

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: 13 September 2021

Appeal Ref: APP/P1560/W/20/3259775

172 Point Clear Road, St Osyth, Essex CO16 8JB

- 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 Miss L Pitman against the decision of Tendring District Council.
 - The application Ref 20/00152/FUL, dated 18 March 2020, was refused by notice dated 28 April 2020.
 - The development proposed is 'subdivision of site to form separate building plot, erection of detached bungalow and formation of parking spaces'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council refers to policies from 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. However, this contains strategic policies and not those referred to in this case, which are 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 any of the policies and, if so, how significant these are. For this reason, I find that only limited weight can be given to these emerging policies for the purposes of this appeal. Consequently, I have relied on the policies referred to from the adopted development plan.
3. I note that the appellant submitted a unilateral undertaking at application stage to address the required mitigation by the Council of the effect of the proposal on protected European sites.
4. 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.

¹ Paragraph 48.

Main Issues

5. The Council's third reason for refusal concerns the failure to provide an ecology survey with the application. This has now been addressed as such a survey was provided with the appeal submissions and, therefore, the Council indicates that it no longer wishes to defend this reason for refusal.
6. Accordingly, the main issues are the effect of the proposal on the character and appearance of the surrounding area; and whether there would be adequate vehicular access and parking, and related to this the effect on highway safety.

Reasons

Character and Appearance

7. The appeal site is the rearmost part of the back garden of No 172, a detached bungalow in a residential road of mixed property types. Access to the site would be provided by a private track that runs between Nos 172 and 174 from Point Clear Road and which serves a number of properties within an area known as Dairy Farm Meadow to the rear of dwellings with frontages on the main road. A detached bungalow was approved in 2017 in the garden of No 172, immediately south of the appeal site². While this dwelling had not been built at the time of the inspection, neither party indicates that the permission is no longer extant.
8. Policy QL9 of the Tendring District Local Plan 2007 (the Local Plan) requires development to protect and enhance local character, including that development should relate well to its site and surroundings. Policy EN1 of the Local Plan concerns landscape character. It says that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted.
9. The Council's principal concern is the effect of the proposed dwelling on the local landscape character of land to the north. There are no visible examples of development in the rear gardens of properties close to the appeal site in a similar position to the appeal proposal. However, No 174 and neighbouring dwellings to the west are positioned substantively deeper on their plots than No 172, while there is development well beyond the established building line fronting Point Clear Road, in the form of properties at Dairy Farm Meadow. Moreover, the paddocks adjoining No 172's rear garden boundary provide a buffer between the residential gardens and open land beyond this leading to St Osyth Creek to the north; and this open land is screened by a tree belt.
10. Taking these matters as a whole, the introduction of a single storey dwelling within the established residential curtilage of No 172 would have little direct effect on the character and appearance of the open land to the north. Consequently, for these reasons, I conclude that the proposed development would not have a harmful effect on the character and appearance of the surrounding area. Therefore, it is not contrary to Policies QL9 and EN1 of the Local Plan, as described above, or to the Framework.

² Ref 17/00608/FUL.

