



Appeal Decision

Site visit made on 30 August 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2024

Appeal Ref: APP/D1590/W/24/3338292

Land adjacent to 92 Glendale Gardens, Leighville Grove, Leigh-on-Sea, Southend-on-Sea SS9 2AY

- 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 Elias Watson against the decision of Southend-on-Sea City Council.
 - The application Ref is 23/01825/FUL.
 - The development proposed is the extension and conversion of existing workshop to create new residential dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The evidence indicates that the appeal site lies within the Zone of Influence (ZoI) of one or more of the European habitats sites of nature conservation importance ("the habitats sites") that are scoped into the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, Supplementary Planning Document ("the RAMS"). These habitats sites are protected by EU derived law under the Conservation of Habitats and Species Regulations 2017, as amended ("the Regulations").
3. The Council has received a direct payment of the Essex RAMS Tariff fee and therefore is not defending refusal reason number 3. Nonetheless, I am the Competent Authority (CA) under the Regulations and through my decision I must consider the effects of the appeal proposal on the nature conservation interests of the habitats sites. I must be satisfied beyond all reasonable doubt that it would not have significant adverse effects on the integrity of those sites. My duty as the CA is therefore reflected in the first main issue below.

Main Issues

4. The main issues in this appeal are:
 - Whether the proposed development would affect the integrity of the protected habitats sites scoped into the Essex Coast RAMS.
 - The effect of the proposed development on the character and appearance of the area.
 - Whether adequate living conditions would be provided for future occupiers of the proposed dwelling, with particular regard to outlook and access to daylight and sunlight.

Reasons

Protected habitats sites

5. There are several protected European habitats sites of nature conservation importance on the Essex coastline. These support internationally important populations of bird species. Evidence has shown that these bird species suffer disturbance from recreational activities on the coastline, causing their populations to decline and threatening the integrity of the protected habitats sites.
6. New housing development within the ZoI of those protected habitats sites is likely to increase the number of persons using the coastline for recreation. This is shown to increase disturbance to the internationally important populations of bird species and is likely to harm the integrity of those habitats sites.
7. Consequently, the appeal proposal is likely, both in isolation and cumulatively with other housing developments, to have a significant adverse effect on the integrity of the habitats sites. The nature conservation objectives of the protected habitats sites are to maintain their integrity.
8. Under the Regulations it is my duty as the CA to undertake an Appropriate Assessment (AA) to determine whether I have certainty that measures could be put in place to avoid or mitigate the appeal development's likely significant adverse effects on the integrity of the habitats sites.
9. The RAMS sets out a range of measures to mitigate the potential adverse effects of new housing development on the qualifying bird species within the protected habitats sites. These include habitat enhancements, access management measures, education to influence visitor behaviour, monitoring and enforcement measures, and a Ranger service.
10. The RAMS requires new residential development within a ZoI to make a financial contribution, secured by a planning obligation, which can be a Unilateral Undertaking or a multi-party Section 106 Agreement, to fund delivery of these measures. Natural England's consultation response, to which I invited the parties' comments on, confirms that the appeal proposal would have no adverse effects on the habitats sites, providing the RAMS tariff is secured by a legal agreement and paid on commencement of development.
11. The appellant's direct payment of the RAMS tariff, which is evidenced by a receipt from the Council, is not a legally binding planning obligation. It contains no mechanism to assure me that the monies will be allocated to funding the RAMS, or to preclude the appellant from seeking a refund of the payment. By comparison, a planning obligation would give legal certainty and establish a transparent link between the development and the mitigation, thus ensuring it would be spent on delivering the mitigation measures by the party responsible for them. It would be legally capable of being enforced against and would set the circumstances under which the contribution would be refunded.
12. In taking a necessarily precautionary approach to this matter, I cannot be certain beyond reasonable doubt that the RAMS mitigation would be secured by the appellant's direct payment of the RAMS tariff, if planning permission was granted. Therefore, based on the evidence before me and in discharging my duty under the Regulations, I am unable to find that the proposal would not harm the integrity of the protected habitats sites.

13. In the context of the Planning Practice Guidance¹, there are no exceptional circumstances, given the scale of the proposed development, which would justify imposing a planning condition securing a planning obligation. There are no very exceptional circumstances under the appeals procedural guide² that would justify delaying a decision on this appeal until a planning obligation was submitted. It is the responsibility of the appellant to submit any necessary planning obligations with their appeal in accordance with the requirements of the RAMS.
14. Consequently, I conclude through my AA that the proposed development would have adverse effects on the nature conservation interests of the protected habitats sites. No other solutions, imperative reasons of overriding public interest, or other compensatory measures have been put forward by the appellant as alternatives.
15. The appeal proposal would therefore be contrary to Policies CP4, KP1 and KP2 of the Southend on Sea Borough Council Core Strategy 2007 ("the CS"), and Policies DM3 and DM6 of the Southend on Sea Borough Council Development Management Document 2015 ("the DMD"), insofar as they seek to ensure that ecological assets, including European sites of nature conservation importance, are not adversely affected by development.
16. There would also be conflict with Paragraphs 180.a) and 186.a) of the National Planning Policy Framework ("the Framework"), 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.

Character and appearance

17. The appeal site fronts a residential street that is predominantly lined on both sides by rows of tightly spaced 2 storey dwellings, set on strongly defined building lines and behind short front gardens. They are generally built to consistent scales and common period architectural styles, with roof slopes facing the street. As such, they display a strong sense of unity in the street scene, which gives the area a cohesive traditional appearance.
18. The appeal site is occupied by a small, low height building that is set further back from the road than the established building line, behind larger flanking buildings. In this context, its low height is out of keeping with the sizes of buildings in the area. Being wider than its street frontage, the appeal building also appears somewhat cramped between the flanking buildings. For these reasons it does not reflect the prevailing character and appearance of the area.
19. The proposed front extension would be a subservient addition to the appeal building that would bring it closer to the established building line. However, the appearance of its gabled form and triangular shaped window would not reflect the appearances of the buildings in the street, none of which appeared to be gable fronted or have triangular shaped windows. Its low height would remain out of keeping with the heights of buildings in the street scene and its width would remain greater than that of the plot's frontage. As such, the proposed dwelling would be at odds with the character and appearance of the area.

¹ Paragraph: 010 Reference ID: 21a-010-20190723

² Paragraph 18.2.1 of the Procedural Guide: Planning appeals – England

20. However, the screening effects of the larger flanking buildings would limit public views of the proposed dwelling to short distance, direct angle views from the road and along the access. In these views it would be apparent that neither of the flanking buildings strongly reflect the prevailing character and appearance of the area. For instance, Number 77 has a larger mansard roof that is at odds with the prevailing roof forms in the area. The long side wall of Number 92 is set on the back edge of the pavement, much closer to the road than the established building line.
21. Seen in this context, the contrast between the appearance of the proposed dwelling and the prevailing character and appearance of the area would be relatively modest. However, it would nonetheless cause a low level of localised harm to the street scene, in conflict with the guidance in the Design and Townscape Guide ("the SPD")³, which requires development to be consistent with local character.
22. That the proposal would appear to retain the historic ties referred to in the previously dismissed appeal in 2019⁴, would not alter my overall conclusion on its harmful visual effect. In any case, the dismissed appeal scheme was for a new build dwelling of a materially different design with accommodation its roof space and front and rear dormers. It therefore holds little relevance to my considerations in this appeal.
23. I therefore conclude on this main issue that the proposed development would harm the character and appearance of the area, contrary to CS Policies KP2 and CP4, and DMD Policies DM1 and DM3, insofar as they seek to ensure that development is respectful of its local context and townscape setting. There would also be conflict with Framework Paragraph 135.c) which seeks to ensure that development is sympathetic to local character, including the surrounding built environment.

Living conditions

24. The glazed window in the front gable would provide future occupiers of the proposed dwelling with a reasonably wide field of vision from out of the open plan lounge/dining area and bedroom. The position of the proposed fence and the taller buildings nearby would not be so close to this window as to be visually oppressive or overbearing to the outlook of future occupiers. Future occupiers would be afforded a view from out of this window, above the proposed fence and along the driveway towards the road. As such, they would have a good appreciation of the proposed dwelling's surroundings.
25. The modest kitchen would be served by a glazed door and tall glazed window. The field of vision from out of the kitchen would be restricted by the side wall of the proposed dwelling. The viewing angle would be towards the proposed boundary fence and the rear wall of the tall nearby building and its external staircase. However, these would not be so close to the kitchen window and door as to be visually oppressive or overbearing to the outlook of future occupiers. Compared to the lounge/dining area, the modest kitchen is unlikely to be a room in which future occupiers would sit and relax whilst looking out of the window and door.

³ Southend-on-Sea Supplementary Planning Document 1, Design and Townscape Guide 2009.

⁴ APP/D1590/W/19/3225914

26. Despite the large flank elevation of Number 77 being set on the appeal site boundary, I did not experience the appeal site as being oppressively dark at my site visit. Whilst my visit was a snapshot in time, I have no technical evidence to indicate that my experiences were abnormal. Given the proposed dwelling's relationship with nearby buildings, and the sizes and positions of window openings and rooflights, I consider that sufficient daylight would reach its rooms and outdoor space.
27. In terms of sunlight, the aspect to the east of the proposed dwelling is relatively open and includes the access, the road and the low height garage building opposite. As such, even when low in the sky during the morning, sunlight from the east would be expected to reach the rooms within the proposed dwelling, through the windows and door.
28. Number 77 would be expected to overshadow the proposed dwelling to varying degrees as the sun moves through the sky. However, around half of the proposed dwelling's high-level gable window would be set behind the rear wall of Number 77. The gardens and parking courts behind it would provide a relatively open aspect to the west and southwest of the proposed dwelling. Consequently, even when the sun is lower in the sky in the late afternoon, sufficient sunlight would reach the open plan living areas of the proposed dwelling through the gable window and rooflights.
29. Taking all the above into account, I conclude on this issue that the proposal would provide adequate living conditions for future occupiers with particular regard to outlook and access to daylight and sunlight. As such, it would not harmfully compromise the quality of life for future residents, consistent with the guidance in SPD paragraph 196.
30. For these reasons the appeal proposal would be consistent with CS Policies KP2 and CP4, and DMD Policies DM1, DM3 and DM8, insofar as they seek to ensure that development provides convenient and usable internal layouts, which avoid detrimental impacts to future residents. It would also accord with the Framework's requirements in Paragraph 135.f), of creating places with a high standard of amenity for existing and future users.

Other Matters

31. The Council is currently unable to demonstrate a 5 year supply of housing land in its area and is not achieving the boost in the supply of housing that the Framework expects.
32. In this context, notwithstanding the Council's evidence that one-bed residential units comprise a high proportion of the housing stock in its area, the proposed dwelling would make a small but valuable contribution to housing supply, with future occupiers contributing to the economy. It could be delivered quickly to make efficient use of an existing building on previously developed land, in an urban location where housing is supported as a matter of principle by the development plan.
33. Planning conditions could secure efficient use of energy and water, together with the generation of a proportion of the proposed development's energy needs through on-site renewables. This would contribute to reducing greenhouse gases and mitigating climate change.

34. Given the relationship between the proposed dwelling and nearby properties, I am satisfied that no harm would be caused to the living conditions of their occupants. I note the Council reached a similar conclusion. However, an absence of harm in this respect does not weigh positively in favour of the appeal proposal, being a requirement of any well designed scheme.

Conclusion

35. Through my AA, I find that the appeal proposal would have a significant adverse effect on the integrity of the protected European habitats sites. In the absence of any compensatory measures, imperative reasons of overriding public interest to grant planning permission, or alternative solutions, I am directed by Regulation 63(5) of the Regulations to refuse planning permission. This is a determinative matter in this appeal, irrespective of the benefits of the scheme or absence of other harms.
36. Under Footnote 7 to Framework Paragraph 11.d)i. the potential harm to the habitats sites provides a clear refusal reason. Therefore, despite the Council's current housing land supply position, the proposal does not benefit from the Framework's presumption in favour of sustainable development.
37. Had I been certain through my AA that the RAMS measures had been properly secured by a legal agreement to avoid or mitigate the appeal proposal's likely significant adverse effects on the habitats sites, then Framework Paragraph 11.d)ii. would have applied. In that scenario, the proposal's low level of harm to the appearance of the area would not have significantly and demonstrably outweighed its benefits when assessed against the policies in the Framework taken as a whole.
38. However, I must determine the appeal proposal on the evidence before me. In doing so, the conflict with CS Policies CP4, KP1 and KP2, and DMD Policies DM1, DM3 and DM6, brings the proposal into conflict with the development plan. There are no material considerations of sufficient weight, including the provisions of the Framework, 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