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## Appeal Decision

Site visit made on 9 October 2023

**by T Burnham BA (Hons) MSc MRTPI**

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

**Decision date: 18 January 2024**

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**Appeal Ref: APP/V2255/W/22/3308462**

**Land North of Elm Lane, Minster on Sea Easting (x) 595803 Northing (y) 172261**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr S Naish (Provectus Holdings Limited) against the decision of Swale Borough Council.
  - The application Ref 21/503124/OUT, dated 25 June 2021, was refused by notice dated 15 September 2022.
  - The development proposed is residential development for up to 44 dwellings with vehicle and pedestrian access off Drake Avenue (Outline with means of access for approval).
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### Decision

1. The appeal is allowed. Planning permission is granted for residential development for up to 44 dwellings with vehicle and pedestrian access off Drake Avenue (Outline with means of access for approval) at Land North of Elm Lane, Minster on Sea Easting (x) 595803 Northing (y) 172261 in accordance with the terms of the application Ref 21/503124/OUT, dated 25 June 2021 subject to the conditions set out in the attached schedule.

### Procedural Matters

2. The Council decision notice before me is dated 15 September 2023, however this cannot be correct as this post dates the date of the appeal. That submitted by the appellant is undated. I have therefore taken the date of the application from the appeal form.
3. The application is made in outline with only reserved matters of access before me. Matters of appearance, landscaping, layout, and scale are reserved for future consideration. Only some plans form the basis of the planning permission<sup>1</sup>. I have considered the layout/housing mix of the development shown on plan SK001 Rev F and SK002 Rev C as being for illustrative purposes only.
4. The decision notice makes no reference to any development plan or other planning policy. The submitted committee report from the Council does identify a range of policies within Bearing Fruits 2031 (the Swale Borough Local Plan) (2017) (LP). Those policies have been supplied for me.

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<sup>1</sup> Site Location Plan SK002 A, Access for Approval SK001 F (Access only) & Proposed access design 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P01.

5. Drawing on the refusal reason, the main issues identified by the Council appear to relate to harm from loss of countryside and impact on living conditions arising from the proposed site access onto Drake Avenue. In the absence of any LP policy being specifically drawn to my attention regarding the main issues I have identified these myself.
6. The policies which I consider most important are ST 3 relating to the Swale Settlement Strategy, CP 4 relating to Design, DM 14 General Development Criteria and DM 28 Biodiversity and geological conservation.
7. A completed planning obligation has been submitted alongside the appeal. It relates to financial contributions towards community learning, healthcare, highways, libraries, primary/secondary education, refuse bins, social care, waste and youth services. It also makes provision for a Special Protection Area Mitigation Contribution.
8. The evidence indicates that the submitted undertaking is necessary to make the development acceptable in planning terms to enable the proposal to accord with the LP.
9. It is directly related to the development and fairly and reasonably related in scale and kind to the development. The planning obligation therefore meets the tests within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and at Paragraph 57 of the Framework<sup>2</sup>.

### **Application for costs**

10. An application for costs was made by Mr S Naish (Provectus Holdings Limited) against Swale Borough Council. This application is the subject of a separate Decision.

### **Main Issues**

11. The first main issue therefore is the principle of the development in this location including the effect of the proposal on the character and appearance of the area. The second is the effect of the proposal on the living conditions of occupiers at No. 65 & No. 69 Drake Avenue (No.s 65 & 69). The third is the effect of the proposal on the North Kent Marshes Special Protection Areas (SPA's).

### **Reasons**

#### *Principle of Development/Character and Appearance*

12. The appeal site sits to the immediate south-west of Nelson Avenue and Drake Avenue, which are residential streets incorporating established and closely spaced residential properties. These streets form a finger extending outwards from the main body of Minster-on-Sea (Minster) to the north-west.
13. To the north of Nelson Avenue, land levels make a steady and pronounced rise upwards. However, the appeal site sits at a broadly similar level to Nelson Avenue and Drake Avenue. The raised area within the site along its north-eastern boundary is associated with the remnants of the former Sheppey Light Railway.

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<sup>2</sup> National Planning Policy Framework December 2023.

14. The site, which appears to largely support equestrian use, is enclosed by Elm Lane to the south-west, which separates the appeal site from extensive arable land beyond. The land is however unallocated and outside of the built up area boundary for Minster, effectively considered as within the open countryside. There is therefore conflict with the requirements of Policy ST 3 which limits development that is permitted at locations in the open countryside, outside of the built-up area boundaries.
15. Although this is the case, as well as the differentiation from that arable land beyond to the south in terms of use, the site is further visually separated from the arable land beyond by the extensive planting along its south-western boundary fronting onto Elm Lane as well as planting on the other side of Elm Lane.
16. From the majority of surrounding public areas and viewpoints, the site would be viewed as an easily understood continuation of the Nelson Avenue and Drake Avenue block of housing, and distinctly separate from the arable farmland beyond.
17. The development would alter the character and appearance of the site through the introduction of housing onto a site which contains very limited development. This would result in some alteration and slight harm to the character and appearance of the area.
18. However, with the proposed measures and mitigation, including setting back properties from Elm Lane, limited density of development allowing for undeveloped areas within the site and along with retention and provision of additional planting, the proposal would be able to limit its impact on the intrinsic value, landscape setting, tranquillity, and beauty of the countryside.
19. The site is directly adjacent to Minster which is included as a tier 3 other urban local centre, which in combination with other nearby centres provides a reasonable range of services.
20. There would therefore be some conflict with Policy ST 3 in terms of the principle of the location and in terms of the effect of the proposal on the character and appearance of the area.
21. There would also be some conflict with Policy CP 4 of the LP which overall requires development proposals of a high quality design that is appropriate to its surroundings including assessing and responding to local landscape character, condition and sensitivity.
22. However due to the particular existing characteristics of the site and given its location closely adjacent to Drake Avenue and Nelson Avenue, the harm associated with that conflict would be limited.

#### *Living Conditions*

23. The proposal would see an access created onto the site at the site of the existing residential property at 67 Drake Avenue which would be demolished. The creation of an access would be noticeable to the occupants of Nos 65 & 69 either side of the proposed access.
24. However, the majority of habitable windows on both of those properties appear orientated to the front and rear to overlook the front and rear gardens. The

appellant has also submitted a noise survey which concludes that the impact of noise from cars using the new access road could be adequately attenuated by the provision of 1.8m high acoustic perimeter fencing along the boundaries of these dwellings. That requirement is conditioned.

25. There would therefore be no conflict with Policy DM 14 which amongst other matters requires that all development proposals will cause no significant harm to amenity.

#### *North Kent Marshes Special Protection Areas*

26. The site is located within the Strategic Access Management and Monitoring Strategy (SAMM) area for the SPA's. The SPA's include habitats such as mudflats, saltmarsh and freshwater grazing marsh which support a range of breeding and wintering birds.
27. The proposal would involve new residential accommodation within close proximity to the sites and could therefore result in impacts on the designated sites arising from increased recreational disturbance. An impact pathway is therefore present.
28. Therefore, adopting the precautionary principle, and in the absence of any evidence to the contrary, I consider that as a result of the proposal, likely significant effects on the protected habitats sites cannot be ruled out.
29. I am therefore required to carry out an Appropriate Assessment. Increases in recreational pressure would be likely to have a detrimental impact on the bird populations present as a result of disturbance to habitat. As such, the favourable conservation status of the species would not be likely to be maintained. The development would be likely to have a detrimental impact on the delivery of the sites objectives, adversely affecting their integrity.
30. However, there is a tariff system in place to pay into a mitigation scheme relating to such potential impacts. The SNCB agree that this scheme is ecologically sound. The relevant payment is proposed as part of the planning obligation and given that this would be secured, such potential impacts would be adequately mitigated.
31. There would therefore be no conflict with Policy DM 28 of the LP, which amongst other things seeks to protect the SPA's.

#### *Main Issues and the LP*

32. When the main issues are considered against the LP the proposal would accord with Policies DM 14 and DM 28 of the LP. There would be some conflict with policies ST 3 and CP 4 as the site is unallocated and outside of the built up area boundary for Minster. There would therefore be conflict with the Swale Settlement Strategy along with some harm to the character and appearance of the area. However, the harm associated with those conflicts would be limited due to the particular characteristics of the site outlined above.

#### **Other Matters**

33. There is nothing compelling to indicate that there will be any unacceptable impacts of the development in terms of highway safety. Given the setting of the site and its land levels which would mean it would read as a logical extension of the existing area of housing and I have not identified any harm to

the setting of the Grade I listed Abbey and Gatehouse to the north within the main body of Minster. There is no compelling evidence that the proposal would give rise to unacceptable impacts on local services and facilities and financial contributions are included within the planning obligation to address these matters.