Vehicular Access, Parking and Highway Safety

11. The Council states that the approved bungalow directly to the rear of No 172 is served by an existing access associated with No 172, which has been in use by occupants of the host dwelling. The proposed dwelling would, however, require a new access. The existing track is a single vehicle's width and it is not possible, therefore, for two vehicles to pass each other or to provide a pedestrian footway. However, the track appears to be used by the properties to the rear at Dairy Farm Meadow. Therefore, as the access track is already in use the main question is whether its use in association with the proposed dwelling would increase traffic movements to a point where highway safety would be compromised to an unacceptable level.
12. The Highway Authority indicates that the proposal would intensify the use of an existing access and private track which have deficiencies in geometric layout, visibility and construction, which is not in accordance with current safety standards. The submitted drawings show that the proposed dwelling would have two parking spaces and one visitor space, despite the reference to two parking spaces on the application form. While the dwelling would be small it would have the capacity to make a material difference to the use of the private track in terms of numbers of journeys by occupiers, visitors and for deliveries. I agree in this regard with the Highway Authority's assessment that the intensification of use in this location has the potential for vehicles having to reverse out onto the main road or back down the track should opposing vehicles meet. In either case, such movements are likely to result in conflict between vehicles and other vehicles and pedestrians, raising significant concerns for highway safety.
13. I note that the Highway Authority takes the view that there would be sufficient space within the site to enable vehicles to turn and approach the highway in forward gear. This view is based on amended drawing PPCR-201A. However, my understanding is that the Council's decision was made on the basis of drawing PPCR-201B, which is the drawing provided with the appeal submissions. The Council's view differs from that of the Highway Authority as it considers that there would be insufficient space to turn within the site.
14. The submitted drawing does not apparently show the boundary between the approved and proposed dwellings and, therefore, the extent of the available space. Consequently, with the three parking spaces shown on the drawing and the possibility of a shed being provided, it is far from clear that when one or more parking spaces are occupied there would be sufficient space for a vehicle to manoeuvre into a position to enable it to leave the site in forward gear. This would result in vehicles having to leave the site in reverse gear onto the track or to enter the site in reverse gear, neither of which would be conducive to safety given the potential for conflict with other users of the track. I acknowledge the appellant's contention that the parking spaces would be of the requisite size and that there would be space to manoeuvre, particularly as some conifer trees could be removed to facilitate this. However, the submitted drawing is not sufficiently clear to conclude with certainty on this matter and, therefore, it must weigh against the proposal.
15. The appellant draws attention to a number of other developments permitted within the surrounding area, including a number which require access from the

main road to dwellings set behind properties on the road frontage, as here. However, I am unaware of the details of these cases, including whether the Highway Authority expressed concerns about access and highway safety as in this case or the levels of use of the access tracks involved. Moreover, I have considered the appeal proposal on its individual merits and have found that it would result in material harm. As such, the existence of these other developments is not sufficient basis to overcome that harm.

16. The appellant also makes a direct comparison with the approved dwelling also in the rear garden of No 172, particularly as no concerns were raised with regard to access, parking and highway safety. However, the proposal represents a material increase in the amount of development and traffic that would be using the track compared to the approved dwelling and in this instance the Highway Authority has raised substantive concerns. As such, there are differences between the circumstances pertaining between the two schemes and, therefore, the approved dwelling cannot be taken as a direct precedent for the current proposal.
17. Therefore, taking these findings as a whole, I conclude that the proposal would not provide adequate vehicular access and parking arrangements and so would have an unacceptably harmful effect on highway safety. Consequently, it is contrary to Policy QL10 of the Local Plan, which states that all new development should meet functional requirements, including that access to the site is practicable. It is also contrary to the Framework, which requires that safe and suitable access to the site can be achieved for all users³.

Other Matters

18. I have had regard to the representations made by interested parties. These do not, however, raise any additional matters in relation to the main issues that would lead me to reach a different overall conclusion.
19. The Framework requires that plans and decisions should apply a presumption in favour of sustainable development⁴. 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 Framework⁵. 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 appellant's 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. The Framework is clear that existing policies should not be considered out-of-date simply because they were adopted prior to the current Framework's

³ Paragraph 110.

⁴ Paragraph 11.

⁵ Paragraph 74.

publication, as is the case here. Due weight should be given to them according to their degree of consistency with the Framework⁶. I am unaware that the appellant provides any evidence to suggest that the relevant policies are out-of-date and I find that there is no inconsistency with the Framework. Consequently, the presumption in favour of sustainable development is not engaged.

22. 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 an additional home. I acknowledge also that it would be accessible to local services and facilities, and would provide some short-term local economic benefit from its construction as well as supporting local services.
23. The appellant draws attention to a recent appeal decision where the Inspector found in favour of the residential scheme⁷, 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 not provide adequate vehicular access and parking arrangements and so would have an unacceptably harmful effect on highway safety. As such, as well as it being contrary to the development plan, the proposal is contrary to the Framework, as found above. I give significant weight to the conflict with the Framework in this regard.
24. The benefits set out by the appellant are not of sufficient weight, either individually or as a whole, to overcome the extent of the conflict with the Framework's requirement that development should achieve safe and suitable access to the site for all users. Therefore, I conclude that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits.

Conclusion

25. I have found in the appellant's favour with regard to the first main issue, concerning the effect of the proposal on character and appearance. However, this is not sufficient to outweigh the fact that the proposal is contrary to the development plan and the Framework as it would not provide adequate vehicular access and parking arrangements and so would have an unacceptably harmful effect on highway safety. 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.

J Bell-Williamson
INSPECTOR

⁶ Paragraph 219.

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