



Appeal Decision

Site visit made on 21 August 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/M1520/W/22/3303568

20 Kents Hill Road, Benfleet SS7 5PN

- 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 Dr Satwant Gill against the decision of Castle Point Borough Council.
 - The application Ref 21/1170/FUL, dated 11 January 2022, was refused by notice dated 10 March 2022.
 - The development is described as “the proposed dwelling will be a one bedroom detached bungalow with one small front dormer. Demolition of existing storage outbuilding”.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council’s officer report refers to the New Local Plan (2018-2033). However, the Council has clarified that they have withdrawn this plan prior to adoption and therefore, the emerging policies referenced by the Council are no longer applicable. I have determined the appeal on this basis.

Main Issues

3. 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 and Ramsar, the Blackwater Estuary Special Protection Area and Ramsar, and the Essex Estuaries Special Area of Conservation (‘the SPAs’). 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 SPAs. It is therefore necessary for me to consider this matter as a main issue.
4. Therefore, the main issues are the effect of the proposed development on:
 - a) the character and appearance of the surrounding area;
 - b) the living conditions of the occupiers of the existing dwelling and the living conditions of future occupiers, with particular reference to garden sizes;
 - c) highway safety; and
 - d) the integrity of the SPAs.

Reasons

Character and Appearance

5. The appeal site comprises a semi-detached dwelling fronting onto Kents Hill Road. Within the dwelling's rear garden is a detached single storey garage that is accessed from Constitution Hill. It is proposed to demolish the existing garage, sub-divide the existing plot and construct a detached dormer bungalow that would front onto Constitution Hill.
6. Constitution Hill comprises a predominantly residential road with dwellings of mixed appearance. The dwellings along the western side of Constitution Hill within the immediate vicinity of the appeal site are set back from, and follow the curve of, the road. Consequently, each dwelling is set slightly closer to the road than its southern neighbour and results in a defined building line. In contrast, the proposed dwelling would be sited significantly closer to Constitution Hill and would project forward of the dwelling immediately to the north (23 Constitution Hill) which would not reflect the existing pattern of development along this side of the road and would appear prominent.
7. The proposed dwelling would be sited within a rectangular-shaped plot that would have a narrow width. In contrast, the plots within the immediate vicinity of the appeal site comprise relatively wide plots. The proposal would therefore conflict with the prevailing character of the surrounding area. While I acknowledge that there are examples of other dwellings on Constitution Hill that have narrow plot frontages, these dwellings are set back from the road by a garden/parking area, tend to have deeper plots, or are not located within the immediate vicinity of the appeal site. Therefore, they are not directly comparable to the appeal proposal. Furthermore, I must determine the proposal on its own merits.
8. I acknowledge that the appeal site is currently overgrown and detracts from the character and appearance of the surrounding area. However, I am not persuaded that the appearance of the site could not be improved by less harmful means.
9. In respect of the first main issue, the proposed development would harm the character and appearance of the surrounding area. It would be contrary to Saved Policy EC2 of the Castle Point Borough Council Local Plan, adopted 1998 ('the LP') which, amongst other things, requires the scale, density, siting, design and layout of any development to be appropriate to its setting and not harm the character of its surroundings. It would also be contrary to Policies RDG1 and RDG3 of the Council's Residential Design Guide Supplementary Planning Document ('the Design SPD'), effective from 1 January 2013 in respect of plot sizes and building lines, and paragraph 130 of the National Planning Policy Framework ('the Framework') which requires development to be sympathetic to local character and establish or maintain a strong sense of place.

Living Conditions of the Occupiers of the Existing Dwelling and Future Occupiers

10. Both the proposed dwelling and the existing dwelling would have a rear garden that, although of a useable shape and flat, would be below the minimum size detailed within the Design SPD, resulting in a substandard level of private amenity space. The appellant asserts that the gardens would be orientated to

provide good levels of daylight. However, this has not been substantiated with evidence.

11. The Design SPD states that less amenity space may be considered appropriate in cases where there is safe and convenient access to high quality public open space. South Benfleet playing fields is located between 300m and 450m to the south of the appeal site. However, access to it would necessitate crossing the B1006 which is a busy thoroughfare and although there is a zebra crossing which could aid pedestrians, it is my view that a safe and convenient access could not be gained. Villa Road recreational ground is located approximately 850m to the north of the appeal site, which would not be within its immediate proximity. Furthermore, it has not been demonstrated that either area of open space is "high quality", and the proposal has not been supported by a "robust design rationale" as required by the Design SPD.
12. While the internal floor area of the proposed dwelling may exceed the floorspace standards that would be expected for a 1 bedroom/2 person/two-storey dwelling, this does not negate the Council's outdoor private amenity space requirements.
13. In respect of the second main issue, the proposed development would harm the living conditions of the occupiers of the existing dwelling and the living conditions of future occupiers, with particular reference to garden sizes. It would therefore be contrary to Policy RDG6 of the Design SPD which, amongst other things, seeks to ensure that residential developments provide an amenity space of a size that is suitable for the site, its context and type of occupier. It would also be contrary to paragraph 130(f) of the Framework that seeks to create places with a high standard of amenity for existing and future users.

Highway Safety

14. No off-street parking is earmarked for the existing or proposed dwellings. Therefore, the proposal would not comply with Essex County Council's Parking Standards Design and Good Practice, adopted 2009. Furthermore, the proposal would result in the demolition of the host dwelling's garage. The section of Constitution Hill immediately in front of the appeal site is subject to a Traffic Regulation Order on both sides of the road that restricts parking to permit holders only at specific times and days.
15. The appellant contends that future occupiers of the proposed dwelling could apply for a parking permit and could park on the road immediately in front of the proposed dwelling. However, I have not been provided with details of the parking permit regime to ascertain whether future occupiers would be eligible for a permit, nor have I been provided with an assessment of existing roadside parking to establish whether there is capacity within the surrounding area for additional vehicles to park on the road. It is suggested that the existing dropped kerb that serves the host dwelling's garage could be removed to create an additional parking space on the road. However, I have not been provided with evidence that vehicles do not currently park in this area due to the demarcation of the permit holder parking area, nor have I been provided with evidence that there would be sufficient space to accommodate an additional vehicle.
16. The existing dwelling fronts onto Kents Hill Road and has a small front garden with a boundary wall along the back edge of the pavement. A telegraph pole is

located to one side while the road immediately in front of the dwelling has double yellow lines and a bus stop. The appellant asserts that two off-street parking spaces could be provided within the front garden of the existing dwelling, accessed from Kents Hill Road and they would be agreeable to a condition requiring the parking to be provided prior to the commencement of development should the appeal be allowed.

17. However, from the evidence before me it is unclear whether two vehicles could be accommodated within the front garden. Furthermore, if a bus was waiting at the bus stop, this could result in vehicles waiting on the public highway to turn into the parking area, resulting in an obstruction; vehicles would likely have to manoeuvre out of the spaces in a reverse gear onto a road that was heavily trafficked at the time of my site visit and whose driver's visibility could be impeded. The appellant contends that parking spaces within the front garden could be provided without requiring planning permission. However, this has not been substantiated with evidence.
18. The appellant asserts that the appeal site's location could negate the need for parking spaces to be provided for the existing and proposed dwellings. However, I have not been provided with information regarding modes of public transport or their frequency, the location of facilities such as healthcare, secondary schools, employment, supermarkets. Therefore, it is unclear from the evidence before me whether a reduction in the vehicle parking standards would be acceptable. Furthermore, the Highways Authority has assessed the proposal and consider that three on-site parking spaces are required in line with the adopted parking standards.
19. In respect of the third main issue, the proposed development would harm highway safety. It would be contrary to Saved Policies EC2 and T8 of the LP which, amongst other things, seek to ensure that all modes of movement are made safe and convenient, and that adequate off-street parking provision accompanies any future development proposals, in accordance with Essex County Council's car parking standards.
20. Paragraph 111 of the Framework states that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe". As detailed above, the proposal would have an unacceptable impact on highway safety and therefore the development should be refused on highway grounds.

Integrity of the SPAs

21. The application site is located within the Zones of Influence (ZoI) of the SPAs. These are European Designated Sites 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 SPAs, 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.

22. Evidence shows that the SPAs are under significant pressure from an increase in the level of public access for recreation, and disturbance of bird species, as a result of urban development. The proposed development has the potential to impact on the integrity of the SPAs, through increased recreational disturbance. The increase in recreational pressure can lead to such issues as an increase in wildfires, damaging recreational uses, 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 SPAs.
23. The proposal would result in an increase in one dwelling. There would be a likelihood of future occupiers of the proposed dwelling visiting the SPAs and therefore the proposed development would be likely to result in recreational disturbance to the bird populations and other qualifying features of the habitats sites. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
24. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SPAs. 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 SPAs, which is set out in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document, adopted May 2020 ('the Essex Coast SPD').
25. 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, the Council has confirmed that they, 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 Essex Coast SPD. The appellant has paid £127.30 directly to the Council towards the RAMS to alleviate any adverse impacts of the development on the SPAs 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 SPAs and would be secured by the RAMS Partnership Agreement.
26. In respect of the fourth main issue, the proposal would not harm the integrity of the SPAs. The proposal would therefore comply with the Essex Coast SPD which, amongst other things, seeks to ensure the integrity of the SPAs are protected.

Other Matters

27. The proposed development would result in the provision of a small, one-bedroom dwelling. While this may be desirable as a first home, I have not been provided with evidence to suggest that there is a need for one-bedroom dwellings in the area.

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

28. I acknowledge that paragraph 120(d) of the Framework seeks to promote and support the development of under-utilised land and buildings, especially if this would help to meet the identified needs for housing where land supply is constrained. However, the appeal site is not overly large and the land to the rear of the host dwelling provides a reasonable, rather than substantial, sized garden. While currently overgrown, it is not under-utilised land.

Planning Balance

29. I have not been directed to any development plan policies in respect of the second and fourth main issues, and the Council has stated that it is unable to demonstrate a five-year housing land supply of deliverable housing sites. As such, paragraph 11(d) of the Framework is engaged which states, "where there are no relevant plan policies, or the policies which are most important for determining the application are out-of-date, granting planning permission unless: (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) 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".
30. I have not been provided with information regarding the scale of the shortfall in housing supply. As detailed above, the appeal site is located within the ZoI of the SPAs (protected areas as defined by Footnote 7 of paragraph 11(d)). However, I have already found that the policies in the Framework that seek to protect those areas of particular importance do not provide a clear reason for refusing the proposed development, therefore (i) of paragraph 11(d) is not applicable. I will therefore address whether the proposal would comply with (ii).
31. The provision of one dwelling weighs in favour of the proposal and would make a contribution, albeit small, to the Government's objective of significantly boosting the supply of new homes. It would also provide some employment during the construction phase, although this would be temporary. I therefore attach moderate weight to these benefits.
32. Against these benefits is the harm that would be caused to the character and appearance of the surrounding area, to the living conditions of the occupiers of the existing dwelling, the living conditions of future occupiers, and to highway safety. Matters to which I attach substantial weight.
33. Consequently, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal would therefore not represent a sustainable form of development.

Conclusion

34. For the reasons outlined above, having regard to the development plan as a whole and all other matters raised, the appeal should be dismissed.

A Berry

INSPECTOR