



Appeal Decision

Site visit made on 15 October 2021

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2021

Appeal Ref: APP/P1560/W/21/3269982

Land adjacent Little Thatch, Mill Lane, Thorpe-Le-Soken, Clacton-on-Sea CO16 0ED

- 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 and Mrs C Cramphorn against the decision of Tendring District Council.
 - The application Ref 19/01157/FUL, dated 31 July 2019, was refused by notice dated 27 August 2020.
 - The development proposed is 'One dwelling'.
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Decision

1. The appeal is allowed and planning permission is granted for one dwelling at Land adjacent Little Thatch, Mill Lane, Thorpe-Le-Soken, Clacton-on-Sea CO16 0ED in accordance with the terms of the application, Ref 19/01157/FUL, dated 31 July 2020, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. I have taken the date of the application from the application form.
3. The latest iteration of the National Planning Policy Framework (the Framework) was published on 20 July 2021, after the application was determined.
4. Section 1 of the Local Plan for Tendring (LPT S1), adopted on 26 January 2021, shortly after the planning application subject to this appeal was determined. A different housing target applies following the adoption of LPT S1. The Council now maintains that it can demonstrate a five-year supply of deliverable housing land with appropriate buffer, and the 'tilted balance' no longer applies¹.

Application for Costs

5. An application for costs was made by Mr and Mrs Cramphorn against Tendring District Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues are:
 - (i) The effect of the proposal on the living conditions of the occupiers of neighbouring dwellings, with particular regard to outlook and light; and,

¹ Paragraph 11 (c) National Planning Policy Framework.

- (ii) Whether the proposal makes adequate provision for foul drainage.

Reasons

Living conditions

7. The appeal site lies between two detached two storey houses known as 'Little Thatch' (to the south) and 'Mill Lodge' (to the north). The proposed dwelling would occupy almost the full width of the plot such that the flank walls would be in close proximity to the boundaries with those houses. The building line is irregular; Mill Lodge is sited forward within its plot and Little Thatch is set-back. As such, the proposed dwelling would variably align with the flank walls of Little Thatch and Mill Lodge.
8. The proposed dwelling would not directly align with the flank wall of Little Thatch and the outlook from the bedroom window situated within that flank wall would not be unduly affected. For similar reasons, the alignment of the proposed dwelling would not significantly affect the levels of light reaching the bedroom window, nor Little Thatch as a whole. Future occupiers of the proposed dwelling may erect a boundary fence in close proximity to the bedroom window, which may affect the levels of light reaching that room; however, whether or not a boundary fence is to be erected would not be reliant on a planning permission for the new dwelling. Furthermore, the nature of the room is that it is unlikely to be occupied for substantial portions of the day.
9. The proposal includes a ground floor window in the southern flank wall, facing Little Thatch. This window would serve a utility space and as such, a condition requiring the window to be obscure glazed and non-opening would effectively prevent any overlooking.
10. The flank wall of Mill Lodge is also in close proximity to the boundary and has an existing triple window, which serves a kitchen and looks out to onto the vacant appeal site. The proposed building would present a two-storey wall which would be readily visible from the kitchen window. However, the kitchen is open plan and dual aspect; it benefits from a patio door to the adjacent wall. As such, the windows and door serving that space afford a high-quality outlook across the rear garden of the property. Therefore, whilst the outlook from the kitchen window would be affected, the proposal would not result in material harm to the living conditions of the occupiers of Mill Lodge in respect of outlook.
11. The kitchen window in the flank wall of Mill Lodge is south facing. Given the close proximity and height of the flank wall to the proposed dwelling, it is likely that the proposal would reduce the level of light to the kitchen. However, the space would nonetheless receive adequate light by virtue of its dual aspect. Moreover, due to the function and layout of the room, it is unlikely that the occupiers would spend substantial portions of the day in the space adjacent to the flank window in question. Any reduction in the level of light to the kitchen would, therefore, not amount to material harm to the living conditions of the occupiers of Mill Lodge.
12. Whilst the Essex Design Guide suggests that built form should not intervene in a 45-degree angle taken from the centre of the window, this is for the purposes of guidance only. My assessment is based upon the evidence before me,

including the proposed siting of the dwelling and the nature of the internal spaces likely to be affected.

13. This appeal proposal is a resubmission of an almost identical proposal, which was dismissed at appeal² due to technical issues with a unilateral undertaking³. The effect of the proposal on the living conditions of neighbouring properties Little Thatch and Mill Lodge was a main issue for that appeal. The Inspector for that appeal concluded that the proposed development would not cause material harm to the living conditions of neighbouring occupiers, with particular regard to outlook and light. I concur with that Inspector's conclusion, as is reflected in my reasoning above.
14. For these reasons, the proposal would accord with saved policy QL11 of the Tendring District Local Plan (LP), adopted 2007 and policy SP7 of the LPT S1, as well as the National Planning Policy Framework (the Framework). The proposal would also accord with emerging policy SPL3 of the Local Plan for Tendring (LPT S2). Whilst little information is before me in respect of the level of outstanding objection to specific emerging policies, the LPT S2 is at an advanced stage of preparation and emerging policy SPL3 is consistent with the Framework; I therefore afford it significant weight. These policies seek, amongst other things, development which has a high standard of amenity for future and existing occupiers, and which does not materially harm the amenity of neighbouring occupiers.

Foul Drainage

15. Saved policy COM31a of the LP requires that satisfactory provision must be made for the proper disposal of sewage waste and effluent from new development to avoid the risk of environmental, amenity or public health problems. It states that occupation of development will not be permitted until such adequate provision is operational. The policy states that private sewage provision, such as septic tanks, will not be permitted if there is an existing public foul sewerage system. It further states that private facilities will only be permitted where ground conditions are satisfactory, the plot is sufficiently sized and all of the statutory or relevant guidance can be met.
16. The requirement of Saved policy COM31a to ensure that satisfactory provision for sewage waste insofar as its aim to prevent environmental, amenity and public health impacts is consistent with the environmental and social roles of sustainable development within the Framework. In this sense, the imposition of a condition relating to foul drainage would be necessary to make the development in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development⁴.
17. However, the policy's requirement to impose conditions which seek compliance with other regulatory requirements is not consistent with the Framework would be unnecessary, given the applicability of other regimes. I therefore afford this policy moderate weight.
18. As a public sewer system is not available for connection, a private sewerage arrangement would be necessary. This is consistent with the advice in the National Planning Practice Guidance (NPPG) which invites plan-making to

² APP/P1560/W/18/3213632

³ These technical issues have been resolved in the unilateral undertaking submitted in support of this appeal.

⁴ Paragraph 56 National Planning Policy Framework.

consider the circumstances where wastewater from new development would not be expected to drain to a public sewer⁵.

19. Whilst it is acknowledged that the Council has concerns regarding a lack of information about the proposed private sewage arrangement, the circumstances do not bear this out. The Appellants have submitted some details of a private sewage arrangement as part of the application. Given that the appeal site is abutted on both sides by dwellings, and that new dwellings were under construction a short distance away from the appeal site along Mill Lane at the time of my visit, there is no evidence to suggest that it would not be feasible to adequately drain the proposed development (which is the limit of the planning consideration).
20. A condition requiring the submission of details of a private drainage system to ensure sufficient provision is made (but which does not require demonstration of compliance with another regulatory regime as part of that condition) would adequately address the practical requirements of the proposed dwelling and would accord with the Framework consistent requirements of saved policy COM31A. Indeed, I have imposed a standard condition to this effect.

Other Considerations

21. A considerable number of third-party representations were made in respect of the appeal. These representations included serious allegations as to improper behaviour of persons who are not directly involved in the appeal, on matters which are not material considerations for the appeal.
22. Concerns were raised in respect of construction traffic suitability along Mill Lane. Although narrow, Mill Lane is unrestricted and the proximity of other construction work to the appeal site suggests that construction access is practicable. Moreover, a Construction Method Statement would avoid adverse impacts on highway safety and living conditions.
23. Third parties consider the appeal site provides a 'wildlife link'. The appeal proposal is supported by an Ecology Report which makes sets out mitigation and enhancement measures.
24. Representations were made concerning the integration of the design of the scheme with the local vernacular and grain of development. Mill Lane features a variety of building types, sizes, plot sizes and shapes, irregular spacing, irregular building lines and architectural designs. The proposed dwelling would not appear incongruous with the mixed surrounding character.
25. Traffic generation was raised as a concern. The level of additional traffic generated by the proposed dwelling would not result in any significant impact on the wider road network. Further, I have imposed conditions relating to the site access.

Conditions

26. The Council has requested a total of 16 conditions; several of these conditions overlap; as such, I have consolidated some conditions.
27. I have imposed the standard time limit and approved plans conditions, in the interests to ensure the development is carried out in a timely manner and as

⁵ Paragraph: 007 Reference ID: 34-007-20140306.

- proposed. To ensure that the new dwelling provides adequate living conditions and does not have an adverse effect on highway safety, I have also imposed conditions which require the cycle parking, bound vehicular access and visibility splay to the nearby public right of way to be in place prior to first occupation of the dwelling, and thereafter retained.
28. The Council requested a condition requiring that the developer make good any damage to Mill Lane which may occur as a result of the construction works. This condition would not be necessary to make the development acceptable and it would affect land outside of the Appellant's control. Moreover, it would be imprecise in its terms, and would be unenforceable as it would be impractical to demonstrate that 'damage' to the public Mill Lane had arisen due to the construction at the appeal site. Access to Mill Lane is unrestricted, the lane is imperfect at present and there are other construction works taking place close by. However, given the narrowness of Mill Lane and the proximity of dwellings to the appeal site, I have imposed a Construction Method Statement condition to ensure that the scheme does not have an adverse effect on highway safety and living conditions.
29. As permission is required to temporarily or permanently divert or close a public right of way under a separate statutory regime, I do not consider it necessary to impose a condition requiring access to the public footpath No.11 (Thorpe Le Soken) to remain uninterrupted.
30. I have imposed a condition requiring the submission of hard and soft landscaping details and implementation in accordance with those details, to ensure a high quality of design which integrates well with the character and appearance of the surrounding area. To avoid repetition, I have not imposed a separate condition relating to boundary treatments.
31. The Council has requested a condition to require the retention of the hedge situated on the boundary with Little Thatch. A requirement to retain a high and poorly maintained hedge would not be fairly and reasonably related to the development proposed, as its retention is not necessary to make the development acceptable in planning terms; either in respect of living conditions of neighbouring occupiers or local character. The hedge does not make a particularly positive contribution to local character and, in any case, any trees within the boundary are protected by way of the Conservation Area designation.
32. The Council has requested a condition requiring that vegetation is removed by hand stripping only, in the interests of protecting wildlife. I note that the appeal is supported by an Ecology Statement, which sets out mitigation and enhancement measures. I have imposed a condition requiring the development is carried out in accordance with that Statement.
33. For the reasons set out above, I have imposed conditions relating to foul drainage and flank windows. All 'prior to commencement' conditions are imposed with the Appellant's agreement.

Conclusions

34. For the reasons set out above, the proposal would not have an unacceptable adverse impact on the living conditions of neighbouring occupiers, and imposition of a planning condition would ensure adequate provision is made for

foul drainage. The proposal accords with the development plan and Framework and the appeal is accordingly allowed.

Kim Langford Tejrar

INSPECTOR

Schedule of Conditions

- 1.** The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2.** The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Site Plan, Planning Drawing Rev E dated 01/2017 CML-01 and the Planning and Heritage Statement dated October 2017.
- 3.** The dwelling shall not be occupied until a bound surface means of access for vehicles, pedestrians and cyclists shall have been constructed to a width of 4.8 metres in accordance with the approved plans. The access shall be retained thereafter.
- 4.** The dwelling shall not be occupied until a visibility splay of 2.4 metres x 11 metres from the access in both directions onto the public right of way has been provided. These splays must not form part of the vehicular surface of the access. These visibility splays shall thereafter be retained and no structure or shrubs, trees or other vegetation shall be placed or allowed to grow within the sightlines referred to above.
- 5.** The dwelling shall not be occupied until secure, covered and convenient space has been laid out within the site for the parking of cycles and powered two-wheelers in accordance with the EPOA Parking Standards. The space shall thereafter be kept available for the parking of cycles and powered two-wheelers.
- 6.** No development shall take place, including any works of site clearance, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - The parking of vehicles of site operatives and visitors,
 - Loading and unloading of plant and materials,
 - Storage of plant and materials used in constructing the development,
 - The erection and maintenance of security hoardings, including decorate displays and facilities for public viewing, where appropriate,
 - Wheel washing facilities,
 - Measures to control the emission of dust and dirt during construction,
 - A scheme for the recycling/ disposal of waste resulting from demolition and construction works,
 - Delivery, site clearance and construction working hours,

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 7.** Prior to the commencement of any above ground works, a scheme of hard and soft landscaping works for the site shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include details of boundary treatments and any proposed changes in ground levels, and shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 8.** All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwelling, or completion of the development, whichever is sooner; and any trees or plants which within a period of 5 years from the completion of the development die, or are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9.** All mitigation and enhancement measures and/or works shall be carried out in accordance with the approved details contained in the Great Crested Newt Survey Report (Liz Lord Ecology, dated May 2020).
- 10.** Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), the windows on the south-western flank elevation of the dwelling shown on Drawing No. CML 01 Revision E shall be non-opening and glazed in obscure glass, and shall thereafter be permanently retained as such.
- 11.** Development shall not commence until details of the drainage works for wastewater and foul drainage have been submitted to and approved in writing by the local planning authority. These works shall subsequently be carried out in accordance with the approved details.