

Appeal Decision

Site visit made on 28 July 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2021

Appeal Ref: APP/P1560/W/20/3258337

9 Dumont Avenue, Point Clear, St Osyth CO16 8JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr & Mrs Mockford against Tendring District Council.
 - The application Ref 20/00573/OUT is dated 5 May 2020.
 - The development proposed is demolition of house and erection of nine dwellings.
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Decision

1. The appeal is dismissed and outline planning permission for demolition of house and erection of nine dwellings at 9 Dumont Avenue, Point Clear, St Osyth CO16 8JP in accordance with the terms of the application Ref 20/00573/OUT, dated 5 May 2020, is refused.

Preliminary Matters

2. The application is for outline planning permission with all matters reserved for subsequent consideration. A drawing has been provided which shows the layout, landscaping and access for the proposed dwellings, although I have treated this as indicative only.
3. The Council refers to the Tendring District Local Plan 2013-2033 and Beyond Publication Draft, and indicates that the Section 1 Local Plan was adopted in January 2021, which is after the appeal was made. Policy QL9 from the Tendring District Local Plan 2007, relied on by the Council in this case, has been replaced by Policy SP7 of the Section 1 Local Plan and, therefore, I have had regard to the more recent adopted policy for the purposes of this appeal.
4. Reference is also made to policies from the Section 2 Plan, which is subject to independent examination. The National Planning Policy Framework (the Framework) indicates that weight may be given to relevant policies in emerging plans depending on a number of factors¹. I accept that the Section 2 Plan is at a relatively advanced stage in its preparation, but it is not fully clear whether there are unresolved objections to the relevant policies and, if so, how significant these are. For this reason, I find that only limited weight can be

¹ Paragraph 48.

given to the emerging policies for the purposes of this appeal. Consequently, I have relied on the policies referred to from the adopted development plan.

5. A revised version of the Framework was issued in July 2021. The parties were given the opportunity to comment on any implications with regard to the current appeal and I have had regard to the comments made.
6. An application for costs was made by Mr & Mrs Mockford against Tendring District Council. This application is the subject of a separate decision.

Main Issues

7. The Council indicates that had it determined the application permission would have been refused. The first reason is that the introduction of residential properties in this location will demonstrably urbanise the immediate character of the area and set a harmful precedent for similar forms of future development, the cumulative impacts of which will result in significant harm to the open countryside landscape.
8. The second reason concerns the effects of the proposal on local open space requirements and the effect on protected European sites. Financial contributions are required to mitigate the effects of the proposal with regard to both matters. The appellants submitted a unilateral undertaking as part of the appeal process to address these requirements. I am unaware, however, that the Council has specified the requisite contribution in either case and, therefore, it is necessary to consider the adequacy of the undertaking.
9. Accordingly, the main issues are the effect of the proposal on the character and appearance of the appeal site and surrounding area; and whether the proposal makes adequate provision towards open space and the mitigation of likely significant effects on protected European sites.

Reasons

Character and Appearance

10. No 9 is a large detached property, set in an extensive plot with a formal garden area to the rear and open grassland behind this, which is also part of its curtilage and the site of the proposed dwellings. The surrounding area is predominantly residential with a mix of property types and sizes. The proposal involves the demolition of No 9 to create an access road from Dumont Avenue to the group of dwellings.
11. Policy EN1 of the Tendring District Local Plan 2007 concerns landscape character. It says that development control will seek in particular to conserve a number of natural and man-made features which contribute to local distinctiveness, including the settings and character of settlements. Policy SP7 of the Section 1 Local Plan concerns place-shaping principles, including the requirement that development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. The Council also refers to Policy EN3 from the 2007 Local Plan, which concerns the Coastal Protection Belt, which the site is within. The policy says that new development which does not have a compelling functional need to be located in the Coastal Protection Belt, as defined on the Proposals Map, will not be permitted.

12. Dumont Avenue and surrounding roads comprise dwellings laid out on largely consistent building lines with dwellings facing the road and relatively generous plots with large rear gardens. No 9 reflects this general pattern of development. To the south and east is open countryside and, consequently, the rear gardens of properties along this part of Dumont Avenue and to the west of the appeal site form a transition to the open countryside beyond. This is the case with regard to the appeal site, the main part of which lies outside the defined settlement boundary and forms part of informal open land beyond the more formal garden to the rear of No 9. As such, it also contributes to the landscape setting of the settlement.
13. The position of the dwellings well behind the established building line along Dumont Avenue would be uncharacteristic of the planned layout of this part of the settlement. While all matters are reserved, the size and shape of the appeal site gives a good indication of the likely layout of the dwellings as shown on the indicative drawing. This indicates that the position and likely orientation of the dwellings would be contrary to the clearly established linear pattern of development along street frontages. In particular, the dwellings would be grouped on much smaller plots than those that are characteristic of the surrounding settlement. Moreover, the boundaries surrounding the site are likely to appear contrived in the otherwise open setting and in contrast to the established form of development.
14. As there appears to be no public access or footpaths on open land to the south, the dwellings would not be readily visible from the countryside here. However, the demolition of No 9 would create a substantive gap in the street frontage between the neighbouring dwellings. Consequently, the group of dwellings and access road would be prominent from the public realm and neighbouring dwellings, from which views their incongruous and uncharacteristic location and likely layout would be readily apparent. Furthermore, it would be apparent that the dwellings would harmfully undermine the sense of openness to the rear of established properties as well as encroaching close to the landscape setting of the settlement.
15. The appeal site is located within the Coastal Protection Belt where restrictions to development are applied by Policy EN3 as described above. However, the site is directly adjacent to the settlement boundary and edge of the Protection Belt designation and there is established development along Dumont Avenue further south of the appeal site and so closer to the coast. As such, I find there would be no material harm arising from the proposal with regard to the purposes underpinning Policy EN3. Nonetheless, for the reasons given above, I conclude that the proposed development would have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area. Therefore, it is contrary to Policy EN1 of the Tendring District Local Plan 2007 and to Policy SP7 of the Section 1 Local Plan, as described above.

Whether Adequate Provision is made towards Open Space and Mitigation Measures

16. The appellants have provided an undertaking to address the Council's concerns with regard to both matters that require financial contributions. However, due to my conclusion on the first main issue this is sufficient basis for the appeal to fail. Consequently, it is not necessary to consider the undertaking in any

further detail. In reaching this view, I acknowledge the appellants' contention questioning the basis for the open space contribution.

Other Matters

17. I have had regard to the representations made by the parish council. These do not, however, raise any additional matters in relation to the main issues that would lead me to reach a different overall conclusion. I acknowledge that no objections were made by local residents. However, this is not sufficient reason to overcome the harm and conflict with the development plan that has been found in this case.
18. I note the appellants' assertion that the Council failed to consider properly the merits of the proposal and that this is reflected by a number of errors in the appeal submissions and reference to another appeal decision that is not of direct relevance. This is not a basis, however, to overcome the harm found with regard to the first main issue and, in any case, these matters are more properly considered as part of the appellants' separate costs application.
19. The Framework requires that plans and decisions should apply a presumption in favour of sustainable development². At the time the appeal was made the Council accepted that it could not demonstrate a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, as required by the Framework³. Consequently, the view taken was that the appeal proposal should be considered in the context of paragraph 11d) of the Framework.
20. As a result of the recent adoption of the Section 1 Local Plan, the Council now indicates that its overall housing requirement is reduced to the extent that a minimum of five years' worth of housing can be demonstrated. While I note the appellants' contention that the supply has reduced over recent months, there is no dispute that the supply is still more than the requisite five years' worth. Consequently, the presumption is not engaged as a result of housing under-supply in accordance with footnote 8 to paragraph 11.
21. In the circumstances of this appeal where there are relevant development plan policies, paragraph 11 of the Framework requires an assessment of whether the policies which are most important for determining the application are out-of-date. The most important policies are included in the Tendring Local Plan 2007 and Section 1 Local Plan, which pre-date the current Framework. However, the Framework is clear that existing policies should not be considered out-of-date simply because they were adopted prior to the Framework's publication. Due weight should be given to them according to their degree of consistency with the Framework⁴.
22. The appellants contend that Policy EN3 in applying a blanket restriction to development in the designated area is not consistent with more recent policy in the Framework. However, while I found no harm with regard to Policy EN3 in this case, there is no clear evidence provided or other basis to conclude that in seeking to protect coastal locations from inappropriate development that the

² Paragraph 11.

³ Paragraph 74.

⁴ Paragraph 219.

policy is inconsistent with the Framework and so out-of-date. I note that there are objections to the policy as it is carried forward into the emerging Part 2 Local Plan; and the appellants' reference to a recent appeal decision at Great Oakley where the Inspector found no harm arising from development within the area covered by Policy EN3. However, I am unaware of the details relating to the emerging plan and the previous appeal. The other policies relied upon in this case, EN1 and SP7, reflect, respectively, the Framework's requirement for policies to conserve and enhance the natural environment, and its advocacy of good design and so are consistent with it and not out-of-date. Consequently, the presumption in favour of sustainable development is not engaged.

23. The Framework's requirement to provide a five year housing supply is a minimum requirement and should not be viewed as a ceiling, and in this respect the proposal would provide a net benefit of eight additional homes. I acknowledge also that these would be accessible to local services and facilities, and that the properties would be provided as part of a self-build or custom build project, which type of housing the Framework promotes.
24. The appellants draw attention to a recent appeal decision where the Inspector found that proposals for self-build housing weighed in favour of the scheme⁵, although the presumption in favour of sustainable development applied in that case, unlike in this appeal. However, for the avoidance of doubt, even were the presumption to be engaged in this case, I have found that the proposal would result in unacceptable harm to the character and appearance of the appeal site and surrounding area. As such, as well as it being contrary to the development plan, the proposal is contrary to the Framework, which requires that development should be sympathetic to local character in contributing to well-designed places⁶. I give significant weight to the conflict with the Framework's objectives and requirements in this regard.
25. The benefits set out by the appellants are not of sufficient weight, either individually or as a whole, to overcome the extent of the conflict with the Framework's objective to promote good design that respects local character. Therefore, I conclude that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits.

Conclusion

26. I have found that the proposed development would have a materially harmful effect on the character and appearance of the appeal site and surrounding area. As such, the proposal is contrary to the development plan and to the Framework. The presumption in favour of sustainable development does not apply and there are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed and outline planning permission refused.

J Bell-Williamson

INSPECTOR

⁵ APP/P1560/W/20/3246370 dated 7 August 2020.

⁶ Paragraph 130(c).