
Appeal Decision

Site visit made on 1 June 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2021

Appeal Ref: APP/D1590/W/20/3255887
85 Western Road, Leigh-on-Sea, SS9 2PT

- 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 Search Flow against the decision of the Southend-on-Sea Borough Council.
 - The application Ref. 20/00655/FUL dated 21 April 2020, was refused by notice dated 4 June 2020.
 - The development proposed is the erection of two storey side extension and part two storey first floor and single storey rear and side extension, to form two additional self-contained flats, layout parking to front, communal amenity space, cycle and refuse stores to rear, alter elevations and form additional vehicular access onto Western Road.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The application form described the proposed development as 'Residential development comprising of 4 no. apartments with communal amenity, parking court, cycle and refuse store'. The council's decision notice amended this description to that which I have adopted in the heading above. This description is more comprehensive than that given on the application and better describes the proposal. This change appears to have been made without input from the Appellant. However, the appellant is obviously aware of the change and used it as the description of the development on the appeal form.

Main Issues

3. The main issue in this case, as given in the refusal reason, is the effect on the character and appearance of the area, particularly with regard to scale, size, design and width, and the degree of set-back from the front elevation. However, it is not disputed that the council is unable to demonstrate a 5-year supply of deliverable housing sites, and the latest Housing Delivery Test (HDT) shows that delivery of housing was substantially below (less than 75%) the housing requirement over the previous 3 years. Therefore there is an issue of the presumption in favour of sustainable development arising from the National Planning Policy Framework (the Framework) paragraph 11 d) ii.

Reasons

The development plan policies and the Framework

4. The starting point is the development plan (DP), since the 'tilted balance' under Framework paragraph 11 d) requires, in the circumstances of this case, identifying the policies of the development plan that come within the scope of "the policies which are most important for determining the application", and what weight should be given to them and other relevant policies of the DP.
5. The DP in Southend-on-Sea consists of the Core Strategy (CS) of 2007 and the Development Management Document (DM) of 2015. The main policies relevant to this case are CS policies KP2, CP4 and CP8 and DM policies DM1 and DM3. In addition, the advice contained within the adopted Design and Townscape Guide (DTG) of 2009 is a material consideration.
6. The CS pre-dates the 2012 Framework, but that does not necessarily mean that its policies are out of date. What is clearly out of date is policy CP8: Dwelling Provision. This policy seeks delivery of 6,500 dwellings between 2001 to 2021 and 20% affordable housing provision. The figure of 6,500 dwellings corresponds to the housing requirement set out in the revoked East of England Plan (2005) and predates the 2012 Framework which requires local authorities to plan for the full, objectively assessed needs, for market and affordable housing, in the housing market area. I have not been supplied with the full text of this policy but, irrespective of the current housing land supply in the borough, this policy is out of date.
7. However, CPS policies KP2 and CP4 are not out of date since, irrespective of pre-dating the Framework, their content is effectively in accord with Framework 2020. Similarly, the texts of DM policies DM1 and DM3, although adopted during relevance of Framework 2012, as far as material here, continue to accord with the current version.
8. In this context, as relevant in this case and in brief, policy KP2, item 10, requires development to respect the character and scale of the existing neighbourhood, and CP4, item 5, requires maintaining and enhancing the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development. Policy DM1 – 'Design Quality' states that all developments should draw reference to the design principles set out in the DTG, and should *"(i) add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting,"*. Policy DM3 'The Efficient and Effective Use of Land', item 3, states that the conversion of existing single dwellings into two or more dwellings will only be permitted where the proposed development: (ii) *"Will not harm the character and appearance of the existing building or wider area"*.
9. The DTG commits to good design, stating that the council is committed to good design and will seek to create attractive, high quality living environments. Beyond these generalities, the DTG states, of relevance in this appeal: *"Many properties in the Borough have the capacity to extend to the side. However, side extensions can easily become overbearing and dominate the original property. In order to avoid this, side extensions should be designed to appear subservient to the parent building. This can generally be achieved by ensuring the extension is set back behind the existing building frontage line and that its design, in particular the roof, is fully integrated with the existing property"*.

10. In my judgement, having dismissed policy CP8 as out-of-date, the other policies I have referred to conform with and put into effect the basic tenets of the Framework, as set out in section 2 'Achieving sustainable development', paragraphs 7 -10; section 11 'Making effective use of land'; and section 12 'Achieving well-designed places'. In addition, of note, is Framework paragraph 12: *"The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making"*.

Features of the appeal proposal in the policy context.

