
Appeal Decision

Site visit made on 15 September 2020

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Appeal Ref: APP/V2255/W/20/3251533
69 Church Road, Eastchurch ME12 4DG

- 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 Mehmet Gergeroglu against the decision of Swale Borough Council.
 - The application Ref 19/505985/FULL, dated 25 November 2019, was refused by notice dated 18 February 2020.
 - The development proposed is to convert the existing 3 bed house into two separated three-bedroom dwelling houses alongside the creation of 2x new-build three bedroom houses at the rear land with designated green spaces.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposed development includes appropriate mitigation to ensure that it does not, in combination with other plans and projects, have adverse effects on the Swale Special Protection Area (SPA)/ RAMSAR sites.
 - The effects on the living conditions of the occupiers of surrounding properties and future occupants of the proposal, with particular regard to privacy and whether noise and disturbance would occur due to increased use of the access road.

Reasons

Swale Special Protection Area (SPA)/ RAMSAR sites.

3. The Council have identified the appeal site as being located within 6km of the Swale SPA/RAMSAR sites. The sites are protected and subject to statutory protection as an internationally important habitat for a number of important wintering water birds, including grebes, geese, ducks, and waders, and the wetland provides a habitat for varieties of plants and invertebrates.
4. Natural England have confirmed that the Swale Local Plan (Local Plan) provides an ecologically sound basis for managing the risk that recreational pressures resulting from net increases in residential development could have potential adverse effects on the sites which, in combination with other plans or projects in the area, may impact them significantly.

5. For development of the nature of the appeal proposal, the Local Plan places a policy requirement for appropriate contribution to be made to strategic access management measures (SAMB) across the north Kent marshes as a form of appropriate mitigation and management of the recreational pressures associated with the proposed development. The contribution would be put towards projects such as those set out in the Thames, Medway, and Swale Estuaries Strategic Access Management Strategy.
6. The Council identify the sum of the contribution in this case to be £239.61 per dwelling. The Appellant has signalled a willingness to make the required contribution but has not provided a planning obligation or other method for it to be secured. Given the issues discussed above, completion of such an obligation would be necessary to make the development acceptable in planning terms.
7. Requiring the obligation to be entered into as a negatively worded condition of planning permission would not be consistent with national guidance¹ as in my opinion the exceptional circumstances where use of such a condition might be justified do not apply.
8. For the reasons discussed, I conclude that the proposed development does not include appropriate mitigation to ensure that it does not, in combination with other plans and projects, have an adverse effect on the SPA/RAMSAR sites. Consequently, I find conflict with policies in the Local Plan, including Policies ST1, DM14, and DM28 which collectively provide a policy framework for managing the risk that recreational pressures resulting from net increases in residential development could have potential adverse effects on the SPA/RAMSAR sites.

Living conditions

9. In relation to standards of privacy and whether a degree of mutual overlooking created between the 2 pairs of dwellings would create good living conditions for future occupiers of the dwellings, in particular those identified on the plans as units 1 and 2. The Council indicate that the separation distances between the two pairs of dwellings would be approximately 17 metres, which is less than the 21 metres minimum distance that they would normally expect.
10. The Council do not identify where the 21 metre requirement comes from and I find nothing specific in the policies cited in the reasons for refusal that refers to it. As such, in the absence of further evidence on this matter, I give limited weight to whether the proposed development meets this specific standard. Notwithstanding this, proposed developments should create a high standard of amenity for future users as set out in paragraph 127 (f) of the National Planning Policy Framework (the Framework).

¹ Paragraph: 010 Reference ID: 21a-010-20190723 (Revision date: 23/07/2019)

11. The front wall of the new build semi-detached units 1 and 2 would face towards the rear wall and gardens of the 2 dwellings that would be created from the subdivision of the existing No 69. The separation distances would not be dissimilar to that which already exists between No 69 and the neighbouring No 71 which lies further down the access road. Although No 69 and No 71 face each other the levels of privacy appear to be good, helped by the sloping nature of the surroundings and presence of gardens and parking area.
12. Units 1 and 2 would achieve a similar relationship with the 2 dwellings at No 69. Standards of privacy would be improved further using appropriate boundary screening to the rear gardens of the dwellings at No 69, balancing that with the need to also create a safe and attractive access for units 1 and 2.
13. Dwellings at Bramley Way have rear gardens and windows that face towards the back section of the site that would accommodate units 1 and 2. Due to the boundary fences, views towards the proposed development from these properties would be limited to the upper floor windows and views into the rear gardens of units 1 and 2 would be at an angle.
14. Overall, accepting that a level of mutual overlooking is to be expected in a more urbanised area such as this, I find that the privacy levels that would result from the proposed development would be acceptable.
15. Turning to noise and disturbance, the proposed development would result in a net increase of 3 dwellings at the site. This would bring with it associated vehicular traffic for occupants of and visitors to the dwellings and a consequent increase in use of the unadopted access road that leads from Church Road, passing No 71 and the rear boundaries of properties on Cheyne Road.
16. Given the small scale of the development and the level of uplift in linked vehicle movements estimated by the Council, this does not represent a significant intensification of the access road. As such, spread across the course of a day, additional vehicle movement linked to the proposed development would not be easily perceived by the occupiers of neighbouring properties.
17. In relation to the properties on Cheyne Road, it is noted that many have fences and greenery that provide screening from the access road. This would further serve to mitigate any effects, including from the appearance of vehicle lights.
18. As such, the risk of additional noise and other potential disturbance from vehicle movements harming the living conditions of occupiers is low and would not justify a refusal of planning permission.
19. For the reasons discussed, the proposed development would not have a harmful effect on the living conditions of the occupiers of surrounding properties and future occupants of the dwellings. Consequently, I do not find conflict with policies in the Local Plan including Policies CP3, CP4, and DM14 which collectively seeks to achieve a high quality of design and cause no significant harm to amenity.

Planning balance

20. I have identified harm in relation to providing appropriate mitigation to ensure that the proposed development does not have an adverse effect on the SPA/RAMSAR sites, when viewed in combination with other plans and projects.

21. The proposed development would provide a modest but nevertheless positive contribution to housing supply in the local area in what is otherwise a sustainable location. This weighs in favour of the development, in particular given the priority the Government places on boosting supply of housing in the Framework. However this along with other indirect social and economic benefits that naturally flow from development, do not outweigh the harm identified given the statutory obligations that apply to SPA/RAMSAR sites.

22. The presumption in favour of sustainable development is not engaged as my conclusions in relation to the SPA/RAMSAR sites fall within the exclusion from it in paragraph 177 of the Framework.

Conclusion

23. For the above reasons the appeal is dismissed.

D. R. McCreery

INSPECTOR