34. My attention has been drawn to another planning appeal but that appeal has not been clearly referenced. There is nothing to indicate that all the circumstances relating to that appeal are the same as at the site before me, especially as the site for that appeal appeared to be 250 yards to the north, where land levels increase leading to very different characteristics to this site. I accept that the proposal would lead be likely to lead to some diminishment of views over the land especially from the rear of properties on the southern side of Drake Avenue. There is nothing to indicate that the proposal would have a significant adverse impact regarding flooding and conditions are proposed in this respect.

### **Conditions**

35. There is no adequate justification before me for removing permitted development rights via a condition. The provision of EV Charging points is covered by buildings regulations and a condition is therefore not necessary. No proper justification has been put forward for a condition relating to energy efficiency/thermal performance/emissions or for a condition relating to water efficiency or relating to accessible housing and I cannot be sure that they meet the relevant tests. A condition relating to high speed broadband has not been adequately justified.
36. Standard conditions relating to time limits and approved plans are necessary to define the permission. Condition 5 is necessary as the access would need to be provided prior to the first residential occupation. Conditions 6, 7 and 9 are necessary in the interests of the character and appearance of the area. Details of cycle parking are required in the interests of promoting the use of more sustainable modes of transport.
37. Conditions 10 and 15 are required in the interests of biodiversity at the site. Conditions 11, 19 and 20 are necessary in the interests of Highway Safety. Conditions 12, 13 and 14 are necessary to ensure proper drainage of the site. Conditions 16, 17, 18 and 21 are necessary in the interests of the living conditions of nearby occupiers.

### **Other Considerations**

38. Set against the harm identified there would be social and economic benefits associated with the proposal. Up to 44 dwellings could make a substantial difference to the overall supply of housing and would be likely to provide a local economic boost associated with construction. The support those extra households would provide to the local economy were a significant amount of those dwellings to be realised would be substantial.

### **Planning Balance**

39. Paragraph 225 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework.

40. The Framework places significant emphasis on achieving well designed places. At paragraph 130, amongst other things, it seeks to support proposals that are sustainably located in terms of their access to services and facilities. The proposal accords with the Framework in this respect.
41. With regard to Policy ST 3, the Framework does not indicate that the use of settlement boundaries is an inappropriate policy response. The Framework states that planning decisions should ensure that developments are sympathetic to local character and history including landscape setting. There is some conflict with Policy CP 4.
42. Given that Policies ST 3 and CP 4 are not inconsistent with the Framework those policies should not be considered out of date. There would be conflict with the development plan as a whole.
43. The Council cannot demonstrate a five-year housing land supply. The Council within their statement indicate that the supply is 4.83 years, while the appellant suggests the supply is 3.7 years. Whichever is the case, the shortfall is of substance. Paragraph 11 d) of the Framework is applicable.
44. 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. The site is not within a protected area.
45. I have not identified any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development weighs in favour of the proposal.

### **Conclusion**

46. The proposal would conflict with the development plan as a whole, however the harm that would arise in association with that conflict would be limited. There would be substantial social and economic benefit to the proposal which weighs in its favour as does the presumption in favour of sustainable development. Therefore, considerations indicate the decision should be taken otherwise than in accordance with the development plan. The appeal is therefore allowed.

*T Burnham*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

1)Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.

2)Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3)The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4)The development hereby approved shall be carried out in accordance with the following approved plans:

-Site Location Plan SK002 A

-Access for Approval SK001 F (Access only)

-Proposed access design 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P01

5)The access shown on the hereby approved plans - Access for Approval 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P02 -shall be completed and available for use prior to the first residential occupation of the site. The gradient of the access shall be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.

6)Prior to or alongside the submission of the reserved matters a site-specific design code shall be submitted to and approved by the Local Planning Authority showing the scheme layout, finished site levels, building heights, a landscape and open space masterplan and the palette of building materials and elevational designs. Any subsequent reserved matters approval or variation shall be in accordance with the approved site specific design code.

7)No development beyond the construction of foundations shall take place until details of the external finishing materials of the dwellings has been submitted to and agreed in writing by the Local Planning Authority. The details shall include brick, stone and roof tiles. The details as approved shall thereafter be implemented.

8) The reserved matters shall include details of the provision of vehicle parking and permanent retention of secure covered cycle parking facilities details of which shall be submitted to and approved in writing by the Local Planning Authority. The agreed facilities shall be made available for the dwelling to which they relate prior to the first occupation of that dwelling.



9)The reserved matters shall include details of both hard and soft landscape works. 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. The agreed details must be implemented prior to the first occupation of the dwelling to which they relate.

