
Appeal Decision

Site visit made on 9 March 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date 23RD March 2022

Appeal Ref: APP/X1545/W/21/3280594

Land east of 1 Redbrick Cottages, The Endway, Althorne, CM36DU

- 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 Mrs Wendy Gaspar against the decision of Maldon District Council.
 - The application Ref. FUL/MAL/20/1063 dated 24 November 2020, was refused by notice dated 22 February 2021.
 - The development proposed is erection of 1No. two bedroom bungalow.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. There is some reference in the appellant's case to a revised application that was submitted to the council following the refusal of this appeal proposal. This was under planning reference 21/00595/FUL, which was for the erection of one new build three-bedroom house with off road parking for two vehicles, and sought to address the issues and inaccuracies found by the council with earlier proposals. Apparently, the council refused to determine that application on the basis of the powers under section 70B of the Town and Country Planning Act 1990 (as amended). That matter is not before me, and the information provided to me has played no part in my deliberations on the current case.

Main Issues

3. The main issues in this case are: i) the suitability of the location of the site for the proposed development; ii) the effect of the proposed dwelling on the character and appearance of the surrounding area and countryside; iii) the quality of the living conditions of future occupiers in terms of outlook and overlooking; and iv) the lack of mitigation to overcome the impacts of the development on the European Designated Nature Conservation Sites.

Reasons

The suitability of the location of the site for the proposed development

4. The appeal site is located on the southern side of The Endway, within the parish of Althorne but outside of any defined settlement boundary, being part of sporadic ribbon development that peters out a little way to the east. The site is currently undeveloped, although it is paved and there is a trailer and an amount of rubbish spread across it. There are neighbouring two-storey

dwelling to the east and west of the site, with a small part of the garden of the adjoining house, 'Brown Leaves' running behind it. The northern side of the road, directly opposite the site, is flanked by semi-detached bungalows. The wider area is rural in nature, consisting largely of arable fields.

5. Althorne is classed as a small village containing few or no services and facilities, with little access to public transport and very limited or no employment opportunities. Therefore, it is likely that any future occupiers of the dwelling would be required to travel to access day to day facilities, work and education. I have noted what is said about Althorne station on the Crouch Valley Line, but that does not persuade me that travel for work, shopping, education and other services would not mainly involve the use of private motor vehicles. I do accept that the roads and terrain in the immediate vicinity would be conducive to cycling to some facilities, but the relative remoteness of the site means that overall the choice of mode of transport would not be significantly altered.
6. The National Planning Policy Framework (the Framework) has at its heart a presumption in favour of sustainable development. Paragraph 11 d) states: *"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: (as applicable here) ii 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"*. This presumption comes into play where the planning authority cannot demonstrate a 5-year supply of deliverable housing sites. That is the case in this district.
7. There are three dimensions to sustainable development as defined in the Framework. These are the economic, social and environmental roles. As far as this appeal is concerned, the economic benefit would be a degree of employment during construction and the possibility that the vitality of the rural community may be marginally improved. I note what is said about the closure of the post office in the village shop, and the point that, if the continued refusal for each infill dwelling were reversed, the cumulative total would contribute to maintaining local services. This begs 2 questions: how many additional infill dwellings would be needed, and how would that relate to the present development plan policy of the council. It seems to me that it would need a revision of policy that would require a very careful examination of numbers and outcomes that cannot be achieved in the appeal before me.
8. The social benefit would include the delivery of 1 additional dwelling, adding to the housing numbers for the district, and a minor potential addition to the social life of the community. In this latter respect I note that the parish council does not support the proposal.
9. It is difficult to see an environment benefit, other than the assured remedying of the evicted scaffolding use which did not have the benefit of planning permission, and the removal of what is currently an eyesore. But certainly, as far as environmental benefit is concerned, the lack of mitigation in respect of the impacts of the development on the European designated nature conservation sites, dealt with under issue iv), clearly outweighs any such benefit. In any event, the benefits of the proposal, including the additional dwelling in the district's supply are marginal.

10. In the light of the above, I consider that the proposed dwelling does not amount to sustainable development, since it is not readily accessible to services by sustainable means, and does not benefit from the 'tilted balance' of Framework paragraph 11 d ii. Nor do any of the policies of the Local Development Plan provide any over-riding support for the proposal.

The effect of the proposed dwelling on the character and appearance of the surrounding area and countryside

11. The proposed dwelling would consolidate the existing ribbon of development in this area of countryside. Its design, constrained by the limited site, has an over dominant roof, of a scale that produces an unsatisfactory appearance to the whole of the building, and sits unsympathetically with its neighbours. The unsatisfactory effect on the character and appearance of the surrounding area and the countryside is limited, in view of the nature of the surroundings, but nevertheless stands against the proposal.

The quality of the living conditions of future occupiers in terms of outlook and overlooking

12. The neighbouring property to the west, has a two-storey extension to the rear (south) of the dwelling which projects towards the site and contains a first-floor side elevation window. This window, which is approximately 5.5m from the shared boundary, would have direct views into the site and the private rear garden of the proposed dwelling and would result in direct overlooking and lack of privacy.
13. The officer's report states that, since the proposed dwelling has two bedrooms, 50m² of amenity space is required. Eighty m² of amenity would be provided to the rear and side of the dwelling which would be usable and suitable for sitting out, hanging washing, etc. The officer's report indicates that the maximum depth of the rear garden would be 4.2m, (whilst commenting that different distances have been shown on different plans). One of the drawings submitted with the appeal is a fully dimensioned hand written diagram of the site and dwelling which does indeed show that the rear boundary of the site is 4.2m from the rear elevation of the bungalow. Since this diagram has the appearance of having been compiled from specific measurements, it can be given some weight.
14. Nevertheless, I am unclear about how the 80m² of amenity space is calculated, since it seems to me to be somewhat less, taking the hand written dimensions that I have mentioned. However, this space, given a depth of 4.2m, would provide a limited outlook. I judge this to be a further indication that the living conditions of future occupiers would be less than desirable.

The lack of mitigation to overcome the impacts of the development on the European Designated Nature Conservation Sites

15. The application site falls within the 'Zone of Influence' for one or more of the European designated sites scoped into the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). This means that residential developments could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure.

16. The development of one dwelling falls below the scale at which bespoke advice is given from Natural England (NE). To accord with NE's requirements and standard advice, an Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), the council has completed a Habitat Regulation Assessment (HRA) Record to consider if the development would constitute a 'Likely Significant Effect' (LSE) to a European site in terms of increased recreational disturbance. The findings from HRA Stage 1: Screening Assessment were that a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements. If this mitigation is secured, it can be concluded that this planning application will not have an adverse effect on the integrity of the above European sites from recreational disturbance, when considered 'in combination' with other development.
17. In determining this appeal, I am now the competent authority, and have a duty to ensure that there is no impact on Special Protection Areas. The Essex Coastal Recreational Avoidance and Mitigation Strategy document has been adopted. This document states that the flat rate for each new dwelling has been calculated at £125.58 and thus the developer contribution should be calculated using this figure. However, in the absence of a signed legal agreement to secure the abovementioned contribution, the impact of the development would not be mitigated. The appellant has indicated a willingness to enter a section 106 agreement, citing a lack of a proforma as a reason for failure to do so. Be that as it may, without such an agreement in place, there can be no assurance that there would be not be a detrimental effect on the ecological importance of a European designated nature conservation site.

Overall conclusions

18. The starting point for any planning decision is the development plan. In this case, where the council cannot demonstrate a 5-year housing land supply, the tilted balance of Framework paragraph 11 d ii is potentially a material matter of considerable importance. However, the tilted balance must be seen in the context of the presumption of sustainable development. I have found that the proposed dwelling does not amount to sustainable development and thus does not benefit from that element of the Framework, whilst the policies of the Local Development Plan, judged in the round, stand against the proposal. Thus the location of the site is not suitable for the proposed development.
19. In addition, the proposed development would have a negative effect on character and appearance of the surrounding area and countryside. Furthermore, the quality of the living conditions of future occupiers would be less than is desirable, in terms of outlook and overlooking. Finally, whilst the lack of mitigation to offset the impacts of the development on the European designated nature conservation sites could be overcome, the lack of an agreement to pay the required developer contribution is a fundamental stumbling block. I shall therefore dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR