
Appeal Decision

Site visit made on 11 August 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th October 2020

Appeal Ref: APP/P1560/W/20/3248809

Land at 53 The Street, Kirby-Le-Soken CO13 0EG

- 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 Huddlestone against the decision of Tendring District Council.
 - The application Ref 19/01039/OUT, dated 10 July 2019, was refused by notice dated 12 September 2019.
 - The development proposed is described as 'demolition of existing house and erection of four dwellings'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Planning permission is sought with all matters reserved except access. I have therefore taken into account the access details shown on drawing TDC-0315-1-06, but otherwise treated it as illustrative only.
3. Arboricultural information¹ has been submitted with the appeal. The Council has had an opportunity to comment on the information; however, I cannot be certain that all interested parties are aware of it. Notwithstanding this, layout and landscaping are reserved matters and thus the information is predicated on an illustrative layout. I have therefore taken the information into account on an illustrative basis, as an example of the potential extent of vegetation removal and retention on and adjacent to the appeal site. The interests of interested parties are not prejudiced in adopting this approach.
4. The main parties have indicated that the site is within the zone of influence of Hamford Water Special Protection Area (SPA) and Ramsar site. A unilateral undertaking (UU) dated 28 July 2020 has been submitted in relation to this matter.
5. The emerging Local Plan (eLP)² is currently being examined in respect of a joint growth strategy for North Essex which includes Tendring, Colchester and Braintree. An examination of more specific policies and proposals for Tendring has not begun. The eLP is therefore subject to change and thus it attracts limited weight in my decision.

¹ Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement & Tree Protection Plan, dated 10 October 2019 and associated drawing no 7715-D-AIA

² Tendring District Local Plan 2013-2033 and Beyond Publication Draft

Main Issue

6. The main issue is the effect of the proposal on the character and appearance of the area, with due regard to the Kirby-Le-Soken Conservation Area.

Reasons

Character and appearance

7. The site relates to the dwelling and the land surrounding it at 53 The Street. The property faces towards and is accessed from The Street. It includes a long and highly vegetated rear garden and, beyond that, are open fields. At the time of my visit a dwelling was being constructed to one side of the site. A public right of way is located on its other side, which extends into the fields. Another public right of way is located adjacent to Mumfords Lane, which also extends into the fields.
8. The property and many others along The Street are located within the conservation area. The properties have varying styles and extend along and close to the highway in an informal and linear fashion, which provides a sense of transition between the surrounding rural landscape and the more built up parts of the settlement. A Conservation Area Review³ sets out that its special character rests in the sinuous layout of The Street and the relationships between the wide variety of buildings associated with it. The conservation area is also characterised by a sense of spaciousness.
9. The public rights of way provide for views into the conservation area and from them its linear and spacious character and rural setting are appreciable. It is also apparent from them that the vegetation to the rear of No 53 and along The Street makes a positive contribution to the conservation area and its setting by providing a sense of enclosure, and by screening and integrating the properties along The Street in the rural landscape.
10. The Council has no concerns regarding the demolition of the existing dwelling as it does not make a positive contribution to the area. I see no reason to reach a different conclusion. In addition, it is likely that a dwelling would be erected beside the one currently under construction and front onto The Street in a similar manner to nearby properties. Visibility of the properties behind them would also be limited. The character and appearance of the streetscene would thus be preserved.
11. I noted from my visit that there are gaps between the trees and hedges along the boundaries of the rear garden even with the vegetation in full leaf. The proposed dwellings would therefore be visible from the public rights of way even if bungalows come forward. Moreover, the arboricultural information indicates that a significant amount of vegetation would need to be removed from within the site and along its boundaries. Whilst the trees and hedges have little individual value and there would be limited harm from their loss directly, the dwellings would become more prominent as a consequence.
12. From the public rights of way, the development would appear as a cluster of dwellings that are set behind the properties in The Street, which would undermine the linear pattern of development. The illustrative layout also suggests that the dwellings would be near to the site's boundaries and close to

³ Tendring District Council Conservation Area Review 2006: Kirby-le-Soken Conservation Area – final report

each other, which would harm the conservation area's sense of spaciousness. Furthermore, while the dwellings would not be located on agricultural land, the development would extend significantly beyond the rear boundaries of the properties between the site and Mumfords Lane and nonetheless appear to project into the fields in an incongruous manner, to the detriment of the conservation area and its setting. Additional planting would not screen the development to the extent that it would no longer be harmful.

13. The Council argues that the proposal would set a precedent for similar schemes in the immediate area. Whilst each scheme must be treated on its own merits, there would be opportunities to create clusters of properties which appear to extend from The Street into the surrounding fields in a similar manner to this proposal. Allowing this appeal would make it difficult to resist further applications for comparable development, and their cumulative effect would exacerbate the harm I have identified.
14. The appellant has indicated that several schemes have been granted permission nearby⁴ and referred in detail to 2 appeal decisions⁵, both of which share similarities with this proposal. I have not been provided with full details of either case. However, they are not directly comparable with this proposal as the permitted properties either closely follow the linear pattern of development along The Street or are not visible to the same extent as the proposed properties would be from the public rights of way. In neither case would the properties appear to project into open fields like the proposed development.
15. Paragraph 193 of the National Planning Policy Framework (the Framework) advises that when considering the impacts on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In addition, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving or enhancing the character or appearance of conservation areas.
16. I conclude that the character and appearance of the area would be harmed and the conservation area would fail to be preserved. The harm to the conservation area would be less than substantial. The proposal is contrary to Policies QL9, QL11 and HG13 of the Tendring District Local Plan (LP), which provide design criteria for development in the interests of protecting local character. It also conflicts with LP Policies EN1 and EN17, which seek to protect landscape character and conservation areas respectively. It conflicts with policies SPL3, LP8 and PPL8 of the eLP too, which impose similar criteria to the LP policies.
17. The Council contends that the proposal conflicts with LP Policy QL10; however, it is not directly relevant as it sets out functional requirements for new development which are not attributable to character and appearance matters.

Other considerations

18. The site is located outside the settlement boundary of Kirby-Le-Soken and thus it is in the countryside for planning policy purposes. LP Policy QL1 sets out the spatial strategy for Tendring. It states that only development which is consistent with countryside policies will be permitted outside settlement boundaries. The Council did not refuse the application due to conflict with the policy on the basis that it is unable to demonstrate a 5 year supply of

⁴ Shown at Appendix PLG4 of the appellant's statement

⁵ Appeal references: APP/P1560/W/16/3146590; APP/P1560/W/17/3176998

deliverable housing sites. Nonetheless, the location of the proposal is not supported by the spatial strategy. However, I attach limited weight to the conflict with the policy due to the Council's housing supply position, the Council's acceptance that the site is relatively accessible to services and facilities and because the policy adopts a more prohibitive approach to development within the countryside than the Framework.

19. If I were minded to grant permission, I would need to be satisfied that the proposal would have no adverse effects on the integrity of the SPA and Ramsar site. I would need to have regard to the UU in my consideration of this matter.

Planning Balance

20. Paragraph 196 of the Framework is relevant. It states that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against its public benefits. Paragraph 11 of the Framework also applies due to the Council's housing supply position. It sets out that planning permission should be granted unless the application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the development proposed. It confirms at Footnote 6 that policies relating to designated heritage assets are applicable in this regard.
21. The proposal would make a modest contribution to the supply of housing. The appellant has also put forward that the demolition of the existing dwelling would benefit the conservation area. In addition, there would be benefits from the construction of the development and the occupiers of the properties being close to and able to support local services and amenities. However, these are modest benefits as a result of the small scale of the proposal. If I were to find that the SPA and Ramsar site were not adversely affected, this would constitute a neutral consideration rather than a benefit.
22. Taking into account the considerable importance and weight that I must give to harm to designated heritage assets, the benefits identified would not outweigh the less than substantial harm that would be caused to the conservation area. Paragraph 196 of the Framework does not therefore indicate in favour of the development. Moreover, the Framework's policies in respect of heritage assets provide a clear reason for refusing permission and thus paragraph 11 does not indicate in favour of the development either.
23. I have found that the proposal would harm the character and appearance of the area, including the conservation area. In addition, its location is not supported by the spatial strategy for Tendring. The proposal conflicts with the development plan as a whole. There are no material considerations which outweigh my findings in respect of the development plan. It is not therefore necessary that I assess the effects of the proposal on the SPA and Ramsar site, as any outcome of that assessment would have no bearing on my decision.

Conclusion

24. For the above reasons, the appeal is dismissed.

Mark Philpott

INSPECTOR