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## Appeal Decision

Site visit made on 2 July 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29<sup>th</sup> of July 2025

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**Appeal Ref: APP/V2255/W/24/3357228**

**Land at Honeysuckle Drive, Minster-on-Sea, Sheerness, Kent ME12 3RE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Harps Farm Developments against the decision of Swale Borough Council.
  - The application Ref is 23/502126/FULL.
  - The development proposed is Erection of 2no. 3-bedroom detached dwellings with associated garaging and parking accessed from existing private driveway.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. With the appeal, the Appellant submitted a signed Unilateral Undertaking (UU) to secure a payment in accordance with the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (the SAMMS), which the Council state addresses its third reason for refusal. I have had regard to this in setting out the main issues below and return to this matter later.

### Main Issues

3. The main issues are the effect of the proposed development upon:
  - open space provision; and,
  - highway convenience.

### Reasons

#### *Open space provision*

4. Paragraph 96 of the National Planning Policy Framework (2024) (the Framework) states that decisions should aim to achieve healthy, inclusive places that promote interaction, enable and support healthy lives, especially where this would address identified local health and well-being needs, such as through the provision of safe and accessible green infrastructure. Paragraph 103 explains that access to a network of high-quality open spaces and opportunities for physical activity is important for community health and well-being and can deliver wider benefits for nature, and help address climate change. Similar is recognised in the supporting text to Policy DM17 of the Swale Borough Local Plan (2017) (the SBLP).
5. Policy DM17 requires that proposals safeguard existing open space in accordance with national policy, having regard to the Council's open space assessment and

strategy and facilities planning model. Framework paragraph 104(a) states existing open space should not be built upon unless an assessment clearly shows the space or land to be surplus to requirements. Criterion (b) is not subsequently advanced in the appeal submission, and (c) is not relevant to the proposal.

6. Part of the appeal site and some adjacent land was designated as open space in an original outline permission for the wider area, a subsequent reserved matters application<sup>1</sup>, and I understand its provision is secured by a planning obligation. It was previously used as a construction compound, but at my visit was cleared, appeared largely flat, and under a mix of flowers and grasses. It was surrounded by fixed metal bow-top fencing with a gate, but there was also an internal line of temporary fencing which appeared to prevent general public use.
7. The appellant suggests the open space should not be considered as being provided as it has not been used as open space. Though I note the limitation of use by temporary fencing, the land currently exists as an open space and there is nothing of substance before me to suggest it is not secured by extant permissions and an obligation. Therefore, its circumstances mean it should be regarded as open space sought to be protected by Policy DM17 and the Framework.
8. The appeal site alone might not be of a sufficient size for formal sports provision, or a park or garden. However, I do not agree it could not be used for a natural or semi-natural greenspace. Moreover, it is part of a continuous wider adjacent space, which as a whole, is of a good shape, area, utility, benefits from some surveillance, and would be easily accessible to local occupiers. Its position close to the roundabout does little to detract from its suitability and it would appear fencing would be an appropriate solution to ensure the safety of children from the nearby highway and watercourse.
9. Therefore, if provided as intended in extant permissions and the obligation, the space would provide both a useful and desirable open space of benefit to local occupiers and the area, consistent with development plan policy and Framework objectives. The appeal scheme would result in the loss of a significant proportion of the space, thereby markedly reducing the quantum of open space and its utility, with the remaining space having much less overall value.
10. The Council states the original proposal for Thistle Hill was for 1,000 houses, but 1,934 have been permitted or provided, so open space is now deficient for the population. Applying a standard per dwelling occupancy ratio for the development the Council calculates almost all open space typologies are deficient against the standards in Policy DM17 within Thistle Hill. They state around 33.31 hectares are necessary, but only around 18.98 hectares are provided. Deficiencies for some types of space are proportionally very large.
11. The appellant considered space existing or secured through permissions within 400m of the site, based upon mid-year population estimates of Output Areas. The appellant also took the approach of identifying spaces within Thistle Hill as a whole and categorised them in line with Policy DM17 categories to assess provision. Its initial view was that 44.72 hectares was secured for all of Thistle Hill, but at the final comments stage states that it is 19.79 hectares, and with some named other spaces, including outside the community, provision is around 24.43 hectares.

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<sup>1</sup> Ref. SW/06/0750.



12. It is unclear how this re-calculation affects its previous views of adequate provision for certain categories of open space existing within 400m of the appeal site. I am also mindful that by considering sites and populations within 400m of the site, this does not encompass all of the Thistle Hill area and population. Therefore, this initial approach has some limitations, so the approach of considering Thistle Hill as a whole would appear the most appropriate means of assessing provision.
13. Having visited some of the areas<sup>2</sup>, the initial estimation of around 44.72 hectares appeared a significant over-estimation of provision. This is based upon spaces such as the natural or semi-natural greenspace (NSNG), the park and garden area due northwest of the appeal site and football pitch at the Academy. Therefore, it appears the appellant's revised figures are more reflective of provision. I do have some concerns that given the land at Sheppey Rugby Football Club is outside the recommended 800m radius and a 20-minute walk from the site, it may not reasonably provide for many residents seeking formal outdoor sport provision.
14. However, even if I did consider it and that suitable provision was around 24.43 hectares, this would still represent a very significant deficiency against the 33.31 hectares the Council considers is required to be consistent with local standards. It would seem therefore, that the current situation could well be adversely affecting health and well-being objectives for the local community. Though total open space may be over double that envisaged for the original development, it would still be significantly below more modern adopted development plan standards, so this, of itself, does not justify losing part of the appeal site for use as valuable open space.
15. The evidence provides little to substantiate the value and utility of space as part of 22/503935/REM. I have also considered the Lapwing Close Park and area on the opposite side of Aspen Drive which are part of existing provision. However, I am not persuaded they adequately mitigate the harm from the appeal scheme or mitigate existing deficiencies. There is various other provision for public open space within a 20-minute walk or cycle distance of the appeal site. However, the evidence in this regard gives limited information upon the nature of many facilities and given their significant distance from the site, they do not fully or adequately mitigate the need for close-by convenient open space as sought by Policy DM17.
16. Therefore, for the reasons set out above, the proposed development would result in the loss of open space, for which it is not demonstrated there is sufficient provision in the area, or that the appeal site is surplus to requirements. This conflicts with Policy DM17 of the SBLP and paragraph 103 of the Framework, the relevant provisions of which I have set out above.

#### *Highway convenience*

17. Policy DM7 of the SBLP explains that until such time as the SBC Vehicular Parking Standards Supplementary Planning Document (2020) (the SPD) is adopted, the Council will apply Kent County Council vehicle parking standards. The now adopted SPD is a material consideration, setting out standards having regard to matters such as local travel modes, car ownership, providing appropriate parking provision, safe operation of the highway and encouraging sustainable travel modes. The appeal site is in an area where the SPD recommends that 2 – 3 parking spaces, and 0.2 visitor spaces are provided per three-bedroom dwelling.

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<sup>2</sup> Based on the plan in Appendix E of the Appellant's Appeal Statement.



18. The plans show two parking spaces per dwelling, of which the external spaces meet the SPD required size, but the garage spaces fall short in width and depth<sup>3</sup>. Of note is that the internal widths, proportionally, would appear to be significantly below the standard. Their internal sizes would be likely to make parking and opening doors of many medium and larger cars awkward, so could result their use being unappealing for vehicle parking, so vehicles may park on the highway.
19. The effects of the scheme would be dependent upon the number and size of vehicles of future occupiers and parking preferences, which are by no means certain. It is possible that for dwelling A, that if occupiers have a second car, they might park in a tandem arrangement if cars were sufficiently small. However, any such arrangement would not appear possible for dwelling B. Even were I to be persuaded amending the scheme to incorporate carports does not conflict with the description of development, the plans indicate this may still be unable to secure a sufficient width space for dwelling B.
20. The scheme could result in a few future occupier cars parked on the highway near the dwellings access, which includes a cul-de-sac end, turning head and two-way unrestricted route. Though I observed some on-street spaces available, and it is not a through route, cars parked could reduce the turning room, and/or mean cars have to wait to pass a parked car even were cars parked mounted on the pavement or verge. Though it can only represent a brief snapshot in time on a weekday morning, this had occurred and there is no substantive evidence by either main party to suggest what I observed was untypical at that time.
21. It is noted the Council does not assert that such conditions would be prejudicial to highway safety, and though noting effects upon convenience might be quite limited, the scheme nevertheless, would be likely to result in some adverse effects upon highway convenience. This would conflict with the aims of Policy DM7 of the SBLP, and the SPD, the relevant provisions of which I have set out above.

#### **Other Matters**

22. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require where a plan or project is likely to result in a likely significant effect (LSE) on a designated habitats site, a competent authority is required to make an appropriate assessment of its implications on the integrity of the site, in view of its conservation objectives. Any LSEs need to be considered alone and in combination with other development, adopting the precautionary principle.
23. The appeal site is in proximity to the Swale Special Protection Area (SPA) and Ramsar site and the Medway Estuary and Marshes SPA and Ramsar site. The sites are designated because they provide important habitats for wintering, migratory and breeding waders, seabirds, waterfowl and other birds (the qualifying features). Their conservation objectives are to maintain or restore their integrity by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features, the population of each of the qualifying features, and the distribution of the qualifying features within the site.
24. Studies have found that visits and recreational use by occupiers in proximity to the habitats sites, including activities including walking, dog walking, cycling, and

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<sup>3</sup> Page 32 of the SBC Vehicular Parking Standards Supplementary Planning Document (2020).



jogging, can disturb the qualifying features<sup>4</sup> constituting LSEs upon them. This scheme would result in new dwellings within a distance of the habitats sites where it is identified there would be likely to be increased visits by occupiers, with potential for recreational disturbance and LSEs upon the qualifying features.

