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## Appeal Decision

Site visit made on 4 February 2025

by **Mark Philpott BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 March 2025

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**Appeal Ref: APP/V2255/W/24/3352730**

**Land North of 24 Jetty Road, Warden Bay, Sheerness, Kent ME12 4PR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mrs P Taylor against the decision of Swale Borough Council.
  - The application Ref is 23/500752/FULL.
  - The development proposed is described as 'proposed pair of 3 bed S/D houses with associated parking spaces'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The revised National Planning Policy Framework (Framework) and the 2023 Housing Delivery Test results were published in December 2024. I gave both main parties an opportunity to comment on the Framework; however, as the test results do not have a consequence for decision-making and neither did the results from the previous year, I did not seek views in relation to that matter.
3. In an attempt to overcome the Council's objections to the scheme, the appellant submitted new evidence<sup>1</sup> with the appeal relating to matters of coastal erosion, flood risk and ecology. The Council and interested parties were able to comment on this evidence as part of the appeal process. Prejudice would not arise in taking it into account and so that is what I have done. The appellant provided further new ecological evidence<sup>2</sup> with their final comments in response to matters raised during the appeal process. I gave the Council an opportunity to comment on this and have also taken it into account.
4. In addition, the appellant has made a payment to the Council that is intended to be used to mitigate impacts of the proposal on the integrity of Habitats Sites, as defined by the Framework, that would allegedly otherwise arise. The Council has explained that this has addressed its corresponding fourth reason for refusing the application. Furthermore, the Council has set out that its second refusal reason pertaining to the sequential approach to flood risk has been addressed by the new evidence. For reasons given later, it is not necessary to consider these matters in a substantive manner. The main issues identified below are therefore informed by the outstanding issues in dispute.

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<sup>1</sup> Coastal Erosion Vulnerability Assessment (ref: 3225/RE/07-24/02); Flood Risk Assessment (ref: 3225/RE/07-24/01); Flood Risk Sequential Test Assessment (ref: 2128); and Ecological Impact Assessment (ref: 6200-LLB-RP-EC-0003).

<sup>2</sup> Letter ref: 6200-LLB-CO-Ec-0002

## Main Issues

5. The main issues are:

- whether the site is an appropriate location for housing, having regard to coastal change and associated development plan and national policy; and
- the effect of the proposal on ecology.

## Reasons

### *Location*

6. The site comprises vacant land close to the sea. The Proposals Map to the Local Plan<sup>3</sup> (LP) shows that the site's proposed vehicular accesses would be within a Coastal Change Management Area (CCMA). While the associated dwellings would be outside it, the accesses are clearly a constituent part of the scheme and no other means of accessing the site has been put forward. Accordingly, residential development is proposed in the CCMA. In addition, though the Proposals Map shows the site outside Erosion Zone 1 and Erosion Zone 2 as defined by the LP, the Council considers it should be treated as being within them because the Medway Estuary and Swale Flood and Erosion Risk Management Strategy (MEASS) shows that part of it is at risk of coastal erosion within 50 years.
7. LP Policy DM23 states that within the CCMA only certain types of development will be permitted and where it is demonstrated that there would not be an increased risk to life or a significant increase in risk to property. This reflects paragraph 184 of the Framework, which specifies that plans should reduce risk from coastal change by avoiding inappropriate development in vulnerable areas and be clear as to what development will be appropriate in CCMA's. Furthermore, paragraph 185 of the Framework specifies similar criteria to LP policy DM23 in setting out that development in CCMA's will be appropriate only where it is demonstrated that it will be safe over its planned lifetime, amongst other things.
8. The proposal is not for any of the permissible development types in the CCMA specified by LP policy DM23. This is the case irrespective of whether the site is treated as being inside either of the erosion zones. Moreover, the Planning Practice Guidance (PPG) on coastal change confirms that permanent new residential development is inappropriate in CCMA's<sup>4</sup>. The proposal thereby conflicts with LP policy DM23 and Framework paragraph 184.
9. Notwithstanding the above policy conflicts, it is logical that the MEASS is taken into account in considering coastal change risks as it sets out a strategy for sustainably managing the coastline and tidal defences in the area following a review of evidence that informed the LP. It recommends maintaining existing defences in the vicinity of the site, albeit not in line with sea level rises, which would mean that the standard of protection would decline over time. The Council has indicated that the Environment Agency has since updated its recommendation so as to protect the area more robustly, but funding for defences has not been secured.

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<sup>3</sup> Bearing Fruits 2031: The Swale Borough Local Plan 2017

<sup>4</sup> Reference ID: 7-073-20220825

10. In that context, I cannot be sure that there would not be increased risks from coastal erosion over the lifetime of the development, which I take to be at least 100 years in line with the PPG<sup>5</sup>, particularly as the CEVA does not provide substantive site-specific evidence as to the site's vulnerability or risk mitigation in respect of coastal change. While a monitoring and adaptation strategy has been included in the CEVA, this does not include actions that would actually address coastal change impacts. It is put forward that the appellant is willing to accept whatever risks would arise, but there is no certainty that they would be the sole occupant of the housing. Furthermore, even if I were to find no risks associated with the scheme, conflict with development plan and national policy would remain as residential development is proposed in the CCMA.
11. I therefore conclude that the site is in an inappropriate location for housing, having regard to coastal change. It thereby conflicts with LP policy DM23, paragraphs 184 and 185 of the Framework and the PPG on coastal change.

### *Ecology*

12. The Council considers that the appellant's Ecological Impact Assessment (EcIA) provides a good understanding of local ecology and I see no reason to disagree. It also raises no issues with mitigation specified therein in principle. However, it has concerns regarding a lack of detail about a receptor site for the proposed translocation of low populations of slow worm and common lizard present on site. There are also concerns that biodiversity net gain has not been demonstrated. The evidence submitted with the appellant's final comments seeks to address those concerns, but the Council has not responded to it.
13. The reptiles would be translocated because the retention of suitable habitat on site is reportedly unfeasible. However, a receptor site is within the appellant's control around 6 kilometres away. It seemingly offers good quality habitat and has previously been used as a receptor site for reptiles. Further enhancements to that site are proposed. In the absence of any evidence to the contrary, I consider that there is a reasonable prospect that such an approach could be made acceptable through the use of conditions. Appropriate mitigation could be secured for other species by conditions too.
14. Furthermore, the EcIA explains that the proposal would involve the removal of mostly low quality habitats comprising other neutral grassland and bramble scrub. Given that soft landscaping could be provided to the front and rear of the proposed dwellings, there is sufficient scope for some level of biodiversity net gain to be achieved, which could also be secured by conditions.
15. The proposal would not have an unacceptable effect on ecology. It accords with LP policy DM28 and paragraphs 187 and 193 of the Framework, which seek to conserve or enhance biodiversity and secure the delivery of biodiversity net gain.

### **Other Matters**

16. The Council can reportedly only demonstrate 4.1 years supply of deliverable housing sites. It is also undisputed that the proposal would provide energy efficient homes that make efficient use of previously developed land. In that context, the proposed provision of the dwellings weighs in favour of the development. There

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<sup>5</sup> Reference ID: 7-006-20220825

would also be benefits arising from the construction process, the occupiers spending on and engaging with amenities in the area, and from proposed wildlife enhancements.

17. In respect of the refusal reasons relating to the sequential approach to flood risk and the integrity of the Habitats Sites, if I were to consider these matters in detail and concur with the main parties' positions, these would be neutral factors rather than benefits in favour of the scheme.

### **Planning Balance and Conclusion**

18. The presumption in favour of sustainable development as set out by paragraph 11(d) of the Framework is relevant as a result of the Council's housing supply position. However, the application of the Framework's policies that protect areas at risk of coastal change provide a strong reason for refusing the development proposed, particularly as residential development is not supported in the site's location. Consequently, the presumption does not indicate in favour of the scheme.
19. The aggregated weight of the benefits of the scheme is limited by the small amount of housing proposed. These do not outweigh the proposal's conflict with the development plan. Accordingly, material considerations do not indicate that a decision should be taken other than in accordance with the development plan, and the appeal should be dismissed. As such, it is not necessary to consider the Council's second and fourth refusal reasons in detail, as this would have no bearing on the outcome of the appeal.

*Mark Philpott*

INSPECTOR