
Appeal Decision

Site visit made on 9 January 2017

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 January 2017

Appeal Ref: APP/P1560/W/16/3159347

14 Oxford Road, Frinton-on-Sea, Essex CO13 9HX

- 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 Mr & Mrs Clark against the decision of Tendring District Council.
 - The application Ref 16/00266/FUL, dated 18 February 2016, was refused by notice dated 25 April 2016.
 - The development proposed is erection of four bedroom detached dwelling with associated access, parking and ancillary works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of four bedroom detached dwelling with associated access, parking and ancillary works at 14 Oxford Road, Frinton-on-Sea, Essex CO13 9HX in accordance with the terms of the application Ref, 16/00266/FUL, dated 18 February 2016 subject to the conditions set out in the schedule to this decision notice.

Preliminary matter

2. The Council's second reason for refusal relates to the absence of a planning obligation to secure a financial contribution towards public open space. A Court of Appeal judgement on 11 May 2016 upheld the Secretary of State's appeal on all grounds relating to the High Court judgement in *R (on the application of West Berkshire District Council and Reading Borough Council) v SSCLG* [2015] EWHC 2222 (Admin) on 31 July 2015. As a consequence, a Written Ministerial Statement published on 28 November 2014 and Planning Practice Guidance (PPG) are material considerations that set out Government policy defining the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought for small scale development. The definition includes the proposal before me. The Council have therefore withdrawn this reason for refusal.
 3. The Council confirm that as of 14th July 2016, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Preferred Options Consultation Document (the emerging Local Plan). I have not though been referred to any Policies in this document in support of the Council's decision.
 4. I saw at my site visit that the bungalow that was to the north east of the appeal site referred to by the Council in their decision notice has been
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demolished. Therefore concerns relating to the effect of the proposal on the occupiers of that bungalow are no longer relevant.

5. I have been supplied with plans of the proposed bungalow to the north east by the appellant (16/00265/FUL). The Council has not disputed the plans and therefore I have used them in the determination of the appeal.

Main Issue

6. The main issue is whether the proposal would provide acceptable living conditions for the future residents of the proposed bungalow to the north east of the appeal site with particular regard to privacy, outlook and garden space.

Reasons

7. The appeal site forms the previous front garden of the bungalow that has been demolished. The site is wider at the rear than the front with vehicle access available from Oxford Road. The proposal is for a two storey house that would be sited roughly in line with 16 Oxford Road. It would contain three first floor windows in the rear elevation, two of which would serve bedrooms. The other would be to a bathroom which the appellant confirms would be obscure glazed. The Council has stated that the first floor elevation would be 14.5 metres from the closest corner of the new bungalow to the rear. This has not been disputed by the appellant.
8. The new bungalow to the rear of the appeal proposal would have its main front elevation facing the north-west so that its rear elevation and private amenity space would face south east. It would be designed so that the south west elevation facing the appeal site, albeit at an oblique angle, would only contain one window to a dining room. The main rear elevation would be L-shaped so that the principal window to the sitting room would face towards the gardens of properties on Eton Road. As a result there would be very limited opportunity for direct overlooking into the windows of the proposed bungalow from the appeal proposal.
9. I acknowledge that some of the rear garden space of the new bungalow would be visible from the first floor windows of the appeal proposal. None-the-less, the L shape design of the bungalow would facilitate a sitting out area which would be shielded from view of the proposed house. Consequently a private garden space of a reasonable size, close to the rear elevation of the bungalow would be provided. Such provision would be in accordance with the requirements of the Essex Design Guide for Residential and Mixed Use Areas which the appellant's state has been adopted as Supplementary Planning Guidance by the Council.
10. Given that the main outlook of the windows in the bungalow would be away from the appeal site then I do not consider that the proposed house would be an overbearing presence when viewed from those windows. The appeal proposal would be visible from part of the garden area of the new bungalow. However, this would only be a small part of the total garden space available for the future occupiers. Consequently, they would have a reasonable amount of garden space that would have an open outlook over surrounding gardens and this would be particularly so from the private sitting out area. I do not consider therefore that the proposal would be significantly dominant or overbearing to the garden space as a whole.

11. For the reasons above I consider that the proposal would provide acceptable living conditions for the future residents of the proposed bungalow to the north east of the appeal site with particular regard to privacy, outlook and garden space. As a result it would be in accordance with saved Policy Q11 of the Tendring District Local Plan 2007 and the National Planning Policy Framework (the Framework). These require that development secures a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

12. Plan ref 1317/02 B together with the delegated decision officer report for application reference 16/00265/FUL submitted by the appellant both confirm that pedestrian access and parking spaces are provided to the proposed bungalow from Eton Road. I note that no objections were raised to this by the Council or the Highway Authority. Furthermore the parking for the appeal proposal would comply with the Council's parking standards.
13. I have found that the proposal would ensure that the future occupiers of the bungalow to the north east would have acceptable living conditions. In addition, from my observations on site and the evidence in front of me I see no reason to disagree with the Council's findings regarding the effect of the proposal on the living conditions of residents of other houses surrounding the appeal site or the design/impact and layout of the appeal proposal. As a result I am satisfied that allowing the appeal would not lead to overdevelopment within the area or an unacceptable adverse effect on the living conditions of surrounding residents.

Conditions

14. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents. In the interests of clarity it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
15. A condition relating to external materials is required to protect the character and appearance of the street scene. I also concur that conditions are required to ensure that access and parking is provided together with pedestrian visibility splays and a construction management statement in the interests of highway safety.
16. Details of boundary treatment and changes in ground level are required to protect the living conditions of neighbouring residents and the character and appearance of the area.
17. I have amended the wording of some conditions slightly as details are not required prior to all work commencing on site. Conditions 3 and 4 though require the submission of details prior to any works commencing due to the potential for changes to land levels and to ensure no harm to highway safety from the start of works.
18. The Council has suggested that a condition be imposed regarding the submission of a landscaping scheme. However, this would be a small domestic scheme where landscaping should be left to the discretion of the owners.

Furthermore I did not see, and my attention has not been drawn, to any trees worthy of retention on the site.

19. I have carefully considered the Council's submitted condition regarding the removal of permitted development rights for the roof of the proposed house. Paragraph 017 of the Planning Practice Guidance states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. I have seen no convincing reason for this being an exceptional circumstance for removing permitted development rights and therefore I have not imposed this condition.

Conclusion

20. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Zoe Raygen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 131701B
- 3) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 5) Other than site clearance and preparation works no works shall commence on the construction of the hereby permitted dwellings until details of the provision, siting, design and materials of screen walls and fences have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented on site prior to the approved dwelling being first occupied.
- 6) Other than site clearance and preparation works no works shall commence on the construction of the hereby permitted dwellings until details of the manufacturer and types and colours of the external facing and roofing materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) All off street parking, including garaging, shall be laid out and made available for use in accordance with plan ref 131701B prior to the first occupation of the approved house and they shall be retained and kept available for their intended purposes at all times thereafter.
- 8) Prior to the first occupation of the hereby approved house the proposed vehicular access shall be constructed at right angles to the highway boundary and to a width of 3.7 metres and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge in accordance with details to be submitted to and approved in writing by the local planning authority.

- 9) Prior to the proposed access being brought into use, a 1.5m x 1.5 m pedestrian visibility splay, relative to the highway boundary, shall be provided on both sides of that access and shall be maintained in perpetuity free from obstruction clear to the ground. These splays must not form part of the vehicular surface of the access.
- 10) No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.