



Appeal Decision

Site visit made on 28 June 2023

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH August 2023

Appeal Ref: APP/P1560/W/22/3311836

Land to the Rear of 172 Point Clear Road, St Osyth CO16 8JB

- 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 Miss Pitman against the decision of Tendring District Council.
 - The application Ref 22/00315/FUL, dated 27 January 2022, was refused by notice dated 27 May 2022.
 - The development proposed is the erection of a detached bungalow and associated access, parking and passing bay.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached bungalow and associated access, parking and passing bay at land to the rear of 172 Point Clear Road, St Osyth CO16 8JB in accordance with the terms of the application, Ref 22/00315/FUL, dated 27 January 2022, subject to the conditions identified in the attached Schedule to this decision.

Application for Costs

2. An application for costs was made by Miss Pitman against Tendring District Council. This application is the subject of a separate Decision.

Procedural Matters

3. There is a disagreement between the parties as to whether the appeal scheme would constitute a self-build home. The Council refers to an e-mail where self-build was referenced to support the claim that a self build home would be erected. However, this is not part of the description of development which refers to a detached bungalow. The appeal has been assessed on this basis.
4. A Unilateral Undertaking has been provided by the appellant to secure a financial contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy.

Main Issue

5. It is considered that the main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

6. The proposed development includes the erection of a dwelling within the rear most part of the garden associated with 172 Point Clear Road. This dwelling would be erected adjacent to a recently completed bungalow sited closer to No.

172. Both this bungalow and the appeal scheme would be accessed from a private drive which also serves Dairy Farm Meadow.
7. An earlier proposal for the erection of a bungalow on the site was dismissed on appeal by a previous Inspector because of inadequate vehicular access and parking provision (Ref APP/P1560/W/20/3259775). Subject to appropriate conditions, there are no objections to this appeal scheme from the Highway Authority based upon access, highway safety and parking matters. Reference is also made by the appellant to other residential schemes in the surrounding area but their full planning circumstances have not been provided and, as such, this appeal scheme has been assessed on its own merits, albeit also having regard to the previous Inspector's assessment.
 8. Since the determination of the previous appeal the Tendring District Local Plan 2013-2033 (LP) has been adopted and this is claimed by the Council to be a material change in circumstance. However, as was the case for the previous appeal, there is no defined settlement boundary in the Local Plan for Point Clear. Further, at the time the previous appeal was determined the Council could demonstrate a 5-year supply of deliverable housing land and this is also the case now (which is not challenged by the appellant). Notwithstanding these comments about the similarity of the previous and current proposals, it is correct that there is a need for this appeal scheme to be assessed against the extant development plan policies.
 9. LP Policy SP3 refers to existing settlements being the principal focus for additional growth. Development will be accommodated within, or adjoining, settlements according to their scale, sustainability and existing role within each individual District.
 10. The *Local Plan Settlement Hierarchy* report, forming part of the Local Plan's evidence base, identifies Point Clear as falling within the second tier of settlements. Despite its position in the settlement hierarchy, Point Clear is not identified in the Local Plan as a location for development because of concerns associated with previous levels of growth and traffic. However, within walking distance of the appeal site there is a local convenience shop and bus stops providing an alternative mode of travel to a car for future occupiers. Further, the erection of a single dwelling at Point Clear would not be of a scale of development that would be disproportionate to the size of this settlement.
 11. The Planning Officer's report refers to the proposed development not constituting an isolated dwelling located away from the existing built-up area and it would be closely associated with existing residential development. This assessment reflects its location within the extensive curtilage of an existing dwelling which is enclosed on 2 sides by the rear gardens of neighbouring properties.
 12. The previous Inspector found that the erection of a bungalow within the established curtilage of No. 172 would have little direct effect on the character and appearance of the open land to the north of the site between No. 172 and Dairy Farm Meadow. Accordingly, the Inspector concluded that the proposed development would not have a harmful effect on the character and appearance of the surrounding area. Based upon the site visit, there are no reasons to reach a different conclusion from the previous Inspector and, as such, the quality of the existing place and its environ would be preserved as sought by LP

Policy SP7. No objection is raised by the Council to the quality of the design and layout which is also addressed in LP Policy SP7.

13. For the reasons given, it is concluded that the proposed development would not cause unacceptable harm to the character and appearance of the surrounding area and, as such, it would not conflict with LP Policies SP3 and SP7. For the reasons already given, LP Policy LP7 is not considered to be of direct relevance because it is concerned with self-build homes.

Other Matters

14. A Unilateral Undertaking has been provided by the appellant to secure a financial contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy. This is necessary to secure mitigation to protect the integrity of the habitats of European designated sites, including the Stour and Orwell Estuaries. The Council is satisfied with the Undertaking which has been signed as a Deed by the appellant as landowner. There are no reasons for me to disagree with the Council's assessment about the content of, or the ability to enforce, the Undertaking. The Undertaking would ensure that there would not be an adverse effect on the integrity of the European designated sites.
15. There are comments from a local resident about the legality of the appellant submitting a further application and appeal following the dismissal of the previous scheme. However, the appellant can resubmit a further scheme for consideration. The question of the rights for construction vehicles and the future occupiers to access the appeal site along the private drive, or manoeuvre vehicles, are legal rather than planning matters. The same comment applies to any encroachment of vehicles onto third party land.
16. Although concerns about access for fire appliances and the safety of other highway users who use the private drive have been raised, there is no objection from the Highway Authority to the proposed development, subject to appropriate conditions which include the provision of a vehicular passing bay, maintaining a visibility splay and providing a manoeuvring area on-site which could be secured by suitable conditions.
17. Noise and disturbance concerns associated with the construction of the proposed dwelling are not matters which have been raised by the Council. The effects of construction could be mitigated through the implementation of a construction management plan. If there is a breach of such a condition then this could be enforced by the Council.
18. The Council has expressed concerns that the proposed development would establish an unwelcome precedent for similar proposals. However, this appeal has been determined based upon its planning circumstances, including the site's location and planning history.

Conditions

19. The Council has suggested several conditions in the event this appeal succeeds which have been assessed against the tests in the National Planning Policy Framework and the Planning Practice Guidance. Where relevant, the conditions have been rewritten for reasons of precision or to consolidate the requirements for ease of implementation.

20. For reasons of clarity, a condition is necessary for the proposed development to be undertaken in accordance with the approved drawings. To protect the living conditions of neighbouring occupiers and the site's residual biodiversity interest, conditions to secure compliance with the submitted Construction Method Statement and Ecological Impact Assessment during the construction period are appropriate. By reason of the scale of the appeal scheme, the level of detail already provided by the appellant is appropriate in this case.
21. It is necessary for the landscaping details of the proposed development to be approved by the Council and for there to be a suitable implementation provision. The lack of substantial trees within the appeal site means that details to protect them as part of the landscaping condition are unnecessary. However, it is necessary that any boundary treatment and the erection of a bird box accord with the ecological recommendations. Any planting or boundary treatment adjacent to the proposed access should ensure that appropriate visibility splays could be retained for reasons of highway safety and this could be secured by a separate condition. Although an area is shown on a drawing, no details about cycle parking have been provided. Such details could be considered as part of the landscaping condition albeit a specific implementation condition is required to secure and retain the cycle parking.
22. The provision of suitable vehicular parking spaces, a passing space, an on-site manoeuvring area and the access to the site with the associated visibility splays are necessary for reasons of highway safety. However, it is noted in the consultation response from the Highway Authority dated 8 April 2022 that further details concerning vehicular parking provision are not requested in the suggested conditions.
23. Although the appellant claims the condition unenforceable, it is necessary for a condition to be imposed to promote sustainable modes of travel, including the use of the near-by bus service. The suggested condition has been amended to enable its enforcement. However, the suggested condition to secure resource efficiency measures has not been adequately justified as being necessary by reference to specific development plan policies and some of the matters are the subject of requirements under the Building Regulations.
24. A condition withdrawing some permitted development rights associated with a dwelling house has been suggested by the Council. Exceptionally, because of the size of the plot and the relationship to the recently constructed bungalow, it is necessary for some permitted development rights to be withdrawn.

Conclusion

25. For the reasons given, it is concluded that this appeal should be allowed.

D J Barnes

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: Site Location Plan and Drawing No. PPCR-201 Revision C.
- 3) The development hereby permitted shall be carried out in accordance with the Construction Method Statement (received by the Council 18 February 2022).
- 4) The development hereby permitted shall be carried out in accordance with Section 5.0 Conclusions and Recommendations of the Ecological Impact Assessment Ref: 1588 dated 11th September 2020.
- 5) No above ground works shall take place until details of both hard and soft landscape works, including an implementation programme, have been submitted to and approved in writing by the local planning authority. These details shall include:
 - a) earthworks showing existing and proposed finished levels or contours;
 - b) boundary treatment which shall reflect the Mitigation & Enhancement Measures set out within Section 6.0 of the Ecological Impact Assessment Ref: 1588 dated 11th September 2020;
 - c) schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate;
 - d) Cycle parking provision; and
 - e) hard surfacing materials.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping pursuant to Condition 5 shall be carried out in accordance with the approved implementation programme. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) The dwelling hereby permitted shall not be occupied until the vehicle passing bay area shown on Drawing No. PPCR-201 Revision C shall be constructed and made available for use. The vehicle passing bay shall not be used for any purpose other than an area for vehicles to pass and repass.
- 8) The dwelling hereby permitted shall not be occupied until the vehicular access has been constructed in accordance with Drawing No. PPCR-201 Revision C and that this space shall thereafter be kept available for this purpose.
- 9) Any new boundary planting shall be planted a minimum of 1 metre back from the private road and any visibility splay retained shall be kept free of obstruction by any boundary treatment above 0.6 metres.

- 10) The dwelling hereby permitted shall not be occupied until the vehicular parking spaces have been constructed in accordance with Drawing No. PPCR-201 and that a minimum space of 6 metres shall be provided between the parking spaces and the private drive to allow for the manoeuvring of vehicles. These spaces shall thereafter be kept available for the purposes of vehicle manoeuvring and parking.
- 11) The dwelling hereby permitted shall not be occupied until the cycle parking approved pursuant to Condition 5 is provided and that the space shall thereafter be kept available for the parking of bicycles.
- 12) The dwelling hereby permitted shall not be occupied until details of a Residential Travel Information Pack have been submitted to and approved in writing by the local planning authority. The details shall include six one day travel vouchers with a relevant local public transport operator for use by the first occupiers of the dwelling.
- 13) The dwelling hereby permitted shall not be occupied until a bird box has been erected in accordance with the recommendation at Section 6.0 Conclusions and Recommendations of the Ecological Impact Assessment Ref: 1588 dated 11th September 2020.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, including alterations to its roof, of the dwelling hereby permitted shall be erected and nor shall any outbuildings within its curtilage be erected other than those expressly authorised by this permission.

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