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## Appeal Decision

Site visit made on 17 October 2024

**by A M Nilsson BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>th</sup> December 2024**

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**Appeal Ref: APP/V1505/W/24/3341002**

**53 Manor Avenue, Pitsea, Basildon, Essex SS13 2AU**

- 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 Russell Silver against the decision of Basildon Borough Council.
  - The application Ref is 23/01588/FULL.
  - The development proposed is to split the house into 2 flats.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are 1) the effect of the proposed development on highway safety with regard to parking provision, 2) whether or not the proposed development would provide acceptable living conditions for future occupants with regard to amenity space, and 3) the effect of the proposed development on the integrity of the Essex Coastal Recreational Avoidance and Mitigation Strategy.

### Reasons

#### *Highway safety*

3. The appeal property is a two-storey end of terrace dwelling. It is located in an area which is made up of residential properties of a similar size and design. The property looks onto a small area of amenity open space and is also accessible via a back lane to the rear.
4. There is a garage block comprising two garages to the rear of the property. The location plan subject to the appeal shows one of these garages to be within the appeal site, and this is declared as being within the appellant's ownership. This however contradicts the land ownership plan submitted with the appeal. Whilst this provides a clear element of uncertainty over the deliverability of parking, I have determined the appeal based on the plans as originally submitted and considered by the Council.
5. The proposed development would result in the creation of two one-bedroom flats. Both main parties accept that one parking space would be provided with this being identified to serve the ground floor flat.
6. Policy DM8 of the Essex County Council Development Management Policies (2011) outlines that development proposals should comply with the "Parking

Standards: Design and Good Practice” document. This document outlines that for one-bedroom dwellings, a minimum of one space should be provided per unit. This excludes garages if less than 7m x 3m measured internally.

7. In the appeal scheme as only one space is identified, the development would not comply with the above requirement. Furthermore, it is not clear whether the space which has been identified is one of the garages and whether or not this is of a size capable of constituting a parking space. It is also pertinent that garages are often used for purposes other than the parking of a vehicle.
8. There is limited substantive evidence in relation to the availability of parking off-site, despite some locations being identified, and whether or not there is capacity to accommodate parking for the proposed development without causing adverse highways impacts.
9. In this case however, I am mindful that the existing dwelling, comprising three bedrooms, when considered against the parking standards would require two spaces. It is therefore the case that the parking requirement for the existing dwelling and the proposed development would be the same. Given this context this material consideration is such that a decision on the matter other than in accordance with the development plan can be made.
10. Therefore, on the matter of highway safety, given the current use of the site, despite there being conflict with the parking standards, the proposed development would not result in unacceptable highway impacts. Having regard to the language of the National Planning Policy Framework (2023) (the Framework) the proposal would not have an unacceptable impact on highway safety, nor would the residual cumulative impacts on the road network be severe.

#### *Living conditions – future occupants*

11. The appeal property currently benefits from a modest size rear garden that is commensurate with the surrounding properties. It is proposed to sub-divide the space between the proposed dwellings.
12. The plans as originally submitted and considered by the Council stated that amenity space provision would be 21.65sqm and 20.86sqm respectively. Although not shown in great detail, this was laid out on the scaled proposed block plan.
13. The Council outline how based on the above provision, the proposed development would fail to provide the minimum amount of private amenity space necessary, that being 25sqm for each home as set out in the Essex Design Guide (SPD) (2018).
14. In the appeal, the appellant has submitted a somewhat crudely drawn plan which states the garden provision in total would be 58sqm. Although such a figure would have the potential to comply with the requirement of the SPD the proposed subdivision to show the space for each property has not been set out nor has this been demonstrated on a scaled proposed plan.
15. On this basis I cannot be certain that the minimum amount of amenity space in order to ensure acceptable living conditions for future occupants can be provided. The proposed development would therefore fail to provide acceptable living conditions for its future occupants in accordance with the

requirement of the Framework in terms of ensuring high standards of amenity for all users. It would also be contrary to the SPD.

*Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS).*

16. The evidence indicates that the site is located within the Zone of Influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy. This is a European designated Special Protection Area (SPA).
17. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) requires the competent authority to ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of SPAs. The effects arising from the proposed development need to be considered in combination with other developments in the area and by adopting a precautionary approach.
18. The RAMS Supplementary Planning Document (SPD) (2020) sets out guidance that will apply when determining planning applications for new housing development, that would adversely affect the integrity of the SPA. This would include a financial contribution of £156.76 per dwelling (for the financial year 2023/24). The RAMS payment applies to all residential development within a catchment area known as the Zone of Influence (ZoI) as set out in the SPD.
19. The Habitats Regulations require me to determine whether the development is likely to have a significant effect on the SPA alone or in-combination with other plans or projects, applying a precautionary approach. Where it would be affected, consent can only be granted if there are no alternative solutions, there are imperative reasons of overriding public interest and suitable compensatory measures are provided.
20. The proposed development, resulting in a net gain of one dwelling, would result in additional recreational pressures and is likely to result in localised effects for which mitigation measures would be required. This is in the form of a financial contribution towards the RAMS. Given the quantum of development, the amount of additional recreational visitors would be small and the likely effects on the SPA from the proposed development alone would not be very significant. However, in combination with other developments the proposal would likely have significant effects on the SPA.
21. As such, the development would have an adverse effect on the integrity of the SPA, but regard can be had to whether these adverse effects can be mitigated. In this regard, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
22. Having regard to the SPD contributions towards off-site measures to mitigate the likely impacts of adverse recreational effects arising from a development, contributions will be sought where these are necessary to make the development acceptable, are directly related to the development and are fairly and reasonably related in scale to the development.
23. In this case, there is no mechanism before me to secure the appropriate financial contributions to ensure that no harm is caused to the integrity of the protected site. In the absence of acceptable mitigation, I therefore conclude that the proposed development would cause harm to the integrity of the SPA.

24. Consequently, the proposed development conflicts with the requirements of the Habitats Regulations, which are described above, and the relevant aspects of the SPD and chapter 15 of the Framework.

### **Other Matters**

25. The evidence outlines that the Council are unable to demonstrate a five-year supply of deliverable housing sites.
26. The proposed development would result in the net gain of one additional dwelling on previously developed land. It would result in a very small increase in the Council's overall housing number. These are benefits that weigh in favour of the appeal.
27. As the application of policies in the Framework that protect SPAs provides a clear reason for refusing the proposed development, it does not benefit from the presumption in favour of sustainable development.

### **Planning Balance and Conclusion**

28. The proposed development would result in a very small increase in the Council's overall housing number and would be on previously developed land. When combined with the Council being unable to demonstrate a five-year housing land supply, collectively, I give these matters significant weight in favour of the proposed development.
29. However, the failure to clearly show that acceptable living conditions for future occupants, in terms of amenity space, would be provided, combined with, in the absence of appropriate mitigation measures, the harm to the SPA, attracts greater significant weight that outweighs the benefits associated with the proposed development.
30. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*A M Nilsson*

INSPECTOR