



Appeal Decision

Site visit made on 31 January 2022

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 03 February 2022

Appeal Ref: APP/X1545/W/21/3276152

Land adjacent to 7 Granger Avenue, Maldon, Essex CM9 6AL

- 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 V Millen against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/00162, dated 16 February 2021, was refused by notice dated 13 April 2021.
 - The development proposed is the erection of a pair of semi-detached dwellings.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a pair of semi-detached dwellings on land adjacent to 7 Granger Avenue, Maldon, Essex CM9 6AL, in accordance with the application, Ref FUL/MAL/21/00162, dated 16 February 2021, subject to the conditions in the attached schedule.

Preliminary matter

2. One of the Council's reasons for its refusal of planning permission related to the need for mitigation in respect of the proposed development's potential impact on nearby sites of international importance for nature conservation. Subsequently a contribution has been made by the appellant towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, supported by a legal undertaking entered into by the owners of the land. In the light of this secured mitigation, the Council has now confirmed that it no longer wishes to pursue this refusal reason. In the circumstances, I am satisfied that the development would have no likely significant effect on any protected site.

Main issues

3. The remaining main issues in the appeal concern the proposed development's effects, firstly on the area's character and appearance, and secondly on living conditions at neighbouring properties, with regard to privacy or other impacts.

Reasons for decision

Character and appearance

4. Granger Avenue and Orchard Road form part of a post-war estate of mainly semi-detached, medium density housing. The extended block comprising Nos 78, 80 and 82 Orchard Road forms a terrace of three dwellings on the corner with Granger Avenue. The appeal site is made up of the rearmost sections of the original rear gardens of each of these three properties, lying alongside the side boundary of No 7 Granger Avenue.

5. The two proposed new dwellings would sit centrally within the site thus created, fronting onto Granger Avenue. The dwellings would form a symmetrical pair, under a single pitched roof with hipped ends. Their size and design would be broadly consistent with the predominant style of the surrounding area. To the front and at one side, two parking spaces would be provided for each plot, separated by an area for planting and landscaping. Both dwellings would have private gardens to the rear, with plot 2 also having a further area of private amenity space to the side.
6. The proposed dwellings would sit between No 7 Granger Avenue and the rear of Nos 78-82 Orchard Road, and would be set back slightly behind the building line formed by these existing properties. The development would therefore not be unduly prominent in the street scene. The new dwellings would be set at an angle to No 7, but they would be perpendicular to the Orchard Road dwellings, and they would also be roughly parallel to Nos 14-20 Granger Avenue, on the opposite side, following the curve of the road. The rear gardens of Nos 78-82 would be shortened compared to their original length. But nevertheless, in terms of building-to-building distances, the new dwellings would be around 10m from No 7, and more than 12m from Nos 78-82. This spacing would be enough to avoid any impression of being cramped. In none of these respects would the proposed development appear contrived. Rather, to mind, the scheme would complement the rhythm and grain of the existing development pattern.
7. The Council also finds cause for objection in the slight 'dog-leg' in each of the site's side boundaries. However, as far as I am aware, there is no policy or other requirement for site boundaries to run in straight lines. In the present proposal, far from being offset as the Council suggest, the rear gardens would lie directly in line with the rear elevation of each of the new dwellings; they would also be of regular shape and adequate size. The small deviation that would occur midway along the boundaries would be set well back from the road, and would thus be scarcely noticeable. In any event, in the case of the western boundary, the dog-leg is an existing feature of the boundary between the appeal site and No 7 Granger Avenue, and that boundary is not proposed to change. I can see no grounds on which this aspect of the scheme could be considered visually harmful.
8. In the most recent previous appeal decision on the site¹, in February 2018, the inspector found the development then proposed to be cramped and excessively prominent. However, that scheme was based on a smaller site area, and involved a building set closer to both the road and the eastern boundary. The present scheme improves on that earlier one in both these respects, and in my view overcomes these previous concerns.
9. For the reasons explained above, I conclude that the development now proposed would cause no harm to the area's character and appearance. In these respects, it would represent a design-led solution, optimising the use of the land, while respecting the local context and setting, as required by Policies H4 and D1 of the Maldon District Local Plan, adopted in July 2017.

¹ APP/X1545/W/17/3180915

Living conditions

10. The nearest upper floor windows in the new dwelling on proposed plot 2 would be only 2.8m from the boundary with the retained rear garden of No 78 Orchard Road. However, that new dwelling would be offset from the boundary in question, and any overlooking would thus be oblique. In addition, upper floor windows in both of the proposed new dwellings would face towards the rear garden of No 76 Orchard Road, but at a distance of 11.6m. But in both cases, the parts of the neighbouring gardens that would be most affected would be those furthest from the dwellings themselves. And in addition, in both cases, those areas are already overlooked by other neighbouring properties.
11. These distances would fall short of the 15m which the Essex Design Guide (the EDG) refers to in certain circumstances, but it is not clear whether any of those circumstances that are envisaged in the EDG are fully comparable to the present proposal. In the absence of any other clear guidance, it seems to me that the most important parts of the affected gardens, from a privacy point of view, are those parts closest to the dwellings themselves, as these are the areas most likely to be used for sitting-out and entertaining. In the present case it does not appear that any such areas would be subjected to direct overlooking at close range.
12. In the 2018 appeal decision, the inspector found harm to living conditions at Nos 80 and 82 Orchard Road, due to overbearing impact. However, the present proposal has addressed this, by changes to the siting and height of the proposed building. In that appeal it was also found that the occupiers of the new dwellings would suffer overlooking from existing properties, but again the layout changes now incorporated seem to me to eliminate that issue. I note that the Council no longer takes issue on either of these grounds.
13. I note also the comments of some residents living on the opposite side of Granger Avenue. But nevertheless, the new building would be far enough away from those properties to avoid any unacceptable detriment to living conditions, by virtue of overlooking, loss of light, or any other impacts.
14. I conclude that the proposed development would give rise to no unacceptable impacts on living conditions, at either the existing or proposed dwellings, by reason of overlooking or in any other way. In this respect therefore there would be no conflict with Policy D1 or any other policy.

Other matters

15. I appreciate that even though most of the existing properties in Granger Avenue have their own car parking, some on-street parking still takes place. The bend in the road requires a degree of care. However, the road is lightly trafficked, and from my observations, visibility is adequate. Pedestrian visibility splays are proposed and can be secured by condition. Overall, in this context, I do not consider that the proposed development would pose any significant threat to highway safety.
16. It appears not to be disputed that the Council is currently unable to demonstrate a 5-year supply of land for housing development, as required by the National Planning Policy Framework (The NPPF). According to the appellants, the most recent quantified study showed a supply of 3.2 years, and I have no reason to doubt the submissions before me on that point. The Council suggests that the priority in Maldon District is for smaller units of two

bedrooms or less. However, I note that this is based on an assessment carried out in 2014; and in any event, it appears that even in that assessment 40% of the identified need is for properties with three bedrooms or more. The NPPF makes it clear that boosting the supply of housing is an important national priority. In my view substantial weight attaches to the benefits of increasing the supply of deliverable sites, in a sustainable urban location, in a District with significant unmet needs.

Conditions

17. In the light of the above findings, I have considered the conditions suggested by the Council, having regard to the tests in NPPF paragraph 56. Where appropriate, I have edited these in the interests of clarity and concision.
18. The proposed conditions concerned with materials and hard and soft landscaping are necessary to ensure a satisfactory appearance. However, it is unnecessary for the landscaping scheme to extend beyond the part of the site that will be publicly visible, and I have amended that condition accordingly. Conditions relating to boundary treatments and levels are also needed for the same reason, and also to protect the privacy of existing and future occupiers.
19. Conditions relating to surface and foul water drainage are necessary, to secure a good standard of amenity and to protect against any risk of flooding. In the case of surface water, I have amended the suggested condition to avoid over-prescriptiveness. In the light of this, I see no need for a separate condition relating to the discharge of surface water onto the highway.
20. Conditions relating to vehicle and cycle parking, and pedestrian visibility splays, are necessary for reasons of highway safety. However, the suggested condition relating to the surfacing of the vehicular access is unnecessary, as this falls within the scope of the landscaping condition. There is also no purpose in a condition restricting the use of the highway during construction, as such matters are controllable under Highway powers.
21. A condition relating to ecological mitigation would be reasonable, to protect against any unnecessary harm to wildlife, but the suggested version lacks clarity as to the measures required, whilst being over-prescriptive in other respects. I have therefore amended this condition accordingly.
22. The proposed condition requiring adherence to the approved plans is necessary, to provide certainty as to the development that is approved.
23. The proposed conditions restricting the use of permitted development rights have not been adequately justified. In the absence of such justification, such conditions would be unreasonable, and I have therefore not imposed these.

Conclusion

24. The proposed development would cause no harm either to the area's character and appearance, or to the living conditions of any residential occupiers, and would therefore accord with all relevant Local Plan policies. The scheme would also provide housing in a district currently lacking a 5-year supply. No material considerations weigh against the proposal. The appeal is therefore allowed.

J Felgate
INSPECTOR

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall be carried out in accordance with the approved plans numbered as follows:
Layout Plan No ORM 002, Rev 1
Elevations No ORM002, Rev 1
Floor Plans No ORM003
Sections No ORM003, Rev 1
Block Plan No ORM 006, Rev 1
- 3) Notwithstanding the plans already submitted, no works above ground level shall take place until full details of the external facing materials have been submitted to the local planning authority and approved in writing. The development shall thereafter be carried out in accordance with the details thus approved.
- 4) Notwithstanding the plans already submitted, no new dwelling within the development shall be occupied until a scheme of boundary treatments has been implemented, in accordance with details to be submitted to the local planning authority and approved in writing.
- 5) The development shall be carried out in accordance with the following recommendations contained in the submitted Preliminary Ecological Appraisal (the PEA), by Hybrid Ecology Limited, dated 1 February 2021:
 - i) No site clearance, site preparation or other works involving ivy stripping or tree removal shall be carried out other than between the months of September to February inclusive.
 - ii) No site clearance, site preparation or other works involving ground disturbance or spoil removal shall be carried out unless a further inspection has been carried out immediately prior to such works, by a qualified ecologist, to check for signs of the presence of badger. In the event that any such signs are found, the relevant further recommendations set out on page 7 of the PEA are to be followed.
 - iii) No new dwelling within the development shall be occupied until a scheme for the provision of one bat roosting feature and one bird box has been implemented, in accordance with details to be submitted to the local planning authority and approved in writing.
- 6) No new dwelling within the development shall be occupied until a scheme of hard and soft landscaping for the front garden areas has been implemented, in accordance with details to be submitted to the local planning authority and approved in writing. Thereafter, within a period of five years from the date of planting, if any tree, shrub or plant forming part of the landscaping scheme is removed, uprooted, destroyed or seriously damaged, or dies, it shall be replaced with another of the same species and size.

- 7) No dwelling within the development shall be occupied unless a system of sustainable surface water drainage has been installed, in accordance with a detailed scheme to be submitted to the local planning authority and approved in writing. The scheme shall include details of the proposed arrangements for the future management and maintenance of the system, and such arrangements shall be implemented in accordance with the details thus approved.
- 8) No dwelling within the development shall be occupied unless a system of foul drainage has been installed, in accordance with a detailed scheme to be submitted to the local planning authority and approved in writing. The scheme shall include details of the proposed arrangements for the future management and maintenance of the system, and such arrangements shall be implemented in accordance with the details thus approved.
- 9) No dwelling within the development shall be occupied until pedestrian visibility splays of 1.5m x 1.5m have been provided for each of the proposed vehicular accesses, in accordance with the details shown on the approved Layout Plan, numbered ORM 002, Rev 1. Thereafter, the visibility splays shall be kept free of obstruction at all times.
- 10) No dwelling within the development shall be occupied until the vehicle parking areas for each dwelling have been provided, in accordance with the details shown on the approved Layout Plan, numbered ORM 002, Rev 1. Thereafter, the parking areas shall be kept available at all times for the parking of vehicles associated with the site, and shall be used for no other purpose.
- 11) No dwelling within the development shall be occupied until cycle parking facilities for each dwelling have been provided, in accordance with details to be submitted to the local planning authority and approved in writing. The cycle parking facilities shall be secure, covered, and conveniently located for use in connection with each dwelling.
- 12) No development shall take place until full details of the existing and proposed ground levels, and proposed finished floor levels, have been submitted to the local planning authority and approved in writing. The details to be submitted shall include sufficient information to enable a comparison to be made between the proposed levels within the development and those of the adjoining properties and gardens. The development shall be carried out in accordance with the levels thus approved.

[END OF SCHEDULE]