
Appeal Decision

Site visit made on 2 August 2023

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 17th August 2023

Appeal Ref: APP/V2255/W/22/3307802

Land to rear of No 6 Orchard Grove, Minster-on-sea, Kent ME12 3PD

- 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 Adrian Sherred against the decision of Swale Borough Council.
 - The application Ref 22/503616/FULL, dated 23 July 2022, was refused by notice dated 26 September 2022.
 - The development proposed is a 2-bedroom bungalow and associated landscaping.
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Decision

1. The appeal is dismissed.

Main issues

2. From the submissions before me, the main issues in the appeal are:
 - the effects of the proposed development on living conditions at the adjoining property No 6 Orchard Grove, due to visual impact;
 - and the effects on the future occupiers of the proposed development itself, with regard to overlooking and privacy.

Reasons for decision

Visual impact on No 6 Orchard Grove

3. Orchard Grove is a cul-de-sac of mainly 2-storey houses with some bungalows, mostly on reasonably generous plots. The appeal site comprises a small area of garden land, said to have been originally attached to No 6 Orchard Grove, but subsequently transferred to No 5. As a result, No 6's remaining garden is shorter than most others in the street. At the rear, the appeal site has a frontage to Whybornes Chase, a residential street with mainly bungalows.
4. The land slopes down markedly, from Whybornes Chase towards Orchard Grove, so that the level within the appeal site is significantly higher than the ground on which the existing property No 6 is built. As a result, there would be the potential for any new building on the site to appear overbearing and over-dominant, when seen from No 6's ground floor windows, or from the lower part of its relatively short rear garden.
5. In the present proposal, the proposed new dwelling would have only a single storey, and its roof would have quite a shallow pitch and hipped ends. It would

also be positioned end-on, so that the elevation facing No 6 would be one of its shorter sides. These features would help to reduce the potential impact on No 6, to some degree. But nevertheless, the fact remains that the levels are unfavourable, and this presents a significant obstacle to designing a scheme in which the impact on the adjoining property would be acceptable.

6. From the information submitted, it is not clear to what extent it would be possible to sink the new building into the ground, nor to what degree that would relieve the potential impact. Furthermore it seems likely that the scope for such mitigation may also be affected by technical considerations such as the access gradient, and the need for satisfactory drainage, on which no clear information is before me. In the absence of any further evidence, it seems to me that the bungalow now proposed would be likely to have an unacceptably dominant and oppressive effect on the occupiers of No 6 Orchard Grove.
7. This impact would adversely affect living conditions at the affected property. As such, the scheme would be contrary to Policy DM14 of the Swale Borough Local Plan (the SBLP), adopted in July 2017, which seeks amongst other things to ensure that developments avoid harm to amenity.

Overlooking and privacy at the new dwelling

8. In addition, the whole of the outdoor garden area of the new dwelling would be overlooked at fairly close range from No 6's first floor windows. Some screening is provided by existing trees, vegetation and structures within No 6's garden, but there is no certainty that these will always remain. Boundary fencing of up to 6 feet in height would also appear to provide only limited protection, especially given the difference in levels. No evidence is before me to suggest that this likely adverse effect on the privacy of the occupants of the new property could be satisfactorily overcome.
9. The development would therefore fail to provide acceptable living conditions for the new bungalow's future occupiers, due to the lack of privacy within the external garden space. This shortcoming adds further to the conflict already identified with SBLP Policy DM14.

Other matters

Potential effects on Special Protection Area

10. The appeal site lies less than 6km from the Swale Special Protection Area (SPA), which is designated at international level because of its special ecological importance for rare and vulnerable bird species. Within this distance around the SPA, the Council is concerned, on the advice of Natural England, that any new residential development is likely to add to the existing pressures and disturbance experienced by the SPA, in terms of recreational use, dog walking and predation by domestic pets. Under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations), planning permission may not be granted for development likely to have a significant adverse effect on the SPA, either alone or in combination with others.
11. The Council, together with neighbouring authorities and Natural England, has developed a scheme of Strategic Access Management and Monitoring (SAMMs), which enables the potential impacts of individual developments to be mitigated by means of a financial contribution, secured by a Section 106 obligation. In the present case however, the need for such a contribution is disputed.

12. The SAMMs method of mitigating possible impacts is well established, not just in this part of Kent, but in many other areas of the country, and I am well aware that in the majority of cases, the justification for seeking such contributions is not contested. But nevertheless, wherever a planning obligation is sought, it must be capable of being shown to meet the tests set out in paragraph 57 of the National Planning Policy Framework (the NPPF).
13. In the present case, the information before me is limited. The appeal site is not within the SPA itself, and therefore the reason for anticipating any potential adverse effect rests on its inclusion within the 6km buffer zone around that area. However, the buffer zone itself is not part of the designated SPA, nor does it appear to be the subject of any specific policy or designation in the development plan. SBLP Policy DM28 supports the general approach of protecting internationally designated sites, but makes no mention of any buffer zone, or of any requirements applying outside of the designated areas themselves.
14. Clearly, none of this necessarily means that the Council's approach cannot be justified. However, in terms of the information which has been put before me, the evidence is somewhat lacking. The arguments made by the appellant on this matter are also very limited, but that does not relieve the Council of the need to demonstrate that the requested contribution has some basis, either in the relevant legislation or in development plan policy.
15. Based on the evidence before me therefore, I find that the case for the requested mitigation is inconclusive. In this case however, in view of my conclusions on the main issues discussed earlier in this decision, this does not affect the outcome of the appeal.

Other considerations

16. In Whybornes Chase, the two bungalows known as Woodpeckers and Little Acorns were built on another parcel of former garden land that, like the appeal site, was at one time attached to 6 Orchard Grove. The present appeal site has a similar relationship to Whybornes Chase, and similar levels, and the development now proposed would be similar in scale to these two dwellings. But neither Woodpeckers nor Little Acorns has another dwelling directly behind, and the issues arising are therefore not comparable.
17. To the south of these two dwellings, there are no buildings fronting the west side of Whybornes Chase, and as a result, this part of the road has a more open character. However, the view of the rear fences along this section is not especially attractive, and therefore in general terms I agree with the appellant that some form of development on the appeal site need not harm the street's character or appearance. However, the scheme now proposed is particularly bland and uninteresting in terms of its design. The failure to take advantage of the opportunity to improve the area's visual quality, through better design, adds some further weight against the proposal.
18. I note the comments of the occupier of No 6 Orchard Grove with regard to surface water drainage, and the impacts said to have been experienced at that property as a result of other developments. The documents submitted in support of the present application and appeal appear to contain no information on this matter. Nevertheless, there seems no reason to doubt that a technical solution could be devised. Although no draft condition has been suggested by

the Council, there seems no reason why a condition could not have been devised to deal fully with this issue. In any event, in the light of my conclusions elsewhere in this decision, I do not need to consider the matter further.

19. I fully accept that new-build bungalows are relatively rare. I have no reason to doubt that there is a high demand for such properties in the area, particularly for the elderly or disabled, and that the appeal proposal would help to fill this gap in the market. I have taken this into account, but it does not outweigh the harm that I have identified.

Conclusion

20. The proposed development would cause harm to the living conditions of the occupiers of No 6 Orchard Grove, due to its overbearing visual impact, and would fail to provide good living conditions for its own future occupiers, due to the overlooking that they would suffer. In these respects the scheme would conflict with SBLP Policy DM14. The development would also cause moderate harm to the area's character and appearance due to its poor design.
21. This harm, and resultant conflict with the development plan, is not outweighed by the benefit of providing a single-storey dwelling. None of the other matters raised adds any weight, either for or against the development. Consequently, the balance as a whole weighs against granting permission.
22. The appeal is therefore dismissed

J Felgate

INSPECTOR