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## Appeal Decision

Site visit made on 28 June 2022

**by Martin Small BA(Hons) BPI DipCM MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 05 August 2022**

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**Appeal Ref: APP/V2255/W/21/3286020**

**55 Parsonage Chase, Minster-On-Sea, ME12 3JX**

- 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 Batten against the decision of Swale Borough Council.
  - The application Ref 20/501925/OUT, dated 4 May 2020, was refused by notice dated 27 August 2021.
  - The development proposed is replacement of existing bungalow with 7 houses and associated car parking and access drive.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application is submitted in outline form with access, appearance, layout and scale for approval at this time and only landscaping reserved for future approval.
3. The appeal site lies within 6km of the Swale, Thames and Medway Estuary and Marshes Special Protection Areas (SPAs) and Ramsar sites. The Council's third reason for refusal related to the absence of a legal agreement to secure mitigation against harm to the integrity of these designated habitats sites. However, during the course of the appeal, the appellant made a contribution of £1,522.80 towards mitigation measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS). The Council has confirmed that the contribution has addressed the reason for refusal. I return to this matter below.

### Main Issues

4. The main issues are:
    - i) the effect of the proposed development on the character and appearance of the area;
    - ii) whether the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to outlook and car parking;
    - iii) the effect of the proposed development on biodiversity, with particular regard to Great Crested Newts; and
    - iv) whether the proposed development would preserve the setting of the Grade II listed Parsonage Farm.
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## Reasons

### *Character and appearance*

5. Parsonage Chase is an established residential street primarily comprising detached bungalows, chalet bungalows and 2-storey dwellings of varying ages and styles facing the road with hardstandings and gardens / planting to the frontages. The southern end of the cul-de-sac is more recent but maintains the mixture of dwelling styles and frontages. However, notably, two pairs of semi-detached 2.5 storey houses have more recently been built on the corner between the older properties and the newer southern extension to the road.
6. The appeal site is a single plot accommodating a bungalow with a reasonably large garden located just off Parsonage Chase, on the east side of an accessway to Parsonage Farm. The property is accessed off but set back from Parsonage Chase, with its front elevation facing towards Leigh Court, a small close of modern modest 2-storey dwellings.
7. The site is bounded by fencing and vegetation with a small green and footpath to the north and the gardens of Parsonage Farm and properties in Leigh Court to the south. To the other side of the access to Parsonage Farm is the side elevation and rear garden of No 65 Parsonage Chase, the end property of the more recent dwellings at the southern end of the road. The openness of the site makes a localised but positive contribution to the character and appearance of the area.
8. The dwellings on plots 1-4 of the proposed development would be sited facing Leigh Court and be of a similar scale and form. They would therefore read as a consistent extension of the existing development in Leigh Court. Whilst set back slightly the dwellings on plots 5-7 would relate more to the street scene in Parsonage Chase. These dwellings would be side on to the access to Parsonage Farm reflecting the alignment of development on the other side of the drive. At 2.5 storeys they would be of a similar height to the new dwellings on the corner of Parsonage Chase.
9. However, the proposed layout shows proposed plots 5-7 as substantially smaller than those on Parsonage Chase. The layout is cramped as demonstrated by the proximity of the dwellings on plots 5-7 to the parking spaces for plots 4-7, the need for tandem parking for plots 5-7 and the awkward relationship of the parking spaces for plots 1 and 2.
10. Furthermore, the terrace of plots 5-7 would be incongruous in Parsonage Chase. Whilst landscaping is a reserved matter, the layout would include extensive areas of hardstanding with little room for planting to soften the extent of built development. In this respect it would be similar to Leigh Court, which I found to be a sterile environment, and would not be consistent with the numerous vegetated frontages on Parsonage Chase. The scheme would thus be harmfully at odds with the existing pattern of development on that street.
11. I therefore conclude that the proposed development would be harmful to the character and appearance of Parsonage Chase. Accordingly, in this respect, the proposals would conflict with Policies CP 4 and DM 14 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017 (the Local Plan). In combination and amongst other things these policies require high quality design appropriate to the location and surroundings, as promoted by the National Design Guide.

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#### *Living conditions*

12. The layout shows the dwellings on plots 5-7 with a poor outlook directly onto a communal path and their parking areas with no room for planting in between to soften this outlook or provide privacy. Plot 5 would also have cars parked directly alongside the side of the dwelling and garden, which could result in potential disturbance. The rear gardens of plots 5 and 7 would be significantly compromised by the refuse bin and cycle stores.
13. I therefore conclude that the proposed development would not provide satisfactory living conditions for the occupiers of the dwellings on Plots 5-7. Accordingly, in this respect, the development would not be of a high quality design, so conflicting with Policy CP 4 and thus with Policy DM 14 of the Local Plan. The proposal would also conflict with paragraph 130 of the National Planning Policy Framework (the Framework) in that it would fail to create a place with a high standard of amenity for future users.

