



Appeal Decision

Site visit made on 7 January 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st January 2020

Appeal Ref: APP/W1525/W/19/3236158

5 Dakyn Drive, Stock, Ingatestone, CM4 9DJ

- 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 M Campion against the decision of Chelmsford City Council.
 - The application Ref: 18/02123/FUL dated 21 December 2018, was refused by notice dated 4 April 2019.
 - The development proposed is a detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development upon:
 - the living conditions of the occupiers of No. 5 Dakyn Drive with particular reference to outlook and private outdoor amenity space provision;
 - the living conditions of the future occupiers of the proposed new dwelling with particular reference to private outdoor amenity space provision;
 - the protection and future health of a protected tree; and,
 - the habitat and biodiversity at the Blackwater Estuary Special Protection Area and Ramsar site and the Essex Estuaries Special Area of Conservation.

Reasons

Living conditions – No. 5 Dakyn Drive

3. The existing private amenity space for No. 5 Dakyn Drive is approximately 6m in depth. The outlook is constrained to some degree by the existing dwellings on Brookmans Road and some of their outbuildings to the west, and a small projection at the rear of the neighbouring No. 3 Dakyn Drive to the south. Notwithstanding this, most of the open outlook is towards the south and west permitting a reasonable amount of sunlight. The proposed dwelling would be located approximately 2m to the side of the approximately 3m high existing brick outbuilding on the northern side of the private amenity space. The new dwelling would be approximately 4.4m high to the eaves and 6.6m high to the ridge with a blank elevation, save for one small rooflight, along virtually the entire depth of the garden.

4. The outbuilding would provide a modest amount of screening to the new dwelling from the main grassed area of the rear garden of No. 5. However, the height, depth and massing of the new dwelling would be visible and significantly enclose the amenity space. Being located to the north side there would be no discernible impact upon sunlight or overshadowing. However, due to its height, depth, massing and close proximity the new dwelling would have a considerable enclosing effect, feeling overbearing from the garden of No. 5. It would have a significant adverse impact upon outlook such that it would result in significantly harmful living conditions for the occupiers of No. 5.
5. Therefore, for the reasons set out above the proposed new dwelling would result in significantly harmful living conditions for the occupiers of No. 5 Dakyn Drive by reason of being overbearing and through loss of outlook. This is contrary to paragraph 127(f) of National Planning Policy Framework (2019) (the Framework), which requires decisions should create places that promote health and well-being with a high standard of amenity.
6. Policy DC44 of the Council's Core Strategy and Development Control Policies Development Plan Document (2008) (the Core Strategy) requires all new dwellings to have the use of private amenity space appropriate for the type of dwelling and its location. The proposed arrangement would increase the level of private amenity space available to No. 5. This would be by virtue of the new boundary demarcated by the new dwelling approximately 2m to the north of the outbuilding, increasing the overall width of the rear amenity area to approximately 11m.
7. Allowing for the 2m strip between the outbuilding, the floor space of the outbuilding itself and the existing garden, there would be approximately 70 square metres (sqm) of space. The usability of the additional strip may be questionable, however, the provision and use of outbuildings for storage and other functions in rear gardens is not uncommon. The additional strip of space would mean the overall quantity of private space would increase as a result of the proposed development. On this basis, whilst there might be a small degree of conflict with Policy DC44 of the Core Strategy, there would be no harm in this regard.
8. The proposals show an area of approximately 93 sqm to the north east of the appeal site to be retained by No 5 as further amenity space. I have some concerns about the suitability of this space as it is separated from No. 5 by the shared driveway, dominated by a mature oak tree, and not private by being open on one side. However, as I have not found harm in relation to the quantity of amenity space for No. 5, this area would not be necessary as additional supplementary outdoor private amenity space.

Living conditions – new dwelling

9. Part of the Council's reason for refusal suggests a concern about the level of useable space for the proposed new dwelling which would not be compliant with Policy DC44 (the relevant provisions of which I have set out above). The plans before me suggest the quantity of space would be above the 50 sqm set out for a two-bedroom dwelling in this location within Council's Making Places Supplementary Planning Document (2008) (the SPD).
10. On its south and eastern sides, the new private outdoor amenity space would be bound by a 1.2m high post and rail fence, and new hedge to grow to 1.6m

high. The position of the private amenity space would mean that the eastern side would be visible through the opening to the driveway from Dakyn Drive and from the retained front amenity area. Therefore, if I were to allow this development, this area would not be private until the hedge grows to a sufficient height, which could take several years. Therefore, the proposed development would conflict with Policy DC44 of the Core Strategy, which requires all new dwellings have the use of sufficient private amenity space. For this reason, it would also conflict with the guidelines for the level of private amenity space set out in Appendix 1.2 of the SPD. The development would also conflict with paragraph 127(f) of the Framework, the relevant provisions of which I have referenced above.

