



Appeal Decision

Site visit made on 27 August 2020

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2021

Appeal Ref: APP/P1560/W/20/3250384

85 Salisbury Road, Holland On Sea CO15 5LS

- 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 John Coley against the decision of Tendring District Council.
 - The application Ref 20/00019/FUL, dated 02 January 2020, was refused by notice dated 17 March 2020.
 - The development proposed is a 3-bed bungalow.
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Decision

1. The appeal is allowed and planning permission is granted for a 3-bed bungalow at 85 Salisbury Road, Holland On Sea, CO15 5LS in accordance with the terms of the application, Ref 20/00019/FUL, dated 02 January 2020, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by Mr John Coley against Tendring District Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The development plan for Tendring consists of the Saved Policies of the adopted Tendring Local Plan 2007 (LP). The Tendring District Local Plan 2013-2033 and Beyond Publication Draft (DLP) is an emerging policy document, currently with Section 1 requiring modification before Section 2, which contains district-specific development management policies, can be examined. The policies of the DLP therefore have limited weight at this time.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the living conditions of the occupants of the neighbouring properties;
 - whether the proposal would provide safe and convenient access for future occupants;

Reasons

Character and Appearance

5. The appeal site is located on the northern side of Salisbury Road and forms part of the land currently associated with the dwelling at 85 Salisbury Road. A timber shed and a detached garage building are currently located on the site. There is an existing dropped kerb and driveway to the front of the detached garage. The site is within an established residential area characterised primarily by detached dwellings, including bungalows, chalet bungalows and 2-storey dwellings. Whilst there is a mix of plot sizes and widths in the surrounding area, the plot width at no 85 is larger than is typical of Salisbury Road. There is also a variety of architectural styles in the surrounding area, including both gable and hip-roofed forms.
6. The proposed hip-roofed bungalow would be situated to the side of no 85 and to the rear of properties on Princes Road. The Council's statement advises that the separation distances from the flank of the proposed bungalow to its common boundaries with the adjacent properties on Princes Road would be in the region of 0.9 m. The proposed dwelling would, however, be separated from the rear elevations of adjacent properties on Princes Road by those properties' rear gardens. As such, whilst I have had regard to the LP Policy HG14 guideline that a minimum 1 m separation to the side boundary is provided, the separation distance between dwellings would be sufficient to prevent the proposal appearing cramped within the street scene. Furthermore, given the larger than typical plot width of no 85, the subdivision of the plot would not result in plot widths out of character with the surrounding area. The space surrounding the bungalow, given its modest scale, would be sufficient to prevent it appearing cramped within its plot or the wider street scene.
7. As such, the proposal would not harm the character and appearance of the surrounding area. In these regards, the development would be in accordance with LP Policies HG14, QL9 criterion (ii) and QL11 criterion (i) which require, amongst other things, that the scale and nature of new development is appropriate within its setting, is well designed, and does not create a cramped appearance. It would also accord with DLP Policy SPL3 which requires that all new development should protect or enhance local character. Furthermore, it would accord with the design aims of the National Planning Policy Framework (the Framework), including paragraph 130, which requires permission to be refused for development of poor design.

Living Conditions

8. I have had regard to the concerns of the occupiers of neighbouring properties on Princes Road with regards to the visual impact of the proposal and its effect on sunlight. Given the single storey scale and hipped roof form of the proposal, however, I am not persuaded that the visual impact would be overbearing or that a significant loss of sunlight to either adjacent gardens or dwellings would result. Furthermore, additional residents on the site would not lead to disturbance incompatible with the established residential area.
9. Accordingly, the proposal would not unacceptably harm the living conditions of the occupiers of the neighbouring dwellings. As such, it would not conflict with LP Policies HG14 and QL11 which require development, amongst other things, to safeguard the amenities and aspect of adjoining residents. It would also

accord with DLP Policy SPL3 which requires that development will not have a materially damaging impact on the amenities of nearby properties.

Safe and Convenient Access

10. The dwelling would be accessed through a door located on the elevation facing no 85. The Council's statement notes that the separation distance between this elevation and the boundary with no 85 is in the region of 2 m. The Council advises that the approach to the private entrance of the proposed dwelling appears to be only 835 mm rather than the 850 mm required in Part M4(3) of the Building Regulations 2010 Approved Document M (Access to and Use of Buildings), Volume 1 2015. Part M4(3) is an optional requirement for wheelchair user dwellings. The Council has not demonstrated in its evidence that there is a policy requirement for the proposal to meet this optional requirement. Furthermore, the Council has not demonstrated where it has taken its measurements from. Even if the 835 mm measurement is accepted, the impact on accessibility for all users in comparison to an 850 mm width would be very limited.
11. The approach route to the dwelling would be relatively flat and an approach width of 850mm could be secured by condition if necessary. At the time of my site visit, construction had begun on a new vehicular access to serve the existing dwelling at no 85. The County Highway Authority have not objected to the provision of an additional access and I am satisfied that a condition can reasonably be used to secure its completion prior to the occupation of the new dwelling. As such, the development would not conflict with LP Policies QL10 and COM1 which require, amongst other things, development to provide safe and convenient access for people of all abilities. It would also accord with DLP Policy SPL3 which requires, amongst other things, the design and layout of development to provide safe and convenient access for people with mobility impairments. For similar reasons, in this regard, the proposal would accord with the Framework, including paragraph 108.

Other Matters

Designated European Sites

12. The appeal site lies within the Zone of Influence of the Hamford Water RAMSAR site and Special Protection Area, and the Essex Estuaries Special Area of Conservation. These are designated European Sites. The Habitats Regulations¹ require that permission may only be granted after having ascertained that it will not affect the integrity of such European Sites.
13. The above sites are designated for their environmental importance, since they provide habitats for wintering birds, wildfowl and wading birds. The sites are used for public recreation and it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would not have significant effects on the quality features of interest of the sites due to the increased recreational use.
14. In 2018 the Court of Justice of the European Union 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) rather than at the screening stage. As the Competent

¹ The Conservation of Habitats and Species Regulations 2017

Authority, and in accordance with the Habitats Regulations, I have therefore undertaken an AA. In this AA, I may consider any conditions or other restrictions which could secure mitigation of any harm, and which would therefore allow development to proceed in the knowledge that the conservation objectives of the identified site would be ensured.

15. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal. The mitigation is in the form of the Council's Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This strategy requires financial contributions from developments and allocates payment to detailed and costed infrastructure and non-infrastructure projects. These mitigation measures would be appropriately secured by the signed unilateral undertaking (UU) submitted by the appellant. The obligation is necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development.
16. I am therefore satisfied that, subject to the mitigation payment, it has been demonstrated that there would be no adverse effect on the integrity of the European Sites. I am therefore able to favourably conclude my Appropriate Assessment. The proposal would, therefore, accord with LP Policy EN11a.

Open Space Provision

17. LP Policy COM6 of the adopted Local Plan specifies a requirement for financial contributions towards open space provision from developments below 1.5 ha where existing facilities are inadequate to meet the projected needs of future occupiers. The Council has identified a shortfall of equipped play and formal open space in Holland-on-Sea and Clacton-on-Sea. The proposal would lead to an increase in people and children on the site and therefore increase the demand for the use of public open space.
18. The Council have identified that the nearby Hereford Road play area would be put under increased pressure from the additional residents. The appellant's UU commits to a mitigation payment with respect to this issue, related to the net increase in dwellings and linked to the payment schedule set out in Table 4 of the UU. The obligation is necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. Consequently, the proposal would mitigate its effect on public open space as a result of the increased demand from the site. I therefore conclude that, the proposal would make satisfactory provision for open space and would comply with LP Policy COM6.

Previous Appeal Decision

19. I have been referred to a recently dismissed appeal² on the site. The submitted proposed plans for the earlier appeal and the current appeal are the same. That earlier appeal was dismissed because no mitigation had been secured in relation to the effect of the proposal on the European Sites. That issue has been addressed in this instance by the signed UU. My findings with regards to the effect of the proposal on the character and appearance of the area, and on living conditions, are consistent with the earlier appeal decision. The previous appeal decision is a material consideration and I attach significant weight to it

² Appeal Ref: APP/P1560/W/3234819

in favour of the current proposal given that the circumstances are substantially comparable.

Interested Parties

20. I have had regard to interested parties' concerns with regards to the impact of the development on the protected Beech tree located within the site. The Council's Tree Officer advises, however, that the submitted plans demonstrate that the development will not cause harm to the protected Beech tree. Subject to a condition securing appropriate tree protection measures, I see no substantive reason to take a different view.
21. I also note the concerns regarding the security and bio-diversity impact of the removal of the existing boundary fencing and planting. There is, however, no substantive evidence before me to suggest unacceptable harm in these regards would result from the development. Appropriate site security during construction can be controlled by condition through submission of a construction method statement. Appropriate boundary treatments to ensure highways safety and protection of the character of the area can also reasonably be secured through conditions.

