
Appeal Decision

Site visit made on 21 April 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2021

Appeal Ref: APP/A1530/W/20/3255066
54 Grove Road, Tiptree CO5 0JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Metcalf against the decision of Colchester Borough Council.
 - The application Ref 193153, dated 29 December 2019, was refused by notice dated 21 April 2020.
 - The development proposed is described as application for a single dwelling located in the gardens of 54 and 56 Grove Road, with access to the site shown from Wilkin Drive as indicated on the attached plans.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters reserved for future consideration. I have assessed the appeal on this basis and treated the block plan as being submitted for illustrative purposes.
3. The Council's decision notice refers to Policy DP3 of the Council's Core Strategy 2014. However, the evidence shows this policy to be part of the Council's Development Policies 2014 document. I do not consider that any party would be prejudiced by my taking it into account.

Main Issues

4. The main issues are the effect of the proposed development on (i) the character and appearance of the area; (ii) trees; (iii) whether the proposal would provide satisfactory living conditions for future occupiers with particular regard to privacy; and (iv) the impacts on European sites and local infrastructure.

Reasons

5. The appeal site would be formed from the end sections of the rear gardens of Nos 54 and 56 Grove Road (Nos 54 and 56). The new dwelling would be accessed from Wilkin Drive, where it would sit alongside and opposite two storey properties. All matters are reserved, however, considering the restraints of the site, it would be reasonable to assume that the illustrative plans provide a good indication of the size and layout of development possible on the site. In addition, the appellant indicates that the proposal is for a single storey dwelling.

Character and appearance

6. The sizeable gardens of the donor properties and No 54's positioning on the corner of the road, where its side boundary is separated from the highway (Wilkin Drive) by a triangular shaped landscaped grass verge, in combination with the visually prominent trees contained within the site, gives this part of the street scene a verdant and spacious village feel. In this manner the site positively contributes to the character and appearance of the area and contrasts markedly with the dominant hard surfaced layout of the more urban appearance of Wilkin Drive.
7. The size and shape of the proposed site would be at odds with those of surrounding properties. The appeal site marks the transition between the older more spacious layout of properties on Grove Road and the higher density more modern properties of Wilkin Drive. The proposed development would harmfully interrupt this transition, resulting in a diminished sense of spaciousness. To be accommodated within the proposed plot the dwelling would be considerably smaller than other single storey dwellings in the vicinity, its form would also be discordant with the two storey properties of Wilkin Drive. Consequently, the proposed development would appear inconsistent with the surrounding built form.
8. In addition, the result of subdividing the existing plots in this way would be that Nos 54 and 56 would be on decidedly smaller plots than others in their row. Whilst this factor would not be particularly obvious within the street scene, it would, nonetheless, be apparent from nearby properties, thereby further highlighting the uncharacteristic siting of the proposal.
9. The intrusion of an access through the grass verge would exacerbate the harmful effect of the proposed development on the appearance of the street scene. The site is not a logical infill and its development would significantly erode the positive contribution it makes to the character and appearance of the area.
10. Consequently, I conclude that the proposed development would unacceptably harm the character and appearance of the area. Thus, it would conflict with Policy UR2 of the Colchester Core Strategy 2014 (CS), Policies DP1 and DP12 of the Colchester Development Policies 2014 (DP) and the Council's Backland and Infill Supplementary Planning Document 2010 (SPD), which together and amongst other matters require high quality design that respects and enhances the character of an area and integrates well with existing development.

Trees

11. The proposal would result in the removal of a number of trees from within the site but seeks to retain trees referred to as T2, T3 and T4, within the site frontage. These are silver birch trees which are attractive mature specimens, with over 20 years remaining life expectancy. Due to their height, spread and overall shape, these trees contribute appreciably towards their surroundings. The Council considers that a tree preservation order (TPO) is in place in respect of this group of trees. The existence of the TPO is challenged by the appellant. Whilst I have been provided with a plan of the TPO no specific details accompanied it. I cannot, therefore, be certain of the exact status of the trees in question. It is nevertheless accepted by the appellant that all trees must be taken into account when proposing development.

