



Appeal Decisions

Site visit made on 24 September 2024

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th December 2024

Appeal Ref: APP/M1595/W/24/3340998

10 Chestnut Avenue, Thurrock, Grays RM16 2UJ

- 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 I Virk against the decision of Thurrock Borough Council.
 - The application Ref is 23/01357/FUL.
 - The development proposed is for the demolition of existing garage and creation of new 3 bed, 5 person dwelling with secured cycle storage and bin storage. Alterations to existing dwelling comprising of hip to gable roof extension, new porch, and single and two storey rear extensions. Erection of new outbuilding to both resulting dwellings and creation of new hardstanding and vehicle access to serve existing and new dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing garage and creation of new 3 bed, 5 person dwelling with secured cycle storage and bin storage. Alterations to existing dwelling comprising of hip to gable roof extension, new porch, and single and two storey rear extensions. Erection of new outbuilding to both resulting dwellings and creation of new hardstanding and vehicle access to serve existing and new dwelling at 10 Chestnut Avenue, Thurrock Grays RM16 2UJ in accordance with the terms of the application, Ref 23/01357/FUL subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr I Virk against Thurrock Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I am also the Inspector appointed to determine the first appeal¹ on the same site. The two appeals raise similar issues but are the subject of separate decisions. Whilst there may be some duplication on matters each appeal has been addressed separately.
4. The appeal site falls within the Zone of Influence (ZoI) of the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site. These are referred to as Habitats sites within the National Planning Policy Framework (the Framework). The appellant agreed to address this matter through the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy² (RAMS). The appellant and the Council have had the opportunity to clarify and

¹ APP/M1595/W/23/3333119

² Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) Habitats Regulations Assessment Strategy document 2018-2038 (RAMS SPD)

address this and provided with additional time. No third parties would be prejudiced by my consideration of the matter as it does not alter the substance of the appeal. This matter is discussed later in the decision, which I have considered as a main issue.

5. Building work had been undertaken at No 10 Chestnut Avenue but is not complete. For the avoidance of doubt my assessment of this appeal is based on the proposed plans that were before the Council.

Main Issues

6. The main issues are:

- the effect of the proposed development upon the character and appearance of the area; and
- the effect of the proposed development upon Habitats sites.

Reasons

Character and appearance

7. The appeal site comprises land associated with 10 Chestnut Avenue, which is a right hand side hipped roof semi-detached property. The area is characterised by well-proportioned dwellings, set back behind front gardens or parking courts. There is a range of dwelling styles including bungalows, detached and semi-detached properties. The area has a spacious character with mature trees giving it a pleasant established residential appearance. The existing site contributes positively to this character by virtue of the spacious driveway to the side of the property, allowing a generous and relaxed setting for No 10 and the adjacent detached dwelling at 8 Chestnut Avenue.
8. The proposal is for a new dwelling attached to the side of No 10. Alterations are also proposed to that property to change the hipped roof, add a porch, single storey flat roof extension and two-storey extension to the rear. However, the front and public facing elevation of the resultant development facing Chestnut Avenue would have an overall scale and form which substantially mirrors that of the building at 12 Chestnut Avenue. The external appearance and details are also virtually the same, with similarly proportioned and positioned fenestration at ground and first floor. The proposed porch, whilst providing an entrance to two dwellings, would be positioned centrally and satisfactorily reflect the design and the location of the porch at No 12.
9. The development would transform No 10 into a mid-terraced property. This would be at odds with the type of homes within the area. Both No 10 and the new dwelling would also have a narrower plot width. However, unlike a detached dwelling, it would be difficult to ascertain that the new dwelling, was not part of No 10. It would appear simply as a common form of extension of the property, particularly if front boundary treatments were open and/or low and the proposed hardstanding was sensitive to this. These elements could be controlled through a suitably worded planning condition.
10. The proposed development would be positioned close to the joint boundary with No 8. The spacious gap that currently exists would be eroded. However, the development would not appear obtrusive and the gap would not be

incongruously small given the similar sized development and gap between the corresponding buildings of No 12 and 14 Chestnut Avenue.

