



Appeal Decision

Site visit made on 1 November 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th November 2024

Appeal Ref: APP/M1520/W/24/3339318

19 Beveland Road, Canvey Island, Essex SS8 7QU

- 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 Derek Durrant against the decision of Castle Point Borough Council.
 - The application Ref is 23/0578/FUL.
 - The development proposed is the demolition of existing bungalow and proposed 5 flats with garage and parking spaces.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Whether the proposed development would affect the integrity of the Benfleet and Southend Marshes Special Protection Area (SPA) and Ramsar site, the Foulness Estuary SPA and Ramsar site, and the Blackwater Estuary SPA and Ramsar site, which are protected sites ("the habitats sites") of nature conservation importance under EU derived legislation.
 - The effect of the proposed development on the character and appearance of the area.
 - Whether parking provision would be adequate.
 - Whether the arrangements for the collection of refuse and recycling bins would be adequate.

Reasons

Protected habitats sites

3. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy, Supplementary Planning Document ("the Essex Coast RAMS") indicates that the appeal site lies within the Zones of Influence (ZoI) of the habitats sites referred to above.
4. These sites are recognised for their value as coastal habitats. They support internationally important populations of bird species and are protected by EU derived law under the Conservation of Habitats and Species Regulations 2017, as amended ("the Regulations").
5. The evidence indicates that recreational activities on the Essex coastline cause disturbance to the qualifying bird species, leading to declining populations and

threatening the integrity of the protected habitats sites. These recreational activities are carried out predominantly by residents in Essex. Therefore, new housing developments within the ZoI of those protected habitats sites are likely to increase the number of residents using the coastline for recreation. In turn, this has the potential to increase the negative effects of recreational disturbance to the qualifying bird species.

6. Consequently, the appeal proposal is likely, both in isolation and cumulatively with other housing developments, to have a significant adverse effect on the bird species and thus the integrity of the habitats sites. The nature conservation objectives of the protected habitats sites are to maintain or restore at favourable conservation status their natural habitats and species.
7. It is my duty as the Competent Authority (CA) under the Regulations to undertake an Appropriate Assessment (AA). This is to determine whether I have certainty that measures could be secured to avoid or mitigate the appeal development's likely significant adverse effect on the integrity of the habitats sites, with the aim of maintaining or restoring, at favourable conservation status, their natural habitats and species.
8. The Essex Coast RAMS, which is agreed with Natural England, 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. In addition, there would be monitoring and surveys.
9. The Essex Coast RAMS requires new residential development within a habitats site's ZoI, to make a financial contribution to fund the delivery of these mitigation measures. This would be secured by a planning obligation, which can be a Unilateral Undertaking or a multi-party Section 106 Agreement. Natural England has confirmed that the appeal proposal would have no adverse effects on the habitats sites, providing the appropriate Essex Coast RAMS tariff contribution is secured by a legal agreement and paid on commencement of development.
10. The appellant has advised that a direct payment to the Council of the Essex Coast RAMS tariff contribution has been made. However, this has not been properly secured by a planning obligation and therefore there is no legal mechanism to assure me that any contribution paid would be properly allocated to funding the Essex Coast RAMS.
11. Compared to a direct payment, a planning obligation would establish a transparent and legally enforceable link between the development proposed and the mitigation secured. It would give legal certainty that the contribution would be spent on delivering the mitigation measures, along with the circumstances under which it would be refunded.
12. Given that legally protected habitats sites could be adversely affected by occupation of the proposed development, I must take a precautionary approach to this matter. In so doing, I cannot be certain beyond reasonable doubt that delivery of the Essex Coast RAMS mitigation measures would be properly secured if planning permission was granted.

