



Appeal Decision

Site visit made on 8 October 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2020

Appeal Ref: APP/W1525/W/19/3231822 28 Sidmouth Road, Chelmsford CM1 6LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr W Sims against the decision of Chelmsford City Council.
 - The application Ref 19/00525/OUT, dated 28 March 2019, was refused by notice dated 30 May 2019.
 - The development proposed is the construction of a new dwelling extending the existing access to 28 Sidmouth Road.
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Decision

1. The appeal is allowed and outline planning permission is granted for the construction of a new dwelling extending the existing access to 28 Sidmouth Road with appearance and landscaping reserved for subsequent approval at 28 Sidmouth Road, Chelmsford CM1 6LR in accordance with the terms of the application, Ref 19/00525/OUT, dated 28 March 2019, subject to the conditions set out in the attached schedule.

Procedural Matter

2. Outline planning permission is sought but with access, layout and scale to be considered at this stage. The proposal's appearance and landscaping are matters which are therefore reserved for future consideration. I have determined the appeal accordingly.

Main Issues

3. The main issues are the effect of the proposal on;
 - highway safety; and
 - the integrity of protected European sites.

Reasons

Highway Safety

4. The appeal site is located in a residential area on the eastern side of Sidmouth Road. This is a relatively wide, unclassified, carriageway that is subject to a 30mph speed limit. The site is a broadly triangular shaped parcel of land immediately to the north of No 28. It comprises the side garden and part of the double garage at this property.

5. This proposal seeks outline planning permission for the construction of a new dwelling following the demolition of part of the existing double garage. Access to this property would be provided via the widening of the existing dropped kerb which currently serves No 28.
6. The appeal site is positioned close to a bend in the carriageway. Consequently, the visibility at the widened access from a setback position of 2.4m would fall below standards recommended within the guidance of the Manual for Streets (MfS). However, it would seem that there have been very few, if any, recent accidents on this particular stretch of road. This indicates that it has a good safety record. This is despite the presence of driveways, such as that at the appeal site, which appear to have lower levels of visibility than is recommended within the MfS.
7. I appreciate that a speed survey has not been submitted by the appellant. However, he has provided a recent consultation letter sent by the Highway Authority to local residents. The evidence associated with this letter shows that average daily vehicular speeds along Sidmouth Road are lower than 30mph. Furthermore, vehicular movements associated with a single dwelling would not be excessive and I also observed that Sidmouth Road was not as heavily trafficked as surrounding roads. This further reduces the likelihood that the proposal would contribute towards hazardous conditions for pedestrians and motorists.
8. Taking all of the above factors into consideration, I am not persuaded that the proposed access would unduly prejudice highway safety. Conflict with the identified guidance of the MfS would therefore not, in these site specific circumstances, result in any significant material planning harm.
9. For the reasons given, I conclude that the proposal would not adversely affect highway safety. It would therefore accord with the advice of the National Planning Policy Framework (the Framework) insofar as it seeks to ensure that safe and suitable access to the site can be achieved by all users and that developments do not result in an unacceptable impact on highway safety. It would also accord with Policy DM1 of the County Highway Authority's Development Management Policies Supplementary Guidance insofar as it seeks to ensure that proposals do not create a significant potential risk and are not detrimental to the safety of the highway network.

European Sites

10. In 2018 the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at screening stage¹. This is a responsibility that now falls to me as the competent authority.
11. The appeal site falls within a Zone of Influence for the Blackwater Estuary Special Protection Area (SPA). This is a protected European site and is an important recreational and economic resource. It is likely that occupants of the proposed development would visit it. In this regard, the evidence before me is clear that the proposal, when combined with other development in the area,

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

would have a likely significant effect on this habitat designation through increased disturbance as a result of recreational activity.

