
Appeal Decision

Site visit made on 25 November 2020

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Appeal Ref: APP/M1595/W/20/3251730

53-55 Third Avenue, Stanford Le Hope SS17 8EL

- 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 D Darby (Cedarmill Developments Ltd) against the decision of Thurrock Council.
 - The application Ref 20/00067/FUL, dated 14 January 2020, was refused by notice dated 3 April 2020.
 - The development proposed is seven dwellings with associated access road, hardstanding, landscaping and bike stores following the demolition of two existing detached dwellings.
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Preliminary Matters

1. The appellant indicates that the original description of development has changed. Therefore, the above description reflects the amended description shown on the appeal form.
2. The main parties agree that financial contributions should be made by the appellant concerning two matters. The first concerns the funding of a Traffic Regulation Order (TRO) to implement parking restrictions related to the proposed development. The second concerns a contribution per dwelling towards measures to mitigate the likely significant effects of the proposed development on the Thames Estuary and Marshes Special Protection Area (SPA), which has been identified for its importance as a habitat supporting certain protected species.
3. The relevant regulations require that if likely significant effects on a protected site cannot be excluded, then the competent authority must undertake an appropriate assessment of the implications for that site¹. I have, therefore, undertaken such an assessment with regard to the proposal in this case.
4. With regard to the financial contributions, the appellant submitted an unsigned unilateral undertaking under section 106 of the Town and Country Planning Act 1990, but subsequently during the appeal proceedings indicated that the contributions would be secured by alternative means. Accordingly, for these reasons, I have considered this matter as a main issue in this appeal, together with the Council's reason for refusal.

¹ The Conservation of Habitats and Species Regulations 2017, Regulation 63.

Decision

5. The appeal is dismissed.

Main Issues

6. The main issues are the effect of the proposed development on the character and appearance of the appeal site and surrounding area; and whether adequate provision would be secured for the mitigation of likely significant effects on a protected European site and towards a TRO.

Reasons

Character and Appearance

7. The appeal site comprises two separate but adjoining residential plots, each of which includes a detached chalet style bungalow with a frontage on Third Avenue. These dwellings together with the two properties to the east have long rear gardens, which together create a substantive open area within the surrounding layout of residential development. This includes a mix of property types, with detached and semi-detached dwellings, and short terraces particularly apparent.
8. My attention is drawn to a recent appeal decision involving an application for the development of nine dwellings on the appeal site². Given the relevance of that decision to the current appeal I have had regard to it and refer to it where appropriate.
9. Policies PMD2, CSTP22 and CSTP23 of the Thurrock Core Strategy and Policies for Management of Development document (the Core Strategy) require development to respond to and respect the character of the area, and to provide a high quality of design. These policies are consistent with the National Planning Policy Framework (the Framework).
10. The Council indicates that the appeal site is identified as part of the Homesteads Ward on the Adopted Interim Proposals Map accompanying the Core Strategy. Policy CSTP23 says that the Council identifies a number of areas where character is a key issue, including the intensively developed Homesteads Ward. Reference is also made to Policy H11 and Annexe A9 of the Thurrock Borough Local Plan 1997, which concern infill and backland development in residential precincts, including the Homesteads Ward. The annexe indicates that the whole area is identified as a Residential Precinct where infill and backland development will not normally be permitted.
11. I have had regard to the appellant's comments concerning the Local Plan's status and I note the relevant finding of the Inspector in the recent appeal, that while Annexe A9 is not directly linked to Policy CSTP23, it nevertheless is a material consideration with regard to the importance of retaining some of the original character of the area³. I see no reason to take a different view given that the development plan position has not changed since this recent appeal. I have had regard also to the Inspector's finding that the proposed development should be considered on its merits and impacts in relation to the more

² APP/M1595/W/19/3231533, dated 28 November 2019.

³ Paragraph 7.

contemporary development plan policies and in relation to the specific local context. I agree and have taken the same approach with regard to the current appeal.

