



Appeal Decision

Site visit made on 17 September 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th November 2019

Appeal Ref: APP/A1530/W/19/3232239

Land to the rear of No 7 John Kent Avenue, Colchester CO2 9ES

- 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 Miss Justine Kelliher against the decision of Colchester Borough Council.
 - The application Ref 182285, dated 14 September 2018, was refused by notice dated 24 May 2019.
 - The development proposed is a two bed bungalow.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the living conditions of the occupants of Nos 7 and 9 John Kent Avenue, with particular regard to noise and disturbance; and
 - whether or not the proposal would afford satisfactory living conditions for future occupants, with particular regard to privacy and bin storage.

Reasons

Character and Appearance

3. The appeal site is positioned on the southern side of John Kent Avenue and is not covered by any specific landscape designation. Although there are some bungalows within the surrounding area, this particular section of the street is characterised by two storey, semi-detached and terraced, properties. The set back of individual properties from the carriageway varies, but the prevailing pattern of residential development near to the appeal site is of dwellings set behind relatively small front gardens with larger, open, gardens to the rear. This common layout gives the spatial pattern of residential properties in this part of John Kent Avenue a sense of rhythm and uniformity.
4. The appeal site itself comprises a backland plot that appears to have formerly been a part of the rear garden of No 7, which is an end of terrace property. This has a separate access to John Kent Avenue and established trees separate it from an industrial estate beyond its rear boundary. Although this plot is

entirely self-contained with its boundaries marked by fences, I consider that its open and undeveloped nature contributes positively to the layout of surrounding residential form.

5. The scheme seeks full planning permission to construct a detached bungalow at the backland plot. I acknowledge that this proposed dwelling has been reduced in size compared to that originally submitted to the Council. Nonetheless, it would add a significant amount of bulk and mass to the plot. This would erode its openness and harm the uniform layout of dwellings along this part of John Kent Avenue. In addition, sited to the rear of an existing dwelling, close to its eastern and southern boundaries with only a comparatively small garden area, the proposal's layout would be out of character with the prevailing rhythm and pattern of nearby residential development. In this context, I also consider that it would appear unduly cramped upon its plot in relation to its size.
6. I appreciate that the proposal would have a similar roof pitch compared to nearby properties and would be subordinate to No 7 in height. However, its single storey nature would be at odds with the height of most nearby dwellings. This would reinforce its incongruous appearance. Taking this, and all of the above into account, I consider that the proposal would introduce an inappropriate feature to the site that would fail to integrate effectively with the spatial pattern and character of surrounding built form. Its harmful impact would be apparent from the rear gardens of several surrounding properties. This harm would not be significantly diminished even if the scheme would not have a detrimental impact upon established trees adjacent to the site.
7. The individual design of the proposal would be acceptable and could incorporate suitable materials. However, this would not address the fundamental problem associated with its layout and positioning. This is therefore not a reason to permit this scheme. Neither does the existence of the nearby utilitarian industrial buildings justify a scheme which would fail to function well or add to the quality of the area, as advocated by the National Planning Policy Framework (the Framework).
8. My attention has been drawn to a detached, single storey, dwelling which has been constructed to the rear of No 1 John Kent Avenue. However, given the corner positioning of No 1, this dwelling fronts Layer Road. It is therefore not directly comparable to the appeal scheme which would have no street frontage. Consequently, and as this particular backland development is not a defining characteristic of the area in which the appeal site is located, it is not a reason to set aside the harm identified.
9. For the reasons given, I conclude that the proposal would harm the character and appearance of the area. It would therefore conflict with Policy UR2 of the Local Development Framework Core Strategy (CS) and Policy DP1 and DP16 of the Local Development Framework Development Policies (DP). Amongst other things, these seek to ensure that proposals are of a high quality, have private amenity space which reflects the character of the area and, overall, respect and enhance the quality of the area. It would also conflict with the Council's adopted Backland and Infill Development Supplementary Planning Document (SPD) insofar as it seeks to ensure that backland developments harmonise with their surroundings. I have been referred to Policy ENV1 of the CS. However, this deals with biodiversity and the historic environment, as well as the countryside and the coastline. It is not relevant to this main issue.

10. Turning to the Framework, this states that windfall developments, in the right location, can make a contribution to meeting housing requirements by making efficient use of land. It also encourages a positive and creative approach to decision making. However, this should not be at the expense of achieving high quality development which is visually attractive as a result of its layout and sympathetic to local character. I have found that the proposal would not achieve this. There is therefore conflict with the design objectives of the Framework.

