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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/22/3301131**  
**53 Millfield, Sittingbourne, Kent ME10 4TP**

- 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 Ajit Singh against the decision of Swale Borough Council.
  - The application Ref 22/500942/FULL, dated 27 March 2022, was refused by notice dated 31 May 2022.
  - The development proposed is erection of a two-storey side extension to form 1no. semi-detached dwelling with associated parking and alteration to fenestration of existing building.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are:
  - The effects of the proposed development on the living conditions of the occupants of Nos 57 to 67 Millfield, with particular regard to outlook, privacy, and daylight and sunlight; and
  - The integrity of European sites, namely the Swale, Thames and Medway Estuary Special Protection Areas.

### Reasons

#### *Living conditions*

3. The appeal property is an end of terrace dwelling within a broadly triangular plot that is wider at the front and narrower toward the rear. Adjoining the appeal site's angled side boundary are the rear gardens of Nos 57 to 67, a three-storey terrace row with small rear gardens. The back corner of the proposed dwelling would almost abut the shared boundary and, due to short garden length, would appear very close to No 61.
4. Due to its two-storey height and siting close to the shared boundary, the proposed development would appear imposing and have an enclosing effect on the rear of the adjacent terrace row. The proposed development would therefore result in a loss of outlook, particularly from the back gardens and rear habitable rooms of Nos 57 to 63.
5. The proposed development would be lower in height than surrounding dwellings. The appellant asserts that the proposed development would lie within the shadow cast by the appeal property. However, no technical daylight and sunlight assessment has been submitted to demonstrate this.

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6. As a result of the proposed development's siting close to shared boundary, I consider the rear gardens and rear habitable rooms of Nos 59 to 63 would experience a loss of daylight and sunlight, particularly after noon. Limiting the height of the proposal to two-storeys would not therefore be sufficient to prevent a loss of daylight and sunlight.
7. Windows on the side elevation would be fixed and obscure glazed. However, the first-floor window at bedroom 1 would directly overlook the rear gardens of Nos 63 to 67. The short distance between bedroom 1's window and the rear elevation of the adjacent terrace row would result in overlooking of habitable rooms, particularly at Nos 63 and 65. The separation distance between those windows would not satisfy Swale Borough Council's 'Designing an Extension: A Guide for Householders' Supplementary Planning Guidance which requires windows to the rear to be at least 21m from the windows of other houses to the rear.
8. The proposal would therefore result in a loss of privacy for the occupants of Nos 63 to 67 through overlooking of habitable rooms and rear gardens from the first-floor bedroom window.
9. The appellant has drawn my attention to nearby developments similar to the proposal. During my site visit I identified two-storey side extensions at No 5 Millfield and No 6 Kiln Close. In both examples, the side extensions are positioned at a greater distance from neighbouring dwellings than the proposed development and thus would not have comparable effects in respect of the living conditions of neighbouring occupants.
10. As set out above, the proposal would harm the living conditions of the occupants of Nos 57 to 67 Millfield, with particular regard to outlook, privacy, and daylight and sunlight. The proposal would therefore conflict with Policies CP4 and DM14 of 'Bearing Fruits 2031: The Swale Borough Local Plan 2017' (LP) which together require proposals to be of high-quality design appropriate to its surroundings, to comply with local design guidance, and to cause no harm to amenity.

#### *European Sites*

11. The appeal site is located within 6km of The Medway Estuary and Marshes Special Protection Area. 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.
12. Natural England were consulted on the scheme and advised that, since it would result in a net increase in residential accommodation, the proposed development risks increasing recreational disturbance on European sites identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy<sup>1</sup>. The scheme is therefore likely to have a significant effect on the SPA's integrity in isolation and in association with other similar development.

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

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13. The strategy requires a financial contribution toward strategic off-site mitigation of the effects on European sites arising from development. However, no contribution, or mechanism to secure such a contribution, has been provided.
14. In the absence of a secured scheme of mitigation, I must conclude that the proposal would have likely significant adverse effects on the integrity of the SPA. On this basis, the proposal would conflict with LP Policies ST1, 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**

15. The proposal would provide an additional dwelling thereby contributing to the area's housing supply and would include an electric vehicle charging point thus supporting a transition to low-emission vehicles. The proposal would therefore provide very modest social, economic and environmental benefits commensurate in scale to the development of a single dwelling.
16. The Council cannot demonstrate a five-year supply of deliverable housing sites. Its supply is equivalent to 4.83 years, representing a modest shortfall against the 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, since I have found the proposal would have likely significant effects on 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.
17. No objections were raised by the Council's Environmental Health team regarding matters within its remit, including noise, contaminated land, air pollution or lighting, and the appellant confirms that the suggested condition stipulating working hours during construction would be adhered to, and the proposal would avoid disturbance to neighbours. However, the absence of harm in this regard neither weighs against nor in favour of the development.

#### **Conclusion**

18. For the reasons given above, having assessed the case against the development plan as a whole and having had regard to all other relevant material considerations, I conclude that the appeal should be dismissed.

*E Dade*

INSPECTOR