Protected tree

11. The large oak tree to the north eastern corner of the appeal site is the subject of Tree Preservation Order (TPO) TPO/2002/45. At my site visit the extent of the canopy of the tree appeared greater than the suggested canopy in the plan dated 13 January 2019. Although its age is unclear, it is a tall and very substantial tree that has a considerable amenity value within the street scene and wider area. Its apparent size, age and quality suggests that it would not be replaceable as a habitat within any reasonable length of time, and as such, should be classed as an irreplaceable habitat referenced in paragraph 175 of the Framework.
12. The proposed new dwelling is outside of the estimated Root Protection Area (RPA). The proposed parking spaces although partly within the RPA, would be situated on an area already given over to hardstanding/shingle. The appellant's arboricultural report and method statement gives me reassurance that subject to the specified safeguards being adhered to (e.g. protective fencing and the storage area) and being secured by a planning condition, the construction works would not be likely to result in harm to the tree.
13. The proposals show approximately 20 sqm of the existing shingle area would be returned to soft landscaping. By increasing the area for water and nutrient intake this could be beneficial to the tree. It is understood that storage of bins and paraphernalia already takes place under the tree, some of which was apparent on my visit. This appears not to have had a detrimental effect on the tree to date. There is no substantive evidence before me that the normal domestic use of the amenity areas, would be detrimental to the future health of the root system of the tree through increasing unfavourable soil conditions.
14. The Council is concerned the tree would result in issues for future occupiers due to its size dominating the private amenity space, overshadowing the garden and falling detritus, leading to pressure for reduction or removal of the tree. The new outdoor space would be north facing, and sunlight would be constrained from the south by dwellings. There would be some overshadowing in the outdoor space for parts of the morning for some of the year from the tree due to its substantial size, close proximity and its easterly direction. Due to its large size and close proximity the tree would appear overbearing from the proposed new private amenity space.
15. The appellant's statement suggests the tree has grown to full height, but the evidence upon which this is based is unclear. It appears to have been the subject of previous management works. Although referenced by the appellant, it is not clear how the works have been for its overall health. Furthermore,

further investment in management will be required to ensure it does not outgrow its location, which would be further constrained by its relationship with the new private outdoor amenity space associated with the new dwelling. Without further maintenance its substantial height and canopy, and associated detritus from branches, twigs, fruit and leaves being deposited, would be likely to increase pressure for the removal of this valuable tree. Collectively the size, position, close proximity and detritus would make its future presence at its current size and its future growth, undesirable for future occupiers of the new dwelling. This would be likely to be prejudicial to its future health.

16. The application would therefore introduce development that would not safeguard the protected tree. This would conflict with Policy DC14 of the Core Strategy which states that permission will be refused for development that would be liable to cause demonstrable harm to protected trees. There would also be conflict with paragraph 175 Framework which states that development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.

Biodiversity

17. The Council's third reason for refusal concerns a failure to address the impact of the development on the European designated Blackwater Estuary Special Protection Area (SPA) and Ramsar site and the Essex Estuaries Special Area of Conservation (SAC). The appeal site is within a zone of influence of the SPA and SAC where harm from the proposed development would result from the increased recreational pressure. There was not sufficient information accompanying the planning application that allowed the likely significant effects to be ruled out or mitigated.
18. The Council has enclosed a Habitats Regulation Assessment for the development. This concludes that a contribution in line with the Essex Coast RAMS (which I understand to be a mitigation strategy, although it is not before me) will ensure that the development is not likely to have a significant effect upon the interest features of the SPA, Ramsar site and SAC. There is no information before me to confirm that Natural England was consulted upon the planning application.
19. The Council's evidence suggests that a contribution has been received from the appellant towards appropriate mitigation, such that it has no objection on the grounds of the third reason for refusal. However, whilst I acknowledge that it appears that a planning obligation has been completed, I have not been provided with a copy of the completed obligation. As the competent authority in this matter, I have to take a precautionary approach to development affecting Habitats sites. Therefore, I cannot be satisfied that the suggested mitigation measures within the planning obligation would be sufficient to mitigate the harm to the Blackwater Estuary SPA and Ramsar site and the Essex Estuaries SAC. Taking a precautionary approach, I must therefore conclude that the proposal would have a likely significant adverse effect on the integrity of the SPA, Ramsar site and SAC, contrary to Policy DC13 of the Core Strategy and paragraph 175 of the Framework.
20. Even if the contribution were to have been found to be present and acceptable, as it would provide a contribution towards mitigating impacts on the SPA and SAC, as such, it would not have benefits that would weigh in favour of the

scheme. However, in light of my findings on the main issues above, it is not necessary to look at this matter in detail, given the proposal is unacceptable for other reasons. In-light of my findings on the main issues above, it is not necessary to look at this matter in further detail including by seeking the missing obligation in this case, given the proposal is unacceptable for other reasons.

Other Matters

21. The proposed development would result in the provision of a new dwelling, making a more efficient use of land, in what can be considered a sustainable location well placed to access village facilities and services. The development would also not result in harm to the character and appearance of the area. However, this does not outweigh the harm I have found above.

Planning Balance

22. The proposed development would result in the provision of a new dwelling, making more efficient use of land, in what can be considered a sustainable location well placed to access village facilities and services, which attracts modest weight in favour of the development. It would also not be harmful to the character and appearance of the area, which is a neutral factor in the balance. On the other hand, I have found that the proposal would result in significantly harmful living conditions to future occupiers of the new dwelling with reference to private amenity space, the occupiers of the host dwelling with reference to loss of outlook, and the development would be likely to prejudice the future health of a protected tree. These are matters that attract significant weight against the scheme and outweigh the benefits.

Conclusion

23. The proposed development would result in significant harm to the living conditions of future occupiers, the occupiers of the host dwelling, and would be likely to prejudice the future health of a protected tree. There are no considerations advanced which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR