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## Appeal Decision

Site visit made on 16 October 2024

**by Stewart Glassar BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 1<sup>st</sup> November 2024**

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**Appeal Ref: APP/V2255/W/24/3337949**

**Land rear of 98A Scocles Road, Minster on Sea, Sheerness, Kent ME12 3SW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Mr and Mrs Alan Saunders against the decision of Swale Borough Council.
  - The application Ref is 22/500388/OUT.
  - The development proposed is an outline planning application for residential development of 6no. dwellings with associated parking and access driveway, to be accessed from within parcel G of Harps Farm residential development.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application is submitted in outline with all matters except for access reserved for future consideration. I have dealt with the appeal on this basis, treating any details of other matters shown on the plans as illustrative.
3. The application was amended from 7 to 6 dwellings during the course of the Council's consideration of the application. I have therefore taken the description of development from their decision notice as it more accurately describes that for which permission is sought.

### Main Issues

4. The main issues are the effect of the proposed development on a) the Swale, Thames and Medway Estuary Special Protection Areas; and b) the character and appearance of the area.

### Reasons

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

5. The Swale, Thames and Medway Estuary Special Protection Areas (SPAs) provide wetland and important habitat that is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). These areas are easily disturbed by recreational activity from people and their pets and there is a reasonable likelihood that the SPAs would be accessed for recreational purposes by future occupiers of the development. While the effects of the development alone would be limited, additional recreational visitors to the protected areas would be likely to have significant effects when considered in combination with other proposals.

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6. The Habitats Regulations require me to consider any avoidance or mitigation measures that would be capable of addressing the adverse effects and to be certain that they would be effective. I have been provided with information and representations on the matter, including the Bird Wise North Kent Mitigation Strategy (2018). It appears that the impact on the SPAs could be monitored and managed to a satisfactory level through a tariff-based system that would fund measures such as awareness raising, on-site wardens, provision of signage and access infrastructure. Natural England, who are the statutory conservation body, agree that such payments can avoid an adverse effect on the integrity of the SPAs.
7. An applicant can either make a direct payment to the Council, in line with the appropriate tariff, or sign a unilateral undertaking (UU) to pay the tariff at a later date. I acknowledge the appellant has submitted a draft UU to address this matter but there is no information before me to indicate that a completed UU has been produced or a direct payment made to the Council.
8. Where suitable mitigation has not been secured, the Habitats Regulations state that planning permission should only be granted if there are reasons of overriding public interest and suitable compensatory measures are secured. As this case does not accord with those requirements, permission cannot be granted.
9. Consequently, I find that the proposed development could result in harm to the integrity of the SPAs and would conflict with both the Habitats Regulations, and Policies ST1, DM14 and DM28 of the Swale Borough Local Plan 2017. These policies, amongst other things, require development to avoid significant harm to, and adequately mitigate the effects upon, biodiversity, and that any adverse effect is only permitted in exceptional circumstances where there are overriding reasons of public interest and damage can be fully compensated.
10. The development would also conflict with the National Planning Policy Framework (the Framework), which requires development to protect and enhance the natural environment and sites of biodiversity value, improve biodiversity, and that where significant harm to biodiversity cannot be adequately mitigated, permission should be refused.

*Character and Appearance*

11. The appeal site is a largely inaccessible plot of land which contains unmanaged trees and vegetation. It is located between the rear gardens of houses on Harps Avenue and a residential development currently under construction. The green buffer provided by the site is no doubt of some value to those existing residents whose gardens back onto it. However, given where it is located and the housing around the site, its wider visual contribution to the area is more limited.
12. The redevelopment of the site would result in the loss of some habitat, trees and biodiversity. However, it would also provide an opportunity for some compensatory planting and habitat provision, which could be more effectively managed than is currently the case.
13. However, the illustrative layout submitted with the proposal does not, to my mind, represent a satisfactory approach in this regard. It leaves a large inaccessible area of trees at one end of the site and insufficient areas amongst

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the houses to allow planting and structural landscaping to thrive. What the illustrative drawing does do however, is indicate that a more considered layout could achieve these objectives.

14. Indeed, it seems to me that there is sufficient space to provide the houses as well as a more appropriate approach to boundary planting; deliver areas of communal planting that would help bring about habitat and biodiversity contributions; and retain a visual contribution to the wider area. I acknowledge that this might necessitate smaller dwellings than those shown on the submitted illustrative layout but this would not necessarily change the number of units now being sought.
15. It was suggested that the scheme as proposed would deliver a 7% Biodiversity Net Gain (BNG). Any new planning application would need to meet the new statutory BNG targets and so this would provide a definitive measure against which any revised submission would need to be assessed. This would be an additional incentive to provide appropriate boundary planting and retain as many trees on site as possible.
16. Given that the site is effectively 'land-locked' and is, or will be, largely surrounded by houses, the redevelopment of the site for housing would not be out of keeping with the wider area. The Highway Authority has indicated that in terms of highway safety and capacity the means of access would be acceptable. Although some on site matters such as turning would need to be more fully considered, it would be possible to deal with them at a later date.
17. Overall, there would be opportunities to secure compensatory planting and biodiversity net gains, which would retain some of the site's wider visual contribution to the area. Accordingly, I do not find the proposal harmful to the character and appearance of the area. As such, it would accord with Policies CP4, DM28 and DM29 of the Swale Local Plan 2017 insofar as they seek to ensure developments are appropriate to their surroundings and have regard to trees, habitat, biodiversity and their management.
18. The proposal would in relation to this matter accord with the Framework's objectives of avoiding significant harm to, and providing net gains for, biodiversity.

#### **Other Matters**

19. The Framework seeks to significantly boost the supply of housing and acknowledges that small-scale developments can make an important contribution to meeting housing requirements and be built out quickly. In this case the site is located within a settlement, and I note that the appellant has secured rights of access, drainage etc across the adjoining land in order to be able to develop the site. Six additional dwellings would make a positive contribution to the supply and mix of housing in the borough and there would be some modest economic and social benefits associated with them. This all weighs positively in favour of the proposal.
20. It is suggested that the Council did not make the appellant aware of the need for a SPA payment. However, the appellant has become aware of the requirement as a draft UU was submitted with the appeal and it was open to the appellant to pursue the matter further. As such, it does not detract from my findings on the issue.

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**Conclusion**

21. Notwithstanding the positive contribution the proposal would make to the supply of housing, and the absence of harm to the character and appearance of the area, the harm to the SPAs provides a clear reason to refuse the appeal.
22. There is nothing before me to indicate that the harm I have identified to the SPAs, or the resulting conflict with the Habitat Regulations and the development plan, would be outweighed by other material considerations. Therefore, the decision should be made in accordance with the development plan.
23. As such, having regard to all other matters raised, the appeal is dismissed.

*Stewart Glassar*

INSPECTOR