



Appeal Decision

Site visit made on 15 December 2022

by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Appeal Ref: APP/V1505/W/22/3293084

119 Kenneth Road, Pitsea SS13 2BH

- 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 K Bhatt against the decision of Basildon Borough Council.
 - The application Ref 21/01494/FULL, dated 1 October 2021, was refused by notice dated 15 November 2021.
 - The development proposed is a two-bed dwelling
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has confirmed that the emerging Local Plan referenced in the submissions has been withdrawn from examination. The draft policies in that document have not therefore been determinative in my decision.
3. The Council indicates that the appeal site is within the zone of influence of the Benfleet and Southend Marshes Special Protection Area (SPA) and Ramsar site. Natural England has now been consulted on the proposal and states that the site is within the zone of influence for the Blackwater Estuary Special Protection Area. I have a duty under the Conservation of Habitats and Species Regulations 2017 (as amended) as competent authority to carry out an assessment to test if the proposal could significantly harm the designated features of these habitats sites. I return to this below.

Main Issues

4. The main issues are therefore the effect of the proposal on highway safety, with particular regard to parking provision; and on the integrity of the habitats sites.

Reasons

Highway safety

5. The proposal would replace the existing garage with a new dwelling, served by two parking spaces in front. The site was previously associated with No 119, however the evidence before me is that they are now in separate ownership. The parking spaces on the appeal site have not been available to No 119 for some time, so that property has no existing off-street parking provision. This appears to be a significant change in circumstances since previous applications were considered by the Council, and I must consider the existing situation

when determining this appeal. There is no substantive evidence before me that this situation would change irrespective of the outcome of this appeal.

6. Although there is an area of hardstanding to the front of No 119, it is not large enough for a vehicle to park either parallel or perpendicular to the road. Should any vehicle attempt to park there, it would be very likely to overhang the pavement, to the detriment of pedestrian safety. However, there is no dropped kerb serving it and none is proposed in this appeal. Furthermore, there is a layby providing parking in front of that property. If a car were to park in the existing layby in front of No 119, any vehicle parked on the frontage of that property would be blocked in. In these circumstances, it is unlikely that anyone would seek to park on the frontage of No 119.
7. Vehicles associated with No 119 therefore already need to park on-street or in the layby, and the proposal would not change that situation. The submitted layout would provide 2 parking spaces of sufficient size to serve the proposed dwelling, in accordance with the Council's parking standards. Those spaces would be served by an existing dropped kerb, so could be accessed without affecting the existing parking provision in the adjacent layby. Sufficient off-street parking would therefore be provided for the proposed dwelling.
8. An existing fence slightly limits visibility approaching the junction and for vehicles exiting the existing parking space. This fence is to be removed under the proposal in order to provide an additional parking space, and any replacement boundary treatment could be controlled by condition. The house itself would be set back from the road and the junction. Therefore, the appeal proposal would not harmfully alter visibility.
9. I appreciate local concern about parking problems in the area, particularly traffic associated with the local sports clubs and the potential for inconsiderate parking. Nevertheless, any displacement of parking from No 119 will already have occurred, and the proposal would meet the parking need of the proposed new dwelling. Therefore, it would not be likely to increase on-street parking compared to the existing situation.
10. Consequently, the proposal would not harmfully affect traffic, congestion or highway safety in the area. Therefore, it would not conflict with Saved Policy BAS BE12 of the Basildon District Local Plan (2007) which sets out that permission for new residential development will be refused if it causes material harm in one of five ways, including traffic danger or congestion. Nor do I find any conflict with the highway and parking policies of the National Planning Policy Framework (the Framework).
11. The highway authority's comments refer to Policies DM1 and DM8 of its Development Management Policies, but I have not been provided with these policies, nor has it been confirmed whether they form part of the development plan. Therefore, they have not been determinative in this main issue.

Habitats sites

12. The appeal site is within the zone of influence of the Blackwater Estuary SPA and potentially also the Benfleet and Southend Marshes SPA and Ramsar sites. Details of these zones are set out in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Habitats Regulations Assessment Strategy document 2018-2038 and the adopted RAMS Supplementary Planning

Document (SPD) (dated May 2020). These SPAs are part of a group of sites along the Essex coast designated to protect internationally important breeding and non-breeding birds and their coastal habitats. The sites are under pressure from recreational disturbance, which has the potential to cause ongoing adverse effects on the protected habitats and species.

