



Appeal Decision

Site visit made on 21 January 2025

by Thomas Courtney BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th June 2025

Appeal Ref: APP/D1590/W/24/3341587

29 Parkanaur Avenue, Thorpe Bay, Southend-on-Sea, Essex SS1 3HX

- 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 Peter Emptage (EAv2 Architects) against the decision of Southend-on-Sea Borough Council.
 - The application Ref is 23/01708/FUL.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is allowed, and planning permission is granted for a new dwelling at 29 Parkanaur Avenue, Thorpe Bay, Southend-on-Sea, Essex, SS1 3HX, in accordance with the terms of the application, Ref 23/01708/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. As the revisions have no implications for the outcome of this appeal, it has not been necessary to request observations from the main parties.

Main Issues

3. The main issues relevant to this appeal are:
 - the effect of the proposal on the living conditions of the neighbouring occupiers at 17 Parkanaur Avenue; and
 - the effect of the proposal on European protected sites.

Reasons

Living conditions

4. The proposed dwelling would be erected within the garden of 29 Parkanaur Avenue. It would be set 1.2 metres from the southern boundary adjoining the neighbouring property at 17 Parkanaur Avenue. The proposed two-storey element nearest No 17 would include a garage with modest height and would not project beyond No 17's rear elevation. No 17 does not have any ground floor flank windows along the common boundary and there is only a single first-floor window within the side elevation.

5. The form and mass of the proposed dwelling would be stepped down near the southern boundary. Consequently, it would not appear obtrusive or constitute an imposing structure. It would not have an overbearing impact as the neighbouring occupants would still enjoy open rear views towards a large rear garden. Given the form, height and volume of the proposed dwelling, it would not be read as dominant when viewed from the neighbouring garden.
6. Furthermore, the proposed design would ensure that no significant loss of daylight or sunlight would occur, particularly as the development would be situated to the north of No 17. Additionally, the absence of windows on the proposed southern elevation, excepting a small roof light, would safeguard against any overlooking or loss of privacy.
7. As the massing and form of the development would be appropriate, its overall scale would not be excessive and would be comparable to properties in the vicinity. As such, it would not have an unduly dominant impact on the setting of No 17.
8. Given the siting, scale and separation of the proposed dwelling, it would not materially harm the living conditions of the occupiers of 17 Parkanaur Avenue. The proposal would therefore comply with Policies DM1 and DM3 of the Council's Development Management Document (2015) and the Design and Townscape Guide Supplementary Planning Document (2009) (SPD) insofar as they seek to ensure that proposals are well-designed and do not adversely impact upon the living conditions of neighbouring residents.

Effect on protected sites

9. The appeal site is located within the recognised 'Zone of Influence' for the European designated sites scoped into the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). I have a duty under the Conservation of Habitats and Species Regulations 2017 to assess any impact the proposed development would have upon the protected sites. New residential development at this site has the potential to cause disturbance to several European designated sites being within the Zone of Influence of the Benfleet and Southend Marshes Special Protection Area (SPA) and RAMSAR, the Foulness Estuary SPA and RAMSAR, the Crouch and Roach Estuaries SPA and RAMSAR, the Dengie SPA and RAMSAR, and the Blackwater Estuary SPA and RAMSAR. The occupation of a new dwelling can impact these sites through increased recreational activities and pressure. Therefore, the development must provide appropriate mitigation.
10. The Essex Coast RAMS sets out a strategic approach to mitigation by several Councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA and RAMSAR sites.
11. The appellants have indicated that they have made a financial contribution of £156.76 to fund the Essex Coast RAMS. The Council have confirmed receipt of the payment. This approach can be problematic as there is no obligation on the Council to spend the money as envisaged and in a particular timescale. However, the evidence before me indicates that as a responsible public body it will transfer

the funds to Chelmsford City Council, which is the organisation responsible for administering the mitigation strategy. Therefore, I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.

12. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.
13. Given this, the proposal would not harm the identified European designated sites scoped into the RAMS. It would therefore comply with the Habitat Regulations and with the RAMS Supplementary Planning Document (SPD) which seeks to protect wildlife habitats.

Other Matters

14. Although trees along the boundaries of the site would be removed, the considerable separation distance between the proposed dwelling and the neighbouring properties, means that the living conditions of any adjoining residents would be unacceptably harmed.

Conditions

15. In addition to the standard commencement condition, a condition requiring compliance with the submitted plans is necessary for reasons of certainty. To safeguard the character and appearance of the proposed dwelling and surrounding area, I have imposed a condition requiring the submission of samples of all external facing materials.
16. Furthermore, to ensure a satisfactory layout and in the interest of the character and appearance of the proposed development and surrounding area, I have imposed a pre-commencement condition requiring the submission of details of both hard and soft landscaping. This will include details of refuse and recycling storage as well as details of all existing and proposed trees and hedgerows on the land. Additionally, I have imposed a condition requiring the implementation of measures to protect existing trees during construction.
17. A condition relating to planting, seeding and turfing during the first planting and seeding seasons following the occupation of the buildings or the completion of the development is necessary in the interest of the character and appearance of the appeal site and surrounding area.
18. To reduce carbon footprint and minimise the environmental impact of the development, I have imposed the recommended conditions relating to the provision of on-site renewable energy and the installation of water efficiency measures.
19. To ensure the proposed dwelling is accessible and usable by occupants with reduced mobility, I have imposed a condition requiring the development complies with the Building Regulations part M4 (2) requirements for accessibility and adaptability.

20. A pre-commencement condition regarding the submission of a detailed surface water drainage scheme for the site was necessary to ensure appropriate drainage is provided. I have also imposed a pre-commencement condition relating to the submission of a Construction Method Statement to limit and control the impacts of the construction on highway safety and the living conditions of neighbouring residents. For the same reasons, I have imposed a condition setting out the hours of work.
21. Condition 14 is necessary to ensure the development provides adequate parking. One parking space should be fitted with an active electric vehicle charging point.
22. To limit the loss of privacy and overlooking and protect the living conditions of neighbouring occupiers, I have imposed a condition requiring the first-floor window within the northern side elevation of the dwelling serving the master bedroom is obscure glazed.
23. I have imposed the Council's recommended condition relating to the submission of a noise impact assessment and details of mitigation measures concerning the existing pool plant equipment on the boundary of 29 Parkanaur Avenue. This will ensure the living conditions of the future occupiers are not unacceptably impacted with regards to noise.
24. To protect the living conditions of neighbouring occupiers I have imposed a condition requiring the first-floor window in the northern side elevation be fitted with obscured glazing. Additionally, no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened.
25. Furthermore, to ensure satisfactory provision of refuse, recycling and cycle storage, I have imposed a condition requiring the submission of details prior to the first occupation of the dwelling.
26. I have not been provided with sufficient evidence or compelling reasoning to justify the removal of permitted development rights contained within Schedule 2, Part 1, Classes A, AA and B of the Town and Country Planning (General Permitted Development) (as amended) Order 2015. The removal of such rights is exceptional, and I do not find it would be reasonable and necessary to do so.
27. It has been suggested that a condition be imposed to secure the replacement of a tree in the highway. However, the degree of change in the street would not be significant particularly as new landscaping would be provided in the site. In addition, it has not been demonstrated that the process of removing a tree and its replacement would not be covered under non planning processes given that the tree is not located within the site. Therefore, the condition is not justified.

Conclusion

28. For the reasons given above the appeal should be allowed, and planning permission is granted.

Thomas Courtney

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 the nos Site Location Plan and drawing nos P:01D, P:02D, P:03C, P:04 C, P:05 C, P:06 C, P:07C, P:08C, P:09C, P:10C and P:11C.
- 3) No development above ground level shall take place until details of all external facing materials have been submitted to and approved in writing by the local planning authority in writing. The development shall be carried out in accordance with the approved details.
- 4) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - a statement setting out the design objectives and how these will be delivered;
 - details of all existing and proposed trees and hedgerows on the land, with those to be retained identified;
 - earthworks showing existing and proposed finished levels or contours;
 - means of enclosure and retaining structures;
 - boundary treatments;
 - hard surfacing materials;
 - structures e.g. refuse or other storage units, etc;
 - proposed and existing functional services above and below ground e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant;
 - lighting and floodlighting;
 - an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- 5) All the trees and hedges shown on the landscaping plan as "to be retained" and/or any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made.

- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out according to the schedule agreed in condition 4; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) A scheme detailing how at least 10% of the total energy needs of the development hereby approved will be supplied using on site renewable sources shall be submitted to and agreed in writing by the Local Planning Authority and implemented in full prior to the first occupation of the development. This provision shall be implemented in accordance with the agreed details and before prior occupation of the development hereby approved and retained thereafter.
- 8) Prior to occupation of the development hereby approved water efficient design measures as set out in Policy DM2 (iv) of the Development Management Document to limit internal water usage to 105 litres per person per day (lpd) (110 lpd when including external water usage), including measures of water efficient fittings, appliances and water recycling systems such as grey water and rainwater harvesting shall be installed in the development hereby approved and be retained thereafter.
- 9) The development hereby permitted shall not be occupied until the Building Regulations part M4 (2) requirements for accessibility and adaptability have been complied with.
- 10) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.

The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;

- iv) measures to control the emission of dust during construction;
- v) a scheme for recycling/disposing of waste resulting from demolition and construction works;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 12) Demolition or construction works shall take place only between 8am-6pm on Monday to Friday, and between 8am-1pm on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 13) The development hereby permitted shall not be occupied until the vehicle parking spaces have been provided in accordance with drawing no P:02D. One of the parking spaces shall be fitted with an active electric vehicle charging point and retained thereafter. Those spaces shall be retained for the parking of vehicles only.
- 14) The building hereby permitted shall not be occupied until the first-floor window in the northern side elevation has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 15) Prior to the first occupation of the development hereby approved, a noise impact assessment shall be conducted and a report of its findings and recommendations shall be submitted to and approved in writing by the Local Planning Authority to demonstrate how noise generated by the existing pool plant equipment in the boundary of No.29 Parkanaur Avenue will be mitigated to protect the future occupiers of the application site. This assessment shall include details of any necessary mitigation measures which shall then be agreed and incorporated at the site prior to first occupation of the dwelling hereby approved and shall be retained thereafter.
- 16) Prior to the first occupation of the development hereby approved, full details (including elevations) shall be submitted to and approved in writing by the Local Planning Authority identifying the provision of secure and enclosed refuse, recycling and cycle storage for the approved development at the site. The approved refuse, recycling and cycle storage shall be made available for use by the occupants of the approved dwelling prior to the first occupation of the dwelling hereby approved and shall be retained thereafter.