



Appeal Decision

Site visit made on 4 January 2022

by **D Szymanski BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th February 2022

Appeal Ref: APP/V2255/W/20/3265165

The Annexe, Field View, 168A Queenborough Road, Halfway, Kent ME12 3DF

- 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 Ms Elaine Price against the decision of Swale Borough Council.
 - The application Ref 20/503865/FULL, dated 21 August 2020, was refused by notice dated 14 October 2020.
 - The development proposed is described as 'I currently have a detached building in the same site as the main house named the Annex , it has planning permission Currently for family use only to the existing bungalow , I would like to submit an application to change the use from an Annex to a detached 1 bedroom bungalow calling it little farm lodge with a completely new address of maybe 168b , the Annex already has its own services separate from the main house , there would be no change to the building as it has its own drive with parking for two vehicles, there would be no need to make changes , I have been living in the Annex since June.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have considered the appeal on the basis the application is retrospective as set out in the application form and referenced in the Council's delegated report, which is reflected in the terminology I have used below.
3. The revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021 and the 2021 Housing Delivery Test (HDT) measurement results were published on 14 January 2022. I have given the Council and the Appellant the opportunity to comment upon the implications of these for their cases.
4. The Council's third reason for refusal makes reference to the Swale Special Protection Area but its Appropriate Assessment (AA) makes reference to the Medway Estuary and Marshes Special Protection Area. I have been subsequently advised the appeal site lies within the Zones of Influence (ZoI) of the Thames Estuary & Marshes Special Protection Area, the Medway Estuary & Marshes Special Protection Area and Ramsar site and the Swale Special Protection Area and Ramsar site (the SPAs).
5. The Bird Wise North Kent Mitigation Strategy (2018) (the MS) explains the features of interest and the Likely Significant Effects (LSEs) from residential

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development within a ZoI is similar for each SPA/Ramsar site. It also deals with mitigation for the designated sites collectively via one single tariff, whether a development falls within 1, 2 or 3 ZoIs. I have given the appellant the opportunity to comment upon this matter and it has not been put to me this approach is incorrect. I have therefore considered the appeal on the basis that all the SPAs may be affected which is reflected in my setting out of the main issues below. The appellant would not be prejudiced by this approach.

Main Issues

6. The main issues are:

- the effect of the development upon the SPAs;
- whether or not the development provides satisfactory living conditions for the occupiers of the appeal site and No 168A with particular reference to private outdoor space provision; and,
- the effect of the development upon highway convenience.

Reasons

SPAs

7. The Conservation of Habitats and Species Regulations 2017 (the Regulations) requires where a plan or project is likely to result in a significant effect on a European site (in this case the SPAs), a competent authority is required to make an AA of the implications of that project on the integrity of a European site in view of its conservation objectives. Any LSEs from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
8. The SPAs are important habitats for species of wintering, breeding, and migrating waders, waterfowl, and terns which are rare or vulnerable. The conservation objectives of the SPAs are to maintain or restore the integrity of the sites by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features, the population of the qualifying features, and the distribution of the qualifying features within the sites.
9. The appeal scheme would permanently create a separate dwelling and household within the ZoI of the SPAs. The MS explains surveys and studies identified additional dwellings within 6km of the SPAs would have LSE on them. This is through increased visitors resulting in additional disturbance to birds, from recreational activities such as dog walking, cycling, and jogging. Therefore, the effects of this scheme alone and in combination with others would have LSE on the SPAs. The appellant does not dispute this matter.
10. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out mitigation measures funded by financial contributions at a costed tariff. These include funding rangers, education, communication, site specific access and infrastructure enhancements, and monitoring. Natural England (NE) as the Statutory Nature Conservation Body, has endorsed the SAMMS. NE is a partnership organisation on the SAMMS Scheme Board that implement the funded mitigation. NE has confirmed the SAMMS comprise a package of strategic measures to address LSEs funded through contributions. I

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am satisfied that subject to a payment being secured against the appeal scheme via a planning obligation or other suitable mechanism that ensures a direct link between the monies and the scheme, the measures would overcome the LSEs on the SPAs.

11. The appellant is willing to accept a planning condition requiring a legal agreement to contribute to the SAMMS. However, the appellant's suggested conditions would not meet the requirements of the Regulations. This is because they suggest an AA can be undertaken by a party other than the competent authority, and the condition would be a pre-commencement condition for a commenced development. Therefore, allowing this appeal with the suggested condition would authorise a scheme without necessary mitigation secured, resulting in unmitigated LSEs to the SPAs. Moreover, as the scheme is retrospective, any such planning condition would be positively worded, in conflict with paragraph 21a-005-20140306 of the Planning Practice Guidance. Therefore, mitigation cannot be addressed by the conditions.
12. As the competent authority in determining this appeal, I do not have a planning obligation before me securing a financial contribution to SAMMS, or other alternative measures to mitigate the impact of this scheme. Therefore, it makes no provision to mitigate the recreational disturbance impacts and thus maintain or restore the integrity of the SPAs. Applying the precautionary principle, in the absence of appropriate mitigation, the appeal scheme would have significant adverse effects on the integrity of the SPAs due to increased recreational disturbance. For this reason, the appeal scheme would fail to adhere to the conservation objectives. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the SPAs.
13. For the reasons set out above, the development conflicts with Policies ST1, DM14 and DM28 of the Swale Borough Local Plan (2017) (the LP). Amongst other things these require development avoids significant harm to and adequately mitigates the effects upon biodiversity, complies with the Council's supplementary guidance, and for proposals that adversely affect the integrity of a European site, permission will only be granted in exceptional circumstances where there are imperative reasons of overriding public interest and damage can be fully compensated. The development would also conflict with paragraphs 8, 174, 175 and 180 of the Framework, which require development shall protect and enhance the natural environment, improve biodiversity, and where significant harm to biodiversity cannot be adequately mitigated, permission should be refused.