13. Therefore, based on the evidence before me and in discharging my duty as CA under the Regulations, I am unable to conclude that the proposal would not harm the integrity of the protected habitats sites.
14. I have considered whether a condition could be imposed to secure a planning obligation. However, in the context of the Planning Practice Guidance¹, there are no exceptional circumstances that would justify doing so. Furthermore, there are no very exceptional circumstances before me that would, under the appeals procedural guide², justify delaying a decision until a planning obligation was submitted.
15. I therefore conclude through my AA that the proposed development would have an adverse effect on the nature conservation interests of the protected habitats sites referred to above. No other solutions, imperative reasons of overriding public interest, or other compensatory measures have been put forward by the appellant as alternatives.
16. Consequently, the proposal would 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. The Framework directs that 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. Beveland Road is fronted by a mixture of residential buildings constructed to different sizes, designs, proportions and materials. These consist of some very modest bungalows and many good-sized houses, including a distinctive row of several large 3 storey residential buildings on its eastern side.
18. Whilst the buildings display little in the way of uniformity or consistency, they are set back from the road in tightly spaced rows on discernible building lines. Seen in street level views, they present a strong built frontage and sense of enclosure to the road, particularly along its eastern side. The prevailing character and appearance of the area is therefore derived predominantly from the pattern of buildings fronting the road.
19. The appeal dwelling is set on the established building line where it contributes to the mixed appearances of the buildings in the street scene. However, when seen amongst the distinctive row of larger 3 storey buildings, the comparatively modest scale and massing of its broadly triangular shaped façade is out of keeping with the greater height and massing of those buildings. As such, it markedly weakens the characteristically strong built frontage established by those buildings and their tight spacings.
20. The roofs of the buildings at Numbers 23 and 13c, appear to be noticeably taller than the roofs of Numbers 17 and 21, which flank the appeal site. Even if the proposed building would be taller than the flanking buildings by the distances stated by the Council, the roofscape of the row of 3 storey buildings is mixed and comprises of different roof forms and heights, with little in the way of uniformity.

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

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

21. Seen in this context, the roof height of the proposed building would be broadly comparable to the roof heights of the 3 storey buildings in the row. Furthermore, the building's roof form would reflect those in the roofscape and would slope-up away from the boundaries, thus reducing the perception of its height in street level views.
22. The spaces between the proposed building and the flanking boundaries would be narrower than sought by the guidance in RDG2 of the Castle Point Residential Design Guidance, Supplementary Planning Document, Adopted 2013 ("the SPD"). The south facing elevation of the building would be set on the common boundary at ground floor level.
23. However, tight spaces between buildings, especially at ground floor levels, are a characteristic of this row of buildings, contributing to the enclosure of the street. For example, the substantial masonry steps of Number 17, and the south facing walls of Numbers 21 and 23, are set on their common boundaries at ground floor level.
24. Seen in this context, the spaces between the proposed building and the flanking dwellings would be comparable to the established pattern of tight spaces between buildings. This would be consistent with the overarching guidance in RDG2 which seeks to avoid disruption to clear patterns of development.
25. Taking all the above into account, the scale, form and massing of the proposed building would be in-keeping with the tightly spaced pattern of larger 3 storey buildings in the row. As such, it would reinforce the established pattern of development and strong built frontage to the street scene, consistent with the prevailing character and appearance of the area.
26. Most properties have hardsurfaced forecourts providing frontage parking for a number of vehicles side-by-side. Whilst several have some modest areas of planting, a good proportion have open frontages which are devoid of front boundary treatments and are almost exclusively hardsurfaced. These may have been created through permitted development rights. However, they are sufficiently numerous as to be a characteristic of the street scene.
27. In this context, the proposed hardsurfaced frontage parking and driveway would not be visually obtrusive. Parked vehicles would not dominate the public realm, which RDG12 of the SPD seeks to avoid. Different surface materials could differentiate the parking spaces from the driveway. Taller plants could be set within the proposed flower bed to provide softening of the frontage, particularly when cars are not parked. These could be secured through a landscaping scheme in accordance with RDG11 of the SPD.
28. For these reasons, I conclude that the appeal proposal would not be harmful to the character and appearance of the area. It would therefore be consistent with Policy EC2 of the Castle Point Borough Council Local Plan, Adopted 1998 ("the CPBCLP"), which requires high quality development, appropriate to its setting and not harmful to the character of its surroundings.
29. The proposal would, for the same reasons, be consistent with Framework Paragraph 135, which seeks to ensure, amongst other considerations, that developments are sympathetic to local character, including the surrounding built environment and landscape setting, and function well over their lifetime.

Parking provision

30. Parking space 4 would have a width greater than 4 metres to allow for the convenient manoeuvrability of a vehicle into and out of this space. It would therefore accord with the Essex County Council (ECC) Parking Standards Design and Good Practice 2009 ("PSDGP").
31. However, the widths of parking spaces 5 and 6, fall short of ECC guidance. If a vehicle was already parked in one of those spaces, the manoeuvrability of a second vehicle into or out of the remaining parking space would, on the evidence before me, be likely to be constrained by the walls and the parked vehicle. Consequently, the driver of the manoeuvring vehicle would be required to perform a relatively challenging series of turns to avoid conflict with the walls or parked vehicle.
32. Whilst simultaneous parking in spaces 5 and 6 would not appear impossible, and the size of any vehicle would be a relevant factor in this, it is likely that future occupiers may well choose to use just one of those spaces for parking. In that scenario, parking provision for the appeal development would amount to 5 spaces. Therefore, when compared to the 6 parking spaces that the Council raised no objection to, it is likely that a vehicle would be displaced onto the street.
33. Several parking spaces were available on Beveland Road at the time of my visit. Whilst my visit was only a snapshot in time, there is limited evidence to demonstrate that the conditions I observed were abnormal. On the evidence before me, I am satisfied that a displaced vehicle from either parking space 5 or 6, would not increase pressure for on-street parking to the extent that it would harm highway safety, the functioning of the road, or the living conditions of nearby occupiers. There is no objection from ECC as the Local Highways Authority.
34. Furthermore, the evidence suggests that the appeal site is in an accessible location and the development would provide cycle storage facilities. As such, future occupiers would have opportunities for travel other than by private car, which may reduce car ownership and parking demand.
35. I therefore conclude on this issue that the parking arrangements for the proposed development would be adequate. Given my findings on this matter, the technical conflict with the PSDGP and CPBCLP Policy T8, which applies those standards, carries very limited weight against the proposed development. Taken as a whole, the development would function well with respect to parking, consistent with Framework Paragraph 135.

Refuse and recycling bin collection

36. The route for wheeling waste and recycling bins between the storage area and the collection point would either be along the path to the side of the building or through the ground floor garaging. On the evidence before me the distance over which the bins would be wheeled would fall within the distance of 30 metres that is stated in RDG13 of the SPD as the limit for occupiers.
37. Whilst it would exceed the 10-metre limit for waste collectors stated in RDG13, I see no reason on the evidence before me why future occupiers could not wheel the bins to within this distance of the collection point, particularly as the route would appear clear, relatively flat and unobstructed by obstacles.

38. For these reasons, I conclude on this issue that arrangements for the collection of refuse and recycling bins would be adequate and consistent with the requirements of RDG13, which are set out above. Consequently, the development would function well with respect to bin collection, consistent with Framework Paragraph 135.

Other Matters

39. Local residents and the Town Council have raised concerns with the proposed development on a range of matters, including the capacity of drainage systems and flood risk, loss of privacy to nearby property, and noise and disturbance. The Borough Council has assessed these matters, and they did not form reasons for refusing planning permission. On the evidence before me I have no basis to disagree with that assessment.
40. Whilst CPBCLP Policy H13, seeks to locate flats on or near a main road site, this policy is not consistent with the Framework and the Council reached a similar finding. Therefore, the appeal proposal's conflict with this policy would carry limited weight against it.

Conclusion

41. The appeal proposal would comply with the most important policies in the CPBCLP for determining this appeal. The limited weight that I give to the degree of conflict with CPBCLP Policies H13 and T8, would not be sufficient to bring the proposal into conflict with the development plan when read as a whole.
42. As the CA, I have concluded through my AA that the appeal proposal would have significant adverse effects on the integrity of the protected 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 the absence of other harms.
43. Under Footnote 7 to Framework Paragraph 11.d)i. the proposal's adverse effects on the habitats sites provides a clear refusal reason. Therefore, despite the Council's current housing land supply position and Housing Delivery Test results, the proposal does not benefit from the Framework's presumption in favour of sustainable development.
44. Consequently, the proposal's adverse effects on the habitats sites and the resultant conflict with Paragraphs 180.a) and 186.a) of the Framework is of sufficient weight 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