



Appeal Decision

Site visit made on 15 November 2022

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 FEBRUARY 2023

Appeal Ref: APP/M1595/W/21/3290011

Land Adjacent to 107 Humber Avenue, South Ockendon RM15 5JT

- 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 Vision Partners Homes Limited against the decision of Thurrock Borough Council.
 - The application Ref 21/01181/FUL, dated 3 July 2021, was refused by notice dated 6 September 2021.
 - The development proposed is a detached house and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for a detached house and associated works on land adjacent to 107 Humber Avenue, South Ockendon RM15 5JT, in accordance with the terms of the application, Ref. 21/01181/FUL, dated 3 July 2021, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Vision Partners Homes Limited against Thurrock Borough Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are i) the effect of the proposed development on the character and appearance of the area and ii) whether any material considerations would indicate a decision other than in accordance with the development plan.

Reasons

Character and appearance

4. The appeal site is in a predominantly residential area. There is a school to the rear of the site and a parade of shops with flats above on the opposite side of Garron Lane. There is a large area of public open space on the opposite side of Humber Avenue, beyond which there is a public house and a sports field. The public house on the corner of Garron Lane and Gatehope Drive is the only building fronting onto the western side of Garron Lane. Its frontage is set back, roughly in line with the existing side elevation of No.107 Humber Avenue. Other houses in this area are also set well back from the public highway.
5. The site comprises a long parcel of undeveloped grassland on the corner of Humber Avenue and Garron Lane. It is bound by a low brick wall, which runs

alongside the pavement of Garron Lane and Humber Avenue. There is a tall timber fence that separates the site from No.107 Humber Avenue. From the evidence before me and my observations on site, it is apparent that the part of this fence that has been constructed between the front of the house and the pavement, is relatively new and did not exist at the time of the previous appeal decision¹. Despite the new tall fence on the boundary with No.107, the site continues to have an open appearance and is similar in size and shape to the parcel of undeveloped grassland on the corner between Nos.91 and 93 Humber Avenue.

6. I understand that the site was previously part of the residential curtilage to No.107 and was owned and sold by the Council. There is nothing before me to suggest that the land has ever been used as public open space. Nevertheless, the undeveloped nature of the land continues to contribute to the spatial quality and openness of the area. Consequently, the construction of a dwelling on part of this open space would alter the character and appearance of the area.
7. Although the houses in this area are mainly semi-detached there are also detached houses, on corner plots. Many properties have been substantially altered and extended, including to the front, resulting in them having a varied appearance and width, with reduced gaps between them. Subject to the use of suitable external materials, the scale and design of the dwelling would not appear out of place.
8. The proposed dwelling would be set well back from Humber Avenue, roughly in line with the existing slightly staggered building line. The appellant has confirmed that the existing tall fencing on the boundary of No.107, between the front of the house and the pavement, would be replaced with a lower form of boundary treatment, enhancing the openness of the Humber Avenue streetscene. This could be controlled by a planning condition. Parking and hardstanding to the front of dwellings is typical of the area and would not appear out of place.
9. There is conflicting information on the submitted plans in relation to the proposed boundary treatment to the front of the house, with some plans showing the existing brick wall, which is an original characteristic of the area retained and others showing it replaced with a timber fence. Given the prominent corner position of the site and its open nature, a high quality and low-level form of boundary treatment would be most appropriate, details of which could be required by a planning condition.
10. The side elevation of the proposed dwelling would be set in a reasonable distance from the Garron Lane footpath and would not make the plot appear cramped or over developed. However, it would have an almost blank flank wall, facing the street, which together with the proposed close boarded timber fence, that is proposed to be constructed along the Garron Lane footpath from the rear of the dwelling, would appear very stark and would harmfully detract from the open and green streetscene that currently exists along this side of Garron Lane.
11. The only landscaping proposed is two trees at the very end of the rear garden. Although the existing timber fence to the rear of No.107 Humber Avenue is

¹ APP/M1595/W/19/3238315

visible in the street at present, this is set back behind the undeveloped open grassland, which reduces its prominence, it is not hard up to the public pavement. These concerns could be mitigated by an improved landscaping and boundary treatment scheme, details of which could be required by condition.

12. I therefore conclude that although the scale and general design of the proposed dwelling would be acceptable, the proposed side elevation, boundary treatment and lack of landscaping, together with the loss of this open parcel of land that contributes towards the openness of the area, would harmfully detract from the open and green character and appearance of the area.
13. The proposal is therefore contrary to Policies PMD2, CSTP22 and CSTP23 of the Thurrock Local Development Framework Core Strategy and Policies for the Management of Development (as amended) January 2015. These seek, amongst other things, to ensure that new development responds positively to its local context and its distinct characteristics. However, subject to suitable amended boundary treatment and landscaping that could be required by planning conditions, this harm would be very limited.

Material Considerations

14. I accept that a previous appeal was dismissed for a dwelling on the same site. However, the scheme before me is for a smaller dwelling, set further in from Garron Lane and I have identified only very limited harm to the character and appearance of the area, which could be mitigated to some extent by imposing conditions requiring improved boundary treatment and landscaping. It is also now common ground that the council cannot demonstrate a five year housing land supply and accordingly the tilted balance is engaged. I consider that these represent a significant material change in circumstances.
15. Whilst I acknowledge that the outlook from houses on the opposite side of Garron Lane would be changed by the proposal, the planning system does not exist to protect private interests such as views or property values. Adequate separation space would be retained between properties to protect living conditions.
16. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions, which indicates that planning decisions should apply a presumption in favour of sustainable development. For decision taking this means, where development plan policies, which are the most important for determining the application are out of date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.
17. The Council does not dispute that it is unable to demonstrate a five year supply of housing land or that its housing land supply shortfall is substantial. Consequently, having regard to footnote 8 of the Framework, the Council's policies are out-of-date.
18. The Framework encourages the effective use of land, especially where there is an identified need for housing and where housing land is constrained. It also supports small scale development on windfall sites. The site is well related to local services, facilities and public transport and the proposal would make a

positive contribution towards the Council's housing land supply. Whilst the contribution would only be small, such housing can often be delivered quickly. The proposal would also make a modest contribution to the local economy during its construction phase and thereafter, through the use of services and facilities in the local area by its future occupants.

19. Although the development would result in the loss of an open green space, much of the site would remain as garden land. The site is not allocated or protected for its open space value in the development plan and is not available for public use. There are several larger and more usable public open spaces in the area. The site also has very limited biodiversity value, which subject to suitable landscaping conditions could be improved.
20. I have identified that the proposal would result in some limited harm to the character and appearance of the area, contrary to development plan policies PMD2, CSTP22 and CSTP23. However, that limited harm would not significantly and demonstrably outweigh the benefits I have identified. Consequently, I conclude that the proposal would constitute sustainable development when assessed against the Framework as a whole.

Conditions

21. In addition to the standard time limit and approved plans conditions, it is necessary to complete the development in accordance with external materials to be agreed, in order to protect the character and appearance of the area. Conditions to ensure appropriate sight lines and parking are available before use and thereafter maintained are necessary in the interests of highway safety.
22. The appellant considers the landscaping and boundary treatment conditions to be unnecessary as details have already been shown on the submitted plans. However, there is conflicting boundary treatment information shown on different plans and the details submitted would result in a level of harm to the character and appearance of the area that would not be outweighed by other material considerations. Consequently, in the absence of conditions to mitigate this harm and ensure a more appropriate end appearance, I would be dismissing the appeal. These conditions are therefore necessary.
23. Paragraph 54 of the Framework is clear that permitted development rights should not be restricted by conditions unless there is clear justification to do so. No such justification has been provided in this case. It is not reasonable or necessary to require a construction management plan for a development of this scale and nature in this case. However, a condition to restrict construction hours is necessary to minimise the level of disturbance experienced by local residents throughout the construction phase.

Conclusion

24. For the reasons given above, having taken all matters into consideration, I conclude that the appeal should be allowed.

R Bartlett

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, except in respect of the boundary treatment and landscaping details shown on these plans: V100B, V200, V300 Rev.2, V400, and additional notes for vehicle crossing and manoeuvring.
- 3) Notwithstanding condition 2 and the information on the approved plans, no development shall take place above ground level, until details 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 strict accordance with the approved details.
- 4) Notwithstanding condition 2 and the information on the approved plans, no development shall take place above ground level, until amended details of the siting, height, design and materials of all boundary treatments, including gates, fences, walls, railings, piers and replacement of the existing high level fencing to the front of No.107 Humber Avenue, have been submitted to and approved in writing by the local planning authority. The approved boundary treatment shall be completed prior to the first use/occupation of the development and shall be retained and maintained as such thereafter.
- 5) Notwithstanding condition 2 and the information on the approved plans, no development shall take place above ground level, until full details of soft landscape works on the site have been submitted to and approved in writing by the local planning authority. These details shall include:
 - 1) Details of proposed species of trees, hedges and shrubs to be planted, planting layouts with stock sizes and planting numbers/densities; and
 - 2) Details of the planting scheme implementation programme, aftercare and maintenance programme.

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development unless otherwise agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree, hedge or shrub, or any replacement tree, hedge or shrub, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree, hedge or shrub of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation

- 6) No construction works in connection with this development shall take place on the site at any time on any Sunday or Bank / Public Holiday, nor on any other day except between the following times:
Monday to Friday 0800 – 1800 hours
Saturdays 0800 – 1300 hours

- 7) Prior to occupation of the dwelling hereby permitted sight splays measuring 1.5 metres x 1.5 metres measured from the back of the footway shall be laid out on each side of the proposed access with the highway and these sight splays shall thereafter be permanently maintained free of any obstruction exceeding 600mm high.
- 8) The dwelling hereby permitted shall not be occupied until the vehicle parking area has been hard surfaced and made available for use in accordance with the details shown on the approved plans. The vehicle parking area shall be retained in this form at all times thereafter.