Housing Supply and Mix

22. The Council's refusal reason refers to LP Policy HG6 which relates to ensuring the right mix of dwelling sizes and type. I have no substantive evidence before me to suggest the proposal would conflict with the aims of this policy. Furthermore, given the proposal is for less than 10 dwellings and is on a site smaller than 0.3ha, I am not persuaded the proposal conflicts with LP Policy HG6.
23. Whilst I note an interested party's concern that there is substantial availability of existing homes for sale and rent in the local area, the Framework is clear that the Government's objective is to boost the supply of homes. The appeal site is within an existing urban area, demonstrably available, and in the absence of strong arguments against the form of development proposed, there is no good reason to frustrate the wish of a developer to proceed with the provision of an additional home. In accordance with paragraph 68 of the Framework, I attach great weight to the benefits of delivering housing on a suitable windfall site within an existing settlement.
24. It is common ground between the main parties that the Council cannot demonstrate a 5-year supply of deliverable housing sites. I have not been provided with any substantive evidence with regards to the extent of any shortfall. I have, however, found the development does not result in harm with regards to the main issues, or any of the other issues considered. As a result, the 'tilted balance' is not a determinative matter as I have found the development acceptable and in compliance with planning policy.

Conditions

25. I have considered the conditions suggested by the Council against the tests of the Framework and advice provided by the Planning Practice Guidance. Where necessary, I have amended the conditions list in the interests of clarity and to ensure the conditions meet the tests. The Council's conditions regarding discharge of water onto the highway and garage internal dimensions have not been robustly justified and do not meet the test of necessity.

26. For certainty, I attach the normal planning condition limiting the period of the consent to 3 years. It is necessary to define the plans in the interest of clarity. In the interests of achieving a visually attractive development that respects the character of the area, I attach conditions requiring details of external materials and landscaping to be approved and implemented.
27. A condition to secure the submission and implementation of a Construction Method Statement is also necessary in the interests of highway safety and to protect the living conditions of local residents during the construction period. A condition to secure the submission and implementation of a scheme of tree protection is also necessary. It is necessary that the construction management and tree protection arrangements are put in place prior to commencement to be effective and they should remain in effect for the full duration of the development.
28. In the interests of highways safety and visual amenity, conditions are attached to ensure appropriate hard landscaping, access, visibility splays and parking areas are provided.
29. In the interests of protecting living conditions and the character of the area, a condition is attached removing permitted development rights in relation to the roof of the dwelling.

Conclusion

30. The development is in accordance with the adopted development plan when taken as a whole. There are no material considerations, taken individually or cumulatively, that outweigh the identified benefits or indicate that the appeal should not succeed.
31. For the above reasons, the appeal is allowed subject to the conditions in the attached Schedule.

S D Castle

INSPECTOR

**Schedule of Conditions attached to Appeal Decision
APP/P1560/W/20/3250384
85 Salisbury Road, Holland On Sea CO15 5LS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos 1813-PL01 C, 1813-PL05 A and 1813-PL07 A.
3. No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The Statement shall provide for:-
 - i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. wheel and underbody washing facilities;
 - v. delivery, demolition and construction working hours;
 - vi. the erection and maintenance of security hoarding where appropriate.

The approved Statement shall be adhered to throughout the construction period for the development.

4. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained Beech Tree (identified as T1 within the submitted Arboricultural Impact Assessment - dated 15th February 2018) and an arboricultural method statement in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved tree protection details.
5. No development above slab level shall commence until details of hard landscape works have been submitted to and approved in writing by the local planning authority. These details shall include: boundary treatments; vehicle parking layouts; cycle parking; pedestrian access layout; and hard surfacing materials;

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.

6. No development above slab level shall commence until details / samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
7. Prior to first occupation of the dwelling hereby approved, the construction of the vehicular access shall be carried out in accordance with a specification submitted to and approved in writing by the Local Planning Authority. The

specification shall include details of the pedestrian visibility splays and such visibility splays shall be retained thereafter in accordance with the approved specification.

8. Prior to the first occupation of the dwelling hereby approved, the construction of a vehicular access serving the existing dwelling at no 85 Salisbury Road shall be carried out in accordance with a specification submitted to and approved in writing by the Local Planning Authority. The specification shall include details of the pedestrian visibility splays and such visibility splays shall be retained thereafter in accordance with the approved specification.
9. 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), there shall be no additions or alterations to the roof of the dwelling hereby approved.