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## Appeal Decision

Site visit made on 11 August 2023

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5<sup>th</sup> October 2023

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**Appeal Ref: APP/V2255/W/22/3309840**

**Land Adjacent to The Coach House, Chalkwell Road, Sittingbourne, Kent  
ME10 2LY**

- 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 D Creary (Architectural Designs) against the decision of Swale Borough Council.
  - The application Ref 22/502726/FUL, dated 3 August 2022, was refused by notice dated 1 September 2022.
  - The development proposed is the demolition of the existing garage and erection of a one bedroom, two storey dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The address on the application form and drawings refers to the location of the appeal site as The Coach House (TCH). However, TCH is the adjacent detached dwellinghouse. Therefore, for the banner heading above, I have used the address from the Council's decision notice as it accurately describes the appeal site's location, and it coincides with the address stated in the appellant's appeal form. I am satisfied that assessing the appeal on this basis would cause no prejudice to any party.
3. I am advised that the appeal site lies within the zone of influence of the Medway Estuary and Marshes Special Protection Area (SPA), which is protected as a European site of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (as amended). This is a matter which I will return to later in this decision.

### Main Issues

4. The main issues are:
    - The effect of the proposed development on the living conditions of the occupiers of TCH, with particular regard to outlook and access to light, and the occupiers of the properties on Staplehurst Road and Alexander Court, with particular regard to privacy.
    - Whether the proposal would provide adequate living conditions for future occupiers of the proposed dwelling, with particular regard to the amount of outdoor amenity space, and
    - The effect of the proposed development on access to the nearby garages.
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## Reasons

### *Living conditions of nearby occupiers*

5. The proposed dwelling would extend alongside the rear garden of TCH, and beyond its rear wall. The closest first floor window in the rear wall of TCH is clear glazed and from the appeal evidence serves a bedroom. This window provides occupiers with a relatively wide field of vision from out of this room.
6. Set at such a close distance to the common boundary with TCH, the height, depth and solidity of the side elevation of the proposed dwelling would have a harmfully dominant and overbearing effect on the outlook of the occupiers of TCH, when viewed from the bedroom window and from the closest parts of the rear garden.
7. The evidence before me does not include a technical assessment of daylight and sunlight. Nonetheless, I have taken account of the angle of the sun as it moves through the sky and the orientation of the proposed dwelling relative to TCH, and its relatively wide rear garden. The garden and rear facing windows in TCH have a relatively open aspect towards the east and through to the south. Whilst the proposed dwelling would be set close to the common boundary, I am satisfied, based on these factors combined, that sufficient daylight and sunlight would continue to reach the rear facing rooms and garden of TCH, which would not suffer harmful overshadowing.
8. The proposed dwelling's bedroom window is relatively wide and would provide future occupiers with views across nearby gardens, parking areas and towards the rear windows of nearby dwellings. Some overlooking is a common characteristic in built-up areas where back-to-back-relationships exist between buildings. However, given the distances separating the bedroom window in the proposed dwelling from the rear walls of the properties in Staplehurst Road and Alexander Court, views from out of the bedroom window would not lead to harmful overlooking and a loss of privacy for nearby occupiers.
9. I acknowledge that the aforementioned separation distance would fall slightly short of the Council's guidelines<sup>1</sup> for extending a dwelling. Although I have had regard to these guidelines, I have assessed the appeal, which is for a new dwelling and not an extension to a dwelling, on the information before me and what I experienced at the site visit. Having done so, the conflict with the guidelines does not alter my conclusion on this main issue.
10. For these reasons, I conclude that the appeal proposal would harm the living conditions of the occupiers of TCH, with particular regard to outlook. As such, it would be contrary to Policies CP4 and DM14 of The Swale Borough Local Plan – Bearing Fruits 2031 (Adopted July 2017) (the LP), which, amongst other requirements, seek to ensure that development would cause no significant harm to amenity.
11. Insofar as is relevant to this case, the policies referred to above are consistent with Paragraph 130.f) of the National Planning Policy Framework (the Framework), which states that planning decisions should ensure that developments create places with a high standard of amenity for existing users.

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<sup>1</sup> Swale Borough Council Planning and Development Guidelines No. 5 – Designing an Extension: A Guide for Householders.

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*Living conditions for future occupiers*

12. The private rear garden to the proposed dwelling would be relatively modest in size relative to others in the locality. However, given the low occupancy levels of the proposed 1 bedroomed dwelling, the garden would have sufficient capacity to accommodate a commensurately modest outdoor seating area for relaxation and for domestic purposes, such as drying washing. Furthermore, the broadly rectangular shape of the garden would be practical and conveniently accessible to the living area within the dwelling, aiding usability, and would accommodate bin and cycle storage.
13. For these reasons, I conclude that the proposed garden area would contribute to providing adequate living conditions for future occupiers, consistent with LP Policies CP4 and DM14, the relevant objectives of which are set out above.

