



Appeal Decision

Site visit made on 7 February 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th May 2023

Appeal Ref: APP/D1590/W/22/3303333

182A Tankerville Drive, Southend-on-Sea, Leigh-on-Sea SS9 3DD

- 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 and Mrs J Pendrigh of Homes Direct, against the decision of Southend-on-Sea City Council.
 - The application Ref 22/00815/FUL, dated 30 March 2022, was refused by notice dated 26 May 2022.
 - The development proposed is to construct new 2 bedroom flat on roof of existing block of 4 flats and provide additional parking spaces to side and front.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellants have submitted an amended site and location plan drawing (drawing number 10, Revision C, titled Site + Location Plans) with their appeal. This drawing shows 1 vehicle parked on the existing driveway that extends alongside the north facing flank wall of the appeal building, rather than the 2 vehicles shown on the original site plan that was before the Council when it determined the planning application.
3. In taking account of the principles established in the case of *Bernard Wheatcroft Ltd v SSE* 1982, I am content that accepting the amended drawing showing fewer parked vehicles on the driveway of the appeal property would represent a very modest change to the appeal development. Furthermore, the Council and interested parties have had an opportunity to consider the amended drawing.
4. Whilst the Council takes the view that I should not consider the amended site plan drawing, it has not given reasons for this stance. I am satisfied that by me accepting the amended drawing it would not unfairly prejudice the interests of any party. I have therefore accepted it and have determined this appeal accordingly.
5. In its first reason for refusal, the Council has cited a conflict with Policy DM5 of the Southend on Sea Borough Council Local Development Management Document (2015) (DMD). This policy relates to the historic environment of Southend-on-Sea. The main parties agree that the appeal site does not contain a listed building and is not located within a conservation area. As the appeal proposal does not affect a heritage asset, I find that Policy DM5 is not relevant to the appeal proposal, and I have not taken it into account in determining this appeal.

Main Issues

6. The main issues are:

- The effect of the proposed development on the character and appearance of the host property and area.
- Whether the proposed development would affect the integrity of a protected European site of nature conservation importance; and
- The effect of the proposed development on the living conditions of the occupiers of the ground floor flat (Flat 1), with particular regard to noise and disturbance.

Reasons

Character and appearance

7. The appeal relates to a flat roofed two storey block of flats that is situated within a row of mostly two storey residential properties that front onto Tankerville Drive, within an area that is primarily residential in character.
8. The area is predominantly characterised by a mixture of detached and semi-detached single and two storey dwellings that are set back from the roads by short distances on discernible building lines. Most dwellings are of a traditional period style with sloping pitched main roofs in either hipped or gabled forms, and many feature front projecting bays. Roof slopes are generally uninterrupted except where front bays continue into the front roof slopes under gabled roofs.
9. Despite fronting Tankerville Drive, the rear elevation of the appeal building and parts of its north facing side elevation are visible in views from Blenheim Chase, above the rear gardens of the appeal building and the rear gardens of the nearby properties fronting onto Tankerville Drive.
10. The appeal proposal is to construct a 2 bedroom residential flat on the roof of the existing building. It would be contained within a pitched roof form that includes side gables and a pair of matching gabled roofs projecting out from the rear roof slope. A flat roofed dormer set between a pair of substantial chimney stacks, would project out from the rear facing pair of gabled roofs and onto a proposed roof terrace.
11. Together, the rear facing pair of gabled roofs in combination with the elongated horizontal emphasis of the wide flat roofed dormer and the verticality of the chimney stacks, would create an overly complex roof form. The surfaces of the roof slopes, the walls of the rear facing gables, the dormer and the chimney stacks, would merge together at awkward angles to one another.
12. Set high up in an elevated position on the appeal building, the proposed roof form would be clearly visible in public views from Blenheim Chase and across the rear gardens of the properties fronting onto Tankerville Drive. In this position, the scale and complex appearance of the proposed roof form would be visually jarring and intrusive in public views from Blenheim Chase, and in private views from the rear gardens of nearby residential properties.
13. This visual intrusion would be particularly noticeable when seen in the context of the comparatively simple forms of the sloping hipped and gabled roof forms of the flanking buildings fronting onto Tankerville Drive, and the gabled and

hipped roofs of the surrounding buildings that are visible in the wider roofscape.

14. I acknowledge that the proposed dormer would be set down from the main ridgeline of the proposed roof of the building and set in from the existing external walls of the host property, where it would occupy a position on the proposed roof between the chimney stacks. The main parties agree that the proposed dormer with twin rear gabled roof arrangement would be an incidental element to the proposed main roof form of the development, in accordance with one of the requirements contained within paragraph 366 of the Southend on Sea Borough Council Supplementary Planning Document 1 Design and Townscape Guide 2009 (SPD1).
15. However, the proposed dormer and the twin rear roof gables should not be considered in isolation to either one another or to the overall composition of the proposed roof enlargement. Compliance with the guidance in the SPD1 is not confined solely to whether the proposed dormer and twin rear gabled roof arrangement would be incidental or not to the main roof. The effects of the appeal proposal, which includes these elements, must be considered as a whole and in the context of its surroundings in the townscape. This is evident from the first sentence of paragraph 366 of the SPD1, which states that proposals for additional roof accommodation within existing properties must respect the style, scale and form of the existing roof design and the character of the wider townscape.
16. When assessed on a holistic basis, I have found that the proposed development would harm the character and appearance of the area, being markedly at odds with the largely undisrupted and comparatively simple sloping roof forms that are visible within the area.
17. I acknowledge that the SPD1 is guidance and not policy, and that its purpose is intended to encourage high quality design by indicating and illustrating non exhaustive options to meet the design objectives and principles in the Council's planning policies. However, for the reasons given and when read as a whole, I find that the proposal would conflict with the overarching aims of the SPD1's guidance on roof extensions and dormer windows. These are to ensure that roof extensions and dormers are respectful to the character of the wider townscape in accordance with the objectives in the relevant accompanying development plan policies.
18. My attention is drawn to a number of flat roofed dormers to nearby properties on Tankerville Drive, Kingswood Chase and Blenheim Chase, and I saw that several dormers are visible from the appeal property. However, unlike the appeal proposal none of those existing dormers project out from large dual gabled roofs on their rear roof slopes or are set between substantial chimney stacks in the configuration proposed in this appeal. Furthermore, I have no information regarding any planning permissions for those dormers or the policy context under which they were considered.
19. I therefore find that the examples of the dormers cited by the appellants are not directly comparable to the context of the appeal proposal and are of limited relevance to my considerations. In any event, I have considered the appeal on the basis of the evidence before me and my site observations.

20. There is no dispute between the main parties that replacing the appeal building's flat roof with the proposed pitched gabled roof form would be in-keeping with the established character and appearance of the traditional roof forms in the Tankerville Drive street scene. However, this would not outweigh the appeal proposal's harmful effect on the character and appearance of the area that I have identified above.
21. I note the appellants' contention that omitting the proposed dormer and increasing the depth of the rear projecting dual gables would result in a more complicated roof form. However, such an alternative proposal is not before me and is therefore of limited relevance to this appeal.
22. For these reasons, I conclude that the proposed 2 bedroom flat on the roof of the existing flat block would harm the character and appearance of the host property and area.
23. As such, the proposed development would conflict with Policy CP4 of the Southend on Sea Borough Council Local Development Framework Core Strategy Development Plan Document One (2007) (CS), and Policies DM1 and DM3 of the DMD, which require well-designed development that respects the character of the site, its local context and surroundings in terms of its form, proportions and townscape setting.
24. The appeal proposal would also conflict with Paragraph 130 of the National Planning Policy Framework (2021) (the Framework), which states that planning decisions should ensure that developments are visually attractive and sympathetic to local character, including the surrounding built environment.
25. The Council has not specified which parts of the National Design Guide (2021), the appeal proposal conflicts with and therefore it has limited influence on my findings.

Protected European sites of nature conservation importance

26. The appeal site lies within the Zone of Influence (ZoI) of one or more sites on the Essex coastline that are protected as European sites of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (as amended). Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of a European site. I am the competent authority for the purposes of this appeal.
27. The protected sites are listed in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) May 2020. The SPD identifies that occupiers of the proposed development are likely to visit one or more of the protected European sites for recreational purposes, contributing to the threat posed by visitors to the integrity of the European sites, through recreational disturbance to internationally important breeding and non-breeding birds.
28. The SPD sets out the mitigation that will be required to ensure that development within the ZoI would have no significant effect on the integrity of the European sites, alone and in combination with other development. The SPD enables a financial contribution to be secured towards funding the delivery of the strategic mitigation strategy, which is set out in the Essex Coast RAMS, to mitigate adverse impacts on the integrity of the protected European sites.

29. Although the appellants have submitted a receipt for the payment of the financial contribution to the Council towards the Essex Coast RAMS, to mitigate any adverse impacts of the appeal development on the European sites. The Council has not confirmed that this would be acceptable. Furthermore, the contribution has not been properly secured by any Unilateral Undertaking (UU) as required by the SPD.
30. Consequently, on the basis of the evidence before me, I am unable to find that the proposed development would not harm the integrity of one or more of the European sites of nature conservation importance listed in the SPD. I recognise the appellants' willingness to provide a UU, however as I am dismissing the appeal for other reasons, I need not consider this matter any further.
31. The appeal proposal would therefore be contrary to Policies CP4, KP1 and KP2 of the CS, Policy DM6 of the DMD and the guidance in the SPD, which seek to ensure that European sites of nature conservation importance are not adversely affected by development.

Living conditions

32. Alongside the north facing flank wall of the flat block is a narrow hard surfaced driveway that connects to Tankerville Drive via a vehicle access and dropped kerb crossover. Facing the driveway in the north facing wall of the flat block at ground floor level are two relatively large windows serving the bedrooms in the ground floor flat (Flat 1). The appeal proposal seeks to dedicate the existing driveway for the parking of vehicles and to provide an additional hard surfaced parking space on the site frontage to meet the Council's parking standards.
33. The appellant states that occupiers of the flat block are currently prohibited from parking vehicles on the driveway by a private agreement with the freeholder of the flat block. As a private agreement, this arrangement may change irrespective of the outcome of this appeal leading to vehicles being parked on the driveway.
34. Nonetheless, I note the Council's concerns regarding the effects of noise and disturbance arising from the comings and goings of vehicles using the driveway. The noise effects emanating from those comings and goings, such as the running of vehicle engines and the intermittent closing of vehicle doors, would only be focussed alongside the wall of the building and in close proximity to the bedroom windows serving Flat 1. The associated noise and disturbance would likely to be noticeable to the occupiers of this flat and it could occur during the night when most occupiers are likely to be sleeping.
35. However, given the small scale of the proposed development and the likely levels of occupancy, I find that the comings and goings of the small number of additional vehicles that could be accommodated on the narrow driveway would be relatively infrequent. The duration of vehicle movements within the short and narrow driveway would likely be commensurately short.
36. Accordingly, I find that levels of noise and disturbance associated with the comings and goings of vehicles would be at a relatively low level. Therefore, use of the existing driveway to serve the proposed development would not harm the living conditions of the occupiers of Flat 1, even if this was during the night time hours.

37. As such, I conclude that the proposed development would not have a harmful effect on the living conditions of the occupiers of Flat 1, with particular regard to noise and disturbance.
38. As such, the proposed development would be consistent with Policies CP4 and KP2 of the CS, and Policies DM1 and DM3 of the DMD, which require well-designed development that secures good relationships with existing development and does not adversely affect the living conditions of immediate neighbours from noise and disturbance, amongst other objectives.
39. The appeal proposal would also be consistent with Paragraph 130 of the Framework, which states that planning decisions should ensure that developments create places with a high standard of amenity for existing users.
40. Although the Council has cited the SPD1 in its second reason for refusal, the extracts from the SPD1 that are before me in this appeal are not relevant to this main issue, and they have not influenced my findings.

Other Matters

41. The appellants have listed the matters of common ground between the main parties in this appeal. Aside from those considered above in this appeal decision, I acknowledge that the main parties agree that the principle of the proposed development is acceptable and there is no objection to the proposed roof terrace and the number of car parking spaces proposed. There would be no harmful effects on the living conditions of the existing occupiers of nearby properties or the future occupiers of the proposed residential unit. Established interior space standards would be met and outdoor amenity space would be available. Arrangements for storage of bins for waste and recycling, and their presentation for collection would be acceptable.
42. However, even if I were to agree that there is an absence of harm in these respects, an absence of harm is neutral and weighs neither in favour or against the development.

Planning Balance

43. In the context of the development plan, I have found that the proposed development would conflict with Policies CP4, KP1 and KP2 of the CS and Policies DM1, DM3 and DM6 of the DMD, which require well-designed development that respects the character of the site, its local context and surroundings in terms of its form, proportions and townscape setting, and ensures that habitats sites (including European sites of nature conservation importance) are not adversely affected by development.
44. Although the CS pre-dates the first version of the Framework, and the DMD pre-dates the current version, the weight to be attached to these policies does not hinge on their age. Rather Paragraph 219 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. These policies are broadly consistent with the Framework's objectives of ensuring that development adds to the overall quality of an area, is sympathetic to local character and protects habitats sites of biodiversity value. Therefore, I give the appeal proposal's conflict with these policies significant weight.

45. The socio-economic benefits of the appeal proposal are that it would make efficient and effective use of land in a location suitable for new housing and where there is a range of services, facilities and employment opportunities for residents, and access to public transport. It would deliver an additional residential unit, which in turn would generate short term employment opportunities during construction and longer term benefits through the new residential household supporting the economy. However, as a single residential unit these benefits would be relatively small and they attract limited weight in its favour. As such, they would not outweigh its harmful effect on the character and appearance of the area, and on the integrity of the protected European sites of nature conservation importance. For these reasons, I find that the appeal proposal would not accord with the development plan when considered as a whole.
46. The Council cannot currently demonstrate a five year supply of deliverable housing sites. The proposal would make a small contribution to the housing supply in the Council's area. However, under Footnote 7 to Paragraph 11.d)i. of the Framework, the proposal's harmful effect on the integrity of the protected European sites of nature conservation importance provides a clear reason for refusal and therefore the proposal does not benefit from the Framework's presumption in favour of sustainable development.
47. Even if the Framework's presumption under Paragraph 11.d)ii. had applied, I find that the appeal proposal's adverse impacts on the character and appearance of the area would have significantly and demonstrably outweighed the benefits that I have identified when assessed against the policies in the Framework as a whole.

Conclusion

48. For the reasons given above and having considered all matters raised, I conclude that the proposed development conflicts with the development plan as a whole. There are no material considerations of sufficient weight, including the provisions of the Framework, to outweigh this finding. Therefore, the appeal is dismissed.

G Sylvester

INSPECTOR