



Appeal Decision

Site visit made on 4 May 2021

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th May 2021

Appeal Ref: APP/V2255/W/20/3262303

Rides House, Warden Road, Eastchurch, ME12 4HA

- 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 Bill Love against the decision of Swale Borough Council.
 - The application Ref 20/503620/FULL, dated 7 August 2020, was refused by notice dated 13 October 2020.
 - The development proposed is the erection of 2no. semi-detached dwellings with associated access and parking.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 2no. semi-detached dwellings with associated access and parking at Rides House, Warden Road, Eastchurch, ME12 4HA in accordance with the terms of the application, Ref 20/503620/FULL, dated 7 August 2020, subject to the conditions in the attached schedule.

Main Issues

2. These are whether the proposed dwellings would be in a suitable location having regard to relevant development plan policies, the effect on highway safety along Warden Road and on the integrity of the Medway Estuary and Marshes Special Protection Area (SPA).

Reasons

Suitable location

3. Rides House has recently been demolished and it is proposed to replace it with a pair of semi-detached dwellings. The new houses would be outside of any built-up area boundaries. This is where development will not generally be permitted according to Policy ST3 of the Swale Borough Local Plan. Policy CP3 also indicates that homes will be steered towards the locations identified in Policy ST3 which focuses on the main urban centres in the Borough.
4. However, the proposal would not be harmful to the character, appearance or intrinsic value of the countryside because it would occupy the footprint of the former house and as its scale would be similar to that building together with the permitted extension. The visual change resulting from the proposed development would therefore be negligible compared to what stood there recently. As such, there would be no conflict with Policy CP4 which requires good design or with relevant general development criteria within Policy DM14.
5. The additional dwelling would be approximately 1.6km from the built-up area boundary of Warden where there are very few facilities. There is a greater

range at Eastchurch which is about 2.5km away. The bus service is infrequent. Because of these factors it is likely that future occupiers would be reliant on private vehicles from most trips. As a result the proposal would not fulfil the aim of Policy CP2 of promoting sustainable transport as there would be very limited access to modes other than the car.

6. Consequently the proposal would not be in a suitable location having regard to relevant development plan policies. In turn, it would not accord with Policy ST1 which seeks to deliver sustainable development by, amongst other things, expecting that the settlement strategy is adhered to.

Highway safety

7. The highway authority seeks visibility splays in excess of 50m by 2.4m in both directions along Warden Road. Semi A would be served by an existing access. The number of vehicle movements using it would be equivalent to those that occurred in connection with the former Rides House. Therefore there is no need to insist that details be provided.
8. Semi B would be served by a new access. Vision in both directions over and round the existing front boundary hedge would be reasonable. It may be that the full standards sought cannot be met on land controlled by the appellant or within the public highway. However, no evidence has been provided to explain what the deficiencies would be or why use of this access would be hazardous. My own observations, albeit over a limited period of time, are that traffic along Warden Road is light and that speeds are modest. Furthermore, that drivers exiting the site would be able to see traffic approaching from either direction and act accordingly. The visibility from the proposed access would also appear to be similar to, or better than, that available for existing residential properties along Warden Road. There is nothing to indicate that the proposal would have an unacceptable impact on highway safety.
9. Neither party has suggested a specific condition but it would be prudent to ensure that the hedge along the front boundary was kept to a reasonable height. Subject to this the proposal would achieve safe vehicular access as required by Local Plan Policy DM14. In practice there would also be adequate space within each curtilage for parking and turning so as to satisfy the intentions of Policy DM7.

Integrity of the Special Protection Area

10. The Medway Estuary and Marshes SPA provides habitats for overwintering birds. Because the appeal site is within 6km the proposal has the potential to affect its features of interest. In combination with other development in Swale, an additional dwelling would be liable to lead to recreational disturbance and so have a detrimental impact on the birds. There would therefore be a likely significant effect on the SPA.
11. To mitigate this impact the Council expects that a financial contribution is made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy. The collection of the tariff to facilitate off-site measures is intended to avoid significant or long-term impacts. Natural England concurs with this approach.
12. The Council indicates that the requisite sum has been paid by the appellant. A payment form has been completed which confirms the purpose of the

contribution. In turn, the payment will be forwarded to Birdwise which is the brand name of the SAMM Board that is made up of a partnership of local authorities, developers and environmental organisations.

13. The PPG indicates that any measures used to inform the decision about the effects on integrity need to be sufficiently secured and likely to work in practice (ID: 65-004-20190722). A high degree of assurance is required if the provisions of the Conservation of Habitats and Species Regulations are to be met. This would normally be done by means of a planning obligation. However, the money has been paid and the way in which it should be spent has been documented. Furthermore, the Board and the Council are responsible public bodies given specific powers and competencies. In particular, the Board has a function of overseeing the strategic measures designed to mitigate disturbance to birds caused by recreational visits to the north Kent coast. A direct payment may not always provide certainty that the intended mitigation will take place. But in these circumstances, I am satisfied that would be the case and therefore that the mitigation would be effective.
14. As a result, following an appropriate assessment, the proposal would not adversely affect the integrity of the SPA. It would therefore accord with Policy DM28 of the Local Plan which reflects the Regulations and seeks to conserve and enhance biodiversity generally.

Other considerations

15. The supply of deliverable housing sites in Swale is equivalent to 4.6 years of the housing requirement. Therefore housing development should be subject to the presumption in paragraph 11 d) of the National Planning Policy Framework.
16. The appeal site comprises previously-developed land. The Framework encourages strategic policies to make as much use as possible of sites of this type. However, that is the function of the local plan which does not support development in this location. Paragraph 68 does support the development of windfall sites but the implication is that this is aimed at suitable sites within settlements. Nevertheless, the fact that the site is brownfield land as defined by the Framework and that the development would replace a previous dwelling is a consideration that favours the proposal.
17. Just because there are no policies in the Local Plan that expressly deal with this situation does not mean that the Framework takes primacy. However, paragraph 79 indicates that development involving the sub-division of an existing residential dwelling could be an exception to the policy of generally avoiding the development of isolated homes in the countryside. That is not exactly the position but it would have applied if an application had been made to convert Rides House into two units. More importantly, the implication is that in certain circumstances additional housing in such locations can be accepted. This will not always be so but here it is an important factor.

Final Balance

18. The adverse impacts arising from the proposal relate to its unsatisfactory location when judged against the settlement strategy policies for Swale.
19. The proposal would dilute the overall strategy for the pattern of development which is contrary to the expectations of the Framework. On the other hand, the proposal would be on previously-developed land replacing a recently

demolished dwelling. The Framework indicates that there is some scope to permit isolated dwellings in the countryside. Furthermore, it recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Consequently the strength of the objection to the proposal is not of a high order and the weight given to the conflict with the development plan is limited.

20. The proposed development would add only one dwelling to the supply of housing and therefore the associated benefits would be small in scale. However, the starting point of the presumption is that permission should be granted and the Government's objective is to significantly boost the supply of homes. The shortfall in supply is relatively modest if assessed as a proportion of the expected supply but amounts to approximately 400 dwellings per annum. In any event, the size of the deficit does not obviate the need to address the provisions of paragraph 11 d). The 'tilted balance' was applied in a decision at Danaway but it is not clear whether that appeal involved replacing a building on previously-developed land.
21. The adverse impacts associated with this proposal would not be great. They therefore do not significantly and demonstrably outweigh the benefits of an extra home when assessed against the policies in the Framework taken as a whole. As a result the presumption in favour of sustainable development should be applied.

Conditions

22. To provide certainty the plans should be specified. Conditions are also required to secure details of external materials and landscaping in the interests of the appearance of the area. There is other housing nearby so that limiting construction hours is warranted. Making provision for vehicle charging points and cycle storage is required to promote sustainable transport and to meet the expectations of development plan policies.
23. The Council seeks a 50% reduction in emission rates compared to the target in the Building Regulations. This is a laudable response to climate change but the Framework is clear that any local requirements should reflect the Government's policy for national technical standards. Such a condition therefore goes beyond national policy. There is no evidence that this approach has been examined or is the subject of development plan policy. Similar considerations apply to the policy suggested relating to limiting water consumption. Imposing either of these conditions would therefore not be reasonable and would fail that test set out at paragraph 55 of the Framework.

Conclusions

24. The proposed development would be contrary to the development plan but material considerations, especially the presumption in the Framework, outweigh this conflict. Therefore, for the reasons given, the appeal should be allowed.

David Smith

INSPECTOR

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 drawing nos PG NO:01, 02, 03 and 04.
- 3) No development beyond the construction of the foundations shall take place until details of the external finishing materials have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Demolition or construction works shall take place only between hours of 0800 to 1800 hours Monday to Friday and 0800 to 1300 hours on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 5) No development beyond the construction of the foundations shall take place until details of hard and soft landscaping have been submitted to and approved in writing by the local planning authority. The details shall include:-
 - a) existing trees, shrubs and other features;
 - b) planting schedules of the quantity, size, species and positions of all trees and shrubs to be planted;
 - c) means of enclosure and the extent and materials of any hard surfaced areas;
 - d) measures to limit the height of the existing front boundary hedge; and
 - e) a programme for implementation.

The hard and soft landscaping shall be carried in accordance with the approved details and with the programme for implementation and the front boundary hedge shall be maintained at the approved height.

- 6) If, within a period of 5 years from the date of planting pursuant to Condition 5), any tree or shrub (or any tree or shrub planted in replacement for it) is removed, uprooted, destroyed or dies or becomes seriously damaged or defective, then it shall be replaced by another tree or shrub of such size and species as may be agreed in writing with the local planning authority, and within whatever planting season is agreed.
- 7) No development beyond the construction of the foundations shall take place until details of the provision of an electric charging point for each dwelling have been submitted to and approved in writing by the local planning authority. The approved charging point shall be installed prior to the first occupation of the dwelling that it would serve and shall be retained thereafter.
- 8) No development beyond the construction of the foundations shall take place until details of secure cycle storage for each dwelling have been submitted to and approved in writing by the local planning authority. The approved cycle storage shall be provided prior to the first occupation of the dwelling that it would serve and shall be retained thereafter.