
Appeal Decision

Site visit made on 18 May 2015

by R W Allen B.Sc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 July 2015

Appeal Ref: APP/P1560/W/15/3002161

824 St. Johns Road, Clacton-on-Sea, Essex CO16 8BS

- 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 Westley Wallace against the decision of Tendring District Council.
 - The application Ref 14/00929/FUL, dated 30 June 2014, was refused by notice dated 18 November 2014.
 - The development proposed is demolition of the existing bungalow and other buildings and the creation of 14no. three, four and five bedroom houses, plus associated roads, drives, car parking and garages.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing bungalow and other buildings and the creation of 14no. three, four and five bedroom houses, plus associated roads, drives, car parking and garages at 824 St. Johns Road, Clacton-on-Sea, Essex CO16 8BS in accordance with the terms of the application, Ref 14/00929/FUL, dated 18 November 2014, subject to the 14 conditions set out in the schedule of conditions at the end of this decision.

Preliminary Matters

2. The Council has relied on policies from the Tendring District Local Plan Proposed Submission Draft 2012 (the emerging local plan), which is intended to replace the Tendring District Local Plan 2007 (the adopted local plan). In 2014, the Council proposed a number of alterations to the emerging local plan which was subjected to public consultation. Following this, the Council decided that further substantial revisions were necessary before the emerging local plan could be progressed for independent examination. To date, these changes have not been published. Given the above and having regard to the tests in paragraph 216 of the National Planning Policy Framework (the Framework), I find the emerging local plan is at an early stage of its process, and that I have not afforded it significant weight in my decision.
3. The Legal Agreement before me in reference to play space contributions says that monies are to be used for improving and maintaining 'Brookings Elm'. This is a typographical error and should read as 'Bockings Elm'. I have proceeded to determine the appeal on that basis.

Main Issues

4. The main issues are:

- The effect of the proposed development on the character and appearance of the area; and
- Whether the proposal makes adequate provision for local facilities, services and infrastructure made necessary by the development.

Reasons

Character and appearance

5. The appeal site comprises a detached bungalow and its rear garden, and a large parcel of land at the rear that extends behind the gardens of neighbouring properties. The rear land is accessed from a side track adjacent to the appeal property. The rear land is predominately level, and contains a number of barns of varying height and size, greenhouses, mobile structures and large areas of hardstanding. The dwellings immediately to the front of the rear land are bungalows of varying design. These dwellings are similarly aligned and positioned closely together. The appeal site lies outside of the settlement boundary as defined by the adopted local plan.
6. The parties agree that the Council is unable to demonstrate that it has a five-year supply of deliverable sites for housing to meet its housing requirements. In such circumstances, the parties also agree that paragraphs 49 and 14 of the Framework prevail. Paragraph 49 says that the relevant policies for the supply of housing should not be considered up-to-date, and paragraph 14 says that permission for development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. I agree with the parties and have taken the same approach in my decision. I have afforded significant weight in my decision to the benefits the proposal would bring in delivering new homes.
7. Although bungalows are the dominant property type immediately in front of the appeal site, two-storey properties lie only a short distance to the east. I therefore do not find the character of the area is dominated by bungalows, and that the introduction of two-storey dwellings at the appeal site would not amount to a significant departure from the area's character and appearance.
8. I saw from my site visit that properties on St. Johns Road largely screen the appeal site from the road, with only glimpsed views possible from the gaps between the dwellings. The proposed dwellings would be positioned some distance from the road frontage, and although taller and greater in number than the current barn buildings, they would be modest in scale and height and proportionate to the buildings in the surrounding area. The proposed dwellings are well designed, would assimilate well into its surroundings, and would not loom over the bungalows along St. Johns Road or appear visually dominating within the street scene.
9. Accordingly, I find that the proposed development would not appear visually prominent or harmful to the character and appearance of the area, and would not significantly and demonstrably outweigh the scheme's considerable benefits I have identified in providing much needed housing.

