



Appeal Decision

Site visit made on 16 December 2019

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th January 2020

Appeal Ref: APP/P1560/W/19/3238961

Park Lodge, New Road, Mistley CO11 2AG

- 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 R Rawlinson against the decision of Tendring District Council.
 - The application Ref 19/00289/FUL, dated 14 February 2019, was refused by notice dated 6 September 2019.
 - The development proposed is erection of 4 cottage style dwellings with enhanced access onto New Road including landscaping access, drive and turning facilities.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on the character and appearance of the Manningtree and Mistley Conservation Area and on the significance of a non-designated heritage asset.

Procedural Matters

3. Both the Council and the appellant refer to policies from the emerging Tendring District Council Local Plan 2013-2033 and Beyond Publication Draft June 2017 (ELP). Although Section 1 of the plan has been through public examination, it remains the subject of outstanding concerns that were raised by the Inspector, and Section 2 will not progress until these matters have been resolved. Therefore, the emerging local plan does not yet form part of the development plan and due to the unresolved objections to it, I have afforded its policies only limited weight in the determination of this appeal.
4. The appellant has submitted a duly executed unilateral undertaking which I have taken into account. It provides for a Recreational Disturbance, Avoidance & Mitigation Contribution and for a Public Open Space Contribution and I have considered this under other matters.

Reasons

5. The site is located within the Manningtree and Mistley Conservation Area. Park Lodge is identified as a positive contributor within the Conservation Area Management Plan-Manningtree & Mistley Conservation Area 2010 and is recognised as a non-designated heritage asset.

6. Park Lodge dates from around 1875, when it first appears on the Ordnance Survey and is a mixture of red and gault brick with a grey slate roof. It includes sliding sash windows and a Georgian portico door. These features are also evident in other houses nearby. As a result of these similarities Park Lodge makes a positive contribution to the historic character of the Conservation Area.
7. This part of the Conservation Area is characterised by spacious well established plots with mature planting. Park Lodge is set back from New Road and is partially screened by existing mature landscaping. The property currently benefits from a large garden, with the area immediately to the rear of the house comprising small outbuildings and a swimming pool and then beyond this a wooded area which is laid to grass. The size of the plot and the spaciousness which is currently afforded around the dwelling contributes significantly to its setting and the significance of the Conservation Area.
8. The proposal would result in the subdivision of the existing garden into smaller plots and the construction of 4 dwellings to the rear of Park Lodge. The proposed dwellings would introduce development to the rear of New Road, in an area which is characterised by rear gardens. As a result the proposed dwellings would be completely at odds with the historic pattern of development in this area and would be harmful to the setting and significance of a non-designated heritage asset.
9. From within the garden it is possible to see the rear of properties within The Park and I have had regard to the differing character of this development. The terraced properties with narrow gardens, which abut the appeal site currently enjoy the backdrop provided from the garden of Park Lodge and experience the open spacious character which I have identified as being characteristic of this part of the Conservation Area. The proposed dwellings would be visible to residents in Nelson Villas and 1-2 Park Cottages which would result in the loss of this open character, overall spaciousness and the loss of established trees and landscaping. This would harm the character, appearance and significance of the Conservation Area.
10. In reaching these conclusions I have considered the extant permission for 67 dwellings, which was allowed on appeal, APP/P1560/W/17/31776089 on land to the rear of Park Lodge and even if this development were to be completed my findings would remain the same. I note that in that case the Inspector considered that the appeal site did not contribute to the historical significance of the Conservation Area, due to it not forming part of the designed parkland attributed to Mistley Hall. However, this appeal related to an enclosed and discrete site which had formerly been used for agriculture. It is therefore not of a similar character to the site I am considering which is domestic garden which forms part of the setting of a non-designated heritage asset.
11. Paragraph 193 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Given that the proposal would be of a relatively small scale, I find the harm to the setting of the Conservation Area to be less than substantial in this instance but nevertheless of considerable importance and weight.
12. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal. There

would be benefits to local housing supply and employment with the creation of additional dwellings, but these are modest due to the small scale of the development. Taking the above points together I do not consider that there would be public benefit sufficient to outweigh the great weight to be attached to the harm I have identified.

13. For the above reasons the proposal would neither preserve nor enhance the character or appearance of the Manningtree and Mistley Conservation Area harming its significance. It would also be harmful to the setting and significance of a non-designated heritage asset. As a result it would conflict with the Framework and Policy EN17 of the Tendring District Local Plan 2007, which requires development within a Conservation Area to preserve or enhance the character or appearance of the Conservation Area and not to harm heritage features. These requirements are echoed within Policy PPL8 of the ELP.

Other matters

14. I have had regard to the relationship of the site with the Grade II Listed building, The Hollies, which is located to the north of the site. However, whilst the development would be sited in relatively close proximity there is a sufficient level of separation between the two sites and therefore I find no harm in this respect and I note the Council considered the proposal would preserve the setting of The Hollies.
15. It would appear that the appeal site falls within a 'Zone of influence' for the European designated sites of the Stour and Orwell Estuaries SPA and Ramsar site (Stour on the Essex side only). Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations.
16. In this case, the Council has carried out a Habitats Regulations Assessment and considered proposed avoidance and mitigation measures. They concluded that with mitigation the project would not have an adverse effect on the integrity of the European sites included within the Essex Coast RAMS. This mitigation would be secured by the unilateral undertaking which has been submitted with this appeal. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.
17. The unilateral undertaking also facilitates a financial contribution towards public open space provision. However, were I to allow the appeal, I would still need to consider such an obligation against Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. However, as I have determined to dismiss the appeal on the grounds set out above, I need not address this matter further here.
18. The appellant submitted the proposal following pre-application advice. The Framework stresses the benefits of early engagement and of good quality pre-application discussion. Whilst this is not binding it is clearly unfortunate if proposals are initially supported but then the final outcome is an adverse one. Nevertheless, at appeal the proposal is considered afresh and as a consequence the positive feedback given does not warrant allowing the appeal.

19. The Council accepts that it cannot demonstrate a five-year housing land supply at present. Paragraph 11 of the Framework states that where the policies that are most important for determining the application are out of date, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 sets out that these policies include those relating to designated heritage assets. Therefore, I am not required to apply the tilted balance in this respect. However, even if the tilted balance were to be applied the benefits of the scheme would be significantly and demonstrably outweighed by the harm I have identified

Conclusion

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

G. Pannell

INSPECTOR