



Appeal Decision

Site visit made on 3 December 2020

by J D Westbrook BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

Appeal Ref: APP/P1560/W/20/3254413

Owl Lodge, Vicarage Lane, Thorpe-Le-Soken, CLACTON-ON-SEA, CO16 0EH

- 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 Mrs C Hickford against the decision of Tendring District Council.
 - The application Ref 19/01527/FUL, dated 14 October 2019, was refused by notice dated 18 December 2019.
 - The development proposed is the erection of three detached 3-bedroom bungalows.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Stanfords on behalf of Christine Hickford against Tendring District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are the effects of the proposed bungalows on:
 - The character and appearance of the area around Thorpe-le-Soken, and in particular the area around Vicarage Lane and St Michael's Road,
 - Highway safety along St Michael's Road, and
 - Housing supply in the Borough

Reasons

4. The appeal site lies to the rear of Owl Lodge, a detached house on a corner plot at the junction of Vicarage Lane and St Michael's Road. At the time of my visit, the site had the appearance of a large garden area, although it was fenced off from the rest of the garden area to the rear of the house. Neighbouring houses on Vicarage Lane appear to have generally long rear gardens, beyond which is largely open countryside. The proposed development would involve the erection of three detached bungalows on the land at the rear of Owl Lodge, with access from St Michael's Road.

Character and Appearance

5. Policy QL1 of the Council's Local Plan (LP) indicates that most new development should be concentrated at the larger urban areas, while in the smaller towns and villages, limited development consistent with local community needs will be

- permitted. Development should be concentrated within specified settlement development boundaries, which includes Thorpe-le-Soken.
6. Policy QL9 of the LP indicates that all new development should make a positive contribution to the quality of the local environment and protect or enhance local character. Planning permission will only be granted if certain criteria are met. These include that new buildings are well designed and should maintain or enhance local character and distinctiveness; that the development relates well to its site and surroundings, particularly in relation to its siting, height, scale, and massing; that the development respects or enhances locally important features; that the design and layout of the development incorporates important existing site features of landscape value such as trees and hedges, (as well as opportunities to enhance such features); and that boundary treatments and hard and soft landscaping reflect the function and character of the development and its surroundings.
 7. Policy EN1 of the LP indicates that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted. The Council will seek in particular to conserve features which contribute to local distinctiveness such as the setting and character of a settlement, and the traditional character of protected lanes, other rural lanes, bridleways and footpaths.
 8. The Tendring District Local Plan (2013-2033 and Beyond) is at Publication Draft stage (PDLP). This plan has not yet been adopted but is at an advanced stage of development where it can be afforded moderate weight. Policies SPL3 and PPL3 of this plan continue the same basic thrust of Policies QL9 and EN1 of the LP, with regard to protection and enhancement of local character and features of the natural landscape, and I afford the PDLP moderate weight.
 9. In this case, the appeal site lies outside of the settlement boundary, albeit it abuts that boundary. The Council's Landscape Character Assessment apparently notes that the site is within the area known as the Soken Clay Plateaux, which is described as being gently undulating agricultural clay lands with 'low gappy hedgerows and occasional hedgerow trees'. There is no specific mention of Thorpe-le-Soken itself, although this part of St Michael's Road and beyond is characterised by hedgerows and trees.
 10. The appellant makes reference to a recent appeal decision relating to a plot of land on the opposite side of St Michael's Road, known as The Brambles. The appeal was allowed with regard to the construction of two detached houses on the site. Several references made by the appellant to statements in the Inspector's decision letter are relevant to this appeal and I must deal with the issues raised.
 11. In his decision letter, the Inspector states that the erection of the proposed dwellings and associated access and boundary enclosures would "extend built development further north. However, it would appear as continuation of the existing linear pattern of settlement along St Michael's Road and would be fairly effectively enclosed by established planting The provision of vehicular access and associated visibility splays would result in the loss of part of the roadside boundary hedge".

12. The proposal for the appeal site would similarly extend development north beyond the settlement boundary but, in this case, there is no linear pattern of development on the western side of the road behind Owl Lodge for the proposal to continue. Furthermore, the proposal would appear to result in the loss of the entire hedgerow along the western side of the road, while the other boundaries of the site would have fencing more characteristic of an urban area than the generally open urban/rural fringe area in which the appeal site is located. It would not have the appearance of enclosure by established planting that benefits the site opposite, nor would it appear to have scope for significant planting enough to create such an appearance.
13. The proposal would result in the development of three bungalows with very little space between them, such that they would appear somewhat cramped on the site. I note that the site opposite is larger and has permission for only two houses, one of which was under construction at the time of my visit. The additional scale of this nearby site, therefore, enables the retention of a character and appearance more respectful to the context of a largely open area that is characterised by hedgerows and trees. Moreover, the appeal bungalows would not relate well to the space and overall density of the development permitted opposite.
14. The Inspector in his earlier decision letter refers to a concern expressed by the Council that the grant of planning permission would set a precedent for similar developments. However, he went on to conclude that there were no directly comparable sites to which this might apply and that, in any case, each proposal must be considered on its merits. In this case, I find that the appeal site is not comparable to the site opposite in that the proposal would not continue a linear pattern of development along St Michaels Road and that the development would appear cramped on its more restricted site. It would not appear to have sufficient space for effective soft landscaping to enhance the local character of the area, and it would appear out of context with the open nature of the surrounding landscape on the edge of Thorpe-le-Soken.
15. On the basis of the above, I conclude that the proposal would be significantly harmful to the character and appearance of the area outside of the settlement boundary in this part of Thorpe-le-Soken. It would not maintain or enhance the local character and distinctiveness along St Michaels Road and beyond, nor, by virtue of its cramped appearance, would it relate well to the site and its surroundings. Finally, it would not incorporate important existing site features such as hedges, and the boundary treatments would not reflect the function and character of the development in the context of its surroundings. On this issue, I find that the proposal would conflict with Policies QL1, QL9 and EN1 of the LP, and also with Policies SPL3 and PPL3 of the PDLP, which follow the same thrust.

Highway safety

16. Access to the three proposed bungalows would be from St Michael's Road which, at this point is a narrow, rough-surfaced lane that is also a bridleway. There would be two access points, one serving one bungalow and one shared between the other two bungalows. The Highway Authority raised no objections subject to the imposition of certain conditions.
17. There will be two new accesses from St Michael's Road in the near future, serving the development opposite, and I do not consider that the addition of

another two accesses serving three bungalows would add unduly to the usage of this section of road or the roads in the immediate vicinity. There would inevitably be some minor cumulative impact, and there would clearly be some scope for additional conflict between vehicles from the proposed bungalows and horses and other users of St Michaels Road, but this would be limited.

18. The Council notes that parking spaces should measure 5.5 metres by 2.9 metres, and the Highway Authority requires that a double garage should measure a minimum of 7 metres by 5.5 metres internally. It would appear that the garages serving the proposed bungalows do not meet these requirements. The Council accepts that there is provision in front of the garages to accommodate the two required parking spaces and I concur with that, although I note that this may potentially impinge on the ability of cars to turn on-site such that they can enter and leave the property in forward gear. This adds somewhat to my concerns that the proposed bungalows are cramped on their plot, in this regard with the potential for some harm to highway safety.
19. I also note that the Highway Authority required a condition that "the public's rights and ease of passage over public footpath no. 5 (Thorpe le Soken) shall be maintained free and unobstructed at all times, with the reason being to ensure the continued safe passage of the public on the definitive right of way and accessibility". This is not likely to be a valid condition, given that St Michael's Road is a private street and the condition would not meet the tests required by the Planning Practice Guidance. All other suggested conditions appear to relate to the provision of access and parking facilities on site, including visibility splays. The safety of those users of St Michael's Road other than those from the proposed bungalows, albeit likely to be limited in number, could not therefore be suitably guaranteed by way of condition.
20. On this issue, I find that there may be some limited adverse cumulative impact caused by the proposal, along with possible difficulties relating to on-site manoeuvring, but this would not be enough to warrant dismissing the appeal on this basis alone. I therefore conclude the proposal would not be likely to result in significant harm to highway safety, and would not conflict with Policies QL10 and TR1a of the LP, which seek in general to prevent hazards and inconvenience on the highway network, and which require development to provide safe and practicable site access.

Housing Supply

21. There is agreement that the Council cannot demonstrate 5 years years' supply of land for housing, the figure apparently being around 4.6 years supply. The appellant contends that the LP is out of date since it is over 13 years old. Paragraph 11 of the National Planning Policy Framework (The Framework) indicates that if the Development Plan policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. In this case, although the LP is 13 years old, the policies I have referred to above would themselves not appear to be out of date, being generally still in conformity with relevant policies of the Framework. However, Footnote 7 to the Framework notes that reference to out-of-date policies includes, for applications involving the provision of housing, situations where the local

planning authority cannot demonstrate a five-year supply of deliverable housing sites. It therefore applies in this case, and it is necessary to carry out a balancing exercise to weigh the benefits of the proposed housing scheme against any adverse effects.

23. In this case, whilst the construction of three bungalows would result in some social and economic benefits locally, the scale of the development would mean that such benefits would be limited. Moreover, the development of three dwellings would have very little impact on the housing supply across the Borough. Against that must be balanced the significant adverse landscape and environmental impacts resulting from the proposal, along with the potential for some, albeit very limited, adverse impact on highway safety along St Michael's Road. In this case, I find that these adverse impacts would demonstrably outweigh the limited social and economic benefits associated with the development of three dwellings, and that the balancing exercise should not therefore lead, in this case, to a presumption in favour of grant of planning permission.

Other Matter

24. The Council has noted that there have been a number of representations stating that there is a covenant on the application site that restricts development such as that of this current proposal. Whilst this may raise some doubt as to the potential of the development taking place, it is not a material planning consideration, and would therefore need to be addressed under separate legislation.

Conclusion

25. I find that the proposed development of three bungalows on the appeal site would result in significant harm to the character and appearance of the area around this part of Thorpe-le-Soken, and in particular the area around Vicarage Lane and St Michael's Road. It would therefore conflict with Policies QL1, QL9 and EN1 of the LP, and with Policies SPL3 and PPL3 of the PDLP. The proposal would have limited social and economic benefits, and would provide a very small addition to the housing land supply in the Borough. It would be likely to have some limited adverse impact on highway safety along St Michael's Road.
26. I have conducted a balancing exercise as required by Paragraph 11 of the Framework, and I find that the significant adverse landscape and environmental impacts of the proposal, along with limited adverse highway impacts, would demonstrably outweigh the limited benefits of the proposal. Accordingly, I dismiss the appeal.

J D Westbrook

INSPECTOR