#### *Biodiversity*

14. No Preliminary Ecological Assessment was submitted with the application or the appeal to identify any biodiversity interest of the site, such as the presence of protected species e.g. Great Crested Newts (GCN) and / or bat roosting opportunities. The only ecological information submitted was a letter from 'Cleaner Ponds' which describes the wildlife identified within a small pond on the appeal site. This did not include any GCN, although the previous occupiers of the property contend that GCN were present in the pond in 2014.
15. Moreover, previous surveys in 2018 and 2019 undertaken for applications on sites near to the appeal site (18/503135/OUT and 19/503138/OUT) have found that GCN were present in the area. The more recent survey found a good population of GCN in a pond within 100m of the appeal site. GCN can commute up to at least 250m from a breeding pond and there is thus a reasonable likelihood of their presence on the appeal site, notwithstanding that it has been maintained as a domestic garden.
16. I have considered whether a survey could be secured by condition. However, Circular 06/2005 "Biodiversity and Geological Conservation – Statutory Obligations within the Planning System" sets out the necessity of establishing the presence or otherwise of protected species and the extent that they may be affected by a proposed development before planning permission is granted. It advises that the need to ensure ecological surveys are carried out should therefore only be left to planning conditions in exceptional circumstances. No such circumstances have been put to me and I therefore conclude that it would not be appropriate to rely on such a condition in this case.
17. In the absence of any substantive evidence to the contrary, I cannot be confident that the proposed development would not be harmful to the biodiversity of the site and area. Accordingly, in this respect, it would conflict with Policy DM 28 of the Local Plan which seeks to conserve, enhance and extend biodiversity.

#### *Parsonage Farm*

18. The appeal site is within the setting of the Grade II listed Parsonage Farm. In determining this appeal I must have special regard to the desirability of preserving the setting of this listed building. The Framework sets out that

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great weight should be given to the conservation of a designated heritage asset and that any harm to the significance of such an asset should require clear and convincing justification. The Framework recognises that development within the setting of heritage assets can affect their significance.

19. The National Heritage List for England entry for Parsonage Farm describes it as comprising two parallel ranges dating from the early-mid 17<sup>th</sup> and 18<sup>th</sup> centuries. The property's significance therefore lies in its architectural and historic interest. It is set back from Parsonage Chase behind the newer properties at the southern end of the road. There is limited intervisibility between the appeal site and Parsonage Farm but the site is nevertheless within the setting of the heritage asset.
20. The former agricultural setting of the dwelling has been encroached upon by the development of Leigh Court and the southern end of Parsonage Chase but the property retains an extensive garden principally to the south that gives the building space. This more recent residential development has eroded the original setting of the listed building and outline planning permission for up to 700 houses has been granted on appeal on land to the south and west (APP/V2255/W/19/3238171). Nevertheless, Historic England's *Good Practice Advice in Planning Note 3: The Setting of Heritage Assets* explains that consideration still needs to be given to whether additional change would further detract from or enhance the significance of the asset.
21. Whilst part of the original setting of the Parsonage Farm, the appeal site has been developed in the past for a bungalow and garden and thus any link to that original setting has already been very largely lost. The site offers only a limited experience of Parsonage Farm, being separated from it by fencing and vegetation. The site therefore contributes very little to the significance of the listed building. Whilst better revealing that significance would be desirable and is encouraged by paragraph 206 of the Framework, given this limited contribution and the modest scale of the proposed development I am not persuaded that the failure of the proposals to do so would justify withholding planning permission.
22. The existing vegetation on the boundary to the access road provides some softening of the built environment, but this garden shrubbery does not make a contribution to the special interest of the listed building. Moreover, the access is dominated by the flank elevation of No 65 and the concrete panel wall to the rear garden which directly abut the accessway and form part of the setting of the heritage asset.
23. The proposed development would retain the residential character of the site. Although the flank elevation of the proposed dwelling on Plot 7 would be particularly noticeable with little or no room for planting on the boundary, the setting of Parsonage Farm formed by the access has already been substantially eroded by No 65. The development would not significantly affect the ability to appreciate the special interest of the listed building.
24. I therefore conclude that the proposed development would not harm the setting of Parsonage Farm and that the setting would thereby be preserved. Accordingly, in this respect, the proposals would comply with Policies CP 8, ST 6 and DM 32 of the Local Plan, which in combination and amongst other things seek to protect heritage assets. The development would also generally comply with the heritage policies of the Framework.

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### **Other Matters**

#### *The Swale, Thames and Medway Estuary and Marshes Special Protection Areas*

25. The SPAs are designated for their prevalence of rare and vulnerable birds and for regularly occurring migratory species which together comprise their qualifying features. The conservation objectives of each of the SPAs are, in summary, to ensure that the integrity of the site is maintained or restored in order to protect the habitats and the birds that depend upon them. The Bird Wise North Kent Mitigation Strategy (the Strategy) notes that increased recreational disturbance associated with a net increase in residential accommodation within 6km is adversely affecting the integrity of the SPAs.
26. The proposed development would result in a net increase of 6 dwellings within 6km of the SPAs. It would therefore be likely to have a significant effect on the integrity of the designated habitats sites. In such circumstances the Conservation of Habitats and Species Regulations 2017 (as amended) require a decision maker to undertake an Appropriate Assessment (AA) before giving any permission. In doing so, I can have regard to mitigation measures. I return to this matter below.

#### *Other considerations*

27. Local residents have raised concerns including parking issues and the removal of trees from the site. However, none of these matters have been determinative in this appeal.

### **Planning Balance**

28. It is common ground that the Council cannot demonstrate a 5-year supply of deliverable housing sites, although I have no evidence of the extent of the shortfall. Consequently, paragraph 11 of the Framework is engaged and the most important policies of the development plan for determining this appeal are deemed to be out of date.
29. However, this does not mean that they carry no weight; paragraph 219 of the Framework sets out that weight should be given to a policy according to its degree of consistency with the Framework. Policies CP 4 and DM 14 of the Local Plan are broadly consistent with the Framework's policies on design and character. Policy DM 28 is broadly consistent with the policies of the Framework on biodiversity. The conflict I have found with these policies therefore carries significant weight in my determination.
30. Policy CP 3 of the Local Plan, to which the appellant refers, supports windfall sites in principle. However, given the conflict with policies relating to character and appearance, living conditions and biodiversity, the proposed development conflicts with the development plan taken as a whole.
31. Nevertheless, paragraph 11 of the Framework is a material consideration. I have found above that the proposal would not harm the significance of the designated heritage asset of Parsonage Farm. Consequently, planning 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 in accordance with paragraph 11 d) ii).

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32. The net gain of 6 dwellings would accord with the Government's aim of significantly boosting the supply of homes as set out in the Framework (paragraph 60). The Framework supports the development of windfall sites, requiring great weight to be given to the benefits of using suitable sites within existing settlements for homes (paragraph 69). It recognises that small and medium sites can make an important contribution to meeting the housing requirement of an area and supports the effective and efficient use of land (paragraphs 69, 119 and 124). The development would also have economic benefits from the construction of the dwellings and expenditure by future occupiers. However, 6 additional dwellings would only be a modest contribution to the housing supply in the borough and the economic benefits would be correspondingly limited.
33. Set against those benefits are the adverse effects on character and appearance and biodiversity and of unsatisfactory living conditions. The Framework notes the desirability of maintaining an area's prevailing character and the importance of securing well-designed, attractive places (paragraph 124). Planning decisions should ensure that developments add to the overall quality of the area, are visually attractive as a result of layout and appropriate / effective landscaping and, whilst not preventing or discouraging appropriate innovation or change, are sympathetic to local character (paragraph 130). Decisions should also safeguard and improve the environment, create places with a high standard of amenity for existing and future users and minimise impacts on biodiversity (paragraphs 119, 130 and 174).
34. Having regard to all these policies, I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the modest benefits of 6 additional dwellings. As such, the proposed development would not be the sustainable development for which paragraph 11 of the Framework indicates a presumption.
35. In these circumstances it is not necessary for me to undertake an AA in respect of the effects of the development on the integrity of the Swale, Thames and Medway Estuary and Marshes Special Protection Areas. Also, as I am dismissing the appeal, there would be no interference with the human rights of the occupiers of neighbouring properties.

### **Conclusion**

36. I have found above that the proposed development would conflict with the development plan taken as a whole. There are no considerations, including the provisions of the Framework, that indicate that a decision should be made other than in accordance with the development plan.
37. For this reason, and having regard to all other matters raised, the appeal is dismissed.

*Martin Small*

INSPECTOR