Living conditions

14. Adequate private outdoor space is required to provide benefits for well-being and household and leisure activities, such as gardening, drying clothes, sitting outside, fresh air, and other hobbies. The appeal site plot is relatively wide and there is approximately 6m between the rear wall of the main annexe structure and back of the garden, and approximately 3m between the rear boundary and conservatory. At my visit it was clear this space could accommodate storage and outdoor seating, with some limited space for gardening opportunities or other activities/functions.
15. The Council has referred to a minimum depth of 10m for rear gardens in its delegated report, although it has not stated where this is set out in its policies.

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The appeal site provides a small dwelling not likely to be occupied by a family. I find the level of outdoor space is of an adequate overall width, depth, shape, utility, and outlook to provide satisfactory living conditions for the occupiers.

16. The development would result in the permanent loss of private outdoor space for the neighbouring No 168A. I am informed that No 168A is a 3 bedroom dwelling of an adequate size for family occupation and that omitting the conservatory, the outdoor space is approximately 32 sqm. While it is not the 10m depth referred to in the delegated report, it is of a reasonable shape, width, depth, utility, and outlook to provide for various household and leisure activities as may be required for family occupation. Therefore, it provides satisfactory living conditions for the occupiers of No 168A.
17. For the reasons set out above the development provides satisfactory living conditions for the occupiers of the appeal site and No 168A with reference to private outdoor space provision. Therefore, it does not conflict with Policies CP4 and DM14 of the LP. Amongst other things these require development creates comfortable places that cause no significant harm to amenity.

Highway convenience

18. This development results in the occupiers of No 168A using parking on its private front space as they could no longer use the two spaces at the annexe. I have not been provided with plans demonstrating the front area of No 168A can provide two spaces in accordance with any of the dimensions in Table 7 of the SPD¹. The front space at No 168A is shallow with a wall and gates necessitating what would be a perpendicular tandem parking arrangement if it were able to accommodate 2 cars. While it appears that a single space could be provided, it is not clear that the development can provide a minimum of two spaces of the requisite dimensions in a practically accessible manner.
19. I cannot be certain occupiers of No 168A would not need to park outside the property. While my visit can only represent a brief snapshot in time, parking space was plentiful outside the site and on the road. There was limited traffic on the public highway, with on-street parking space widely available nearby on the A250, St Peter's Close and Holmside Avenue. As well as at evenings and weekends, there may be intermittent increased parking associated with the Football Club and another sports club. However, there were no signs of parking stress at my visit, or evidence provided of this by the Council. Therefore, while occupiers of No 168A may need to park off the property to the detriment of highway convenience, I am not provided with substantive evidence demonstrating this would be harmful to the operation of the highway.
20. For the reasons set out above, the development would be likely to be detrimental to highway convenience, in conflict with Policy DM14 of the LP insofar as this requires compliance with the SPD. However, based upon the evidence before me this would not result in harmful effects that would necessitate dismissing this appeal. Therefore, the development does not conflict with Policy CP4 of the LP, which requires development should create safe accessible places. I do not find a conflict with Policy DM7 of the LP referred to in the Council's second reason for refusal, as this policy simply outlines the intention for the SPD but does not specifically require compliance with the SPD.

¹ Swale Borough Council Parking Standards Supplementary Planning Document (2020) (the SPD)

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Planning Balance

21. The 2021 HDT results indicate the Council delivered 78% of its required housing over the previous 3 years. I have not been provided with the Council's latest housing land supply position. However, given the harm to the integrity of the SPAs, the application of policies in the Framework that protect areas of particular importance provide a clear reason for refusing the development. Therefore, the tilted balance does not apply.
22. The provision of one dwelling is a limited social benefit to the supply of housing, attributed limited weight in favour of the scheme. The development is not harmful to and therefore has a neutral effect upon the living conditions of the occupiers of the appeal site and No 168A. There would be a policy conflict in respect of highway convenience, however, there would not be harm as a consequence of the conflict, and so is also a neutral matter in the balance.
23. At my visit the property appeared to be occupied. I have not been provided with confirmation as to whether this is the occupiers primary or only residence. Dismissing this appeal and any future enforcement notice would put the occupation of the dwelling at risk, representing an interference with their rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life) as incorporated by the Human Rights Act 1998.
24. Dismissing this appeal may result in the occupiers needing to find new accommodation. However, there is no evidence of a shortage of suitable properties, or that occupiers have requirements resulting in needing to only reside at this property. Having regard to the legitimate, justified, and established planning policy aims to protect the SPAs from significant adverse effects upon their integrity, in this case the greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate and would not result in a violation of the human rights of the occupiers.
25. The development would adversely affect the integrity of the SPAs. This is a matter that attracts significant weight against the scheme, which significantly and demonstrably outweighs the benefits of the development.

Conclusion

26. The development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR