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## Appeal Decision

Site visit made on 17 August 2020

by **Guy Davies BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 September 2020

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**Appeal Ref: APP/V2255/W/20/3246976**

**Land adjoining Stanbourne House, Church Road, Eastchurch, Sheerness, Kent ME12 4DH**

- 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 Mrs Anne Montgomery against the decision of Swale Borough Council.
  - The application Ref 19/503696/FULL, dated 18 July 2019, was refused by notice dated 19 September 2019.
  - The development proposed is construction of a 3 bedroom chalet bungalow with associated car parking.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of a 3 bedroom chalet bungalow with associated car parking on land adjoining Stanbourne House, Church Road, Eastchurch, Sheerness, Kent ME12 4DH in accordance with the terms of the application, Ref 19/503696/FULL, dated 18 July 2019, subject to the conditions in the attached schedule.

### Procedural Matter

2. The proposal is accompanied by a unilateral undertaking that secures the payment of a financial contribution for bird protection measures in the event of permission being granted. I have taken this undertaking into account in making my decision.

### Main Issues

3. The main issues are:
  - Whether the site is in a suitable location for a dwelling having regard its impact on the countryside and accessibility to facilities and services
  - The effect of the development on a designated European site of ecological importance.

### Reasons

#### *Suitable location*

4. Policy ST3 of the Swale Borough Local Plan 2017 sets out the Swale settlement strategy, which directs new development to a hierarchy of locations, with urban centres being the focus for most growth and other centres being progressively more restricted depending on their size, accessibility and service provision. At

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locations outside the built up area boundaries development is not 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.

5. The site lies within a small cluster of buildings lying to the north of a complex of three prisons. Houses and bungalows fronting Orchard Way and Range Road have a suburban appearance while to their north other dwellings form part of a lower density plot land development, which has a more loose-knit character with individual dwellings set on large plots, spaced apart and with a greater amount of trees and shrubs. None of these building groups fall within a built up area as defined on the Local Plan Proposals Map.
6. The appeal site forms part of the plotland development. It is laid out as domestic garden land to Stanbourne House but divided from it by an unmade track that leads to a house at the rear. The introduction of a new dwelling would to some extent consolidate this part of the plotland area. Nevertheless, it would retain a good amount of space around the building, which would be set back from the Church Road frontage to enable landscaping to be added. Because of the existing domestic appearance of the site and it being surrounded on three sides by houses within a cluster of other dwellings, the development would only have a limited impact on the plot land character of the immediate area, and would not in my view harm the intrinsic value, landscape setting, tranquillity and beauty of the wider countryside.
7. The nearest defined settlement is at Eastchurch which contains a range of local facilities and services including a church, a primary school, a community hall, shops and public houses. The appeal site is linked to it by a paved footpath and there is a bus service to the village and larger settlements. The village is some distance away and that limits the ease of accessibility to the facilities and services. However, in my view the site is not isolated in the sense used in paragraph 79 of the National Planning Policy Framework (the 'Framework') and the facilities and services, which are sufficient to meet the day to day needs of most people, can be reached from the site.
8. The proposal would fall outside any defined built up area and as a result would conflict with policies ST1, ST3, ST6, DM9 and DM14 of the Swale Borough Local Plan 2017, which seek to direct development to the most sustainable locations and minimise the need to travel. However, the harm caused by this conflict in terms of its effect on the character and appearance of the countryside, or accessibility to local facilities and services is limited.

*Ecological importance*

9. The site lies within the zone of influence of the Swale Special Protection Area, which is a European site designated under the Conservation of Habitats and Species Regulations 2017.
10. The development could, in combination with other development in the area, have a significant effect on the Special Protection Area through added recreational pressure causing disturbance to the bird population. Due to the scale of development on-site mitigation would not be possible. However, the harm to the nature conservation interest of the Special Protection Area could be mitigated by suitable management and monitoring to reduce the effect of

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increased recreational pressure on the feeding and breeding grounds. An initiative has been developed by local councils in partnership with Natural England and other conservation bodies to achieve such mitigation through the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy, which aims to reduce disturbance to birds through a variety of measures.

11. Having regard to the evidence presented by the Council and the advice from Natural England, I consider that the development could have a potential adverse impact on the Special Protection Area, but that adverse impact would be adequately mitigated through management and monitoring of recreational pressures, and that the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy would achieve such mitigation. Subject to the development contributing to the Strategy, I am satisfied that there would be no adverse effect on the integrity of the Swale Special Protection Area.
12. The appellant has submitted a unilateral undertaking that secures an agreed payment in mitigation of the additional recreational pressure on the Swale Special Protection Area. The undertaking has been amended to address most of the points raised by the Council's legal department. The only outstanding matter is the trigger point at which the payment is made. That is set at 28 days after commencement of development in the undertaking, while the Council wishes payment to be made prior to commencement of development.
13. I recognise that there would be a period between payment of the contribution and the mitigation being carried out but I see no objection to the payment being triggered 28 days after commencement of development, which would still be some months before occupation of the new dwelling and therefore before any potential pressure on the Swale Special Protection Area could occur. As the Management and Monitoring Strategy is an ongoing process supported by many different developments in the zone of influence, I do not foresee that a difference of 28 days would be critical for the delivery of the requisite mitigation.
14. No explanation has been given by the Council as to why this trigger point would make the undertaking difficult to enforce. If there is any doubt about whether development has commenced the Council would be able to inspect the site.
15. I therefore consider the undertaking to be acceptable as drafted, including the trigger for payment being 28 days after commencement of development and give it weight in my decision.
16. I conclude that the submitted unilateral undertaking would secure suitable mitigation to protect the integrity of the Swale Special Protection Area. Subject to payment being made in the terms secured by the undertaking, the development would comply with policies ST1, DM14 and DM28 of the Swale Borough Local Plan 2017, which amongst other objectives seek to conserve, enhance and extend biodiversity and minimise any adverse impacts.

#### **Other Considerations**

17. The Council's most recent housing land supply statement calculates that there is 4.6 years' supply of housing available. The shortfall in housing land supply is therefore small although I have no evidence that this shortfall will be made up

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soon or will not persist into the future. In contrast, the development would provide an additional dwelling to the Borough's housing stock which would be a small but beneficial addition. This carries moderate weight in favour of the development.

18. Both the Council and the appellant have drawn my attention to previous appeal decisions and planning permissions on and in the vicinity of the site.
19. The most recent, and relating to development on the appeal site, was dismissed on the grounds that the site was not a suitable location for development, harmed the countryside and had poor accessibility<sup>1</sup>. This decision was made at a time when the Council could demonstrate a five year housing land supply and therefore while I have placed some weight on it, there are important differences which need to be taken into account.
20. Another appeal decision relating to a site in Range Road was allowed, the Inspector in that case deciding that the location was sustainable and that it would not harm the character and appearance of the countryside<sup>2</sup>. This decision precedes the current Local Plan and relates to a different site, albeit one within the same cluster of dwellings. For these reasons I only give it limited weight.
21. Notwithstanding the differences between these appeals, it is apparent that the inspectors had differing views on the accessibility of the cluster of houses around the prison complex, and also the effect on the character and appearance of the countryside. While having regard to both decisions, I have reached my own conclusions on these issues and the specific merits of the site and the proposed development.
22. Other decisions relate to permissions granted by the Council or an appeal decision in a different settlement, which I consider to be of lesser weight given the differing circumstances.
23. The appellant has argued that the house is needed to help provide care for the occupant of Stanbourne House. While I have sympathy with those personal circumstances, it is the case that a development of this nature would remain long after those personal circumstances had changed. I therefore give this matter little weight.

#### **Planning Balance**

24. I find that there is conflict with the Local Plan as a whole in that the appeal site lies outside any built up area and does not accord with the Council's settlement strategy. That is reflected in the limited accessibility of the site to local facilities and services and the consolidation of the plot land character of the immediate area, although for the reasons given, I consider this harm to be limited in so far as local facilities and services are available albeit some distance away, and the development would not cause harm to the wider countryside.
25. Set against the conflict with the Local Plan is the moderate benefit of the development providing an additional dwelling in an area with a lack of housing supply.

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<sup>1</sup> APP/V2255/W/18/3209762

<sup>2</sup> APP/V2255/W/15/3135783

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26. There is no dispute that the Borough currently lacks a five year housing land supply. In such circumstances paragraph 11 of the Framework advises that for applications involving the provision of housing permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides 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 as a whole.
27. For the reasons set out above I do not consider that the development would harm habitats sites, which is one of the areas of particular importance noted in footnote 6 of the Framework, nor do I consider it would conflict with the policies in the Framework relating to rural housing. The relevance of paragraph 11 of the Framework therefore lies in the second criterion.
28. In my view the adverse impacts of the development are limited whereas the benefits are moderate. On that basis the harm would not significantly and demonstrably outweigh the benefits. It follows that the proposal benefits from the presumption in favour of sustainable development.
29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any determination must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. In this case, I consider that the presumption in favour of sustainable development is a material consideration that indicates that the appeal should be allowed, notwithstanding the limited harm arising from the conflict with the Swale Borough Local Plan.

#### **Conditions**

30. I consider the conditions recommended by the Council meet the tests set out in paragraph 55 of the Framework, subject to minor rewording where required for clarity and consistency.
31. In addition to the standard time limit, I have added a condition listing the approved plans in the interests of certainty. I have imposed conditions requiring approval of external materials, and hard and soft landscaping in the interests of the character and appearance of the area. I have imposed a condition limiting the hours of construction in the interests of the living conditions of neighbouring occupiers. I have imposed conditions requiring the provision of parking space, water efficiency and energy efficiency measures in the interests of future occupants and to meet the policy requirements of the Local Plan aimed at securing sustainable development.

#### **Conclusion**

32. I conclude that the appeal is allowed.

*Guy Davies*

INSPECTOR

#### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

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- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 19.54.01, 19.54.02, 19.54.03, 19.54.04.
- 3) No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.
- 4) No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.
- 5) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.
- 6) If within a period of five years from the date of the planting of any tree or shrub that tree or shrub, or any tree or shrub planted in replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written approval to any variation
- 7) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0800 – 1800 hours, Saturdays 0800 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.
- 8) The area shown on the submitted plan as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling hereby permitted.
- 9) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and shall not be occupied unless the notice for the dwelling 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.
- 10) No development beyond the construction of foundations shall take place until details of the measures to be undertaken to secure at least a 50%

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reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

**\*\*\* End of Conditions\*\*\***