11. The Council has not submitted a statement of case, and neither the reason for refusal or the minutes of the planning committee meeting articulate any significant concerns arising from the alterations to the rear of No 10 or the proposed outbuildings. The proposed outbuildings would be erected at the far end of the existing garden. These would be low and unobtrusive. These and the alterations at the rear of No 10 would be subservient to the host buildings and largely obscured from public views from Chestnut Avenue by the new dwelling. These proposed elements would not harm the character or appearance of the area.
12. In conclusion, the proposed dwelling would result in some very minor harm to the character and appearance of the area arising from the formation of the terrace and reduction in the space between Nos 8 and 10. Notwithstanding my findings on the first appeal, this is a materially different development, and in this case the harm would be minimal. Nevertheless, it would result in conflict with policies CSTP22, CSTP23 and PMD2 of the Thurrock Local Development Framework Core Strategy and Policies for Management of Development (as amended) adopted January 2015 (Core Strategy). Together these policies seek to ensure that development promotes good design, a sense of place and responds to the sensitivity of the site and its surroundings. In the planning balance, such harm will be assessed in relation to other material considerations.

Habitats sites

13. The Thames Estuary and Marshes SPA and Ramsar site is classified for bird species and habitats that are rare and/or vulnerable. The Conservation of Habitat and Species Regulations 2017 (as amended) (the Regulations) imposes a duty on the competent authority to consider whether a proposed development may have a significant effect on the conservation objectives of such sites either alone, or in combination with other plans and projects within the context of an Appropriate Assessment (AA).
14. The proposed dwelling would be likely to result in additional recreational pressure locally on sensitive coastal areas and such activity could cause disturbance to birds and their habitats. The increase from the development alone would be small, but it is likely that in combination with other developments, the proposal could have a significant impact on the integrity of the Habitats sites.
15. The RAMS SPD sets out a strategic approach to mitigate such adverse impacts, and details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. These include a range of habitat-based measures, education, communication and monitoring. As set out in the RAMS SPD and the Council's Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) May 2020 Natural England has endorsed this approach.
16. In this case, the appropriate contribution has been secured through a direct payment to the Council. I have been provided with evidence of an email from the Council which identifies such payments can be recorded on their systems against the relevant permission. I have no clear reason to doubt that the

Council, as a responsible public body, would not spend the money in the way as envisaged by the RAMS SPD, or within a specified timetable.

17. As such, the contribution may be taken into account as mitigation to effectively mitigate the recreational impacts of the proposed development on the nature conservation interest of the Habitats sites and avoid adverse effects to their integrity. I am satisfied that the mitigation measure would be used for the intended purpose. In light of the above and following an AA, I find that the proposal would not adversely affect the integrity of the Habitats sites.

Other Matters

18. Despite concerns raised about the proposal's effect on the living conditions of neighbouring occupiers, the Council identified that the development would not breach the guidance within the adopted Residential Alteration and Extensions Supplementary Planning Document July 2017. No substantiated evidence to the contrary has been provided to counter the Council's conclusions that the proposals would not harm neighbouring living conditions or provide future occupiers a suitable standard of accommodation. The Council's Environmental Health Officer has also not raised concerns in relation to noise or pollution.
19. The Council's officer report suggests parking provision meets the Council's parking standards and that the proposed new vehicle crossover would comply with the vehicle crossover policy and therefore no highway safety objections have been raised. There is no evidence that the provision of refuse storage cannot be suitably stored within the site or that gas, water, electric and drainage systems and local infrastructure are unable to accommodate the development. The layout of the proposed outbuildings do not show they would be used as habitable accommodation even if there are utilities connected to it.
20. It has been suggested that due to the layout and number of bathrooms that both properties would be capable of being occupied as a House in Multiple Occupation (HMO). The Council has suggested a condition which would retain them within Use Class C3³ to prevent them changing into HMO's. However, there is no evidence that this would be possible, or that the arrangements would meet HMO licensing requirements and room sizes. Unacceptable levels of noise or disturbance are not the inevitable consequence of HMOs or rental properties, even if located in areas predominantly occupied by single households. Insufficient evidence has therefore been provided that this would result in any significant harm given that the new dwelling only shows three bedrooms. It has not been clearly defined why such a condition is relevant, necessary or reasonable to subsequently impose on either property.
21. Concerns have been raised regarding legal agreements for No 12, the effects on neighbouring land, property values and the intentions and actions of the appellant. The courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations. I have considered the proposal on its planning merits alone.

³ Of The Town and Country Planning (Use Classes) Order 1987

Planning Balance

22. The Council cannot demonstrate a sufficient supply of deliverable housing sites as required by the Framework. Although the overall housing figure has not been explained, by either party, paragraph 11 d) of the Framework should, because of the provisions of footnote 8, therefore be applied. This requires the granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole.
23. Regardless of the extent of any shortfall, the proposed development would provide limited social and economic benefits. This includes the creation of one additional dwelling contributing to the supply, mix and range of housing in the district. Economic benefits would arise from the construction and occupation of the development. However due to the scale of the development, the weight to be given to these benefits is limited.
24. The proposal would result in a very small level of harm to the character and appearance of the area and conflict with Core Strategy policies CSTP22, CSTP23 and PMD2. The Framework within chapter 12, also expects good design, which is identified as a key aspect of sustainable development. Furthermore it expects development that is not well designed to be refused. The proposal would conflict with the development plan as a whole. However, given the level of harm the conflict between the proposal and the policies carries minimal weight in this appeal.
25. Other matters pertaining to the proposal, as set out above, have been identified as being acceptable. However, these weigh neither for nor against the proposed development.
26. Overall, the adverse effects of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Such a material consideration would be of sufficient weight to indicate that the appeal should be determined otherwise than in accordance with the development plan and planning permission should be granted.

Conditions

27. The Council's suggested conditions have been considered against the tests at paragraph 56 of the Framework. Minor drafting amendments have been made in the interests of clarity and to avoid duplication unless otherwise stated. I have also amended the conditions to primarily refer to the new dwelling where necessary. The appellant has provided written agreement to the terms of the pre-commencement condition.
28. In addition to the standard time limit condition [1], I have imposed a condition [2] specifying the approved plans in the interest of certainty.
29. To safeguard the living conditions of neighbouring occupiers and highway safety, a condition to agree details of how construction will be managed is necessary [3]. This is a pre-commencement condition as details need to be agreed before any works take place to ensure that they are satisfactory.
30. A condition is necessary, in the interests of the character and appearance of the area, for the Council to approve the details of the proposed materials [4],

hard standing [5] and all boundary treatments [6]. Whilst the Council suggested a pre-commencement condition for the hard standing, it is not necessary for this as it relates to materials and can be considered after a certain amount of development has taken place. Furthermore condition [7] is necessary to ensure that the requisite parking is provided before the new dwelling is occupied to ensure the effect on the highway is acceptable and the character of the area is preserved.

31. Condition [8] relates to restrictions on permitted development rights to both No 10 and the new dwelling because the appeal site has been subdivided to accommodate two dwellings. The appeal development has also been subject to careful negotiation and consideration throughout its evolution to arrive at this scheme. Therefore any additional development, which could be undertaken using permitted development rights, at either property, could undermine that associated process and outcome. It is therefore reasonable to impose this condition and necessary in the interests of the character and appearance of the area and neighbouring living conditions.
32. Condition [9] relates to construction hours. It is necessary to impose this to protect residential living conditions.

Conclusion

33. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

K Williams

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing no's: 10 OS 1 Proposed – Block Plan Location Plan; 10 HH 6 Proposed – Ground Floor Plan; 10 HH 7 Proposed – First Floor Plan; 10 HH 8 Proposed – Roof Plan; 10 HH 9 Proposed – Elevation; 10 HH 10 Proposed – Elevations; 10 HH 11 Proposed – Street Scene Roof Plans & Elevations; 10 HH 11a Proposed – Outbuilding Plan and Elevations; 10 HH 12 Proposed – Site Plan and 10 HH 14 Location Plan.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by the local planning authority. The development shall commence in accordance with the approved CMS and shall be adhered to throughout the construction period. The CMS shall provide for:
 - i. details of construction access;
 - ii. the parking of vehicles of site operatives and visitors;
 - iii. loading and unloading of plant and materials;
 - iv. storage of plant and materials used in constructing the development;
 - v. details of temporary hardstanding;
 - vi. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vii. wheel washing facilities and sheeting of vehicles transporting aggregates;
 - viii. measures to control the emission of dust and dirt during construction; and
 - ix. a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 4) No development above ground level shall take place until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted 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 development above ground level shall take place until details of the hardstanding to the front of No 10 Chestnut Avenue and the new dwelling hereby permitted 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 and shall thereafter be retained.
- 6) Prior to the occupation of the new dwelling hereby permitted details of the positions, height, design, materials and type of all boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed as in accordance with the approved details before the proposed dwelling is occupied and shall thereafter be retained.

- 7) The new dwelling hereby permitted shall not be occupied until the vehicle parking spaces have been provided in accordance with drawing no: 10 OS 1 Proposed - Block Plan Location Plan. Thereafter those spaces shall be retained for the parking of vehicles only.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B, D or E of Part 1 of Schedule 2 to the Order shall be undertaken to No 10 Chestnut Avenue and to the new dwelling and outbuildings hereby permitted without planning permission having first been obtained from the local planning authority.
- 9) Demolition or construction works shall take place only between 08:00 hours to 18:00 hours on Monday to Friday, 08:00 hours to 13:00 hours on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays. This shall be adhered to unless in association with an emergency or with the prior written approval of the local planning authority.

End of Schedule