25. Strategic measures to mitigate LSEs from recreational disturbance are set out in the SAMMS, based upon a costed per dwelling tariff to fund mitigation. In its consultation response to this proposal NE states it is satisfied the SAMMS contribution is satisfactorily secured by the UU and sufficient to avoid an adverse impact to the integrity of the habitats sites and relevant features. The Council is also satisfied the UU secures an appropriate payment to address its reason for refusal and therefore avoid adverse effects upon the integrity of the habitats sites.
26. I see no reason why the sum would not be directed by the Council and partner organisations in the manner intended towards the mitigation. The UU binds the delivery of mitigation and based upon the evidence before me I see no reason why it would not be delivered in the time and form needed to mitigate LSEs. Overall, I am satisfied the UU is a sufficient mechanism to enable the delivery of adequate mitigation in accordance with the SAMMS. Therefore, following an appropriate assessment, I am satisfied the mitigation is appropriately secured and would be delivered in a timely manner to mitigate the LSEs, and the appeal scheme would maintain and restore the integrity of the habitats sites and its qualifying features.
27. For the reasons set out, the proposal would not adversely affect the integrity of the habitats sites in view of their conservation objectives, so is compliant with Policies ST1, DM14 and DM28 of the SBLP. These require proposals conserve the natural environment and apply international, national and local planning policy, and law to protect areas designated for their biodiversity importance.

### **Planning Balance**

28. The appeal scheme would result in a modest temporary economic benefit during construction and once constructed a limited on-going benefit to the local economy, and support to local services and facilities. The Council has performed below housing delivery test targets and cannot demonstrate a 5-year housing land supply (HLS). Both parties referred me to a figure of approximately 4.1 years from an appeal decision for up to 290 dwellings<sup>5</sup>, which is subsequently reduced to being of the order of 3.98 years. Smaller sites can make an important contribution to supply and be built out relatively quickly. However, in the context of local needs of the order I am referred to, the provision of two additional dwellings to supply would be a limited benefit attracting limited weight in favour of the appeal scheme.
29. Subject to the imposition of suitably worded planning conditions, it is possible the appeal scheme could result in additional landscaping and a net biodiversity gain. From what I saw and the evidence before me, it possible the level of benefit could be one that attracts moderate weight in favour of the appeal scheme. Though the appellants advocates the appeal scheme would make a better use of under-utilised land, the land seems under-utilised due to fencing, which could be remedied. In the context of its secured use and the shortfall of open space provision, I cannot agree that appeal scheme represents an optimal use of the land.

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<sup>4</sup> Phase I – Bird Disturbance Report by Footprint Ecology (July 2012).  
<sup>5</sup> APP/V2255/W/23/3333811

30. The scheme incorporates an appropriate design, is in a sustainable location, and is consistent with nearby patterns of development close to roundabouts. However, in the context of its surrounds, open space next to a roundabout is neither inconsistent nor harmful. I am also not convinced it is necessary to contain a small corner of the roundabout, to create a node, that two additional houses add to a sense of place, or would be an overall benefit to character and appearance. The effect of the appeal scheme in these regards would be neutral overall.
31. Were I to agree the scheme would be compliant with policies and standards in respect of matters such as the living conditions of future and neighbouring occupiers, rights of way, access to services and facilities, electric vehicle charging, sustainable construction and building methods, access specifications, wider highway capacity, construction management, and archaeological matters, these would be neutral matters in the planning balance.
32. The policies most important for determining the application are considered out of date, so in accordance with Framework paragraph 11d) 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
33. The overall benefits of the appeal scheme attract moderate weight in its favour. Having regard to the harm and policy conflict I have found in respect of parking and highway convenience, the matter attracts limited weight against the appeal scheme. However, the appeal scheme would result in the loss of a proportion of open space, where based upon the evidence before me, a significant shortfall exists and it is not demonstrated the space is surplus to requirements, in conflict with fundamental aspects of development plan and Framework policies. Given the nature of the existing deficiency, and the nature of the appeal site, this is a matter that attracts significant weight against the appeal scheme.
34. Overall, the policy conflicts and resulting harm are such that the adverse impacts significantly and demonstrably outweigh the benefits of the development, when assessed against the policies of the Framework taken as a whole. Therefore, the appeal should not succeed.

### **Conclusion**

35. The proposed development is contrary to the development plan read as a whole, and the Framework taken as a whole. There are no considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

*Mr D Szymanski*

INSPECTOR