

Appeal Decision

Site visit made on 28 November 2017

by Alex Hutson MATP CMLI MArborA

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

Decision date: 21 December 2017

Appeal Ref: APP/P1560/W/17/3181960

57 Ingestre Street, Harwich, Essex CO12 3JG

- 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 Abul Azad against the decision of Tendring District Council.
 - The application Ref 16/01665/FUL, dated 7 December 2015, was refused by notice dated 24 April 2017.
 - The development proposed is 5 x 2 bed and 2 x 1 bed and 1 single person apartments over 2.5 floors with under-croft parking.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application form states the address of the appeal site as 59 Ingestre Street. However, the main parties have confirmed that the correct address is 57 Ingestre Street. I have considered the appeal on this basis and I have amended the appeal site address in the banner heading above accordingly. I am satisfied that the initial error on the application form has little bearing on my consideration of the appeal given that the submitted plans clearly show that the appeal site is located between the properties of 55 and 59 Ingestre Street.
3. The Council cites a number of draft planning policies of the emerging Tendring District Local Plan (emerging Local Plan) on its decision notice. However, whilst it has now reached the publication draft stage, the emerging Local Plan has not yet been examined and found to be sound. Thus, it could be subject to change. Therefore, having regard to Paragraph 216 of the National Planning Policy Framework (the Framework), I afford the emerging Local Plan and its draft policies limited weight at this time.

Main issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of the existing occupiers of 59 Ingestre Street with particular regard to outlook;
 - Whether the proposal would provide adequate living conditions for any future occupiers with particular regard to external amenity space provision; and
 - The effect of the proposal on flood risk.

Reasons

Character and appearance

5. The appeal site comprises a vacant and somewhat overgrown plot of land on the south-eastern side of Ingestre Street. It was previously in use as a builder's yard. It lies between a row of traditional two storey terraced dwellings with basements and ground floor bay windows to the south-west and a row of more recent two storey terraced dwellings with some forward projecting gable features to the north-east. Though there is a contemporary apartment block with balconies along Talbot Street which sides onto Ingestre Street, the pattern of development along Ingestre Street is predominantly characterised by terraced dwellings, albeit of varied appearance, and this provides the main context to the appeal site.
6. The proposal would introduce a building, containing 8 flats, onto the appeal site. Parking would be provided at the lower ground floor level with living accommodation at ground and first floor levels. Further living accommodation would be provided within part of the roofspace with some front and rear dormer windows incorporated at this level. A combination of front and rear balconies would provide amenity space for each of the apartments.
7. I acknowledge that the appellant has sought to pick up on some existing architectural features of other buildings in the area, including the forward projecting gables of the terraced dwellings to the north-east and the balconies of the block of flats along Talbot Street. I also recognise that variation in ridge heights can, in some situations, create visual interest. In addition, I accept that the materials to be used would reflect those of other buildings in the area, including some along Ingestre Street. Furthermore, as Ingestre Street is characterised by terraced properties and therefore side spacing is not a strong feature along it, the proposed building would maintain an adequate degree of separation from its adjacent dwellings so as not to impact detrimentally upon the streetscene in this regard.
8. However, the variation in the ridge height of the proposed building would appear substantially at odds with the predominantly even ridge height that the blocks of terraced dwellings either side of the appeal site display. Moreover, the overall ridge height of the proposed building would be noticeably higher than that of the traditional terraced dwellings to the south-west. This would result in a poor visual relationship with these dwellings. The proposed half-hipped roof would make little difference in this regard. Front balconies and front dormer windows are not a characteristic feature along Ingestre Street and thus, these features would also not integrate well into the streetscene. Furthermore, the variation of the ridgeline height and the presence of front dormer windows would afford the proposed building an overly bulky appearance. So too would its considerable depth when viewed from a footpath which runs along the rear of the appeal site. In addition, the front projecting gables would be considerably narrower than those of the terraced dwellings to the north-west and would therefore not adequately harmonise with these existing features.
9. These factors would result in an overall incoherent building form that would fail to reflect the prevailing pattern of development along this part of Ingestre Street. This would result in significant harm to the character and appearance of the streetscene and area. This is notwithstanding that the area is not

subject to any specific heritage designations or that the appeal site in its current form might appear to some extent unsightly.

