
Appeal Decision

Site visit made on 28 March 2017

by Alex Hutson MATP CMLI MArborA

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

Decision date: 26 April 2017

Appeal Ref: APP/M1520/W/16/3161965

Land adjacent to 81 May Avenue, Canvey Island, Essex

- 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 Dean Bullock – D.R Bullock Builders Ltd against the decision of Castle Point Borough Council.
 - The application Ref 16/0336/FUL, dated 3 May 2016, was refused by notice dated 6 July 2016.
 - The development proposed is "Construct two detached two bedroom chalets with associated facilities including relocation of existing public footpath".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The submitted plans appear to show the floor plans, roof plan and full elevation plans for the proposed dwelling on Plot 2 only. However, the proposed site plan indicates that the proposed dwelling on Plot 1 would be a mirrored version of the proposed dwelling on Plot 2. I have considered the appeal on this basis.
3. The Council's reasons for refusal on its Decision Notice do not cite matters of privacy. However, a representation from the occupier of 42 Handel Road, submitted as part of the original planning application process, raised this matter as a concern. For the reasons set out below, I also have concerns in this regard and as such, I have included privacy in the main issue relating to living conditions. I am satisfied that the representation was available to the main parties and as such, they have had an opportunity to comment on it.

Main issues

4. The main issues are:
 - The effect of the proposal on the living conditions of the occupiers of 42 Handel Road and 83 May Avenue with particular regard to outlook, and additionally, in respect of the occupiers of 42 Handel Road, privacy.
 - The effect of the proposal on the character and appearance of the area; and
 - The effect of the proposal on flood risk elsewhere from surface water runoff.
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Reasons

Living conditions

5. The appeal site is located within the context of a wider residential area and comprises a plot of land which runs in an east-west direction between May Avenue and Handel Road. It predominantly comprises grass though has a public footpath running through it which provides pedestrian access between these two roads. The footpath currently runs along the southern boundary of the appeal site. The proposal would introduce two detached chalet style dwellings onto the appeal site; one which would face May Avenue and one which would face Handel Road. The footpath would be relocated close to the northern boundary of the appeal site and would be approximately 1.5 metres (m) in width.
6. I firstly address matters of privacy. A detached bungalow, 42 Handel Road, lies to the immediate north of, and in close proximity to the appeal site. It has two windows on its southern elevation which directly face the appeal site. One of these is obscure glazed and serves a bathroom. The other, according to the evidence, serves a bedroom. A low fence currently forms the boundary between the appeal site and the southern elevation of No 42. The existing position of the footpath away from the bedroom window limits the opportunity for any of its users to obtain views into this window and into the habitable room that it serves.
7. The proposed siting of the footpath close to the northern boundary of the appeal site would allow any of its future users the opportunity to look directly, and from a short distance, into the bedroom window of No 42. This would result in a significant and harmful loss of privacy for the occupiers of No 42. The proposed site plan does not indicate any intention to alter the height of the fence along the northern boundary of the appeal site to mitigate this harm. Moreover, even if this were feasible, the erection of a higher fence in such close proximity to the bedroom window of No 42 might have a detrimental effect on outlook for the occupiers of this property.
8. I now turn to matters of outlook. The occupiers of No 42 are likely to experience an open outlook from the bedroom window on the southern elevation of this property. This is due to the low boundary fence and the current undeveloped nature of the appeal site. The proposed dwelling on Plot 2 would be set back from the northern boundary of the appeal site by only a modest degree and would likely align directly with the bedroom window of No 42. The two storey height of the proposed dwelling combined with its close proximity to the bedroom window of No 42, would create a considerable sense of enclosure to and would appear overbearing in views from this window. Consequently, it would result in a material loss of outlook for the occupiers of No 42.
9. I observed that the detached bungalow, 83 May Avenue, which lies to the immediate south of the appeal site, has no principal windows facing the appeal site. The proposed dwelling on Plot 1, which would largely reflect the front and rear building line of No 83, would therefore not be apparent in any views from the main habitable rooms of this property. Nor would it be particularly apparent in any views from the rear conservatory or rear garden of No 83 for the same reason and given that a high fence currently runs along the rear garden of No 83 where it adjoins the appeal site. As such, there would be no

harmful effect on the living conditions of the occupiers of No 83 in respect of outlook.

10. Whilst I have not found harm to the living conditions of the occupiers of 83 May Avenue, I have found material harm to the living conditions of the occupiers of 42 Handel Road in respect of loss of privacy and outlook. This would considerably reduce the enjoyment of their home.
11. The Council cites conflict with saved Policy EC2- Design, of the Castle Point Borough Council Local Plan 1998 (Local Plan) in respect of living conditions matters. However, this policy does not relate to such matters and is therefore not relevant to this main issue. I therefore turn to the National Planning Policy Framework (the Framework). The proposal would be contrary to the policies of the Framework which seek, amongst other things, to secure a good standard of amenity for all existing occupants of land and buildings.

Character and appearance

12. Dwellings along May Avenue and Handel Road tend to be tightly spaced and display a wide variety of architectural styles. There is also a mix of single storey, chalet style and two storey dwellings along these roads. The appeal site provides a modest break in built form along May Avenue and Handel Road, though due to its narrow width and the tight spacing of dwellings, this is only particularly noticeable from vantage points immediately to its east and west. Whilst some other grassed plots of land with footpaths linking roads exist in the wider area, these do not occur on such a frequent basis to be a defining or characteristic feature of the area. This is apparent from the submitted Location Plan RUPC.1 and from my observations of the pattern of development in the area during my site visit. On this basis, whilst the appeal site provides some visual amenity within its immediate vicinity, I consider that the contribution it makes to the wider character and appearance of the streetscape and area is limited.
13. The proposed dwellings would be reflective of the size and style of other dwellings in the area and would maintain the linear pattern of development along May Avenue and Handel Road. I acknowledge that the introduction of these dwellings onto the appeal site would result in the loss of an area of grass. However, as set out above, the grassed area of the appeal site is not a defining or characteristic feature of the wider streetscape and area. Nor is it subject to any specific landscape designation. Consequently, I conclude that the proposal would respect and reflect the prevailing character and appearance of the streetscape and area.
14. It would therefore comply with saved Policy EC2, of the Local Plan. This policy requires, amongst other things, development to be of a high standard of design, to be of a scale, design and layout appropriate to its setting and to not harm the character and appearance of its surroundings. This policy is consistent with the policies of the Framework which require planning to secure high quality design and to take account of the different roles and character of different areas.

Flood risk

15. The Council raises the concern that inadequate information has been submitted to demonstrate how surface water runoff from the proposed dwellings and hard

surface areas would be managed without increasing the risk of flooding elsewhere.

16. The appellant's Flood Risk Assessment (FRA) sets out that a sustainable urban drainage system would be utilised to attenuate surface water from rainfall on the site. This would then feed the stored water into the existing main drainage system at a reduced rate. The appellant indicates that this may in fact have a beneficial effect on the surface water drainage of the appeal site on the basis that Canvey Island is predominantly made up of London Blue Clay soil which is largely impermeable. There is no substantive evidence before me to the contrary. I also note that the Council's Committee Report suggests that this matter could be effectively dealt with by way of a suitably worded planning condition to secure further details of the attenuation system and the implementation of such details. I have not been provided with any compelling reasons to justify why this would not be a reasonable approach to take. Moreover, the Environment Agency raised no specific concerns in respect of the FRA.
17. Therefore, I am satisfied that the proposal would not have a detrimental effect on flood risk elsewhere from surface water runoff. The Framework promotes using opportunities offered by new development to reduce the causes and impacts of flooding.

Other matters

18. The appeal site lies within Flood Zone 3a, as identified on the Environment Agency (EA) Flood Zone Map. This is a high probability zone at risk of tidal flooding. Residential use is classified as a More Vulnerable Use by the EA. The Framework indicates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. This translates into an approach whereby local planning authorities should only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test (ST), it can be demonstrated that the development is appropriately flood resilient and resistant. The aim of the ST is to steer new development to areas with the lowest probability of flooding. Notwithstanding the submission of a FRA and that Canvey Island benefits from flood defences, the EA sets out that a ST is required. I have not been provided with any evidence that a ST has been undertaken. Nevertheless, on the basis that I am dismissing the appeal anyway, I do not consider that it is necessary for me to consider this matter further.
19. A number of interested parties have suggested that the appeal site, in its entirety, benefits from public access rights. However, the evidence demonstrates that the appeal site is within private ownership. Moreover, it is not designated as a public open space. It is also my understanding of the evidence that public access rights through the appeal site, from its eastern to western boundaries, are limited to the existing footpath which has been adopted by Essex County Council. This footpath would be relocated to allow continued public access between May Avenue and Handel Road. As such, on the basis of the evidence before me, I am confident that the proposal would not result in the loss of any public amenity space or access rights.

20. The appellant states that the Council cannot demonstrate a five year supply of housing. I recognise therefore, that two new dwellings would assist the Council in meeting any housing supply shortfall in this context. Nevertheless, in the wider scheme of things, such a contribution to housing supply within the Borough would be modest. As such, the harm I have identified to the living conditions of the occupiers of 42 Handel Road would significantly and demonstrably outweigh this benefit.

Conclusion

21. I have not found harm to the character and appearance of the area. Nor have I found that there would be a detrimental effect on flood risk elsewhere from surface water runoff. In addition, I have not found harm to the living conditions of the occupiers of 83 May Avenue. However, I have found material harm to the living conditions of the occupiers of 42 Handel Road with regard to loss of privacy and outlook. Such harm would significantly and demonstrably outweigh any benefits.
22. Thus, for the reasons set out above and having regard to all other matters, including parking, highway safety, private amenity space provision, antisocial behaviour, telegraph poles, litter, land ownership, strain on current infrastructure, light, noise and disturbance and the privacy and outlook of the occupiers of neighbouring properties other than those considered above, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR