The Planning Inspectorate

Appeal Decision

Site visit made on 10 April 2019

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 25 July 2019

Appeal Ref: APP/P1560/W/18/3213632
Land Adjacent Little Thatch, Mill Lane, Thorpe Le Soken CO16 0ED

- 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 Cramphorn against the decision of Tendring District Council.
- The application Ref 17/01933/FUL, dated 30 October 2017, was refused by notice dated 10 April 2018.
- The development proposed is one dwelling.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The National Planning Policy Framework was revised in February 2019 (the Framework) and this post-dates the Council's refusal notice. I have taken the Framework into account as part of the determination of this appeal.

Main Issues

3. Since the decision notice was issued, the Council has confirmed that they no longer contest the second reason for refusal. The Council noted in its statement that the site falls within a Zone of Influence, therefore the main issues are:

   - the effect of the proposed development on Weeleyhall Wood SSSI, Hamford Water Special Protection Area (SPA) and Ramsar site; and
   - the effect of the proposed development on the living conditions of the occupiers of neighbouring dwellings with particular regard to outlook and light.

Reasons

Weeleyhall Wood SSSI, Hamford Water SSSI and Hamford Water Ramsar site

4. The appeal scheme proposes a dwelling on a site that lies within the Zone of Influence (ZoI) of Hamford Water SPA and Ramsar site. Since the development is for one dwelling only, the number of additional recreational visitors would be limited and the likely effects on Hamford Water SPA and Ramsar site from the proposed development alone may not be significant. However, new housing development within the ZoI would be likely to increase the number of recreational visitors to Hamford Water SPA and Hamford Water Ramsar site; and, in combination with other developments it is likely that the proposal would

have significant effects on the designated site. Consequently, an Appropriate Assessment (AA) is necessary to ascertain the implications for the site.

5. Natural England (NE) commented that it has no concerns regarding the effect of the proposed development on Weeleyhall Wood SSSI. I have no evidence before me to suggest that the proposed development would cause any harm to the integrity of this habitats site.

Appropriate Assessment

6. The qualifying features for the Hamford Water SPA and Ramsar designation are the overall water bird assemblage. The Conservation Objectives include maintaining the structure and function of the habitats of the qualifying features and supporting the processes on which the habitats of the qualifying features rely.

7. I note the draft Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2019 (draft RAMS SPD), which sets out a strategic approach to mitigation by several councils across Essex. The draft SPD sets out detailed mitigation measures that would be funded by S106 contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education and communication, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on SPA and Ramsar site. While I note that the draft SPD is not yet adopted, NE's interim advice[1] states that for proposals for fewer than 100 dwellings that are within the ZoI of the listed designated sites, a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements.

8. The Council suggested that significant effects on the designated sites could be mitigated by a condition requiring the submission and implementation of proposals in accordance with the RAMS. However, while it is possible to implement on-site mitigation measures via a condition, in this case mitigation measures would be required off-site in order to address the wider effects of the development on the designated sites. Moreover, NE has advised that financial contributions would be necessary to mitigate against residual impacts of the development. Due to its limited scale and general lack of complexity the proposed development in this case does not meet the exceptional circumstances which would justify the imposition of a condition seeking a planning obligation set out in the Government's Planning Practice Guidance. Taking these matters together leads me to the view that conditions would not provide an effective mechanism to provide mitigation in this case.

9. The appellants provided a signed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 during the course of the appeal seeking to ensure the payment of a financial contribution prior to the commencement of development. The Recreational Disturbance, Avoidance & Mitigation Contribution Calculation is defined in the UU as a contribution towards the impact of development on the European Wildlife Sites, and European Wildlife Sites is defined as Special Protection Areas, Special Areas of

[1] Emerging strategic approach relating to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) – Revised interim advice to ensure new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations dated 16 August2018

Conservation and Ramsar sites designated primarily to protect waders and wildfowl.

