



Appeal Decision

Site visit made on 20 September 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th October 2023

Appeal Ref: APP/P1560/W/22/3306913

11 Hill Road, Dovercourt, Essex CO12 3PB

- 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 M Pickett against the decision of Tendring District Council.
 - The application Ref 21/00528/FUL, dated 15 March 2021, was refused by notice dated 25 March 2022.
 - The development proposed is proposed conversion of residential property into four self-contained flats incorporating a two-storey extension (currently in use as an unauthorised HMO).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site lies within the zone of influence for two designated habitats sites. A Unilateral Undertaking (UU) dated 10 March 2022 pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) in relation to a contribution towards the mitigation of likely significant effects on these sites has been submitted. It is necessary for me to consider this as a main matter.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the integrity of habitats sites; and
 - the living conditions of neighbouring occupiers with particular regard to outlook.

Reasons

Habitats Sites

4. The site lies within the Zone of Influence of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site, and the Hamford Water SPA and Ramsar site. The Council has adopted the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) to address the likely significant effects of development on these sites, amongst others.
5. Regulation 63(2) of The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) confirms that it is incumbent on any person applying for permission to provide such information as the competent authority may reasonably require for the purposes of assessment. The Planning Practice

Guidance (PPG) sets out what an appropriate assessment must contain¹. The SPD does not contain all of the information I would require to carry out this assessment.

6. However, even if I did have sufficient information to enable me to establish whether there would be a likely significant effect, either alone or in combination with other development which could be adequately mitigated, there is no sufficiently robust mechanism before me to secure the contributions identified in the SPD. I am not satisfied the UU could be relied upon to bind successors in title. Without that certainty, I could not conclude that the proposed development would not have an adverse effect on the integrity of the habitats sites.
7. Consequently, the proposed development would be contrary to Tendring District Local Plan 2013-2033 and Beyond Section 1 (January 2021) Policy SP 2 and Tendring District Local Plan 2013-2033 and Beyond Section 2 (January 2022) (LP2) Policy PPL 4, the Habitats Regulations and Section 15 of the National Planning Policy Framework (the Framework) insofar as it relates to habitats sites, which taken together, require any likely recreational impacts arising from the development to be mitigated.

Living Conditions

8. The appeal property and its attached neighbour at 9 Hill Road are substantial properties set in commensurately spacious plots. The proposed extension would be considerable in its depth and massing and set in proximity to the boundary between the properties. No 9 has an outbuilding with a pitched roof set on this boundary a short distance from the stairs. This restricts the outlook from part of the rear garden such that the additional effect of the proposed extension would not result in a harmful loss of outlook.
9. The proposed extension would be readily apparent from the first-floor sunroom at No 9 and would effectively entirely enclose the side windows. However, the expanse of windows on the rear elevation face the length of the garden. The outlook from these windows would be largely unaffected as the proposed extension would only project a short distance beyond this room and it is not in dispute that the 45 degree rule would not be breached. The width of the plot and length of the garden provide for a good standard of outlook from these windows. Overall, an acceptable level of outlook from No 9 would remain. Loss of view is a private interest and the PPG² advises that planning is concerned with land use in the public interest.
10. The proposed development would therefore not have an adverse effect on the living conditions on the occupiers of 9 Mill Road with respect to outlook. It would therefore be in accordance with LP2 Policy SPL 3 which requires, amongst other things, development to be well related to its site and surroundings, provide adequate outlook for existing residents and would not have a materially damaging impact on the amenity of occupiers of nearby properties. It would also be in accordance with paragraph 130 of the National Planning Policy Framework which, insofar as it relates to this appeal, requires a high standard of amenity for existing and future users.

¹ Appropriate assessment Paragraph: 003 Reference ID: 65-003-20190722 Revision date: 22 07 2019

² Determining a planning application Paragraph: 008 Reference ID: 21b-008-20140306 Revision date: 06 03 2014

Other Matters

11. There would be undoubted benefits from the delivery of additional dwellings, particularly in a location with ready access to services and public transport within walking distance. There would also be a benefit from improvements to the existing building and it being in full active use. I attach limited weight to these benefits given the small scale of the proposed development.
12. No harm with respect to highways or the character of the surrounding area has been identified. Other effects on the living conditions of neighbouring occupiers could be addressed by condition. However, these would be expected of any well designed scheme and would therefore be neutral.
13. Policy HG10 is no longer part of the development plan. Although there is not clarity around the authorised use of the site, LP2 Policy LP11 does not have criteria related to the existing use of the site. It imposes controls on the creation of new houses in multiple occupation or bedsits and therefore would not be applicable to this proposal for self-contained flats. It also does not provide explicit support for reducing the number of houses in multiple occupation or bedsits.

Conclusion

14. Notwithstanding my conclusion in regard to the second main issue, it would not be sufficient to make the proposed development acceptable in light of the harms I have found in respect of the first. There would be conflict with the development plan and there are no material considerations worthy of sufficient weight, that would indicate otherwise. The appeal should therefore be dismissed.

J Downs

INSPECTOR