

**PLANNING COMMITTEE – 7 DECEMBER 2017**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 17/503349/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of chalet type dwelling with detached garage (Resubmission of 16/506230/FULL)			
<b>ADDRESS</b> 9 London Road Newington Sittingbourne Kent ME9 7NP			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal provides an additional dwelling within the built up area boundary and in my view overcomes the reason for refusing the previous application on the site and the comments of the Inspector in the subsequent appeal.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Recommendation contrary to Parish Council views.			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN</b> Newington	<b>COUNCIL</b>	<b>APPLICANT</b> Mr M Anderson <b>AGENT</b> Prime Folio
<b>DECISION DUE DATE</b> 01/09/17	<b>PUBLICITY EXPIRY DATE</b> 24/10/17		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
16/506230/FULL	Erection of chalet type dwelling with detached garage.	Refused and dismissed at appeal (PINS ref: 3165376)	17/10/2016, appeal dismissed on 29 <sup>th</sup> March 2017

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 No.9 London Road is a large detached two storey property with a generous amount of hardstanding to the front and a large amount of private amenity space to the rear.
- 1.02 The property is situated on an access road which runs parallel to the A2 and the dwelling is elevated above the main highway. A part of the private amenity space to the rear is sandwiched between No.20 and No.30 The Willows.

## **2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the erection of a chalet type dwelling in the rear private amenity space of No.9 London Road. Due to the layout of the application site the proposed property would address The Willows with vehicular access also taken from here.
- 2.02 The property would have a footprint of 13.3m x 7.8m with a frontward projecting element of 1.9m in depth and 4m in width. The property would have a pitched roof measuring 2.6m to the eaves and 7.1m in overall height. As stated above, it would have a frontward projecting element with a pitched roof, the ridgeline of which would be turned 90 degrees to the main roof. This element of the dwelling would measure 5m to the eaves and 7.1m in overall height. The front facing roofslope includes two pitched roof dormer windows and a rooflight whilst the rear facing roofslope has 5 rooflights which will be obscure glazed.
- 2.03 A detached single garage is proposed adjacent to the dwelling measuring 2.7m in width, 5.3m in depth, 2.4m to the eaves and 4.4m in overall height. A driveway will be created from the site boundary with The Willows leading up to the garage.
- 2.04 Due to the shape of the plot the rear private amenity of the new dwelling will be triangular shaped measuring approximately 9m in length at its very deepest point and 15.5m across at its widest.
- 2.05 The application site also includes the existing property at No.9 London Road and the proposal includes the obscuring and fixing shut of the rear facing first floor window of the main bedroom (closest to the proposed property) and the replacement of the first floor window in the projecting element with a triangular oriel window, with one half obscure glazed and fixed shut.

## **3.0 PLANNING CONSTRAINTS**

- 3.01 None

## **4.0 POLICY AND OTHER CONSIDERATIONS**

- 4.01 The NPPF and the National Planning Policy Guidance (NPPG) both advocate provision of new residential development within sustainable urban locations close to local shops and services, subject to good design and no serious amenity issues being raised.

### Development Plan - Bearing Fruits 2031: The Swale Borough Local Plan 2017

- 4.02 Policy ST1 is a general policy aimed to achieve sustainable development throughout the Borough. The most relevant criteria are:

4. Accord with the Local Plan settlement strategy; and
7. Deliver a wide choice of high quality homes by:

- a. meeting the full, objectively assessed need for housing in the housing market area;
- b. providing housing opportunity, choice and independence with types of housing for local needs; and
- c. keeping vitality within rural communities with identified housing needs, proportionate to their character, scale and role.

ST3 sets out the Swale settlement strategy, and identifies preferred locations for residential development. Newington is defined as a rural local service centre and Para.4 of the policy states that *“Other villages with built up area boundaries, as shown on the proposals map, will provide development on minor infill and redevelopment sites within the built up area boundaries where compatible with the settlement’s character, amenity, landscape setting, heritage or biodiversity value.”*

Policy CP2 states that new development will be located to minimise the need to travel for employment and services, and to facilitate sustainable transport choices.

CP3 aims to provide a wide choice of high-quality homes across the Borough. It aims to steer development to the built up areas and allocated sites in accordance with policy ST3.

