



Appeal Decision

Site visit made on 30 July 2019

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 16 August 2019

Appeal Ref: APP/V1505/W/19/3229550

39 Jersey Gardens, Wickford SS11 7AG

- 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 Merrington (LAA Brown Ltd) against the decision of Basildon Borough Council.
 - The application Ref 18/01589/FULL, dated 25 November 2018, was refused by notice dated 20 March 2019.
 - The development is a proposed new dwelling to rear of 39 Jersey Gardens.
-

Decision

1. The appeal is allowed and planning permission is granted for a proposed new dwelling to rear of 39 Jersey Gardens, Wickford, SS11 7AG in accordance with the terms of the application, Ref 18/01589/FULL, dated 25 November 2018, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out only in accordance with the approved revised drawings no. ADP258EP 01 Rev C, ADP258EP 02 Rev C and ADP258EP 03 Rev B received at the Local Planning Authority's offices on 28 January 2019.
 - 3) Prior to occupation of the proposed dwelling the existing vehicular access shall be widened to provide the parking layout as shown on drawing number 03 Rev B. The vehicular access shall be provided with a dropped kerb vehicular crossing of the footway and highway verge.
 - 4) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, or any Order revoking and re-enacting that Order, no development within Part 1, Class A of Schedule 2 to the Order shall be carried out to the dwelling hereby approved (labelled 39a on plan ADP258EP 03 Rev B), except with express permission granted under Part III of the Town and Country Planning Act 1990 or any re-enactment thereof.
 - 5) All planting, seeding and turfing comprised in the soft landscaping shown on drawing no. ADP258EP 03 Rev B shall be carried out in the first planting and seeding season following occupation of the building, or completion of the development, whichever is sooner. Any trees or shrubs or other elements of landscaping dying within five years of planting, shall be replaced with a specimen of a similar size and type by the developers or their successors in title.

Application for costs

2. An application for costs was made by Mr Merrington against Basildon Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The description of development used above has been taken from the planning application form. The council used a different description and in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application in the heading above and in my decision.
4. Similarly, the address used on the application form and the council's appeal decision is different to the address used in the appeal form. In the absence of written confirmation that an alternative has been agreed, I shall use the one given on the original application form as I consider this to be adequate and accurate.

Main Issues

5. The main issue is the effect on the character and appearance of the area.

Reasons

6. The site is located within a predominantly residential setting and is surrounded by a variety of detached and attached, single and two storey dwellings, some of which appear to have additional accommodation within the roof space. Although there is significant variety to the size and appearance of the dwellings and no fixed building line, all dwellings sit at the front part of their plots but are set back a sufficient distance for off-street parking to be a feature of most frontages. The site includes a two storey end-of-terrace dwelling with a single storey attached garage to the side. A vehicle access leads to the side of the garage into the rear of the site. At the rearmost part of the site, the plot widens to match the width of the plots of 39, 41 and 41a Jersey Gardens.
7. The proposal would see the erection of a dwelling on the land to the rear of the terrace of dwellings, which would be served by a vehicle access at the side of the existing dwelling. The existing garage would be demolished, but 2 parking spaces would be provided at the front of the site and a detached garage, three parking spaces and a turning area would be provided at the rear.
8. At present there appears to be no examples of dwellings being located to the rear of other dwellings, but the main parties have highlighted that planning permission has been granted for the erection of a dwelling on land to the rear of 45 Jersey Gardens which would share a boundary with the application site. That permission was granted recently and I have no reason to suppose that the dwelling will not be constructed.
9. The adjacent permission demonstrates that the Council has accepted similar development to the rear of Jersey Gardens directly next to the site and that development will alter the character of the area and is directly relevant to the context for the current proposal. Consequently, I attach significant weight to the extant planning permission as a material consideration and therefore find

that the proposed development would not conflict with the emerging pattern of development. Similarly, the proposal to provide a lengthy vehicular access between existing dwellings would be consistent with the development approved at the adjacent site. I afford less weight to the proposals at 2 Guernsey Gardens as, whilst the comments of the Inspector are noted, planning permission has not been granted and the site is substantially larger and therefore I find the circumstances to be materially different.

