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## Appeal Decision

Site visit made on 16 August 2021

**by Guy Davies BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 August 2021**

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**Appeal Ref: APP/V2255/W/20/3263345**

**Land adjacent to 1 Seaview Mews, Grove Avenue, Leysdown ME12 4EA**

- 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 Cadwell Services Ltd. against the decision of Swale Borough Council.
  - The application 20/501966/FULL, dated 20 April 2020, was refused by notice dated 18 August 2020.
  - The development proposed is 2no. 2 bedroom flats.
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### Decision

1. The appeal is allowed and planning permission is granted for 2no. 2 bedroom flats on land adjacent to 1 Seaview Mews, Grove Avenue, Leysdown ME12 4EA in accordance with the application 20/501966/FULL, dated 20 April 2020, subject to the conditions in the attached schedule.

### Preliminary Matters

2. Although the Council has used a slightly different description on its decision notice, it appears to be incomplete. I have therefore used the description given on the application form.
3. The appellant has made a financial contribution towards measures to mitigate potential harm to the Swale Special Protection Area. The Council has confirmed receipt of the contribution and that as a result no longer wishes to contest its third reason for refusal. I address this subject in more detail under other matters.

### Main Issue

4. The main issue is whether satisfactory living conditions would be created with regards to sunlight, outlook and dominance.

### Reasons

5. The Council has raised detailed concerns on the main issue for two reasons: firstly, the overbearing nature of the neighbouring property on the rear garden area through loss of sunlight and sense of enclosure; and secondly, the poor outlook from the ground floor east facing window serving bedroom 1 to Flat 1.
6. 1 Seaview Mews is the neighbouring 3 storey dwelling which stands close to the flank boundary. It is set further back than the proposed building such that it would span along all the rear communal amenity area. The area would be largely open on its remaining two sides and would be south facing. Although considerably smaller than the gardens of the family houses along Seaview

Mews, it would nevertheless be large enough to provide a private outdoor seating area for the 2 flats and space for storage of domestic paraphernalia such as bins and bicycles. The flank wall of 1 Seaview Mews would be apparent to those occupants using the amenity area, but in my view given the openness of the remaining two sides it would not be so overbearing as to appear oppressive or dominant. The amenity area would receive a good level of daylight and being south facing it would also gain sunlight for most of each day. I therefore do not consider it would be detrimentally overshadowed by the neighbouring building.

7. The east facing window to the rear bedroom of Flat 1 would have a view out over part of the communal amenity area. This view would be limited by the boundary fence, but that is not unusual for ground floor habitable room windows, and I do not consider it would be oppressive. The room would still benefit from light from windows in two elevations, and privacy would be maintained by a planting bed in front of the window. The main living space of the flat, in which occupants would tend to spend most of their time, would have a triple aspect to the front, rear and side. The outlook from the flat when taken as a whole would therefore be acceptable.
8. A proposal for a 2-storey house of a similar size and layout on the site was dismissed on appeal in 2019<sup>1</sup>, the Inspector in that case upholding the reasons for refusal in respect of inadequate living conditions as a result of poor outlook and sunlight. The current appeal differs from that scheme in that it proposes flats as opposed to a family house; and the orientation of the main windows to all habitable rooms at the rear would be to the east. I distinguish the current proposal from the previous scheme on these grounds.
9. Although I acknowledge the benefits of outdoor amenity space for all types of dwellings, it is generally the case that less emphasis is placed on the need for such space for flats when compared to family houses. The appellant has drawn attention to a recent permission on a nearby site which includes flats without any outdoor amenity space<sup>2</sup>. As noted by the Council, the circumstances of this site differ in that it involves a conversion rather than new build and enables the reuse of a vacant building to the benefit of the vitality of the area, but nevertheless it is an example of flats being acceptable with no or little amenity space.
10. Given the built up nature of the central location within Leysdown, where buildings are generally set close to one another with relatively small curtilages, I conclude that the size and useability of the outdoor amenity area proposed would not be out of place or detrimental to the living conditions of future occupants of the proposed flats. The development would, as a result, comply with Policies DM14 and CP4 of the Swale Borough Local Plan 2017, which set out general development criteria and require good design.

### **Other Matters**

11. The site is located within the zone of influence of the Swale Special Protection Area, designated under the Conservation of Habitats and Species Regulations 2017 for its rare bird populations and migratory feeding grounds. The proposed development could, when taken in combination with other residential

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<sup>1</sup> APP/V2255/W/18/3207600

<sup>2</sup> 20/500631/FULL

development, have a significant adverse effect on the ecological value of the Special Protection Area through increased recreational pressure.

12. The Council, in partnership with other bodies, has developed the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy to mitigate the potential harm to the Special Protection Area. The appellant has made a financial contribution to support implementation of the Strategy. I am satisfied that, in the light of the contribution made, the Strategy will adequately mitigate any adverse impact the development might have on the Special Protection Area, such that its ecological integrity would not be compromised.

### **Conditions**

13. I have considered the conditions suggested by the Council against the tests set out in paragraph 55 of the National Planning Policy Framework. Those conditions which meet those tests have been imposed, subject to minor rewording in the interests of consistency and clarity.
14. In addition to the standard time limit condition, a condition listing the approved plans has been added in the interests of certainty. Conditions relating to energy and water efficiency are necessary in the interests of sustainable construction. While I note the appellant's view that these are matters for the Building Regulations, the Government's approach to technical housing standards<sup>3</sup> does not prevent individual planning authorities from seeking higher standards to those imposed in the Building Regulations on specific themes, including energy efficiency and water consumption, where justified and supported by planning policy, which in this case is Policy ST1 of The Swale Borough Local Plan 2017. However, approval of energy efficiency details does not need to be pre-commencement and I have altered the wording of the condition accordingly.
15. Conditions requiring approval of external materials, and hard and soft landscaping are necessary in the interests of the appearance of the site and character of the area. A condition limiting the hours of construction is necessary in the interests of the living conditions of neighbouring occupants. A condition requiring the provision and retention of space for parking and cycle storage is necessary to avoid additional pressure for off-site parking and to encourage alternative means of transport to the motor car.

### **Conclusion**

16. The proposed development complies with those policies which are most important for determining the appeal and therefore is in accordance with the development plan when taken as a whole. There are no material considerations that indicate that a decision should be reached other than in accordance with the development plan. I therefore conclude that the appeal should be allowed.

*Guy Davies*

INSPECTOR

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<sup>3</sup> Written ministerial statement, 25 March 2015

### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: BD/16/132.01A Flats, BD/16/132.02A Flats, BD/16/132.03A Flats.
- 3) No development beyond the construction of foundations shall take place until details of the measures to achieve at least a 50% reduction in the dwelling emission rate compared to the target emission rate required under Part L1A of the Building Regulations 2013 (as amended) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) No development beyond the construction of the 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.
- 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 planting schedules of plants, plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.
- 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.
- 7) If within a period of five years from the date of the planting of any tree or shrub that tree or shrub, or any tree or shrub planted in replacement, is removed, uprooted, destroyed, dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the same place.
- 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.
- 9) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day and shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).
- 10) The areas shown on the submitted plan as car parking space and cycle storage shall be kept available for such uses at all times and no permanent

development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwellings hereby permitted.

**\*\*\* End of conditions \*\*\***