



Appeal Decision

Site visit made on 11 May 2021

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2021

Appeal Ref: APP/P1560/W/20/3259779

Land adjacent Lower Park House, The Walls, Mistley CO11 1AT

- 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 Cox against the decision of Tendring District Council.
 - The application Ref 19/01830/FUL, dated 2 December 2019, was refused by notice dated 27 March 2020.
 - The development proposed is the erection of 2no. detached dwellings and amended highways access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal, the Council adopted Section 1 of the Tendring District Local Plan 2013-2033 and Beyond June 2017. Section 2 remains at the examination stage (emerging Local Plan) for the purposes of this appeal. I have taken the status of the relevant policy documents into account in my decision.
3. A unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) was submitted with the appeal documents. In light of reviewing the UU, the Council determined not to defend two of the cited reasons for refusal. I shall return to this matter later in my decision.

Main Issues

4. The main issues for the appeal are:
 - the effect of the development upon the character and appearance of the area, including landscape character; and
 - whether the proposal preserves or enhances the character of the Mistley and Manningtree Conservation Area.

Reasons

Effect upon character and appearance

5. Policy EN2 of the Tendring District Local Plan 2007 (the Local Plan) identifies the appeal site as falling within a Local Green Gap, the main functions of which include preventing coalescence between settlements and protecting their rural settings. In the explanatory text to policy EN2, specific objectives are set out

- for the Local Green Gaps between Lawford, Manningtree and Mistley, which include preserving attractive views towards the Stour Estuary and Dedham Vale, and safeguarding open character. Policy PPL6 of the emerging Local Plan refers to Strategic Green Gaps and contains stricter restrictions on potential new development, with an aim to prevent erosion of settlement identities.
6. In this instance, the Local Green Gap (the gap) sits between the settlements of Manningtree and Mistley and is characterised by wooded areas at either end of an expansive open field. Trees and hedgerows form the outer perimeter of the gap, although a stretch of brick wall forms part of the northwest boundary onto the public highway. From my site visit, I observed few built features within the gap, principally being a tearoom with an accompanying car park and a couple of residences to the south on the B1352. The open field was divided by timber post and rail fencing with a few small sheds visible.
 7. Lower Park House occupies a plot towards the northwest corner of the gap. The appeal site is within the wooded area that separates Lower Park House from the eastern edge of Manningtree, formed by the Kiln Lane housing development. It would accommodate two proposed dwellings with a double garage, parking and turning areas, together with a long driveway and a passing bay. A number of trees would need to be removed or cut back to facilitate the access whilst the proposed dwellings would generally be located within a clearing.
 8. In visual terms, substantial trees sit towards the north of the appeal site, and to the north and west of Lower Park House. Consequently, the proposed dwellings would be highly unlikely to feature in viewpoints from within the adjacent Area of Outstanding Natural Beauty (as extended), even when trees are not in leaf.
 9. However, the tree removal plan reference JBA 16/300 TR01 dated 24 May 2019 indicates two large groups of trees being removed from the western appeal site boundary, which currently separate the appeal site from Kiln Lane. This puncture in the wooded area would make the proposed development clearly visible from the Kiln Lane estate, urbanising the appearance of the gap.
 10. In addition, I observed a few areas on the southern edge of the appeal site where tree coverage was thin and low, allowing views out towards the church spire and the adjacent open field. The upper storey of both of the proposed dwellings would likely be visible, particularly during winter months, above these areas of weaker landscape structure. Notwithstanding that proposals for tree management would seek to reinforce the landscaped character of the area, the proposal has every prospect of being visible from the B1352, interrupting the attractive views towards the Stour Estuary. This would be contrary to the objectives of policy EN2.
 11. Furthermore, in spatial terms, the proposal represents an incremental addition that would extend the housing area of Manningtree eastward closer to Mistley, with Lower Park House becoming physically attached to the built environs of the settlement. The spatial importance of the gap to the locality is not in anyway undermined or diminished by transitory leisure uses along the length of the River Stour. The location of the appeal development would encroach onto land that is distinctly undeveloped in nature and would therefore directly conflict with the spatial objectives and principles of the gap, developing land that is intended to be kept open and to keep settlements apart.

12. The appeal development is distinctly urban in form and would both significantly and incrementally, visually and spatially, reduce the open character of the gap. On this basis the proposal would conflict with policy EN2 of the Local Plan, which seeks to keep land essentially free of development.

Effect upon Mistley and Manningtree Conservation Area (MMCA)

13. The MMCA extends across the whole of the appeal site and the area described above as forming the gap, on the basis that the entire land formed part of the historic parkland of Mistley Place (demolished). Although the extent of the remnants of the parkland estate are not fully surveyed, documented or presented in the appeal, I was able to observe some evidence of this past use such as Hopping Bridge and an ornamental lake to the northeast of the gap.
14. The submitted supplementary statement¹ states that Lower Park House was constructed in the 1950s to the east of Mistley Place and its gardens were subsequently extended when Mistley Place was demolished. Whilst this may suggest that the appeal site does not form part of the parkland setting for Mistley Place, it would have been part of the former formal gardens for that property, which is of historical and cultural significance even if the physical features of such have eroded over time.
15. I acknowledge that changes have occurred resulting in the loss and masking of features pertaining to the historic setting, including the construction of the housing development to the west known as Kiln Lane. However, the landscape setting to Lower Park House and the wider land within the gap remains of importance for its special interest and contribution to local character, forming a historically significant green frontage onto the riverside separating Manningtree from Mistley.
16. For this reason, the proposal would give rise to harm to the MMCA. Given the modern incursions in and around the site, I find no reason to disagree with the Council's position that such harm is less than substantial. Paragraph 196 of the National Planning Policy Framework (the Framework) is thus engaged, noting however that the asset's conservation is to be given great weight and any harm thereto requires clear and convincing justification as per paragraph 194.
17. The proposal would have modest economic and social benefits by providing two houses in close proximity to an existing settlement wherein shops, services and public transport opportunities are present. Weighed against this is the harm to the historically and culturally significant contribution the gap, and consequently the appeal site, makes to the conservation area.
18. In addition, the upper storey of the proposed dwellings would likely be seen in views across the MMCA from the south and southeast. Whilst tree management may preserve some of the landscape value, this would not provide a sufficient screen for the appearance of these modern dwellings, and in any event a great deal of foliage would need to be cleared to provide the proposed access drive, passing bay and parking areas.
19. I therefore conclude that the public benefits would not outweigh the harm to the significance of the conservation area, contrary to the provisions of the Framework. On this basis the proposal would conflict with policy EN17 of the Local Plan and policy PPL8 of the emerging Local Plan, which both seek

¹ Heritage, Landscape and Planning Policy Supplementary Statement

development within a conservation area to preserve or enhance special character or appearance.

Other Matters

Housing Land Supply

20. The positions of the main parties have changed during the appeal following the Council's adoption of its Section 1 emerging Local Plan. It appears common ground that the Council can demonstrate a five-year housing land supply, although the appellant questions the deliverability of the supply in light of the Covid-19 pandemic.
21. There is no evidence before me to suggest how the pandemic has affected housebuilding in the District, particularly when planning and construction industries were allowed some degree of flexibility to continue operating during the pandemic. I have no reason therefore to doubt the Council's position and therefore paragraph 11 of the Framework is not engaged. Even if this were a case that turned on the housing land supply position, the harm identified to the conservation area would, in respect of the Framework, provide a clear reason for refusal.
22. The fact that certain aspects of the proposal are not objected to by the Council or its consultees does not carry weight on this basis.

Public Open Space

23. The UU submitted secures a financial contribution towards public open space to the satisfaction of the Council. However, as I am dismissing the appeal on other grounds, I have not had need to test the acceptability of the contribution or if it meets the relevant tests for its imposition.

Effect of Development upon the National Site Network

24. 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 Site², must consider mitigation within the framework of an Appropriate Assessment rather than at the screening stage. This responsibility now falls to me within this appeal.
25. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the National Site Network.
26. The site falls within the 13-kilometre 'Zone of Influence' for the Stour and Orwell Estuary Special Protection Area (SPA), as defined in the Essex Coast Recreational disturbance and Mitigation Strategy (RAMS). This site is designated for its environmental importance, since it provides habitats for wintering birds, wildfowl and wading birds including little terns, bitterns and brent geese. The proposal, when considered alone or in combination with other schemes, could have significant effects on the quality features of interest of the SPA due to the increased recreational use.

² Now the National Sites Network following the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

27. When concluding that the scheme, either alone or in combination with other schemes, would have a significant effect on the quality features of interest of the identified sites, it is incumbent upon me to undertake an Appropriate Assessment. However, given that I am dismissing the appeal on other grounds, I have not had need to examine the content of the S106 nor undertake the task of Appropriate Assessment.

Conclusion

28. For the reasons given above, I dismiss the appeal.

David Wallis

INSPECTOR