10. However, the UU does not refer specifically to Essex Coast RAMS or to Hamford Water SPA and Hamford Water Ramsar site, the sites that would be adversely affected by the proposal. There would therefore be a risk that the contribution could be used on other designated sites particularly since there are several in the Essex Coast Area. Consequently, there is a possibility that it would not mitigate the harm caused by the proposed development. Moreover, NE's interim advice[2] states that "in the interim period before the RAMS is adopted, a financial contribution should be agreed with and collected from the developer, prior to commencement, on the basis that it can be used to fund strategic 'off site' measures (i.e. in and around the *relevant* European designated site(s))" (my emphasis). Since the relevant European designated sites are not explicitly identified in the UU it would not meet this requirement.

11. Therefore, while the Council has indicated that it is satisfied with the UU and I note the appellants' comments regarding the standard template used by numerous Councils, for the reasons set out above, I am not persuaded that it would be effective in mitigating against residual impacts of the development on Hamford Water SPA and Hamford Water Ramsar site. The UU therefore would fail to make the development acceptable in planning terms and would conflict with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

12. Consequently, the proposed development would have adverse effects on the integrity of Hamford Water Special Protection Area (SPA) and Ramsar site and would conflict with Policy QL11 of the Tendring District Local Plan 2007 (LP) which seeks, among other things, development that will not lead to a material loss or damage to important environmental assets such as areas of ecological or landscape value. The proposal would also conflict with the Framework in this respect.

Living conditions

13. While I note that the effect of the proposed development on the living conditions of the occupiers of Little Thatch did not amount to a reason for refusal, I have had regard to the comments from interested parties and assessed the effect of the proposal on this property later in this section.

14. The appeal site lies between two detached two storey houses; Little Thatch to the south and Mill Lodge to the north. The proposed dwelling would occupy almost the full width of the plot such that the flank walls would be in close proximity to the boundaries with the adjacent properties. The flank wall of Mill Lodge is also in close proximity to the boundary and has an existing triple window that currently looks out onto the vacant site.

15. The proposed building would present a two-storey wall, albeit with a slope at higher level, that would be readily visible from the kitchen window in the flank wall of Mill Lodge. However, the space served by this window is a dual aspect open plan kitchen, which also benefits from a patio door to the adjacent wall which affords a high quality of outlook across the rear garden. Therefore, while outlook from the kitchen window would be affected by the proposed

[2] At Annex II

development, due to the nature of the room that this window serves it would result in no material harm to the living conditions of the occupiers of Mill Lodge in this respect.

16. Turning my attention to light, the window is south facing, and given the close proximity and height of the flank wall of the proposed dwelling, it would reduce the levels of light reaching the kitchen area. However, given that there is a full height patio door on the adjacent wall, the space would still receive adequate light such that the living conditions of the occupiers would not be unduly affected. Moreover, given the function and layout of the room, it is unlikely that the occupiers would spend substantial portions of the day in the space adjacent to that flank window.

17. While I note the guidance within The Essex Design Guide relating to a 45-degree angle from the centre of the window, the purpose of the document is as a guide only. While I acknowledge that evidence such as BRE assessments have not been submitted with the proposal, from the evidence before me, given the position of the proposed building in relation to Mill Lodge and the open plan nature of the internal spaces, the harm to outlook and light would not be significant such that refusal of permission on this ground alone would be justified.

18. I note concerns regarding the effect of the proposed development on the living conditions of occupiers of Little Thatch with regard to outlook. However, since the proposed building would not be located directly opposite to this side of the house, the outlook from the bedroom window in the flank wall of Little Thatch would not be unduly affected. Furthermore, since the room is unlikely to be occupied during substantial parts of the day, any harm would be very limited such that refusal of permission on this ground alone would not be justified. I acknowledge the concerns relating to overlooking to the front of Little Thatch. The windows on the flank wall of the proposed building facing Little Thatch would be to an ancillary room of the kitchen and a secondary window to the dining area. Therefore, a suitable condition could be reasonably imposed to require these windows to be obscured such that the privacy of the occupants of Little Thatch would not be unduly affected should planning permission be forthcoming.

19. Given the position of the proposed dwelling in front of the building line of Little Thatch, the proposed building would not significantly affect the levels of light reaching the bedroom window. It may be likely that the future occupants of the appeal site would erect a fence along the boundary with Little Thatch that may reduce the levels of light to this room. However, given that the room is less likely to be occupied for substantial parts of the day compared with other spaces, the harm in this respect would be limited.

