



Appeal Decision

Site visit made on 17 October 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2022

Appeal Ref: APP/P1560/W/21/3289592

Land rear of Strangers Way, Church Road, Brightlingsea, CO7 0QT

- 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 Park Mark Development Ltd against the decision of Tendring District Council.
 - The application Ref. 21/00208/FUL dated 2 March 2021, was refused by notice dated 5 November 2021.
 - The development proposed is the erection of 5 no. self-contained residential houses (bungalows) with associated parking, landscaping and amenity space.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 5 no. self-contained residential houses (bungalows) with associated parking, landscaping and amenity space on land at the rear of Strangers Way, Church Road, Brightlingsea, CO7 0QT in accordance with the terms of the application, Ref 21/00208/FUL, dated 2 March 2021, subject to the conditions set out in the schedule at the end of this decision.

Preliminary matters

2. As paragraph 2 of the National Planning Policy Framework (the Framework) points out, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. At the time that the appeal application was determined by the council, the adopted local plan consisted of the saved policies of the 2007 Local Plan and Section 1 (the more strategic policies) of the Tendring District Local Plan 2013-2033 and Beyond (TLP), which was formally adopted on 26 January 2021. Section 2 (more specific policies) of the TLP was then still under examination, but was formally adopted on 25 January 2022. Since an application should be determined in accordance with the development plan, it is the recently adopted plans that are my starting point in considering this appeal proposal.

Main Issues

3. The main issues in this case are: i) the effect of the proposed access to the appeal development on the living conditions of the occupiers of the dwelling Strangers Way in respect of privacy, vehicular movements and light pollution; and ii) the effect on the character of the surrounding area.

Reasons

4. The appeal site is the substantial curtilage of an existing bungalow 'Strangers Way'. To the south-east Church Road is fronted by a mixture of housing types, with 1 storey, 1½ storey and 2 storey dwellings having a wide variety of roof forms. Within this length of the road, the 2 dwellings adjoining Strangers Way have rear gardens similar in length to the host bungalow, but thereafter the rear gardens are of about half that length. On the opposite side of Church Road there is a wide grass verge behind the roadside footway, behind which is a row of bungalows. These have plot sizes not noticeably larger than those of the appeal proposal. To the north-west of Strangers Way is 'Stronvar', a substantial care home, and then 2 dwellings, 'Homefield' and 'Field House', between which there is a recent cul-de-sac development of a similar form to the appeal proposal behind the frontage properties. All of the housing just referred to, including the curtilage of Strangers Way, is included in the settlement development boundary of Brightlingsea under Section 2 of TLP.
5. The provisions Tendring District Local Plan 2007 have now been superseded by the 2 Sections of Tendring District Local Plan 2013-2033 and Beyond, and policy HG13 of the former has been replaced by the adopted local plan policies SP7 (Section 1) and LP8 (Section 2).
6. Policy SP7 (Place-Shaping Principles) is an overarching policy that seeks to ensure, amongst other matters, that all new developments should reflect the key place shaping principles including; the protection of the amenity of existing and future residents. Policy LP8 (Backland Residential Development) sets out a list of criteria that all backland residential developments are required to meet. Of particular relevance to the first reason for refusal is criterion b which states that all backland residential development should be served by a safe and convenient means of vehicular and pedestrian access/egress that does not cause undue disturbance or loss of privacy to neighbouring residents or visual detriment to the street scene. The criterion explicitly states that 'long or narrow driveways will not be permitted'. Criterion f is also of relevance since it states that the proposal must not be out of character with the area or set a harmful precedent for other similar forms of development.

The effect of the proposed access to the appeal development on the living conditions of the occupiers of the dwelling Strangers Way in respect of privacy, vehicular movements and light pollution

7. The reference in the refusal reason to a 'long and narrow driveway' seems to me to be misconceived. It is effectively no longer than the access to the recent development at the rear of Field House and Homefield. It conforms with the Essex Design Guide and meets the requirements of the highway authority. The proposal includes a 1.8m high wall along the new access which is set, at its closest, just over 1m away from the flank wall at the front of Strangers Way. This gap rapidly opens to 4m at the rear end of the flank wall. This relationship can frequently be found where dwellings are sited at the junction of minor roads with more major roads, in situations where these roads serve many more than 5 properties and carry greater numbers of vehicles.
8. Therefore, I cannot see that the proposal would have the claimed effect on the living conditions of the occupants of Strangers Way, by way of vehicular

movements and noise, more than is common within towns and villages in such situations. Nor can I see that privacy would be adversely affected in such circumstances or light pollution. The first issue does not justify the refusal of permission.