*Access to nearby garages*

14. The evidence indicates that the appeal proposal would be built partly on third party land within the concrete surface forecourt area to the nearby garage block serving residential properties on Staplehurst Road. This would reduce the space available for the parking and manoeuvring vehicles, which an interested party suggests is already tight when the parking spaces are in use.
15. Consequently, the proposal would make it more difficult for a driver to manoeuvre and park a vehicle within the forecourt. Vehicle access to some garages would be more difficult than it currently is, even for a small car, if not prevented. Car parking could be displaced onto nearby roads, causing inconvenience to residents who may not be able to park vehicles in convenient locations relative to their homes. However, based on the evidence before me and my observations of the availability of parking on nearby roads, which I note were a snapshot in time, I am not persuaded that this would lead to harm to the living conditions of nearby occupiers. I note the Council raises no objection in relation to parking.
16. For these reasons the proposal would comply with the objectives of LP Policies CP4 and DM14, which seek to create accessible places where development causes no significant harm to amenity.
17. The deeds of the nearby properties may provide protection of access rights to the forecourt and garages, however that would be a civil matter between the relevant parties that would fall outside of planning control. As such, it does not alter my conclusion on this main issue.

**Other Matters**

18. Given the appeal proposal's location, its resident population is likely to contribute to increased visitor numbers to the SPA. In turn, this would exert increased recreational pressure on the SPA, leading to disturbance and likely significant adverse effects on the bird species for which the SPA is designated.
19. I am advised that the appellant has paid the requisite tariff-based contribution, using the Council's standard proforma, towards the delivery of the strategy to mitigate the potential adverse in-combination effects of new housing development and visitor pressure on the qualifying bird species within SPA. Accordingly, the parties agree that the appeal proposal would mitigate its effects on SPA.



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20. However, a copy of the proforma is not before me and therefore I cannot be certain that the proposed development would not harm the integrity of the SPA. Nevertheless, in light of my findings on the main issues above, it is not considered necessary to look at the harm to the SPA in detail, given that the proposal is unacceptable for other reasons.
21. I acknowledge that the proposal would adhere to quantitative national internal space standards and would provide adequate storage for bins and cycles. The design of the appeal proposal would not harm the character and appearance of the area. Designated heritage assets would not be harmed. However, all well designed schemes should comply with these standards and not cause harm in these respects. As such, an absence of harm in this instance does not weigh either in favour or against the appeal proposal.
22. I note the planning history of the appeal site, however I am not bound by the decisions of the Council and as such this is a matter to which I can attach limited weight in my decision.

### **Planning balance**

23. In the context of the development plan, the appeal proposal would conflict with policies CP4 and DM14 of the LP, which I have found to be broadly consistent with Paragraph 130.f) of the Framework. As such, I give significant weight to the appeal proposal's conflict with these policies.
24. The proposal would make efficient use of a small site in a location where there is good access to a range of services, facilities and employment opportunities, and where housing is supported in principle. Occupancy of the proposed home would deliver long-term economic and social benefits through residents supporting these facilities and services. Construction works would generate short term employment opportunities and economic activity. The evidence indicates that the proposal would be both energy efficient and lead to a reduction in emissions relative to the Building Regulations standards in accordance with the Council's suggested conditions.
25. However, given the scale of the proposed development and its likely occupancy levels, these economic, social and environmental benefits are modest and attract limited weight in its favour. Collectively, they are insufficient to outweigh the appeal proposal's conflict with the development plan when considered as a whole.
26. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration, and the Council has confirmed that it cannot currently demonstrate a five-year supply of deliverable housing sites in its area.
27. Accordingly, the policies which are most important for determining the application are deemed out-of-date in accordance with Paragraph 11.d) of the Framework. It follows that planning permission should be granted, unless either the Framework's policies that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or the adverse impacts of granting permission would significantly and

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demonstrably outweigh the benefits, when considered against the policies in the Framework as a whole.

28. For the reasons given above, I am unable to conclude that the proposal would not harm the integrity of the SPA. Therefore the Framework's protection of habitats sites within Footnote 7 to paragraph 11.d)i. provides a clear reason for refusal.
29. Even if Framework's presumption under Paragraph 11.d)ii. applied to the appeal proposal, the benefits I have attributed to the construction and occupation of the proposed dwelling, and its contribution to boosting housing supply and making efficient use of land within an existing settlement, would be modest. These benefits are outweighed by the importance the Framework attaches to the expectation that a development's design should provide a high standard of amenity for existing users, and which the appeal proposal fails to achieve.
30. Consequently, the appeal proposal's adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. Therefore, the proposal does not benefit from the presumption in favour of sustainable development under Paragraph 11 of the Framework.

#### **Conclusion**

31. For the reasons given above and having considered all matters raised, I conclude that the proposed development conflicts with the development plan as a whole. The material considerations, including the aforementioned potential benefits of the proposal and the associated provisions of the Framework, do not carry sufficient weight to outweigh the harm, nor do they indicate that the appeal should be determined other than in accordance with the development plan. The appeal should be dismissed.

*G Sylvester*

INSPECTOR