



Appeal Decision

Site visit made on 1 March 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2024

Appeal Ref: APP/M1520/W/23/3325266

Corner Club, 149-151 High Street, Canvey Island, Essex SS8 7RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Lee Petch against the decision of Castle Point Borough Council.
 - The application Ref is 22/0567/FUL.
 - The development proposed is an upwards development to create 3no. new-build residential flats with associated car parking and waste management on site and amend the meterage to match the new footprints on the plans.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Government published a recently revised National Planning Policy Framework ("the Framework") and all references in this decision relate to the revised document. There are no material changes relevant to the substance of this appeal and therefore I am satisfied that the parties will not be prejudiced by the changes to the Framework.

Main Issues

3. The main issues in this appeal are:
 - Whether the proposed development would affect the integrity of the Benfleet and Southend Marshes Special Protection Area (SPA) and Ramsar site, Foulness Estuary SPA and Ramsar site, and the Blackwater Estuary SPA and Ramsar site, which are protected European sites of nature conservation importance under the Conservation of Habitats and Species Regulations 2017 as amended ("the Regulations").
 - Whether or not the proposed development would prejudice the development of land to the rear of the appeal site, with particular regard to the outlook and privacy of future occupiers.
 - The effect of the proposed development on the living conditions of nearby occupiers and future occupiers of the proposed development, with particular regard to off-street vehicle parking provision.
 - The effect of the proposed development on the character and appearance of the area with particular regard to the position of the off-street parking provision.

Reasons

Protected European sites of nature conservation importance.

4. The appeal site is shown by the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, Supplementary Planning Document ("the RAMS"), as located within the Zones of Influence of the designated European sites of nature conservation importance referred to in the first main issue. These sites are recognised for their value as coastal habitats supporting internationally important populations of bird species.
5. The location of the appeal development is likely to increase disturbance to the qualifying bird species in the SPAs, through future residents visiting the coastline for recreational purposes. Recreational activities including walking, sailing, birdwatching, jet skiing and fishing are the main threat to the bird species and thus the integrity of the nature conservation interests of the designated European sites. Occupation of the appeal development would be likely to lead to an increase in such activities, resulting in a significant adverse effect on the integrity of the SPAs, both in isolation and cumulatively with other housing developments.
6. Under the Regulations it is my duty as the competent decision making authority to undertake an Appropriate Assessment (AA) to consider whether I have certainty that measures could be put in place to avoid or mitigate the proposal's likely significant adverse effect, with the aim of maintaining or restoring at favourable conservation status, the natural habitats and species of the SPAs.
7. The RAMS requires new residential development to make a tariff-based financial contribution towards its delivery to mitigate the potential adverse in-combination effects of new housing development and visitor pressure on the qualifying bird species within SPAs. The strategy, which is endorsed by Natural England, incorporates measures including habitat enhancement, diverting activities away from the most vulnerable locations through access management, the promotion of alternative walking and cycling routes, interpretation and signage, education and direct engagement with the public, a Ranger's service, enforcement, and the monitoring of visitors and bird numbers.
8. The appellant has submitted a signed document dated 19 August 2022, which purports to be a Unilateral Undertaking (UU) obligating payment to Castle Point Borough Council (CPBC) of £137.71 per residential unit towards the delivery of the RAMS. In assessing this document, I have had regard to the main parties' comments on its effectiveness and to the Planning Inspectorate Guidance¹.
9. The submitted document does not clearly and precisely indicate, either through a full postal address or through an annexed plan, the land to which the submitted obligation relates. The appellant has not provided evidence of title to the appeal land. Therefore, I cannot be certain that the document would bind the landowner or landowners to the obligation, or that it would be enforceable.
10. The financial contribution proposed to be secured by the document fell short of that for the financial year of 2023-2024 of £156.76 per dwelling, which the RAMS identifies will be indexed linked with a base date of 2019, and

¹ Planning obligations: good practice advice, Updated 26 April 2023

periodically reviewed. To my mind, if the contribution is not index-linked to account for inflation, it is likely that the delivery of the RAMS would be adversely affected as a result. No substantive evidence has been provided to demonstrate that the costs of the mitigation scheme have not increased with inflation. As such, the contribution figure in the document, which relates to an earlier financial year, is not acceptable.

11. The appellant has raised concerns over CPBC's lack of cooperation in the drafting of the document, which was submitted prior to the determination of the planning application and based on its template. There is a willingness to submit a fresh UU. However, it is the responsibility of the appellant to submit an effective and legally sound obligation with their appeal and for the parties involved in planning appeals to present their case in full. In accordance with paragraph 18.2.1 of the appeals procedural guide², there are no very exceptional circumstances that would justify delaying a decision until a fresh obligation was submitted. The efficient operation of the appeals process necessitates that I determine this appeal on the evidence before me.
12. For these reasons, the submitted obligation is not legally sound and I cannot be certain, as required by the Regulations, that it would be effective in mitigating the recreational impacts of the proposed development on the nature conservation interests of the SPAs, and avoid adverse effects on their integrity.
13. I am advised that the extant planning permission granted on appeal³ for 4 residential units ("the 4-unit scheme"), was subject to a UU that would have secured adequate mitigation to avoid adverse effects on the integrity of those designated European sites. However, the 4-unit scheme is a separate planning permission, and I am not aware of any legal mechanism that could secure the diversion of any mitigation secured by that permission to this appeal proposal. As such, on this particular issue, the extant 4-unit scheme has limited relevance and weight to my considerations.
14. Consequently, in having regard to my duties in respect of the Regulations and in taking a necessarily precautionary approach to this matter, I conclude through my AA that the appeal proposal would have adverse effects on the integrity of the SPAs. No alternative solutions, imperative reasons of overriding public interest and no other compensatory measures have been put forward. Therefore, the proposal would conflict with Framework Paragraphs 180.a) and 186.a) insofar as they require decisions to protect sites of biodiversity value in a manner consistent with their statutory status, and if significant harm to biodiversity cannot be avoided, adequately mitigated, or as a last resort compensated for, then planning permission should be refused.

Living conditions of future residential occupiers

15. The rear wall of the proposed development, which includes windows serving 2 of the proposed flats and an outdoor terrace, would be set more or less on the boundary with a relatively spacious plot of vacant land ("the vacant land") to the rear of the appeal site. As such, it would not meet the specific numerical separation distances set out in section RDG5 of the Castle Point Residential Design Guidance, Supplementary Planning Document, Adopted 2013 ("the SPD"), which are described as thresholds setting a starting point to ensuring

² Procedural Guide: Planning appeals – England, Updated 11 January 2024

³ APP/M1520/W/22/3301883

that appropriate levels of privacy and living conditions are achieved on all sites. Nonetheless, the outlook from those 2 flats and across the vacant land would be extensive in distance and aspect, and would contribute to providing satisfactory living conditions for future occupiers of the appeal development.

16. There is no substantive evidence that the vacant land is formally allocated or safeguarded for development in the CPBC development plan. Although it was granted planning permission in 2013 for the development of three live/work units, it was not built-out and I have not been made aware of any subsequent planning applications for its development or any interest in developing it. As such, I have no certainty on the evidence before me that it will be developed for housing and the probability of 3 housing units being delivered on the appeal site is considerably greater to the benefit of housing supply. CPBC is unable to demonstrate a five-year supply of deliverable housing sites and therefore the proposed housing units would contribute positively to housing supply.
17. The vacant land is relatively spacious by comparison to its surroundings and its rectangular shape would appear practical for some form of development. The possibility of a planning application being submitted for housing development on the vacant land cannot be ruled out and the effects of such a proposal on the living conditions of existing and future occupiers would be material planning considerations. The flexibility to the SPD's separation distances in Section RDG5 states that site specific circumstances may justify reductions to the numerical separation distances referred to above, including in cases where the residential urban grain is relatively tight. Therefore, the SPD would not necessarily preclude development of the vacant land, and it acknowledges that prescriptive standards can counteract the provision of privacy through careful design.
18. On the evidence before me I am not persuaded that the appeal proposal would be likely to prejudice the delivery of any form of residential development on the vacant land, or that its development would inevitably harm the living conditions of future occupiers of the appeal development. Even if the vacant land was to be developed for a lesser quantum of housing than permitted in 2013, it could still contribute, along with the appeal proposal, to delivering a greater number of residential units in totality than permitted in 2013, thus benefitting housing supply. I am also not persuaded that the development of that land would inevitably harm the outlook of the future occupiers of the appeal development.
19. Taking all the above into account, I conclude on this issue that the appeal development would provide adequate living conditions for future occupiers, with particular regard to outlook. The effects of overlooking from the proposed development would not be likely to unacceptably prejudice the development of the vacant land to its rear. As such, it would be consistent with RDG5 of the SPD, which requires dwellings to have reasonable outlooks and not produce an overbearing impact on each other and achieve appropriate levels of privacy and living conditions on all sites. For the same reasons the appeal proposal would be consistent with Framework Paragraph 135.f), which states that developments should create places with a high standard of amenity for existing and future users.

Living conditions – car parking provision.

20. Policy T8 of the Castle Point Borough Council Local Plan, Adopted 1998 ("the LP") states that the car parking standards published by Essex County Council

(ECC) will apply. The evidence indicates that the proposed car parking spaces on the site frontage would fall short of the number of parking spaces required by the ECC Parking Standards 2009. Furthermore, the proposed parking spaces would fall short of the requisite dimensions of some 5.5 metres x 2.9 metres, together with a depth of 6 metres opposite each space for manoeuvring.

21. The ECC parking standards state that parking provision might be reduced in main urban areas. The appeal site is located within the urban area of Canvey Island and relatively close to the services and facilities that are likely to be visited frequently by future occupiers. There is a shopping centre and a relatively large supermarket are located further along the High Street, some 600 metres from the appeal site. Future occupiers would have good access to frequent and extensive public transport, as well as Canvey Island's facilities and car parks. The evidence indicates there are bus services to Basildon and Southend, as well as Benfleet Rail Station that would provide a choice of travel modes for future residents.
22. For these reasons, car ownership would not be essential for future occupiers to access the services and facilities that they are likely to visit frequently to meet their day-to-day needs. Even if future occupiers of the proposed development were to choose to own a car, parking restrictions protect the immediate highway network from parking, including along parts of the nearby side roads that join High Street.
23. Taking all the above into account, I am satisfied that the likely level of vehicle parking provision that could be practically accommodated on the site frontage would be acceptable given the scale and location of the proposed development, and would not be likely to cause conflict between future occupiers. Furthermore, given the relatively small scale of the development, demand for overspill parking onto nearby roads, where parking is restricted, would be modest and would not harm the living conditions of nearby occupiers.
24. I therefore conclude on this issue that the proposal would not harm the living conditions of nearby occupiers or future occupiers of the proposed development, with particular regard to off-street vehicle parking provision. As such the proposal would comply with ECC Parking Standards and thus LP Policy T8. I also find the appeal proposal to be consistent with Paragraph 135.a) of the Framework, which states that planning decisions should ensure that developments will function well.

Character and appearance

25. Car parking on land situated between the front walls of buildings and the road is commonplace on this section of the High Street, and is a visual characteristic of the street scene. In this context, the parking of a modest number of vehicles in spaces on the appeal site frontage would not, despite being readily visible on this corner of the busy High Street, be visually obtrusive or dominant. As such, I conclude on this issue that the proposed off-street parking provision would not harm the character and appearance of the area, consistent with the SPD, which states that parking must not dominate the public realm or have an adverse amenity impact, and the aim of achieving well designed places in Framework Paragraph 131.

Other Matters

26. The appeal proposal would not, on the evidence before me and my observations at the site visit, harm the character and appearance of the area, or the living conditions of the occupiers of nearby buildings. It would provide adequate living conditions for future residential occupiers and satisfactory provision for vehicle parking and bin storage. Services and facilities likely to be visited frequently by future occupiers would be readily accessible. However, these would be requirements of nearly all well-designed schemes and therefore do not weigh positively in favour or against the proposal.
27. It is not necessary to consider the flood risk Sequential and Exception Tests, to which the Environment Agency has referred, as this would not alter the outcome of this appeal.

Planning Balance and Conclusion

28. The appeal proposal would comply with LP Policy EC2 and LP Policy T8 in respect of its design and parking provision. As such, it would accord with the development plan when read as a whole and would make a small but nonetheless valuable contribution to housing supply. Construction and occupation of the proposed development would generate short-term employment opportunities and long-term economic and social benefits through the new resident households supporting businesses, facilities and services within the area. It could lead to an enhancement of the environmental performance of the host building. However, given the scale of the proposed development, these benefits would be relatively modest, and they attract moderate weight in its favour.
29. As concluded in my AA, the occupation of the proposed development would have adverse effects on the integrity of the SPAs as protected European sites of nature conservation importance. Substantial weight attaches to this harm, which is not outweighed by the benefits of the proposal or the fallback development of the 4-unit scheme. Under Footnote 7 to Framework Paragraph 11.d)i., the proposal's adverse effects on the integrity of the SPAs would provide a clear reason for refusing to grant planning permission. Consequently, it does not benefit from the Framework's presumption in favour of sustainable development.
30. The conflict with the Framework in this regard is of sufficient weight to indicate that a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR