



Appeal Decision

Site visit made on 20 June 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2023

Appeal Ref: APP/D1590/W/22/3304113

12 Branksome Road, Southend-on-Sea SS2 4HQ

- 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 Susan Steel against the decision of Southend-on-Sea Borough Council.
 - The application Ref 21/01506/FUL, dated 21 July 2021, was refused by notice dated 11 February 2022.
 - The development proposed is the demolition of an existing house and replacement with four new build houses.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of an existing house and replacement with four new build houses at 12 Branksome Road, Southend-on-Sea SS2 4HQ in accordance with the terms of the application, Ref 21/01506/FUL, dated 21 July 2021, subject to the conditions in the schedule to this decision below.

Main Issues

2. The Council has stated that the appellant has paid directly to them a sum of money towards measures to mitigate any adverse impacts of the development on the Benfleet and Southend Marshes Special Protection Area, Special Conservation Area, Site of Special Scientific Interest and Ramsar ('the SPA'). The Council has confirmed that this satisfies their requirements. Nevertheless, it is incumbent upon me as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. It is therefore necessary for me to consider this matter as a main issue.
3. Accordingly, the main issues are the effect of the proposed development on the:
 - a) character and appearance of the surrounding area; and
 - b) the integrity of the SPA.

Reasons

Character and Appearance

4. The appeal site is on a predominantly residential street that is mainly characterised by two-storey terraced and semi-detached dwellings. In addition, there is a short run of detached single storey and 1.5-storey dwellings along either side of the road. The front elevations of the two-storey dwellings are similar in appearance; they are constructed of a mix of brick, painted brick and render; and have similar sized plots. In contrast, the single storey and 1.5-

storey dwellings have a varied character, appearance and plot sizes. The dwellings are set back from the pavement by a small front garden that is generally used for off-street parking. While there is some consistency in the front building line, there are also examples of dwellings that are marginally set forward or backward from the neighbouring property.

5. The appeal site comprises a detached bungalow set within a large rectangular-shaped plot. The plot is substantially larger than the other plots in the road and therefore does not follow the predominant character. The existing bungalow is sited to one side of its plot, with a large gap separating it from the boundary shared with 10 Branksome Road. The existing bungalow is set behind a brick boundary wall which, together with the presence of trees and other vegetation, substantially screens it from the road. The existing bungalow is sited within a run of dwellings which are mixed in scale and appearance.
6. It is proposed to demolish the existing bungalow and construct a terrace of four, two-storey dwellings that would be positioned equidistant from the side boundaries of the appeal site. The proposed dwellings would have a contemporary design. However, their palette of materials would reflect those within the road, and they would include large, vertical windows and a front facing feature gable that would echo the front elevational architectural features of the existing two-storey dwellings. The ridge height of the proposed dwellings would be marginally higher than No 10, however this is unlikely to be discernible from the street due to their roof design and the gaps to either side.
7. The proposed dwellings would each have a rear garden that would be a similar size and shape to others within the road and therefore, more in-keeping than the existing plot. The siting of the proposed off-street parking to the back edge of the pavement would also be similar to others in the road and, while positioned to either side of the plot, they would not detract from the area's character or appearance. The proposed dwellings would be positioned marginally behind 10 and 14 Branksome Road to either side of the appeal site. However, this is unlikely to be apparent due to the gap to either side, and the car parking spaces and landscaping proposed to the front. Consequently, the proposal would not result in an overdevelopment of the plot.
8. In reference to the first main issue, the proposed development would not adversely affect the character and appearance of the surrounding area. It would therefore adhere to Policies KP2 and CP4 of the Southend-on-Sea Borough Council Local Development Framework, Development Plan Document One, Core Strategy, adopted 2007 ('the CS') and Policies DM1 and DM3 of the Southend-on Sea Borough Council Development Management Document, adopted 2015 ('the DMD') which, amongst other things, seek to ensure that developments reinforce local distinctiveness; and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape setting and detailed design features.
9. It would also adhere to the Supplementary Planning Document 1, Design and Townscape Guide, adopted 2009, the National Planning Policy Framework ('the Framework') and the National Design Guide which, amongst other things, seek to achieve well designed places.

Integrity of the SPA

10. The appeal site lies within the Zone of Influence (ZoI) of the SPA. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA, either alone or in combination with other plans and projects. In 2018, the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment, rather than at the screening stage¹. This responsibility now falls to me as the competent authority.
11. Evidence shows that the SPA is under significant pressure from an increase in public access for recreation, and disturbance of bird species, as a result of urban development. The increase in recreational pressure on the SPA can lead to such issues as an rise in wildfires, damaging recreational uses, the introduction of incompatible plants and animals, nutrient enrichment, loss of vegetation and soil erosion. Accordingly, disturbance by humans and their pets, amongst other factors, can have an adverse effect on the SPA.
12. The proposal would result in a net increase of three dwellings on the appeal site. Consequently, there would be a likelihood of future occupiers of the proposed dwellings visiting the SPA and therefore the proposed development has the potential to impact on the integrity of the SPA through increased recreational disturbance to the bird populations and other qualifying features of the habitat sites. I therefore conclude that the proposal, particularly when combined with other developments in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
13. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SPA. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council has been operating a strategy for the protection of the SPA, which is set out in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document, adopted May 2020 ('the SPD').
14. The SPD indicates that the mitigation (i.e. the Recreational disturbance Avoidance and Mitigation Strategy tariff – 'the RAMS') should be secured by a planning obligation. However, Natural England has stated that some of the Local Planning Authorities that have adopted the RAMS allow applicants to make a direct payment of the tariff as an alternative to a planning obligation. The absence of a planning obligation would not normally secure the RAMS payment, however, Natural England states that the Council, together with the other relevant Essex Local Authorities are subject to the obligations of the "RAMS Partnership Agreement" which provides the legal framework and governance arrangements for securing the required contributions and delivering the mitigation measures set out in the SPD. The RAMS Partnership Agreement requires that the RAMS tariff be paid to the accountable body (currently Chelmsford City Council) when the Council is satisfied that the

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

qualifying development will be constructed, pursuant to the relevant planning permission.

15. The appellant has paid £519.20 directly to the Council towards the RAMS to alleviate any adverse impacts of the development on the SPA for which a receipt has been submitted. This payment would fund the mitigation necessary to avoid adverse effects on the integrity of the European sites within the SPA and would be secured by the RAMS Partnership Agreement.
16. In respect of the second main issue, the proposal would not harm the integrity of the SPA. The proposal would therefore comply with Policy CP4 of the CS, which, amongst other things, seeks to safeguard, protect and enhance nature and conservation sites of international, national and local importance.

Other Matters

17. The proposal could result in the loss on on-street parking and third parties have raised concerns regarding existing parking demand. However, the Highways Authority has not objected to the proposal, and from the evidence before me, I have no reason to take a different view. While the construction phase of the development could potentially be disruptive and could result in the deposition of mud and dust, it would be short-term, and some effects could be mitigated by way of conditions. There is no indication that the removal of trees would lead to damage to existing properties, or that contractors' vehicles would cause damage to cars, and in any event, this is a civil matter. While the submitted documentation may contain errors, this has not prevented me from forming a view on the main issues.
18. Concerns raised regarding the ventilation of bathrooms and the location of soil pipes are matters to be considered under Building Regulations. Surveys have been submitted in respect of ecology and trees and both the Council's Arboriculturist and Environmental & Green Space Project Officer have raised no objection to the proposal subject to conditions. Furthermore, the existing building is not listed or locally listed, the Council do not object to the building's demolition, and they consider the proposal would meet the exceptions of LP Policy DM3(4). I have no reason to take a different view on these matters.
19. Concern regarding the capacity of existing sewerage and water has not been substantiated with evidence. While the loss of a view is not a material planning consideration. The Council do not raise concern regarding the effect of the proposed development on the living conditions of the occupiers of neighbouring properties and I have nothing before me to come to a different view.

Conditions

20. The Council has provided a list of conditions which I have had regard to with respect to the tests for conditions set out within the Framework. I have undertaken some minor editing and rationalisation of the proposed conditions in the interests of precision and clarity. The appellant has had sight of the Council's proposed conditions and is agreeable to the majority of them, including those that are pre-commencement conditions, with a few exceptions, which I will detail below.
21. In addition to the standard condition which limits the lifespan of the permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. Conditions relating to the submission,

- approval and implementation of materials, and a landscaping scheme are necessary to ensure the appearance of the development would be satisfactory.
22. I am satisfied that conditions in respect of the provision and retention of areas for the parking of vehicles and the construction of vehicle crossovers, are necessary in respect of highway safety. Furthermore, the provision and retention of bin storage areas are necessary to ensure the appearance of the development would be satisfactory, and they would not pose a highway safety issue. A Construction Method Statement is reasonable and necessary in the interests of highway safety due to the narrowness of the surrounding roads and the provision of on-street parking. It is necessary to restrict the hours of working on the site to between specified hours to safeguard the living conditions of adjacent occupiers.
23. The provision and retention of covered cycle storage facilities and electric vehicle charging points are necessary to increase the environmental advantages of the proposed development and to promote the use of more sustainable modes of transport. A condition requiring at least 10% of the development's total energy needs to be supplied using on-site renewable sources is required to reduce the dwellings' impact on climate change, and a condition in respect of water efficiency measures is necessary to account for water resourcing issues experienced in the surrounding area.
24. Conditions in respect of works to, and the retention of, existing trees and the development to be undertaken in accordance with the recommendations contained within a Preliminary Ecological Assessment (PEA) are necessary to ensure that the development has an acceptable impact on habitats and protected species; to ensure the appearance of the development would be satisfactory; and to ensure that the development achieves a net gain in biodiversity. A condition in respect of nesting birds is not necessary as the requirements of this condition are repeated within the PEA's recommendations.
25. A condition requiring the dwellings to be built to comply with Part M(2) of the Building Regulations is necessary as it is an optional requirement unless secured through the planning process. Furthermore, it is required in this instance due to the development resulting in the loss of an existing bungalow. A condition in respect of drainage is necessary to ensure that the development is designed in accordance with sustainable urban drainage systems principles.
26. The Council has recommended the removal of permitted development rights within Classes A, AA, B, D and E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO'). The appellant has raised concern in respect of this condition. The Planning Practice Guidance states "conditions restricting the future use of permitted development rights...may not pass the test of reasonableness or necessity". The siting of the proposed dwellings would ensure that any future extensions or alterations permitted under these Classes of the GPDO would unlikely harm the living conditions or the occupiers of existing or future dwellings. Therefore, it would not be reasonable or necessary to remove them from the proposal.
27. The proposed elevations drawing indicates that the first floor bathroom and ensuite windows in each end of the proposed development would be obscure glazed and fixed. The appellant has raised concern regarding this condition. However, it appears that they have misunderstood which windows this draft condition refers to, thinking the Council meant the first floor windows in the

rear elevations of the proposed dwellings. I agree with the Council that a condition ensuring that the bathroom and en-suite flank windows remain as indicated on the approved drawings for the lifetime of the development is reasonable and necessary in order to protect the living conditions of the occupiers of both neighbouring properties and future occupiers.

28. The Council has requested a condition requiring a scheme to be agreed with the local planning authority to protect the living conditions of the occupiers of neighbouring properties from the ground floor flank windows of the proposed development. However, due to the proposed gap and the likely presence of boundary treatment, I support the appellant's view that such a condition is not reasonable or necessary.

Conclusion

29. For the reasons given above and having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be allowed.

A Berry

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: P1000, P1001, P1002, P1003, P1004 Rev C, P1005(1) Rev B, P1005(2) Rev B, P1006, P1007, all dated November 2021.
- 3) Notwithstanding the details shown on the approved plans, prior to development above slab level, full product details of the materials to be used on all the external elevations of the residential building shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) Prior to commencement of the development, other than the clearance of shrubs necessary to allow for tree survey work, no tree removal or development of any kind shall take place until a full tree survey carried out in accordance with British Standard BS5837 - Trees in Relation to Construction - Recommendations has been submitted to and approved in writing by the local planning authority, together with an associated scheme and an Arboricultural Method Statement for the protection of trees to be retained at the site in accordance with the same British Standard.

Any approved protection measures shall be fully installed prior to the commencement of development and maintained at all times during construction. The development shall be implemented in full accordance with the approved statement, measures and methods.

- 5) The development shall be carried out in strict accordance with the recommendations made within Section 7 of the submitted Preliminary Ecological Assessment, dated December 2021 including but not limited to:
 - i) a requirement for a disturbance licence to be obtained from Natural England prior to the commencement of development to allow the proposed development to proceed, and the need to engage with Natural England to obtain and fully adhere to all terms agreed within the disturbance licence;
 - ii) prior to the occupation of the development, the implementation of a scheme of measures to ensure biodiversity net gain in accordance with a scheme that has previously been submitted to and approved in writing by the local planning authority;
 - iii) landscaping of the site to include native species; and
 - iv) the installation of hedgehog nest domes and gaps under any perimeter fencing in accordance with a scheme that has previously been submitted to and approved in writing by the local planning authority. The development will be carried out in accordance with the approved details prior to the occupation of the development.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be fully adhered to throughout the construction period. The Statement shall provide, amongst other things, for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from construction works that does not allow for the burning of waste on site;
 - vii) measures to restrict the duration of noisy activities and locating them away from the periphery of the site;
 - viii) measures to ensure site security and to minimise impacts of lighting on neighbouring occupiers;
 - ix) measures to protect existing trees adjacent to the site boundaries in accordance with BS5837; and
 - x) construction-management mitigation measures, with regard to protected species.
- 7) Notwithstanding the details shown on the approved plans, no development above slab level shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The soft landscape works shall be designed to enhance biodiversity at the site further to the findings of the submitted Biodiversity Impact Assessment, produced by ACJ Ecology and dated December 2021. The approved hard landscaping works shall be carried out

prior to the first occupation of the development and the soft landscaping works shall be carried out within the first planting season following first occupation of the development. The details submitted shall include, but not limited to:

- i) means of enclosure of the site including any gates or boundary fencing;
- ii) details of the number, size and location of trees, shrubs and plants to be planted, together with a planting specification;
- iii) hard surfacing materials including permeable surfacing;
- iv) minor artefacts and structures (e.g. furniture and planters);
- v) measures to enhance biodiversity within the site; and
- vi) full maintenance and management proposals for the site frontage in perpetuity.

Any trees or shrubs that die, are removed, are damaged or diseased within five years of planting shall be replaced with trees or shrubs of a size and species as agreed in writing by the local planning authority and planted within an agreed timeframe.

- 8) Drainage infrastructure (including foul and surface water drainage infrastructure) associated with the development hereby approved shall only be installed at the site in accordance with details that have previously been submitted to and approved in writing by the local planning authority. The drainage infrastructure shall be designed in accordance with 'sustainable urban drainage systems' (SUDS) principles with a clear justification provided with any submission as to why the use of any particular SUDS techniques have been considered and discounted.
- 9) The demolition and construction of the development hereby approved shall be limited to between 8am and 6pm Mondays to Fridays and 8am and 1pm on Saturdays. There shall be no working on Sundays or Bank/Public Holidays.
- 10) At least 10% of the total energy needs of the new dwellings shall be supplied using on site renewable sources. Prior to occupation of the dwellings hereby approved, details of the position and appearance of the renewable sources shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the first occupation of the dwellings and shall be retained thereafter.
- 11) Prior to first occupation of the development hereby approved, details of a waste management strategy together with the design, location and appearance (including use of materials) of external refuse and recycling storage, shall be submitted to and approved in writing by the local planning authority. The approved details shall be carried out prior to the first occupation of the development and shall be retained thereafter.
- 12) Prior to the first occupation of the development hereby approved, details of secure, covered cycle storage and electric vehicle charging infrastructure shall be submitted to and approved in writing by the local Planning authority. The approved scheme shall be carried out prior to the first

occupation of the development hereby approved and shall be retained thereafter.

- 13) Prior to first occupation, the dwellings hereby approved shall comply fully with Building Regulation M4(2) 'accessible and adaptable dwellings'. Such measures incorporated to comply with the Regulation shall be retained thereafter.
- 14) Prior to first occupation, the development hereby approved shall incorporate water efficient design measures as set out in Policy DM2 (iv) of the Southend on Sea Borough Council Development Management Document, adopted July 2015 to limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water consumption), including measures of water efficient fittings, appliances and water recycling systems such as grey water and rainwater harvesting. The water efficient design measures incorporated into the dwellings hereby approved shall be retained thereafter.
- 15) Notwithstanding the details shown on the approved plans, the proposed first floor bathroom and en-suite windows within the western and eastern side elevations of the development hereby approved shall be glazed in obscure glass (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal floor level of the room which they serve, and shall be retained thereafter.
- 16) The development hereby approved shall not be occupied until the car parking as shown on the approved plan P1004 Rev C, together with the associated vehicular crossovers has been provided. The approved parking shall be retained thereafter and maintained free of obstruction.
- 17) Notwithstanding the approved details, prior to the first occupation of the development hereby approved, the proposed vehicular crossovers shall each be constructed to a width of 4.88m in accordance with details that have been previously submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the first occupation of the development and retained thereafter.

*****End of Conditions*****