



Appeal Decision

Site visit made on 17 June 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2024

Appeal Ref: Appeal Ref:

APP/D1590/W/23/3335699APP/D1590/W/23/3335699

995-1003 London Road, Leigh-on-Sea, Southend-on-Sea SS9 3LB

- 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 R Schofield against the decision of Southend-on-Sea City Council.
 - The application Ref is 23/01191/FUL.
 - The development proposed is described as "erect two storey rear extension and form new second floor to the main building with roof terrace to form a further 4no. self contained flats with associated parking, bin and cycle storage".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr R Schofield against Southend-on-Sea City Council. This application is the subject of a separate decision.

Preliminary Matters

3. The site is within the Zones of Influence (ZOI) of Special Protection Areas (SPA), Ramsar sites and a Special Area of Conservation (SAC). These are European Designated Sites (Habitats Sites) afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). Although not forming part of the Council's reasons for refusal, as competent authority, I need to consider whether the proposal would be likely to have a significant effect on the integrity of Habitats Sites. Therefore, I have dealt with the matter as a main issue.

Main Issues

4. The main issues in this appeal are:
 - whether the proposed development would provide acceptable living conditions for the future occupiers of units 1 and 2, with particular regard to the provision of external amenity space;
 - the effect of the proposal on the living conditions of the occupiers of 10 Grasmear Avenue, with particular regard to outlook; and
 - the effect of the proposal on the integrity of Habitats Sites.

Reasons

Living conditions – future occupiers

5. The appeal site lies on the corner of London Road and Grasmear Avenue. It comprises a two-storey building with a ground floor shop and flats above, with disused land and a parking area to the rear. The parking is accessed by a shared access road, beyond which lies a two-storey house at 10 Grasmear Avenue (No 10) that has a small back garden.
6. There is an extant planning permission for a two-storey rear extension and a new second floor to the main building to form three flats on the site granted in 2022¹.
7. Policy DM8 of the DMD requires all new dwellings to make provision for usable private outdoor amenity space for the enjoyment of intended occupiers. It indicates that this could be a balcony or semi-private communal amenity space for flatted schemes and that residential schemes with no such space will only be considered acceptable in exceptional circumstances.
8. Units 3 and 4 would have roof terraces, providing private outdoor space for future residents of these dwellings. Whilst units 1 and 2 would incorporate Juliet balconies, in contrast to the 2022 scheme which included useable amenity space for all proposed units, the occupiers of these flats would not have any access to external amenity space. This would be harmful to future residents as they would only have internal accommodation and no private or semi-private outdoor space in which to sit. Therefore, the proposed scheme would not meet the policy requirements for the provision of private outdoor space for units 1 and 2.
9. I acknowledge that units 1 and 2 would only be one person dwellings and that a communal roof terrace providing shared amenity space for them was removed during the appellant's consultation with neighbouring owners. However, there is no evidence that other external space solutions have been explored which would not harm living conditions or that exceptional circumstances exist to justify the lack of external amenity space for the two smaller flats.
10. I note that Chalkwell Park is close by, but this is a public space which has a different function to private space and does not replace the need to provide it.
11. Therefore, I conclude that the proposed development would provide unacceptable living conditions for the future occupiers of units 1 and 2, with particular regard to the provision of external amenity space. This would be contrary to Policies KP2 and CP4 of the CS and Policies DM1, DM3 and DM8 of the DMD where they require development to avoid detrimental impacts on the living conditions of future residents.

Living conditions – existing occupiers

12. The proposed development would create an additional level over much of the existing structure, raising the height of the building to three storeys. It would also include a two-storey rear extension adjacent to Grasmear Avenue. The

¹ Planning application ref: 22/01629/FUL – "the 2022 scheme/earlier proposal"

proposed parking area and retained access road would separate the extended building from the existing rear garden at No 10.

13. The Council's second reason for refusal only refers to the impact of the new third storey on the living conditions of the occupiers at No 10, and no issues are raised in respect of the proposed two storey rear addition.
14. The proposed development would be of near identical form and scale to the 2022 scheme, and would not be any greater in height, linear extent or depth northward than it. The Council found that the earlier proposal would have an acceptable impact on neighbouring living conditions.
15. The proposed new third storey would result in some modest loss of sky views from the neighbouring garden. However, due to its massing, position mostly set in from the rear of the existing building, and the significant separation distance between it and the neighbouring property, the additional level would not dominate the outlook from the rear garden at No 10. Therefore, the proposed development would accord with the advice in the Council's Design and Townscape Guide 2009 (Townscape Guide) that new development must be designed so as not to be unduly obtrusive to adjacent buildings.
16. Consequently, I conclude that the proposal would not harm the living conditions of the occupiers of 10 Grasmear Avenue, with particular regard to outlook. It would accord with Policies KP2 and CP4 of the Southend-on-Sea Core Strategy 2007 (CS) and Policies DM1 and DM3 of the Council's Development Management Document 2015 (DMD). Together, these require development to avoid detrimental impacts on the living conditions of neighbouring residents, having regard to outlook, amongst other things.

Habitats Sites

17. The appeal scheme proposes four flats on a site that lies within the ZOI of the Blackwater Estuary, Dengie, Foulness Estuary, and Southend and Benfleet Marshes SPAs and Ramsar sites and the Essex Estuaries SAC. The Habitats Regulations require that, where a project is likely to have a significant effect on a Habitats Site, either alone or in combination with other projects, the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
18. The SPAs are noted for their estuaries and intertidal sand, silt and mud flats, including several islands, shingle and shell beaches and extensive areas of saltmarsh. They support important populations of wintering and migratory birds, including internationally important wintering waterfowl.
19. The conservation objectives of the SPAs generally seek to ensure that the integrity of the sites is maintained or restored as appropriate, and that the sites contribute to achieving the aims of the Wild Birds Directive.
20. The SAC is a typical, undeveloped, coastal plain estuarine system. It is important for its habitats, including salt meadows, estuaries, saltmarsh scrub, intertidal mudflats and sandflats, annuals which colonise mud and sand, subtidal sandbanks and cord-grass swards.

21. The conservation objectives of the SAC seek to ensure the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the favourable conservation status of its qualifying features.
22. A threat to the integrity of the Habitats Sites is recreational activities associated with additional development. The appeal site is within the ZoI where new residential accommodation is likely to result in recreational pressure, which would likely have a significant effect on the protected sites.
23. The development is for four new flats and, as such, the number of additional recreational visitors would be limited. However, in combination with other developments, it is likely that the proposal would have significant effects on the Habitats Sites.
24. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2020 (RAMS) sets out a strategic approach to mitigation and has been adopted by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified index linked tariff per dwelling. These include a range of habitat-based measures such as education, communication, habitat creation and monitoring.
25. The appellant and the Council agree that the financial contribution needs to be secured to make the proposal acceptable. I have consulted Natural England who have confirmed their endorsement of the RAMS and referred to the tariff currently being £163.86 per dwelling.
26. An application for planning permission cannot be approved if it is likely to have a significant effect on a Habitats Site and that effect would be unmitigated. There is no mechanism to positively require a financial contribution by planning condition² and therefore a planning obligation would be necessary. This would ensure that there is the necessary legal certainty that the mitigation would be paid. The payment would also be linked to the permission preventing occupation until it is paid. This approach also provides a transparent audit trail.
27. However, instead of providing a planning obligation, the appellant has paid a financial contribution of £156.76 per dwelling. Setting aside that this is less than the sum now required, a direct payment is inadequate as there would be no legal link between it and the planning permission. In effect, the mitigation would be unsecured, and this would lead to uncertainty. For example, the appellant may be able to ask for the money back as there is no legal requirement for it to be paid.
28. In the absence of appropriately secured mitigation, I do not have sufficient certainty that the proposal would not have a significant in combination effect on the Habitats Sites through recreational disturbance and damage. As a result, I cannot rule out that the condition and integrity of the Habitats Sites would deteriorate. For this reason, the appeal scheme would fail to adhere to the conservation objectives and a scheme for four dwellings would not provide imperative reasons of overriding public interest to justify allowing the appeal.
29. Consequently, and as directed by Regulation 63(5) of the Habitats Regulations, permission must not be granted. The proposal would also conflict with Policies

² Planning Practice Guide Paragraph: 005 Reference ID: 21a-005-20190723

CP4 and KP2 of the CS where they require conservation sites of international importance to be safeguarded and protected.

Other Matters

30. The Council did not find harm or development plan conflict in relation to several other matters, including design, landscaping, energy and water efficiency, internal space provision, dwelling mix, flood risk and drainage, vehicle parking and manoeuvring, deliveries to the commercial premises, cycle and refuse storage, and light, privacy, noise and disturbance to neighbouring and future occupiers. However, even if I were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposal.

Planning Balance

31. The Council accepts that it is currently unable to demonstrate a five year supply of deliverable housing sites as required by the National Planning Policy Framework (the Framework) and that there has been an underperformance of housing delivery in the city. However, on account of the harm that would occur to the integrity of the Habitats Sites, paragraph 188 of the Framework confirms that the presumption in favour of sustainable development in paragraph 11 of the Framework does not apply.
32. The proposed scheme would provide four additional dwellings, making more efficient use of an existing building and site in an urban regeneration area with good access to services and public transport. However, these benefits would not outweigh the harm I have identified.

Conclusion

33. Although the proposal would not harm the living conditions of neighbours, it would conflict with the development plan in respect of providing unacceptable living conditions for future occupiers and having a significant adverse effect on Habitats Sites. The proposal would therefore conflict with the development plan as a whole and there are no material considerations, including the Framework, that would outweigh this finding. Therefore, the appeal is dismissed.

A Wright

INSPECTOR