CP4 states that all development proposals will be of a high quality design that is appropriate to its surroundings and amongst other requirements will enrich the qualities of the existing environment by promoting and reinforcing local distinctiveness and strengthening sense of place.

DM7 states that the Council will continue to apply extant Kent County Council vehicle parking standards to new development proposals.

DM14 is a general policy and sets out a number of criteria all developments are expected to accord with.

DM16 states that planning permission will be granted for alterations to existing buildings provided they, amongst other considerations, protect residential amenity.

## 5.0 LOCAL REPRESENTATIONS

5.01 Representations have been received from 3 separate addresses. 2 neighbouring occupiers object to the application whilst 1 supports the proposal. The objections raise the following summarised points:

- The application would give rise to further parking pressures in The Willows;
- Access to the property would be difficult with vehicles parked opposite the application site;
- The proposed garage is too small;
- The proposal would lead to the removal of large and well established trees which would affect wildlife and give rise to harm to visual amenities;
- Possible disturbance to surrounding properties caused by construction work;
- Construction noise and vehicles will give rise to harm to neighbouring amenities;
- The proposal appears unaltered from the original scheme;
- The property is not in keeping with the surrounding dwellings;
- The proposal is too large for the development site;
- The proposal would give rise to harmful levels of overlooking due to a change in site levels;
- The development would devalue existing property.

The letter of support raises the following summarised points:

- A new detached property would enhance The Willows;
- The design of the property bears a striking resemblance to the rear elevation of No.9 London Road;
- Willing to offer a piece of land to enable a wider access;

- *“With reference to previous comments made about the parking in The Willows, if the residents used their driveways and garages to their full potential this would increase the available parking on the road, also, if the people that live in Bull Lane refrained from parking their vehicles in The Willows this would also help.”*

## **6.0 CONSULTATIONS**

- 6.01 Newington Parish Council object to the application and made the following comments:

*“Councillors agree with the reason for refusal to the original application given by Swale Borough Council that 'Due to the limited separation distance between the proposed property and No.9 London Road the proposal would create an unacceptable level of mutual overlooking and significant loss of privacy leading to an unacceptable impact upon the residential amenities of both the existing and future occupiers of these dwellings. As a result the application would be contrary to policies E1 and E19 of the Swale Borough Local Plan.' This view was confirmed in the dismissal of the subsequent appeal to the Planning Inspectorate.*

*Whilst the address is for the main property on London Road, access to the proposed house would be via The Willows. This road already experiences problems with resident parking, resulting in complaints and requests for parking restrictions to the Parish Council; the proposal would reduce parking still further.*

*We note that KCC Highways have made their standard response to proposed developments of this scale. Give the concerns of additional access/egress onto the Willows we request that KCC Highways be asked to make a site visit and that this should be either in the evening or at a weekend when parking problems are severe.*

*The proposed property does not fit the design of houses in The Willows.”*

- 6.02 The Council's Tree Consultant was consulted on the previous application. The proposal in terms of the impact upon the trees remains unchanged and as such I have repeated these comments here as follows:

*“two Conifers and a self-sown Sycamore would need to be removed in order to develop the site. Whilst of mature size they are only partly visible from the adjoining road The Willows, so they have limited amenity value. The Sycamore is located closer to the road and so is more prominent within the street scene although being a self-sown specimen it is not a species of tree that is suitable for its current growing position. Based on their current condition and prominence within the area the three trees are not considered to be of sufficient quality to be an arboricultural constraint.”*

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and correspondence relating to planning reference 17/503349/FULL, 16/506230/FULL and appeal reference 3165376.

## **8.0 APPRAISAL**

### **Principle of Development**

- 8.01 The application site lies within the built up area boundary where the principle of development is accepted. The main considerations in this case concern the impact upon residential, visual and highway amenity.