11. The site is part of an existing residential curtilage of a 2-storey semi-detached building. The host building at present contains 2 flats, each of 2 bedrooms, each suitable for occupation by 2 persons. However, it is not 'previously developed land', as suggested by the appellant and as referred to in the officer's report – see the definition in Annex 2: Glossary to the Framework, which excludes land in built-up areas such as residential gardens. The immediate surroundings consist mainly of substantial houses, almost all of 2-stories, in detached, semi-detached and terrace form.
12. The appeal site is located on the northern side of Western Road within a long established residential area. This location is close to local shopping facilities and essential services, bus routes and Leigh-on-Sea railway station. It is a sustainable location. It is unsurprising therefore that the council makes no objection to the principle of development; the issue as revealed in the refusal reason rests on consideration of the design of the proposal and its relationship with the existing building and the character and appearance of the area. In this regard, I find that the 'area' concerned is the immediate vicinity of the site.
13. Since the appeal building is part of a semi-detached pair, the issue in this case revolves around the relationship with its adjoined neighbour, and the extent to which the extended building affects their symmetry and scale. This is important since the pleasing character of the locality relies to a considerable extent on the symmetry of the semi-detached houses.
14. The DTG guidance that I set out in paragraph 9 above is clearly in furtherance of policy DM1 as relevant to the case here, where there is a pair of semi-detached buildings, one of which is proposed be extended very substantially. This was one of the criticisms of a previous scheme for the site (application reference 18/02277/FUL), criticisms which the current proposal seeks to overcome. This revised scheme has succeeded in respect of most of the refusal reasons for the earlier scheme. In particular, and as far as the first issue in this case is concerned, the ridge over the 2-storey side extension has been lowered and the roof form has been changed from a half-hip to a full hip. These changes have certainly reduced the prominence of the side extension.
15. However, the other significant alteration to the 2-storey side extension is the set-back from the front elevation of the existing building. This set-back is only 300mm. Since the host property is some 7.4m wide, and the width of this side extension is some 3.7m wide, the extension is half the width again of the existing. The result is that the extension would be a very dominant feature and does not have the subservience that is necessary to preserve the form and unity of the semi-detached pair. This would detract from the appearance of the pair of semis themselves, but would also detract from the character and appearance of the immediate locality.

16. The proposal meets many of the component parts of the policies I have referred to above. However, it conflicts with:
- policy KP2, item 10, requiring development to respect the character and scale of the existing neighbourhood;
 - policy CP4, item 5, requiring maintaining and enhancing the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development;
 - Policy DM1 – ‘Design Quality’ stating that all developments should draw reference to the design principles set out in the DTG, and should: (i) add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, etc.
 - Policy DM3 – ‘The Efficient and Effective Use of Land’, item 3 stating that the conversion of existing single dwellings into two or more dwellings will only be permitted where the proposed development: (ii) Will not harm the character and appearance of the existing building or wider area.
17. Thus I conclude that the appeal proposal would produce a harmful effect on the character and appearance of the area, with regard to the scale of the 2-story side extension, due to its width, and the minimal set-back from the existing front elevation.

Reaching a planning judgement

18. Under Framework paragraph 11 d), the tilted balance requires “granting permission unless: ii. any adverse impacts of doing so would significantly outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.
19. The housing land supply position in this borough is clearly well below that required, as shown by the HDT, hence the ‘tilted balance’ must be considered. The appeal proposal would provide an additional 2 dwellings, contributing a very small amount to the overall shortfall of approximately 1995 homes in the last 3 year period¹. I do not regard this public benefit as of overriding weight to balance against the policies of the Framework taken as a whole and those of the DP.
20. The council’s decision to refuse permission in this case was not based on a rejection of the principle of developing 2 additional housing units on the site; as the council’s appeal response states, the proposal “would not optimise the potential of the site to provide increased density of accommodation” and it is not beyond possibility that planning permission for additional residential accommodation could be permitted, when judged against the policies that I have recognised as being up-to-date. This is an additional reason for regarding the contribution of the appeal development to the shortfall of homes delivered as not being of overriding weight. I consider that the adverse impact of the proposal in terms of the effect on the character and appearance of the area, particularly in respect of the immediate locality, with regard to size, design and

¹ I have taken this figure from the HDT 2020 measurement published on 19 January 2021, which shows for this borough a total number of homes required in the 3 year period 2017/18 to 2019/20 of 3,102 and a delivery of 1,107, leaving a shortfall for the 3 years of 1,995 homes. These figures post-date the submission of the appeal, but I have given the parties an opportunity to comment and have taken the comments into account.

width, the small degree of set-back from the front elevation proposed, and the resultant dominance of the 2-story side extension, significantly outweighs the benefit of the 2 additional dwelling units, as proposed.

Other matters

21. In the council's appeal statement there is reference to the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) which was adopted on 29th October 2020, subsequent to the decision being issued. The appeal site falls within the Zone of Influence for one or more European designated sites scoped into the RAMS. Any new residential development has the potential to cause disturbance to European designated sites and therefore the development must provide appropriate mitigation. This is necessary to meet the requirements of the Conservation of Habitats and Species Regulations 2017. The RAMS SPD requires that a tariff of £125.58 (index linked) is paid per dwelling unit. This will be transferred to the RAMS accountable body in accordance with the RAMS Partnership Agreement.
22. In this instance the net increase in dwellings would be of two units, and on that basis a payment of 2 x £125.58 (index linked) would be liable no later than on commencement of development, should the appeal be allowed. The appellant confirms that, if planning permission is granted, they are willing to pay the required tariff of 2 x £128.58 to be secured through a direct payment to the council. Since I am now the competent authority, I must ensure that necessary mitigation takes place; had I been satisfied that the appeal should be allowed, I would have provided the opportunity for the payment to be secured. However, in the circumstances of my decision on the basis of the council's refusal reason, this is a point that need not be pursued.
23. I have taken account of all other matters raised, including the appeal decisions (APP/D1590/W/19/3232683 and APP/H1840/A/12/2171339) that have been drawn to my attention, but I have not found these helpful in the circumstances of this case.

Overall conclusion

24. For the reasons I have given in paragraphs 18 to 20, I dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR