



Appeal Decision

Site visit made on 10 March 2020

by **M Philpott BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16th April 2020

Appeal Ref: APP/D1590/W/19/3243372

10 Underwood Square, Leigh-on-Sea, Essex SS9 3PB

- 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 G Newton against the decision of Southend-on-Sea Borough Council.
 - The application Ref 19/01446/FUL, dated 2 August 2019, was refused by notice dated 7 November 2019.
 - The development proposed is the erection of 1 No. 5 bedroom detached house. 2 No. new parking spaces to front with new crossover.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr G Newton against Southend-on-Sea Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. Haydon House is included in the site address on the planning application form. I have omitted reference to Haydon House from the heading above because the property has been demolished.
4. The description of development in the heading above has been taken from the application form. In part E of the appeal form it is stated that the description of development has changed, however, I do not consider that the change is significant. I have therefore used the description given on the application form.
5. During my site visit, I considered it necessary to enter the neighbouring land at 51 Lime Avenue to assess the effects of the proposal on that property. I was granted access to the rear garden. I do not consider that this has prejudiced the views of any party.

Main Issues

6. The main issues are the effects of the proposed development on:
 - the biodiversity of the site and the surrounding area;
 - the character and appearance of the area; and
 - the living conditions of the occupiers of 51 Lime Avenue, with particular regard to outlook.

Reasons

Background

7. The appeal site is located on the western side of Underwood Square. It forms part of a larger parcel of land which is also within the ownership of the appellant and is enclosed by hoardings. Underwood Square features a centralised open space endowed with trees and highway around it. Properties in the area are of varying ages and designs although they tend to extend across the widths of the plots and form fairly consistent building lines.

Biodiversity

8. The Council's third reason for refusal relates to an out of date bat and badger survey and the proposal failing to demonstrate that biodiversity would not be harmed as a consequence.
9. The appeal has been submitted with an updated bat and badger survey, dated November 2019. The Council has confirmed that the updated survey was submitted in support of a similar proposal relating to the site, which has been refused planning permission under reference 19/02143/FUL. I have been provided with the decision notice and officer's report for that application. Following the submission of the updated survey the Council no longer wishes to pursue the third reason for refusal. Notwithstanding this, concerns regarding the effects of the proposal on biodiversity have been raised by interested parties and I must be content that the effects are acceptable.
10. Objections were raised in respect of both the application subject to this appeal, and 19/02143/FUL, due to the potential effects of the proposed development on badgers. Notably, the Essex Badger Protection Group has expressed concerns regarding both the original and updated versions of the survey and requested that further survey work be undertaken. The Council has suggested that, if the appeal is allowed, a condition is imposed to require a survey and a scheme for any necessary mitigation to be submitted for approval. The suggested condition makes specific reference to more in depth surveying of badger activity.
11. The updated survey identifies features which indicate that badgers are present on site and nearby. Although it states that nearby badger setts appear inactive, analysis of the setts has only been informed by visual observations made during site visits. Standing advice by Natural England¹ explains that sett entrances should be monitored over an extended period to establish activity and provides examples of the types of monitoring which should be undertaken, such as camera traps. However, such monitoring of the nearby setts has not been undertaken. I also note that the adjacent properties were not accessed when the survey was updated. Given the extent of features of badger activity on site and nearby, I consider that a period of surveying is necessary in order to establish the likely effects of the proposal on badgers.
12. I am satisfied that the effects of the proposal on bats would be acceptable. In addition, I do not have any firm evidence which indicates that any other protected species would be harmed by the proposal.

¹ Badgers: surveys and mitigation for development projects

13. Circular 06/2005² states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted. On the basis of the evidence before me, I do not consider that it would be appropriate to condition the undertaking of further survey work. A condition to require mitigation in the absence of further surveying would also not be appropriate as there can be no certainty that the mitigation would acceptably address any harm to badgers.
14. I am not satisfied that sufficient evidence has been provided in order to ascertain the effects of the proposed development on badgers or that survey work can be secured by a condition. Therefore, I conclude that the proposal fails to demonstrate that its effects on the biodiversity of the site and the surrounding area would be acceptable. The proposed development is contrary to policy KP2 of the Southend-on-Sea Core Strategy (CS), policy DM2 of the Southend-on-Sea Development Management Document (DMD) and the National Planning Policy Framework (the Framework), which seek to ensure that proposals conserve and enhance biodiversity.

