



Appeal Decision

Site visit made on 20 February 2024

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal: APP/P1560/W/22/3313811

5 Sheppard Close, Clacton-on-Sea, Essex CO16 8YA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Carpenter against the decision of Tendring District Council.
 - The application reference is 22/01416/OUT.
 - The development proposed is proposed 1 new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for outline permission with all matters being reserved for future consideration. Whilst the application includes detailed floor plans and elevations, I have considered the proposal on this basis and, I have taken the drawings to simply be an illustration of how the proposal could ultimately be configured and appear.
3. As the proposal is within the setting of a listed building I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated it on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
5. The appellant has provided an uncompleted Unilateral Undertaking. I will return to this matter later in my decision.

Main Issue

6. The main issues in this appeal are the effects of the proposal on the character and appearance of the local area bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II* listed building, Cann Hall (Ref: 1111549), and on a European Protected Site.

Reasons

Heritage

7. Cann Hall (the hall) dates from around 1512 and has been subject to some later alterations in the 18th century. In the 20th century the windows were replaced. It nonetheless retains many of its early architectural features and is an attractive, well-proportioned building. It was built for St Osyth's Priory, passing to Thomas Cromwell following the suppression of the priory in 1539. The hall later passed to Princess Mary and thence to Lord Darcy. The hall retains a sizeable part of its original land and lies within hedges and an enclosing brick wall, topped by concrete coping, of modern appearance (the surrounding boundary). Within the surrounding boundary stands a curtilage listed barn, thought to be contemporaneous with the hall and a smaller walled garden, lying to the side of the hall building. The special interest of the listed building, insofar as it is relevant to this appeal, relates to its architectural interest as an pleasing example of a hall house and its links to figures that played significant roles in the nation's history.
8. The hall and its barn once occupied a more rural location. However, its setting has been eroded by modern housing development that encircles it. Whilst this includes dwellings of varying scale, two storey development is generally set well back away from the surrounding boundary, whilst buildings close to the boundary are lower.
9. There are limited views into the site from which to appreciate the design and features of the hall and its associated structures. The principle views into the site are from Constable Avenue, and only glimpses are available. On other sides of the hall, views are obscured by existing development and the boundary and, again, only glimpses of the hall and associated structures are available.
10. The enclosure of the hall's curtilage by the surrounding boundary provides a degree of screening from neighbouring development, and this, together with the scale and setback of development around the hall, allows the hall to retain a sense of separation from the encroaching development around it and a degree of seclusion within the grounds of the hall. This provides the grounds of the hall with a degree of tranquillity reflective of the private nature of the building. This is a positive contribution to the way in which the hall is experienced. Given the above, I find the setting of the building, insofar as it relates to this appeal, to be primarily associated with its aesthetic value as a space providing separation of the private dwelling from its neighbours, reflective of the historic social status of the LB and its occupiers and for the visual appreciation of the hall. This directly contributes to its special interest.
11. The proposal would introduce a substantial building in close proximity to the surrounding boundary and the curtilage listed barn. Any dwelling of significant scale, such as that shown on the illustrative plans, would appear above the surrounding boundary and, in so doing, would increase the sense of enclosure of the site by modern development, particularly for persons in and around the area of the barn. This would encroach visually into the space around the LB and undermine the sense of separation from modern development that I have identified above.
12. Further, a taller building would intervene in views into the site. Whilst the main views from Constable Avenue would be unaffected, the limited views of the curtilage listed barn from Sheppard Close would be further reduced.
13. However, the proposal before me is in outline form, and, whilst the appellant has submitted illustrative drawings showing a chalet bungalow, it would

appear, on the evidence before me, that a building of lower profile could be placed within the site, further away from the boundary than shown on the illustrative plan.

14. Under such circumstances the visual encroachment that I have referred to above, about which I have concerns, could be significantly diminished, or avoided. Were this the case the harm that I have referred to would not result. I note the advice of the officer from the Built Heritage Team to the Council that "there might be the potential here for a dwelling of reduced footprint and 1-1.5 storey height, providing that the development would not intrude on views from Cann Hall or that appropriate mitigation measures are proposed in order to minimise the visual impact of the proposal on the setting of the designated heritage asset". As will be seen above, I see no reason to disagree with that view.
15. The appellant has suggested that the proposal is justified by the presence of recent development in the vicinity, which sets a precedent. However, the presence of existing harm is not a justification for any further harm.
16. It has been suggested by the appellant and the occupiers of the hall that the proposal would not harm the hall, as there would be no direct views of the proposed dwelling from the windows of the hall. However, as will be seen above, the proposal has potential to impact on views into the site of the hall, and how the hall is experienced in its setting from within the boundary of the hall.
17. It has been brought to my attention that the Council have previously granted permission¹ to convert the barn into two separate dwellings. Permission² was also granted to convert the hall to a recreational leisure centre. Neither permission appears to have been implemented.
18. I have limited information before me regarding the planning history of those proposals, however they were determined some time ago and planning policy, both local and national, have changed in the intervening period. I have, in any case, determined the proposal before me on its own merits.
19. Given the above I conclude that, on balance, the outline proposal would preserve the setting of the Grade II* listed building. This would satisfy the requirements of the Act, paragraph 206 of the Framework and would not conflict with Policy SP7 of Section 1 and Policy PPL9 of Section 2 of the Tendring District Local Plan 2013-2033 and Beyond (2021) (the LP) that seek, among other things, to ensure that development protects and enhances assets of historical value and creates a unique sense of place, where listed buildings or their settings are protected for their special architectural or historic interest, character, appearance and fabric. As a result, the proposal would be in accordance with the development plan in respect of this main issue.

European site

20. The site is located within the zone of influence of the Colne Estuary (Mid-Essex Coast Phase 2) Special Area of Conservation and Ramsar (the SAC), which is a European Designated Site afforded protection under the Conservation of

¹ Council Ref: TEN/0111/87

² Council Ref: TEN/0110/87

Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations).

21. The SAC supports nationally important breeding populations of little tern, wintering populations of hen harrier and summer populations of pochard and ringed plover. It is a wetland of national importance supporting wildfowl including, in winter, migratory waterfowl.³
22. Policy SP2 of the LP seeks to protect such sites from harm through securing mitigation measures against any adverse effect of development, where necessary, in accordance with Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy 2018-2038 (the Essex Coast RAMS). The Essex Coast RAMS, developed in consultation with, and agreed by, Natural England as a means of providing strategic mitigation measures to avoid adverse impacts.
23. The Court of Justice of the European Union has ruled 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 (AA) rather than at the screening stage. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.
24. Paragraph 186 of the Framework states, with regard to habitats sites, that "if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused". The Protected Site is used for public recreation, such as dog walking and other activities, which has potential to disturb birdlife. The proposed development is likely to add to this and thus, in combination with other development, have a significant effect on the features of interest of the Protected Site. This would undermine its conservation objectives, which can be summarised as maintaining the integrity of the habitat.
25. Whilst I note the willingness of the appellant to provide the Essex Coast RAMS payment, a financial contribution towards mitigating the effects of the proposal on the Protected Site, the UU provided is not completed. Further the Council advise that the payment, as set out, is insufficient. The proposal would, therefore, fail to provide the necessary mitigation to offset the increase in recreational pressure. There are alternative solutions to providing unmitigated housing at the appeal site and a scheme for a single dwelling would not provide imperative reasons of overriding public interest to justify allowing the appeal.
26. I am, therefore, unable to complete the AA favourably and, as such, I must conclude that, following an Appropriate Assessment, the proposal would cause harm to the Protected Site and its integrity and condition would not be preserved. Therefore, the scheme would conflict with Policy SP2 of the LP. Similarly, it would conflict with those parts of the Framework that seek to protect the natural environment.

Other Matters

27. The proposed development would provide an additional dwelling to supplement local housing supply. The government has stated that it aims to significantly increase the number of homes being built and the Framework, at paragraph

³ SPA Citation, CAR September 1993

70, advises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. An increase in the supply of housing would therefore be a benefit. However, a single dwelling, given that the Council is currently able to demonstrate a housing land supply in excess of six and a half years, would not make a significant impact on housing supply and so the benefits of the proposal in regard to the provision of housing would be limited.

28. The proposal would, during the construction phase, result in additional employment in the construction and supply chain industry, and would, by increasing the local population in the area, provide long-term support to local shops and businesses. There may be additional benefits to the community through the increased support of social groups. However, given the small scale of development, such benefits would be limited.
29. I have found that the proposal would result in harm to a Protected Site. Regulation 63(5) of the Habitats Regulations directs that the competent authority may agree to the proposal only after having ascertained that it will not adversely affect the integrity of the European Site. This is a matter of great weight against the proposal and this outweighs the limited benefits that accrue from granting permission.

Conclusion

30. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

I A Dyer

INSPECTOR