The effect on the character of the surrounding area

9. In paragraph 4 above I have described the situation of the appeal site in relation to its surroundings. The first observation that I would make is that the appeal development would be barely visible in the streetscene of Church Road. But putting that aside, the character of the area around this part of Church Road, at 'Strangers Corner', is not solely that of large detached houses set in extensive plots, since the bungalow development, on plots that are akin to the appeal proposal, are just as much a part of the character of the surrounding area as is Strangers Way and its neighbours. And of course, the recent development to the rear of Homefield is part of the surroundings, which I judged at my site visit to have little or no impact on this character.
10. Furthermore, the proposed development cannot reasonably be described as 'cramped' when Strangers Way would be left with a private amenity area of 350m², whilst each of the proposed dwellings would have in excess of 100m² of such amenity. I conclude that the effect on the character of the surrounding development would be minimal, and certainly not sufficient to warrant refusal of permission.

Conclusions

11. I have considered all other matters raised, but none persuade me, having carefully considered matters dealt with in the officer's report, that there are issues of substance beyond those that were raised in the refusal reasons. For the reasons that I have set out above I have concluded that the proposed access to the appeal development would not be harmful to the living conditions of the occupiers of Strangers Way in respect of privacy, vehicular movements and light pollution, nor would the proposal detrimentally affect the character of the surrounding area. The provisions of the current adopted development plan are not breached by the appeal proposal. I will therefore allow the appeal.

Conditions

12. 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.
13. 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; condition 3 is to ensure that the proposal does not have any detrimental impact on adjacent trees; condition 4 is to ensure that the proposal does not have any detrimental impact on protected species, in the interests of biodiversity; conditions 5 and 6 are to ensure that the appearance of the development permitted integrates with the area in a visually satisfactory manner; condition 7 is to protect residential amenity and highway safety; conditions 8 to 15 are in the interests of highway safety for vehicles and

pedestrians; condition 16 is in the interests of reducing the need to travel by car and promoting sustainable development and travel; condition 17 is to ensure that the site is free from contamination; condition 18 is to protect residential amenity from light pollution; condition 19 is to protect archaeological deposits which records indicate may be present in the ground; condition 20 is to protect the living conditions of the occupiers of adjoining property; condition 21 is to enable the local planning authority to maintain control over development that would otherwise be permitted development in the interests of the amenity and privacy of adjoining occupiers; and condition 22 is to ensure that the development contributes towards reducing carbon emissions in addressing climate change.

14. Conditions 7, 19 and 22 are 'pre-commencement' conditions, necessary because they clearly need to be met before any work on site begins – because No.18 relates to archaeological investigation and No. 22 because the Renewable Energy Generation Plan will have implications for groundworks as well as other elements of the development. Condition 7 must be satisfied before development begins because it governs matters that will take place pre-commencement. In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, if the Inspector is minded to grant planning permission subject to pre-commencement condition(s) he/she may only do so with the written agreement of the appellant to the terms of the condition(s). In this case the appellant's agent has clearly stated on behalf of the appellant that the conditions are acceptable.

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 Drawing Nos: PA001, PA002C, PA003C, PA004A, PA005A, PA006, PA007 and PA008.
- 3) The development hereby permitted shall be carried out in accordance with the Arboricultural Impact Assessment and Preliminary Method Statements, produced by Arboricultural Association, ref: TPSarb2160920, unless otherwise agreed in writing by the Local Planning Authority.
- 4) The development hereby permitted shall be carried out in accordance with the Ecological Impact Assessment, produced by Hybrid Ecology Ltd, dated January 2021, unless otherwise agreed in writing by the Local Planning Authority.
- 5) No above ground development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of hard and soft landscaping works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction.
- 6) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.
- 7) Prior to the commencement of development a Construction Management Plan shall have first been submitted to and approved in writing by the Local Planning Authority. This shall include a method statement for the following (where applicable):
 - i) Provision for: the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials storage of plant and materials used in constructing the development, and; wheel and underbody washing facilities
 - ii) The use of barriers to mitigate the impact of noisy operations will be used where possible.

- iii) No vehicle connected with the works to arrive on site before 07:30 or leave after 19:00(except in the case of emergency). Working hours to be restricted between 08:00 and 18:00 Monday to Saturday (finishing at 13:00 on Saturday) with no working of any kind permitted on Sundays or any Public/Bank Holidays.
 - iv) The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228.
 - v) Mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement).
 - vi) Prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the Planning Authority (in consultation with Pollution and Environmental Control). This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents. If there is a requirement to work outside of the recommended hours the applicant or contractor must submit a request in writing for approval by Pollution and Environmental Control prior to the commencement of works.
 - vii) Prior to the installation of any external lighting precise details shall have first been submitted to and approved in writing by the local planning authority. Any external lighting shall be designed so as to prevent any unnecessary light spill. Any lighting of the development shall be located, designed and directed or screened so that it does not cause avoidable intrusion to adjacent residential properties/ constitute a traffic hazard/cause unnecessary light pollution outside the site boundary. "Avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Engineers. Thereafter external lighting shall only be installed in accordance with such details as may have been approved.
 - viii) All waste arising from any demolition process, ground clearance and construction processes to be recycled or removed from the site subject to agreement with the Local Planning Authority and other relevant agencies.
 - ix) No materials produced as a result of the site development or clearance shall be burned on site.
 - x) All reasonable steps, including damping down site roads, shall be taken to minimise dust and litter emissions from the site whilst works of construction and demolition are in progress.
 - xi) All bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit.
- 8) Prior to occupation of the development, the access at its centre line shall be provided with a minimum visibility splay with dimensions of 2.4 metres by 70 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of obstruction at all times.
- 9) Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of each vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.

- 10) Prior to occupation of the development a vehicular turning facility, of a design to be approved in writing by the Local Planning Authority shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.
- 11) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 12) Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of Carriageway/Footway/Highway Boundary and provided with an appropriate dropped kerb crossing of the footway/verge.
- 13) Prior to occupation of the development the vehicular access for the host dwelling shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 4.5 metres (5 low kerbs), shall be retained at that width for 6 metres within the site and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.
- 14) The existing access for the host dwelling shown on the site layout plan shall be suitably and permanently closed incorporating the reinstatement to full height of the highway verge/footway/cycleway/kerbing immediately the proposed new access is brought into first beneficial use.
- 15) There shall be no discharge of surface water onto the Highway.
- 16) Prior to occupation of the proposed dwellings, the developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge.
- 17) If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the local planning authority.
- 18) Any external lighting of the dwellings shall be located, designed and directed [or screened] so that it does not cause avoidable intrusion to adjacent residential properties or cause unnecessary light pollution outside the site boundary. "avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Engineers. Subsequently this lighting shall not be augmented with any additional lighting without the prior approval in writing by the local planning authority.
- 19) a) No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation (WSI) which has been submitted by the applicant, and approved in writing by the Local Planning Authority.

- b) No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the WSI defined in a) above.
- c) The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Local Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.
- 20) No development above ground level shall take place until precise details of the provision, siting, design and materials of screen walls and fences have been submitted to and approved in writing by the Local Planning Authority. The approved screen walls and fences shall be erected prior to the dwellings to which they relate being first occupied and thereafter be retained in the approved form.
- 21) Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A, B, C, D and E of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no provision of extensions, roof alterations, buildings, enclosures, swimming or other pool shall be erected except in accordance with drawings showing the design and siting of such building(s) which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.
- 22) No development shall be commenced until a Renewable Energy Generation Plan (REGP) has first been submitted to and approved in writing by the Local Planning Authority. The REGP shall provide for an electric vehicle charging point (Type 2, 32 Amp), and set out the measures that will be incorporated into the design, layout and construction, aimed at maximising energy efficiency and the use of renewable energy. Thereafter, the development shall comply with the REGP and any approved measures shall be implemented prior to first occupation.

End of Schedule