



Appeal Decision

Site visit made on 5 January 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

Appeal Ref: APP/P1560/W/20/3257132
45 Harwich Road, Lawford CO11 2LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs D Spurgin against the decision of Tendring District Council.
 - The application Ref 19/01667/FUL, dated 2 November 2019, was refused by notice dated 8 April 2020.
 - The development proposed is erection of two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council refers in its decision notice to policies from the Tendring District Local Plan 2013-2033 and Beyond Publication Draft. The Council indicates that the Section 1 Local Plan was adopted recently. However, this contains strategic policies and not those referred to in this case, which are from the Section 2 Plan, which is subject to independent examination. The National Planning Policy Framework (the Framework) indicates that weight may be given to relevant policies in emerging plans depending on a number of factors¹. In this case, I accept that the Section 2 Plan is at a relatively advanced stage in its preparation, but it is not fully clear whether there are unresolved objections to any of the policies and, if so, how significant these are. For this reason, I find that only limited weight can be given to these emerging policies for the purposes of this appeal. Consequently, I have relied on the policies referred to from the adopted development plan.
3. An application for costs was made by Mr & Mrs D Spurgin against Tendring District Council. This application is the subject of a separate decision.

Main Issues

4. The main issues are the effect of the proposal on the character and appearance of the appeal site and surrounding area; and whether the proposal makes adequate provision towards the mitigation of likely significant effects on a protected European site.

¹ Paragraph 48.

Reasons

Character and Appearance

5. No 45 and its immediate neighbour are a pair of semi-detached two storey dwellings set back from Harwich Road in generous plots. There is a good degree of separation between the neighbouring dwellings to either side, which is characteristic of the area, with dwellings dispersed along the main road with substantive spacing between them.
6. My attention is drawn to the recent approval of a proposal on the appeal site for a pair of semi-detached dwellings²; and to a successful appeal involving a detached dormer bungalow nearby at No 43 Harwich Road³. Given their relevance to the current proposal, I have had regard to these other developments.
7. The site of the proposed dwellings is a grassed area of garden land to the side of No 45, with access being provided from the existing driveway onto the main road. The predominant form of residential properties in the surrounding area is semi-detached dwellings, as the Council contends. However, the spacing between the dwellings along the main road means that there is not a readily apparent sense of uniformity from the established pattern or type of development. Moreover, the recently-developed detached dwelling at No 43 provides for a degree of variety in the street scene. As such, where the principle of residential development on the site has been established by the existing permission, the fact that these would be detached rather than semi-detached dwellings would not harmfully affect the character and appearance of the surrounding area.
8. The dwellings' layout would result in a good degree of separation from the existing dwellings to either side. I note that Policy HG14 of the Tendring District Local Plan 2007 (the Local Plan) requires retention of appropriate open space between the dwelling and side boundaries of the plot; a one metre gap is indicated as a guideline. This separation would be achieved between the boundary and side of the dwelling on plot 1 by the provision of a parking space. The gap to the boundary from the side of the dwelling on plot 2 would be smaller, but there would still be a substantive gap between the dwelling, its boundary and the neighbouring dwelling.
9. The parking space between the two dwellings would allow for sufficient separation between them, while the dwellings would have generous open space to the front and rear. Consequently, the new dwellings would not appear cramped on the site or a form of overdevelopment. They would be positioned slightly forward of the existing building line of the established properties to either side, but this would not be incongruous or result in an undue prominence in the street scene.
10. Accordingly, taking these findings as a whole, I conclude that the proposed development would not have a harmful effect on the character and appearance of the appeal site and surrounding area. Therefore, there is no conflict with Policies QL9, QL10 and QL11 of the Local Plan, which seek to ensure that all

² Ref 20/00338/FUL.

³ APP/P1560/W/18/3218683, dated 5 July 2019.

new development makes a positive contribution to local character, through high quality design and compatibility with existing uses. These policies are consistent with the Framework.

Whether Adequate Provision would be made towards Mitigation Measures

11. The site is within the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS) zone of influence. The Essex Coast RAMS sets out the detailed mitigation measures that are to be delivered from the RAMS tariff related to the likely effects of residential development on a number of protected European sites. The relevant regulations require that if likely significant effects on a protected site cannot be excluded, then the competent authority must undertake an appropriate assessment of the implications for that site⁴.
12. The Council undertook an appropriate assessment using the Natural England standard approach. The proposal is assessed as having likely effects on the Stour and Orwell Estuaries Ramsar and Special Protection Area (SPA) resulting from increased recreational disturbance, in combination with other schemes. Consequently, a tariff contribution per dwelling is required to mitigate the effects.
13. In these circumstances, I have relied on the appropriate assessment already undertaken by the Council and agree that a contribution is necessary to mitigate the likely effects in accordance with the Essex Coast RAMS. As such, the contribution sought meets the requisite tests set out in the Framework⁵.
14. The appellants make no reference to this issue in their appeal submissions and no means of securing the necessary contribution had been forthcoming by the time of making this decision. Therefore, I must conclude that the proposal fails to ensure adequate provision towards the mitigation of likely significant effects on a protected European site. Consequently, it is contrary to Local Plan Policies EN6 concerning the effects of development on biodiversity and EN11a concerning protection of international sites. It is also contrary to section 15 of the Framework.

Other Matters

15. At the time of making its decision the Council accepted that it could not demonstrate a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, as required by the Framework⁶. Consequently, the view taken was that the appeal proposal should be considered in the context of paragraph 11d) of the Framework.
16. As a result of the recent adoption of the Section 1 Local Plan, the Council now indicates that its overall housing requirement is reduced to the extent that a minimum of five years' worth of housing can be demonstrated. In these changed circumstances, in the interests of natural justice normally it would be appropriate to consult the appellants and other interested parties. However, I have found above that the proposal would not make adequate provision to mitigate the likely significant effects on a protected European site. In these circumstances, the Framework says that the presumption in favour of

⁴ The Conservation of Habitats and Species Regulations 2017, Regulation 63.

⁵ Paragraph 56.

⁶ Paragraph 73.

sustainable development does not apply⁷. Therefore, even if the Council could not demonstrate the requisite housing supply, the presumption in favour would not be applicable in this case. Consequently, I have not considered this matter further.

17.I have had regard to all the representations made by interested parties both in support of and against the proposal. These do not, however, raise any additional matters in relation to the main issues and other matters considered in this appeal that would lead me to reach a different overall conclusion.

Conclusion

18.I have found that the proposal would not be harmful with regard to the first main issue, concerning the effect on character and appearance. However, I have also found that adequate provision would not be secured to mitigate the likely significant effects on a protected European site, which finding must outweigh that in favour of the appeal. Accordingly, for the reasons given above and having regard to all other matters raised, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

⁷ Paragraph 177.