



Appeal Decision

Hearing held 7 March 2023

Site visit made on 7 March 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 March 2023

Appeal Ref: APP/P1560/W/22/3308647

700 and 762 St Johns Road and St Johns Nursery, Clacton On Sea, Essex CO16 8BP

- 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 Kelsworth Limited against the decision of Tendring District Council.
 - The application Ref 21/01000/FUL, dated 3 June 2021, was refused by notice dated 18 May 2022.
 - The development proposed is demolition of nursery buildings and dwelling house (700 St Johns Road) and erection of 180 residential units (including affordable housing) comprising 10 two bed houses, 83 three bed houses, 24 four bed houses, 15 five bed houses, 16 one-bedroom apartments and 24 two-bedroom apartments and 8 live work units (mixed commercial units totalling 1064 square metres with flats above), and roads, open space, drainage, landscaping and other associated infrastructure.
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Decision

1. The appeal is allowed, and planning permission is granted for demolition of nursery buildings and dwelling house (700 St Johns Road) and erection of 180 residential units (including affordable housing) comprising 10 two bed houses, 83 three bed houses, 24 four bed houses, 15 five bed houses, 16 one-bedroom apartments and 24 two-bedroom apartments and 8 live work units (mixed commercial units totalling 1064 square metres with flats above), and roads, open space, drainage, landscaping and other associated infrastructure, at 700 and 762 St Johns Road and St Johns Nursery, Clacton On Sea, Essex CO16 8BP in accordance with the terms of the application, Ref 21/01000/FUL, dated 3 June 2021, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. Planning permission was partly refused on the basis that the Transport Assessment (TA) submitted with the application was insufficient to demonstrate that the proposal would not have a severe impact on highway safety, or the local road network. The underlying concern was the age and timing of the survey data which informed the TA. Further survey work was subsequently undertaken by the appellant and submitted with the appeal. Though the Council failed to acknowledge this evidence when preparing its own statement, it confirmed at the Hearing that the new data had addressed its concern. Except in relation to costs, the matter was not therefore the subject of further dispute between the main parties at the Hearing.

3. Planning permission was also partly refused due to the lack of a dormouse survey, and a Section 106 agreement securing a range of obligations. Again, the Council has confirmed that a survey submitted with the appeal addresses its concern in relation to dormice, whilst the other matters are addressed by the submitted Unilateral Undertaking (UU). I shall therefore consider these and the above matters only to the extent that they remain relevant below.
4. An application for costs was made by Kelsworth Limited against Tendring District Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is the effect of the development on the living conditions of the occupants of 698 and 702 St Johns Road in relation to (a) noise, (b) vibration and (c) light.

Reasons

Background

6. The Council's objections in relation to noise, vibration and light all relate to the proposed access road between Nos 698 and 702 and the future movement of vehicles along it. These were not however grounds for objection to a proposed 195-dwelling scheme on the same site that was dismissed at appeal in 2020 (the 2020 scheme). The current scheme features an access road in the same location. As the same amount of commercial floorspace is proposed as in the 2020 scheme, but less dwellings, fewer vehicle movements would be generated. Logically therefore, any effects of the current scheme in relation to noise, vibration and light would be less than those of the 2020 scheme. In this regard no objection to the appeal scheme was raised by the Council's Environmental Health Officer.

(a) Noise

7. The 2020 scheme was supported by a noise assessment, and a revised noise assessment has been submitted with the current appeal. This demonstrates that the occupants of Nos 698 and 702 would experience change, but that this would not be sufficient to give rise to an unacceptable effect upon their living conditions, either externally or internally. Insofar as this finding is subject to the boundaries along the access road being screened by timber fencing, greater protection would be provided by the masonry walls proposed.
8. The Council's case both is and was not supported by any specialist rebuttal of the noise assessment. Though aspects of the noise assessment were queried, these queries were in part based on a misunderstanding of its scope and required content.
9. Concerns that the access would see heavy use by HGVs are not otherwise reflected in the mix of uses that would be accommodated within the site, and which could be controlled by condition. Further concerns that incorporation of a traffic calming measure on the access road would generate increased vehicular noise through stopping and starting, are not supported by the modelling of vehicle movements. Moreover, as the Highways Authority is open to the proposed chicane being swapped for a raised table, scope exists to identify and to install the most noise sensitive measure. This can be secured by condition.

10. For the above reasons I am satisfied that no unacceptable harm would arise to occupants of Nos 698 and 702 in relation to noise.

(b) Vibration

11. The Council confirmed at the Hearing that it had no evidence or further comment to make in relation to vibration. I have therefore been presented with no reason whatsoever to conclude that future use of the access road would cause harmful vibration within Nos 698 and 702.

(c) Light

12. Insofar as the plots occupied by Nos 698 and 702 could be subject to an increased level of light intrusion from streetlights and headlights, the proposed boundary walls would be effective in blocking much of this light. The remainder could be satisfactorily addressed by design measures secured by condition, as was proposed by officers. In the absence of any evidence to the contrary, I therefore again find that no unacceptable harm would arise to occupants of Nos 698 and 702 in relation to light.

Conclusion

13. For the reasons outlined above I conclude that the effects of the proposed development on the living conditions of occupants of 698 and 702 St Johns Road in relation to noise, vibration and light, would be acceptable. The development would therefore comply with Policy SPL 3 of the Tendring District Local Plan 2013-2033 and Beyond Section 2 2022 (the LP2), which amongst other things requires that development will not have a damaging impact on the amenities of occupiers of nearby properties, and that any additional road traffic arising will not cause unacceptable levels of noise or vibration.

Other Matters

Interested parties

14. Interested parties have raised various concerns in relation to traffic generation and congestion. This includes cumulative effects in relation to other developments which either have been or which may be approved within the locality, seasonal variation, and safety. These concerns are broadly similar to those raised by the Council's Committee when the application was determined. As noted above, the appellant has submitted further survey and interpretive data with the appeal which both confirms the findings of the TA submitted with the application, and demonstrates that the development would have no unacceptable impact on the safe and efficient functioning of the highway.
15. Interested parties have additionally raised concern that occupants of existing dwellings facing onto St John's Road would see their privacy harmed by development to their rear. However, given that these dwellings all have reasonably long back gardens, generous separation distances would be achieved, thus limiting scope for overlooking. The boundary walls to be constructed either side of the access road would additionally limit any scope for public views into the gardens of Nos 698 and 702.
16. Though interested parties have questioned the appropriateness of the location, the site lies within the Clacton Settlement Development Boundary, which provides a general indication of its suitability for the proposed development.

Habitats sites

17. The site lies within the zone of influence of the Colne Estuary Special Protection Area (SPA) and Ramsar, the Blackwater Estuary SPA and Ramsar, the Dengie SPA and Ramsar, and the Essex Estuaries Special Area of Conservation (together the habitats sites). Considered in combination with other plans or projects the development would have a likely significant effect on the integrity of the habitats sites due to the increased population that the additional dwellings would support, and the associated generation of recreational activity. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) an Appropriate Assessment is therefore required.
18. The designation of the habitats sites relates to the range of protected priority species that they support together with their habitats. In this context the habitats sites hold particular importance in relation to birdlife. Where available, conservation objectives seek to maintain or restore integrity, including that of qualifying features. Harm arising from increased recreational activity within the designated areas would be at odds with these objectives.
19. The Council's mitigation strategy is set out within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (RAMS). This comprises a range of strategic mitigation projects funded by developer contributions. The appellant has additionally proposed promotion of local footpaths and a circular walking route. Natural England has confirmed that a contribution provided in line with the RAMS, together with promotion of local walking routes would deliver mitigation.
20. Whilst promotion of local walking routes can be secured by condition, the UU contains an obligation securing payment of the required contribution. In light of the RAMS and my findings above I am satisfied that the obligation passes the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the National Planning Policy Framework (the tests). This allows me to conclude that the development would not adversely affect the integrity of the habitats sites, and that the scheme would comply with Policy SP2 of the North Essex Authorities' Shared Strategic Section 1 Plan, which supports application of the RAMS.

Other obligations

21. The UU secures the provision of the proposed live-work units and 10% on-site affordable housing. This satisfies the requirements of Policy LP5 of the LP2.
22. Other obligations secure the provision and subsequent management of on-site public open space, including an equipped play area. This serves to address demand that will generated by the development, meeting the requirements of Policy HP5 of the LP2.
23. Contributions towards the costs of providing additional capacity within local GP facilities, upgrading existing facilities at the local library, and providing additional early years and childcare places, are also secured. Each would again directly service demand generated by the development, as informed by national and regional guidance relating to healthcare, the Essex County Council Developers Guide to Infrastructure Contributions 2020 (the Guide), and in accordance with the provisions of Policies HP1 and PP12 of the LP2.

24. Finally, and subject to a further Highways Agreement, the UU contains obligations securing the improvement of 3 nearby bus stops and upgrading of the pavement linking the site access to Earls Hall Drive. A subsidy of the local bus service is also secured, the level of which has been calculated on proportionate basis relative to the scale of the development. Though I have not been provided with the full details of the way in which the contribution has been calculated, neither party has given me cause to question its validity. Each of the above, together with a further obligation to provide and fund the monitoring of a Travel Plan, would promote sustainable modes of travel for future occupants. This would be in line with Policies CP1 and CP2 of the LP2, as informed by the Guide.
25. I am satisfied that all the above obligations above pass the tests.

Bats

26. Two roosts supporting common species of pipistrelle bats have been identified within one of the buildings on site. A European Protected Species License (EPS License) would therefore be required before demolition of the building could occur. Having regard to the licensing tests, I can see no likely impediment to an EPS License being granted. Mitigation measures have otherwise been proposed and can be secured by condition.

Conditions

27. Conditions (1) and (2) are standard conditions setting out the time period for commencement of the development and identifying the approved plans for sake of certainty.
28. Conditions (3) and (4) are imposed to address the range of potential contamination risks which have been identified on site, in the interests of public health and safety. Condition (3) is required to be pre-commencement given that risks may arise from the point at which the development is commenced.
29. Condition (5) requires provision of a Construction Management Plan, which, having regard to the scale of the development, is imposed in the interests of safeguarding the amenity of occupants of adjacent dwellings. The criteria include some necessary potential for overlap with Condition (3), and do not cover off-site matters in relation to which scope for enforcement is uncertain. The condition is again required to be pre-commencement given that adverse effects may arise from the point at which the development is commenced.
30. Condition (6) secures a scheme of archaeological work given that the site has been identified as holding potential, and the resource will most likely be lost in its absence.
31. Conditions (7) and (8) secures works in accordance with submitted statements in relation to ecology and trees, thus helps to avoid adverse impacts in relation to each.
32. Condition (9), which combines 3 suggested conditions, requires provision of a surface water drainage scheme, thus helping to ensure that the development is properly drained.
33. Condition (10) requires construction of walls along the side boundaries with Nos 698 and 702, which will mitigate the effects of increased noise.

34. Condition (11) requires the provision/maintenance of a visibility splay at the site access in the interests of highways safety.
35. Condition (12) secures a landscaping scheme, which includes boundary treatments, and Condition (13) approval of building materials/details. Each further incorporates provisions relating to biodiversity enhancement. The conditions will thus help to ensure high standards of design and amenity, and biodiversity value.
36. Condition (14) requires the provision of details of how energy efficiency and the use renewable energy will be maximised within the development. This meets the requirements of Policy PPL 10 of LP2. Though the Council had proposed a condition requiring that 20% of future energy needs would be provided renewable energy, no explicit policy basis for this has been identified.
37. Condition (15) requires provision of a lighting scheme, which is necessary both in the interests of bats, and avoidance of intrusion upon occupants of existing and proposed dwellings.
38. Condition (16) combines 2 proposed conditions relating to the construction and delivery of highways works within the development, together with a number of minor modifications to the submitted scheme. This will ensure timely delivery to a suitable standard, in the interests of highway safety.
39. Condition (17) combines 3 proposed conditions covering the provision of cycle storage/parking facilities, vehicular parking spaces/garaging, and refuse storage facilities. This is in the interests of ensuring that the development caters for the parking demand that it will generate, supports sustainable modes of travel, and general amenity.
40. Condition (18) secures the provision of information leaflets to new occupants promoting local footpaths, in line with the requirements of the AA.
41. Condition (19) is imposed to restrict the use of the live-work units. This is in order to both safeguard the amenity of future occupants, and to ensure that an element of commercial activity is retained within the development.
42. There is no need for a condition requiring installation of EV charging points as this is covered by the Building Regulations. There is also no reason to require details of the development's connection to the sewer network, as this is not in doubt. Insofar as separate conditions controlling hours of work, burning of waste and surface water runoff during construction have also been proposed, these are all addressed within the context of Condition (5).
43. I have not imposed a condition requiring a biodiversity enhancement plan, but instead incorporated various measures proposed within the submissions into Conditions (12) and (13). I have also not imposed a condition requiring finished floor levels, as the site itself is fairly flat, and likely to remain so.

Conclusion

44. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless modified in compliance with the conditions below the development hereby permitted shall be carried out in accordance with the following approved plans: PL AAB-01 D; PL AAB-02; PL AAB-03 B; PL AAB-04 C; PL AAB-05; PL AC-01 E; PL AC-02 B; PL AC-03 B; PL DE-01 B; PL ADE-02 A; PL ADE-03 A; PL ADE-04 A; PL ADE-05; PL LW-01 C; PL LW-02 A; PL LW-03 A; PL LW-04 B; PL 2A-01 A; PL 2A-02; PL 3A-01 C; PL 3A-02 A; PL 4A-01 C; PL 4A-02 A; PL 4A-10 A; PL 4A-11 A; PL 4A-12 A; PL 4A-20 A; PL 4A-21; PL 5A-01 A; PL 5A-02 A; PL 3B-01 A; PL 3B-02; PL 3B-10 C; PL 3B-11; PL 3B-21; PL 3B-20 B; PL 4B-01 C; PL 4B-02 B; PL 5B-01 A; PL 5B-02 A; PL 5B-03 A; PL 3C-01 A; PL 3C-02; PL 3C-10 D; PL 3C-11; PL 3D-20 D; PL 3D-21 A; PL 3D-22; PL 3D-23; PL 3E-01 C; PL 3E-02 A; PL 3E-03 A; PL 0001 B; PL 0100 B; PL 1000 P; PL 1001 H; PL 1002 H; PL 1003 L; PL 1004 M; PL 1030 K; 1040 F; 1041 E; PL 1050 E; PL 1060 E; PL 1070 E; 21.5142.01 A.
- 3) The development hereby permitted shall not commence until a scheme addressing the risks associated with contamination of the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall comprise:
 - a) a revised preliminary risk assessment which has identified all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources; pathways and receptors; and potentially unacceptable risks arising from contamination at the site.
 - b) a site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - c) the results of the site investigation and detailed risk assessment referred to in (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how and when they are to be undertaken.
 - d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.The scheme shall then be implemented as approved.
- 4) Any contamination that is found during construction of the development hereby permitted that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.
- 5) The development hereby permitted shall not commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall cover:
 - a) hours of work;
 - b) locations/arrangements for parking by site operatives and visitors;

- c) locations/arrangements loading and unloading of plant and materials;
- d) arrangements for access to/from the site;
- e) locations/arrangements for storage of plant, materials and waste;
- f) details of the erection and maintenance of security hoardings and lighting;
- g) measures to be taken to control the emission and spread of dust, dirt and mud during demolition and construction works;
- h) measures to be taken to control noise and vibration during demolition and construction works;
- i) measures to minimise surface water run-off during demolition and construction works; and
- j) arrangements for disposal of construction and demolition waste, including measures to maximise recycling.

The development shall then be implemented in accordance with the approved plan.

- 6) No excavation/groundworks shall be undertaken on site in relation to the development hereby permitted, until a Written Scheme of Investigation setting out a timetabled programme of archaeological work, including arrangements for post-excavation analysis, publication and archiving, has been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved scheme.
- 7) The development hereby permitted shall be carried out in accordance with the Precautionary Method Statement set out within the Extended Phase 1 Update Survey Report with Protected Species Surveys dated Oct 2021; the mitigation measures set out in relation to bats within the Protected Species Report Addendum dated Dec 2022; and the measures set out in relation to non-native lizards also set out within the latter.
- 8) The development hereby permitted shall be carried out in accordance with the recommendations set out within Section 8 of the submitted Arboricultural Impact Assessment dated 3 June 2021.
- 9) Construction of the development hereby permitted shall not commence until a scheme of surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be informed by an assessment of the potential for disposing of surface water by means of a sustainable drainage system, the results of which shall be provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted scheme shall:
 - a) provide fully evidenced details of the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - b) include a timetable for implementation; and,
 - c) provide, a management, maintenance and monitoring plan, including details of arrangements to secure the operation of the scheme throughout the lifetime of the development.

The approved scheme shall then be implemented in accordance with the timetable, and shall thereafter be managed in accordance with the managed, maintenance and monitoring plan.

- 10) Prior to the construction of the access road hereby permitted, masonry walls shall be built along the adjacent boundaries with 698 and 702 St John's Road in

accordance with design and construction details which have first been submitted to and approved in writing by the Local Planning Authority.

- 11) Prior the first use of the new access onto St John's Road hereby permitted a clear to ground visibility splay of 2.4 metres by 120 metres shall be provided in both directions. The splay shall thereafter be retained and kept free from obstruction at all times.
- 12) Prior to commencement of construction above slab level of the development hereby permitted, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall cover/include:
 - a) a design rationale;
 - b) surfacing materials;
 - c) boundary treatments, including measures to facilitate the free movement of hedgehogs;
 - d) a scheme of planting, whose specification shall maximise long term biodiversity value; and
 - e) a timetable for implementation.

The approved landscaping scheme shall then be implemented in accordance with the approved timetable. Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years thereafter shall be replaced in the next planting season with others of a similar size and species.

- 13) Prior to commencement of construction above slab level of the development hereby permitted, a detailed specification of the materials to be used in the construction of all external building surfaces shall be submitted to and approved in writing by the Local Planning Authority, together with details of the provision of in-built features to support nesting/roosting by bats and birds. The development shall then be implemented in accordance with the approved specification.
- 14) Prior to the commencement of construction above slab level of the development hereby permitted, a Renewable Energy Generation Plan shall be submitted to and approved in writing by the Local planning Authority. The plan shall set out the measures that will be incorporated into the design, layout and construction of the development aimed at maximising energy efficiency and the use of renewable energy. The development shall then be carried out in accordance with the approved plan.
- 15) Prior to the commencement of construction above slab level of the development hereby permitted, an external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. This shall demonstrate how the type, design, location and operation of all external lighting to be installed within the development will:
 - a) not cause any avoidable intrusion to existing and proposed residential dwellings; and
 - b) be sensitive to bats.External lighting shall then be provided and shall thereafter be operated in accordance with the approved scheme.
- 16) Prior to the commencement of construction above slab level of the development hereby permitted, construction details relating to the highways works shown on approved plan PL 1000 P, together with a timetable setting out their phased delivery, and including:
 - a) provision of a hardened forward visibility splay of 25 metres on each corner;

- b) continuation of the 2-metre-wide footway between plots 94 and plot 97;
 - c) extension of the raised table to include the drive to plot 173;
 - d) location of speed-restraint measures at maximum 60 metre intervals starting within 50 metres of the entry junction or zone; and
 - e) switching of the build-out on the access road to the opposite side, or modification to a raised table, whichever has least effect in relation to vehicles stopping and starting;
- shall be submitted to and approved in writing by the Local Planning Authority. The highways works shall then be provided in accordance with the approved construction details and timetable.

- 17) Prior to the first occupation of each of the dwellings and live-works units hereby permitted the related cycle storage/parking facilities; vehicular parking spaces/garaging; and refuse storage facilities shown on the approved plans shall be provided and made available for the storage/parking of cycles, the parking of vehicles, and storage of refuse respectively. The cycle storage/parking facilities, vehicular parking spaces/garaging, and refuse storage facilities shall thereafter be retained and kept available for such uses at all times.
- 18) Prior to the first occupation of the development hereby permitted, details of information leaflets to be distributed to new householders highlighting the location of local footpaths and areas of green space, including nearby country parks, shall be submitted to and approved in writing by the Local Planning Authority. The approved leaflet shall be provided to all new households.
- 19) Notwithstanding the provisions of Class E of the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) use of the live-work units hereby permitted shall be restricted to uses within Class E(c) and Class E(g) at ground and first floor levels, and no other use, without express permission of the local planning authority.

APPEARANCES

For the Appellant

Stuart Berry	Entran Ltd
Richard Fitter	Entran Ltd
Richard Humphreys KC	No 5 Chambers
Michael Robinson	e3 Design

For the Council

John Pateman-Gee	Planning Manager
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Interested parties

Ray Crosier	Local resident
Michael Talbot	District Councillor

Documents presented at the Hearing

Council's Costs response