



Appeal Decision

Site visit made on 9 June 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2023

Appeal Ref: APP/W1525/W/22/3291667

Land adjacent to 14 Creekview Road, South Woodham Ferrers, Chelmsford CM3 5GU

- 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 Immofin Ltd against the decision of Chelmsford City Council.
 - The application Ref 20/02055/FUL, dated 11 December 2020, was refused by notice dated 6 August 2021.
 - The development proposed is the provision of eight new residential dwellings including new access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal has been accompanied by a unilateral undertaking to address potential effects on the Blackwater Estuary and Crouch and Roach Estuaries Special Protection Areas and RAMSAR sites. The appellant has also submitted additional information with their appeal regarding the biodiversity value of the existing site and biodiversity net gain. The Council has indicated this addresses its concerns in each regard and no longer wishes to defend the first reason for refusal. I will return to both of these matters.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area with particular regard to trees; and
 - whether the proposed development would provide acceptable living conditions for future occupiers with specific regard to the provision of outdoor amenity space.

Reasons

Character and Appearance

4. The appeal site is a substantial domestic garden which lies to the side of the property. It is bounded to three sides by residential development and by Creekview Road to the other. There is a substantial boundary hedge to Creekview Road which prevents views into the garden from the street. Many of the trees in the garden are clearly visible above this hedge.

5. Creekview Road effectively forms the edge of built development with dwellings to one side and public open space to the other. There is a notable amount of tree planting on this space along Creekview Road. Notwithstanding, the appeal site does provide an attractive break in the built development which makes a positive contribution to the character and appearance of the area. The trees within the site are a substantial component of that value.
6. Tree Preservation Order 2003/46 (TPO), as it relates to this appeal, includes group G2 which, at the time of the TPO, consisted of 25 hawthorn and 1 weeping willow. The application was accompanied by an arboricultural report carried out by Trevor Heaps Arboricultural Consultancy Ltd. A further report by Arbtech was submitted alongside the appeal. Neither survey identifies which trees lie within G2 and both surveys record fewer hawthorn than the 25 specified in the TPO.
7. There are a number of minor inconsistencies in the submitted evidence with regard to the number of trees to be removed and how many of which are protected. In light of the evidence before me and having regard to the comments of both parties, I have determined the appeal on the basis of the information shown in Appendix 3 of the Arbtech report that 30 trees are to be removed of which 7 are protected by the TPO, 6 hawthorn and 1 weeping willow.
8. LP Policy DM17 sets out that planning permission will be granted for development proposals that do not result in unacceptable harm to the health of a preserved tree. Clearly, the felling of a tree would result in such harm. The policy goes on to provide that in exceptional circumstances, there may be overriding public benefits arising from the development that could justify the removal of protected trees and that in such circumstances a replacement shall be provided.
9. The appellant's case, which only addresses the loss of 6 of the trees, sets out that 2 are not visible from public spaces so their loss would not be significant to the group, and that the loss of the remaining trees would not be significant due to their height and position in the group and if replacement trees were to be planted along the northern boundary. It also sets out that the provision of 8 family dwellings and biodiversity enhancements would justify the loss of the protected trees.
10. While there would be an undoubted benefit from the delivery of an additional 8 dwellings, there is no evidence before me to suggest that an appropriate level of housing is not being delivered or that there is a shortfall in the supply of deliverable housing land. LP Policy DM16 sets out that all development should deliver a net gain in biodiversity where possible and the evidence submitted with the appeal shows that a 10% gain could be secured which would also be a benefit. However, neither of these would constitute an exceptional circumstance, nor are the benefits so significant that they would override the loss of the protected trees.
11. LP Policy DM17 also seeks to protect natural landscape features and the supporting text confirms this includes trees and applies to urban and suburban areas. The proposal would also result in the loss of 23 non-protected trees which are landscape features and contribute positively to the character and appearance of the area. The appellant's evidence confirms that the proposal would result in the loss of some visually significant individual trees. Even with

the retention of much of the group, there would be harm to the character and appearance of the area from the loss of a considerable number, particularly the loss of those that are visually significant.

12. LP Policy DM17 allows for this loss in two specific circumstances. I have previously found that there are no overriding public benefits arising from the development. While the proposed plans show some additional trees, this is not in the form of a landscape strategy providing the specific details of the proposed trees that would allow me to be certain that it would compensate for the harm that would arise from the loss. It would also allow a more informed judgement to be made as to the likelihood of future pressure for the trees to be removed. In these circumstances, it would not be appropriate for this matter to be left to a condition as the suitability of the landscape strategy would be fundamental to the acceptability of the scheme.
13. There is no compelling evidence before me that any of the trees on site are an irreplaceable habitat or are ancient or veteran trees, therefore I do not find that the proposal would conflict with paragraph 180 c) of the National Planning Policy Framework (the Framework).
14. Nonetheless, the proposed development would have an adverse effect on the character and appearance of the area with particular regard to the unacceptable loss of trees. It would therefore be contrary to LP Policy DM17 which seeks to prevent development that would have unacceptable harm to the health of a preserved tree except in exceptional circumstances where there would be overriding public benefits or unacceptable harm to natural landscape features that are important to the character and appearance of the area unless the loss is compensated for by a landscape strategy or where there are overriding public benefits.

Living Conditions

15. LP Policy DM26 requires new dwellings to provide sufficient private amenity space, in this case 80sq m as each dwelling would have more than 3 bedrooms. It does allow for lower provision where particular site circumstances allow.
16. There is no reason that any of the dwellings on this site should have a garden below the standard set out in the LP given the low density of the scheme. It would not be justified by the ability of occupiers to access the semi-private open space that would be created at the rear of the site as future occupiers would not have the same freedoms to use the land in the way that private amenity space allows.
17. Notwithstanding, this is a matter which could be addressed by condition. A number of the proposed dwellings are shown to have irregularly shaped gardens which has not been raised as a concern. While the Council has not suggested such a condition, I consider it would be relevant to planning and the development to be permitted. It could be worded in such a way as to be precise and enforceable. It would be reasonable in all other respects. It would therefore meet the tests set out in paragraph 56 of the Framework.
18. The proposed development could thus provide acceptable living conditions for future occupiers with regard to the provision of outdoor amenity space. It would therefore be in accordance with LP Policy DM26, the aims of which I have set out.

Other Matters

19. The TPO also protected another group, G1, which consisted of 4 willow trees. Felling of these was permitted by two separate applications¹ and all 4 have been removed. The application in 2019 sought the removal of 3 of the trees and this was approved subject to a condition which required their replanting in the first season following felling. This does not appear to have been complied with. The Council contends that this matter would be best addressed through this application. The appellant's evidence is inconsistent in this respect, as their statement claims this is not a matter for this appeal, but a number of the submitted drawings are clearly marked showing 3 replacement willow trees. However, as I have found against the appeal for other reasons, it is not necessary for me to consider this matter further, which would not be determinative in any case.
20. The appellant has submitted additional information regarding the biodiversity of the site and how biodiversity net gain could be delivered. I have no reason to dispute these findings. The Council does not dispute this evidence and confirmed it no longer wished to defend the first reason for refusal. The Council considers this matter could be secured by condition, while the appellant's evidence sets out this could be secured through a legal agreement, although the submitted unilateral undertaking does not make provision to secure this. However, as I have found the development to be unacceptable for the reasons set out above, it is not necessary for me to consider this matter further.
21. The site falls within the zone of influence for the Blackwater Estuary and Crouch and Roach Estuaries Special Protection Areas and RAMSAR sites. The Council's report sets out that the appeal proposal could give rise to likely significant effects on these sites alone or in combination with other development due to the increased recreational pressure. The appellant has submitted a draft unilateral undertaking to address this. However, there is no need for me to consider the implications further because the proposed development is unacceptable for the reasons I have set out above.
22. The site is at least partially within an area of high flood risk. The Council's officer report confirms that the proposal passes the sequential and exception tests. As I am dismissing the appeal for other reasons, it is not necessary for me to seek further clarification on this matter.
23. The proposed development, in isolation of my findings above, would integrate into the surrounding area and provide acceptable living conditions for future occupiers. It would be located within an existing settlement with access to public transport services. There would not be an adverse effect on the operation of the highway arising from the development. However, these would amount to a lack of harm and would therefore be neutral factors.

Conclusion

24. For the reasons given above, the appeal scheme would conflict with the development plan and there are no material considerations before me worthy of sufficient weight that would indicate to the contrary. The appeal should therefore be dismissed.

J Downs INSPECTOR

¹ 18/05938/DD and 19/05182/TPO