10)The reserved matters shall include a Landscape and Ecological Management Plan (LEMP). The content of the LEMP shall be based on the details in appendix C of the 'Biodiversity Unit Calculations' (KB Ecology April 2022) and include the following:

- a) Description and evaluation of features to be managed;
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;
- d) Appropriate management prescriptions for achieving aims and objectives;
- e) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- f) Details of the body or organisation responsible for implementation of the plan;
- g) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

The Landscape and Ecological Management Plan shall include the landscape buffer along the south-eastern and south-western boundaries and communal amenity landscape areas outside of private resident ownership within the proposed development. The development shall then be carried out in complete accordance with the approved details.

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, or ten years for the structural planting along the southern and eastern boundaries, shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

11) Prior to first occupation of each of the dwellings hereby approved, the following works between that dwelling and the adopted highway shall have been completed:



(a) Footways and/or footpaths, with the exception of the wearing course;  
(b) Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).

12) No development shall take place until details have been submitted to and agreed in writing by the Local Planning Authority that:

(a) demonstrate that requirements for surface water drainage for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm can be accommodated within the proposed development layout.

(b) demonstrate that an effective outfall for surface water is provided for the development layout. This information may include details of surveys of watercourses and culverts and / or details of any works that may be necessary to deliver an effective outfall for surface water.

The surface water scheme shall be implemented in full accordance with the approved details.

13) No development shall take place until a sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall be based upon the Sustainable Drainage Assessment dated 13th January 2022 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in full accordance with the approved details.

14) The development hereby permitted shall not be occupied until a Verification Report, has been submitted to and approved by the Local Planning Authority. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

15) Development shall not commence until a biodiversity gain plan has been submitted to and approved by the Local Planning Authority; to demonstrate how the proposal shall contribute to the development achieving a post development biodiversity value which will be a minimum of 20% higher than site pre-development biodiversity value. The calculation shall be in accordance with biodiversity metric 2.

The post development biodiversity value may include off-site biodiversity gain under the control of the applicant and purchased biodiversity credits. This gain shall thereafter be maintained for a minimum period of 30 years in line with the biodiversity gain plan.

The development shall be carried out in full accordance with the approved biodiversity gain plan.

Any off-site credits must demonstrate in the biodiversity gain plan -

- That it is on land made available by a site provider with sufficient rights to the land;
- That it will be delivered by a specified person or body considered fit and proper to undertake the enhancement works;
- The land will be suitably managed to meet the required enhancement;
- That Work commenced 30 January 2020 or later;
- That the enhancement will be maintained for at least 30 years after the completion of those works;
- That the credit is measured using the most up to date biodiversity metric against a baseline metric assessment:
- That the credit may be allocated to development in accordance with the terms of the conservation covenant or planning obligation;
- That the credit is available to be allocated to this development;
- That it complies with rules on additionality and stacking including on protected sites;
- That it is in England, and;
- Monitoring and reporting for that site over the 30 year period.

16) 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 0730-1800 hours, Saturdays 0800-1300 hours.

17) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:- Monday to Friday 0900-1700 hours unless in association with an emergency or with the written approval of the Local Planning Authority.

18) Prior to the commencement of the development, a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:

- Hours of working and timing of deliveries
- An indicative programme for carrying out the works Measures to minimise the production of dust on the site(s)

- Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)
- Design and provision of site hoardings
- Management of traffic visiting the site(s) including temporary parking or holding areas
- Provision of off-road parking for all site operatives
- Measures to prevent the transfer of mud and extraneous material onto the public highway
- Routing of construction and delivery vehicles to / from site, including the number of vehicles
- Measures to manage the production of waste and to maximise the re-use of materials
- Measures to minimise the potential for pollution of groundwater and surface water
- Provision of wheel washing facilities
- Temporary traffic management / signage
- The location and design of site office(s) and storage compounds
- The location of temporary vehicle access points to the site(s) during the construction works

Construction shall thereafter take place in accordance with the CEMP.

19) Prior to the commencement of any development on site a Construction Logistics Management Plan shall be submitted to and agreed in writing by the Local Planning Authority to include the following:

- (a) Routing of construction and delivery vehicles to / from site
- (b) Parking and turning areas for construction and delivery vehicles and site personnel
- (c) Timing of deliveries
- (d) Provision of wheel washing facilities
- (e) Temporary traffic management / signage

The development shall proceed only in accordance with the agreed details.

20) The reserved matters shall include details of the following; proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture. All such features shall be laid out/constructed in accordance with the approved details.

21) Prior to the first use of the access to the site, the scheme of noise mitigation measures outlined in Part 4.0 of the report by MRL Acoustics dated October 2022 shall be installed and available for use. They shall thereafter be retained for the lifetime of the development.