



Appeal Decision

Site visit made on 26 September 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Appeal Ref: APP/M1595/W/22/3309178

Land at Kipling Avenue, Tilbury, Essex, RM18 8HE

- 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 Circa Properties against the decision of Thurrock Council.
 - The application Ref 21/02004/FUL, dated 18 November 2021 was refused by notice dated 29 July 2022.
 - The development proposed is residential development to create 8 no. 2-bedroom 2-storey dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Whether the proposal would accord with the development plan with reference to the loss of open space; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Open space

3. The appeal site is a rectangular area of grassed land embedded within a housing estate constructed in the 1980's. The site is well maintained, with shrubs at the western end and a single tree in the south east corner. The surrounding streets are tight knit and predominantly defined by terraced and semi-detached houses fronting the roads behind small front gardens and car parking areas.
4. I understand that the appeal site has not been dedicated or allocated within local planning policies as a public open space. However, the National Planning Policy Framework (2023) (the Framework) defines 'open space' as all open spaces of public value which offer important opportunities for sport and recreation and can act as a visual amenity. The Glossary within the Thurrock Core Strategy Policies for Development Management (2015) (CSPMD) also defines 'open space' as any open space that is used by the public or local community for outdoor recreation, whether public or privately owned and whether use is by permission. Accordingly, the appeal site fits within the definition of open space within the Framework and CSPMD.

5. In considering this appeal, the guidance provided in paragraph 99 of the Framework is relevant as it outlines three tests prescribed to be undertaken in order to help justify the loss of such amenity space. Two of these tests are particularly relevant and include a) an assessment showing that the land in question is clearly surplus to requirements, and b) that the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
6. Whilst not referenced in the reason for refusal, the Council's decision notice confirms that Policy PMD5 of the CSPMD was taken into consideration when determining the application. The policy states that the Council will safeguard all existing open spaces, outdoor sports and recreational facilities. Development proposals that would result in their complete or partial loss will not be permitted unless accessible alternative facilities will be provided; or improvements to remaining facilities sufficiently outweigh the loss. In addition, proposals should not negatively affect the character of the area.
7. No assessment has been provided to show that the open space, be it designated or not, is surplus to requirements. There is also no suggestion that the loss resulting from the proposal would be replaced by accessible alternative facilities, which would be necessary to meet criteria within both the Framework and Policy PMD5.
8. Conversely, I have evidence before me that the land in question is used by local residents and the large number of letters from local people are testament to the fact that this area of land is used for a variety of purposes especially, it appears, by younger children. Therefore, I consider that the land cannot be considered surplus to requirements, but is a well utilised area of informal amenity space that is highly valued by those who use it.
9. That other similar undeveloped plots have since been constructed on highlights the importance of retaining the remaining open space rather than the acceptability of losing additional open space. I also note that the two previous permissions¹ involving the loss of open space were approved prior to the publication of the Framework.
10. There are two open spaces with play equipment within walking distance of the housing adjoining the appeal site (King George's Field and a field to the south of Fielding Avenue). However, the existence of other open space within the local area does not negate the need to address the requirements of the development plan. The two alternative open spaces may also not be as convenient for younger children to access safely.
11. Therefore, the submission fails to demonstrate that the proposal would accord with PMD5 of the CSPMD and with paragraph 99 of the Framework, with respect to the loss of open space.

Character and appearance

12. The appeal site offers a noticeable departure from the estate as a whole, by providing a more informal area of green space located within the core area of the estate. In this sense, it seems likely that it was originally intended that the space would remain open and accessible, to provide residents with both a visual and physical relief from the surrounding built form.

¹ 03/01486/FUL and THU/596/93

13. When viewed in isolation, the design, scale and bulk of the houses within the terraces are comparable to those in the other terraces on neighbouring streets. The proposed materials would also be characteristic of the area, and the proposal could provide additional planting and landscaping which would be secured by a planning condition. However, I find that the presence of the open space, whether formerly intended or not, is positive in terms of its effect upon the character of the area.
14. The proposal would appear prominently in a number of views taken from Kipling Avenue and Shaw Crescent, from which the introduction of built form and removal of green space would be particularly apparent. The presence of a long row of car parking spaces adjoining Kipling Avenue would also have a markedly urbanising effect. There would be a harmful loss of physical openness that provides both visual and physical relief from the surrounding built form. Overall, the removal of the open space and infilling with a significant amount of built form would result in significant harm to the character and appearance of the area.
15. In light of this I find that the loss of this space would cause harm to the character and appearance of the area through the loss of an informal area of open space. As such I consider that the proposal would be in conflict with policies PMD2, PMD5 and CSTP22 of the CSPMD. These policies require development proposals to demonstrate high quality design and respond to the sensitivity of the site and its surroundings whilst contributing positively to the character of the area. Equally, the proposal would conflict with the principles of the Framework that seek good design sympathetic to the local area.

Other Matters

16. The proposal is within the zone of influence (ZoI) of one or more European designated sites covered by the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS). In combination with other development in Tilbury and elsewhere, eight dwellings would have a likely significant effect on the sensitive interest features of the Thames Estuary and Marshes Special Protection Area (SPA) through increased recreational pressures. Local planning authorities in Essex have developed the RAMS to deliver the necessary mitigation to address such impacts which is to be funded through a tariff.
17. Had I found the proposal to be otherwise acceptable, the Habitats Regulations impose a duty to consider within the framework of an Appropriate Assessment whether it would have a significant effect on the conservation objectives of the RAMS either alone, or in combination with other plans and projects. As part of this, I would need to consider the likely effectiveness of mitigation proposed. However, even though the appellant has indicated a willingness to enter into an agreement to address any mitigation required to address concerns related to the RAMS I have no such agreement before me. In any event, given the harm that I have identified above and that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further as it would not alter my findings on the main issues.
18. The Framework seeks to significantly boost housing supply and indicates the value of using suitable land within settlements for homes. It also encourages the optimal use of underutilised land, and states that, where there is a shortage of land for meeting identified housing needs, planning decisions should avoid homes being built at low densities. The proposal represents a

windfall opportunity to contribute to local housing supply in an area with access to public transport and services. These matters weigh moderately in favour of the development.

19. The proposal may be compliant with various other provisions of the development plan, for instance by retaining the on site tree, preventing overlooking between the units and meeting the parking standards. The Flood Risk Assessment indicates that the proposal would not increase risk to life and would not increase flood risk to the site itself or areas adjacent to the site. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.
20. I understand that the appellant undertook pre-application discussions with the Council in advance of the submission of the planning application. However, the concerns expressed regarding the Council's conduct during the processing of the planning application are outside the remit of this appeal.

Planning Balance

21. It has been put to me that the development plan of Thurrock Council is out of date and that progress on an up-to-date Local Plan for the Borough has been slow. The appellant and the Council are in agreement that the Council cannot demonstrate a 5-year housing land supply. The appellant also suggests that housing delivery has been slow and that the Council's Annual Monitoring Review identifies delivery of 319 units in 2021/22, and 493 and 558 units in the two previous years respectively. This is set against a post 2021 target of 950 units set by Policy CSTP1 of the CSPMD. Alternatively, the Council's Five Year Housing Land Supply Position Statement (2016) assesses annual housing need in the Borough to be between 913 and 973 new homes.
22. I note that the Council has only delivered 49% of its housing as demonstrated by the Housing Delivery Test (HDT) results. The housing delivery has thus been significantly less than 75% of the housing requirements over the previous three years. This demonstrates that inadequate housing delivery has been persistent.
23. As a consequence of the housing supply and delivery positions, paragraph 11(d) of the Framework is triggered. This states that "where the policies which are the most important for determining the application are out-of-date, granting planning permission unless (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework as a whole".
24. The appeal site is located within the ZoI of specific sites afforded protection under the Habitats Regulations. This is a protected area by definition of Footnote 7 of paragraph 11(d)(i). As previously stated, I cannot rule out that the proposal would not harm the integrity of the SPA. Consequently, the application of policies in the Framework that protect habitats and biodiversity provide a clear reason for refusing the development proposed and the proposal would not benefit from the presumption in favour of sustainable development detailed in paragraph 11 of the Framework.
25. The provision of eight additional dwellings 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 is also recognised that small and medium sized sites can make an important contribution to meeting the

housing requirement of an area and are often built out quickly. There would be benefit from providing eight 2-bedroom dwellings, albeit these would only be likely to be suitable for small family units. I attach significant weight to the potential contribution that the appeal proposal would make to both the housing supply and delivery shortfalls.

26. There would also be economic benefits during the construction phase through employment, however, these would be short-term. Future occupants would contribute to the local economy and vitality of the area which would provide some economic benefits. These benefits carry moderate weight in favour of the scheme.
27. The appeal site falls within an area where housing growth is generally supported and the appeal scheme does not give rise to any further conflicts with the policies of that plan. However, these matters are of neutral consequence to my assessment.
28. Nevertheless, the identified adverse impacts of the development, in respect of the loss of open space and effect on character and appearance are matters of a high order. Overall, I consider that the adverse impacts I have identified in this regard, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

29. The proposal would conflict with the development plan and there are no other considerations, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict. For the reasons outlined above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR