



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: 8th November 2021

Appeal Ref: APP/P1560/W/21/3268132

17 Standley Road, Walton On The Naze, Essex CO14 8PT

- 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 Laurence Sandum against the decision of Tendring District Council.
 - The application Ref 20/01273/FUL, dated 14 September 2020, was refused by notice dated 15 December 2020.
 - The development proposed is described as the “demolition of existing dwelling house for the development of 9 No. apartments and associated parking and landscape works”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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.
3. The Council refers to the Tendring District Local Plan 2013-2033 and Beyond Publication Draft, and indicates that the Section 1 was adopted in January 2021, which is after the appeal was made. Policies QL9 and QL10 from the Tendring District Local Plan 2007 (LP), relied on by the Council in making its decision in this case, have been replaced by Policy SP7 of the Section 1 Local Plan (S1LP) and, therefore, I have had regard to the more recent adopted policy for the purposes of this appeal.
4. Reference is also made in the decision notice to Policies PPL1, PPL4, SPL3 and HP5 from the Section 2 Plan, which are 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

5. The main issues in this appeal are the effect of the development on:
 - flood risk,
 - the character and appearance of the area,

- the living conditions of future occupiers with particular regard to access to the car park and entrance to the building and the living conditions of adjoining occupiers with particular regard to privacy and light,
- whether there is a requirement to provide financial contributions towards play equipment,
- whether the development provides adequate size parking spaces, and
- the effect of the development on European designated sites.

Reasons

Flood Risk

6. The appeal site lies within Flood Zone 3a of the Environment Agency (EA) flood maps, which is classified as having a 'high probability' of river or sea flooding as defined within the section on Flood Risk and Coastal Change of the national Planning Practice Guidance (PPG). Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Paragraph 161 expects the application of a sequential approach to the location of development so as to avoid, where possible, flood risk to people and property.
7. Annex 3 to the Framework identifies dwelling houses as a 'more vulnerable' form of development in relation to flood risk. Although there would be no living accommodation at ground floor level, this is nevertheless the main access route to and from the dwellings and flooding in this area would in all likelihood increase access and egress difficulties both for pedestrians and vehicles.
8. Consequently, a sequential test needs to be applied to the appeal scheme which, as stressed by paragraph 162 of the Framework, seeks to steer new development to areas with the lowest risk of flooding from any source. In accordance with the PPG, proposals should therefore not be permitted if there are reasonably available sites appropriate for the development in areas with a lower probability of flooding.
9. The application was supported by an FRA¹ and a Sequential Test² (ST). The ST stated that four qualifying criteria were applied to sites identified within the Council's SHLAA³. In essence, all sites identified in the SHLAA were excluded either because they were too large, too small, did not have capacity or were within Flood Zone 3. Consequently, the ST concluded that there were no other preferable sites for housing.
10. An ST should seek to identify sites that are reasonably available at lower risk from flooding, and the PPG advises that it should be a pragmatic approach. However, I find the criteria set within the ST to create a very rigorous selection process as any ST must respond to the specific issues of the district and its development needs and not the developers' private interests, be it in ownership of the land or an ambition to deliver a precise number of dwellings. Moreover, flood risk should not be offset against housing need without very careful assessment of the risks and benefits. The Framework itself sets out specific policies of restriction, flood risk being one. As such, although I have not been

¹ Flood Risk Assessment, Ambient Environmental Assessment, Ref: 5628 Authorised 22/09/2020

² Sequential Assessment, Ambient Environmental Assessment, Ref: 5629 Authorised 22/07/2020

³ Strategic Housing Land Availability Assessment 2019 (SHLAA)

provided with full details of sites within the SHLAA, I consider that the possibility of building out part of a larger site, or combining two or more smaller sites may have been considered, and this may include windfall sites that have not been identified through the SHLAA process. Similarly, land that is allocated or has permission, but is not being brought forward could also be considered as a sequentially preferable option.

11. Consequently, while I accept that the Council are likely to need to seek additional land for housing, in light of my findings above there is insufficient evidence to show that all options to meet the development's needs have been fully assessed in the ST. Consequently, the proposal has not properly addressed the sequential test and so conflicts with paragraphs 159, 161 and 162 of the Framework and Policy QL3 of the LP, which itself references the sequential test requirements in this regard. In light of this, there is no need for me to consider the Exception Test for this site and indeed the wider sustainability benefits to the community through the provision of nine apartments at the site.

Character and Appearance

12. The appeal site is roughly triangular in shape and contains a detached, two storey dwelling that is within walking distance of the sea front and town centre where one can access a range of services and facilities. The site sits between an existing block of flats known as Kings Reach and a primary school. A small area of grassed land lies between the primary school and the appeal site which includes a public footpath to the public swimming pool and its car park which is located to the rear of the appeal site. The proposal seeks to demolish the existing property and replace it with a four storey block of flats containing nine apartments, with parking areas provided at ground floor level.
13. Although the area is mixed with commercial, retail and educational properties in the vicinity of the appeal site, it nonetheless retains a residential character containing a variety of style and size of property, which includes flatted development such as that at Kings Reach. The area has a pleasant suburban quality that is reinforced by the relatively open nature of development that is largely set back from the road with space about buildings in the form of front and rear gardens and parking areas. Although the existing building is sited close to a block of flats, it nonetheless contributes towards the overall open townscape of the area.
14. The development itself proposes a flat roof design which is also found on the property known as 'Homelea' on the corner of Standley Road and Princes Esplanade. However, although this type of development is not particularly prevalent in the area, a single style of architecture does not dominate the area either. Therefore, the staggering of the eastern elevation along with the addition of rendered banding at each floor level and balconies add interest to the building. Furthermore, there is a diverse range of building types in the vicinity that are constructed of varying materials such as bricks of differing colours and render. Moreover, the block of flats adjacent to the appeal site is constructed over three storeys with a pitched roof. Consequently, I am not persuaded that a four storey development, constructed of grey bricks and incorporating a flat roof design, would be necessarily harmful to the character of the area.

15. Nevertheless, the proposal represents a very large mass of building within the appeal site, especially when viewed from the western elevation. The rear and side elevations would be positioned very close to its respective north and eastern boundaries, leaving very little room for meaningful landscaping, save for narrow strips on the site boundaries along with small areas at the entrance and to the north of the car park. This would result in a somewhat stark development that fails to add to local distinctiveness.
16. Moreover, from its south, west and northern elevation the development would be dominated by its access, car parking and other paved areas throughout the site, relying more on the spaces within Kings Reach and the existing green space to the west, than that within the appeal site to increase its sense of openness. Although the Council state that the size of the proposed amenity space as acceptable to serve the occupants of nine apartments, it would nonetheless be very small in relation to the total site area and the proposed built development. This would give the proposal a cramped and discordant appearance which would be at odds with the characteristically more generous overall plots to buildings in this area, which includes the block of flats adjacent to the appeal site.
17. I acknowledge that the existing hardstanding within the appeal site detracts from views into and through the site. I also accept that the existing dwelling on the site has no historic or architectural merit. Nonetheless, the condition of the existing dwelling and the site it is set within is not in itself a reason to find in favour of a development that is otherwise harmful.
18. Thus, the development would result in harm to the established character and appearance of the area. It is in conflict with Policy HG14 of the LP and Policy SP7 of the S1LP and paragraph 130 of the Framework which seek to ensure that developments respond positively to local character and context.

