



Appeal Decision

Site visit made on 18 September 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2024

Appeal Ref: APP/P1560/W/23/3333761

22 Vaux Avenue, Dovercourt, Essex CO12 4XP

- 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 Boulding and Moore Ltd against the decision of Tendring District Council.
 - The application Ref is 23/00416/FUL.
 - The development proposed is erection of a single storey two-bedroom dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey two-bedroom dwelling at 22 Vaux Avenue, Dovercourt, Essex CO12 4XP in accordance with the terms of the application, Ref 23/00416/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Both parties, within their respective submissions, had an opportunity to comment on the revised Framework. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the 20 December 2023 version.
3. On 30 July 2024 the Government published a consultation on proposed reforms to 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 of very significant weight, the weight I give to the changes in the draft Framework is limited given that no final document has been published and it is subject to potential change in the future.
4. 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 published in December 2023.

Main Issues

5. The main issues are the effect of the proposed development on:
 - the character and appearance of the surrounding area;
 - the living conditions of the occupiers of 22 Vaux Avenue with regard to daylight, sunlight and outlook; and

- the integrity of Essex Coast Habitats Sites.

Reasons

Character and appearance

6. The appeal relates to the front and side garden area of the detached residential bungalow at 22 Vaux Avenue (No. 22), located at the end of a linear row of bungalows. Vehicular access to No. 22 is via a shared driveway leading from the highway of Vaux Avenue and this driveway serves a small number of properties within this row.
7. Vaux Avenue is part of a larger housing estate which comprises of mainly bungalows accessed via a network of cul-de-sacs. Directly to the front and side of the appeal site is a footpath which connects Vaux Avenue to the neighbouring cul-de-sacs of Bexley Avenue, Musgrave Close and Frobisher Road.
8. Whilst the properties on Vaux Avenue generally lack significant boundary treatments to the front, the front garden area of No. 22 is enclosed by a high hedgerow, which adjoins the boundaries shared with the adjacent footpath. This hedgerow continues around the side of the front garden area before being replaced by a high fence almost in line with the front elevation of the dwelling and this fence then continues along the boundary to the side and rear of No. 22.
9. Whilst I find that the existing boundary treatments to the front and side of the appeal site are visually at odds with the general open character of the wider estate, the appellant contends that these boundary treatments are lawful, and I have been provided with no evidence to the contrary.
10. The appeal proposal seeks to erect a bungalow which would attach to the side of the existing dwelling at No. 22, creating a pair of semi-detached properties. Vehicle access to the proposed dwelling would be via the existing shared driveway and the submitted plans show that the existing area of hard surfacing to the front would provide parking provision and turning space for both No. 22 and the proposed dwelling.
11. The majority of the appeal site is designated as Safeguarded Open Space (SOS) and therefore Policy HP 4 of the Tendring District Local Plan 2013-2033 and Beyond, Section 2 (2022) (TDLP2) is relevant in the determination of this appeal. This policy states that the loss of the whole or part of areas designated as SOS will not be permitted unless four criteria are met.
12. Given that the appeal site is enclosed by boundary treatments and in private ownership, there is common ground between the main parties that criteria (a) – (c) are not applicable in this case. Nevertheless, the Council contend that the appeal site retains its visual importance to the amenity of the area and the appeal proposal would negatively harm the spacious qualities of the appeal site and the character of the area. Thereby the Council's position is that the appeal proposal fails to comply with criterion (d) of Policy HP 4.
13. In this regard, the appeal site is currently enclosed by a mixture of high hedging and fencing which largely screen the appeal site from public vantage points. These existing boundary treatments particularly screen the appeal site from the footpaths that run directly to the front, side and rear. Consequently, as a result of these existing boundary treatments I currently find the visual importance of the appeal site on the open character and appearance of the wider area to be limited.

14. With regard to the spacious qualities of the existing site, again these are weakened by the existing boundary treatments which prevent views into the appeal site. Nevertheless, the front elevation of the proposed dwelling would be set almost directly in line with the front elevation of No. 22 and its side elevation would be between 6 – 7m from the side boundary shared with the footpath. As such, the siting of the proposed dwelling would not harm the spacious qualities of the appeal site as a significant gap that would be commensurate to other gaps I observed in this area would be retained between the proposed dwelling and both the front and side boundaries shared with the existing footpaths. Also, the existing high boundary treatments would largely screen views of the proposed single storey dwelling from outside the appeal site.
15. In addition, attaching the proposed dwelling to the existing property at No. 22, to create a pair of semi-detached bungalows, would be in keeping with the character of the area as semi-detached bungalows are a common house type throughout this estate. Furthermore, I find that the proposed development would represent a logical continuation of the existing linear development of Vaux Avenue and would not breach the existing building line. The scale and design of the proposed dwelling would also be in keeping with the character and appearance of the wider area.
16. My attention has been drawn to a previous appeal decision¹ at the site. Whilst I have not been provided with all the details and plans in respect of this previous appeal decision, having carefully reviewed the decision letter I consider there to be substantial differences between that appeal and the one before me.
17. Firstly, whilst I note the previous Inspector refers to some existing fencing at the appeal site, they confirmed that at the time of that appeal the fencing was being investigated by the Council's Enforcement Team and it did not form part of the appeal proposal. Consequently, the Inspector gave little weight to this boundary treatment in their consideration of the appeal scheme. Furthermore, I note the Inspector commented that *"This layout results in an open, green and spacious character and appearance between properties on this section of Vaux Avenue leading through to Bexley Avenue"*.
18. As detailed earlier, the appeal site now contains a mixture of high fencing and hedging along its front and side boundaries, visually enclosing the site, and thus the "open" character and appearance between Vaux Avenue and Bexley Avenue referenced by the previous Inspector was no longer present during my site visit. There is no evidence before me that the existing boundary treatments I observed on site are unlawful or currently pending any enforcement action from the Council, as appears to be the case previously. Consequently, the on the ground situation at the site would appear to be significantly different between the previous Inspector's decision and the situation before me now.
19. Additionally, whilst the previous appeal related to an outline application, the Inspector commented *"...there is sufficient space to enable the proposed dwelling to be set back by one metre from the side boundary..."*. The appeal scheme before me proposes gaps ranging between circa 6 – 7m from the side boundary and thus the proposed dwelling on the previous appeal scheme would appear to have been sited substantially closer to the side boundary, and footpath, thus resulting in a significantly greater erosion of the space to the side of No. 22 than the current appeal scheme.

¹ APP/P1560/W/18/3202515

20. Consequently, and based on the information before me, the scheme considered by the previous Inspector, along with the situation on the ground, would appear to be significantly different to those before me as part of my determination of this appeal. This therefore limits the weight I can attribute the previous Inspector's decision in my determination of this appeal scheme.
21. The Council has drawn my attention to the previous Inspector's concerns over the provision of future fencing and hedging at the appeal site, where the Inspector commented that they would erode its open and spacious nature. Whilst acknowledging this observation, as previously detailed, boundary hedging and fencing has subsequently been erected on the site which has, for the reasons given earlier, now eroded the open and spacious nature of the appeal site the previous Inspector was seeking to retain.
22. These boundary treatments are now established features and as detailed I have no evidence that they are unlawful or currently pending any enforcement action from the Council. Consequently, the existing boundary treatments are features which have clearly altered the former open and spacious character and appearance of the appeal site and the surrounding area. The existing boundary treatment has therefore been a significant factor in my consideration of the appeal proposal and its impact upon the character and appearance of the appeal site and the wider area.
23. In view of all the above, I conclude that the appeal proposal would not result in the loss of an area that is important to the visual amenity of the locality, and it would not harm the character and appearance of the surrounding area. Consequently, I find no conflict with Policy SP 7 of the Tendring District Local Plan 2013-2033 and Beyond, Section 1 - North Essex Authorities' Shared Strategic Section 1 Plan (2021) (TDLP1) and Policies SPL 3 and HP 4 of the TDLP2. These policies together seek to ensure, among other things, that new developments protect and respond positively to local character; relate well to the site in respect of siting, height, scale, massing, form, design and materials; preserve the quality of existing places; and would not result in the loss of areas of open space that are important to visual amenity.
24. The proposal would also accord with the requirements of paragraph 135 of the Framework which seeks to ensure that development is sympathetic to local character, including the surrounding built environment and maintains a strong sense of place.

Living conditions of neighbouring occupiers

25. The proposed dwelling would adjoin the side elevation of the existing dwelling at No. 22. Where the proposal adjoins No. 22 it would have a rear projecting single-storey element that extends, according to the submitted plans, 3.1m further back than the rear elevation of No. 22.
26. No. 22 has a bedroom window in its rear elevation and the rear projecting element within the proposed dwelling would be set close to this window. Nevertheless, I find the rear projecting element to be relatively modest in size, both in terms of its projection from the rear elevation and its single-storey height with a pitched roof design that slopes away from the shared boundary. Furthermore, this window, and property, would continue to benefit from natural light and an outlook within its own rear garden area to the south and west.

27. As such, I find that the proposed development would not result in an overbearing impact on the outlook enjoyed from the existing bedroom window in the rear elevation of No. 22. Nor would the appeal proposal result in any significant loss of sunlight or daylight to this window.
28. I therefore conclude that the appeal proposal would not result in harmful living conditions for the occupiers at No.22. Consequently, I find no conflict with Policy SP 7 of the TDLP1 and Policy SPL 3 of the TDLP2, insofar as they together seek to ensure, among other things, that developments protect the amenity of existing nearby residents with regard to loss of light and overbearing impact.
29. I also find no conflict with paragraph 135(f) of the Framework where it seeks to ensure developments provide a high standard of amenity for existing users.

Integrity of European Sites

30. The appeal site falls within the Zone of Influence (ZoI) of the Hamford Water Special Protection Area (SPA) and RAMSAR as defined within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy 2018-2038 (RAMS). These European Sites are afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations) and is recognised for its qualifying features as a coastal habitat which supports internationally important populations of birds, internationally important numbers of migratory species and significant waterfowl assemblage.
31. The RAMS SPD (RAMS SPD) provides a mechanism for the competent authority to comply with their responsibilities to protect habitats and species in accordance with the Regulations.
32. As the competent decision-making authority under the Regulations, it is my duty to undertake an appropriate assessment to determine with certainty whether appropriate measures could be put in place to avoid or mitigate any likely significant adverse effects, with the aim being to maintain or restore, at favourable conservation status, the natural habitats and species of the European Sites.
33. In this regard, it is likely the occupants of the proposed development would visit these European Sites, resulting in increased recreational activity that could disturb the protected habitats and birds within the sites. Therefore, the development, alone and in combination with other development, would be likely to have a significant adverse effect on the integrity and conservation objectives of the protected sites.
34. The RAMS SPD applies a tariff-based financial contribution to all residential development within the ZoI to mitigate 'in-combination' recreational effects of development on the integrity of the European Sites, including a range of habitat-based measures such as education, communication and monitoring. These mitigation measures have been endorsed by Natural England within the RAMS SPD to avoid any adverse effect on the integrity of the Habitat Sites and their relevant features.
35. The appellant has provided a Unilateral Undertaking (UU) dated 2 June 2023, which undertakes to make the required Index Linked RAMS payment prior to commencement of development on site. The UU has been signed and the Council has confirmed that their Legal Team has checked and agreed the UU during the

planning application process. On that basis, I am satisfied that the UU would be effective in securing the payment of the required contribution.

36. I am also satisfied that the undertaking to pay the required RAMS fee meets the relevant tests for planning obligations outlined in paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
37. Consequently, I am satisfied that with the mitigation measures in place, the proposal would not adversely affect the integrity of the European Sites, either alone or in combination with other development.
38. For the above reasons, taking into account the planning obligation set out within the submitted UU, I find that the proposal would not conflict with Policy SP 2 of TDLP1 which requires that contributions are secured towards mitigation measures in accordance with the RAMS. It would likewise be in accordance with the relevant provisions in the Framework which seek to ensure development does not adversely affect the integrity of habitat sites.

Other Matters

39. I note the comments raised by the occupiers of the neighbouring property at number 7 Musgrave Grove (No.7), which is located to the rear of the appeal site. The occupiers of No.7 have raised concerns in respect of the proposed dwelling coming within 4m of the shared boundary, being situated on a higher land level than No.7 and issues relating to overlooking and a loss of privacy. However, based on my observations on the site visit I find that the proposed development would not result in significant harm to the living conditions of the occupiers of No.7 as a result of the proposed separation distance and the screening provided by the existing fence along the shared rear boundary.
40. Interested parties have also raised concerns over the appellant running a business from their home address. I have limited evidence before me in respect of this matter and in any case, it is not determinative in my consideration of the appeal proposal.
41. I note interested parties' comments in respect of matters relating to restrictive covenants and rights of access to the appeal site. These are however private land use considerations and are not matters that I can take into account in the determination of this appeal. It would be for the appellant to be satisfied that they can legally access the site and not breach any restrictive covenants.
42. I am alert to the potential impact of the construction works affecting the health and convenience of surrounding occupiers, including matters relating to noise, dust and access. I have therefore included a planning condition which requires a Demolition and Construction Management Plan (DCMP), including details of the parking of construction vehicles, measures to reduce dust emission and the hours of operation, to be submitted to and approved by the Council prior to commencement of the development.
43. Concerns have been raised about increased traffic generated by the appeal proposal, potential damage to the highway and the extra demand this dwelling would place on the existing drainage capacity in the area. However, the scale of the development for one dwelling is limited and I have insufficient evidence before me that the existing highway and drainage capacity cannot accommodate an extra dwelling, or that the proposal would cause damage to the highway.

44. My attention has been drawn to the visual impact arising from the existing hedges that have been planted at the appeal site. However, as detailed earlier in this decision, these hedges do not form part of the proposed development before me and are existing features on site. I have been provided with no evidence that they are unlawful or that any action is currently pending in relation to these hedges and thus they are existing features which I have taken into account in my consideration of the visual impacts of this appeal scheme within the area.

Conditions

45. The Council has provided a list of suggested planning conditions, which I have considered against paragraph 56 of the Framework, and the advice contained in the Planning Practice Guidance, and I have edited to improve precision and enforceability.
46. In addition to the standard time limit condition (1), I have attached a condition specifying the approved plans to provide certainty (2).
47. I have also included a pre-commencement condition which requires the submission of a DCMP (3). I have however not included all the details that the Council suggested were required to be provided as part of the DCMP as I considered that some of these suggestions were not commensurate, necessary or reasonable to the scale of development proposed. This pre-commencement condition is however necessary to protect the living conditions of occupiers of neighbouring properties, and in the interest of highway safety, throughout the demolition and construction phases.
48. Whilst not requested by the Council, I have included a condition requiring the full details, or samples, of the external materials (4) to be used in the development to be submitted in order to safeguard the character and appearance of the adjoining building and surrounding area.
49. I have imposed a condition to ensure that details of decentralised, renewable or low-carbon sources of energy are provided for the development and that measures for water efficiency are provided for the dwelling (5). This condition is required to support the government's objective of increasing sustainable development, as well as the requirements of TDLP2 Policies PPL 10 and SPL 3 which together require all new developments to demonstrate how new buildings will include renewable energy solutions. I have not however included the list of items suggested by the Council as there is insufficient evidence to demonstrate these would be required and this leaves scope for measures relevant to the proposed development to be secured as part of the discharge of this condition.
50. The Council requested a condition be attached requiring the provision of a turning area for vehicles. The submitted plans show an existing turning area to the front of the proposed dwelling, which I considered to be sufficient to serve both the existing and proposed dwellings, and therefore such a condition is not necessary. I have however added a condition requiring this turning area, and the existing car parking spaces, to be retained in perpetuity (6). This condition is necessary in order to reduce the reliance upon on-street parking, and to prevent vehicles reversing onto the highway, in the interest of highway safety.
51. A condition requiring details of the cycle storage provision (7) to be submitted has been included to support the use of sustainable modes of transport. In the interest of precision I have amended the wording of this condition significantly from that

suggested by the Council as I have not been provided with the “*EPOA Parking Standards*” which were referred to.

52. A condition requiring the submission of a landscaping scheme, which shall then be implemented within the first planting season following occupation, or completion, of the dwelling (8), has been attached. The Council requested that these be secured via two separate conditions, however I have amended the wording of these conditions and amalgamated them into one condition. While this condition is necessary to safeguard the character and appearance of the area, the 10-year period suggested to replace dead trees is unreasonably onerous and thus I have reduced this to 5 years.
53. The Framework advises that conditions should not be used to restrict permitted development (PD) rights unless there is clear justification to do so. Nonetheless, due to the proximity to neighbours, rights for alterations and extensions under Class A, and dormers under Class B, of Part 2 of Schedule 2 of the GPDO² have been removed (9). I have not however included other Classes within Part 2 of Schedule 2 within this condition, as removing those PD rights is neither reasonable nor necessary to make the development acceptable.
54. Also, whilst acknowledging that there is existing boundary hedging to the front of the appeal site, a condition is necessary to remove PD rights for the erection of any manmade means of enclosure such as gates, fences and walls to the front of the proposed dwelling (10). This condition is required to maintain a frontage that is free from manmade means of enclosure in order to safeguard the character and appearance of the area.
55. The Council requested a condition requiring the vehicular access to have a bound material surface. However, the access is not being altered as part of this proposal and I observed on site that it was already finished in a bound material. Moreover, the access is shared with a number of other properties in this row and therefore the surfacing that is used on this shared access would be outside of the appellant’s sole control. I therefore do not find this condition to be reasonable, necessary or enforceable and thus I have not included it.
56. A condition requiring the submission of a Residential Travel Information Pack has been recommended. However, limited information has been provided in support of the requirements for this suggested condition, including the relevant development plan policies quoted in the reason for this suggested condition. Consequently, and on the information before me, I find this condition would result in an unjustified and disproportionate burden on the appellant for a single dwellinghouse and it has therefore not been included.
57. The Council also requested a condition which requires any new boundary planting to be planted a minimum of 1m back from the highway boundary. The appeal site has a combination of existing high hedging and fencing situated along its front and side boundaries and therefore a condition that requires any new planting to be set back a further 1m would, in my opinion, be superfluous. As such, this suggested condition has not been included.

Conclusion

58. For the reasons given above, and having regard to all matters raised, the proposed development would accord with the development plan when taken as a

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

whole and there are no material considerations that indicate it should be determined other than in accordance with it. I therefore conclude that the appeal should be allowed.

R Major

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development must be begun not later than the expiration of three years beginning with the date of this permission.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans:
 - 2019017/10 Rev C
 - 2019017/11 Rev B
 - 2019017/12
- 3) No development hereby approved shall commence on site, including any works of demolition, until a detailed Demolition and Construction Management Plan (DCMP) has been submitted to, and approved in writing by, the Local Planning Authority. The DCMP shall detail the arrangements for:
 - a) the parking of vehicles for site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in the construction of the development;
 - d) measures for the control and reduction of dust and dirt;
 - e) measures for the control and reduction of noise and vibration;
 - f) how traffic would be managed to minimise disruption; and
 - g) hours of operation, including deliveries and collections.

The demolition and construction of the development hereby approved shall be carried out in complete accordance with the approved DCMP.
- 4) Notwithstanding any description of materials in the application or on the approved plans, no above ground construction works shall take place on the development hereby permitted until details / samples of the materials to be used in the construction of the external surfaces of the development have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details / samples.
- 5) No above ground construction works shall take place on the development hereby permitted until a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development have been submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be implemented, and the measures provided, prior to the first occupation of the development and retained as such thereafter.
- 6) The existing vehicular turning area and car parking spaces, as shown on the approved plan (2019017/10 Rev C), shall be retained as such, and kept available for their intended purpose, in perpetuity.

- 7) No above ground construction works shall take place on the development hereby approved until details of secure cycle parking facilities to serve the development to which this permission relates have been submitted to and approved in writing by the Local Planning Authority.

The cycle parking facilities as shown in the approved details shall be provided prior to first occupation of the development and shall be permanently retained for that purpose and kept free from obstruction thereafter.

- 8) No above ground construction works shall take place on the development hereby approved until a detailed landscape & planting plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include a clear key or legend corresponding to the landscaping plan and provide the following information:

- Species (both Latin & Common names) for all plants;
- Locations of all plants or areas of planting;
- Plant numbers or planting densities;
- Sizes of all plants and trees 'at time of planting';
- Details of any changes in land levels; and
- Details of all hard-landscaping areas including materials.

The approved scheme shall then be implemented within the first planting season following the occupation of the development, or the completion of the development, whichever is the sooner. Any trees or shrubs which, within a period of 5 years from first planting, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season, with others of a similar size and species.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any order revoking and re-enacting that Order, with or without modification, the dwelling hereby approved shall not be enlarged or altered under Class A and Class B of Part 1 of Schedule 2 of that Order without the express permission of the Local Planning Authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any order revoking and re-enacting that Order, with or without modification, no gates, fences, walls or other means of enclosure covered by Class A of Part 2 of Schedule 2 of that Order shall be erected or constructed forward of the front elevation of the dwelling hereby approved without the express permission of the Local Planning Authority.

***** END OF CONDITIONS *****