20. While light levels to the front of Little Thatch may be reduced for certain parts of the day, given that the windows to the front of Little Thatch would continue to receive light from the south, the levels of light available in the dwelling would not be significantly reduced such that the living conditions of the occupiers would be unduly affected.

21. Consequently, the proposed development would not cause material harm to the living conditions of the neighbouring occupiers with particular regard to outlook and light. It would therefore accord with LP Policy QL11 in this regard which

requires that development will not have a materially damaging impact on daylight and other amenities of occupiers of nearby properties.

Other Matters

22. I am aware of comments relating to the hedge along the boundary of the appeal site and Little Thatch. However, these are private matters and so do not bear materially on my consideration of the case. Similarly, I acknowledge concerns relating to clearance works being carried out on the site since the application was determined. However, some of these matters are covered by legislation outside of the planning acts and I have assessed the proposal as presented for appeal against its planning merits-which these matters are extraneous to. While I acknowledge the evidence relating to ecology, the Council has stated that it no longer contests this reason for refusal. From the evidence before me I am satisfied that the ecology of the site would not be unduly affected.

23. I acknowledge a subsequent application determined by the Council relating to the appeal site, and the previous applications relating to this site. However, they do not form part of this appeal and in any event, each case must be determined on its own individual merits.

24. I note concerns regarding the effect of the proposal on the character and appearance of the Conservation Area and street-scene. The Council has not objected on this basis and given the design of the building including the form, height and proposed materials, I see no reason to disagree. A condition could be reasonably imposed to require that details of proposed materials are submitted to the Council that would safeguard the character and appearance of the area.

25. I recognise concerns relating to the effect of the proposed development on The Old Mill and the Grade II listed Mill Barn Farm in terms of the effect on the setting of these buildings and the living conditions of the occupiers. Given the distance between these buildings and the appeal site, and the design and height of the proposed building, the setting of these buildings and the living conditions of the occupiers would not be adversely affected by the proposal. Thus, taking these matters together, and in accordance with the duties imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude that the proposed development would preserve the character and appearance of the Conservation Area, and the setting of the aforementioned Listed Buildings.

26. I acknowledge the planning permission for development at and to the rear of Pitts Meadow. However, from the evidence before me, these sites appear larger than the appeal site and do not provide a direct comparison. I also note the comments relating to the proposed development setting a precedent for future development in the area. However, in any event, each case must be determined on its own individual merits.

27. While I acknowledge local concerns regarding highways safety and congestion relating to Mill Lane and High Street including during the construction process and I note the evidence relating to damage to The Oaks. I also recognise the evidence relating to the use of Mill Lane as a public footpath. However, while I acknowledge that the Highways Authority objected to previous proposals for

the site, it has not raised any objections on this proposal in this regard and from the evidence before me I see no reason to disagree with this assessment.

Planning Balance and Conclusion

28. For the reasons set out above the proposed development would have adverse effects on the integrity of Hamford Water Special Protection Area (SPA) and Ramsar site, which is a matter that weighs heavily against the proposal in the overall planning balance. Although I have found that the proposed development would avoid harm to the living conditions of the occupants of neighbouring properties, avoid adverse highway safety and biodiversity impacts, and cause no harm in character and appearance terms these are not positive benefits of the appeal scheme and accordingly have only a neutral effect on that balance.

29. Although the provision of an additional house would carry limited weight in the appeal scheme's favour, this would not outweigh its adverse effects to the SPA and Ramsar site.

30. I note the evidence relating to the five-year housing land supply including a number of appeal decisions[3]. However, paragraph 11 of the Framework is clear that, even if I were to find that relevant policies are out of date as a result of this, that permission should not be granted when the application of policies in the Framework that protect areas of particular importance (including SPAs and Ramsar sites) provide a clear reason for refusing the development proposed- which for the reasons set out above is clearly the case here.

31. Accordingly, for the reasons given above the appeal is dismissed.

R Sabu

INSPECTOR

[3] Appeal ref: APP/P1560/W/18/3196412, APP/P1560/C/17/3188587, APP/P1560/C/17/3188590