12. Whether or not a TPO is in place, there is further dispute between the parties regarding the likely impact of the proposal on trees T2-T4, with particular regard to the provision of the proposed access. Whilst access is a reserved matter, plans have been submitted to show how access into the site could be achieved. The tree protection plan prepared by the appellant's arboriculturist indicates that an access route could be provided without encroachment on the root protection area of these trees, thereby ensuring their retention. Whilst I accept this to be the case, the proximity of these trees to the site's access and likely parking and turning area, gives rise to the reasonable likelihood that future occupiers would, for safety and maintenance, seek to cut back or fell these trees. Any loss or work detrimental to the appearance of these trees would further harm the character and appearance of the area. I, therefore, remain concerned about the future of these trees and their important contribution to the character and appearance of the area.
13. I conclude that the proposed development would be likely to have an unacceptable effect on the amenity value of trees T2-T4. As such it would not comply in this regard with CS Policies ENV1 and UR2 and DP Policy DP1 which, amongst other matters, seek to protect biodiversity and landscape setting.
14. As the proposal would not result in loss or deterioration of irreplaceable habitats such as ancient woodland and ancient or veteran trees, I find no conflict with paragraph 175. c) of the National Planning Policy Framework (the Framework).

Living conditions of future occupiers

15. I accept that some overlooking is inevitable in a residential area and that the proposed development would not itself introduce any harmful loss of privacy to neighbouring occupiers. I also accept that the proposal would provide garden areas for the donor properties and the appeal proposal that would exceed the minimum recommended size requirements for such spaces. However, even if the rear garden area of the proposed development was enclosed by 1.8–2.0 metre high fencing, a significant part of it would be heavily overlooked from the first floor windows in the rear elevations of Nos 1 and 11 Wilkin Drive (Nos 1 and 11). This would include views toward the most likely position of the rear, private sitting out area of the proposed dwelling. This relationship would undermine the privacy of this space to the detriment of future occupiers.
16. Although this area of land is already overlooked, it forms part of a larger garden area serving No 56. Under the existing arrangements, although overlooking from Nos 1 and 11 is present, there are areas of that garden which provide private space away from the direct view of those properties. With the appeal scheme the relationship between properties would be different. The existing arrangements are not therefore directly comparable to those proposed with regard to privacy.
17. I recognise that the proposal is in outline form, however, given the restraints of the site it is reasonable to consider that the proposed dwelling would have its external space, including the area with the greatest expectation of privacy, in close proximity to Nos 1 and 11 and would, therefore, be overlooked. This would not be an acceptable arrangement and leads me to conclude that the future occupiers would not be provided with acceptable levels of privacy.

18. Consequently, the proposal would be contrary to DP Policy DP1 and the adopted Essex Design Guide where they seek to avoid unacceptable impacts on amenity and ensure provision of private amenity space.

European sites and local infrastructure

19. The appellant has agreed in principle to making the financial contributions sought by the Council towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy and local community facilities. The Council has confirmed that should arrangements be made, for a legally binding mechanism, in the form of a Unilateral Undertaking (UU), it would consider these reasons for refusal satisfied. However, no completed UU has been received during the appeal process. I acknowledge the frustration of the appellant in not seemingly having been advised by the Council that such arrangements would be required. However, this is a matter to be taken up with the Council and is not within the remit of this appeal. Therefore, reasons four and five of the Council's decision still stand over the lack of a legally binding mechanism to secure these contributions.
20. The means to undertake an assessment of the proposal's effects on the nearest European sites, required under the Conservation of Habitats and Species Regulations 2017 is, therefore, lacking. The proposal is contrary to DP Policy DP21 which does not permit proposals for development that would cause direct or indirect adverse harm to nationally designated sites or other designated sites or protected species without satisfactory prevention, mitigation and compensation measures being provided.
21. The proposal also remains in conflict with CS Policy SD2, DP Policy DP3 and the Council's Supplementary Planning Documents, the Provision of Community Facilities 2013 and the Provision of Open Space, Sport and Recreation 2006 in respect of a failure to mitigate for the demand on local infrastructure.

Other Matters

22. In acknowledging the limited benefits associated with a single dwelling, I do not consider that they outweigh the harm and the policy conflicts I have identified and to which I attribute significant weight. Accordingly, there are no material considerations which indicate that a decision should be made other than in accordance with the development plan.

Conclusion

23. For the reasons given above the appeal is dismissed.

S Tudhope

Inspector