12. The proposal is to replace the existing detached dwellings with two detached and a pair of semi-detached dwellings. These would be positioned on broadly the same footprint and front building line as the existing dwellings. Their design and appearance would be similar to the overall character and appearance of properties in this part of Third Avenue. As such, the change to the street scene to the front of the site would not be harmful.
13. There is currently a relatively generous gap between Nos 53 and 55 that enables views from the public realm to the rear of the site. The other principal public view from outside the site is across the access track serving the garages to the rear of dwellings on Rose Valley Crescent. From these views the considerable extent of the spacious and open aspect to the rear of Nos 53 and 55 is apparent. This open part of the site is also visible from the rear windows of the surrounding dwellings.
14. The proposed access road would not significantly alter the extent of the gap between the two existing dwellings, although it would enable greater passing views into the site than is currently the case. The proposal is for three detached dwellings positioned across the middle of the site served by the short T-shaped access road. The previous proposal involved six dwellings to the rear of the site frontage, which the Inspector found would appear as a cramped form of development, the pattern of which would jar with the spacious garden areas of the immediately adjacent dwellings⁴.
15. In contrast to the earlier proposal, the spacing between the three dwellings would reflect the layout of dwellings in the surrounding area. Moreover, there would be generous and substantive separation between the row of three dwellings and surrounding residential development, resulting from the size of the new dwellings' gardens, the retained long gardens to the east and the single storey garages adjacent to the southern and western boundaries. As such, while the new dwellings would be visible from the public realm to some extent, they would be surrounded by a greater degree of separation and openness than the general layout of development in the wider area. Consequently, the principal characteristic of the site, its openness and spaciousness, would not be compromised to such an extent that the development would result in material harm.
16. I acknowledge that the three dwellings to the rear would introduce a form of backland development in this location, but the Inspector's main concern in the previous appeal concerning the pattern of development related to the cramped nature of the development, with three more dwellings than in this case. For the reasons given, the development in this case would largely retain the intrinsic open and spacious character of the site and, therefore, the fact that the proposal involves backland development should not weigh against it as a matter of principle.

⁴ Paragraph 13.

17. Accordingly, taking these findings as a whole, I conclude that the proposed development would not have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area. Consequently, there is no conflict with Policies PMD2, CSTP22 and CSTP23 of the Core Strategy, as described above.

Whether adequate provision would be secured towards the agreed mitigation measures

18. As noted above, the main parties agree that financial contributions should be made towards the funding of a TRO, which would be required to provide measures to prevent parked vehicles obstructing the new access points; and towards mitigation measures for the effects of recreational disturbance arising from new residential development on the Thames Estuary and Marshes SPA, which is a site that has protected status by virtue of its contribution to achieving the aims of the Wild Birds Directive.

19. The site is within the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS) zone of influence. The Council explains that the authorities within the zone of influence have developed a standard approach for dealing with smaller schemes with the advice and support of Natural England. This recognises that new development resulting in a net increase of one unit would have an in-combination effect on qualifying species because of increased recreational pressure.

20. The Essex Coast RAMS sets out the detailed mitigation measures that are to be delivered from the RAMS tariff. The Council undertook an appropriate assessment required by the regulations using the Natural England standard approach. The proposal is assessed as having likely effects on the Thames Estuary and Marshes SPA resulting from increased recreational disturbance, in combination with other schemes. As such, a tariff contribution per dwelling is required to mitigate the effects.

21. For these reasons, I have relied on the appropriate assessment already undertaken by the Council and agree that a contribution is necessary to mitigate the likely effects in accordance with the Essex Coast RAMS. Similarly, I agree that a contribution is required to fund the TRO, which relates directly to the development and is necessary with regard to controlling on-street parking. In both instances, therefore, the contributions meet the requisite tests set out in the Framework⁵.

22. The appellant provided an unsigned unilateral undertaking as an indication of the means to secure these contributions, but subsequently stated that an alternative unreserved commitment to make the payments to the Council is the preferred way of securing the contributions. This is due to the refinancing of the property and the fact that the funding arrangement is now governed by a Diminishing Musharakah Agreement. The Council was consulted on this alternative approach but did not make any comments.

23. I acknowledge the reason for the proposed change in approach to securing the contributions. However, I have some concerns about the proposed approach, in particular that the undertaking has not been executed as a deed and does not

⁵ Paragraph 56.

meet the requirements for a planning obligation set out in section 106(9) of the Town and Country Planning Act 1990, which are the statutory provisions expected to be met with regard to contributions related to a grant of planning permission. Furthermore, the proposed approach relies upon the Council demanding payment upon the grant of permission, despite the Council not being a party to the undertaking; and there is no mechanism to ensure that such payment is made.

24. Given these uncertainties, in the particular circumstances raised in this case I find for the reasons given that the proposed approach is inadequate to secure the necessary contributions. Consequently, I must conclude that the proposal fails to ensure that adequate provision would be secured for the mitigation of the likely significant effects on a protected European site and towards a TRO.

Other Matters

25. I have had regard to all the representations made by interested parties. These do not, however, raise any additional matters in relation to the main issues in this appeal that would lead me to reach a different overall conclusion.

26. The main parties concur that the Council cannot demonstrate a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, as required by the Framework⁶. Consequently, the view taken is that the appeal proposal should be considered in the context of paragraph 11d) of the Framework. However, I have found above that the proposal would not make adequate provision to mitigate the likely significant effects on a protected European site. In these circumstances, the Framework says that the presumption in favour of sustainable development does not apply⁷.

Conclusion

27. I have found that the proposal would not be harmful with regard to the first main issue, concerning the effect on character and appearance. However, I have also found that adequate provision would not be secured to mitigate the likely significant effects on a protected European site and to fund a TRO, which finding must outweigh that in favour of the appeal. Accordingly, for the reasons given above and having regard to all other matters raised, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

⁶ Paragraph 73.

⁷ Paragraph 177.