



The Planning Inspectorate

Appeal Decision

Site visit made on 22 November 2022

By Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2022

Appeal Ref: APP/V2255/W/22/3296580

Greystone, Bannister Hill, Borden ME9 8HU

- 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 Ashbyrne Homes Ltd against the decision of Swale Borough Council.
 - The application Ref 21/504571/FULL, dated 17 August 2021, was refused by notice dated 17 December 2021.
 - The development proposed is Demolition of existing property and erection of 2 Five bedroom dwellings with associated parking and private amenity space.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for partial costs was made by Ashbyrne Homes Ltd against Swale Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issues are the effect of the proposal on:
 - The living conditions of neighbouring residential occupiers; and
 - The character and appearance of the local area and the setting of the Borden-Harmen's Corner Conservation Area.

Procedural Matters

4. During the consideration of the planning application by the council and prior to their decision, revised drawings were submitted that replaced drawings submitted with the application. Therefore, my consideration of this appeal has been carried out with reference to these revised drawings.

Reasons

Living Conditions

5. The appeal site is located on the inside of a bend on Bannister Hill. The site was previously occupied by 'Greystone', a single detached dwelling. At the time of my site visit the demolition of this dwelling had been carried out and construction had commenced to implement an approval for two detached

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dwellings on the site, the approval of which was subsequent to the refusal of the planning application that is the subject of this appeal.

6. The proposal is to erect 2 detached 2 storey houses on the site. These would be generously proportioned, generally hipped roofed 5 bedroom houses with relatively small gardens, associated parking areas and a single detached garage. The proposed houses would be accessed from the newly created driveway/close that connects with Bannister Hill. One of these two houses (House C) would be situated on the site so that a side flank wall would be positioned approximately 2.2 Metres from the boundary of the appeal site with the rear gardens of neighbouring detached properties that face onto Bannister Hill.
7. House C would be located directly opposite the rear garden of Wykeham, a two storey detached house with a relatively small garden. The flank wall of House C would stretch almost the entire length of the rear boundary fence of Wykeham with the appeal site.
8. I acknowledge that during the application period the appellant revised their proposal to increase the separating distance between the boundary with Wykeham and House C by an additional 1.2 Metres. However, the small rear garden of Wykeham would result in the proposal dominating the outlook from the rear rooms and rear garden of this neighbouring property. The outlook from Wykeham would be of a two storey flank wall with part hipped roof above. The flank wall would be punctuated towards its centre by a single door and window at ground level to a utility room and small toilet, and a single window above these at first floor level to a bathroom.
9. From the material before me, I am satisfied that the proposal would not cause a loss of daylight or sunlight to an extent that would result in any significant harm to the living conditions of the residential occupiers of Wykeham or other neighbouring properties. Likewise, the application of a suitable condition on an approval of planning permission, requiring obscured glazing to the proposed bathroom and toilet windows, would resolve any issues of overlooking and privacy that would result from the proposal.
10. However, given the height and scale of the proposed House C, the length of its flank wall that would face the boundary, its proposed proximity to that boundary and the small size of the rear garden at Wykeham, the proposal would result in a significant loss of outlook from the enclosing effect of the proposal to the rear of this neighbouring property. Further, the proposal would have a substantial overbearing effect that would be intrusive and would be experienced by the residential occupiers of Wykeham as oppressive.
11. Although the appellant has stated that the rear rooms at Wykeham are not main habitable spaces, from my observations made on my site visit there is no indication that this is the case.
12. For these reasons I find that the proposal would result in significant harm to the living conditions of the residential occupiers of Wykeham. This would be contrary to policies CP4 and DM14 of Bearing Fruits 2031: The Swale Borough Local Plan (2017) (the Local Plan) and paragraph 130 of the National Planning Policy Framework (2021) which collectively seek to ensure that developments safeguard amenity for neighbouring occupiers.

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Character and Appearance

13. The appeal site includes the newly constructed road area of the driveway/close that provides access to two existing new detached houses that form a separate development and would also provide access to the proposal. The design for the close and its junction with Bannister Hill shown on the submitted plans appears to show a junction layout previously approved as part of the earlier approval¹ for the development of the two existing new houses that are accessed from the close, the details of which were conditioned and subsequently approved. Although the proposal does appear to include a slight widening of the roadway of the close away from the junction with Bannister Hill, the design of this junction would remain as approved and substantially completed.
14. The proposal does not, therefore, include any additional adjustments to this junction beyond those already approved and mostly implemented. Further, the Council have not provided any material that would indicate why the proposed addition of a single additional dwelling on the appeal site would result in an increase in traffic that would require any adjustment to the approved design of the junction of the driveway/close with Bannister Hill.
15. As no adjustments to the previously approved design of the junction are proposed and none are deemed necessary, I do not find that the proposal would result in any harm to the character and appearance of the local area or to the setting of the Borden-Harmen's Corner Conservation Area.

Planning Balance and Conclusion

16. Paragraph 11d, footnote 8 of the Framework states that where there are no relevant development plan policies, or the policies most important for determining the application are out-of-date (including housing, where the LPA cannot demonstrate a 5 year supply of deliverable housing sites), permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
17. When this is the case, and as this appeal relates to the provision of housing, the need for the proposal to be considered against paragraph 11d is triggered. However, although the proposal must be determined within the context of paragraph 11d, I consider the Local Plan policies to be a material consideration within this decision, which carry full weight in so far as they conform to the Framework.
18. According to the Government's Housing Delivery Test: 2021, Swale Borough Council has a significant projected housing shortfall on that required. Nothing is before me to indicate that this position has changed.
19. As I have identified above, the appellant has not submitted material that would justify the significant harm to the living conditions of neighbouring residential occupiers, contrary to policies CP4 and DM14 of the local Plan. In light of the Council's housing land supply position, paragraph 219 of the Framework makes it clear that weight should be given to existing development policies according to their degree of consistency with the Framework. Section 12, paragraph 130 of the Framework recognises that development should promote health and well-being, with a high standard of amenity for existing and future users.

¹ Planning Ref: 17/504348/FULL

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20. Even taking account of the objective of significantly boosting the supply of homes and the Council's supply position, the conflict between the proposal and policies CP4 and DM14 of the local Plan should be given significant weight in this appeal.
21. Set against the harm identified there would be social and economic benefits associated with the development. The appeal site is small in terms of its ability to provide housing, and the proposal would provide only a single additional dwelling compared to existing. Although a small contribution to the overall housing target within the Council area, small housing schemes do collectively make a significant contribution to the number of new residential units, and I have given this significant weight in my considerations. The proposal would also generate employment opportunities during its construction and through the employment of local services for its upkeep and maintenance when occupied. In connection with the single additional dwelling proposed, these benefits attract modest weight in favour of the proposed development.
22. Consequently, I conclude that the harm to the living conditions of neighbouring residential occupiers that I have identified, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
23. The proposal would conflict with the development plan as a whole and there are no other material considerations which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Victor Callister

INSPECTOR



Costs Decision

Site visit made on 22 November 2022

by **Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 December 2022

Costs application in relation to Appeal Ref: APP/V2255/W/22/3296580 Greystone, Bannister Hill, Borden ME9 8HU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ashbyrne Homes Ltd for a partial award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for Demolition of existing property and erection of 2 Five bedroom dwellings with associated parking and private amenity space
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The decision notice issued by Swale Borough Council (the Council) gives 2 reasons for refusal, the second of which relates to requirements to provide site lines for the purposes of public safety on the highway and concomitant adjustments to landscaping and boundary structures adjacent to the highway. The council have concluded that these adjustments would create a development which would detrimentally impact the current appearance of this rural site and would negatively affect the setting of the Borden-Harmen's Corner Conservation Area, concluding that the harm to which would be less than substantial.
4. This reason for refusal is in fulfilment of Members' decision to refuse the application following a site visit. Although this decision did not follow the recommendation of officers for approval of the application, the decision makers were entitled to come to a different conclusion.
5. However, the appeal site shown on the submitted plans includes the newly constructed roadway area of the driveway/close that already provides access to two existing new detached houses, which form a separate development. This existing driveway/close would provide access to the proposal, however, the design for the driveway/close and its junction with Bannister Hill shown on the submitted plans appears to show a junction layout previously approved as part

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of the earlier approval¹. This was for the development of the two existing new houses that are accessed from the close, the details of which were conditioned and subsequently approved. Although the proposal does appear to include a slight widening of the roadway of the close away from the junction with Bannister Hill, the design of this junction would remain as approved and as substantially completed.

6. The proposal does not, therefore, include any additional adjustments to this junction beyond those already approved as part of another planning approval and that has been substantially implemented. The Council have also not provided any material that would indicate why the proposed addition of a single additional dwelling on the appeal site would result in an increase in traffic which would require any adjustment to the approved design of the junction of the driveway/close with Bannister Hill.
7. As no changes to the junction of the driveway close with Bannister Hill are proposed or necessary, no harm the character and appearance of the local area or to the setting of the Borden-Harmen's Corner Conservation Area would result from the proposed development.
8. The applicant's appeal statement made this position clear and sought to clarify this aspect of the proposal, which they stated had resulted in an error being made with regard to the second reason for refusal given by the Council in the decision notice. Despite the clarifications given by the applicant, the Council have not taken the opportunity to withdraw their second reason for refusal to correct the mistakes in their assessment of the proposal in this regard. Therefore, the appellant has unnecessarily had to address these issues as part of their appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Swale Borough Council shall pay to Ashbyrne Homes Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the second reason for refusal given in the Council's decision Notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Victor Callister

INSPECTOR

¹ Planning Ref: 17/504348/FULL