



Appeal Decision

Site visit made on 30 October 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2023

Appeal Ref: APP/D1590/W/22/3312543

33 Riviera Drive, Southend-on-Sea SS1 2QY

- 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 Freehold Group Ltd against the decision of Southend-on-Sea Borough Council.
 - The application Ref 22/01160/FUL, dated 30 May 2022, was refused by notice dated 15 August 2022.
 - The development proposed is a new-build detached dwelling house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner above is taken from the application form, which also states that no new or altered vehicular access is proposed, ie within the red line of the (now) appeal site. The Council changed the description to include 'form new vehicle crossovers onto Ilfracombe Avenue and Riviera Drive'. It considered the application on this basis and reason for refusal (RfR) 03 in its decision notice is an objection to one of the vehicle crossovers. While shown in the submitted plans, both vehicle crossovers are not within the red line so not part of the development applied for. I have determined the appeal on this basis.
3. The Council agrees with the appellant that in error RfR2 refers to the Nationally Described Space Standards. The Council has withdrawn the relevant wording from RfR2, which it otherwise maintains in this appeal. I have determined the appeal on this basis.
4. At my request, the Council provided an explanation of what it considers to be its current 5-year housing land supply position. I have also taken account of the appellant's comments in response in determining the appeal.

Main Issues

5. The main issues in this case are:
 - the effect of the proposal on the character and appearance of the area;
 - whether it would provide satisfactory living conditions for future occupiers of the house, having regard to external amenity space and privacy;
 - its effect on Essex coastline designated as European sites; and
 - the Council's housing land supply and delivery position.

Reasons

Character and appearance

6. The appeal site is the far end of a long, narrow plot of what was a large turn of the last century semi-detached house at No.33 Riviera Drive, now split into flats. This corner plot has a return frontage with Ilfracombe Avenue which the site faces onto. The site is used as part of the external amenity space for the flats and to park residents' cars. It is in a mainly residential built-up area of Southend-on-Sea.
7. House plots arranged in a row next to No.33 to the west are also mostly narrow and long. This swathe of mainly open, undeveloped landscaped rear gardens give visual and spatial separation to the ends of the closest houses behind to the north, including the two-storey terraced houses along the west side of Ilfracombe Avenue. Especially so at the site because it stretches along this side of this road next to the pavement. It is not repeated opposite the site where terraced houses continue along the east side of this road. The site is therefore locally distinctive and this gap can be appreciated in public views in both directions from Ilfracombe Avenue and part of Riviera Drive. As such it makes a positive contribution to the character and appearance of the area.
8. Albeit tight next to the end terraced house, the proposed house would erode a substantial part of the intervening gap to No.33, add to the built-up frontage along this side of the road and significantly reduce spaciousness. The front and rear gardens would be inconsistent in shape, layout and size with the existing plot at No.33 and most of the houses nearby, as would be the residual plot at No.33. The notably more cramped arrangement of built form in relation to the size and shape of the site would be in stark contrast to most of the residential development around it.
9. The one-and-a-half storey scale and massing of the house and step down in height at the end of the two-storey terrace would not alleviate these layout related impacts on spaciousness. Moreover, the hipped roof on one side would terminate this part of the streetscene with less authority and consistency than the gabled roof in the end terrace house. The abrupt change in height would then step back up at No.33 at the end of this side of Ilfracombe Avenue whereas the opposite side of the road ends with a lower bungalow.
10. The detached house would be at odds with the continuity of blocks of terraced houses along both sides of Ilfracombe Avenue, as well as the semi-detached houses in Riviera Drive, and bungalow is but one detached dwelling so not representative. The narrow, broadly L-shaped footprint and roof form would not respect the rectangular footprint of most of these other houses nor follow the rear alignment of the terrace next to it. Although a front bay of No.33 is angled towards the corner, and the front elevation of the house would be inset behind the side elevation of No.33, it would jut out forwards of the principal uniform building line established by the terraced houses to the north. This regimented pattern is repeated along the east side of the road. A very small step forward in the last block of terraced house facing the site is not particularly apparent so does not justify the more pronounced approach taken on the site.
11. The notably wider front elevation would be out of kilter with the narrower front elevations of the terraced houses next to it. One side gives the impression of an equivalent two-storey projecting front bay but breaches eaves level and is

oddly truncated by a flat roof awkwardly set into the main roof slope. The projecting gable capping the bay at eaves level in the terraced houses would be conspicuous by its absence, as would be a chimney. The other side gives the impression of a projecting gable but is wider and shallower pitched than the equivalent part of the terraced houses, significantly lower and visual integrity is compromised by unsympathetic placement of windows that straddle an eaves level above and below on both sides. Indeed, no front elevation windows in the house accurately respect the placement or proportion of equivalent windows in these terraced houses. Albeit with curved, not square, front bays, this would remain the case in relation to the otherwise broadly similar characteristics of the shorter row of terraced houses opposite the site.

12. The proposal therefore fails to respect important features of No.33 and the site, as well as houses and plots around it. A facsimile of the terraced houses was not the aim but it was intended for the house to read as part of the Ilfracombe Avenue streetscene. In this respect the house and the layout lacks conviction. It does not sufficiently reflect or continue the well-established primary terraced form or layout of residential development in this road (or the semi-detached houses in Riviera Drive) in a cohesive or meaningful way, so this anomaly would not be assimilated into its surroundings. An incompatible fusion of contemporary and traditional form does not deliver suitable or appropriate differentiation, nor unity in this case. This unsympathetic adjunct would be at odds with the prevailing type, form and layout of residential development near it, significantly erode spaciousness and jar in the streetscene in public views.
13. While the north end of Ilfracombe Avenue at Southchurch Road includes a different character, it is a significant distance from the southern end so does not set an appropriate template for development at the site. Suitable external materials to complement the houses in Ilfracombe Avenue or Riviera Drive could be secured by a planning condition and there is no apparent reason why the development would not be high quality in these respects, including appropriate new landscaping. However, this would not overcome the matters set out above (or further below). There is no evidence that redeveloping the site as proposed is the only way to prevent fly-tipping on it and it has a largely functional, not unsightly or unkempt appearance which are anyway mainly matters of upkeep or security. For the reasons outlined above, the proposal would not provide a betterment over the existing status quo.
14. Taking all the above into account, I find that the proposal would adversely affect the character and appearance of the area. Consequently, it does not comply with Policies KP2 and CP4 of the Southend-on-Sea Core Strategy December 2007 (CS) or with Policies DM1 and DM3 of the Southend-on-Sea Development Management Document July 2015 (DMD). These policies include that development should be well designed to respect the character of the site, its local context and surroundings in terms of architectural approach and details of height, scale, form, massing, density, layout, grain, proportions and townscape. It should secure a good relationship to existing development, add to the overall quality of an area, create successful places and reinforce local distinctiveness.

Living conditions

15. The main garden would have sufficient area but be located to the side of the house, so very close to the flats and near the rear elevation of the adjoining

property No.32 Riviera Drive which appears to be a two-storey house. There are several first floor or roof level rear windows in the flats and two first floor rear windows in No.32. It is not clear to me how these rooms are used but in the flats they could include main habitable rooms, such as a lounge, and at No.32 are likely at least to include a bedroom.

16. Even bedrooms can be in use during daylight hours and outlook from windows is a facet of such use. Given the number, placement and proximity of these windows a 1.8m high close boarded fence would not be tall enough to prevent direct or angled, unduly invasive downward views from them into the main garden, including the eastern part closest to Ilfracombe Avenue. There would also be an uncomfortable perception of being overlooked, as well as actual overlooking. Existing small trees or shrubs on or next to the site would not block all these views, especially in winter months. Similar new planting would take a significant period to reach an appreciable height and cannot be relied on in the long term. In any event, canopies would be collectively overbearing to use of the garden by the occupiers of this small sized family house or restrict natural light for a significant part of the day.
17. There is accessible public open space nearby but no evidence it could be used for private domestic use or activity normally enjoyed and expected as part and parcel of living in a house. While the site is in an urban area these are not compelling reasons to compromise on the 'level and quality' of private garden space. Nor would either compensate for fundamentally undesirable living conditions to begin with given that most of the main garden space would be compromised for such use.
18. I therefore find that the proposal would not provide satisfactory living conditions for future occupiers of the house, having regard to external amenity space and privacy. Consequently, it does not comply with CS Policies KP2 and CP4 or with DMD Policies DM1, DM3 and DM8. These policies include that development should contribute to social regeneration, maintain the amenities of residential areas, create successful places, protect the amenity of the site having regard to privacy or overlooking, avoid detrimental impact upon the living conditions and amenity of future residents and make provision for useable private outdoor amenity space for the enjoyment of future occupiers.

European sites

19. The appeal site is within a zone of influence of Essex coastline designated as European sites to protect habitat for important bird species¹. Alone or in-combination with other development the net dwelling gain in this case would have a likely significant effect on the integrity of habitat and species in the European sites due to recreational disturbance by the additional residents visiting them. With advice from Natural England and endorsed by it, the Council adopted a Recreational disturbance Avoidance and Mitigation Strategy (RAMS)². It provides for a tariff based per dwelling financial contribution towards implementing strategic mitigation measures set out in the RAMS. Payment of the financial contribution must be secured by a suitable planning obligation. By this means the Council considers that the proposal would have no adverse effect on the integrity of the European sites.

¹ One or more Special Protection Area, Special Area of Conservation or Ramsar site

² Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document, May 2020

20. The appellant informs me that arrangements have been made to make the financial contribution to the Council during the appeal process. The Council says it has not received this payment. I have not been advised about progress since, there is no planning obligation before me and no alternative mitigation has been suggested by the appellant. This issue is fundamental to an in principle decision to grant planning permission.
21. In these circumstances, as the competent authority in this appeal and after Appropriate Assessment³, I find that in the absence of suitable mitigation the proposal would harm the nature conservation interests of the European sites so adversely affect their integrity. Consequently, it is contrary to CS Policies KP1, KP2 and CP4 and to DMD Policies DM3 and DM6. These include that development should safeguard, conserve, enhance and complement the natural environment, ensure that European sites for nature conservation are not adversely affected and avoid loss of local ecological assets, including the coast and marine environment.

Housing land supply and delivery

22. In July 2023 the Council considered it could demonstrate a 5-year supply of deliverable housing sites (5YHLS) using the Government's standard methodology, provided a 20% buffer is not applied. This is on the basis that the 2021 Housing Delivery Test (HDT) hasn't been updated since and in that case it says it has a 5.02-year supply. Even if so, at 31% of housing delivery it failed this HDT by a significant margin.
23. The Council suggests that housing delivery in Southend-on-Sea has 'performed well' against its CS local housing requirement of 325 dwellings per annum (dpa). It has also since adopted development plan documents (DPDs) seeking to deliver more homes. Because of the HDT position it applies the presumption in favour of sustainable development to decisions it makes. I also appreciate that the Council must reconcile housing need and delivery against constraints, such as limited suitable land availability.
24. However, the CS was adopted more than 15 years ago and even the DPDs are approximately five years old or more. The CS housing requirement is therefore not up-to-date and substantially lower than housing need using the standard methodology (1,411 dpa) and even without a 20% buffer (1,176 dpa). A new local plan will consider the standard methodology for determining housing need but it is at public consultation stage. I have not been informed about a draft housing requirement. Nor is there evidence that any other review of the CS policies which set out the current housing requirement found they do not need updating.
25. The current National Planning Policy Framework (Framework) was recently published in September 2023. There is no change to paragraphs 74 and 75 or to paragraph 223⁴. Nor to relevant Planning Practice Guidance. Consequently, there is no apparent reason why the most recent HDT should be ignored and the 20% buffer not applied in this appeal. On this basis, and as the Council otherwise accepts, at 4.18-years it cannot currently demonstrate a 5-year supply of deliverable housing sites, with a shortfall of 1,151 dwellings.

³ The Conservation of Habitats and Species Regulations 2017 (as amended)

⁴ Starting on page 63 (as was paragraph 222)

26. The appellant has referred me to a previous appeal decision for development elsewhere in the borough⁵. I am informed that the Council had a 2.5-year supply in that case. However, it is a June 2021 decision so does not reflect the current 5YHLS or HDT position and the appellant has not disputed these later figures.
27. I find that the council cannot currently demonstrate a 5-year supply of deliverable housing sites and that the most recent Housing Delivery Test has not been met.

Planning Balance

28. In these circumstances, and either way (5YHLS or HDT), by virtue of footnote 8 Framework paragraph 11(d) is therefore engaged. The starting point is that planning permission should be granted.
29. In this appeal the application of policies in the Framework that protect an area or asset of particular importance (the European sites) provide a clear reason for refusing permission. Accordingly, the presumption in favour of sustainable development does not apply in this case.
30. The site is in a built-up area and the part excluding the garden is previously-developed land⁶. The house would be on a small windfall site in an accessible urban area near facilities and services and could be built relatively quickly. In a limited commensurate way it would contribute to meeting the Council's housing requirement, meet a specific identified local housing need for (in this case a small) family sized houses and sustain employment during construction. These outcomes would align with objectives of the Framework to significantly boost the supply of homes, meet people's living needs and support the economy. These would be modest social and economic benefits from a single dwelling so, in my view, they each have moderate weight in support of the proposal.
31. However, the proposal would cause significant harm to the character and appearance of the area, to the living conditions of future occupiers of the house and to the European sites. This would undermine the Council's development plan objectives in these respects. These are broadly consistent with aims of the Framework to achieve well-designed places and conserve the natural environment; including that development should add to the overall quality of the area, be visually attractive as a result of good architecture and layout, sympathetic to prevailing local character and built environment, maintain a strong sense of place with respect to building types to create distinctive places to live. Additionally, ensure a high standard of amenity for future users and maintain the character of the undeveloped coast while improving public access to it and protect sites of biodiversity value by avoiding significant harm through adequate mitigation.
32. In light of the 5YHLS and HDT position, reduced weight applies to these policies most important for determining the appeal. But while the CS was prepared and adopted against a different national planning policy context, the Framework is not materially changed in these regards. The DMD was adopted against a previous version of the Framework and it remains broadly consistent with the (current) Framework in these regards.

⁵ APP/D1590/C/18/3218906

⁶ Framework Annex 2: Glossary

33. Consequently, notwithstanding the 5YHLS and HDT position and the not insignificant scale of housing shortfall, I consider that the support given in the Framework to delivering housing is not at the expense of ensuring that residential development is appropriate in relation to its surroundings, suitable for those who would occupy it and avoids harm to the European sites. In my view, these individually important and cumulatively compelling adverse social and environmental impacts have substantial weight against the proposal.
34. The benefits if the proposal would not, therefore, outweigh the harm.

Conclusion

35. The proposal conflicts with the development plan overall and with relevant provisions of the Framework. There are no other material considerations to indicate that the decision should be taken other than in accordance with the development plan⁷. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR

⁷ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended) and Framework paragraph 12