

Appeal Decision

Site visit made on 18 January 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th February 2022

Appeal Ref: APP/P1560/W/21/3275337

Land off Ellis Road, Clacton-on-Sea, CO15 1EX

- 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 K Kandiah against the decision of Tendring District Council.
 - The application Ref 20/00960/FUL, dated 10 July 2020, was refused by notice dated 4 January 2021.
 - The development proposed is construction of 2 No houses.
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Decision

1. The appeal is allowed and planning permission is granted for Construction of 2 No houses at Land off Ellis Road, Clacton-on-Sea, CO15 1EX in accordance with the terms of the application, Ref 20/00960/FUL, dated 10 July 2020, and the plans submitted with it, subject to the attached schedule of conditions.

Preliminary Matters

2. Following the Council's decision, the National Planning Policy Framework (the Framework) was revised on 20 July 2021. The Council and appellant have had an opportunity to comment on the implications of these changes through their submissions.
3. Since the Council issued its decision it has adopted the North Essex Authorities Shared Strategic Section 1 Plan in January 2021 and Section 2 of the 2013-33 and Beyond Local Plan was adopted by the Council at its meeting of 25 January 2022. Therefore, the 'development plan' for Tendring District Council now comprises the adopted Section 1 and Section 2 of the Tendring District Council 2013-33 and Beyond Local Plan (LP).
4. It is incumbent upon me to base my decision upon the most up to date planning policy and this is what I have done. The policies in the LP supersede some of those referred to in the Council's delegated report. The appellant had an opportunity to address the change in policy through their appeal submissions and again following the adoption of Section 2.
5. The appellant has submitted a duly executed unilateral undertaking which I have taken into account. It provides for a Public Open Space Contribution to Tendring District Council and for a contribution towards ecological mitigation and I have contemplated this further later in my decision.

Main Issue

6. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

7. The appeal site comprises part of a car park which is accessed off Ellis Road, and provides parking for residents in Reunion House. The wider area includes a mix of residential and commercial development and its character is highly urbanised, with the scale of development within Jackson Road being particularly prominent.
8. Ellis Road is a predominantly residential street with terraced and semi detached two storey buildings. The overriding character is of two storey frontage development. The properties front onto Ellis Road and benefit from modest gardens to the rear. The linear form of development continues for the length of Ellis Road and contributes to its overall character.
9. Policy LP8 of the LP states that proposals for residential development of backland sites must comply with a number of criteria, including that the proposal must not be out of character with the area or set a harmful precedent for other similar forms of development.
10. The siting of the proposed development, although at odds with the general pattern of development, would be located within an area that already encompasses residential development, with the flats within Reunion House having their main entrances and accesses from within this area. Furthermore, the neighbouring development of Jackson House includes a projecting wing which overlooks the car park and the proposed dwellings would be served by an existing access. The area is very distinct from the linear pattern of development evident along Ellis Road and the commercial development within Jackson Road.
11. The views from Ellis Road would be of the existing vehicular access and the gated entrance which is located to the rear of the properties in Ellis Road. Views of the proposed development from the existing access off West Avenue, adjoining the St Helena Hospice, may be possible. However, the proposed dwellings by virtue of their modest size and scale would not result in harm to the character and appearance of the area.
12. Whilst the proposed dwellings would be located to the rear of those dwellings in Ellis Road, the site is not undeveloped nor does it contribute to the residential character of Ellis Road. It currently provides car parking and access to the residential development within Reunion House and whilst there would be some intensification of the use of the site resulting from the proposed development it would not be evident from outside of the site. Therefore, the proposed development would not be incongruous or out of character within this setting and would form part of the wider mixed character which is experienced both when within the site and from Jackson Road and West Avenue.
13. I therefore conclude that the proposed development would not harm the character and appearance of the area. The development would comply with policy LP8 of the LP as a proposal that is not out of character with the area and it would not set a harmful precedent for other similar forms of development.

Planning Obligations

14. The appellant has provided a unilateral undertaking under section 106 of the Town and Country Planning Act 1990, which includes a number of obligations which would come into effect if planning permission were to be granted. I have considered the obligations in light of the Framework, Planning Practice Guidance (PPG) and the Community Infrastructure Levy Regulations (the CIL Regulations).
15. The unilateral undertaking facilitates a financial contribution towards public open space provision. I am satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related to it in scale and kind. On this basis, I consider the agreement accords with the criteria of Regulation 122 of the CIL and with paragraph 57 of the Framework. I can therefore reasonably take it into account.

Essex Estuaries Special Area of Conservation (SAC) and Colne Estuary RAMSAR

16. The appeal scheme proposes dwellings on a site that lies within the Zone of Influence of both the Essex Estuaries Special Area of Conservation (SAC) and the Colne Estuary RAMSAR.
17. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC and Colne Estuary RAMSAR. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
18. Since the development is for only two dwellings, the number of additional recreational visitors would be limited and the likely effects on the SAC and Colne Estuary RAMSAR from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site.
19. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
20. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.

21. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SAC and Colne Estuary RAMSAR.
22. The appellants have submitted a Unilateral Undertaking for the per dwelling contribution of £125.58 to fund the Essex Coast RAMS. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
23. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

Conditions

24. The Council has suggested 10 conditions. I have considered these in light of the Planning Practice Guide and the tests of the Framework and where necessary amended them for clarity. In addition to the standard implementation condition it is necessary, for the avoidance of doubt, to define the plans with which the scheme should accord.
25. Given the proximity to other dwellings, I have restricted the hours of construction to protect the living conditions of the occupiers of such properties. I have also imposed a condition requiring the submission of a Construction Method Statement to ensure adequate storage for building materials to ensure that access to the wider parking area is not restricted during construction.
26. In order to ensure an appropriate level of on-site parking provision for vehicles, I have imposed a condition requiring the parking area to be provided prior to occupation of the dwelling and retained for the life of the development. Furthermore, in order to support the government's objective of increasing sustainable transport I have imposed a condition to ensure an electric charging point for vehicles and secure cycle storage is provided.
27. I have not found it necessary to impose a condition requiring the submission of a travel pack as I have not been provided with any detailed justification for this requirement.
28. I have not imposed a condition removing permitted development rights as the Planning Practice Guidance advises that conditions restricting the future use of permitted development rights "will rarely pass the test of necessity and should only be used in exceptional circumstances". I have not been provided with adequate justification to suggest that there are exceptional circumstances for such a restriction and therefore do not consider it is necessary in this instance.

Conclusion

29. For the reasons given I conclude that the appeal should succeed.

G Pannell

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: 549/LOC; 549/301; 549/302;
- 3) Demolition or construction works shall take place only between 0800 and 1800 on Monday to Friday and 0800 and 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 4) No dwelling shall not be occupied until the area shown coloured beige on drawing no. 549/301 for parking has been drained and surfaced and provided with electric charging infrastructure, in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and shall thereafter be kept available at all times for those purposes.
- 5) No dwelling shall be occupied until space has been laid out within the site, in accordance with the EPOA standards, for secure cycles storage and shall thereafter be kept available at all times for those purposes.
- 6) No development shall take place above slab level until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;

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

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