### Residential Amenities

- 8.02 The application previously submitted on this site proposed an identically sized and located dwelling to the one which permission is now being sought for. The previous application submitted on the site was refused for the following reason:

*“Due to the limited separation distance between the proposed property and No.9 London Road the proposal would create an unacceptable level of mutual overlooking and significant loss of privacy leading to an unacceptable impact upon the residential amenities of both the existing and future occupiers of these dwellings. As a result the application would be contrary to policies E1 and E19 of the Swale Borough Local Plan.”*

- 8.03 The application was subsequently dismissed at appeal, I have attached the appeal decision as an appendix to this report. It is important to note that the Inspector concluded that the application would cause unacceptable harm to the living conditions of future occupiers of the proposal by virtue of the proximity and available views from the rear windows, in particular the closest dormer window on the rear elevation of No.9 London Road.
- 8.04 Since the previous application was refused and subsequently dismissed at appeal the Council has adopted a new Local Plan, however the policies which relate to overlooking and the impact upon residential amenities in this regard have the same aims. As a result I am of view that the application as now submitted, in order to be acceptable, would be required to overcome the unacceptable elements that the Inspector identifies.
- 8.05 In relation to the issue of overlooking, the application drawings now show that the rooflights on the rear elevation of the proposed property will be obscure glazed with a cill height of 1.65m. Although there are now 5 rooflights proposed in comparison to 4 on the previous application, the Inspector did not raise specific concern in relation to the views from these windows and as such I take the view that as they are now being obscure glazed that this amendment would be acceptable.
- 8.06 In terms of the potential overlooking from the first floor rear windows of No.9 I note that the drawings submitted show that the rear facing dormer window serving the bedroom window closest to the proposed dwelling, separated by a distance of approximately 13m, will be obscure glazed and fixed shut. The views from this window were the Inspector's main concern and due to this amendment I take the view that any potential opportunities for overlooking would not be available. I noted on my site visit that this bedroom is served by other windows and therefore do not believe that the amenity of existing occupiers of this dwelling would be unacceptably harmed by this amendment. I have recommended a relevant condition in order to ensure this is carried out. In addition to this, the drawing shows that there would be some views available within a 45 degree visibility splay from the first floor window on the central rear projecting element of No.9 which serves a bedroom. In order to overcome this the application proposes to replace the existing window with a projecting oriel window. The window pane facing the proposed dwelling would be obscure glazed and fixed shut whilst the window pane facing away from the proposed property would be clear glazed and opening. In my opinion this would effectively mitigate against any possibility of harmful overlooking and provide a satisfactory level of outlook for the occupants of the existing property. I have also recommended a relevant condition in relation to this window. I also note the drawings show a hedge along the perimeter of the private amenity space of No.9

London Road where it adjoins the garden of the proposed property. Due to the alterations to the windows as set out above I do not believe that this would be necessary in terms of disrupting views. However, the standard landscaping condition has been recommended and would ensure that suitable planting is carried out. As a result of the above I am of the view that the amendments would overcome the reason for refusing the previous application and the comments of the Inspector and is therefore acceptable in this regard.

- 8.07 In terms of the impact upon the adjacent properties I reach the same conclusion as the assessment made under 16/506230/FULL. To reiterate, the proposed dwelling does not project either beyond the rear or the front of No.20 The Willows and as such I do not consider that it would have an unacceptable impact upon this property. On the opposite side, the detached garage will be located close to the flank elevation of No.30 The Willows, however, it will not project any further than the front elevation of this property and furthermore, as the proposed property is separated from No.30 by a distance of 5m at the closest point I do not consider that the proposal to have a significantly harmful impact upon the residential amenities of this property. I note the objection received from the occupants of No.11 London Road, however, there is a gap of 22m between the closest points of these properties. As such when this is combined with the obscure glazing of the rooflights on the rear elevation of the proposed property I consider this relationship to be acceptable.
- 8.08 Due to the slightly unusual layout of the site and the proximity to other dwelling, in particular No.9 London Road, further extensions to the development carried out under permitted development rights could have an unacceptable impact upon local amenities. As such I have recommended a condition removing permitted development rights under classes A, B, C and E.

### **Visual Amenity**

- 8.09 As stated above, the overall design and layout of the property remains the same as per the application submitted under 16/506230/FULL. The Willows is a street comprised of a mixture of dwelling types with terraced, semi detached and detached properties. Furthermore, in close proximity of the application site, the design of the adjacent dwellings are mixed. As such, I am of the view that the introduction of a detached property, designed in the manner as described above would not be out of keeping with the streetscene and is in my view acceptable in this regard.
- 8.10 The site does have three trees (two Conifers and one Sycamore) which contribute positively to visual amenities when viewed from the private amenity space. When viewed from public vantage points the most prominent of these trees in the streetscene is the Sycamore. However, for the reasons as set out in the comments provided by the Council's Tree Consultant above it is not a species of tree that is suitable for its current growing position. Therefore I do not consider that the loss of the trees (due to the condition of the Sycamore and the location of the Conifers) would unacceptably harm the visual amenities of the area. The submitted drawings also indicate a 2m high close boarded fence along the southern boundary of the site which would be highly visible from The Willows however this is existing and therefore the impact would be neutral.

### **Highways**

- 8.11 I note that the Parish Council have raised objections, amongst other things on the grounds that the access to the site and the parking arrangement is unacceptable. Although the proposed driveway is limited in width to approximately 2m this is still

wide enough for a car to access the site. In addition, as the access is serving a single dwelling I do not consider this to be unacceptable. Further to this, although the width of the garage is below the KCC preferred garage size there is ample room for parking on the proposed driveway. As such I am of the view that the proposal would not have an unacceptable impact upon highway safety or amenity.

### **Other Matters**

- 8.12 A number of the points raised in the letters of objection have been dealt with in the discussion above. Of those that remain I respond as follows. As the site is not located in a designated area and the trees are not formally protected then the Council would have no control over their removal (notwithstanding the comments from the Tree Consultant). Any structural damage to surrounding properties would be a private legal matter. The development would give rise to some element of disturbance to neighbouring properties, however, I have recommended a condition in relation to construction hours and as a result do not believe that the proposal would be unacceptable in this regard. Finally, issues of property value do not constitute a material planning consideration and as such I make no further comment.

### **Impact upon SPA and Ramsar Sites**

- 8.13 I have for completeness set out a Habitat Regulations Assessment below. This confirms that whilst mitigation could be provided by way of developer contributions, this is not considered appropriate for developments under 10 dwellings. The cost of mitigation will be met by developer contributions on developments over 10 dwellings. In view of this it is not considered that the development will have a harmful impact on the special interests of the SPA and Ramsar sites.

## **9.0 CONCLUSION**

- 9.0 Overall I consider that the proposal overcomes the reason for refusing the previous application on the site and the comments subsequently made by the Inspector in dismissing the appeal. The overall scale, design and layout of the proposed property remains the same as previously considered and therefore as the application was not refused for any other reasons and the Inspector did not raise any additional issues I am of the view that the proposal is now acceptable. On this basis I recommend that planning permission is granted.

## **10.0 RECOMMENDATION – GRANT Subject to the following conditions:**

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall take place in accordance with the following drawing: 16-34-01D (received 27th September 2017).

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3) No development beyond the construction of foundations shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the

development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development in accordance with the approved details prior to the first use of any dwelling.

Reason: In the interest of promoting energy efficiency and sustainable development.

- 4) No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- 5) No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- 6) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area.

- 7) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area.

- 8) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-

Monday to Friday 0800 – 1800 hours, Saturdays 0800 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.



- 9) The area shown on the submitted layout as vehicle parking and turning space shall be provided, surfaced and drained before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking and turning of vehicles is likely to lead to parking inconvenient to other road users and be detrimental to highway safety and amenity.

- 10) Prior to the occupation of the dwelling hereby approved the five rooflights on the rear elevation of the development shall be obscured glazed and fixed shut and shall remain so in perpetuity.

Reason: In the interests of residential amenities.

- 11) Prior to the occupation of the dwelling hereby approved the rear facing first floor window located to the east of the rearward projecting element of No.9 London Road shall be obscure glazed and fixed shut, as shown on drawing 16-34-01D (received 27<sup>th</sup> September 2017) and shall remain as such in perpetuity.

Reason: In the interests of visual amenities.

- 12) Prior to the occupation of the dwelling hereby approved the existing rear facing first floor window located in the projecting element of No.9 London Road shall be replaced with an oriel window as shown on drawing 16-34-01D (received 27<sup>th</sup> September 2017) and shall remain as such in perpetuity.

