



Appeal Decision

Site visit made on 11 December 2020

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2021

Appeal Ref: APP/V2255/W/20/3253723

Land behind 9-10 Range Road, Eastchurch, Sheerness, Kent, ME12 4DU

- 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 L. Marshall against the decision of Swale Borough Council.
 - The application Ref 19/502757/FULL, dated 22 May 2019, was refused by notice dated 17 December 2019.
 - The development proposed was originally described as 2 bedroom bungalow with associated parking on land behind 9/10 Range Road.
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Decision

1. The appeal is allowed and planning permission is granted for a 2 bedroom bungalow with associated parking at land behind 9-10 Range Road, Eastchurch, Sheerness, Kent, ME12 4DU in accordance with application Ref 19/502757/FULL, dated 22 May 2019, but subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Mr L. Marshall against Swale Borough Council. This is the subject of a separate decision.

Preliminary Matters

3. Following written exchanges in February 2021 and in light of the Housing Delivery Test results published earlier in the year, the Council concede that it cannot demonstrate a five-year housing land supply. It has confirmed that the housing land supply is 4.7 years. I will deal with the appeal on this basis.
4. The appellant refers to various examples of permitted housing development in the surrounding area, which I have had regard to. However, there are two previous appeal decisions relating to the site that are of particular relevance. Firstly, the 2016 approval of the recently completed buildings at 9-10 Range Road¹; and the subsequent dismissal of a proposal in 2017 for a larger dwelling on the same land that is the subject of this appeal².
5. The description of development in the formal decision is taken from the Council's decision notice as it is more concise than the version used on the planning application form.

¹ APP/V2255/W/15/3135783

² APP/V2255/W/17/3177790

Main Issues

6. The main issues in this appeal are
 - i) The effect on the character and appearance of the area;
 - ii) The effect on the settlement strategy for Swale, with particular regard to the accessibility of local services by means other than the private car;
 - iii) Whether acceptable living conditions would be provided for future occupants of the proposed residential building with particular regard to privacy;
 - iv) The effect on the Swale Special Protection Area; and
 - v) Whether any harm identified is outweighed by the need for housing, in light of national planning policy.

Reasons

Character and Appearance.

7. The site forms enclosed land behind two recently completed dwellings at 9-10 Range Road. The fence denoting the western boundary of the site continues to the north, marking out a well-established boundary between a row of residential properties and the adjacent recreational open space. Whilst surrounded by open countryside, the area immediately around the site has a developed character, principally due to the prison cluster which is clearly visible from the site. The proposed addition of a single dwelling on this site would be consistent with this prevailing developed character and the local street-scene. It would not detract from the surrounding rural landscape, or the intrinsic character and beauty of the wider countryside.
8. However, the building would depart from the prevailing localised built environment in certain respects. The largely uniform pattern of rear gardens to the rear of 11-16 Range Road would be interrupted by this single dwelling. As a single detached bungalow, the proposal would also differ from the prevailing building type found on Range Road, namely semi-detached two storey pairs.
9. Any harm in this respect would be largely mitigated by the low height of the building, which means that it would be visually subservient to the larger dwellings facing Range Road and the linear pattern of development it reveals. In consequence, there would be no significant visual encroachment in views in to or out of the adjacent playing field, including from 9-10 Range Road. Nor would the development be of a scale that appears cramped, with a good amount of visual space around the building to its front and rear.
10. Considering the development plan, policy CP4 of the Swale Borough Local Plan (Local Plan) requires, amongst other things, that new development promotes and reinforces local distinctiveness. For the reasons discussed above, the proposal departs slightly from the prevailing character of the built environment so does not entirely achieve this aim. However, the actual harm to the character and appearance of the area would be very limited. The conflict with this part of the development plan only attracts minimal weight, in my assessment of this case.