Living Conditions – Future and Adjoining Occupiers

19. The development proposes parking areas at ground floor level which the Council argues is disconnected from the entrance to the building, requiring residents to cut across landscaped areas or leave the site entirely to access the entrance off Standley Road. However, it is evident that there is an opportunity to remove part of the landscaping adjacent to the entrance to provide access, so that occupiers need not leave the appeal site.
20. The existing dwelling on the site is sited to the side of Kings Reach with its rear elevation aligning with the block of flats. The proposed development would be positioned further into the rear of the site, extending past the rear elevation of Kings Reach and an amenity area that provides a grassed space as well as an area to hang out clothes to dry.
21. The proposed apartment block would be sited to the west of Kings Reach and would also be of a similar height. Consequently, the proposal is likely to reduce the amount of light to the amenity area to the rear of Kings Reach, occurring mainly in the late afternoon and early evening. However, this grassed area nearest to the appeal site is not the only amenity area that the block of flats benefits from, with an additional grassed area further east. Therefore, given the limited occurrence of potential overshadowing and the availability of other grassed areas within the site, I find the harm in this regard to be limited.

22. The development also proposes balconies and windows serving main living rooms within the apartment block that will face over the amenity areas to the rear of Kings Reach. However, although the proposal would increase overlooking to these areas, one has to accept that they are not private in the first instance as they are overlooked by windows within Kings Reach and are adjacent to a large car park that also serves the building.
23. Therefore, I am not persuaded that the development would fail to provide a high standard of amenity and functionality for existing occupiers of Kings Reach and future occupiers of the proposed development. It would not be in conflict with Policy HG14 of the LP, Policy SL7 of the S1LP and paragraph 130 of the Framework which seek, amongst other things, to ensure that developments safeguard the amenity of adjoining residents.

Public Open Space

24. Policy COM6 of the LP requires residential developments below 1.5ha to provide a financial contribution for the provision of new or improved off-site open space facilities. The appellant questions whether the requested contribution would be compliant with Regulation 122 of the Community Infrastructure Levy Regulations (CIL) 2010 (as amended) given the site's location close to areas of public open space, the beach and playgrounds.
25. The Council has undertaken an open space audit⁴, a summary of play area and sport pitch needs⁵, and provided an SPD⁶ (the SPD) for the provision of recreational open space for new development. The SPD defines catchment areas within the District and places the appeal site within Catchment Area 3 – Central East, which includes, amongst other areas, Walton, Frinton and Kirby. The Council state although there is adequate open space across the area, there is currently a deficit of 14.12ha of equipped play in Frinton, Walton and Kirby which justifies a financial contribution which would be directed to provide additional facilities at the Bath House Meadow play area to the rear of the site.
26. Regulation 122 of CIL requires that if planning obligations contained within a legal agreement secured under section 106 of the Town and Country Planning Act 1990 are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.
27. Consequently, in the absence of evidence to the contrary, I find that the documents detailed above satisfactorily demonstrate that there is a genuine need for additional funding for equipped play areas within Catchment Area 3. Thus, the obligation to provide such funding towards recreational play areas would be required to make the development acceptable and therefore meets the tests as set out in Regulation 122 of CIL.
28. Although the appellant has expressed a willingness to provide the necessary contribution, the PPG advises that, to provide sufficient certainty, planning obligations should be finalised prior to planning permission being granted⁷. The PPG also confirms that a condition requiring a planning obligation to be entered

⁴ Tendring District Council Formal Open Space Audit March 2008

⁵ Tendring District Council Summary of Play Area and Sports Pitch Need by Town and Parish Area February 2011

⁶ Tendring District Council Supplementary Planning Document (SPD) For Policy COM6 of the Tendring District Local Plan 2007 – Provision of Recreational Open Space for New Development May 2008

⁷ Planning Practice Guidance Ref 21a-010-20190723

into is appropriate only in exceptional circumstances⁸. There is no substantive evidence before me demonstrating that such exceptional circumstances exists for this development.

29. Thus, the development would fail to provide an adequate level of funding towards equipped play areas within the District. It would be in conflict with Policy COM6 of the LP which seek, amongst other things, to ensure that adequate open space facilities to meet the needs of future occupiers of the development are met.

Parking Spaces

30. The Essex County Council Parking Standards 2009 (ECCPS) sets out the requirements for residential developments and requires a total of 17 parking spaces for the nine apartments. As the development proposes only 11 spaces, the Council argue that the development would fail to provide an adequate level of parking for future occupiers.
31. The appellant has provided a drawing⁹ which indicates that all of the car parking spaces to be provided within the site would not meet the standard space of 5.5m x 2.9m as detailed within the ECCPS. However, each space would exceed the minimum 5.0m x 2.5m space requirements as detailed within the ECCPS. Additionally, there would be a space of some 6m to allow vehicles to manoeuvre out of spaces. Nevertheless, the Council argue that the minimum sized spaces should only be used in exceptional circumstances, none of which have been demonstrated. Moreover, the restricted spaces would impede manoeuvring into the access and turning to leave and join the highway.
32. I acknowledge that the development would not provide sufficient parking and that each space would not meet the standard space size required by the ECCPS. However, one has to consider the location of the appeal site in relation to services, amenities and public transport. The site is very close to the town centre, being less than a five minute walk from the High Street where one can access a wide range of shops and services. Moreover, there are bus stops on the esplanade that are very close to the appeal site and Walton-on-the Naze train station is also within walking distance.
33. Consequently, it is apparent that there are genuine opportunities to maximise sustainable transport options and in this particular case, a reduction in parking would be justified. In addition, the spaces provided will meet the minimum requirement as set out within the ECCPS and the Council has not provided any substantive evidence that vehicles would not be able to manoeuvre out of the site in a safe way or that, notwithstanding the primary school close to the appeal site, the area is particularly susceptible to parking stress.
34. Therefore, in this instance I am satisfied that the level of parking and the size of spaces provided would be satisfactory for the proposal. Although there would be a technical breach of the ECCPS, the development would nonetheless be in accordance with Policy SP7 of the S1LP and paragraph 130 of the Framework which seek, amongst other things, to ensure that developments function well and add to the overall quality of an area and include parking facilities that are well integrated as part of the overall design and prioritises the needs of pedestrians, cyclists and public transport above the use of the private car.

⁸ Planning Practice Guidance Ref 21a-010-20190723

⁹ Drawing No. 20-011-00CP Feb 2021

European Designated Sites

35. The appeal site lies within the buffer zone of several European protected sites. The appellant does not dispute the need to make a contribution towards measures which will mitigate the adverse impact that residential development may have upon these designations. It is proposed to deal with this by means of a negatively worded condition. Had I been minded to allow the appeal I would have needed to consider whether a condition would comply with the exceptional circumstances test set out within the PPG. However, since I am dismissing the appeal for other reasons this is not a matter which needs to be addressed in my decision.

Other Matters

36. The planning application was the subject of pre-application advice, which was generally supportive of the development. However, this does not lead me to reach a different finding on the pertinent matters before me.
37. The site lies within the Walton Seafront and Town Centre Urban Regeneration Area. Policy QL6 of the LP supports the development that would reinforce or enhance the function, character and appearance of the area and contributes towards the regeneration of the renewal of the area. In this instance, I have found that the development would not enhance the area. Moreover, I have not been presented with any compelling evidence to demonstrate that the location of the appeal site within an area of regeneration, removes the need for it to comply with the requirements of the Framework in seeking to direct developments to areas that are at a lower risk of flooding.
38. I note the contents of the appeal decision¹⁰ which states that the Covid-19 pandemic is likely to have implications for the house building industry. The Council also accepts that it is presently unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 11 d) of the Framework, as directed by Footnote 8, advises that the policies which are most important for determining the application are considered out-of-date, and planning permission should be granted.
39. However, the presumption in favour of sustainable development does not apply where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. As detailed in Footnote 7 to the Framework, such areas or assets of particular importance include areas at risk of flooding or coastal change. The proposal would be located in an area at risk of flooding, and the policies of the Framework in that regard provide a clear reason for refusing the proposal. The tilted balance set out in paragraph 11 of the Framework is therefore not engaged in this instance.

Conclusion

40. Thus, I conclude that there are no material considerations of such weight as to indicate that a decision be taken other than in accordance with the development plan. Therefore, the appeal is dismissed.

Graham Wyatt **INSPECTOR**

¹⁰ APP/X0360/W/19/3238048