



Appeal Decision

Site Visit made on 21 September 2021

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2021

Appeal Ref: APP/P1560/W/20/3260815

Former Putting Green, Garden Road, Jaywick CO15 2RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs Rendell against the decision of Tendring District Council.
 - The application Ref 19/01657/OUT, registered on 1 November 2019, was refused by notice dated 8 April 2020.
 - The development proposed is described as the "erection of 9 dwellings".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council state that the application was submitted in outline form with all matters reserved for future consideration. However, the application form and the appellant's written statement indicate that matters relating to layout are for determination. Consequently, matters relating to appearance, landscaping, access and scale are reserved for future consideration.
3. Since the submission of the appellant's appeal the Revised National Planning Policy Framework (the Framework) was published and came into force on 20 July 2021. In light of this I have sought the views of the main parties in writing and I have taken any subsequent responses into account in reaching my decision.
4. The Council refer to the Tendring District Local Plan 2013-2033 and Beyond Publication Draft, and confirm that Section 1 was adopted in January 2021, which is after the appeal was made. Policy QL9 from the Tendring District Local Plan 2007 (LP), relied on by the Council in making its decision in this case, has been replaced by Policy SP7 of the Section 1 Local Plan (S1LP) and, therefore, I have had regard to the more recent adopted policy for the purposes of this appeal.
5. Reference is also made in the decision notice to Policy SPL3, HP4, PP14 and PPL4 from the Section 2 Plan, which is subject to independent examination. Paragraph 48 of the Framework indicates that weight may be given to relevant policies in emerging plans depending on a number of factors. 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 given to these emerging policies for the purposes of this appeal.

Main Issues

6. The main issues in this appeal are the effect of the proposal on the,
- character and appearance of the area,
 - provision of open space,
 - living conditions of occupiers on Garden Road and Golf Green Road with particular regard to privacy, overshadowing, and light, and
 - European protected sites.

Reasons

Character and Appearance

7. The appeal site forms a roughly rectangular parcel of land that is covered in unmanaged grass and other vegetation. The site lies within the defined settlement for Jaywick and thus, residential development at the site is accepted in principle. The development proposes to erect nine detached dwellings on the site with the submitted layout indicating a row of properties that would front onto Garden Road.
8. The area is predominantly residential in character with the vast majority of dwellings on Garden Road and Golf Green Road comprising bungalows, some of which have accommodation provided within the roof space. However, it is clear that two storey dwellings do exist in the area, along with flatted development such as that on the corner of Garden Road and Broadway.
9. Although the scale of the development is a reserved matter, the appellant has confirmed that it is the intention to erect two storey dwellings on the site, with garaging at ground floor and living accommodation at first floor level. The proposed layout identifies that the development would be arranged in a linear manner, which would be in keeping with that which currently exists in the area. However, the visual effect of two storey dwellings on the site would be jarring, demonstrating little visual connection with the built form that surrounds the site and quite out of scale and keeping with the vast majority of bungalows that characterise the area. Moreover, even accounting for the presence of other two storey dwellings that exist in the area, it would result in a development that would dominate the street scene, failing to reinforce local distinctiveness.
10. Furthermore, although I acknowledge that there are two storey dwellings in the vicinity of the appeal site, these form part of the overall mixture of properties that constitute the built environment and do not have the same dominance on the street scene as the proposed development undoubtedly would. Moreover, from my visit I found there to be a clear transition between the areas that make up Garden Road and Golf Green Road to that which exists to the south towards the sea front, where the appellant has highlighted such areas as Broadway, Tamarisk Way and Brooklands where larger three and four storey developments have taken place. I found that the areas to the south display a greater diversity of retail and commercial properties along with larger dwellings and flatted development in comparison to the appeal site and its surroundings.
11. Thus, the development would result in harm to the character and appearance of the area. It would be in conflict with Policy QL11 of the LP, Policy SP7 of the

S1LP and paragraph 130 of the Framework which seek, amongst other things, to ensure that developments protect or enhance local character.

Open Space

12. The Council confirm that the appeal site is allocated as Recreational Open Space within the LP. The appellant argues that the site is within private ownership and has never functioned as open space, for informal purposes or otherwise. Moreover, the Council has considered this matter previously when it determined a similar planning application at the site and reported that as the site is privately owned, there is no ability to ensure that it is retained as public open space.
13. Neither party has provided a definition of what is considered open space. However, Annex 2 of the Framework defines an open space as one that has a public value, offers important opportunities for sport and recreation and can act as a visual amenity.
14. It is evident that the appeal site is within an area identified in the development plan as an open space. It is therefore provided with a level of protection by Policy COM7 of the LP, which actively seeks to ensure that developments that prejudice the use or the loss of recreational open spaces is resisted. This includes informal open space. As such, the appeal site falls within the definition of protected open space within the development plan and for the purposes of Policy COM7, land that is subject to a local designation, regardless of it being in private ownership where public access could be restricted. Moreover, as the site has a public value and acts as a visual amenity, it would also fall within the definition of open space as set out within the Framework.
15. Consequently, it has not been demonstrated that the open space is surplus to requirements or that its loss would be replaced by an equivalent or better provision in terms of quantity and quality in a suitable location or that the development is for an alternative provision, the benefits of which outweigh the loss of the current or former use. Thus, the development would result in the loss of open space. It would be in conflict with Policy COM7 of the LP and paragraph 99 of the Framework which seek, amongst other things, to protect the loss of areas of open space.

Living Conditions

16. The proposed dwellings would front onto Garden Road with private garden areas to the rear, backing onto properties that exist on Golf Green Road. The Council cite properties on both Garden Road and Golf Green Road as ones that would be affected by the development through loss of privacy, light, and overshadowing. However, I am not persuaded that the proposal would harm the living conditions of occupiers on Garden Road as this type of arrangement, whereby properties face one another across a public highway, is quite commonplace. The proposed layout also indicates a distance of some 16m between the rear of the proposed dwellings and those on Golf Green Road which I find to be a sufficient distance to ensure that overshadowing or loss of light does not occur.
17. With regard to loss of privacy, properties on Golf Green Road benefit from small rear garden areas that are separated from the appeal site by a narrow access path. It is evident that some of the dwellings on Golf Green Road have

gardens of limited depth, resulting in the dwellings positioned close to its rear boundary. Therefore, although the appellant states that there are design solutions that could overcome potential overlooking, the introduction of two storey dwellings to the rear of single storey properties at such a close proximity would nonetheless introduce a strong perception of being overlooked, which, to my mind, can be as harmful as actual overlooking.

18. Thus, the development would result in harm to the living conditions of occupiers of properties on Golf Green Road. It would be in conflict with Policies QLP6 and QL11 of the LP and paragraph 130 of the Framework which seek, amongst other things, to ensure that developments do not have a materially damaging impact on the privacy of occupiers of nearby properties.

European Designated Sites

19. The development falls within the Zone of Influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS). To ensure the requirements of the Conservation of Habitats and Species Regulations 2017 are met, the Council requires the collection of payments from relevant developments towards the mitigation measures set out in the RAMS.
20. As the appeal is being dismissed on other substantive issues, it is not necessary to look at this matter in detail. Moreover, had I been minded to allow the appeal, I would have explored the necessity for undertaking an Appropriate Assessment and whether any payment provided by the appellant would off-set the impact of the development on European Designated Sites.

Other Matters

21. I acknowledge that the appeal site is within an area that is identified for regeneration through Policy QL6 of the LP. However, this is provided that the development reinforces or enhances the character and appearance of the area, which I have found not to be the case. I also acknowledge that the Head of Planning Services recommended approval for a previous scheme¹ at the site for the erection of 10 dwellings. However, it is evident from the planning balance of the committee report that if the relevant committee felt that the appearance of the development outweighed the potential benefits, then a refusal was a legitimate course of action.
22. The appellant also refers to a development of two storey dwellings that have been granted planning permission at 118 and 120 Golf Green Road. However, the development at 120 Golf Green Road accommodated two dwellings that would be sited behind one another, with only one readily visible from the public domain. The development at 118 also sought the erection of a single dwelling. Thus, the impact of these developments on the character and appearance of the area would be quite different to a development of nine dwellings as proposed. In any event, I have considered this appeal on its own merits which is a fundamental principle that underpins the planning system.
23. I note that representations were made by a local resident, raising additional concerns. However, given my findings on the main issues, it is not necessary to consider these matters in detail.

¹ Application 15/01745/OUT

Planning Balance and Conclusion

24. The Council confirm that it cannot currently demonstrate a five year supply of deliverable housing sites. In such circumstances, paragraph 11 d) ii of the Framework requires planning permission to be granted unless *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*
25. The proposal would boost housing supply in the District and there would be economic benefits resulting from the construction of the new dwellings. The occupants of the dwellings are also likely to assist the local economy through additional spending in the area. There may also be social benefits from the provision of nine dwellings which is in a location that is close to amenities and services. I also acknowledge that as a small windfall site, it could be developed out relatively quickly. Combined, given that the development is for nine dwellings, I would attach moderate weight to these benefits.
26. However, good design and its impact on living conditions are key aspects of sustainable development as recognised by the Framework. Accordingly, given my findings outlined above concerning the resultant harm to the character and appearance of the area and the implications of this for the living conditions of adjoining occupiers of the development, and the loss of open space, the proposal would fail to meet the environmental dimension of the Framework.
27. Consequently, the harm I have found is serious and, in my view, that significantly and demonstrably outweighs the benefits of the scheme when assessed against the policies in the Framework taken as a whole. As such the presumption in favour of sustainable development as envisaged by the Framework does not apply in this case. There are no other material considerations that indicate a decision other than in accordance with the development plan.
28. Therefore, the appeal is dismissed.

Graham Wyatt

INSPECTOR