



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: 23 December 2024

Appeal Ref: APP/P1560/W/24/3338036

**Land rear of The Gables & The Towers, Clacton Road, Weeley Heath
CO16 9EF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Messrs Evershed and Bouchard against the decision of Tendring District Council.
 - The application reference is 23/00807/OUT.
 - The development proposed is the development of five detached houses.
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Decision

1. The appeal is allowed, and outline planning permission is granted for the development of five detached houses at land rear of The Gables & The Towers, Clacton Road, Weeley Heath, CO16 9EF in accordance with the terms of the application, reference 23/00807/OUT, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application is submitted in outline form with all matters reserved for subsequent consideration. An indicative site layout is submitted. I have considered this indicative plan solely on the basis of determining whether, in principle, it is possible to erect five dwellings on the site as set out in the description of development.
3. The Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. It does not change the planning policy context in respect of the main issues, and I have determined the appeal accordingly.

Main Issues

4. The main issues are:
 - The effect of the development on the character and appearance of the area; and
 - The effect of the development on the integrity of the Essex Coast European Protected Sites.

Reasons

Character and Appearance

5. The appeal site is located on Clacton Road at Weeley Heath. It consists of the rear portion of the gardens of two properties known as The Gables and The Towers. The gardens of the two properties are substantial. The dwellings at The Gables and The Towers are located close to the highway. Access to the proposed dwellings would be via a route created between the two properties.
6. LPS2 Policy LP8 does not preclude the development of backland sites but seeks to ensure that it complies with a range of criteria relating to the character and appearance of the area, residential amenity and highway safety.
7. The proposal would not extend built development beyond the strong rear garden boundaries of properties along this side of Clacton Road. The presence of a substantial hedge along the rear boundary and other boundaries of the appeal site coupled with the inset of the appeal site from the rear hedge line would mean that the proposal would not result in a hard urban edge to the settlement boundary. Views into and from the site would be limited given the prominence of the boundary landscaping and the set back of the proposed properties from the highway would mean that they would not appear incongruous or out of place. Furthermore, the proposal would provide adequate amenity space for the existing dwellings at The Gables and the Towers and would not result in inadequate living conditions for the occupiers of those properties.
8. The proposed dwellings would be set further back from the highway than the furthest extent of recently constructed dwellings at a former nursery site at Kidby Way adjacent to The Gables. The distance between the properties on Kidby Way in combination with the intervening garden of the host property at The Towers would mean that the proposal would not appear to amalgamate with them.
9. The development would be consistent in character with that which was granted on appeal at The Oaks in 2020¹. Whilst I recognise that the circumstances surrounding that development differ to the appeal before me, I cannot ignore its existence. Furthermore, other recent development along this section of Clacton Road has significantly altered its character and appearance, meaning that the locality has a built-up character and appearance where development had extended further back into sites and creating small courtyards and cul-de-sacs of development, which are now a prevailing characteristic of the area. The proposal would not, therefore, create a precedent for other similar forms of development.
10. I therefore conclude that there would be no conflict with LPS1 Policy SP7 which sets out place shaping principles and LPS2 Policies SPL3, LP4 and LP8 which seek to ensure that development is of high quality and does not adversely affect the character and appearance of the area.

Integrity of European Sites

11. The appeal site lies within the Zone of Influence (ZOI) of European Protected Sites of the Colne Estuary SPA and RAMSAR, which are recognised for their

¹ APP/P1560/W/20/3246370

- 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 (SPD) establishes mitigation for pressures created by recreational disturbance on this area.
12. A tariff-based system has been established for housing developments, which would contribute towards a range of measures set out in the SPD. The appeal proposal would result in an increase of one dwelling, with a consequent small increase in the number of people living close to the protected site. The evidence is that this would likely increase recreational disturbance, either on its own or in combination with other projects, particularly through dog walking, to the detriment of the integrity of the protected areas. I therefore find that the proposal would likely lead to significant effects on the protected sites.
 13. The Council has adopted a Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) in collaboration with other boroughs within the ZOI of the protected sites. This aims to avoid adverse effects by securing financial contributions towards a detailed programme of strategic avoidance and mitigation measures. LPS2 Policy PPL4 confirms this approach. A signed and completed UU dated 26 April 2024 has been submitted which secures the requisite payments.
 14. I note that Mr Bouchard has signed the UU and is not a legal title holder of either of the land parcels which form the application site. However, as he is named as one of the applicants on the planning application form, I am satisfied that he has sufficient interest in the land and the proposal to warrant forming one of the signatories and his signing does not make the UU flawed.
 15. As the competent authority, it falls to me to undertake an appropriate assessment. In this case I find that the financial contribution to the RAMS would ensure acceptable mitigation and hence ensure that the proposal would not cause harm to the integrity of the protected sites.
 16. I am therefore satisfied that the development therefore accords with the biodiversity requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations) and paragraph 186 of the Framework.

Other Matters

17. It has been suggested that the proposal may be suitable as self-build units. To ensure that a development would be self-built, it would usually be appropriate for this matter to be secured by way of a legal agreement in the form of a planning obligation which would enable the self-build requirement to be binding upon successors in title if ownership of the appeal site were to change in the future. In the absence of an appropriate mechanism to secure the provision of self-build dwellings, there would be no adequate restriction preventing the scheme from evolving into a different type of development, such as open market housing. I therefore attribute limited weight in favour of this benefit of the development.
18. I have had regard to comments and submission made by local residents relating to highway safety. The Highways Authority did not object to the proposal, and although I have been provided with photographs of sections of

walls which may have been damaged by cars, I have no substantive evidence before me that the location of the appeal site in relation to the highway would be inherently unsafe. Furthermore, this matter did not form part of the Council's reasons for refusal. Means of access remain a reserved matter for future consideration in any event.

19. Residents have made representations to me on a wider basis, which include concerns regarding landscaping, living conditions of neighbouring occupiers and drainage. As the application is made in outline, considerations relating to details matters with regard to layout, appearance and landscaping are subject to future consideration by the Local Planning Authority via applications for detailed reserved matters. I am satisfied that these are not matters which could not be overcome through the submission of details and would be unlikely to result in a level of harm which would justify dismissal of the appeal.
20. I note that the Council are able to demonstrate a housing land supply in excess of 5 years. However, this does not place a cap on housing delivery. I therefore place little weight on this matter.
21. Whilst I recognise that a previous Inspector came to an alternative conclusion on an appeal for a similar proposal at the appeal site, I do not have all the details of that appeal before me, I therefore cannot be certain that the proposal was entirely comparable to the proposal before me, and do not share the Inspector's concerns regarding the proximity of the appeal site to Kidby Way. My considerations are based solely on the scheme before me and my observations on site. I have determined the appeal based on the information before me and for the reasons set out above.
22. I understand that my decision will be disappointing for some local residents, however, the evidence before me does not lead me to conclude that the matters raised either individually or cumulatively, would be overriding issues warranting dismissal of the appeal.

Conditions

23. I have carefully considered the conditions suggested by the Council in the light of the Framework and Planning Practice Guidance. I have undertaken some minor editing in the interests of precision and clarity. Those included in the schedule are found to be reasonable and necessary in the circumstances of the case.
24. I have imposed the standard outline conditions, time limits and approved plans conditions. Conditions relating to biodiversity enhancements are necessary in the interests of sustainability.
25. I have not imposed the suggested conditions relating to the vehicular access, and turning facilities as means of access and layout remain as reserved matters to be determined at a later date. Furthermore, I have not imposed the suggested condition relating to the provision of residential information travel packs for future occupiers as I have not been provided with any substantive evidence that this condition is necessary to the grant of planning permission and therefore does not pass the tests set out in the Framework.

Conclusion

26. For the reasons set out above and having had regard to the development plan and all other matters raised, I conclude that the appeal should succeed, subject to the conditions set out in the attached schedule.

K L Robbie

INSPECTOR

Schedule of Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) Details of the access, appearance, landscaping, layout, and scale ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:
 - Drawing Number 204 01 Rev A (red line location plan only)
 - 'Klargester BioDisc Domestic Sewage Treatment Plant',
 - 'Water, energy and resource efficiency measures',
 - 'Construction Method Statement',
 - 'Electric Vehicle Charging' and
 - 'Great Crested Newt District Level Licensing Impact Assessment & Conservation Payment Certificate'.
- 5) Prior to the first occupation of the hereby approved development, all mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Liz Lord Ecology, June 2023).
- 6) Prior to first occupation of the hereby approved development, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
 - a) Purpose and conservation objectives for the proposed enhancement measures;
 - b) detailed designs or product descriptions to achieve stated objectives;
 - c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
 - d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
 - e) persons responsible for implementing the enhancement measures;
 - f) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

****end of schedule****