12. In such circumstances, the Habitats Regulations require that permission may only be granted after having ascertained that it will not harm the integrity of a European site. I may consider any restrictions which could secure mitigation and provide certainty that the proposal would not harm the SPA. The Council already has strategic measures to mitigate impacts upon European sites outlined within the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This is supported by the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy draft Supplementary Planning Document. Natural England (NE) do not object to the mitigation strategies outlined in these documents.
13. In this case, the Council is requesting a financial contribution of £122.30 to cover the overall cost of the Essex RAMS mitigation package. I have no evidence to show that this fee is not proportionate to this appeal proposal. The appellant has provided an executed Unilateral Undertaking (UU) which would secure this contribution. Consequently, the Council has raised no objection on these grounds. In addition, I have consulted NE and they have not objected to this development. I therefore have no evidence to suggest that the secured financial contributions would not be effective in terms of avoiding adverse impacts to the integrity of the SPA.
14. As such, I am satisfied that the UU is an appropriate mechanism to secure the delivery of proportionate and relevant mitigation in respect of the SPA. I am therefore content beyond all reasonable scientific doubt that the proposal would not adversely affect the integrity of the SPA. Thus, it would accord with the provisions of the Conservation of Habitats and Species Regulations 2017 as amended. Amongst other things, this seeks to secure the long term protection of Special Protection Areas and mitigate any harmful impacts to them.

Other Considerations

15. The single storey nature of the proposed dwelling would restrict any direct overlooking of surrounding properties. Furthermore, a condition can be imposed removing permitted development rights for additions, such as dormer windows, and other alterations to its roof. Such a condition is reasonable and necessary with regards to the tests set out at paragraph 55 of the Framework. I am therefore satisfied that the proposal would preserve the living conditions at surrounding properties in terms of privacy.
16. The hours in which the proposal would be constructed would be suitably managed through other legislation. This is also true for the burning of any materials at the appeal site. Any noise and disturbance during the construction period would be short-term and is not a reason to withhold permission.
17. The proposal would afford two off-road parking spaces. The Council do not object to this quantum of parking spaces and I see no reason to conclude otherwise. Consequently, I have no substantive evidence to show that the proposal would lead to unacceptable on-street parking that would be to the detriment of highway safety.

Conditions

18. I have considered the conditions put forward by the Council. Having regard to the tests set out in paragraph 55 of the Framework, I have amended the wording where necessary in the interests of clarity and simplicity. Conditions setting reasonable time limits and the provision of details of the reserved matters are necessary as the application made is for outline permission. I have also imposed a condition specifying the approved plans for reasons of certainty.
19. I have imposed conditions requiring that no unbound material shall be used in the surface finish of the driveway within 6 metres of the highway boundary, that parking spaces are suitably laid out and retained and that surface water is not discharged onto the highway. In addition, I have imposed conditions requiring the submission of an appropriate Construction Method Statement and that the access is constructed as shown on approved plans prior to the first occupation of the dwelling. These are all necessary in the interests of highway safety.
20. Furthermore, I have imposed a condition removing permitted development rights for additions and other alterations to the roof of the approved dwelling. This is necessary in the interests of the living conditions of the occupants of surrounding properties in terms of privacy.

Conclusion

21. For the reasons set out above, the appeal scheme would adhere to the development plan and there are no other considerations which outweigh this finding. Accordingly, the appeal should be allowed.

M Heron

INSPECTOR

Schedule of Conditions

- 1) No development shall commence until details of the appearance and landscaping (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority (LPA). Development shall be carried out in accordance with the approved details.
- 2) Application for approval of the reserved matters shall be made to the LPA not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of the approval of the last of the reserved matters.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 2018-194-001 and 2018-194-002 Rev. A.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the LPA. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials; and
 - wheel washing facilities.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) Prior to the first occupation of the dwelling hereby permitted, the vehicular access shall be constructed as shown on approved plan 2018-194-002 Rev. A. The combined width of the access at its junction with the highway shall not exceed 8.8 metres and shall be provided with an appropriate dropped kerb vehicular crossing of the footway.
- 7) No unbound material shall be used in the surface finish of the driveway within 6 metres of the highway boundary of the site.
- 8) There shall be no discharge of surface water from the development onto the highway.
- 9) Prior to the first occupation of the dwelling hereby approved, the two vehicle parking spaces shall be constructed as shown on approved plan 2018-194-002 Rev. A and shall be retained for this use thereafter.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no additions or other alterations to the roof of the approved dwellinghouse, as permitted by Classes B and C of Part 1 of Schedule 2 of that order, shall take place.

End of Schedule of Conditions