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## Appeal Decision

Site visit made on 5 December 2023

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 3 January 2024**

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**Appeal Ref: APP/V2255/W/22/3312812**

**124 East Street, Sittingbourne, Kent ME10 4RX**

- 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 Ashvin Properties Ltd against the decision of Swale Borough Council.
  - The application Ref 22/501612/FULL, dated 24 March 2022, was refused by notice dated 16 June 2022.
  - The development proposed is the erection of 2 bedroom bungalow.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) accompanied by a written ministerial statement (WMS). All references to the Framework hereafter in this decision are to the December 2023 version.
3. The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS and none of the revisions to the Framework would be material to this appeal. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.
4. The description of development cited in the planning application form differs to that contained within the decision notice. There is no evidence that this change was formally agreed. The latter more accurately reflects the scope of the proposed plans which were submitted, consulted upon, determined by the Council and are now the subject of this appeal. As no parties' interests would be prejudiced, in the interests of clarity I rely upon that latter description for the purposes of the heading above.
5. At the time of the application the property at 124 East Street was designated as a Grade II Listed Building, and the Council's second reason for refusal stated that the proposal would fail to preserve the setting of this Listed Building. However, during the appeal process this property was removed from the List of Buildings of Special Architectural or Historic Interest (delisted), following a reassessment by Historic England (HE).

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6. The main reasons why the property was to be delisted are cited in the HE Advice Report<sup>1</sup>. HE considered that the rear extension and conversion into four self-contained flats meant that the original internal plan had been significantly altered, with any historic features being fragmentary. Also, the original windows had been replaced with uPVC units and that the property did not comprise part of an asset grouping. Therefore, HE considered that the building is no longer of special architectural or historic interest and has been delisted. In light of this, the Council has indicated that it will not be pursuing its second reason for refusal. Consequently, I will assess the proposal on the remaining refusal reasons only.

#### **Main Issues**

7. The main issues are the effects of the proposal on:
- The character and appearance of the area;
  - The living conditions of nearby occupiers with specific regard to private amenity space, noise and disturbance, overlooking and privacy;
  - The living conditions of future occupiers;
  - The adjoining Air Quality Management Area (AQMA); and
  - The integrity of the Swale Special Protection Area (SPA).

#### **Reasons**

##### *Character and appearance*

8. The appeal is located on the southern side of the busy thoroughfare of East Street (A2) in Sittingbourne. The surrounding area is mixed use with commercial, retail and services located amongst traditional detached, semi-detached and terrace residential units. The existing development at 124 East Street is a detached two-storey property subdivided into flats, and whilst having a traditional appearance, it has been modernised including an extension, a painted render finish and the provision of uPVC windows, hence its delisted status. Nevertheless, the property still has a positive contribution within the streetscene and the surrounding area.
9. The rear gardens in this section of East Street abuts the gardens of the properties in Orchard Place to the south of the site. This provides a general arrangement of relatively open domestic garden spaces, occupied by various residential paraphernalia including sheds and other outbuildings, albeit of modest domestic proportions. The appeal site would provide a new single storey 2-bedroom bungalow, accessed via the side of the existing property.
10. Whilst the appearance of properties in the area is mixed, their plots are generally similar in siting, layout, and form, with reasonable and largely undeveloped gardens to the rear. The proposal would occupy a significant proportion of the rear garden at No 124, which would not be commensurate with the existing open domestic gardens in the immediate vicinity. As a result, the significant built development would contrast with the pleasant and relatively open gardens, which contributes positively to the character and appearance of the area. Furthermore, the increased density would provide

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<sup>1</sup> Historic England Advice Report Case Ref: 1484388 dated 21 February 2023

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limited curtilage for both the proposed and existing dwellings, providing a cramped appearance.

11. I acknowledge that there is a large, partially two-storey structure in the rear garden of No 120 which I observed on site. However, from the information before me this is not a separate dwelling, but an ancillary building dating from the mid-19<sup>th</sup> century in connection with the host property at No 120. Nevertheless, this structure is a limited example and does not represent an overriding influence over the existing character and appearance of the area.
12. Overall, I find the proposed development would be harmful to the character and appearance of the area. Accordingly, it would be contrary to Policies CP3, CP4 and DM14 of the Swale Borough Local Plan (SBLP), adopted July 2017 which, amongst other things, requires development to be of good design, providing appropriate densities determined by the context and the defining characteristics of the area, and reflecting the positive features of the site and locality. The proposal would also conflict with Paragraph 135 c) of the Framework insofar as it requires development to be sympathetic to local character.

*Living conditions of nearby occupiers*

13. The existing occupants at No 124 currently enjoy a generous garden area for the provision of private amenity space. The location of the proposal would significantly restrict the private space provided for the existing residents. It is acknowledged that the existing garden area is underutilised and somewhat unkempt, nevertheless this does provide suitable and needed private outdoor space, which would accord with the open garden character as indicated above. The reduction in private area for the existing flatted development would be modest for its density, and whilst small tables and chairs could be accommodated, there would be little room to store additional equipment, provide washing lines and other domestic items. Consequently, I do not consider the outdoor amenity area would accord with SBLP Policies CP4 and DM14 and could not reasonably be regarded as a high-quality living environment.
14. The Council are also concerned with potential noise generated from the comings and goings and general disturbances associated with the proposal. The existing property at No 124 is already a flatted development, and I have been supplied with no information indicating the room layout of these flats. Whilst an additional dwelling at the site is likely to intensify the use to an extent, given the existing multi occupant residential use at No 124, any minor increase in activities of occupants using the side accessway is unlikely to have any significant harm to the existing occupiers living conditions in terms of noise and disturbance than currently experienced.
15. The proposed refuse store is located some distance away from East Street where receptacles would need to be presented. As with existing occupants, any future occupiers would need to drag their refuse and recycling bins down the accessway, to the collection point at East Street. This is not uncommon in the area, and I am satisfied that the distance would not be inconvenient or contrary to what other occupants nearby are already doing and thus would not be harmful in this regard. Furthermore, the provision of a refuse store could be secured through a condition.



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16. In regard to privacy of nearby residents, it is acknowledged that the proposed dwelling would be single storey in nature, and the provision of a suitable boundary treatment could mitigate some overlooking and loss of privacy from the proposal to these adjoining properties. This could also be secured through a suitable condition.
17. Notwithstanding my findings in respect to the adequacy of privacy, noise and disturbance, the living conditions of existing occupiers would be unacceptable due to a significant reduction in private outdoor amenity space. Accordingly, with regard to this main issue the proposal would have an unacceptable effect upon the living conditions of neighbouring occupiers. In this respect it would not accord with SBLP Policies CP4 and DM14 insofar as they seek to ensure development proposals enrich the qualities of the existing environment and cause no significant harm to amenity. The proposal would also conflict with paragraph 135 f) of the Framework, which amongst other things, seeks a good standard of amenity for all existing and future occupants of buildings.

*Living conditions of future occupiers*

18. The proposed development would meet with the minimum internal space requirements for new dwellings contained in the Government's Nationally Described Space Standard, March 2015 (NDSS). However, SBLP Policies CP4 and DM14 among other things, require new development to provide high quality design and cause no significant harm to amenity and other sensitive uses or areas. In addition, the Framework expects planning decisions to ensure healthy living conditions and create better places to live, indicating that higher densities should not be at the expense of acceptable living standards<sup>2</sup>.
19. The constraints of the site prevent any suitable private outdoor amenity space being located at the rear of the proposal, however a modest amenity space would be located at the front of the site instead. As stated above, the provision of the amenity space in this location would restrict and reduce the amenity space currently experienced by the existing residents at No 124 providing a cramped appearance. Furthermore, No 124 has several upper floor rear windows located in close proximity to the proposal. Given their elevated position, the modest garden size and separation distance between the properties, would provide significant overlooking from a higher vantage point to the detriment of the living conditions for any potential occupiers.
20. The proposed development would therefore have an unacceptably harmful effect upon the living conditions of its future occupiers, with particular reference to overlooking and privacy. The proposal is therefore contrary to the relevant provisions of SBLP Policies CP4 and DM14 and the Framework which, amongst other things, expects planning decisions to ensure healthy living conditions and create better places to live.

*Air Quality*

21. The appeal site adjoins the Swale#3 AQMA. SBLP Policy DM6 amongst other things, seeks development to integrate air quality management and environmental quality into the design, and demonstrate that proposals do not worsen air quality or are likely to impact on AQMAs. The appellant has supplied

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<sup>2</sup> Paragraph 129 c) of the Framework

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little evidence to confirm whether or not the development would adversely impact on vehicle emissions in the area.

22. Taking a precautionary approach, it is reasonable to conclude that vehicles associated with the new development would be moving in and around the area and the AQMA, thus would invariably produce additional emissions. In the absence of any evidence to the contrary, these vehicle emissions could likely have a negative effect on the air quality within the area and in particular the adjoining AQMA.
23. Consequently, it has not been sufficiently demonstrated that the development does not have a harmful effect on the AQMA. As such, it is contrary to Policy DM6 of the SBLP and to the Swale Borough Council Air Quality and Planning Technical Guidance, updated May 2021 which collectively seek to minimise climate change and local air quality impacts.

#### *Integrity of the Swale SPA*

24. The Medway Estuary and Marshes SPA is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA, either alone or in combination with other plans and projects.
25. The appeal site is located within 6km of the Medway Estuary and Marshes SPA. The conservation objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive. The qualifying features include its assemblage of breeding birds and waterbirds, including populations of dark-bellied brent goose, common shelduck, northern pintail, pied avocet, ringed plover, grey plover, red knot, dunlin, common redshank, and little tern.
26. I have been presented with no information in respect to any mitigation measures to conserve the integrity of the SPA, or whether any financial contribution (secured by planning obligation) should be considered as an appropriate mitigation measure. Nor is there a planning obligation before me. Nevertheless, as I'm dismissing the appeal for other matters, I do not need to consider this matter further, as no significant likely effects on the SPA would arise from my decision.

#### **Planning Balance and Conclusion**

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
28. I have found that the proposed development would harm the character and appearance of the area and would harm the living conditions for existing and potential occupiers. There is also insufficient evidence to demonstrate that the development does not have a harmful effect on the AQMA, nor is there any suitable information in respect to the protection of the integrity of the Medway Estuary and Marshes SPA, which collectively attract substantial weight against the scheme.

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29. It is not disputed that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. Consequently, because of the provisions of footnote 8, paragraph 11 d) (ii) of the Framework should be applied.
30. Therefore, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme. I find that the development would offer potential benefits in terms of providing a single modest dwelling to the Council's housing stock, given that this is a small site and could be brought forward relatively quickly. It would also have environmental, economic and social benefits, through potential energy efficiency measures, employment opportunities during the construction phase of the development, and future residents accessing and supporting local services. I have attached moderate weight to these factors in favour of the proposal.
31. Taking all of the above into account, in applying paragraph 11 d) (ii) of the Framework, the extent to which there would be adverse impacts of granting planning permission, relating to my findings on the main issues above, would significantly and demonstrably outweigh the above benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.
32. For the reasons outlined above and having regard to the development plan as a whole, and all other relevant material considerations including the provisions of the Framework, the appeal is dismissed.

*Robert Naylor*

INSPECTOR