



Appeal Decision

Site visit made on 8 June 2021

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 30th June 2021

Appeal Ref: APP/P1560/W/20/3243900
45 Manor Lane, Dovercourt CO12 4EA

- 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 Ms M Gianoli and Mr N Bevis against the decision of Tendring District Council.
 - The application Ref 19/00249/FUL, acknowledged by the Council on 15 February 2019, was refused by notice dated 26 June 2019.
 - The development proposed is a two storey dwelling with a vehicular and pedestrian access from existing private driveway.
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Preliminary matters

1. The description of development above is that used by the Council. I have considered the appeal on this basis.
2. The address of the property given on the application form is as stated above. The listed building entry is for 'Capital Gardens Nursery, Manor Lane' and at the site visit the property is named 'Capitol Gardens' as well as being numbered 45. I am satisfied that these descriptions all relate to the same property.
3. As of 26 January 2021, 'Section 1' of the emerging Local Plan for Tendring (Tendring District Local Plan 2013-2033 and Beyond Publication Draft)(North Essex Authorities' Shared Strategic Section 1 Plan) has been adopted and forms part of the development plan for Tendring. Comments were invited on this and I have taken it and the comments into account in this decision.

Decision

4. The appeal is allowed and planning permission is granted for a two storey dwelling with a vehicular and pedestrian access from existing private driveway at 45 Manor Lane, Dovercourt CO12 4EA in accordance with the terms of the application, Ref 19/00249/FUL and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1609.5/40B; 1609.5/42; 1609.5/43.
 - 3) Prior to occupation, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of footway and provided with an appropriate dropped kerb crossing of the footway. The drive shall be retained as such.
 - 4) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

- 5) No occupation of the proposed dwelling shall take place until the occupants have been provided with a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.
- 6) No development shall take place until a construction management plan has been submitted to and approved by the local planning authority setting out arrangements for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development; and
 - d) wheel washing facilities.

The development shall be carried out in accordance with the construction management plan.

- 7) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with British Standard BS 5837: *Trees in relation to design, demolition and construction - Recommendations* has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

(In this condition "retained tree" means an existing tree which is shown to be retained in accordance with drawing ref 1609.5/40B or the drawing submitted in connection with condition 10).

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of the dwelling house hereby permitted forward of any wall of the dwelling house which fronts onto a road.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 1995 (or any Order revising, revoking and re-enacting that Order with or without modification), there shall be no enlargement or extension of the dwelling hereby permitted, including any additions or alterations to the roof.
- 10) No development shall commence until a scheme of landscaping for the area between the dwelling house hereby approved and the public highway has been submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 11) Details of soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate, and a programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings

or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 12) The dwelling hereby approved shall not be occupied until space has been laid out within the site in accordance with drawing No. 1609.5/40B for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for the parking and turning of vehicles.
- 13) The whole of the carport shown on the application drawings shall be kept open and available at all times for the parking and turning of motor vehicles and cycles by the occupants of the dwelling and their visitors and for no other purpose.

Main Issues

5. The main issues are:

- The effect on the setting of Capital Gardens, which is a listed building at Grade II; and
- Whether a contribution towards mitigation measures to avoid a significant effect in terms of recreational disturbance on the Stour and Orwell RAMSAR and Special Protection Area (the SPA) is desirable or necessary.

Reasons

The effect on the setting of the listed building

6. The listed building is a modest timber framed and rendered house dating from approximately 1600. It is set back from Manor Lane but is clearly visible along the drive and across the side garden of the neighbouring property 'The Cott'. The west elevation is partly visible across a walled car parking area in Elizabeth Road and the upper parts of the house can be seen from a large area of open allotments to the north east behind Manor Road.
7. The regressive historical maps provided indicate that as the suburban area of Harwich spread, land originally associated with the property has been redeveloped for housing in what is now Elizabeth Road and 19-25 Manor Lane. This obstructs most views of the listed building from the roads around it and substantially removes any perceivable appreciation of the contribution that the surrounding land may once have made to understanding its origins and purpose. More recent development adjacent to the listed building at 'Regency House' has further substantially obscured views of the property. The area is now generally suburban and mixed in character with an interesting hotch-potch of architectural styles including cottages and late Victorian terraced housing. However, late 20th century development in Elizabeth Road is monotonous and unremarkable, with no visual or historical references to the character of the area or the listed building. Moreover, Elizabeth Road is devoid of any street trees or planting, presenting a stark and unrelieved character.
8. The result of this is that the once generous rural setting of the listed building has been subsumed to the extent that its contribution to the heritage significance of Capital Gardens Nursery has been lost. Even the neglected front garden of the property, now the proposed site of the new house subject to appeal, is dominated by the bland and forbidding 2 storey flank wall of flats at Nos. 23/25 Manor Lane.

