



Appeal Decision

Site visit made on 6 July 2020

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2020

Appeal Ref: APP/P1560/W/19/3244048

Land adjacent to 2 Wivenhoe Road, Alresford, Essex CO7 8AD

- 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 and Mrs K Pope against the decision of Tendring District Council.
 - The application Ref 19/01261/FUL, dated 21 August 2019, was refused by notice dated 25 October 2019.
 - The development proposed is a residential development of 3 dwellinghouses.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development of 3 dwellinghouses at Land adjacent to 2 Wivenhoe Road, Alresford, Essex CO7 8AD, in accordance with the application Ref 19/01261/FUL, dated 21 August 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. An application for three dwellings at the site has been recently dismissed at appeal under Ref APP/P1560/W/19/3222077. I henceforth refer to this as 'the previous appeal scheme'.
3. In addition, the Council has granted an application¹ for one dwelling at the site. I henceforth refer to this as 'the previous permission'.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character and appearance of the area; and
 - the integrity of designated European sites.

Reasons

Character and Appearance

5. The appeal site is located at the eastern edge of Alresford. It comprises an open parcel of land positioned at the end of a row of dwellings set along the southern side of Wivenhoe Road. Dwellings in this street are set in a close knit, linear, pattern which gives them a sense of rhythm and uniformity. The

¹ Ref 18/01775/FUL

immediate area is suburban in nature and it is in this context that the appeal site is mainly read, rather than the more open and rural character of surrounding fields.

6. This proposal seeks permission to construct three detached dwellings at the site. These would be set closer together compared to the previous appeal scheme and would be commensurate with the height and overall scale of nearby properties. Consequently, they would not be unduly prominent and their size and positioning would integrate effectively with the scale and relatively fine urban grain of properties within the street. The proposal would therefore harmonise with the rhythm and uniformity of nearby dwellings in this regard, thereby overcoming the concerns raised by the Inspector for the previous appeal scheme.
7. I appreciate that the proposed dwellings would urbanise the appeal site. However, they would replace a relatively large dwelling approved under the previous permission which would urbanise the site to a degree. In addition, the site is well-related to the built up area of the settlement and the proposed units would be positioned in a manner consistent with the linear pattern of nearby development. Overall, the scheme would be seen as an appropriate extension to the settlement, rather than an intrusive and incongruous form of ribbon development. In reaching this view, I am also mindful that the site would appear to fall within the revised settlement boundary for Alresford as illustrated within the Council's emerging development plan.
8. Turning to the impact upon vegetation, the submitted plans show that the existing hedge towards the front of the site would be retained. A large oak tree is situated in front of No 2 and is protected by a Tree Preservation Order. Given that no new access would be created, the scheme would not harm this tree. I note that the proposal would result in the loss of established conifer trees towards the site's entrance. However, whilst these have some modest visual amenity value, the site is not within a conservation area and these trees are not covered by a TPO. Consequently, they could be removed at any point without permission from the Council. It would therefore not be reasonable to resist the loss of these trees. Overall, the scheme would not deleteriously impact upon any tree or hedge with significant visual amenity value. In addition, a condition could be imposed to ensure that retained trees are suitably protected during construction.
9. My attention has been drawn to an appeal decision at the site Ref APP/P1560/A/14/2212508. However, this appears to have been for five new dwellings. The visual impact of such a scheme would have been greater than this current development. It is therefore not directly comparable to this appeal proposal, which I have assessed on its own merits in any event.
10. For the reasons given, I conclude that the proposal would not harm the character and appearance of the area. It would therefore accord with Policies QL9 and QL11 of the Tendring District Local Plan and Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft. Amongst other things, these seek to ensure that the scale and nature of development is appropriate to the locality and that proposals maintain or enhance local character.

European Sites

11. The appeal site is within the Zone of Influence for the Essex Coast Habitats that includes Colne Estuary Ramsar and Special Protection Areas and Special Areas of Conservation, which are protected European sites. From the evidence, these are designated primarily to protect waders and wildfowl. 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 stage². This is a responsibility that now falls to me as the competent authority.
12. The identified European sites are important recreational and economic resources and I have no evidence to show that future occupants would not be likely to visit them. Consequently, in isolation or when seen in conjunction with surrounding developments, this proposal could have a likely significant effect on these habitat designations through increased disturbance as a result of recreational activity.
13. The Council has strategic measures to mitigate impacts upon European sites. This includes projects identified within the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). Natural England (NE) do not appear to consider such an approach to be inappropriate. Overall, I have no evidence to show that RAMS projects would not be deliverable or effective.
14. In this instance the Council has requested financial contributions towards the RAMS. The appellant has provided an executed Unilateral Undertaking (UU) which, amongst other things, would secure a total of £366.90 to fund strategic mitigation measures. I have no evidence to show that this fee is not proportionate to this appeal proposal. In addition, I have consulted NE and it is content that the secured financial contribution would be effective in terms of avoiding adverse impacts to the integrity of the European sites. There is no evidence before me to suggest I should reach a contrary conclusion.
15. As such, I am satisfied, on the basis of the specific evidence before me, that the UU is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's strategy for development which could affect the Essex Coast Habitats, including Colne Estuary Ramsar and Special Protection Areas and Special Areas of Conservation. I therefore find within my Appropriate Assessment that, with the provided mitigation, the proposal would not harm the integrity of designated European sites.

Other Considerations

16. Residents have raised concerns in terms of highway safety and flooding. However, there is no substantive evidence before me that the development would lead to problems in this regard. In addition, the Council, including its technical highway experts, has not raised any concerns in relation to these matters. I see no reason to take a different view in this case. My attention has also been drawn to the Alresford Neighbourhood Plan (NP). However, I have not been referred to any specific policies and this NP does not appear to have been through a formal examination. Consequently, it carries only limited weight in my decision.

² People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

17. Given the siting of the proposed dwellings, they could not be constructed in conjunction with the previous permission to achieve four dwellings at the site. In addition, the Council would retain the right to assess any subsequent application for four or more dwellings at the site on its own individual merits, as I have done here.
18. I have also had regard to other matters raised by third parties, but none of these alter my conclusions on the main issues above.
19. As an application for the provision of housing in circumstances where the Council cannot demonstrate a five year supply of deliverable housing land, paragraph 11 of the National Planning Policy Framework (the Framework) is engaged. As I have found no conflict with the Council's development plan, there are no adverse impacts that significantly and demonstrably outweigh the benefits associated with the provision of three dwellings. In this instance, the presumption in favour of sustainable development therefore applies.

Conditions

20. 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. In addition to the standard time limit, a condition specifying the plans is required in the interests of certainty.
21. I have imposed conditions requiring the submission of tree protection measures and a Landscaping Plan and ensuring that any tree or shrub planted that is removed or dies within five years is suitably replaced. These are necessary in the interest of the character and appearance of the area and the appellant has agreed to provide details of the tree protection measures prior to the commencement of the development. In addition, I have imposed a condition removing permitted development rights for the enlargement of the dwellinghouses, additions to their roofs or the construction of buildings incidental to their enjoyment. There is clear justification for this in the interests of the character and appearance of the area.
22. I have imposed a condition requiring the off-street parking and turning areas shown on submitted plans, as well as an appropriate dropped kerb, to be constructed prior to the first occupation of the dwellings. Furthermore, I have imposed conditions requiring the submission of a Construction Method Statement (CMS) and ensuring that there are no unbound materials used in the surface treatment of the vehicular access within 6m of the highway boundary. These are all necessary in the interest of highway safety and the appellant has agreed to provide the CMS prior to the development commencing.

Conclusion

23. For the reasons set out above, the appeal scheme would accord with the development plan and there are no other material considerations, including the advice of the Framework, which indicate that the decision should be made other than in accordance with this plan. Accordingly, the appeal is allowed.

M Heron

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 40A, 41A, 42A, 43A, 44A, 45A, 46A, 47A, 48A and 49A.
- 3) Prior to any equipment, machinery or materials being brought onto the site for the purposes of the development hereby approved, details of tree protection measures shall be submitted to and approved in writing by the local planning authority (LPA). Development shall be carried out in accordance with such measures, which shall be installed prior to development commencing.
- 4) Prior to the first occupation of the dwellings hereby permitted, a Landscaping Plan, including details of boundary treatments, hard surfacing, ground levels and the species and size of any trees and hedges to be planted, shall be submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the approved details prior to occupation or, for any new trees or hedges, within the first available planting season.
- 5) If, within a period of 5 years from the date of planting, any new tree or hedge is removed, uprooted, destroyed or dies or becomes, in the opinion of the LPA, seriously damaged or defective, another tree or hedge of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree or hedge.
- 6) 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 enlargement of the dwellinghouses, additions to their roofs or the construction of buildings incidental to their enjoyment, as permitted by Classes A, B and E of Part 1 of Schedule 2 of that order, shall take place.
- 7) Prior to the first occupation of the dwellings hereby approved, the vehicular access and off-street parking and turning facilities as shown on approved drawing 41A, and an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority, shall be provided.
- 8) No development shall take place until a Construction Method Statement (CMS) 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 CMS shall be adhered to throughout the construction period for the development.
- 9) No unbound materials shall be used in the surface treatment of the vehicular access within 6m of the highway boundary.

End of Schedule of Conditions