
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/20/3259073

63 Wittonwood Road, Frinton On Sea, Essex CO13 9JZ

- 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 Mr & Mrs Ilsley against the decision of Tendring District Council.
 - The application Ref 19/01370/FUL, dated 10 September 2019, was refused by notice dated 19 March 2020.
 - The development proposed is 'subdivision of site to form separate building plot and associated work including new vehicular access to 63 Wittonwood Road'.
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Decision

1. The appeal is allowed and planning permission is granted for subdivision of site to form separate building plot and associated work including new vehicular access to 63 Wittonwood Road at 63 Wittonwood Road, Frinton On Sea, Essex CO13 9JZ. The permission is granted in accordance with the terms of the application Ref 19/01370/FUL, dated 10 September 2019, subject to the conditions included in the Schedule at Annexe A.

Preliminary Matters

2. Despite the description of development above, the proposal includes a three bedroom dwelling on the appeal site.
3. 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.

¹ Paragraph 48.

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.

Main Issues

5. The Council's third reason for refusal concerns the effects of the proposal on a protected European site and consequently a financial contribution is required to mitigate the likely effects. The appellants submitted a unilateral undertaking as part of the appeal process to address this requirement. However, it is necessary to consider the basis for and adequacy of the undertaking.
6. Accordingly, the main issues are:
 - the effect of the proposal on the character and appearance of the appeal site and the street scene;
 - whether adequate private amenity space would be provided for the new dwelling; and
 - whether the proposal makes adequate provision towards the mitigation of likely significant effects on a protected European site.

Reasons

Character and Appearance

7. No 63 Wittonwood Road is a two story end-of-terrace dwelling in a predominantly residential area, which includes a mix of property types. No 63 is located on a corner plot next to the junction of Wittonwood Road with School Road and consequently its garden has a side boundary running along School Road. The proposed dwelling would be sited within the rear part of the garden, on the site of an existing one and half storey building, which is ancillary to the use of No 63.
8. Policies QL9, QL10 and QL11 of the Tendring District Local Plan 2007 (the Local Plan) seek to ensure that all new development makes a positive contribution to the quality of the local environment and character by ensuring that proposals are well-designed, relate satisfactorily to their setting and are of a suitable scale, mass and form.
9. The proposed dwelling and its driveway would be partly sited on the footprint of the existing building, which is not insignificant in terms of its scale and prominence in the street scene. The small dwelling would be larger but would not appear cramped or otherwise incongruous in the residential setting, particularly as its siting and orientation would respect the established layout of dwellings along School Road. The design of the building, while simple, is not dissimilar in terms of the pitched roof with gable ends to the two neighbouring properties on School Road.
10. The dwelling and driveway would result in the loss of part of the rear garden and some vegetation. This would be most apparent along the School Road frontage where a new driveway for the dwelling together with parallel parking spaces to serve No 63 would create openings in the existing verdant boundary. However, such openings are characteristic along the street and surrounding streets and the gaps created would represent only a partial loss of the green boundary that wraps around the garden area of No 63. Indeed, the most

prominent part of garden boundary is to the front of No 63 and directly next to the road junction, which would be retained. Moreover, the remaining frontage of the appeal site and garden for the new dwelling could be enhanced with additional planting as suggested by the Council through a landscaping condition.

11. Therefore, taking these findings as a whole, I conclude that the proposed development would not result in material harm to the character and appearance of the appeal site and the street scene. Therefore, it is not contrary to Policies QL9, QL10 and QL11 of the Local Plan, as described above.

Provision of Private Amenity Space

12. Policy HG9 of the Local Plan sets out private amenity space standards for new residential development, which in this case for a three bedroom dwelling should be a minimum of 100 square metres. The provision for the new dwelling is 98 square metres with 102 square metres remaining available to No 63. This very limited shortfall should not count against the proposal and I note that the Council's principal concern is the configuration of the space, with some to the front and side and, therefore, whether it would be private.
13. The supporting text to Policy HG9 acknowledges that side gardens can contribute to private amenity space where of appropriate depth and adequately screened. It appears that the position of the side and front garden areas for the new dwelling could be adequately screened to maintain an appropriate level of privacy. Moreover, there are examples in the surrounding area of established and recently permitted dwellings where the main garden area is to the side rather than rear. Therefore, there would be no material harm arising from the proposed dwelling in this regard and I conclude as such. Consequently, there is no conflict with the provisions of Policy HG9 of the Local Plan, as described.

Effect on a Protected European site

14. The site is within the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS) zone of influence. The Essex Coast RAMS sets out the detailed mitigation measures that are to be delivered from the RAMS tariff related to the likely effects of residential development on a number of protected European sites. The relevant regulations require that if likely significant effects on a protected site cannot be excluded, then the competent authority must undertake an appropriate assessment of the implications for that site².
15. The Council undertook an appropriate assessment using the Natural England standard approach. The proposal is assessed as having likely effects on the Hamford Water Ramsar and Special Protection Area (SPA) resulting from increased recreational disturbance, in combination with other schemes. Consequently, a tariff contribution for the single dwelling is required to mitigate the effects.
16. In these circumstances, I have relied on the appropriate assessment already undertaken by the Council and agree that a contribution is necessary to mitigate the likely effects in accordance with the Essex Coast RAMS. Therefore,

² The Conservation of Habitats and Species Regulations 2017, Regulation 63.

the contribution meets the requisite statutory tests as set out in the Framework³.

17. The appellants have provided an undertaking to address the required contribution, which includes the appropriate amount related to a single dwelling and which provides means of securing this contribution related to the development proposed. As such, I conclude that the proposal makes adequate provision towards the mitigation of likely significant effects on a protected European site. Therefore, there is no conflict with Policy EN6 concerning the effects of development on biodiversity or Policy EN11a concerning protection of international sites, both of the Local Plan.

Other Matters

18. The Framework says that plans and decisions should apply a presumption in favour of sustainable development⁴. However, given the above findings in the appellants' favour it is not necessary to consider this matter further.

Conclusion and Conditions

19. I have found in the appellants' favour with regard to all three main issues and, therefore, for the reasons given, the appeal should succeed.
20. Of the Council's suggested conditions I have imposed the standard time condition and, to ensure the proper implementation of development in accordance with the submitted details, one requiring development to be carried out in accordance with the approved plans.
21. The conditions suggested by the Highway Authority concerning implementation of access and parking arrangements, including surfacing and discharge of water, are necessary in the interests of highway safety. I agree also that landscaping should be controlled by condition in the interests of the character and appearance of the area.
22. Due to the amount and configuration of the amenity space for the new dwelling, I agree that development within its curtilage should be carefully controlled. I have had full regard to policy in the Framework, which says in this regard that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so⁵. In this case, for the reason given, such justification does exist. I disagree, however, that a condition similarly restricting permitted development rights related to walls and fences is necessary. The Highway Authority does not suggest this in the interests of highway safety and the supporting reason apparently incorrectly refers to the location being in the setting of heritage assets.
23. Finally, I agree that a condition requiring a construction method statement is necessary to ensure the proper implementation of the proposal and to protect neighbouring residents' amenity. In accordance with the Council's suggested approach a statement would need to be submitted and approved before

³ Paragraph 57.

⁴ Paragraph 11.

⁵ Paragraph 54.

development starts and so a pre-commencement condition is involved and the appellants' agreement to it was sought⁶.

24. The appellants have suggested an alternative approach that would include the relevant details in the condition, without needing these to be submitted and approved. The Framework says that conditions that are required to be discharged before development commences should be avoided, unless there is clear justification⁷ and so, in principle, the appellants' suggested approach is preferable. The relevant details required by the Council are addressed in the suggested approach and follow well-established precedent (such as construction working hours) and overall are reasonable and proportionate with regard to the permitted development, which involves a single dwelling. Accordingly, for these reasons, I have imposed the suggested alternative details as the final condition.

J Bell-Williamson

INSPECTOR

Annexe A

Schedule – conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan and IWW-02.
- 3) All new driveways and parking areas shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling.
- 4) Prior to occupation of the dwelling a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the new vehicular access for 63 Wittonwood Road. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.
- 5) No unbound material shall be used in the surface treatment of the new or existing vehicular access or driveway.
- 6) Prior to occupation of the new dwelling the new vehicular access for 63 Wittonwood Road shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 4.5 metres (5 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.

⁶ In accordance with The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018.

⁷ Paragraph 56.

- 7) There shall be no discharge of surface water onto the Highway.
- 8) Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.
- 9) Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.
- 10) No above ground works shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works for the site, which shall include all boundary treatments and any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 - Trees in Relation to Design, Demolition and Construction."
- 11) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.
- 12) Notwithstanding the provisions of Classes A, B, C, D and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), the dwelling hereby permitted shall not be extended or ancillary buildings or structures erected within its curtilage without the prior written approval of the Local Planning Authority following the submission of a planning application.
- 13) The following Construction Method Statement shall be implemented and adhered to throughout the full demolition and construction period for the development hereby permitted:
 - (i) Demolition or construction works shall take place only between 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 Saturdays. Deliveries will be accepted within these working hour periods except for Public/Bank Holidays. No works of any kind shall take place on Sundays or any Public/Bank Holidays. No vehicle connected with the works shall arrive on site before 07:30 or leave after 19:00 (except in the case of emergency).
 - (ii) All loading and unloading of material will take place on the site whenever possible so as not to obstruct traffic.
 - (iii) On-site parking will be available for contractors at all times.
 - (iv) The perimeters of the site will be fenced off with Heras fencing. The fence to the front boundary will be fitted with gates which will be secured when the site is vacated. Appropriate safety notices will be displayed. A secure

compound for the storage of materials will be formed on the site and will be used for such storage.

- (v) Wheel washing facilities will be made available on site and all vehicles will be checked and washed down as necessary before leaving the site to minimise any site debris being transferred onto the Highway. Regular inspection of the adjacent road will be carried out to ensure that no debris is inadvertently spread on to the Highway. Edges of roads and footpaths will be cleaned using hand broom with controlled damping.
- (vi) The contractors will seek to monitor and control the effects of dust on site during the construction process and to consider the proximity of dust sensitive properties in the vicinity of the works. A water supply will be made available for damping down and fine materials such as sand and cementitious products will be stored under cover or in sealed containers. Covers will be put on to skips that contain dusty material before leaving site. No materials produced as a result of the site development or clearance shall be burned on site.
- (vii) Noise Control - The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:2014. Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement). Prior to the commencement of any piling works a rationale and details of the techniques to be employed for the piling method shall be chosen, which aim to minimise noise and vibration to nearby residents.
- (viii) All site operatives and sub-contractors shall be made aware of their requirement to assist in the implementation of these requirements and to work to the following best practice measures: General guide to the prevention of pollution; Works in, near or liable to affect watercourses; and Working at demolition and construction sites (Environment Agency).

[End of Schedule]