
Appeal Decision

Site visit made on 24 June 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 7 July 2020

Appeal Ref: APP/W1525/W/20/3246494

43 Dorset Avenue, Great Baddow, Chelmsford, Essex CM2 9UA

- 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 Alan Botten against the decision of Chelmsford City Council.
 - The application Ref 19/01764/OUT, dated 16 October 2019, was refused by notice dated 23 December 2019.
 - The development proposed is demolition of existing dwelling (43) & replace with 5 new dwellings.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was for outline permission with all matters reserved. Drawings showing layout and landscaping have been submitted with the application. For the purpose of this appeal I have taken the details shown on these drawings as indicative only. I have determined the appeal on this basis.
3. During the course of the application the description was amended from "demolition of one house and the erection of new dwellings" to "demolition of existing dwelling (43) & replace with 5 new dwellings". I have used the amended description in the banner heading as this provides a clearer description of the proposed development.
4. I received a request to view the site from the properties of two nearby residents, living at 39 and 41 Dorset Avenue. Whilst I did not consider it necessary to view the site from both properties, I was able to view it from No. 39 during my site visit.
5. The Chelmsford Local Plan -2020- (the new Local Plan) has been adopted by the Council since the appeal was lodged. The parties have had an opportunity to comment on the new Local Plan in relation to the case during the appeal process. The Council have also confirmed that policies within the Chelmsford Core Strategy and Development Control Policies -2008- are therefore no longer extant.
6. The appellant has made a payment in relation to mitigating the effects of the proposal on the Blackwater Estuary Special Protection Area & Ramsar site (the SPA) and the Essex Estuaries Special Area of Conservation. Although this issue is no longer in dispute between the parties, it is a matter that I will return to later in my decision.

Main Issues

7. The main issues are: -

- The effect of the proposal on the character and appearance of the site and surrounding area; and: -
- The effect of the proposal on the SPA, a European Designated Site.

Reasons

Character and appearance

8. The appeal site lies to the rear of Nos 39-41 Dorset Avenue and is formed of the plot of No 43 and parts of the rear gardens of Nos 39 and 41. Beyond the site lies open parkland used for recreational purposes. Between the park and the site runs a Public Right of Way (PROW). To the north of the site lie the rear gardens of properties fronting Chelmerton Avenue. The boundaries of the rear gardens of Nos 39 and 41 present a verdant boundary to the park.
9. Dorset Avenue and Chelmerton Avenue lie within an established residential area and are predominantly fronted by two storey semi-detached dwellings. The buildings are set back on established frontage lines and generally have substantial gardens to the rear. The land behind the dwellings fronting Dorset Avenue and Chelmerton Avenue provides the gardens for the dwellings.
10. With the exception of a terrace of two storey dwellings lying to the rear of 9 Rothmans Avenue and 47 Dorset Avenue, known as Rothmans Place and a terrace of bungalows, known as Dorking Walk, there were no buildings of significant scale within views from the rear gardens, or in views back from the park.
11. The overall character and appearance of the vicinity of the site is of residential dwellings facing the street and large rear gardens which define a strong pattern and grain of development. The dwellings establish a strong presence in the public realm with their own street frontage. The rear gardens generally present an open, verdant scene and create a peaceful, secluded setting. These are positive characteristics of the area.
12. Notwithstanding the outline nature of the application, the shape of the plot would necessitate the positioning of dwellings in the rear part of the site and so the proposal would introduce a number of dwellings to the backland area behind Nos 39-43. The existing two storey dwelling at No.43 would be demolished and, whilst indicative, the layout plan shows an access formed, leading into the proposed development.
13. The introduction of significant structures, with the associated activity of several households would undermine the openness, peace and seclusion of the area. Further, the development would introduce substantial buildings within the backland area between the dwellings on Dorset Avenue and the park, with no frontage on the street. These changes to the area would be readily appreciable from Dorset Avenue, the rear gardens and windows of the dwellings facing towards the site, from the PROW and from the park.
14. The appellant has cited the developments of Dorking Walk and Bramley Place as examples of backland development which he considers have similarities to the proposal. In the case of Dorking Walk, I have little substantive evidence

before me regarding the background of the development, however, the dwellings were permitted some time ago and subsequent changes have occurred to local and national planning policy. In determining the case before me I must have regard to the current development plan and its policies.

15. With regard to the Bramley Place properties this development has a presence in the street scene on Rothman's Avenue. Further, it extends an existing built form on Dorking Walk without extending further north into the backland gardens. Neither the Bramley Place nor the Dorking Walk development are a direct contextual comparison to the appeal site.
16. My attention has also been brought to other backland development in the wider area. However, these are some distance from the site and do not form part of the immediate context of the proposal site. I therefore do not consider that they provide a direct contextual comparison either. I have, in any case, determined this appeal on its own merits.
17. During a previous call for sites as part of plan preparation, a larger site, of which the appeal site formed part, was put forward. However I have no evidence before me to demonstrate that, following consideration, the site was identified as an allocated housing site.
18. I note that the larger site formed part of a land parcel identified in a concept statement (the CS) and was mentioned in a planning design guide "Developing Gardens and Urban Site Guidance November 2006" (the gardens development guidance) produced by the Council. However neither the CS nor the gardens development guidance formed part of the development plan. Further, although referenced, no case has been put forward to demonstrate that the proposal would comply with either document. Given that both documents pre-date the new Local Plan and the National Planning Policy Guidance -2019- the documents attract very limited weight.
19. Reference has been made to an "agreement in principle" between a third party and the Council to redevelop the land to the rear of Nos 39-43. However, I have no substantive evidence before me to demonstrate the nature of that proposal or confirm its acceptability to the Council.
20. My attention has been drawn to two previous appeals relating to proposals for residential development on the site¹. These decisions were made some time ago. However, whilst local and national planning policies have changed, I note the correlation between my conclusions and those of the other Inspectors in regard to design matters.
21. I therefore conclude that the positioning of the development would result in harm to the character and appearance of the area, contrary to Policy DM23 of the new Local Plan which seeks to ensure that development respects the character and appearance of the area in which it is located.

Effect on European Protected Site

22. The site is located within the zone of influence of the Blackwater Estuary Special Protection Area and RAMSAR site (the SPA) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policy DM16

¹ Appeal Refs: APP/W1525/A/01/1077241 and APP/W1525/A/02/1100292

of the new Local Plan seeks to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. Within the new Local Plan the Essex Coast Recreational disturbance avoidance and mitigation strategy (RAMS) incorporates strategic mitigation measures to be delivered to avoid adverse impacts. The appellants have provided a financial contribution towards mitigating the effects of the proposal on the SPA.

23. However, the Court of Justice of the European Union recently ruled 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). This responsibility now falls to me within this appeal.
24. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake an AA. The AA is required on a case-by-case basis to determine whether or not the project would adversely affect the integrity of the European Site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Other Matters

25. The proposal would provide four additional houses to supplement local housing supply. Irrespective of the Council's ability to demonstrate a five year supply of housing land, the supply identified is not a maximum figure. The Government has identified a need for more housing and so such provision would be a benefit resultant from the proposal. Due to the scale of the proposal this benefit would be small and carry limited weight. Such benefit would not outweigh the harm that I have identified to the character and appearance of the area and so does not alter my decision.

Conclusion

26. For the reasons set out above, the appeal is dismissed.

I Dyer

INSPECTOR