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## Appeal Decision

Site visit made on 27 June 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

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**Appeal Ref: APP/V2255/W/22/3298340**

**Garage at rear of Riverbank House, Ash Lane, Minster-On-Sea ME12 2BF**

- 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 Anna Domican against the decision of Swale Borough Council.
  - The application Ref 22/500084, dated 07 January 2022, was refused by notice dated 10 March 2022.
  - The development proposed is conversion of existing garage into a one-bedroom chalet bungalow, with associated parking and amenity space.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are:
  - Whether the proposal would provide adequate living conditions for future occupants, with particular regard to outlook and privacy; and
  - The effects of the proposal on the integrity of the Swale, Thames Estuary and Marshes Special Protection Areas.

### Reasons

#### *Living conditions*

3. The appeal site comprises an existing detached garage building formerly related to adjacent dwelling, Myrtle House, which was previously known as Riverbank House.
4. The garage abuts the shared boundary and Myrtle House is set back from the boundary by a narrow section of garden. The rear elevation of the proposed dwelling would be oriented at 90 degrees to the rear elevation of Myrtle House, which would be clearly visible above the height of the fence from the proposed dwelling's kitchen and rear garden. Therefore, from the proposed dwelling, the two-storey rear elevation of Myrtle House would appear close and imposing and would have an enclosing effect on the rear amenity space. The proposed dwelling would therefore offer poor outlook for future occupants.
5. The fence along the shared boundary would obstruct views between the dwellings at ground floor level. However, a first-floor window serving a bedroom on the rear elevation of Myrtle House would directly overlook the proposed dwelling's rear garden and would provide a clear line of sight to the proposed dwelling's kitchen. Irrespective of the room's use as a bedroom, the first-floor window would provide opportunities for overlooking at any time of

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day and would therefore have a significant adverse effect on the standard of privacy at the proposed dwelling.

6. For these reasons, the proposal would not provide adequate living conditions for future occupants, with particular regard to outlook and privacy. The proposal would therefore conflict with Policies CP4, DM14 and DM16 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) which together require proposals to be of high-quality design which is appropriate to its surroundings and protects residential amenity.

#### *European sites*

7. The appeal site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA). The conservation objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive. The qualifying features include its assemblage of breeding birds and waterbirds, including populations of dark-bellied brent goose, common shelduck, northern pintail, pied avocet, ringed plover, grey plover, red knot, dunlin, common redshank, and little tern.
8. Natural England were consulted on the proposal and advised that, since the proposed development will result in a net increase in housing and therefore an uplift in population, the proposed development increases the risk of recreational disturbance on the SPA. The scheme would therefore have likely significant adverse effects on the integrity of the SPA in isolation and in association with other similar development.
9. The Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy<sup>1</sup> requires development to provide a financial contribution toward off-site strategic mitigation measures to conserve the integrity of the SPA. The appellant has expressed willingness to make this contribution prior determination of this appeal. However, I have been provided with no evidence that a contribution has been made, or of any mechanism put in place to secure payment of the financial contribution.
10. In the absence of a secured scheme of mitigation, I must conclude that the proposal would have likely significant adverse effects on the SPA's integrity. On this basis, the proposal would conflict with LP Policies ST1, CP7, DM14, and DM28, which together seek to conserve and enhance the natural environment and biodiversity and apply the highest level of protection to internationally designated habitats sites, requiring any harm to be mitigated or compensated. The proposal would also fail to satisfy the Conservation of Habitats and Species Regulations 2010 (as amended) and paragraphs 174, 180 and 181 of the National Planning Policy Framework (the Framework) which protect sites of biodiversity value and require significant harm to biodiversity be avoided.

#### **Other Matters**

11. The proposal would provide an additional dwelling and would thus contribute to the supply of windfall housing sites in the area. Through conversion of the existing garage, the proposal would make use of previously developed land. The appeal site would be generally accessible, located within an existing built-up area served by busses and the proposal includes provision of two parking

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<sup>1</sup> Bird Wise North Kent Mitigation Strategy 2018

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spaces. The tree and hedge at the western boundary would be retained. The proposal would therefore provide very modest social, economic and environmental benefits commensurate in scale to the development of a single dwelling.

12. The Council cannot demonstrate a five-year supply of deliverable housing sites and has a shortfall against its Housing Delivery Test requirement. In these circumstances, footnote 8 of the Framework establishes that the policies which are most important for determining the application are out of date. However due to the proposal's likely significant effects in respect of harm to the integrity of the SPA, the Framework's policies which protect assets of particular importance provide a strong reason for restricting development. On this basis, the proposal does not benefit from the presumption of favour of sustainable development, as set out at paragraph 11.d) of the Framework.
13. The proposed dwelling would provide the appellant with year-round accommodation, not subject to a seasonal occupancy restriction. However, this is a private benefit to which I can ascribe no weight in my decision.

#### **Conclusion**

14. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

*E Dade*

INSPECTOR