10. The proposal would therefore be contrary to saved Policies QL9 and QL11 of the Tendring District Local Plan 2007 (Local Plan). These policies require, amongst other things, development to make a positive contribution to the quality of the local environment, to protect or enhance local character and distinctiveness, to relate well to its site and surroundings and to be of a scale appropriate to the locality. These policies are consistent with the broad aims and objectives of the Framework which seek planning to secure high quality design and to take account of the different roles and character of different areas.
11. The Council cites conflict with saved Policies QL10 and HG14 of the Local Plan. However, saved Policy QL10 does not specifically relate to character and appearance and is therefore of little relevance to this main issue. In addition, saved Policy HG14 relates to proposals for detached, semi-detached and end of terrace dwellings and is thus not applicable to the proposal under consideration in this appeal.

Living conditions- existing occupiers

12. The adjacent dwelling to the south-west of the appeal site, 59 Ingestre Street, has an L-shaped rear outrigger at basement and ground floor level. A single storey rear extension occupies much of the rear garden of this property and to such an extent that there appears to be no useable amenity space associated with it. This extension extends out from the basement level which, due to ground level changes, is at garden level at the rear of this property. Any windows within this extension that are orientated towards the appeal site face onto a shared boundary fence at close proximity. This is likely to limit any meaningful outlook from these windows for any occupiers of this property.
13. However, the rear outrigger has a window within its flank elevation at ground floor level from which open views are likely to be experienced over the appeal site by the occupiers of 59 Ingestre Street. There is also a rear facing window at ground floor level within close proximity to the appeal site from which oblique views over the appeal site are likely to be experienced. Thus, these windows currently provide a good level of outlook for the occupiers of 59 Ingestre Street.
14. The proposal would extend built form, of a considerable height, a substantial depth into the appeal site and within close proximity to the shared boundary with 59 Ingestre Street. Thus, any views from the ground floor window in the flank wall of this dwelling would look directly, and within close proximity, onto the flank wall of the proposed building. This would result in a significant sense of enclosure to this window. Given the substantial height and depth of the proposed building, it would also result in a significant sense of enclosure to the rear facing ground floor window of 59 Ingestre Street. This would have a severe and detrimental overbearing effect for the occupiers of this property which would result in significant harm to their outlook.
15. The appellant highlights that should the use of the appeal site as a builder's yard recommence, this would result in noise and disturbance to surrounding residents. However, there is no strong evidence before me to demonstrate this to be the case or that there is any intention to reinstate this use. I therefore

afford limited weight to this matter. Moreover, even if this were to occur, there is other environmental legislation in place to control such potential harmful effects. Consequently, this matter does not alter my findings in respect of this main issue.

16. The proposal would therefore be contrary to saved Policy QL11 of the Local Plan, which requires, amongst other things, development not to have a materially damaging effect on the amenities of occupiers of nearby properties. This policy is consistent with the broad aims and objectives of the Framework which seek planning to secure a good standard of amenity for all existing occupants of land and buildings.

Living conditions- future occupiers

17. Saved Policy HG9 of the Local Plan sets out local standards for external amenity space provision within new residential development. For flats, it requires either a minimum of 25 square metres (sqm) per flat provided communally, or a minimum of 50sqm private garden area for a ground floor flat and a minimum balcony area of 5sqm for units above.
18. The appellant argues that given the undercroft parking and raised floor levels at the rear, that there would effectively be no ground floor flats. Nonetheless, they are identified as such on the submitted plans and they would clearly be at ground floor level when entering them from Ingestre Street. As such, the Council's standards for external amenity should be applied on the basis that the proposal would provide some ground floor flats.
19. There would be no provision of any communal amenity space and the proposed ground floor flats would be provided with front and rear balconies of an area considerably short of 50sqm. Consequently, the proposal would fail to comply with the Council's standards. I am not persuaded that there are any circumstances that warrant setting aside the policy requirements in this case.
20. I therefore conclude that the proposal would provide a poor level of external amenity space, contrary to the requirements of saved Policy HG9 of the Local Plan. This would, overall, provide a cramped living environment and inadequate living conditions for any future occupiers. This would be contrary to the broad aims and objectives of the Framework which seek planning to secure a good standard of amenity for all future occupants of land and buildings.

