



Appeal Decision

Site visit made on 3 January 2025

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th January 2025

Appeal Ref: APP/P1560/W/24/3344837

Land R/O 53 The Street, Kirby-le-Soken, CO13 0EG

- 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 David Huddleston against the decision of Tendring District Council.
 - The application Ref is 23/00699/OUT.
 - The development proposed is Outline application with all matters reserved for the construction of one new dwelling on land to the rear of 53 The Street.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved for subsequent approval.
3. The National Planning Policy Framework (the Framework) was updated on 12 December 2024. However, the sections pertinent to this appeal have not changed to such an extent as to affect the matters raised by the main parties. It has not therefore been necessary to seek their views and the revised version has been referenced in this decision.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area, with due regard to the location of the site in the Kirby-Le-Soken Conservation Area (CA);
 - whether the proposal would be a suitable form of backland development having regard to the relevant development plan policies; and
 - whether or not the development would be in a suitable location having regard to its position within the countryside, its accessibility, and the overall spatial strategy for the area.

Reasons

Conservation Area

5. The appeal site comprises an area of land located to the rear of 53 The Street (No. 53), which faces towards and is accessed from The Street. The appeal site is generally well screened by mature vegetation surrounding its boundaries. There

are open fields to the rear of the appeal site which a public right of way accessed from The Street extends into. Another public right of way is located adjacent to Mumfords Lane, which also extends into the fields.

6. This part of The Street is characterised by a predominantly linear form of development of single storey and two storey detached dwellings fronting both sides of the narrow road. The site is within the Kirby-Le-Soken Conservation Area (CA). The character of this part of the CA and its significance stems from, amongst other aspects, the arrangement of properties in a linear layout, the spacing between them and the distinct transition from the residential properties to the area's pleasant rural landscape immediately to the rear. The Tendring District Council Conservation Area Review: Kirby-Le-Soken Conservation Area (2006) also identifies the sinuous layout of The Street and the western entrance to the CA which is characterised by an informal group of small cottages with some dense frontage planting.
7. In determining a previous appeal¹ at the site, the Inspector found that the public rights of way provide views into the CA which allow its linear and spacious character and rural setting to be appreciated. Furthermore, the mature vegetation to the rear of No 53 and along The Street makes a positive contribution to the CA and its setting by providing a sense of enclosure, and by screening properties along The Street in the rural landscape.
8. As the proposal is in a CA, I have paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). This is reflected in paragraph 212 of the Framework which requires great weight to be given to the asset's conservation when considering the impact of a development on its significance.
9. The appeal site is not readily visible from The Street, being fairly well screened by No. 53 and vegetation. Whilst the layout, scale and appearance of the dwelling are reserved matters, the appellant indicates that the dwelling would be single storey. Given the appeal site's position immediately to the rear of No. 53, the dwelling would be unlikely to be prominent in views from The Street.
10. Due to the relatively dense boundary screening, the proposed dwelling would only be partially visible from viewpoints at the rear of the site, including from the public rights of way. However, it would represent a departure from the linear form of development along this part of The Street and would introduce a 'second layer' of built development to the rear of the road. Even if it were single storey, the proposal would inevitably involve visual change at site level, primarily as a consequence of the introduction of built development into the former garden area. This would result in a limited level of intrusion into the landscape which would be at odds to this part of the Kirby-Le-Soken CA character which is strongly linear. It would also result in limited erosion to the sense of spaciousness within this part of the CA.
11. My attention has been drawn to development which has been granted planning permission nearby². From the site layout provided, the dwelling in that instance did not appear to be sited directly to the rear of the 'host' dwelling, and therefore would have a different visual effect to the proposal before me. In relation to another

¹ APP/P1560/W/20/3248809

² Council Ref: 21/00767/OUT

nearby planning permission for five bungalows³ the description of development confirms the demolition of an existing storage building. I have not been provided with full details of this case, however, the site is closer to the central area of Kirby-Le-Soken, within which the linear pattern of development along The Street is less pronounced. In relation to a previous permission for two detached dwellings⁴, whilst the garages may be set forward of the building line in that instance, the development did not introduce a 'second layer' of built development to the rear of The Street. Notwithstanding this, each development must be considered on its individual merits, and I have reached my conclusion based on the individual merit of the appeal proposal.