The site does not appear to the observer as a vestige of the wide agricultural setting the property once enjoyed, but as a front garden in a town.

9. In this context, it is hard to see how further harm to heritage significance would result from development of this site, and indeed several factors indicate that the proposed house would have some benefits. Importantly, the proposed open timber car port with room over would 'soften' the exposed flank wall of the new dwelling and appear sympathetic to the listed building behind. The proposed siting of the new dwelling slightly recessed behind the line of Nos. 23/25 together with the gap between the properties would help to retain a sense of spaciousness in the street scene. The proposed design including timber windows and doors, a chimney and rendered walls would be more in keeping with the listed building than much of the surrounding development. The retention of the larger trees on the site and the opportunity to improve the frontage would enhance its setting, even taking into account the loss of part of the garden and some greenery. The 2 storey element of the proposal would take up less than half of the width of the overall plot and the front elevation of the listed building would remain visible from the road.
10. I conclude that with appropriate conditions to ensure that the proposed dwelling is constructed in accordance with the drawings and is not further extended, it would not further compromise the setting and heritage significance of the listed building and would not conflict with the relevant aims of saved policy EN23 of the Tendring District Local Plan 2007 (LP) and emerging policy PPL 9 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft of 2017 (eLP).

The need for a financial contribution

11. Residents of the development would be likely to regularly visit the nearby coastline including the SPA, which encompasses the estuary within a short distance of the site. Although the number of occupants would be small, I am required to consider the effect of the proposal both individually and in combination with other projects, and I consider that increased residential development is likely to lead to the potential for a significant effect on the SPA to arise.
12. The appeal site lies within the Zone of Influence of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, adopted in 2020, which aims to provide a simple and effective way of protecting and enhancing the internationally important wildlife of the Essex coast and includes a requirement for developers of new residential dwellings to provide a financial contribution towards this end. A signed and dated S106 Unilateral Undertaking has been provided which ensures the provision of a mitigation contribution which would help in accordance with the strategy. This would help to change the behaviour of people living in or visiting the SPA and thus avoid or mitigate potential adverse impacts on the ecological integrity of the SPA in accordance with development plan policy.
13. I consider that the provisions of the UU are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be necessary to make it acceptable. They meet the tests set out in paragraph 56 of the NPPF and Regulation 122 of the CIL Regulations (2010). The requirements of Regulation 123 and PPG have been satisfied. As such I give the UU significant weight and the requirements of saved LP policies EN6 and EN11a and eLP policy PPL 4 would be met.

Other matters

14. The Council does not deny that it is unable to demonstrate a 5 year supply of housing land. Paragraph 11(d) of the National Planning Policy Framework (NPPF) indicates that in this situation, where the most relevant policies are considered out-

of-date, planning permission should be granted, unless policies of the NPPF that protect areas or assets of particular importance (such as designated heritage assets) provide a clear reason for refusing the development proposed. In this case, the site forms part of the curtilage of a listed building. I have found that the proposed dwelling would not conflict with the development plan or national policy in any event.

Conditions

15. Apart from the usual time limitation and drawings conditions, conditions are necessary to ensure that access to the public highway is safe and that vehicles can turn round within the property. To this end, and to preserve the setting of the listed building, a condition is also imposed requiring the carport to be retained for car parking and cycle parking and for no other purpose. Standard Council conditions requiring a minimum of 6 metres behind a parking space and minimum dimensions of 2.9 x 5.5 metres are unnecessary due to the particular circumstances of the site and the specific nature of the proposal set out on the drawings. A requirement for the developer to provide a Travel Pack including travel vouchers would encourage the occupants to use public transport in accordance with local and national policies on sustainable transport.
16. Manor Lane is narrow and a condition requiring details of site storage and other construction related matters is reasonable and necessary. Details of landscaping of the part of the site facing Manor Lane including protection during construction for those trees that are to be retained are necessary. To preserve the remaining openness of the frontage and views of the listed building, a restriction on fences, gates and walls is the subject of another condition. For the avoidance of any doubt as to the extent of the curtilage of the listed building, the construction of extensions is also restricted because it is desirable that no further building occurs beyond that approved within its setting.

Conclusion

17. For all the above reasons, the appeal should be allowed.

Paul Jackson

INSPECTOR