



Appeal Decision

Site visit made on 9 October 2019

by **Rory MacLeod BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 November 2019

Appeal Ref: APP/V2255/W/19/3229704

77 Queenborough Road, Halfway, Sheerness, Kent ME12 3DB

- 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 David Hall against the decision of Swale Borough Council.
 - The application Ref 19/500279/FULL, dated 19 January 2019, was refused by notice dated 17 April 2019.
 - The development proposed is demolition of existing detached garage and formation of 1 new detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The submitted plans show the replacement of a side extension by a differently located side extension and the provision of a garage to replace a shed to the other side of the dwelling. These changes relate to application 19/500658/FULL which at the time of the appeal submission had not been determined. Accordingly, I have not taken these changes into account in my decision.

Main Issues

3. The main issues are the effect of the proposal on the living conditions of the occupiers of the host dwelling in relation to (a) outlook and sense of enclosure, and (b) the adequacy of the remaining amenity space provision.

Reasons

Outlook

4. The appeal relates to a detached bungalow on a corner plot fronting Queenborough Road. There is a detached garage in the back garden with an access on the return frontage to Holmside Avenue. The proposal is to construct a two storey three bedroom detached house on a plot about 7m wide with a back garden approximately 10.5m in depth.
5. There would be a separation of only about 4.5m between rear facing living room windows at no. 77 which are set in a small projection and the flank wall of the proposed house. The height, mass and proximity of the new house would have a significant adverse effect on outlook from the living room windows and an overbearing impact. As the house would be to the south of no. 77 there would also be some loss of natural light through shading. A bedroom alongside the living room has rear facing windows and would also be affected but to a

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lesser degree as the windows face the back garden to the new house rather than the house itself.

6. The proposal would be in conflict with Policies CP4 and DM14 of the Swale Borough Local Plan (2017) (SWLP) which collectively require the design of new development to be appropriate to its surroundings in respect of scale, height and massing and to cause no significant harm to amenity and other sensitive uses. The impact on existing occupiers would also be contrary to Paragraph 127 (f) of the National Planning Policy Framework (the Framework) that requires planning decisions to ensure that development: “*create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future occupiers*”.

Amenity space

7. The existing bungalow would be left with a rear garden with a depth of only about 5m to the boundary fence with the proposed house. Whilst the width of the rear garden would be in excess of 20m, the quality of much of this private garden area would be shaded and compromised by the proximity and massing of the flank wall to the proposed house. The bungalow benefits from extensive garden areas to its front and eastern side, but these have low enclosures, are open to view from the public footway and offer little privacy.
8. The Council’s officer report refers to a normal required depth of 10m for private amenity space, but this is not evidenced in the policies referred to. The proposal would not achieve this requirement, but the overall quantum of all amenity space would be adequate given the size of the remaining plot. However, the retained private amenity space for the bungalow would be small, poor in quality and not commensurate with the large size of the dwelling. In these respects, the proposal would be of poor design and not conserve or enhance the built environment. It would thereby be contrary to Policies CP4 and DM14 of the SWLP.

Special Protection Area

9. The site is within 6km of 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). As the proposal has the potential to affect the site’s special features of interest, and an Appropriate Assessment is required to establish the likely impacts in accordance with a recent court judgement¹. The Council’s report claims this has been undertaken without information provided by the applicant.
10. The Council’s findings are that the proposed development is of a very small scale and, in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to off site mitigation. This would involve financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM). The Council’s report indicates that the appellant has offered to make the SAMM contribution but there is no evidence of this in the appeal submissions. If the appeal were to be allowed this issue would have warranted greater scrutiny but the appeal is to be dismissed for other reasons.

¹ (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union.

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Other matters

11. The occupiers of Millbrook, a detached house adjacent to the southern boundary to the appeal site, have objected to the proposal in relation to its impact on their living conditions. I concur with the Council's findings in that there would be sufficient separation for the new house not to be overbearing or to result in undue disturbance, that the flank oriel window would not result in overlooking and that parking provision would be adequate.
12. The appellant claims that the Council cannot demonstrate a five year housing land supply and that the tilted balance in favour of sustainable development at Paragraph 11 of the Framework should apply. The site is within a sustainable location within the built up area of Halfway and as a windfall provision would not be contrary to the Council's locational policies for new housing. The Council's pre-application reply letter claims that the Council can demonstrate a five year housing land supply. In the absence of further evidence on this matter, I have assessed the proposal against the stipulations of Paragraph 11.
13. Whilst I have noted the representations from the appellant citing the Framework's objective of significantly boosting the supply of homes, Paragraph 117 on the effective use of land requires "*safeguarding and improving the environment and ensuring safe and healthy living conditions*". The adverse impacts on the host bungalow in relation to loss of outlook, an overbearing impact and retention of poor quality private amenity space would significantly and demonstrably outweigh the benefit of one additional dwelling when assessed against the policies in the Framework taken as a whole.
14. I note that there was some encouragement for the scheme in the Council's pre-application response letter. But this did warn that it would need to be sufficiently demonstrated that there would be no harm to the residential amenity of the occupants of the host property, the critical factor in determination of this appeal.

Conclusion

15. For the reasons given, and having regards to all other matters raised, the appeal is dismissed.

Rory MacLeod

INSPECTOR