Flood risk

21. The appeal site lies within Flood Zone 3a, as identified on the Environment Agency (EA) Flood Zone Map. This is a high probability zone at risk of flooding. Residential use is classified as a More Vulnerable Use by the EA. The Framework indicates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. This translates into an approach whereby local planning authorities should only consider development appropriate in areas at risk of flooding following the application of the Sequential Test (ST). The aim of the ST is to steer new development to areas with the lowest probability of flooding. Notwithstanding that the area benefits from flood defences, the ST should be applied.

22. Where the ST shows that it is not possible for the development to be located in zones with a lower probability of flooding, the Exception Test (ET) should be applied when appropriate. For the ET to be passed, it must be demonstrated that firstly, the development provides wider sustainability benefits to the community that outweigh flood risk and secondly, that a site-specific flood risk assessment demonstrates that the development is appropriately flood resilient and resistant over its lifetime. The Government's Planning Practice Guidance sets out that the ET is required for More Vulnerable Uses within Flood Zone 3a.
23. The appellant has provided a ST based on a study area agreed by the Council. On the basis of the evidence, the study area seems to me to be a reasonable one. The appellant highlights a number of sites within the study area which have been considered for their suitability for housing within the Tendring District Council Strategic Housing Land Availability Assessment 2014 (SHLAA). The appellant sets out that this was the most up to date version of the SHLAA when the ST was produced.
24. According to the evidence, some of these sites fall within or partially within Flood Zone 1. I note that some of them have previously been subject to planning permissions for residential development. Nonetheless, the appellant discounts these sites as suitable alternatives to the appeal site largely on the basis that they are too large and could thus deliver a much higher number of residential units than proposed under this appeal. It is therefore the appellant's view that the proposal under consideration would be too small to occupy land better suited for major developments. In addition, the appellant sets out that the sites are not available for sale to him in any case. He also makes reference to other sites which benefit from planning permission but discounts them for this reason or that they are too small or too large to accommodate the development proposed.
25. Nevertheless, whilst other sites may not be available to the appellant, it seems to me that there are likely to be some that would be able to provide, either individually or cumulatively, the quantum of development as proposed under this appeal in areas at lower risk of flooding. The fact that this might not be delivered by the appellant has little bearing on this matter. Thus, I am not persuaded that the ST has been passed.
26. Moreover, even if I were to accept the appellant's arguments in this respect, the ET would still need to be passed. I acknowledge that the proposal would occupy a location with a good level of access to local services and facilities for any future occupiers and would make a contribution, albeit in the wider scheme of things, a limited one, to housing supply within the District. However, given my findings that the proposal would result in harm to the character and appearance of the area, harm to neighbour living conditions and would provide an inadequate level of external amenity space, it would not sufficiently demonstrate the required wider sustainability benefits to the community that would outweigh flood risk. Thus, whilst a site specific flood risk assessment has been submitted which concludes that the proposal would be appropriately flood resilient and resistant over its lifetime, the overall requirements of the ET would not be passed in any event.
27. For these reasons, the proposal would not be acceptable in terms of flood risk and would fail to comply with the requirements of the Framework in this

regard. It would also be contrary to saved Policy QL3 of the Local Plan, which reflects the requirements of the Framework in respect of flood risk.

Other matters

28. The appellant sets out that planning permission¹ has previously been granted for a building containing 12 flats on the appeal site. I have no reason to dispute this, albeit that the Council does not appear to refer to it. However, I have not been provided with any plans in respect of this consent to allow me to make any informed comparisons between it and the proposal before me. In addition, it is my understanding that it was never implemented and thus, any consent in this regard is no longer extant. I therefore afford limited weight to this previous planning permission and it does not provide justification for me to allow the appeal.
29. The Council's officer report, under the planning history section, indicates that planning permission² was recently granted for a development matching the description of the proposal under consideration in this appeal. However, this is not referred to elsewhere in any of the evidence of either of the main parties as far as I can see. As such, on the basis of the evidence before me, I cannot be certain that this is an accurate reflection of the appeal site's planning history. Thus, in a similar manner to that of the Council and of the appellant, I have not considered it in any further detail.
30. The proposal would occupy a location with a good level of access to local services and facilities for any future occupiers. It would make a contribution, albeit, a limited one, to housing supply within the District. Nonetheless, these modest benefits would not be sufficient to outweigh the considerable harm that I have identified.

Conclusion

31. For the reasons set out above and having regard to all other matters, including sewers, parking and access, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR

¹ Ref 02/00819/FUL

² Ref 15/01845/FUL