the financial contribution of £239.61 would be paid before the commencement of development. The definition of the contribution includes reference to The Swale SPA and given the details of the site and title plan, I am satisfied that the UU runs with the title plan mentioned within. Furthermore, Natural England has indicated that the proposed financial contribution to mitigate the effect on the SPA is sufficient to avoid an adverse impact to the integrity of the European Site and relevant features. On this basis, I am persuaded that the contribution via a UU would be effective in mitigating the adverse effects of the proposal on The Swale SPA in a timely manner.
22. I note the comments of the Inspector for the case at Newington⁴, however in that case no method of securing a financial contribution was provided. Therefore, that case is not directly relevant to this appeal.
23. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the CIL Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.
24. Consequently, the proposed development would not adversely affect The Swale SPA and would not conflict with the Framework in this regard.

Other Matters

25. I note that Hale House, Hale Cottage and The Coach House are located near the site and are Grade II listed buildings. I also note that the site lies within Tunstall Conservation Area (CA). Although the Council has not objected to the proposal on the basis of the effect of the proposal on the setting of the nearby listed buildings and CA, I am required, as a statutory consideration, to have regard to these matters when determining the appeal. The significance of the listed buildings lies in the evidence of historic architecture and original detailing and given their traditional vernacular appearance, they contribute to the rural character of the area. Since the proposed dwelling would not be significantly larger than the existing building and would be of a traditional design with locally distinctive materials, it would preserve the significance of the listed buildings and CA.
26. While I note comments relating to the existing and historic use of the garage, given that the proposed dwelling would have one bedroom, it would result in a limited number of future occupants. Therefore, it is likely that there would be a limited frequency of vehicular movements associated with the proposal. Consequently, it is unlikely that the proposed scheme would result in an unacceptable effect on highways safety and this point has not altered my overall decision. Furthermore, the Highway Authority has not objected to the proposal and from the evidence before me I see no reason to disagree.
27. I note that in addition to the matters discussed above other concerns have been raised locally. These include character and appearance, harm to trees,

⁴ Appeal ref: APP/V2255/W/17/3188809

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drainage, light, wildlife and parking. Nonetheless, these were before the Council when it determined the appeal planning application and it found that they did not warrant the refusal of planning permission. Given the evidence before me, I have found no reason to disagree.

Conditions

28. I have considered the conditions suggested by the Council. I have made some minor changes to these having regard to the tests set out in the Framework and the guidance contained in the Planning Practice Guidance. I have amended some of the wording of the conditions in the interests of precision and clarity.
29. In addition to the standard time limit condition, I have included a condition requiring that the development is carried out in accordance with the approved plans as well as conditions relating to the external materials and landscaping. This is in the interest of certainty and to safeguard the character and appearance of the area. Given the sensitive nature of the character and appearance of Tunstall Conservation Area, a condition relating to external joinery work is necessary.
30. Given the emphasis in the Framework that the planning system should support the transition to a low carbon future in a changing climate, conditions requiring the submission and implementation for sustainable construction techniques and relating to water consumption are necessary.
31. A condition relating to hours of construction and demolition and the parking of vehicles are necessary to protect the living conditions of neighbouring occupiers and highways safety. The reference to permitted development in the condition relating to parking is not necessary and has been omitted.
32. While I note that such a condition has not been suggested by the Council, in this case, there is exceptional justification for removing specified permitted development rights in order to protect the character and appearance of the CA, the setting of the nearby listed buildings and the purposes of the ILCG.

Conclusion

33. For the reasons given above the appeal should be allowed.

R Sabu

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 plans: DRG No 4, DRG No 5, DRG No 6 and DRG No 7.
- 3) No development above ground shall commence until samples of the materials to be used in the construction of the external surfaces of the development, hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved samples.
- 4) No development above ground shall commence until detailed drawings at a suggested scale of 1:5 of all new external joinery work, (which shall be of timber construction) and fittings together with sections through glazing bars, frames and mouldings shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved plans.
- 5) No development above ground shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) No development above ground shall commence until details have been submitted to and approved in writing by the local planning authority, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. The development shall be carried out in accordance with the approved details.
- 8) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).
- 9) Demolition or construction works shall take place only between 0730 and 1900 on Monday to Friday, and between 0730 and 1300 on Saturdays

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and shall not take place at any time on Sundays or on Bank or Public Holidays.

- 10) The development shall not be occupied until space has been laid out within the site in accordance with drawing no. DRG No 6 for 1 car to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling within the following classes of the Order shall be carried out without the prior written approval of the local planning authority: Schedule 2 Part 1 Classes A, B, C, D, E.

END OF SCHEDULE