12. In failing to preserve the character and appearance of the CA, I find that the proposal would, in the words of the Framework, result in less than substantial harm to the significance of the designated heritage asset. In such circumstances, the Framework requires that the less than substantial harm should be weighed against the public benefits. The proposal would provide benefits such as making an efficient use of the site and contributing to local housing supply. The Framework seeks to significantly boost housing supply and emphasises the importance of small and medium sized sites. It also encourages the optimal use of underutilised land. These matters weigh in favour of the development. The development would have temporary economic benefits through the creation of construction jobs during the construction phase. The appellant also indicates that there is an opportunity to improve on-site biodiversity. The proposal's future residents would provide economic benefits through expenditure in local shops and services. These factors also weigh in favour of the development.
13. However, based on the scale and nature of the development, the public benefits relating to this would be modest. They do not therefore outweigh the harm I have identified to the CA and the great weight given to the conservation of designated heritage assets.
14. Taking into account the above, I find that the proposal would fail to preserve the significance of the CA. This would fail to satisfy the requirements of the Act, and paragraph 212 of the Framework and would conflict with Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond, Section 2 (2022) (LPS2) that outlines, among other things, new development within a designated Conservation Area will only be permitted where it has regard to the desirability of preserving or enhancing the special character and appearance of the area.

Backland development

15. Policy LP8 of the LPS2 allows for the residential development of 'backland' sites subject to specific criteria. Specifically, backland residential development will only be permitted where the proposal does not create 'tandem' development using a shared access, where the site is not on the edge of a defined settlement and likely to produce a hard urban edge, and providing that a vehicular and pedestrian access can be provided without causing undue disturbance or loss of privacy to neighbouring occupiers.
16. The proposal would be located immediately behind an existing residential frontage. Whilst the driveway which would provide access to the appeal site would be

³ Council Ref: 16/02067/OUT

⁴ Council Ref: 16/02124/FUL

separate to the parking area for No. 53, there is a single dropped kerb vehicular access onto The Street, which would be used by occupiers of both No. 53 and the future dwelling at the appeal site. Consequently, it is my view that the proposal would create 'tandem' development using a shared access.

17. I have previously found that the proposal would result in a limited level of intrusion into the surrounding rural landscape which would be at odds to the character of this part of Kirby-Le-Soken which is strongly linear. Consequently, it would create a hard urban edge to the appeal site.
18. The access to the site would be located to the side elevation of No. 53 which contains a window, which appears to serve a habitable room, and a door. There would be a narrow gap between the access and the elevation of No. 53 which vehicles and visitors on foot would pass in order to gain access to the appeal site. As a result, in the absence of boundary treatment, anyone entering the appeal site would have direct views into this residential window from close proximity. This would create an unacceptable loss of privacy for the occupiers of No. 53. Given the tight relationship between No. 53 and the access drive, were a boundary treatment to be installed to prevent a loss of privacy, this would be likely to have a significant impact on the outlook of occupiers of No. 53.
19. However, the additional noise related to the infrequent comings and goings of residents from a single dwelling is unlikely to cause significant noise disturbance to the occupiers of the neighbouring residential property.
20. Overall, the proposal would not accord with the criteria of Policy LP8 of the LPS2 relating to tandem development, the creation of hard urban edges and effects on the privacy or other amenities of occupiers of nearby properties. Consequently, the proposal would undermine the approach of the LPS2 in restricting backland development, subject to specific criteria. It would also conflict with Policy SP7 of the Tendring District Local Plan 2013-2033 and Beyond, Section 1 - North Essex Authorities' Shared Strategic Section 1 Plan (2021) (LPS1), and Policy SPL3 of the LPS2, which require development to relate well to its site and surroundings, and to preserve and enhance the quality of existing places and their environs.

Suitable location

21. The main parties agree that the proposal would be located outside the settlement boundary for Kirby-Le-Soken as defined within the LPS2. Kirby-Le-Soken is identified within Policy SPL1 of the LPS2 as a Smaller Rural Settlement.
22. Policy SP3 of the LPS1 sets out the strategic approach to the location of development, and states that existing settlements will be the principal focus for additional growth. Policy SPL2 of the LPS2 states that development proposals outside defined settlements will be considered in relation to the patterns and scales of growth promoted through the settlement hierarchy. It further outlines that development outside settlement boundaries will be considered in accordance with other relevant Local Plan Policies.
23. Smaller Rural Settlements are described as the least sustainable locations for growth in the district as development in these areas will generally be car dependent. However, Policy SPL1 recognises the role of sympathetic small-scale development in 'smaller rural settlements' in meeting the area's housing needs and in sustaining local services.

24. The appellant outlines that a range of local services and facilities including a village shop and post office, two public houses, church, hall and playing field are available within the settlement. Whilst outside the defined settlement boundary, the appeal site is within the ribbon of residential development to the west of the boundary, within walking distance to these services and facilities. Furthermore, a bus stop is located close to the site and Kirby-Le-Soken is served by bus routes stopping along The Street and Walton Road, connecting the village with Frinton-On-Sea and Clacton-on-Sea.
25. Due to the site's accessibility to the defined settlement, future occupiers would be able to access local services without reliance on a private car and would contribute to sustaining those services. Having regard to the local development strategy, the proposed development would therefore be in a suitable location, and the provision of a single dwelling, would be of a scale of growth which would be appropriate to the settlement of Kirby-Le-Soken.
26. Therefore, the proposed development would accord with the Council's strategy for the distribution of residential development, and would comply with Policy SP3 of the LPS1 and Policies SPL1 and SPL2 of the LPS2.

Other Matters

27. The main parties have indicated that the site is within the zone of influence of Hamford Water Special Protection Area (SPA) and Ramsar site. The Council indicate that a unilateral undertaking has been submitted in relation to this matter.
28. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require that, where a project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, the 'competent authority' must, before any grant of planning permission, make an Appropriate Assessment (AA) of the project's implications in view of the relevant conservation objectives.
29. Had I been in a position to otherwise allow this appeal, it would have been necessary to consider this matter within a separate AA. However, as the proposed development is unacceptable for other reasons, an AA is unnecessary as undertaking one would not change the outcome of the appeal.

Planning Balance

30. The Council indicate that they have a five year supply of deliverable housing sites. However, even if I were to conclude there is a shortfall in the housing land supply, Paragraph 11 of the Framework states that where the policies that are most important for determining the application are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a strong reason for refusing the development proposed. Footnote 7 sets out that these policies include those relating to designated heritage assets. Given my findings in relation to the CA, there is a strong reason for refusing the development proposed and I am not required to apply the tilted balance in this respect.
31. The provision of a single dwelling would assist in boosting the supply of homes as supported in paragraph 61 of the Framework. As a small site, it could be developed quickly and support for such sites is provided by paragraph 73. There

would also be modest economic benefits from the construction and the addition of new households to the local area. However, the Framework also sets out, in paragraph 135, that the creation of high quality and beautiful places is fundamental to what the planning process should achieve. The failure of the proposals to represent a high-quality form of development carries substantial negative weight.

32. The identified adverse impacts of the development, in respect of the designated heritage asset, character of the area and neighbouring occupiers' living conditions are matters of a high order. Overall, I consider that the adverse impacts I have identified in this regard, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

33. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR