



Appeal Decision

Site visit made on 15 October 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26TH NOVEMBER 2024

Appeal Ref: APP/P1560/W/24/3336340

9 Crossley Avenue, Jaywick CO15 2LS

Easting (x): 614076 Northing (y): 213019

- 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 Justyna Kozyra against the decision of Tendring District Council.
 - The application reference is 23/01290/FUL.
 - The development proposed is described as "*Empty plot will be occupied by single two bedroom house detached type*".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Only the Easting and Northing co-ordinates and the postcode of the appeal site were used for the address on the planning application form. The appeal site is described as '*Land adjoining Crossley Avenue*' in the Council's decision notice and as '*9 Crossley Avenue*' in documentation submitted by the appellant with the appeal. On my site visit I observed that the appeal site is located between Nos. 7 and 11 Crossley Avenue. I am therefore satisfied that that the description of the appeal site in the banner above accurately reflects the location of the proposed development. I have included the Easting and Northing co-ordinates for clarity.

Main Issues

3. The main issues are:
 - Whether the location of the development is appropriate having regard to the impacts and risks of flooding, including the application of the sequential test;
 - The effect of the development on the character and appearance of the area;
 - The effect of the development on the living conditions of existing occupiers of neighbouring properties with particular regard to outlook, privacy and light; and
 - The effect of the development on the integrity of the Essex Coast European Protected Sites.

Reasons

Flooding

4. The appeal site lies within Flood Zone 3a indicating that it is at greatest risk of flooding, in this case from coastal tidal flooding. Furthermore, the proposal is for residential accommodation which is classified as 'more vulnerable development' under Annex 3 of the National Policy Planning Framework (the Framework).
5. To comply with national policy schemes such as the appeal proposal are required to pass the Sequential and Exceptions Tests and be supported by a Flood Risk Assessment (FRA). Planning Policy Guidance (PPG) is clear that even though the FRA may show a development can be made safe during its lifetime, the Sequential Test (ST) still needs to be satisfied. The aim of the ST is to steer new development to areas with the lowest risk of flooding and development should not be permitted if there are reasonably available sites with a lower risk of flooding.
6. As part of the application, the appellant submitted a site-specific FRA, which includes a section entitled '*The Proposed Development, The Sequential Test & Mitigation*', although there is nothing before me to indicate that the ST has been carried out. The FRA states that a dwelling would be sited on a plot earmarked for residential use. However, from the information before me the site is not an allocated housing site in the local development plan and therefore the ST needs to be undertaken on a site-specific basis and only if no sequentially preferable sites are reasonably available is an Exceptions Test (ET) carried out.
7. I acknowledge that the appellant does not own other development sites, however, to satisfy the requirements of the ST approach, a search area is required to be identified which may be district-wide or confined to smaller area such as a school catchment area, for example, depending on local circumstances¹. The ST should consider all 'reasonably available sites', which are any within the test area and suitable for the proposed development with a reasonable prospect of being available at a point in time envisaged for the development². Ownership is not a factor upon which they can be discounted.
8. Furthermore, the Environment Agency's holding objection highlights that the appeal scheme proposes a solution which the Jaywick Sands Design Guide Supplementary Planning Document 2023 (Jaywick Design Guide) advocates only for replacement dwellings. As the proposal before me is not for a replacement dwelling the approach adopted would not satisfy the guidance set out it and would place the future occupiers of the dwelling at risk.
9. For the above reasons, it has not been adequately demonstrated that the proposed dwelling in its location would not be at an unacceptable risk of flooding. As such, the proposal is contrary to Policy PPL1 of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (TDLP2) which states that development proposals will be considered against the Framework's ST

¹ PPG Paragraph: 027 Reference ID: 7-027-20220825 (<https://www.gov.uk/guidance/flood-risk-and-coastal-change#the-sequential-approach-to-the-location-of-development>)

² PPG Paragraph: 028 Reference ID: 7-028-20220825

approach, to direct development toward sites at the lowest risk of flooding, unless they involve land specifically allocated for development.

Character and Appearance

10. Dwellings in Crossley Avenue and the streets surrounding it are predominantly single storey, set out in a gridded street pattern. Dwellings are set on small plots where in almost all circumstances the dwelling occupies the majority of its footprint. Houses vary in character and appearance with inconsistent ridge levels and a variety of material utilised, nevertheless, they have similar design origins as chalet-style plotland holiday accommodation built in the 1930s.
11. The appeal site is a vacant parcel of land between 7 and 11 Crossley Avenue. The proposed development involves the construction of a three-storey 2-bedroomed dwelling with an integral garage and bicycle store at ground floor and living accommodation at first and second floors with an external staircase on the front elevation to reach the living accommodation.
12. Despite the inconsistency of the appearance of dwellings here, the introduction of a three-storey dwelling on to a single vacant plot into a row of single storey dwellings would appear incongruous and out of keeping with the prevailing character of the surrounding area, particularly with regard to the tall, rendered side elevations which would be highly prominent in the street scene. Although the appeal site is located about halfway along Crossley Avenue, a three-storey dwelling would be highly visible the surrounding streets including Midway and Lotus Way which form an arterial route through the area.
13. Whilst there are some taller structures locally, the appeal proposal's appearance would contrast markedly with the generally modest scale of residential development within the immediate area of the appeal site. This would detract from the character and appearance of the area. In coming to my conclusion on this main issue I have also had regard to the advice set out in the Jaywick Design Guide which provides detailed guidance on the development of vacant plots in the town.
14. Therefore, for the reasons outlined above, I find that the proposal would cause material harm to the character and appearance of the area. Therefore, I conclude that it would not accord with the design, character and appearance requirements of Policy SP7 of the Tendring District Local Plan Section 1 (TDLP1) and TDLP2 Policy SPL3 2 which require new development to meet high design standards which responds positively to local character and relates well to its site and surroundings particularly in relation to, amongst other things, height, scale, massing and form.

Living Conditions

15. The proposed dwelling would be very close to 7 and 11 Crossley Avenue and to 8 Singer Avenue (No. 8) to the rear of the appeal site. Although properties in the area have modestly sized gardens, it does not diminish the value of private external amenity space to their occupiers, in particular the occupiers of Nos. 7 and 11 and No. 8 closest to the appeal site. The orientation of the appeal proposal in relation to the gardens of these properties would be highly likely to lead to significant overshadowing for significant parts of the year, and especially at times when the sun is at its lowest. In the absence of substantive evidence to the contrary, I cannot be certain that the amenity that the

occupiers of these properties enjoy from their gardens would not be unacceptably diminished as a result of the proposed development.

16. Furthermore, in this context, the presence of a three-storey dwelling close to existing single storey dwellings, would be dominant and oppressive. Consequently, the proposal would have an overbearing effect on the outlook for occupiers of surrounding dwelling especially when using their gardens. This would be especially the case for the occupiers of 8 Singer Avenue, whose side garden directly adjoins the appeal site. Therefore, given the proximity of the proposal to the boundaries of neighbouring dwellings and the overall height and orientation of the proposal, it would dominate the outlook from the gardens of those properties and as such the proposal would appear as an imposing feature in the street scene.
17. In considering this main issue I have had regard to the Jaywick Design Guide which sets out that to ensure daylight and sunlight to existing homes and gardens, unless multiple plots are consolidated for comprehensive redevelopment, new homes in this part of Jaywick must be a maximum of 1.5 storeys.
18. For these reasons, therefore, the proposal would harm the living conditions of the occupiers of neighbouring occupiers with regard to outlook, privacy and light. As a result, there would be conflict with TDLP1 Policy SP7 and LP3 and TDLP2 Policy SPL3 Part B which requires developments are designed and orientated to ensure adequate daylight, outlook and privacy for existing residents.

Integrity of the Protected Site

19. The appeal site lies within the Zone of Influence of European Protected Sites on the Essex coast, which are recognised for their value as coastal habitats and support internationally important populations of breeding and non-breeding bird species. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (RAMS) establishes mitigation for pressures created by recreational disturbance on this area.
20. A tariff-based system has been established for housing developments, which would contribute towards a range of measures set out in the RAMS. The RAMS is clear that this should be secured by way of a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended)
21. The appellant has indicated that a payment has been made to the Council as part of a previous planning application and would be willing to make a further payment. However, I have no confirmation from the Council that a payment has been made. Nor do I have a signed and dated planning obligation before me as set out in the RAMS as the appropriate means of securing financial contributions.
22. Had I been minded to allow the appeal, it would have been necessary for me to establish that any payment which either had been made or was due to be paid prior to commencement of the development was in accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) However, given my findings above, it has not been necessary to pursue this matter further.

Other Matters

23. The appellant has referred to developments on Broadway and Lotus Way which are three storeys in height, similar in design to the appeal proposal. The scale of development in these developments differs to that of the single dwelling before me in that they are developments of multiple dwellings built together located either on the main roads through Jaywick or close to the town centre where the scale of development and space around the site is more appropriate for their height. Furthermore, from my observations of developments on Hillman Avenue and Talbot Avenue, rather than providing justification for the proposed development, if anything, points to a need for such proposals to be carefully controlled if the character and appearance of the area is to be safeguarded. Moreover, I have little information relating to the particular circumstances of these developments and whether the circumstances are comparable to the appeal proposal. I have therefore considered the appeal before me on its individual planning merits.
24. I also note that several bungalows have been recently developed nearby. I do not have the details of these before me. However, the Jaywick Design Guide indicates that there are certain circumstances where this type of development is acceptable. This does not indicate the acceptability of a scheme in the form before me. In any event, I must consider the appeal on its individual merits, and I have not been presented with any evidence which would lead me to an alternative conclusion.

Conclusion

25. For the reasons set out above, the proposed development would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to indicate the decision should be taken otherwise. The appeal is therefore dismissed.

K L Robbie

INSPECTOR