10. The proposed development would accord with policies QL9, QL11 and HG13 (vii) of the adopted local plan, which says all new development should protect and make a positive contribution to the quality of the local environment and protect or enhance local character and distinctiveness; that new buildings should relate well to its site and surroundings in relation to siting, height, scale and massing; and that backland schemes should not be out of character or set harmful precedents for other similar forms of development.
11. Criterion (i) of policy HG13 of the adopted local plan (residential development of backland sites) permits such development within defined settlement boundaries. The appeal site lies outside of the settlement boundary and thus would not comply, however as criterion (i) relates to the supply of housing, and having regard to the Council's five-year housing position and the requirements of paragraph 49 of the Framework, I find that this aspect of the policy is out-of-date. Accordingly I have disregarded it in my decision. The Council considers the remaining criteria of the policy are satisfied and I have no reason to disagree. Policy HG3 of the adopted local plan is not particularly relevant, as it deals with residential development within the settlement boundary.

The need for contributions

12. The Council seeks a Legal Agreement for financial contributions towards play space, affordable housing and primary schools. Policy COM6 of the adopted local plan requires play space contributions from all developments under 1.5 hectares, which the appeal site is. Policy COM26 of the adopted local plan requires education contributions for all residential developments over 12 units. The Council has referenced policy HG4 of the adopted local plan in its statement, although not in its decision notice, which it says requires a 25% affordable housing contribution on developments of 10 units or more. The policy or its content is not disputed by the appellant, and I find the request is generally consistent with paragraph 50 of the Framework which seeks that development provides a wider choice of housing.
13. Paragraph 204 of the Framework says requests for planning obligations must meet three tests, which are: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably relate in scale and kind to the development. In light of the evidence before me, including the responses from the Council to the Legal Agreement, I am satisfied that contributions for open space and education would be consistent with the adopted local plan and would meet the tests of the Framework.
14. The Council says that the provision of three residential units would equate to a 21.4% affordable housing provision, thus would fall below the requirements of Policy HG4 of the adopted local plan. However, the Council considered the provision was acceptable at application stage without the need for further financial recourse, and the Council's has not raised any specific objection to the proposed provision or shortfall at the appeal. On the evidence before me, I am satisfied that the affordable housing provision proposed would be proportionate to the scheme, and would meet the tests of paragraph 204 of the Framework.

Other Matters

15. Concerns have been raised regarding the level of traffic that would be generated from the proposed development. Whilst there would likely be an increase in traffic to and from the site over its current use, no evidence is before me to suggest that it would be harmful to the existing road conditions. Concerns regarding air pollution have not been substantiated. In both cases, the Council did not raise these matters as issues, and on the evidence before me I have no reason to disagree. I am satisfied that matters relating to vision splays, contamination, and the control of construction practices could be controlled by planning conditions.
16. Concerns have also been raised in respect to the sustainability of the location of the appeal site. I saw from my site visit that it was not isolated. St. Johns Road is a busy main road, appeared to be served by bus routes, and was not a significant distance from Clacton-on-Sea town centre. Whilst no details of the locations of the schools relative to the appeal site are before me, I nonetheless find the site is not in an unsustainable location. In any event, the Council did not raise this as an issue and on the evidence before me I have no reason to disagree.

Conditions

17. I have considered the conditions suggested by the Council against Paragraph 206 of the Framework, and made changes necessary to comply with those requirements.
18. I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. Conditions relating to materials and landscaping are necessary to ensure the appearance of the development would be satisfactory. Although the appellant disputes the need for boundary and refuse conditions, I find the details shown on drawings OC062-PL-02 Rev 03 and OC062-PL-05 are not sufficiently clear, and that suitably worded conditions would be necessary to ensure the appearance of the development would be satisfactory.
19. An external lighting condition would be necessary to ensure the appearance of the development is satisfactory and to protect living conditions of existing and future occupiers. A construction management plan condition is necessary to ensure the any harm to the road conditions and living conditions of occupiers of surrounding properties is minimised. An ecological management scheme, as recommended in sections 6.2 and 6.3 of the appellant's submitted habitat survey is necessary to ensure local wildlife is not harmed during construction. I have had regard to the comments made by the Council's environmental health officer regarding potential contaminants on the land, and have imposed a more concise wording of a land contamination condition accordingly.
20. A condition requiring the access, access roads, and parking bays to be provided prior to occupation is necessary to ensure the development is properly and safely accessed and that the future occupiers of the dwellings are able to park. A vision splay condition is necessary to ensure safe access from the development can be achieved. I have added a condition relating to surface water drainage as I find it would be necessary to ensure drainage is appropriately managed.

21. Details of the estate roads and materials are controlled by the Highways Act. No evidence is before me as to why they are required to be controlled by the Council. Accordingly, I find the conditions are not necessary. As the scheme is for dwelling houses, a condition requiring details of bicycle storage is excessive and unnecessary. No evidence for the need for a residential travel plan is before me, such that I find a condition would be disproportionate to the development and unnecessary.

Conclusion

22. For the reasons given above I conclude that the appeal should be allowed.

R Allen

INSPECTOR

Richborough Estates

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 approved shall be carried out in accordance with the approved drawings: OC062-001; OC062-PL-02 Rev 03; OC062-PL-03 Rev 03; OC062-PL-04; OC062-PL-05; OC062-PL-06; OC062-50-01 Rev 03; OC062-50-02 Rev 01; OC062-50-03 Rev 01; OC062-50-04 Rev 02; OC062-50-05 Rev 01; OC062-50-06 Rev 01; OC062-50-07 Rev 01; OC062-50-08; OC062-50-09 Rev 02; OC062-50-10 Rev 01; and OC062-50-11 Rev 03.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation and management programme.
- 5) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
- 6) No development shall take place until details of the boundary treatments have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with those approved details and thereafter shall be retained.
- 7) No external lighting shall be used or installed until details of an illumination scheme have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and thereafter retained.
- 8) No development shall take until details of the facilities for the storage of household waste and recycled materials as shown on the approved drawing have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with those approved details and thereafter shall be retained.
- 9) No development shall take place until a construction management plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access and manoeuvre within the site safely, operative and visitor parking and management, and how potential traffic conflicts can be minimised, the route construction traffic shall follow for arriving and leaving the site, construction hours of operation and loading and unloading, site storage, and construction vehicle wash down facilities.

The Plan shall be implemented in accordance with the agreed timescales and details.

- 10) No development shall take place until an ecological management scheme and mitigation plan has been submitted to and approved in writing by the Local Planning Authority. The scheme, which shall include a timetable for its implementation, shall include the measures and recommendations set out in Sections 6.2 and 6.3 of the approved Extended Phase 1 Habitat Survey produced by Southern Ecological Solutions. The development shall be carried out in accordance with the approved scheme.
- 11) No development shall take place until a risk based contaminated land assessment has been submitted to and approved in writing by the Local Planning Authority. Should any unacceptable risks be identified in the land contamination assessment then a remedial scheme shall be prepared and submitted to the Local Planning Authority for written agreement and remediation shall be carried out in accordance with the agreed details. If during the course of development any previously unidentified contamination is discovered, development must be halted on that part of the site and the discovery must be reported in writing to the Local Planning Authority within 10 working days. A risk assessment of the previously unidentified contamination to include any amendments to the remediation scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the recommencement of development of that part of the site.
- 12) Prior to occupation of the proposed development, the proposed access, access roads and carriageways, and car parking areas for each plot shall be provided, constructed and hard surfaced, sealed, and parking bays marked in accordance with the details shown on the approved drawing OC062-PL-03 Rev 03.
- 13) Prior to the proposed access being brought into use, a 1.5m x 1.5m pedestrian visibility splay shall be provided on both sides of the access and shall be maintained in perpetuity free from obstruction exceeding a height of 600mm.
- 14) No development shall take place until details of a surface water drainage system (including storage facilities where necessary) have been submitted to and approved in writing by the Local Planning Authority. The approved system shall be completed before any part of the development hereby approved is first occupied, and permanently retained thereafter.