



Appeal Decision

Site visit made on 7 September 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2022

Appeal Ref: APP/M1595/W/21/3284661

Land at the rear of 42-44 Fairview Avenue, Stanford Le Hope, SS17 0DT

- 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 Liam Nicholson of KLE Design Ltd against the decision of Thurrock Borough Council.
 - The application Ref. 21/00260/FUL dated 14 February 2021, was refused by notice dated 13 April 2021.
 - The development proposed is demolition of the existing single storey garages and concrete plinth to be replaced with 3 No. one-bedroom flats over 2 floors, including communal grounds, bin stores and resident and visitor parking.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing single storey garages and concrete plinth to be replaced with 3 No. one-bedroom flats over 2 floors including communal grounds, bin stores and resident and visitor parking at rear of 42-44 Fairview Avenue, Stanford Le Hope, SS17 0DT in accordance with the terms of the application, Ref 21/00260/FUL, dated 14 February 2021, subject to the conditions set out in the schedule at the end of this decision.

Preliminary matters

2. The application and the council's decision notice describe the development in the following terms: *"demolition of the existing single storey garages and concrete plinth to be replaced with 3No.one bedroom flats over 2 floors. The new two storey building has been designed to match the aesthetic and layout of the immediately adjacent residential block known as Whitwell Court. The development will provide communal grounds, bin stores and resident and visitor parking"*. This description includes matters that do not describe the operational development proposed, but refers to the merits of the design. I consider that a more succinct and appropriate description of the proposal is *"demolition of the existing single storey garages and concrete plinth to be replaced with 3No. one bedroom flats over 2 floors, including communal grounds, bin stores and resident and visitor parking"*. I have therefore adopted this description in the heading above.
3. At the time of my site visit the appeal site was completely over-grown and impenetrable. I had been forewarned of this and the appellant is satisfied that I am able to make a decision on the appeal based on my view of the

surroundings and the information provided in the submitted plans and other documentation.

Main Issues

4. The main issues in this case are: i) whether the site could accommodate the development proposed when judged against the character of the surrounding area; and ii) the effect the proposal would have on the living conditions of neighbouring dwellings in respect of privacy and any overbearing impact.

Reasons

Whether the proposal would amount to over-development of the site when judged against the character of the surrounding area

5. I am told that the site, which is effectively a backland plot, was once part of the long rear gardens of nos. 42 and 44 Fairview Avenue prior to 2006 and has been unused for in excess of 15 years. It is currently occupied by two derelict single-storey garages and overgrown vegetation. The site is accessed from a short cul-de-sac from Fairview Chase. In the immediate vicinity, on the south-west corner of the cul-de-sac with Fairview Chase, is Whitwell Court, a purpose-built block of 10 No. one-bedroom dwellings. The Whitwell Court parking area is in between the existing Whitwell Court building and the appeal site. However, on this parking area planning permission has been granted for 6 No. self-contained one-bedroom flats (Planning Application ref: 17/01303/FUL). There is also an existing planning permission for 2 No. one-bedroom dwellings (Application No. 20/00847/FUL).
6. The land is clearly not in any beneficial use, and that appears to have been the case for a number of years. Furthermore, it is a site in an urban area that must be considered a sustainable location, and therefore the principle of development is not in question. The appeal site is situated on land that rises to the north-east by about 6m, so the housing to the north-west, the terrace comprising Nos. 1 to 15 Fairview Chase, also steps up the contours. The site runs behind the back gardens of these houses. The highest part of the roof on the proposed development is below that of the houses Nos 9 to 13 in Fairview Chase just mentioned, which are immediately adjoining the site to the north-west. Number 15 Fairview Chase has a shorter back garden with a sub-station behind it. To the south-east of the sub-station would be a vehicle turning head beyond which would be parking bays.
7. The immediately surrounding development in Fairview Chase consists primarily of recent 2-storey housing in terrace form on the southern side, followed by the recently constructed 2-storey Whitwell Court of 1-bed flats. To the south-west of the site, outside the appeal site, but on the same parcel of land, there is permission for 1-bedroom flats as mentioned above. On the north-west side of the road there is construction work at a fairly advanced stage, again of a flatted development. In the wider area, along Fairview Avenue, the development is mainly 2-storey semi-detached housing, with a mixture of development from the first half of the twentieth century together with some post-war housing.
8. It is clear that the form of the proposal relates to the challenge of getting a modest 3 flats, each with 1 bedroom, on a difficult site because of the land form. The nature of the site and its relationship to the highway dictates that its

overall design and massing is unlikely to follow from the regular 2-storey frontage development that is normal in the area and in the majority of suburban areas. This means that the proposal cannot reasonably be judged in terms of whether the main accommodation set above an undercroft is a form of development that corresponds to the general character of housing development in the area. Furthermore, the development would effectively have no impact on the character of the area because it would not be visible from the public domain, save for a small part of the short cu-de-sac that provides its access.

9. The proposed development certainly does fill the width of the site, and the outside amenity area is minimal. Nevertheless, as the officer's report notes, this is not uncommon for one-bedroom residential units in a mixed residential area, and the site is in reasonable proximity to open spaces nearby. The recently approved 1-bed flats to the southwest demonstrate that this form of development is acceptable to the council. There is advantage in using land within urban areas efficiently and, on occasions, this will justify development that does not replicate the normal form in the area. In this instance the apparent scale of the development in relation to the area of the site would not amount to over-development to the detriment of the character of the surrounding area

The effect the proposal would have on the living conditions of neighbouring dwellings in respect of privacy and any overbearing impact

10. The proposed development would primarily run across the rear of No.11 Fairview Chase, but its front and rear parts would extend across about half of the width of Nos.9 and 13. The garden of No.11 is about 8m long (measurement taken from the plans at 1:200 scale), and the proposed building is set about 1.8m from the site boundary. The ridge of the roof of the building would be at eaves level of No.11, but because of the 'clipped hip' form of the roof, the peak of the hip would be 4.5m from the site boundary.
11. The floor level of the accommodation in the roof would be roughly 1m below the first floor of No.11. In effect the proposed development would be similar to a chalet bungalow set across the rear garden of No.11, with its ridge running on the long axis of the garden. At a distance of almost 10m, this would not be an over-bearing prospect from No.11 and less so from the neighbouring houses.
12. As to the kitchen window in the side elevation facing the Fairview Chase houses, this would look towards the south-western corner of the curtilage of No.11. Taking the evidence shown on the sectional drawings of the site, existing and with the proposed development, there would be no loss of privacy due to the intervening boundary fence. Looking out of the top of this window, would enable a view of the upper stories of the 9 to 13 Fairview Chase but, at the separating distance, this would not be materially harmful. I also see that it is proposed to be obscure glazed.

Conclusions on the main issues

13. I have found that the proposal would not amount to over-development of the site when judged against the character of the surrounding area, and nor would there be any detrimental effect on the living conditions of neighbouring dwellings in respect of privacy or any overbearing impact. Therefore the council's refusal reasons are not supported. However, in the council's

statement setting out the conditions that it would wish to see imposed on any permission, the statement began with a reference to Securing of a Recreational impact Avoidance and Mitigation Strategy contribution.

New matters raised by the council after the submission of the appeal

Securing of Recreational impact Avoidance and Mitigation Strategy contribution

14. In the council's statement providing suggested conditions in the event that the appeal is allowed, the first matter raised was in respect of Securing of Recreational impact Avoidance and Mitigation Strategy contribution. This stated that the application site falls within the Zone of Influence (ZoI) within the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), as relevant development. Without mitigation the proposed development is likely to have a significant effect on the Thames Estuary and Marshes Special Protection Area. It is therefore considered that a proportionate financial contribution should be made to contribute towards the funding of mitigation measures detailed in the Essex Coast RAMS. A tariff to fund the mitigation, which is payable for all additional new dwellings, was set at £125.58 per residential unit when the application was determined by the Council. Therefore, should the appeal be allowed, it would be appropriate to apply a total tariff of £376.74 for the three units proposed in this appeal and that this contribution should be secured through a suitably worded legal agreement submitted by the Appellant.
15. Since there was no mention in the appeal documentation of such a legal agreement having been entered into, I arranged for the appellant to state whether or not such an agreement was in place. The response confirmed that the legal agreement (securing of RAMS mitigation contribution) has not been entered into with the council. This is because it was not formally requested as part of the initial planning application process, and it would only appear to be a requirement should planning permission be granted. However, it was also confirmed that should planning permission be granted there is full acceptance of a suitable condition.
16. Having given thought to this response, I have decided that the matter can be dealt with by a suitable negatively worded condition that would prevent development commencing until a legal agreement had been entered into by the appellant. In coming to this conclusion I have borne in mind that government guidance includes the statement that it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into of a planning obligation requiring the payment of a financial contribution [Paragraph: 005 Reference ID: 21a-005-20190723]).
17. I am satisfied that this would deal with the matter, such that, as the competent authority, the council would be able to satisfy itself that the duty upon the local planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the Special Protection Area has been met, having had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017. I am also satisfied that this condition would meet all 6 tests set out in paragraph 55 of the Framework, including test 6 – reasonable in all other respects.

Overall Conclusions

18. For the reason that I have set out in paragraphs 5 to 12 above, I find that the reasons given by the council in its decision notice does not justify the refusal of planning permission. Further, the matter that was raised by the council after the appeal was made have been considered. For the reasons that I have given in paragraphs 14 to 17, I have decided that it can be dealt with by condition.
19. Thus there would be no harmful effect of the proposed dwellings on the character and appearance of the immediate location and surroundings in terms of the relationship with the existing dwellings, and visibility from the street. In addition, measures can be taken to ensure no adverse effect would arise through recreational disturbance from the development on the Special Protection Area, by way of payment of the Recreational Avoidance Mitigation tariff, secured by condition. In the light of these overall conclusions, I will allow the appeal.

Conditions

20. In addition to the condition mentioned above, the Council has suggested a number of conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG I have amended some of the text.
21. I consider that conditions should be imposed for the following reasons: condition 2 is required for certainty and avoidance of doubt as to the development permitted; conditions 3 and 4 are to ensure that the appearance of the development permitted integrates with the existing in a visually satisfactory manner; condition 5 is to ensure that no nesting birds are adversely affected during the nesting season, since the site is thickly covered with bushes and trees; condition 6 is to ensure adequate access from the highway in the interests of the safety and convenience of road users; condition 7 is to ensure adequate parking facilities are provided to safeguard the safety and convenience of users of the highway; condition 8 is to ensure that the construction phase does not materially affect the free-flow and safe movement of traffic on the highway; in the interest of highway efficiency, safety and amenity; condition 9 is to ensure satisfactory off-street parking provision is maintained, in the interests of highway safety and visual amenity; condition 10 is to ensure satisfactory cycle storage provision is maintained, in the interests of highway safety and visual amenity and to encourage sustainable modes of travel; condition 11 is to ensure that appropriate waste management facilities are provided in the interests of recycling and the visual amenity of the area; condition 12 is for the reasons set out in paragraphs 14 to 17.
22. Conditions 8 and 12 are 'pre-commencement' conditions which can only be imposed with the consent of the applicant/appellant, as the case may be. The appellant has agreed to the inclusion of these conditions on any permission given for this appeal proposal.

Terrence Kemmann-Lane

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: K1104-PL-050 Location Plan, K1104-PL-051 Existing Site Layout, K1104-PL-052 Proposed Site Layout, K1104-PL-053 Existing Site Layout, K1104-PL-054-B Proposed Site Layout, K1104-PL-055-B Proposed Site Layout, K1104-PL-056-A(1) Sections, K1104-PL-57B Sections, K1104-PL-058-B Proposed Plans, K1104-PL-059-B Roof Plans, K1104-PL-060-B Proposed Elevations, K1104-PL-061-B Site Layout, and K1104-PL-062-B(1) Proposed Elevations.
- 3) No development above ground level shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the local planning authority. For the avoidance of doubt this should include grey windows as shown on page 34 of the submitted Design & Access Statement.
- 4) No development above ground level shall take place until there has been submitted to and approved in writing by the local planning authority, a scheme of landscaping, which shall include details of all existing trees and hedgerows on the land, including the Oak tree, and details of any to be retained, together with measures for their protection in the course of development in accordance with an Arboricultural Method Statement and a programme of maintenance. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding season following commencement of the development [or such other period as may be agreed in writing by the local planning authority] and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
- 5) There shall be no clearance of vegetation from the site carried out during nesting season running from 1st March through to 31st August.
- 6) None of the dwellings hereby permitted shall be occupied until the access road and footway(s) serving that dwelling have been constructed to the satisfaction of the local planning authority, unless otherwise agreed in writing by the local planning authority.
- 7) The parking, garaging and turning areas for each respective dwelling shall be provided before they are occupied, and shall thereafter be retained for the purposes of parking/ turning, and in the approved form, unless otherwise agreed in writing by the local planning authority.

- 8) Prior to the commencement of demolition, remediation or development, a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include, but not limited to, details of:
- (a) Hours and duration of works on site
 - (b) Wheel washing and sheeting of vehicles transporting aggregates on to or off of the site
 - (c) Details of construction access
 - (d) Details of temporary hard standing
 - (e) Details of temporary hoarding
 - (f) Water management including waste water and surface water drainage
 - (g) Road condition surveys before demolition and after construction is completed; with assurances that any degradation of existing surfaces will be remediated as part of the development proposals. Extents of road condition surveys to be agreed as part of this CEMP
 - (h) Details of method to control wind-blown dust
- All works and development shall be carried out in accordance with the approved CEMP and the measures contained therein.
- 9) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 and Section 55 of the Town and Country Planning Act 1990, the parking bays hereby approved/permitted shall only be used for the parking of cars in connection with the residential use of the site and for no other purposes whatsoever.
- 10) The cycle storage as approved shall be provided prior to the first occupation of any of the residential units they serve and shall be constructed and permanently retained in the approved form, unless otherwise agreed in writing by the local planning authority.
- 11) The bin and recycling stores as approved shall be provided prior to the first occupation of any of the residential units they serve and shall be constructed and permanently retained in the approved form, unless otherwise agreed in writing by the local planning authority.
- 12) No development hereby permitted shall commence on site until proposals for the mitigation of the impact of the development on the Thames Estuary and Marshes Special Protection Area have been submitted to and approved in writing by the local planning authority, which shall include evidence of completion of the required legal agreement to secure the proposed mitigation. Such proposals must provide for mitigation in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy or for mitigation to at least an equivalent effect.

End of Schedule