13. The proposal would increase the number of dwellings on the appeal site and is therefore likely to increase the number of visitors to the habitats sites. Consequently, the proposal, particularly combined with other development in the area, is likely to have a significant effect on the integrity of the habitats sites due to greater potential for impacts from increased recreational disturbance of birds and their habitats. It is therefore necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the Habitats sites.
14. The RAMS identifies a detailed programme of strategic mitigation measures, to be funded by contributions from residential development schemes. It is accompanied by the RAMS SPD, which sets out an index-linked tariff per new dwelling to meet the costs of the mitigation strategy, based on the planned number of dwellings in the zone of influence until 2038.
15. The financial contribution sought through the RAMS tariff would be necessary to mitigate the effect of the development on the habitats sites, directly related to the development proposed and fairly and reasonably related to it in scale and kind. Accordingly, there is an agreed project that would address the effects of the proposed development and relieve pressure on the habitats sites.
16. The appellant has confirmed that they would be willing to pay the financial contribution, however there is no legal agreement or other mechanism before me to secure that contribution. Accordingly, mitigation required to address the level of harm likely to be caused by the proposed development has not been secured. Therefore, in the absence of mitigation the proposal would result in a significant harmful effect on the integrity of the habitats sites. Consequently, it would conflict with the Framework which directs that planning permissions should be refused if significant harm to biodiversity would result that cannot be avoided, adequately mitigated or, as a last resort, compensated for.

Planning Balance and Conclusion

17. The proposal would contribute to housing supply in a borough which can only demonstrate a 2.32 year supply of future housing land. Given the very substantial shortfall in housing land supply, the benefit of even one additional dwelling carries moderate weight. The appellant proposes that the dwelling would have a low carbon footprint, but provides few details of how this would be achieved. The proposal would also result in economic benefits through construction and household spending. Given the limited scale of the proposal, these matters carry limited weight.
18. The dwelling would provide suitable internal and external space for future occupiers. While slightly smaller than neighbouring properties, the overall design would be in keeping with the local area and materials could be secured through planning conditions to ensure an appropriate appearance. Garages are not an unusual feature in residential areas, and this one has a tidy appearance. There is therefore no material benefit from its removal.

19. The rear garden of No 119 is already overlooked by neighbouring properties, so the additional windows of the proposed dwelling would not significantly worsen the existing situation. The separation distances from the appeal site to the properties to the rear and on the opposite side of Crown Avenue, and proposed use of obscure glazing, would be sufficient to safeguard the occupiers of those dwellings from harmful overlooking. The single storey rear section of the proposed dwelling would create some shading of the garden of No 119 in the mornings but given its limited height and depth this would be for a short time only, and is unlikely to harmfully affect No 117 due to the separation distance. Therefore, it would not unacceptably reduce sunlight to those properties. Consequently, the proposal would not significantly adversely affect the living conditions of neighbours with regard to light or privacy.
20. There would be some noise and disturbance during demolition and construction, however this would be temporary and, if necessary, could be mitigated by use of planning conditions in order to safeguard the living conditions of neighbours. Construction methods to avoid harm to the structure of the adjoining terrace would be controlled through other legislation. The paving materials for the front hardstanding could be controlled by planning condition to avoid any increase in surface water run-off from the appeal site.
21. The lack of harm to highway safety, design and living conditions are neutral factors in the planning balance, and the proposal would not conflict with the relevant parts of the Local Plan in these respects. An additional house would also result in social and economic benefits. However, in the absence of appropriate mitigation the proposal would harm the integrity of the habitats sites.
22. There are no development plan policies relevant to habitats sites. Therefore, I must have regard to the Framework, which is more recent than the saved policies of the Local Plan and which directs refusal in these circumstances. Consequently, I give the Framework policies on this matter substantial weight.
23. The Framework sets out a presumption in favour of sustainable development in paragraph 11d) which applies in certain circumstances, including where the Council cannot demonstrate a five year supply of deliverable housing sites. However, this presumption is disapplied where the application of specified policies of the Framework provide a clear reason for refusing the development proposed, including those policies relating to habitats sites.
24. Having regard to Framework paragraph 180a), the harm that the proposal would cause to the habitats sites forms a clear reason for refusal of the appeal scheme. Therefore, despite the housing land supply situation, the presumption in favour of sustainable development is not engaged. The adverse effects on the habitats sites would significantly outweigh the benefits of the scheme and justify determining the appeal otherwise than in accordance with the development plan. Therefore, the appeal is dismissed.

L McKay

INSPECTOR