Character and appearance

15. The proposed dwelling would extend across much of the width of the plot and be positioned approximately in line with the front elevation of 11 Underwood Square which is located to the north, in conformity with the characteristics of the area. Whilst the dwelling would have a higher ridgeline than 51 Lime Avenue, it would be set back significantly from no. 51 such that the difference in heights would not appear jarring. In addition, although the dwelling would be deeper than many properties in the area and have a steeply pitched roof, it would be sufficiently set away from its boundaries such that it would not appear cramped or out of scale with its surroundings.
16. I note that the proposed development would be adjacent to trees in the rear garden of no. 51 and in the highway to the front of the site. In addition, interested parties have indicated that the trees are protected by way of a tree preservation order. An arboricultural report was provided with the application which indicates that some work to the adjacent trees would be required. The Council's arboricultural officer had no objection to the application, indicating that the proposal's effect on the trees would be acceptable subject to the mitigation detailed in the report being undertaken, and I have no substantive evidence to suggest otherwise. In respect of character and appearance matters, I consider that the proposed dwelling's relationship with the trees would be acceptable.
17. Concerns have been raised regarding the potential cumulative effects of the appeal proposal and any development of the wider parcel of land. In addition, specific concerns have been raised regarding the potential relationship between the proposal, no. 51 and the dwellings that have been approved adjacent to the site under planning application reference 18/01063/FUL. I note that there is no objection to the principle of residential development and some development of the wider parcel of land seems likely. Notwithstanding this, I have been provided with the drawings for the approved scheme and I do not

² Office of the Deputy Prime Minister Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their Impacts within the Planning System

consider that the proposed dwelling would appear cramped between no. 51 and the approved dwellings.

18. I therefore conclude that the effects of the proposed development on the character and appearance of the area would be acceptable. In this respect, the proposal is compliant with policies KP2 and CP4 of the CS, policies DM1 and DM3 of the DMD, the Southend-on-Sea Supplementary Planning Document 1: Design and Townscape Guide (SPD) and the Framework, which require development to be respectful of and respond positively to the character of its surroundings.

Living Conditions

19. The proposed dwelling would run nearly parallel with the rear garden of 51 Lime Avenue; however, its nearest side wall would be set back from the boundary, with its ridge further away, which would reduce the impacts arising from its depth and height. In addition, no. 51 features a long rear garden and the proposed dwelling's front elevation would be offset from its rear elevation. I do not therefore consider that the proposed development would create an undue sense of enclosure to the rear of no. 51 and that an acceptable level of outlook would be retained.
20. Interested parties have stated that overlooking of no. 51 would be an issue. As the proposed dwelling would be offset and set back from no. 51 and views from the front windows towards no. 51 would be angled, I do not consider that the impacts would be unacceptable. The windows proposed above first floor level facing the garden of no. 51 would provide for direct views; however, these impacts could be prevented by a condition to require the windows to be obscure glazed and non-opening.
21. It has been raised that the retention of the existing vegetation between the proposed dwelling and no. 51 would be unable to adequately mitigate against the effects of the development, as the vegetation may die outside of the owners' control. However, I do not consider that retention of the vegetation would be necessary in order to make the development acceptable in respect of living conditions.
22. I therefore conclude that the effects of the proposed development on the living conditions of no. 51, with particular regard to outlook, would be acceptable. In this regard, the proposal is compliant with policies KP2 and CP2 of the CS, policies DM1 and DM3 of the DPD, the SPD and the Framework, which seek to protect the living conditions of properties.

Other Matters

23. A consultation response from Natural England explains that the proposed development has the potential to have significant effects on one or more habitats sites along the Essex coast, including European protected sites (Special Areas of Conservation and Special Protection Areas) and Ramsar sites. The Council acknowledges this in its officer's report. The report states that appropriate mitigation would be necessary as a result of the development and that this would be achieved by improvements to a Local Wildlife Site, which would be funded by a Community Infrastructure Levy payment.

24. If I were minded to allow the appeal, I would need to consider the likely significant effects of the proposal on the habitats sites, including engagement with the requirements of The Conservation of Habitats and Species Regulations 2017. However, as I am dismissing the appeal on the substantive matter it is not necessary for me to reach a conclusion on this matter at this time.

Conclusion

25. Notwithstanding my conclusions on the effect of the proposed development on the character and appearance of the area and living conditions, the proposal fails to demonstrate that its effects on the biodiversity of both the appeal site and the surrounding area would be acceptable. I therefore conclude that the appeal should be dismissed.

Mark Philpott

INSPECTOR