The Planning Inspectorate

Appeal Decision

Site visit made on 26 November 2019

by Graham Wyatt, BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2019

Appeal Ref: APP/P1560/W/19/3233960
Land Adjoining 2 Harrow Road, Clacton-on-Sea, CO15 3PT

- 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 Michael Wagland against the decision of Tendring District Council.
- The application Ref: 19/00396/FUL dated 7 March 2019, was refused by notice dated 10 May 2019
- The development proposed is a 2-bedroom house with attic studio.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council state that the appellant submitted additional drawings[1] for its consideration on 29 May 2019 and after it had made its decision to refuse planning permission. I have considered these drawings under the principles established by the Courts in Wheatcroft[2]. In addition, although the Council provided a brief response to the additional drawings, the advice within the procedural guide[3] is that any proposals considered by the appellant to overcome the Council's reasons for refusal should normally be made via a fresh application and that the appeal process should not be used to evolve a scheme. Consequently, I have determined the appeal based upon the drawings that were submitted with the planning application[4] and not the additional plans.

3. The Council's decision notice refers to policies from the emerging Tendring District Council Local Plan 2013-2033 and Beyond Publication Draft (June 2017). The Council confirm that the examination of Section 2 of the Plan will not progress until matters relating to Section 1 have been resolved. As such I only afford its policies limited weight.

Main Issues

4. The main issues are the effect of the development on:

   - the living conditions of future occupiers of the dwelling with particular regard to private garden space and privacy; and
   - the Colne Estuary Special Protection Area (SPA).

[1] HAR/03/Rev B and HAR/04
[2] Bernard Wheatcroft Ltd v SSE & Harborough DC [1982] P&CR 233
[3] Procedural Guide Planning Appeals – England 2019
[4] HAR/01, HAR/02/Rev B and HAR/03/Rev A

Reasons

Living Conditions

5. The appeal site forms a vacant parcel of land at the end of a terrace of dwellings on Harrow Road. The proposal seeks to erect a further dwelling on the end of the terrace which will provide two bedrooms and other living space over three floors, which includes the roof space. The area is urban in character and contains a variety in size and style of dwellings that on the whole benefit from private amenity spaces to the rear of the properties.

6. The proposed dwelling would follow the form of the terrace and would assimilate successfully into the street scene. However, the development would only provide a very limited area of garden or private amenity space to the rear of the site. This area would amount to some 40 sq. m, which would be in conflict with the minimum 75 sq. m as required by Policy HG9 of the Tendring District Local Plan 2007 (the Local Plan) for a two-bedroom dwelling.

7. The proposed amenity area would also be bordered by a fence of some 2m in height and other planting that will result in an oppressively confined space which would not deliver a reasonable sized area for activities such as sitting out, hanging washing or gardening. Moreover, the garden is rather small in comparison to the prevailing size of gardens in the area and would be of limited practical use for the occupiers. The amenity area would also be severely overlooked by those properties that flank the site along Harrow Road and Wellesley Road. Consequently, the proposal would not provide an acceptable level of private garden space which would erode the living conditions for future occupiers.

8. Thus, the development would not provide a satisfactory level of private amenity space. It would be in conflict with Policies QL10 and HG9 of the Local Plan which seek, amongst other things, to ensure that new development makes provision for functional needs, which includes acceptable levels of private amenity space.

Special Protection Area

9. The Council confirm that the appeal site is within the Zone of Influence of the Colne Estuary SPA which is part of the Essex Coasts Habitats and is a European designated site. New residential development would place additional pressure from recreational disturbance on the SPA and the proposed development, in combination with other projects, would contribute to that pressure. Thus, it would be incumbent on me to consider whether an appropriate assessment is necessary in relation to the effect of the development on the SPA.

10. I understand that mitigation measures in the form of a financial contribution to overcome the effects of development on the habitats are stated within the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy. The appellant agreed to provide such a contribution and supplied the Council with a cheque for the requisite amount, which was returned as it considered such matters can only be dealt with via a legal agreement. However, given my findings on the first main issue, I have not considered this matter further, including whether an appropriate assessment is required or the necessity of a legal agreement.

Other Matters

11. The appellant refers to other developments in the District that are considered to have either less than 40 sq. m of amenity space and one that has no amenity space at all. However, although I note the details of Hampton Park provided by the appellant, matters relating to the policy framework that these developments were considered against and the reasons for finding them acceptable has not been provided. Thus, I am unable to ensure that they are directly comparable to the development before me. Moreover, each application must be considered on its own merits and the existence of development elsewhere does not represent an appropriate reason to find in favour of a development that would otherwise cause harm.

12. I acknowledge planning permission for an architectural studio was approved at the site. However, from the evidence before me through Policy HG9 of the Local Plan, such a development is not required to provide an area of amenity space. I also acknowledge that the design of the development is acceptable and that suitable materials could be employed. I also accept that the site is close to shops, services and transport links and as such, is within a sustainable location. However, neither this nor any other material consideration that has been advanced outweighs the harm that I have identified above.

Conclusion

13. For the reasons given above, and having regard to the development plan when read as a whole, the appeal is dismissed.

Graham Wyatt

INSPECTOR