



Appeal Decision

Site visit made on 17 August 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023.

Appeal Ref: APP/D1590/W/23/3314325

1 Westgate, Shoeburyness, Southend-on-Sea, SS3 9BT

- 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 Peter Marchant against the decision of Southend-on-Sea City Council.
 - The application Ref 22/01492/FUL, dated 22 July 2022, was refused by notice dated 27 October 2022.
 - The development proposed is erect dwellinghouse with associated amenity space, layout parking spaces, car electric charging point and bin and cycle storage.
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Decision

1. The appeal is dismissed

Preliminary matters

2. The application form described the proposal as "Proposed new-build dwelling house within vacant plot". The council changed this to the description that I have used in the heading above, and this was used on the appeal form. I have adopted it because it more clearly describes the development proposed.

Main issues

3. The main issues in this case are: i) the effect of the proposed development on the character and appearance of the site, the streetscene and the wider area; ii) the degree to which the house would provide an accessible and adaptable dwelling; and iii) The effect of the net increase of one dwelling on habitats and species.

Reasons

The effect of the proposed development on the character and appearance of the site, the streetscene and the wider area

4. The appeal site lies at the junction of Campfield Road with Westgate. The junction is in the form of a 'V', since the 2 roads meet at an angle of about 45°. In this vicinity, the 2 roads have mainly frontage development on regular building lines, in the form of traditional terraces with low pitched slate roofs, although a few recent houses have been added. The exception to the frontage development is a terrace of 3 dwellings that sits across the ends of the current frontage development, just back from the junction, presumably as an 'end stop' to the terraces on either side. On the other side of Westgate there are local

shops and further residential development. On the other side of Campfield Road the character is clearly commercial with large warehouses with associated car parking.

5. The site is narrow and pointed, and of irregular shape, and hence presents a challenge to the aim of achieving a dwelling that relates satisfactorily with its context. There is a separate element of the site, in the form of a narrow parcel of land some 52.2m² in area to the south across Westgate, to form a parking, refuse and cycle store area. The proposed house would front onto Westgate, looking across to the rear of a Sainsburys 'Local' store.
6. Obviously, the size and disposition of the site means that the proposal pays no regard to the building lines of the two roads. The entrance porch is set about 1m from the back edge of the footway, whilst the main front elevation itself is about 2m back. That part of the side elevation which is a lower element, is also some 2m from the curve of the junction. The main body of the building would run back close to the highway edge of Campfield Road, with the private garden area at the widest part of the site, in front of the terrace that otherwise closes the corner.
7. The outcome of the design would be a dwelling that steps back from the front in 3 elements. The main and highest element would sit under a rather short gabled roof that would contain 2 dormer windows set high in the front slope. This 'core' would have attached a lower, narrow 1½ storey element in the apex of the junction, with a dormer window rising from the front wall. It appears from the drawings that this element would have a minimal set back from the main front façade. At the rear, there would be another 2-storey projection, under a gabled roof, the ridge of which would be considerably lower than the main ridge.
8. The combination of these factors would be a building with little coherence between its elements, the 1½ storey part being particularly contrived to achieve the desired amount of accommodation. The fenestration relates poorly to the solid walls, and the dormers, which are not features found in the immediate area, give a degree of incongruity to the whole. The fact that dormers are common throughout towns and cities and that large dormers can be constructed under permitted development rights does not justify accepting dormers in new build development that are visually unsatisfactory.
9. I conclude that overall, this proposal does not represent good design, as required both by the local policies of the development plan, and the National Planning Policy Framework (the Framework). In addition to the unsatisfactory features of the design, the dwelling would not relate agreeably with the local grain of development and would be detrimental to the appearance of this prominent corner. Thus the effect of the proposed development would be harmful to the character and appearance of the site, the streetscene and the wider area.

The degree to which the house would provide an accessible and adaptable dwelling

10. The council's case on this issue, as set out in the officer's report, is that the proposal fails to demonstrate how Building Regulations M4(2) would be met. The council does not consider that safe access could be achieved for persons of all abilities due to the closeness of the site to the highway and the parking provision across the road and to the rear of the site with no straightforward

access to the entrance to the dwelling; and the detached location of refuse, recycling and cycle storage would result in occupiers having to cross the highway to access these facilities.

11. The appellant sets out the requirements of regulation M4(2) as follows: M4(2): Category 2: Accessible and adaptable dwellings. This requirement is met when a new dwelling provides reasonable provision for most people to access the dwelling and includes features that make it suitable for a range of potential occupants, including older people, individuals with reduced mobility and some wheelchair users. I note that the council's Development Management Policy DM8 – Residential Standards requires at item (iv): "*Ensure that at least 10% of new dwellings on major development sites are wheelchair accessible, or easily adaptable for residents who are wheelchair users;*". Clearly both these requirements do not require every dwelling to meet the full range of potential occupants.
12. I also note that the parking space provided within the rear garden is close to entrances to the garden from the house. It also seems to me that it would be possible to arrange refuse and cycle provision within the site itself, rather than across Westgate as proposed, to which, if minded to allow the appeal, I could give further consideration. However, I consider that as the proposal stands, the remote refuse and cycle provision is undesirable close to the junction, and this adds an additional factor that points to poor design and to the refusal of permission.

The effect of the net increase of one dwelling on habitats and species

13. This issue arises from the fact that the site falls within the Zone of Influence (ZoI) for one or more European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS). The council, as competent authority at application stage, undertook a Habitats Regulations Assessment (HRA) to secure any necessary mitigation and recorded this decision.
14. Any new residential development within the ZoI has the potential to cause disturbance to European designated sites and therefore the development must provide appropriate mitigation. This is necessary to meet the requirements of the Conservation of Habitats and Species Regulations 2017. The RAMS Supplementary Planning Document (SPD) requires that a tariff of £137.71 (index linked) is paid per dwelling unit. This will be transferred to the RAMS accountable body in accordance with the RAMS Partnership Agreement.
15. The appellant accepts this and deals with the matter in the statement of case by stating that this is now a common requirement across most Essex authorities and at £137.71, it is a relatively small payment that is required. This will be paid as the appeal progresses and proof of payment will be provided in due course. However, there has been no further response or proof of payment.

Other matters

16. Having reached conclusions on the main issues that the refusal notice raised, it is necessary to consider a matter that only becomes relevant when a refusal of permission is indicated. I refer to paragraph 11 of the Framework. This paragraph has the heading 'Presumption in favour of sustainable development'.

The relevant part of this subparagraph is d), the preamble to which states: *"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:"*. d)i does not apply here, but d)ii states *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole"*.

17. Footnote 8 in this subparagraph makes clear that *"This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years"*. In this connection the appellant points to a 'lamentable failure' of the council to meet the housing delivery test, so that paragraph 11d)ii comes into play. This requires the local planning authority to identify adverse impacts which significantly and demonstrably outweigh the benefits of the scheme.
18. There is a degree of common ground between the parties, in as much as the officer's report states *"The results of the Housing Delivery Test (HDT) published by the Government show that there is underperformance of housing delivery in the City. Similarly, the Council's Five-Year Housing Land Supply (5YHLS) figure shows that there is a deficit in housing land supply in the City. ... For the proposed provision of housing the HDT and 5YHLS weigh in favour of the principle of this type of development"*. However, neither party gives any precise up-to-date figures of the extent of the short coming in terms of the 5-year housing land supply. What I am told by the appellant is that, with the 75% figure being described as a 'substantially below' threshold, the most recent housing delivery test results for Southend were as follows: for 2021, published 2022: 31%; for 2020, published 2021: 36%.
19. These figures represent a good guide to the council's performance. The appeal site is in a sustainable location, and there is no question about the suitability of the general location for housing development. Therefore the 'tilted balance' is firmly a factor, favourable to the appeal, to be weighed in the balance.
20. My clear conclusion on the first issue is set out in paragraph 9 above, which is based on the quality of the design of the proposal. The out-of-curtilage cycle and bin store is an additional shortcoming of the proposal that indicates poor design – good design does not relate to appearance alone. Framework paragraph 11d)ii includes the proviso that the tilted balance applies unless *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole"*. As will be well known to both parties, section 12 of the Framework, headed Achieving well-designed places, emphasises that good design is a key aspect of sustainable development. When taking the policies of the Framework 'as a whole', good design must be an important element in the context of this appeal, set alongside other policies such as those set out in section 5 'Delivering a sufficient supply of homes'.

21. The site is on a prominent corner, and so achieving a well-designed development is all the more important, and I place considerable weight on this factor. Set against my conclusion on that point, is the benefit of the delivery of one net additional dwelling with some added weight to be afforded to the provision of a new family unit. That single unit must carry less weight than a proposal that would make greater inroads into the shortfall of the housing supply in the City.

Conclusions

22. I have concluded under the first issue that the proposal does not represent good design and the dwelling would not relate agreeably with the local grain of development. This means that the appeal proposal, at a prominent junction, would be harmful to the character and appearance of the site, the streetscene and the wider area, and contrary to local policies of the development plan. In addition, the provision of cycle and bin storage on the opposite side of Westgate also indicates poor design. Against this I have considered whether the 'tilted balance' of paragraph 11d)ii justifies planning permission because the council cannot demonstrate a 5 year supply of housing land and the Housing Delivery Test results show a figure substantially below the target. I have set out in paragraphs 19 to 21 above the factors that lead to my decision on the balance that must be struck, and conclude that, taking the policies of the Framework as a whole, the harm to the character and appearance of the site, the streetscene and the wider area, and the poor design generally, must prevail. Therefore, I will dismiss the appeal
23. I reported in paragraphs 13 and 14 above that since the site falls within the Zone of Influence for one or more European designated sites, any new residential development has the potential to cause disturbance to European designated sites and therefore the development must provide appropriate mitigation. The appellant stated that this would be paid as the appeal progresses but there has been no further response or proof of payment. However, in view of the decision that I am making, it has not been necessary to consider the matter further.

Terrence Kemmann-Lane

INSPECTOR