10. The application site represents a particularly large plot and therefore there is scope to host the generous footprint of the dwelling without it appearing cramped. Satisfactory distances would be provided between the dwelling and all boundaries and there would be ample space around the dwelling and the access to provide garden space and landscaping. This would provide a suitable setting for the dwelling.
11. The dwelling would be partially visible between the existing dwellings and from the rear gardens of neighbouring properties. However, due to the single storey form of the dwelling and the setback from the public domain it would not become a prominent addition. Furthermore, although the dwelling would not replicate any of the dwellings of the surrounding area, it would not contrast with the mixed character of the area to an extent that would result in it having a jarring or incongruous appearance.
12. For these reasons, I conclude that the development would not have an unacceptable effect on the character and appearance of the area. The development would therefore be in accordance with policy BAS BE12 of the Basildon District Local Plan Saved Policies which states that development will be resisted if it causes material harm to the character of the surrounding area, including the streetscene. I also find that the proposal would accord with the National Planning Policy Framework which states that development should be of high quality design and maintain an area's character.
13. The weight to afford the design policies of the emerging Basildon Borough Revised Publication Local Plan has been disputed and no statement has been provided by the council to clarify the status of this document. However, as the emerging policies, particularly DES1(2a) and DES3, have a similar aim as policy BAS BE12 and the Framework, they would not provide reason to reach a materially different conclusion in any event.

Other Matters

14. Interested parties have raised concerns in relation to potential upheaval, inconvenience and pollution caused during the construction of the dwelling. However, when considered alone and cumulatively with the planning permission at the adjacent site, the proposal would not cause a level of disturbance that would justify preventing the development or imposing any restrictions. Any impacts on the ability to use a highway would be controlled by other legislation.
15. It has been suggested that trees have been removed, but there is no indication that the trees were the subject of any form of protection and as the site is clear of trees, I am obliged to consider the proposal on that basis. Furthermore, as no evidence has been provided to the contrary, I have no grounds to conclude that the proposed soft landscaping and permeable paving would not be adequate to ensure that the site drains effectively.

16. As the dwelling would be single storey, the boundary treatments shown on the plans would be adequate to prevent unacceptable overlooking of neighbouring properties. Whilst the access would be in close proximity to the openings in the side elevation and the rear amenity space of the neighbouring dwelling, only one property would use the access and, therefore, the level of disturbance caused by the use of the access would not be at a level that would be materially harmful to the living conditions of the occupants of the neighbouring dwelling. Furthermore, as the side and rear gardens would combine to provide adequate amenity space for the proposed dwelling, the future residents of the site would be served by adequate living conditions.

Conditions and Conclusion

17. A condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty is necessary as is a condition to require the provision of the proposed access in accordance with the approved plans, in the interests of highway safety. A condition to require the proposed landscaping to be provided is also necessary in the interests of the character and appearance of the site and the locality.
18. The parties do not agree on the reasonableness of a condition that restricts the use of permitted development rights and in this regard the Planning Practice Guidance¹ states that such conditions may not pass the test of reasonableness or necessity. Although the development is acceptable as proposed, the utilisation of permitted development rights to extend the dwelling may result in the dwelling appearing cramped and as such, in the interests of the character and appearance of the site, it is necessary and reasonable to require the control of further extensions to the building. However, given the height of the dwelling, it is unlikely that first floor accommodation would be able to be provided. Having regard to that and taking account of the orientation of the dwelling and the separation distance from neighbouring dwellings, the removal of permitted development rights for roof alterations is not necessary.
19. Subject to those conditions, and for the reasons set out above, I conclude that the appeal should be allowed

Ian Harrison

INSPECTOR

¹ Planning Practice Guidance Paragraph: 017 Reference ID: 21a-017-20190723 "Is it appropriate to use conditions to restrict the future use of permitted development rights or changes of use?"