
Appeal Decision

Site visit made on 18 February 2020

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2020

Appeal Ref: APP/P1560/W/19/3240434

Land at Harwich Road, Wix, Essex CO11 2SA

- 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 P & S Developments Ltd against the decision of Tendring District Council.
 - The application Ref 19/00685/FUL, dated 25 April 2019, was refused by notice dated 28 August 2019.
 - The development proposed is the construction of two pairs of semi-detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The emerging Tendering Local Plan 2013-2033, dated June 2017 (the emerging LP), is at consultation stage and is therefore likely to be subject to change. Consequently, it has limited weight.
3. The Council has confirmed that it cannot demonstrate a deliverable 5-year supply of housing sites. Consequently, Paragraph 11d of the National Planning Policy Framework (the Framework) is engaged.

Main Issues

4. The main issues are:
 - the effect of the development on the living conditions of nearby occupiers, in particular the occupiers of the properties known as 'Sunset' and 'Dawn' in respect of privacy and outlook; and
 - the effect on the living conditions of future occupiers, particularly in relation to the provision of private amenity space.

Reasons

Living conditions of nearby occupiers

5. The proposed development would be sited opposite two existing houses, known as 'Sunset' and 'Dawn', on the opposite side of Harwich Road, to the north. Sunset and Dawn are located directly on the boundary with the footway and have windows on this boundary, directly facing the proposed development. The windows are to habitable rooms.

6. The proposal would introduce windows to habitable rooms directly overlooking the existing windows to Dawn, and also overlooking the windows to Sunset albeit at a slight angle. Despite being over a highway the separation distance would only be approximately 11m at the closest point. Even the overlooking towards Sunset would still be at an uncomfortably short distance, and the slight angle would not be sufficient to fully mitigate this. The front elevation ground floor windows to both Sunset and Dawn already suffer from overlooking from users of the footway immediately adjacent. However, the proposal would introduce overlooking from the occupiers of the proposed houses, which would be more intrusive than the existing overlooking from passers-by on the footway. The proposal would also introduce overlooking to the first-floor windows, which does not exist at present.
7. Owing to the position, scale and massing of the proposed development, I am satisfied that it would appear dominating or overbearing when viewed by the occupiers of Sunset and Dawn. The effect of the proposal on the outlook enjoyed by the occupiers of these properties would not therefore be materially adverse.
8. Whilst the proposal would be acceptable in terms of its effect on outlook, I conclude that the increased severity and amount of overlooking would significantly harm the privacy of the occupiers of Sunset and Dawn. The proposal would therefore fail to comply with the relevant parts of Policy QL11 of the Tendering District Local Plan 2007 (the LP), and Paragraphs 117 and 127 of the Framework. Amongst other things, these policies state that development should not have a materially damaging impact on the privacy of nearby properties. The proposal would also fail to comply with the relevant parts of emerging Policy SPL3 of the emerging LP. Amongst other things, this states that adequate privacy should be maintained for existing residents.

Living conditions of future occupiers

9. Policy HG9 of the Local Plan sets minimum private amenity space standards of 75 sq m for 2-bedroom dwellings and 100 sq m for 3-bedroom dwellings.
10. Three 3-bed houses are proposed, which would be provided with 100 sq m, 99 sq m and 99 sq m rear gardens. One 2-bed house is proposed, which would be provided with a rear garden of 67 sq m. The proposed properties would be provided with front gardens, but these would not be screened and would be overlooked by the living rooms of Sunset and Dawn. These are not therefore areas of private amenity space and hence these areas cannot be used for the purposes of applying the minimum amenity space standards in Policy HG9 of the LP.
11. I conclude that the proposal would not meet the minimum policy requirements for private amenity space and would therefore not provide a suitable standard of living conditions for future occupiers.
12. Consequently, the proposal would fail to comply with the relevant parts of Policy HG9 of the LP, and Paragraph 117 and Chapter 12 of the Framework. Amongst other things, these policies seek a minimum size of private amenity space for new dwellings and the provision of healthy living conditions.

Other Matters

13. The site falls within the Zone of Influence of the Hamford Water Special Protection Area (SPA) and Special Area of Conservation (SAC), as defined in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority. However, regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an AA is only necessary where the competent authority is minded to approve planning permission.
14. I have no reason to disagree with the Council that the proposal would be acceptable in terms of the design and appearance of the proposed dwellings, and that given the position of the dwellings, they would preserve the setting of the grade II listed property to the north-east known as the White Hart Inn. However, these are matters of neutral consequence in the overall planning balance.

Planning Balance and Conclusion

15. The Council cannot demonstrate a deliverable 5-year housing land supply. Paragraph 11d of the Framework is therefore engaged.
16. The proposal would result in the creation of four housing units, which would help marginally towards addressing the shortfall in housing land supply. The proposal would bring temporary economic benefit from the construction process, and long-term economic benefit from the boost to local services from the new residents. These factors weigh in favour of the proposal, but the benefits would be limited because only four residential units are proposed.
17. The loss of privacy to Sunset and Dawn would be significant, and I place significant weight on this factor. The proposed private amenity space would not accord with minimum policy requirements and hence the proposal would not provide a suitable standard of living conditions for future occupiers. This also weighs against allowing the proposal.
18. In this context, even if I had found that the proposal would avoid an adverse effect on the integrity of the SPA and SAC, and hence that there was not a clear reason for refusing the development proposed, I conclude that the identified adverse effects of the proposal, in respect of overlooking and deficient private amenity space, would significantly and demonstrably outweigh the benefits outlined above, when assessed against the policies in the Framework taken as a whole. Furthermore, there would be clear conflict with LP policies in respect of the identified adverse effects of the proposal. Therefore, the appeal should be dismissed.

O S Woodward

INSPECTOR