



Appeal Decision

Site visit made on 19 November 2019

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 17 December 2019

Appeal Ref: APP/P1560/W/19/3229074

6 Ladysmith Avenue, Brightlingsea, Colchester, Essex CO7 0JD

- 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 S Taylor against the decision of Tendring District Council.
 - The application Ref 19/00194/FUL, dated 4 February 2019, was refused by notice dated 1 April 2019.
 - The development proposed is a two-bedroom bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. My attention has been drawn to various policies in the emerging Tendring District Local Plan 2013-2033 and beyond (publication draft 2017). However, from the evidence before me the emerging plan has not completed its examination in public and I can therefore only give the policies in it limited weight as they may be subject to change.

Main Issues

3. The main issues are:
 - (i) the effect of the development on the character and appearance of the area; and
 - (ii) the effect of the development on habitat and biodiversity with particular regard to the Colne Estuary Special Protection Area and Ramsar site.

Reasons

Character and appearance

4. The appeal site is located within the built-up area of Brightlingsea and is on the north side of Ladysmith Avenue. The site is currently part of the garden area of 6 Ladysmith Avenue. The site adjoins the rear aspects and gardens of the surrounding properties and is not readily visible from public vantage points.
5. The appeal proposal is for a detached bungalow which would be located to the rear of the existing property. The proposed plot would be unusual in that it would be shaped around the retained garden area of No 6 in a reversed 'C' shape.

6. From my site visit I saw that the area is generally characterised by properties with a street frontage with little backland development in the vicinity of the site. Where there is development which is set back from the highway, the respective properties have a visible frontage to the street.
7. In contrast, the appeal proposal would not have a direct frontage to the street and would be largely hidden owing to the unusual shape of the plot and the siting of the bungalow to the rear extremities of the plot itself. To my mind, these factors lead me to the view that the proposal would be significantly out of character with the prevailing development in the area.
8. I have also had regard to the scale of the proposal in that the other development along the north eastern side of Ladysmith Avenue is largely two-storey in scale. However, there are bungalows in the vicinity of the site including those almost opposite. Taking this into account I consider that a suitably designed bungalow would not harm the overall character of the area. That said, in my view, the 'L' shaped design which is largely as a result of the contrived shape of the plot curtilage would not complement the character and appearance of the area.
9. The Appellant has drawn my attention to various other developments nearby¹ which I observed on my visit to the area. However, none of the sites drawn to my attention are directly comparable to the appeal proposal and therefore I consider that these do not outweigh the harm I have identified.
10. I have also had regard to the effect of the development on the setting of the Brightlingsea Conservation Area which borders the appeal site. In this respect I agree with the Council that the proposed development would not result in any harm to the views in and out of the Conservation Area and therefore the proposal accords with the heritage aims of the National Planning Policy Framework (the Framework) and relevant Development Plan policies.
11. For the above reasons the proposal would harm the character and appearance of the area and would conflict with Policies QL9, QL10, QL11 and HG13 of the Tendring District Local Plan (2007) which amongst other matters seek to ensure that new development is not out of character with the area, and makes a positive contribution to the quality of the local environment including its scale and nature. It would also be at odds with the overarching design aims of the Framework.

Habitat and biodiversity

12. From the evidence before me the appeal site is located within the zone of influence of the Colne Estuary Special Protection Area (SPA) and Ramsar site. There is evidence to suggest that recreational activity is causing disturbance to the important biodiversity that the SPA accommodates. Consequently, any intensification of these activities could lead to further disturbance.
13. The Council have indicated that a financial payment is required to secure mitigation against recreational disturbance in those areas as any intensification of these activities could lead to further disturbance in accordance with the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy.

¹ Including those off Ladysmith Road, the development of Windsor Court, off Richard Avenue (rear of Queen Street) and rear of 55 Victoria Avenue.

14. With that in mind, the Appellant has provided a signed Unilateral Undertaking dated 23 July 2019 which provides for a financial contribution to the Council to ensure that appropriate mitigation is implemented in accordance with the emerging mitigation strategy.
15. Notwithstanding that, I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on the SPA/Ramsar site. However, given that I have found harm in relation to the character and appearance of the area, unless there is another material planning consideration which suggests that permission should be granted, it is not necessary for me to consider this matter in any further detail.

Planning balance

16. The Framework indicates that planning decisions should apply a presumption of sustainable development. For decision taking, where Development Plan policies which are the most important for determining the application are out of date², 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.
17. The Council has indicated that they cannot demonstrate a deliverable five year supply of housing, but also point to the fact that such a shortfall is modest. Furthermore, my attention has been drawn to a recent appeal decision³ where it was acknowledged that figures for determining housing need when based upon the standard method of calculation may not be an accurate representation of need owing to the quality of demographic data.
18. Notwithstanding that, I have found that the proposal would result in significant harm to the character and appearance of the area and as a result would be contrary to both the relevant Development Plan policies and the Framework. To my mind, this factor weighs heavily against allowing the proposed development.
19. The proposal would clearly provide some economic benefits in relation to the construction period and permanent benefits in respect of additional residents which would invariably support local businesses and facilities. It would also provide social benefits in that it would provide a much-needed additional dwelling. It is clear to me that all of these factors can be considered to be a benefit of the development and these must weigh in favour of the proposal. However, I consider that these benefits can only be considered to be minor.
20. I have also taken into account that the provision of an additional dwelling would be unlikely to have any significant effect in reducing the deficit to the housing land supply in the administrative area of Tendring.
21. Taking all of the above into account, I consider that the harm identified significantly and demonstrably outweighs the minor benefits when assessed against the policies in the Framework when taken as a whole. The proposal cannot therefore be considered to be sustainable development.

² Footnote 7 includes situations where the local planning authority cannot demonstrate five year supply of deliverable housing sites.

³ Reference APP/P1560/W/18/3196412 dated 3 April 2019

Conclusion

22. Taking all matters into consideration I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR