



Appeal Decision

Site visit made on 26 March 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

Appeal Ref: APP/V1505/W/23/3328776

Wotton End, Fauners, Basildon, SS16 5AP

- 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 B Main (Saren Homes Ltd) against the decision of Basildon Borough Council.
 - The application Ref is 23/00037/FULL.
 - The development proposed is a new block of 4no. self-contained flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the living conditions of the occupiers of the neighbouring building to the rear of the site with regard to outlook and privacy; and
 - whether the proposed development would provide satisfactory living conditions for the future occupiers with regard to outdoor amenity space and noise and disturbance.

Reasons

Living Conditions – Neighbouring Occupiers

3. The appeal site is currently occupied by a large two-storey apartment block towards the rear of the site with a parking area and access from the road to the front. It is located in a residential area in close proximity to the town centre and transport links with a high density of development. The proposal would introduce a second two-storey apartment block to the front of the appeal site to accommodate four flats.
4. The windows on the rear elevation of the proposed building would face the windows on the front elevation of the existing building. Whilst three of the first floor windows on the rear elevation of the proposed building serve stairwells and hallways, which could be obscure glazed, one window serves a living/kitchen area, where obscure glazing would not be appropriate. This would provide direct views into the first floor windows of the existing building, resulting in a loss of privacy to the occupiers of this neighbouring building. The ground floor windows on the existing and proposed buildings would also face each other, however views into the ground floor windows are already possible

from the car parking area and would not be made significantly worse by the proposal.

5. The proposed building would be located in relatively close proximity to the existing rear building on the appeal site. However, the proposed building is slightly shorter in height than the existing building and the 12 metre gap between the properties would be sufficient to ensure that there is not a significant loss of outlook to the occupiers of the existing building from the windows on the front elevation.
6. It is noted that the Council and the appellant has stated that the proposed development would result in a loss of amenity space for the occupiers of the rear block. However, the area to the front of the existing building is not currently used as outdoor amenity space and no evidence has been provided to demonstrate that this should be the case. Furthermore, it is noted that the occupiers of this existing block are served by small rear gardens and balconies and therefore would still be able to access some outdoor amenity space regardless of the proposed development. Therefore, the loss of the space to the front would not be detrimental to their living conditions with regard to access to outdoor amenity space.
7. Nevertheless, due to the loss of privacy at first floor level, the proposed development would harm the living conditions of the occupiers of the existing apartment block and would therefore conflict with Policy BAS BE12 of the Basildon District Local Plan Saved Policies 2007 (the LP). This policy seeks to ensure that new development will be refused if it causes material harm in relation to overlooking. It would also conflict with the objectives of the National Planning Policy Framework relating to a high standard of amenity for existing users.

Living Conditions – Future Occupiers

8. The proposed development does not provide any outdoor amenity space, either private or communal, for the future occupiers of the proposed flats. However, residents of one bedroom flats may be happy to forego this amenity if there is access to other local open space, in order to have the benefits of living in a town centre. The appeal site is adjacent to the town centre and the appellant has highlighted that there is a public open space in close proximity which the occupiers could use for amenity. Therefore, the lack of outdoor amenity space on the appeal site would not be detrimental to the living conditions of the future occupiers of the one bedroom flats in this instance.
9. However, the proposal also includes a two-bedroom flat which would likely be occupied by a family. It would be reasonable to expect a family unit to provide some level of outdoor amenity space for its occupants regardless of its proximity to public outdoor space and central location. Therefore, the proposal would fail to provide sufficient living conditions for the occupiers of the two-bedroom flat.
10. The proposal includes four car parking spaces between the proposed building and the road. This would be located directly adjacent to the four ground floor windows on the front elevation of the building all serving habitable rooms. Although there is no landscape buffer between the two, the number of spaces here are limited and are likely to only be used by the occupants of the flats. Therefore, comings and goings would be minimal and would not result in a

significant or continued amount of noise or disturbance to the future occupiers of the proposed flats.

11. Nevertheless, due to the lack of outdoor amenity space, the proposed development would not provide satisfactory living conditions for the future occupiers of the two-bedroom flat and would conflict with the National Planning Policy Framework which requires a high standard of amenity for future users.

Other Matters

12. The Council have confirmed that they are not able to demonstrate a five year supply of deliverable housing, with only a 1.89 year supply. This would be a significant shortfall and therefore, on this basis, the test in paragraph 11(d) of the National Planning Policy Framework should be applied.
13. The development would add to the overall housing land supply and make a small contribution to the Government's objective of significantly boosting the supply of homes, with four additional flats in a sustainable location and making efficient use of the land. The appellant has also indicated that the proposal will be delivered quickly, will provide net gains in biodiversity and additional soft landscaping, will use sustainable construction methods to create an energy efficient building and will provide economic benefits such as additional council tax and greater footfall to local services.
14. However, the benefits derived from four small units would be limited and therefore this carries limited weight. Therefore, even though there is a significant shortfall in the housing land supply, given the harm I have identified, the adverse impact of granting planning permission would significantly and demonstrably outweigh the limited benefits of four units when considered against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply and does not weigh in favour of the proposed development.
15. Whilst a reason for refusal was included relating to the impact on protected and priority species, an ecology survey has been submitted as part of this appeal and the Council's ecology consultant has withdrawn their objection. The front of the appeal site where the proposed development would be located is made up of hardstanding with no trees, landscaping or other suitable habitats for biodiversity. Therefore, the proposed development would not harm any protected or priority species on the appeal site.
16. The site falls within the Zone of Influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS) and the Thames Estuary and Marshes SPA and Ramsar site. A reason for refusal has been included by the Council as, due to the insufficient information submitted, they cannot be satisfied that the proposal would not result in an adverse effect on the integrity of the SPA and protected and priority species as a result of increased recreational activity from the proposed units. The appellant has stated that they intend to pay a tariff to the Council prior to the determination of the appeal, to mitigate against any impacts, or submit a completed section 106 agreement to secure such a payment. However, no evidence of either of these has been provided.
17. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA)

where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

18. For the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR