



Appeal Decision

Site visit made on 5 August 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th November 2020

Appeal Ref: APP/A1530/W/20/3250629

2A Suffolk Avenue, West Mersea, CO5 8ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr D Townend against the decision of Colchester Borough Council.
 - The application Ref 200346, dated 7 February 2020, was refused by notice dated 20 March 2020.
 - The development proposed is for residential development of between 1 and 2 no. single storey dwellings.
-

Decision

1. The appeal is allowed and permission in principle is granted for residential development of between 1 and 2 no. single storey dwellings at 2A Suffolk Avenue, West Mersea, CO5 8ER, in accordance with the terms of the application Ref. 200346, dated 7 February 2020.

Procedural Matter

2. Permission in principle may not be granted for development which is habitats development, which is likely to have a significant effect on a qualifying European Site, unless the competent authority has ensured an appropriate assessment has been carried out. Therefore, as the effect of the proposal on European designated sites is potentially a determinative issue, I have elevated this matter to a main issue.

Main Issues

3. The main issues are whether the principle of the proposed development is acceptable with specific regard to its location and its effect on the character and appearance of the area and the effect of the development on European designated sites.

Reasons

4. The appeal proposal is for a permission in principle. This consent route has two stages, the first stage establishes whether a site is suitable in principle and the second stage, the technical details consent, is where the detailed development proposals are assessed. The appeal proposal is at the first stage and therefore I have considered the principle of the scheme which is limited in scope to location, land use and amount of development.

Location, Land Use & Amount

5. The site is located within the defined settlement boundary of West Mersea as identified in Policy SD1 of the Colchester Borough Council Local Development Framework Core Strategy 2008 (CS) and is allocated as land for predominately residential use under policy H1 of the CS. Therefore, it is considered suitable in principle for residential development in terms of land use.
6. The appeal site comprises the rear and side garden of 2A Suffolk Avenue, a two storey detached dwelling which is sited within an area characterised by a range of dwelling types. The majority of properties along Suffolk Avenue are set back from the road frontage to allow for parking and benefit from good sized gardens to the rear. Whilst the linear form of development continues for the length of Suffolk Avenue and contributes to its character, there are exceptions to this.
7. Examples of development of dwellings in rear gardens are evident in Suffolk Avenue, such as that behind Nos 14-16 and the development of The Mews which results in shallower gardens for Nos 10 and 10a. In addition, the development of Saltings Crescent is visible from the access to the appeal site and lies directly behind it. These create a varied density of development within the locality, which results in a diverse pattern of development.
8. Therefore, I consider that the proposal would, as a matter of principle, be acceptable in terms of its location. It would not be incongruous having regard to the varied character of the surrounding area and in particular the views that exist of dwellings located to the rear of existing properties in Suffolk Avenue.
9. The proposal is for up to 2 dwellings and the paragraph 4.4 of the appellant's appeal statement demonstrates how the proposal would result in a low density of development, which would be between 8.5 – 17 dwellings per hectare. Therefore, I consider the amount of development proposed would be within an acceptable range having regard to the general density of development within the locality. However, consideration will need to be given at technical details stage as to the appropriate design and layout for the site and whether this would enable the site to be developed for 1 or 2 dwellings.
10. In conclusion, the proposed permission in principle would provide for a form of development which would not have a significant effect on the character and appearance of the area and therefore the location of the development would comply with policy UR2 of the CS which requires development to accord with its context and be well integrated. It would also be in accordance with policy DP1 of the Colchester Borough Council Local Development Framework Development Policies 2010 (DP) which seeks to ensure development respects and enhances the character of the site.
11. I have also had regard to the Colchester Borough Council Supplementary Planning Document – Backland and Infill Development (SPD), which confirms that proposals that would lead to overdevelopment or the appearance of cramming will be resisted. However, as I have concluded that the proposal could, as a matter of principle, be integrated within the site without significantly effecting the character and appearance of the area, I consider the principle of development would accord with the SPD.

12. The Council have also directed me to Policy DP12 of the DP which sets out the required standards for design, construction and layout. However, as an application for permission in principle these details are not before me and therefore it is not directly relevant to this appeal such that there can be no conflict with this Policy at this stage.

European Designated Sites

13. The appeal site falls within a 'Zone of influence' for the European designated sites of the Essex Estuaries Special Area of Conservation, Blackwater Estuary SPA and Ramsar Site, Dengie SPA and Ramsar Site and the Colne Estuary SPA and Ramsar Site and the Stour and Orwell Estuaries SPA and Ramsar site (South Shore). Natural England (NE) has provided advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations.
14. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC and SPA. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
15. Since the development is for up to 2 dwellings, the number of additional recreational visitors would be limited and the likely effects on the SAC and SPA site from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
16. Given the sites location within the zone of influence new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the wider zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
17. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by NE, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA and SAC sites.
18. The appellants have indicated that they have made a per dwelling contribution totalling £244.60 to fund the RAMS. The Council has stated that the payment has been made and Natural England has also confirmed that the RAMs will comprise a package of strategic measures to address such effects which will be

funded through these contributions. Given the evidence before me I am satisfied that the mitigation measures have been secured. Whilst there is no legal agreement securing how the contribution will be spent I am satisfied that the Council, as a responsible public body, will use the contribution for its intended purpose.

19. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.
20. Consequently, the proposal would not adversely affect the integrity of the SAC and SPA sites and would accord with Policy DP21 of the DP.

Other matters

21. Both the Council and interested parties have raised concerns regarding a number of other matters. These include the effect on the living conditions of neighbouring properties having regard to privacy, light and noise and disturbance, the adequacy of outlook and privacy for future occupiers of the proposed development and I note that the SPD provides detailed guidance on a number of these matters. However, these are not matters which fall within the scope of consideration for the first stage of the permission in principle consent route. These are all matters which will need to be addressed as part of the technical details consent, the second stage of the process.

Conclusion

22. For the above reasons, I therefore conclude that the appeal should be allowed.

G. Pannell

INSPECTOR