Living Conditions – Existing Residents

11. I have no substantive evidence before me to show that the resulting smaller rear garden at No 7 would fail the standards outlined within Policy DP16 of the DP. From the evidence before me, and having visited the site, I am therefore not persuaded that it would be of an unacceptable size for the occupants of this property.
12. However, access to the proposed dwelling would be taken between Nos 7 and 9. I appreciate that the proposal is only for one dwelling and vehicular movements associated with it would not be excessive. Nevertheless, it would still be likely to introduce daily vehicular movements along its access. In addition, there would not be a gap of 3m either side of the access, as advocated by the SPD. In my view, the close proximity of vehicular movements to Nos 7 and 9 would result in harmful noise and disturbance to the occupants of these properties. The existence of similar accesses in the surrounding area would not diminish this harm.
13. For the reasons given, I conclude that the proposal would harm the living conditions of the occupants of Nos 7 and 9 in terms of noise and disturbance. It would therefore conflict with Policy DP1 of the DP and the SPD. Amongst other things, these seek to ensure that backland developments protect existing residential living conditions in terms of noise and disturbance.

Living Conditions – Future Occupants

14. The proposal would not have any windows within its northern flank elevation. Taking this into account, on balance, I do not consider that the privacy of future occupants within the proposed dwelling or its garden would be significantly compromised by the dwellings to the north which front John Kent Avenue. In addition, the single storey nature of the properties which front Layer Road, together with their distance from the appeal site, would ensure that they did not diminish the privacy of the future occupants.
15. Turning to the provision of private amenity space, Policy DP16 of the DP requires that the proposed dwelling has a garden which is a minimum of 50sq.m in size. Although the proposal's garden would be smaller than most surrounding properties, on the evidence before me, it would exceed this requirement. Accordingly, whilst the scheme would be cramped in a visual sense, the quantum of external amenity space for future occupants would be acceptable. I note that Policy DP16 does state that a higher standard of private amenity space may be required for small backland schemes. However, this is in the interest of the character of the surrounding area. This particular aspect of this policy is therefore not relevant to this main issue and does not alter my assessment on this matter.

16. Furthermore, I consider that suitable space could be provided at the proposal, and indeed at No 7, for the storage of bins. These could be appropriately presented for collection.
17. For the reasons given, I consider that the proposal would afford satisfactory living conditions for future occupants in terms of privacy and bin storage. It would therefore comply with Policies DP1, DP12 and DP16 of the DP insofar as they seek to ensure proposals provide a suitable quantum of private amenity space for the enjoyment of future residents, have appropriate bin and recycling storage areas and afford an acceptable level of privacy.

Other Consideration

18. It would appear that the proposal could have an impact upon European designated sites. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. In this case, the Council appears to state that appropriate mitigation would be required and has recommended an informative outlining this if the scheme were to be allowed.
19. However, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage¹. As the competent decision making authority, if I had been minded to allow the appeal it would have therefore been necessary for me to go back to the parties to seek further information in order to complete an AA for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Other Matter

20. The Council has referred me to its emerging Local Plan which has been submitted for examination. However, I have not been provided any relevant emerging policies. In any event, they are not determinative to my decision as I have found conflict with the identified policies within the Council's adopted development plan.

Planning Balance

21. I have no substantive evidence before me to show that the weighted presumption outlined at paragraph 11 of the Framework would be engaged. However, the Government is seeking to significantly boost the supply of housing. The proposal would provide a single dwelling in an accessible location. Whilst there may be a demand for smaller property types in the area, its contribution to the Borough's housing stock would be minimal. Similarly, the economic benefits of the proposal would also be minimal and would primarily relate to short-term employment during the construction period. In this context, I give limited weight to these social and economic benefits.
22. I have found that the proposal would provide suitable living conditions for future occupants. It would also be acceptable in other respects, such as in terms of highway safety. However, these are requirements of the development plan and are therefore neutral factors in the overall balance.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

23. On the other hand, the scheme would result in harm to the character and appearance of the area and to the living conditions at Nos 7 and 9 in terms of noise and disturbance. These are matters which collectively attract significant weight.
24. In my view, the adverse effects would outweigh the benefits associated with the provision of one dwelling. This would be so even in the absence of objections from neighbours. The proposal conflicts with the development plan as a whole and there are no material considerations, including the advice of the Framework, which outweigh this conflict.

Conclusion

25. For the above reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

M Heron

INSPECTOR