Reason: In the interests of residential amenities.

- 13) Upon completion, no further development permitted by Classes A, B, C or E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order), shall be carried out.

Reason: In the interests of the amenities of the area.

### **Habitats Regulations Assessment**

This HRA has been undertaken without information provided by the applicant. The application site is located 2.6km south of Medway Estuary and Marshes Special Protection Area and Ramsar site which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard

to the objectives of this Article. The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of the Habitat Regulations require a Habitat Regulations Assessment. NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It goes on to state that when recording the HRA the Council should refer to the following information to justify its conclusions regarding the likelihood of significant effects; financial contributions should be made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG); the strategic mitigation will need to be in place before the dwellings are occupied.

In terms of screening for the likelihood of significant effects from the proposal on the SPA features of interest, the following considerations apply:

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement may cost more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on minor developments will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Borough Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period

when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion as this a proposal for one dwelling, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment. I acknowledge that the mitigation will not be in place prior to occupation of the dwelling proposed but in the longer term the mitigation will be secured at an appropriate level, and in perpetuity.

**The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

## APPENDIX A



---

## Appeal Decision

Site visit made on 28 February 2017

by **D. M. Young BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 March 2017

---

**Appeal Ref: APP/V2255/W/16/3165376**  
**9 London Road, Newington, ME9 7NP.**

- 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 M Anderson against the decision of Swale Borough Council.
  - The application Ref 16/506230/FULL, dated 4 August 2016, was refused by notice dated 17 October 2016.
  - The development proposed is a chalet type dwelling with detached garage – fronting The Willows.
- 

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of the development on the living conditions of future and neighbouring occupiers of the development.

### Reasons

3. The proposed dwelling would be sited in the rear garden of 9 London Road which is elevated above the ground floor level of the host dwelling. It would however be accessed from, and seen in the context of, The Willows.
  4. Insofar as the appeal scheme is concerned, Policy E1 of the "Swale Borough Local Plan 2008" (the LP) seeks to ensure that new development does not cause demonstrable harm to residential amenity.
  5. It is the relationship of the new dwelling to No 9 that is the issue in this case. According to the Council the separation between the rear elevation of the existing and proposed dwelling would be in the region of 13 metres. It is further stated that the Council would normally expect a distance of 21 metres in such situations. However, neither of the policies cited in the Council's Decision Notice are so prescriptive and I have not been referred to a relevant SPG.
  6. Nonetheless, 21 metres is the generally accepted standard between facing habitable room windows. However, in this case, the rear elevation of the proposed dwelling would be devoid of habitable room windows. It is also pertinent that the orientation between the two dwellings would be skewed by 45 degrees such that any direct over looking into the rear windows of No 9 from the new dwelling would be limited and not at a level to cause demonstrable harm.
-

**APPENDIX A**

Appeal Decision APP/V2255/W/16/3165376

---

7. I am however less satisfied with the potential overlooking from No 9 to future occupiers of the dwelling. There are habitable room windows at first floor level in the rear of No 9. One of these, a dormer window, would occupy an elevated position facing the small rear garden of the new dwelling. A 45-degree splay line drawn from this window would encompass the majority of the outdoor amenity space to the dwelling. The window would be particularly apparent to future occupiers where it would loom just beyond the shared boundary. Its elevated position would compound the perception of future occupiers being under surveillance.
8. Whilst I accept that a degree of overlooking is inevitable given the site's context within a built-up residential area, I am not persuaded on the evidence before me that this could reasonably be described as typical in this case. I have considered the appellant's view that the harm could be mitigated by landscaping. However, there is nothing before me to demonstrate what this might look like including the height necessary to provide the screening. In any event, this would take a number of years to mature to any reasonable height and in the meantime the occupiers of the dwelling would have to endure unacceptable living conditions.
9. I therefore conclude that the development would cause unacceptable harm to the living conditions of future occupiers. It would thus conflict with Policy E1 of the LP. Although the Council has cited Policy E19 in its refusal reasoning, this is concerned with high quality design and distinctiveness as opposed to living conditions and I cannot find any conflict with the 12 criteria listed under that policy.

**Conclusion**

10. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*D. M. Young*

Inspector

