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# Appeal Decision

Site visit made on 15 December 2022

**by L McKay MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 June 2023**

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**Appeal Ref: APP/V1505/W/22/3295893**

**7 Station Avenue, Wickford SS11 7AS**

- 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 Mandeep Basra (FSJM Limited c/o Oakmont Estates) against the decision of Basildon Borough Council.
  - The application Ref 21/01837/FULL, dated 17 December 2021, was refused by notice dated 15 February 2022.
  - The development proposed is mixed use development consisting of 6 No. flats and a commercial unit of flexible use (A1, A2, A3, B1, D1 or D2) or new class 'E'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appeal submissions reference the emerging Basildon Borough Revised Public Local Plan 2014-2034. The Council has confirmed that this has been withdrawn from examination. Therefore, the draft policies in that document have not been determinative in my decision.
3. The appeal site is within the zone of influence of the Blackwater Estuary Special Protection Area (SPA) and Crouch and Roach Estuaries Ramsar and SPA (the Habitats sites). 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 the habitats sites.
4. The appeal was accompanied by a unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act to facilitate a contribution towards the carrying out of habitat mitigation projects in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). This has been updated during the appeal process and the Council has had the opportunity to comment on it. I shall return to this below.

## Main Issues

5. The main issues are:
  - i) the effect of the proposal on the character and appearance of the area;
  - ii) whether the proposal would provide satisfactory living conditions for future occupiers of the proposed flats;

- iii) the effect of the proposal on highway safety, with particular regard to car parking; and
- iv) the effect of the proposal on the integrity of the habitats sites.

## **Reasons**

### *Character and appearance*

6. The existing building is a two-storey, traditional structure with commercial use at ground floor. Adjacent is a smaller two-storey unit with a shop at ground floor, and next to that are single storey commercial units. There is a large car park on the other side of the site. The rear of the site contains a single storey building and some vegetation, and backs onto Station Approach. Opposite the site is Broadway House, a three-storey brick and render building of modern design, and nearby are traditional two-storey dwellings. The area is therefore mixed in character.
7. The proposed Block A would be significantly taller than the existing building, but this would continue the stepped increase in height from neighbouring buildings. Therefore, the scale would not be out of keeping in this respect.
8. The variation of materials on the existing building, along with the shopfront and fascia, create visual interest and clearly define the commercial element. The front elevation of Block A would incorporate relatively traditional window forms and detailing and eaves dormers adding some articulation to the roof. However, the front wall would be largely flat, presenting an extensive expanse of red brick broken only by a banding detail and various openings. There would be little articulation and the commercial element would be distinguished only by the large expanse of glazing. It is unclear how any necessary signage would be incorporated.
9. The pedestrian entrance to the flats would be via an undercroft through the building, passing by a refuse and recycling area contained in the same area. Both would have a partially barred opening on the frontage, which would appear unwelcoming and highly unattractive on this street frontage.
10. As a result, the front elevation of Block A would be bland and lack detailing and articulation, with features that would significantly detract from its presentation to the street.
11. Essex Police also advise that further controls would be needed on the pedestrian access to ensure security and prevent unauthorised access and anti-social behaviour. It would therefore potentially need to be gated or similarly restricted, further detracting from the appearance of the building.
12. The side elevation of Block A would present a substantial gable to the car park. Although the roof of the lower rear section would be set down from the main ridge, the side wall would continue on the same line as the front section of the building. This would result in a substantial and bulky built form directly on the side boundary. While a flank elevation need not be over-complicated, nevertheless the two small windows and bands of brick detailing proposed would do little to break up the mass of this elevation.
13. The existing building presents a blank elevation to the car park and extends further to the rear than Block A would. However, the existing building is

- noticeably lower in height than the proposal and set off the boundary. A fence and some vegetation along the boundary help to break up the mass of the elevation. Its visual impact is not therefore as great as the proposed scheme.
14. Consequently, Block A would appear as an unacceptably dominant and overbearing structure when seen from the car park and across that open expanse from Station Avenue.
  15. There is no substantive evidence before me that the car park will be developed in the foreseeable future. I have not been provided with details of any planning permission or development brief, so I cannot be sure that, if it were developed, the development would screen the bulk of the side elevation. This does not therefore justify the harmful impact on the area of the design proposed.
  16. Block B would have relatively traditional detailing, materials and proportions. The line of three doors on the front elevation would create a somewhat unbalanced frontage, however this would not be particularly visible from outside the site, so the resulting impact would be very limited.
  17. The outside space between the buildings would provide a safe, legible route for pedestrians between the blocks and opportunities for landscaping and cycle parking. I note however that space for commercial refuse storage would still need to be achieved, as it must be separate from the commercial waste. It is unclear from the submissions how and where this would be provided.
  18. Accordingly, while the proposal seeks to address previous concerns and appropriate materials would be used, the development would not be visually attractive or function well. It would not add to the overall quality of the area and instead, would harm the character and appearance of the area. It would therefore be contrary to Saved Policy BAS BE12 of the Basildon District Local Plan (2007) and the design policies of the National Planning Policy Framework (the Framework).

#### *Living conditions*

19. The proposed pedestrian undercroft would not be subject to any natural surveillance from the flats or within the site, and the partially enclosed entrance would reduce potential for views in from the street. Together with the close association with the refuse store this would create an unattractive route which would not feel safe or pleasant to use.
20. The undercroft could also be used as a gathering space. While unauthorised access could be addressed through security controls, this would not prevent residents and visitors using the area. This could feel intimidating and lead to fear of crime for those trying to pass through, and could contribute to anti-social behaviour. While lighting could alleviate these issues to some extent, it has not been demonstrated that this poor design is necessary to achieve satisfactory access to the site.
21. The proposal would provide a good-sized area of communal outside space for future residents' use. Balconies to flats B02 and B03 would provide a small amount of additional space, albeit with limited privacy due to the higher ground level of Station Approach behind. The garden to flat B01 could be made private through a gate or similar to restrict entry along the side of the building. The balcony to flat A03 would have limited outlook and be largely enclosed by the

- roof, however as communal space would be provided, this would not significantly compromise the living conditions of the occupiers of that flat.
22. Flat A03 would have some storage space in the bathroom. While it would be small, it has not been demonstrated that this would not meet the minimum requirements of the government's nationally described space standards. Moreover, there is no policy before me requiring compliance with that or any other standard. The amount of storage has not therefore been demonstrated to be inadequate for a flat of this size.
23. While provision of internal and outside space would be satisfactory, the proposed pedestrian access would be very poorly designed, resulting in poor and potentially unsafe living conditions for future residents and a fear of crime. Accordingly, the proposal would conflict with Local Plan Saved Policy BAS BE24 which expects the design and layout of new development to include consideration of crime prevention.
24. The proposal would not cause material harm in relation to the aspects of living conditions referred to in Policy BAS BE12, so I find no conflict with that Policy in relation to this main issue.
25. Nevertheless, the proposal would conflict with Framework paragraphs 110 b) and 130 f), which require that safe and suitable access to a site can be achieved for all users; and that development creates places that are safe, inclusive and accessible, with a high standard of amenity for future users and where crime and disorder, and the fear of crime, do not undermine the quality of life.

#### *Highway safety*

26. The Council advises that approved parking standards indicate that 12 car parking spaces would be required, plus cycle parking. I am advised that allowance is made in those standards for lower provision in highly sustainable locations. The appeal site is close to the train station, with bus stops nearby and various services and facilities in walking distance. It is therefore a highly sustainable location.
27. The existing car parking on site would be lost and none is proposed. Cycle parking would be located throughout the site in secure stores, making cycling a realistic and attractive alternative to use of private cars. This provision could be secured by condition.
28. Nevertheless, it is likely that some residents would still choose to have a car, and consideration must therefore be given to where they would park. There is a car park adjacent, which charges for parking. I have not been provided with any evidence of reduced charges for local residents or the availability of season tickets, so this is unlikely to be an attractive option for permanent residents of the proposed flats. It would however provide a convenient option for visitors to the site.
29. There are yellow lines and other parking restrictions on roads immediately around the site with limited on-street parking opportunities which were well used when I visited. The Council has raised concerns that car parking will be displaced to other uncontrolled residential areas, but it has not identified where those might be. I note that the Highway Authority has raised no concerns given the vehicle parking restrictions in the area.

30. Consequently, while the proposal may generate some demand for car parking, the location and availability of other means of transport mean that such demand is likely to be low. Local restrictions mean that any parking would be likely to take place some distance away or in the adjacent car park. The inconvenience and/or cost of this is likely to further discourage residents of the proposed flats from having a car. Furthermore, it has not been demonstrated that any parking generated by the development would be in unsuitable locations or result in obstruction to traffic or any other harm to highway safety.
31. Accordingly, the proposal would not adversely affect highway safety with particular regard to car parking, and would not conflict with Local Plan Policy BAS BE12 v. which seeks to prevent development which would cause material harm in respect of traffic danger or congestion. I find no conflict with the Framework insofar as it requires appropriate opportunities to promote sustainable transport modes to be taken up and seeks to avoid any significant impacts from development on the transport network.

#### *Habitats sites*

32. The appeal site is within the Zone of Influence of the Blackwater Estuary SPA and the Crouch and Roach Estuaries SPA and Ramsar sites as set out in the RAMS Habitats Regulations Assessment Strategy document 2018-2038 and the RAMS Supplementary Planning Document (SPD) (adopted May 2020). These are part of several sites along the Essex coast designated to protect internationally important number of breeding and non-breeding birds and their coastal habitats. These sites are under pressure from recreational disturbance, which has the potential to cause ongoing adverse effects on the protected habitats and species.
33. The proposal would increase the number of dwellings on the appeal site and, therefore, is 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 increased 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.
34. 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. Accordingly, there is an agreed project that would address the effects associated with the proposed development and relieve pressure on the Habitats sites.
35. The main parties have agreed a financial sum in accordance with the RAMS SPD. The appellant has submitted a UU offering to pay the required contribution. The financial contribution 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.
36. The appellant has had the opportunity to provide an updated UU during the appeal to address drafting matters, and has provided clarification that the plan attached to the UU covers all of the land where development is proposed.

Nonetheless, I have not been provided with a completed UU, as the submitted document has been signed but not dated. Therefore, the obligations would not take effect if I were to allow the appeal and grant planning permission.

37. 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 Blackwater Estuary SPA and the Crouch and Roach Estuaries SPA and Ramsar sites. I have not been directed to any development plan policies relevant to this issue. However, the proposal 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**

38. The proposal would deliver a mix of housing and town centre uses in a highly sustainable location on the edge of the town centre. The latest information I have from the Council indicates that it can only demonstrate a 2.32 year supply of deliverable housing sites. The proposal would make a small but nonetheless valuable contribution to housing provision in a suitable location. Given the very substantial shortfall in housing supply, I afford this moderate weight.
39. There would however be harm to the character and appearance of the area, and the proposal would not provide satisfactory living conditions for future occupiers, in conflict with the Local Plan. Local Plan Policy BAS BE12 does not have the positive emphasis and clear design vision sought by the Framework but it still requires the achievement of well-designed places and seeks to protect amenity. Therefore, I find it generally consistent with the Framework and afford significant weight to the conflict with this policy. Policy BAS BE24 is highly consistent with the Framework in its expectation that the design and layout of development will consider crime prevention. I therefore give great weight to the conflict with that policy.
40. The proposal would not have significant adverse impacts on the living conditions of neighbours, given the separation distance to neighbours opposite. Nor would it demonstrably harm highway safety. It would therefore comply with the Local Plan in those respects. Nevertheless, given the importance afforded to good design and layout in the Local Plan, I find that it would conflict with the development plan when read as a whole.
41. The proposal would use suitable previously developed land for housing, which I afford substantial weight having regard to the Framework. It would boost housing supply and make effective use of an under-utilised site to help meet housing needs, which the Framework supports. However, the Framework also sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, and that good design is a key aspect of sustainable development. The proposal would not be well designed, and therefore the Framework directs that it should be refused. The proposal would also harm the integrity of the habitats sites without suitable mitigation. The proposal would therefore conflict with key elements of Framework policy and I give this conflict very substantial weight.

42. Framework paragraph 11 sets out a presumption in favour of sustainable development which applies in certain circumstances. Although the Council cannot demonstrate a five-year supply of deliverable housing sites, the impact of the proposal on the habitats sites provides a clear reason for refusing the development proposed. Therefore, having regard to footnote 7 and paragraph 11 d)i., the presumption in favour is disengaged in this case.
43. For the reasons given above, the proposal would result in harm and conflict with the development plan and the Framework. Having regard to the evidence before me, I find that there are no material considerations, including the benefits of the proposal, that are sufficient to outweigh that harm. There is therefore no justification for granting planning permission for development that conflicts with the development plan. The appeal is therefore dismissed.

*L McKay*

INSPECTOR