Accessibility

11. Policies ST3 and DM9 of the Local Plan requires that unrestricted housing development will not be permitted outside settlement boundaries, as would be the case here.
12. However, there are site specific considerations that are relevant. Firstly, the site is located adjacent to an existing row of houses, which sit within a built environment dominated by a cluster of prisons. It is therefore reasonably well located for public transport, with a bus stop close to the site. Secondly, and as noted in an earlier appeal decision, the prison cluster also provides possible employment opportunities for future occupants of the building, which could be easily accessed on foot. The proximity to existing development means that the proposal would not amount to an isolated dwelling in the Countryside.
13. Considering the effect on the settlement strategy set out in the Local Plan, in this case the proposal amounts to a single dwelling which would be added to an existing cluster of housing, in a built-up area. Furthermore, the site is reasonably accessible to services and facilities by means other than the private car, which are significant mitigating factors. To conclude on this issue, the proposal conflicts with policies ST3 and DM9 of the Local Plan, the purposes of which are identified above. However, given the modest scale of development and its accessibility to public transport and employment opportunities, I only give this conflict minimal weight.

Living conditions

14. There would be some overlooking from the first-floor windows of the existing houses on Range Road in-to the garden of the new dwelling. However, this would be at a reasonable distance, in excess of 10 metres. It is common for residential properties to have gardens that are overlooked at this distance. The living conditions of future occupants of the house would not be significantly compromised in relation to privacy. Acceptable living conditions would be provided, and there is no conflict with either policy CP4 or DM14 of the Swale Borough Local Plan in this respect, which amongst other things seek to ensure that development does not cause significant harm to amenity.

Special Protection Area

15. The Council's third reason for refusal refers to impacts on the Swale Special Protection Area (SPA). This area supports important populations of rare birds. The site falls within close proximity to this area, and the proposed additional dwelling would create increased recreational pressure on the SPA as a result of an increase in the residential population and their pets, particularly when combined with other plans and projects. Consequently, there would be likely to be a significant effect on the interest features of the site. In these circumstances the Conservation of Habitats and Species Regulations 2017 require competent authorities to carry out an Appropriate Assessment (AA).
16. The Council provide details of the Bird Wise North Kent Mitigation Strategy, which was published by the North Kent SAMMS Project Board in January 2018. This demonstrates that pressure from recreational activities within this

SPA can be appropriately mitigated via a range of management measures as set out in this Strategy. Natural England were consulted on the application that led to this appeal and commented that, subject to the appropriate mitigation being provided they are satisfied the potential recreational impacts of the development will be addressed. I give substantial weight to these comments which indicates the measures will be effective.

17. I am presented with a Planning Obligation in the form of a Unilateral Undertaking (UU). This provides for a financial payment of £245.56 towards this mitigation strategy. This is very slightly in excess of the published tariff (£223.58 per dwelling) but the difference is insignificant, possibly representing an adjustment for inflation. This would be payable in the event that planning permission were to be granted and the development was to commence. I am satisfied that the proposed mitigation does not comprise infrastructure for the purpose of the CIL regulations. Therefore, I am satisfied that the UU provides adequate mitigation for the effect on the SPA and consequently I can be certain that there would be no adverse effect on the integrity of the SPA. The UU can be taken into account as a reason to grant planning permission.
18. I therefore conclude that there is no harm to the Swale SPA as appropriate mitigation is in place. There is no conflict with policies ST1, DM14 or DM28 of the Local Plan nor the relevant parts of the Framework which, amongst other things, seek to protect habitats sites.

Other Issues and conclusion – development plan

19. The Council refer to a large number of planning policies in its decision. I have had regard to all of these, but my conclusions above relate to the relevant policies to the issues in question. In the case of the first two main issues, I have only concluded against the policies where there is conflict with the development plan.
20. I have also had regard to the other concerns raised by interested parties. The road system and other infrastructure around the site, including the drainage system, is adequate to accommodate one additional dwelling. Appropriately sized gardens will be retained for the dwellings at 9-10 Range Road, so there is no unacceptable loss of garden land and the level of residential intensification is appropriate. There would be no unacceptable overlooking from the new building given its low height. Overall, the effect on the living conditions of neighbouring residential occupants would be acceptable in all respects. There is no conflict with the development plan on these issues. However, they are neutral matters.
21. Notwithstanding this, it follows from my conclusions above that the proposal is outside of the settlement boundary and would result in a limited amount of harm to the character and appearance of the area. The proposal therefore conflicts with the development plan, when it is considered as a whole.

Whether any harm is outweighed by the need for housing

22. Planning law requires that proposals should be decided in accordance with the development plan, unless material considerations indicate otherwise.
23. As noted previously the Council are unable to demonstrate a 5 year housing land supply, although the shortfall is relatively limited. However, in these

circumstances the National Planning Policy Framework (the Framework), a material planning consideration, directs that the policies most important for determining the application are out of date. There are no policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development. As such, paragraph 11 d) ii) of the Framework states that planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

24. The proposal would provide a single additional dwelling providing good living conditions for its occupants. It is well located in relation to existing services, and there is no significant conflict with policies in the Framework in this respect. Whilst departing slightly from the prevailing pattern of development, it is otherwise well designed and would appear visually subservient to existing development given its modest size. This would be delivered in a context where there is a shortfall of housing land. The proposal therefore helps to achieve the objective, set out in the Framework, of boosting the supply of housing. These benefits weigh significantly in favour of the proposal.
25. Considering the policies in the Framework, the adverse impacts of the development are limited to the slight departure from the existing appearance of the prevailing built environment. There is therefore a degree of conflict with the requirement in the Framework that new development is sympathetic to local character. However, these adverse impacts do not significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole.
26. Consequently, the need for housing outweighs the limited harm identified. Having had regard to the Framework, planning permission should be granted in accordance with the presumption in favour of sustainable development.

Other Appeal decisions

27. My finding that the presumption in favour of sustainable development should apply is consistent with the 2016 appeal decision which permitted housing outside the settlement boundary on land adjacent to 11 Range Road. In terms of the 2017 appeal decision for a detached house on the same site, the current lack of a 5 year land supply means that the need for housing justifies the proposed development, the appearance of which has been revised from the scheme considered previously at appeal.
28. The Council refer to other appeal decisions, including instances where Inspectors have given limited weight to a housing shortfall, finding in some cases that the adverse impacts of development would significantly and demonstrably outweigh the benefits. I have considered this case on its own merits, and on the evidence before me, and come to a different conclusion.

Conditions

29. Planning conditions have been imposed to comply with statutory timeframes in relation to commencement of development; in the interests of certainty for all parties; and to ensure the appearance of the development is acceptable in terms of landscaping. A condition limiting building activities to

working hours is also imposed to protect the living conditions of surrounding residents. Limitations on the use of the parking space are also justified to avoid obstruction to the highway through excessive on street parking. As imposed the conditions meet the relevant policy tests set out in the Framework and Planning Practice Guidance.

30. Other conditions were suggested by the Council but have not been imposed. The policy basis for the suggested conditions requiring electric vehicle charging, and water and energy efficiency measures are unclear from the supporting evidence. I am not therefore in a position to conclude these suggested conditions are relevant to planning. The Council also sought a broad removal of permitted development rights. However, this would impose a requirement to obtain planning permission for future alterations to the building that would otherwise be allowed under permitted development rules. This is not necessary to preserve the amenity of the area and such a condition would not meet the test of reasonableness.

Conclusion

31. The proposal does not accord with the development plan. However, there are other material considerations, namely the presumption in favour of sustainable development set out in the Framework, which indicate that planning permission should be granted. The appeal is therefore allowed subject to the conditions below.

Neil Holdsworth

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. No development shall take place other than in accordance with the following approved plans: Site Location Plan, No. 19.33.1, 19.33.2.
3. No development beyond the construction of foundations shall take place until full details of both hard and soft landscaping 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.
4. All hard and soft landscape works shall be carried out in accordance with the details approved under the terms of condition 3. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority.
5. 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 shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.
6. No demolition or construction activities shall take place other than between 0800 to 1800 hours (Monday to Friday) and 0800 to 1300 hours (Saturday) with no working activities on Sunday or Bank Holidays.
7. The driveway to the front of the approved building shall be made available for vehicular access and parking prior to the occupation of the approved dwelling. Once installed it shall be retained and made available for this purpose for the lifetime of the development.

END OF SCHEDULE