



Appeal Decision

Site visit made on 24 September 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Appeal Ref: APP/Z1510/W/24/3339650

Land west of St. Dominics Residential Home and The Cloisters, London Road, Kelvedon CO5 9AJ

- 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 St Dominic's Care Services Limited against the decision of Braintree District Council.
 - The application Ref is 23/02286/FUL.
 - The development proposed is described as an addition of 2 no. two bedroom care bungalows to the approved scheme.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
3. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework as published in December 2023, and any reference to paragraph numbers are to this version.

Main Issues

4. The main issues are the effect of the proposal on:
 - the integrity of habitats sites;
 - the character and appearance of the locality; and
 - the living conditions for future occupiers with specific regard to outlook, noise and disturbance.

Reasons

Habitats Sites

5. The appeal site falls within the Zone of Influence of the Blackwater Estuary Special Protection Area (SPA) and Ramsar site; the Dengie SPA and Ramsar site; and the Essex Estuaries Special Area of Conservation (SAC).
6. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) indicates that residential development in this location is likely to have significant effects on a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended, (the Habitats Regulations) through increased recreational disturbance.
7. Due to its proximity to the habitats sites, there is a reasonable likelihood future occupiers of the proposed development would access the habitats sites for recreation. Although such effects would likely be limited from two dwellings, in combination with other approved and proposed residential development, there would be a likely significant effect on the integrity of the SPAs and SAC as a result of the increased population and associated activity.
8. Local Planning Authorities in Essex have developed a strategy to deliver the necessary mitigation to address such impacts which is to be funded through a tariff. The appellant has indicated that they are prepared to provide mitigation through a financial contribution toward the Essex Coast RAMS, although none has been received. Without an accompanying mechanism before me to ensure that the financial contribution is used towards the measures set out in the Essex Coast RAMS, I cannot conclude that the proposed development would not have an adverse effect on the integrity of the habitats sites.
9. Consequently, I must adopt a precautionary approach, as there is no evidence before me to allow me to demonstrate that there are not alternative solutions to deliver housing that would have a lesser effect on the features of the sites in question; that there are imperative reasons of overriding public interest to permit what is proposed; or that there would be compensatory measures that would offset the harm. Consequently, the proposed development would be contrary to Policy LPP64 of the Braintree District Local Plan (BDLP) 2013-2033 (2021), the Habitats Regulations and, insofar as it relates to habitats sites, Section 15 of the Framework which taken together require all impacts on habitats sites to be mitigated for.

Character and appearance

10. The appeal site is located to the south of the settlement of Kelvedon in Essex. The site is on the outskirts of the settlement in a back land location accessed via The Cloisters, a small cul-de-sac off London Road. Whilst the surrounding area is generally open and rural in appearance, there is sporadic clusters of residential development adjoining the roadside as one moves south. These include traditionally designed semi-detached and terrace properties with a generally tight arrangement.
11. The Council is committed to ensuring high standards of planning, design and layout in the district as well as recognising the importance of the quality of

the environment. Policies LPP47 and LPP52 of the BDLP seek to secure a high standard of design and layout in all new development, which amongst other things, respects and responds to the local context.

12. Planning permission¹ has been granted at the site for the erection of a two-storey 21-bedroom care home together with 7 x 2-bedroom close care bungalows and associated parking. At the time of my site visit, the construction of the development has progressed significantly, with a considerable number of the bungalow properties in situ and at an advance stage of development. The proposal would provide an additional 2 x 2-bedroom bungalows of a similar design to those approved, in the northern corner of the site.
13. The principle of the back land development has been established through the extant planning permission, as such the provision of two additional bungalows would not be considered out of keeping within the existing environment. It is acknowledged that there is a varied nature to the surrounding built environment, however the modest proposal would provide an appropriate level of development.
14. The proposed single storey dwellings have been designed with half-hipped roofs to retain a more subservient feel given their rear location. Whilst the proposal would have a tight arrangement within the site itself, given its function as care homes for the elderly it would provide suitably modest, private and accessible accommodation for future occupiers. As such, the development would not appear cramped, and the scale and form of the properties would sit comfortably within the approved architectural pattern.
15. There is a significant amount of hardstanding at the front of the proposal consisting of the accessway and parking areas, along with parking areas associated with the 21-bedroom care home. Nevertheless, these types of arrangements are not uncommon in new housing developments where increased densities are sought. Furthermore, a landscaping scheme to soften the appearance of this area could be submitted, which could be conditioned as part of any approval.
16. Overall, the provision of two additional bungalows in this location would not adversely impact upon the character and appearance of the area, nor would it appear cramped, congested or as an overdevelopment. The proposal would therefore accord with the relevant sections of BDLP policies SP1, SP3, SP6, SP7, LPP1, LPP35, LPP47 and LPP52 and Policies HO1, DE1 and DE2 of the Kelvedon Neighbourhood Plan (NP) 2017-2033 (2022) which collectively aim to steer additional growth within existing settlements whilst ensuring that development proposals are of a high standard of design and make a positive contribution to their surroundings. The proposal would also be consistent with the Framework which seeks high standards of design to be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.

¹ Braintree District Council Planning Ref: 21/02241/FUL

Living conditions of future occupiers

17. The proposed layout provides a tight arrangement in respect to the bungalows and the associated facilities such as parking and storage arrangements. In regard to the noise and disturbance experienced by future occupiers, the proposal would be within an existing care home development and on the edge of the settlement of Kelvedon. Given this location and the vicinity of other residential properties where modest noise and disturbance are commonplace, it is unlikely that this would exceed expected levels of noise or disturbance associated with such a location. This is confirmed in the appellants Noise Impact Assessment² which also concludes noise from existing sources would not cause adverse impact to proposed future residents.
18. In regard to the outlook for future residents, the design and the orientation of "Type A" and "Type D" bungalows, would ensure that there is an acceptable level of outlook experienced from the proposed windows. Whilst the kitchen/living/dining area of Plot 9 would have views over the car park, the room has openings in all three of its external elevations which would allow views of the private garden and communal areas. Similarly, Plot 8 would also have multiple views, over both public and private areas from habitable rooms. As such, this would not represent a poor level of outlook for future occupiers, over that currently existing at the site.
19. For the reasons above, I conclude that the proposal would not result in harm to the living conditions of the future occupiers of the development with particular reference to outlook, noise and disturbance. The scheme would be compliant with the relevant sections of Policy LPP52 of the BDLP; Policy DE1 of the NP and the Framework which amongst other things, seeks to prevent development from adversely impacting upon the amenity of nearby properties.

Other Matters

20. The Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. The provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 57 of the Framework state that planning obligations must only be sought where they meet all of the relevant tests.
21. A legal agreement should therefore be necessary to make the development policy compliant, related directly to the development and provide a fair and reasonable contribution from the appellant related in scale and kind to the proposal. The Council seeks planning obligations which include financial contributions for off-site affordable housing; for the NHS to ensure that the impacts of increased demand for services can be accounted for; and mitigation towards the Essex Coast RAMS. As mentioned previously, I have no planning obligation before me.
22. Policy LPP31 of the BDLP contains the Council's policy for affordable housing. It sets out that for all developments of 10 dwellings or more or where a site

² Noise Impact Assessment prepared by Sharps Redmore Ref: 2019469

area is 0.5 hectares or more the Council will require a minimum 40% of the total number of units proposed on site to be provided as affordable housing. It goes on to give provisions where an off-site contribution may be acceptable. The appeal site consists of two additional bungalows on a small plot, which appears below the threshold for affordable housing set out in the development plan. However, the matter in dispute is whether the appeal site and previously approved scheme, should be aggregated together for the purposes of triggering an affordable housing contribution.

23. Based on the limited evidence before me, the sites share functional arrangements and facilities, although they are nevertheless capable of being developed independently of one another. Be that as it may, the description of development specifically states: '*addition of 2 no. two bedroom care bungalows to the approved scheme*' and as a result the appeal site would be considered an additional phase to the original permission.
24. I have been presented with limited information in respect to the requisite contribution or how that figure has been derived. Nevertheless, I conclude that the proposed development would attract a requirement for the provision of affordable housing. As such the proposal would conflict with Policy LPP31 of the BDLP which sets out the affordable housing threshold.
25. The Council also requires the need for a planning obligation to secure contributions for the NHS to ensure that the impacts of increased demand for services can be accounted for. The provision of this is contained in Policy LPP78 of the BDLP which seeks to ensure that there is appropriate infrastructure capacity to support the proposed development. However, there is only limited substantive evidence before me relating to the need for these contributions, or indeed how they have been calculated. As such I cannot establish that they would meet the tests for planning obligations set out in the Framework and the CIL Regulations.
26. The parties dispute whether Braintree District Council can meet its five-year housing land supply, and thus whether the presumption in favour of sustainable development contained within paragraph 11 d) of the Framework would be engaged or not. However, even if I was to find that there was a deficit in the five-year supply, given that the site is located within a protected habitat, footnote 7 of paragraph 11.d) of the Framework applies. In that respect, given there is no mechanism to secure the contribution to the Essex Coast RAMS, the presumption in favour of sustainable development does not apply.

Conclusion

27. Concluding as a whole, the proposal would have an acceptable effect on the character and appearance of the locality and the living conditions of future occupiers. Notwithstanding, I have concluded that the proposal would be likely to have a significant adverse effect on the integrity of the SPAs and SAC. Whilst I am satisfied that the mitigation measures contained in the RAMS could adequately address the effects of the proposed development on the habitats sites, there is no controlling mechanism before me to ensure that is how the contribution is used. This provides a clear reason for refusing the proposed development.

28. Therefore, and taking into account all other matters raised, the appeal should be dismissed.

Robert Naylor

INSPECTOR