



Appeal Decision

Site visit made on 7 January 2020

by **Jonathan Price BA(Hons) DMS DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

Appeal Ref: W/4000175

106 Scrapsgate Road, Minster on Sea, Kent ME12 2DJ

- 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 A Brooks against the decision of Swale Borough Council.
 - The application Ref 18/506680/FULL, dated 27 December 2018, was refused by notice dated 19 July 2019.
 - The development proposed is erection of a new detached 2 storey dwelling and garage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - The effect on the living conditions of occupiers of 104 and 106 Scrapsgate Road, with particular regard to outlook, privacy and natural light.
 - Whether adequate mitigation can be secured over the impacts of the proposal on the Medway Estuary and Marshes Special Protection Area (SPA).
 - Whether the dwelling proposed is appropriate in this location with regard to local and national policies relating to development in areas at risk of flooding.

Reasons

Living conditions

3. The proposal relates to the side garden to the host property; a detached bungalow. No 104, a semi-detached bungalow, lies to the other side of the proposed plot. To avoid the line of a public sewer, the two-storey dwelling proposed would be sited further back within this plot compared to that of a previously approved house¹, with its garage now detached and remaining towards the front.
4. The appeal site is within a stretch of varied frontage housing, backing onto an expansive undeveloped area, where the properties generally observe a quite regular building line. The siting of the proposed house significantly beyond the rear building lines of the adjacent bungalows would impinge harmfully on the living conditions provided to the adjacent occupiers.

¹ Council reference 16/500006/FULL

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5. As appellants, the occupiers of no 106 would tolerate the effects. However, this does not alter my view that poor living conditions would be provided for future occupiers due to the shading of the back garden and the dominant effect the dwelling would have on the presently open rear outlook.
6. The position of the dwelling would also have an unacceptably overbearing impact on the rear outlook and privacy of occupiers at no 104. Although there were no neighbour objections to this proposal, the proposed siting of a house significantly beyond the rear building line of adjacent bungalows would not be an arrangement conducive to preserving acceptable residential living conditions, particularly in regard to issues such as outlook, privacy and natural light.
7. Consequently, I find the proposal would be in conflict with Policy DM 14 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP), insofar as a general development criterion seeks that proposals cause no significant harm to amenity. I have considered the siting of the dwelling at no 70 but do not find this entirely comparable and, in any case, this current proposal should be considered on its individual merits.

SPA mitigation

8. Although a proposal for just a single dwelling, I am unable to rule out that, in combination with other new residential development in the surrounding area, this scheme would have a likely significant effect on the SPA. This is in relation to the impacts of additional development increasing recreational disturbance on the SPA interest features, which are primarily in relation to wintering birds, in particular waders and waterfowl.
9. The Habitats Regulations provide the statutory protection for the SPA and require that I may grant permission only having ascertained this proposal would not adversely affect its integrity. As carried out by the Council, this would require my undertaking of an Appropriate Assessment under the Regulations.
10. However, I accept the Council's evidence that the absence of a developer contribution prevents the necessary means to mitigate for the likely significant effects and to enable a positive Appropriate Assessment to be concluded. Due to my conclusions on the other main issues I have not pursued the mitigation payment any further. As matters stand, this proposal would be contrary to LP Policies CP7 and DM28 which seek to protect natural assets and restrict development that has an adverse effect on the integrity of the SPA.

Flood Risk

11. As set out in the National Planning Policy Framework (the Framework), the Government directs inappropriate development away from areas at the highest risk of flood, but where it is necessary seeks to ensure safety over its lifetime without increasing flood risk elsewhere. This is carried out by the requirement for a sequential test for developments in flood risk locations and then, if necessary, applying the exception test.
12. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. If it is not possible for development to be located

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in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied.

13. The application site is located within Flood Zone 3, as defined in the Environment Agency flood maps, and is at high risk of both tidal and fluvial flooding. Although in an area benefitting from flood defences, this factor does not avoid the requirement to carry out the sequential test and then, if passed, the exception test. LP Policy DM 21 requires development proposals to accord with such national policy in regard to flooding. The flood risk assessment submitted with the appeal does not satisfy local and national policies relating to development in areas at risk of flooding. For this reason, I conclude the proposal has not been demonstrated to be appropriate in this location.

Conclusion

14. I have taken into account the previous consent for a dwelling on this site. However, current planning policy must apply to this later proposal. The evidence before me is that the earlier consent has expired and so provides no fallback case in support of this appeal.
15. The Council acknowledges it cannot currently demonstrate a five-year housing land supply. However, the application of policies in the Framework that protect the SPA and address flood risk provide clear reasons for refusing the development. Therefore, the presumption in favour of sustainable development in paragraph 11 of the Framework is not applicable and it is unnecessary for me to consider allowing the appeal unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
16. The proposal would be of no harm to the character and appearance of the street, have a safe access, adequate parking and could be built to sustainable standards and landscaped to encourage biodiversity. The scheme would provide a self-build opportunity to meet a specific accommodation requirement and contribute also in a small way to Government aims to boost housing supply. However, these modest benefits would be insufficient to outweigh the harm identified in the three main issues.
17. Consequently, having taken into consideration all other matters raised, I conclude that the appeal should not succeed.

Jonathan Price

INSPECTOR