



Appeal Decision

Site visit made on 5 November 2019

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th November 2019

Appeal Ref: APP/W1525/W/19/3224375

261 Gloucester Avenue, Chelmsford, CM2 9DX

- 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 Michael Yolland of MYDY LTD. against the decision of Chelmsford City Council.
 - The application Ref: 18/01642/FUL dated 13 September 2018, was refused by notice dated 5 December 2018.
 - The development proposed is demolition of existing garage and erection of a new dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A completed and signed Section 106 Unilateral Undertaking has been submitted by the appellant. It seeks to secure a contribution towards mitigation measures on a local Special Protection Area (SPA) and Ramsar site in the area. I return to this matter later.
3. The Chelmsford Draft Local Plan Pre-Submission Document (the CDLP) was submitted to the Secretary of State with examination hearings held in late 2018. In a post hearing advice note the Inspector advised the plan could be found sound, subject to Main Modifications and the outcome of consultations. The Council has published and consulted upon its main modifications. At the time of my consideration of this appeal the CDLP remains unadopted and since it could be subject to change, I afford its policies limited weight.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of the occupiers of 18 Gunson Gate, with particular regard to outlook and daylight.

Reasons

5. The appeal site is an end of terrace property set in a wide plot, with a detached side garage. The land to the north slopes down towards the boundary of 18 Gunson Gate. No. 18 is a detached property with a south facing back garden sloping up to its boundary and the appeal site property.

6. The new dwelling would be formed by demolishing the garage and substantially extending No. 261 to the north. The new dwelling would be contained within the extension. The extension would match the existing eaves and ridge height of the property, integrating a hipped gable roof and a mono-pitched ground floor rear projection.
7. The development would be between 2.3m and 3.4m from the boundary wall of No. 18. It would have an eaves height of approximately 4.8m and a ridge height of around 7.6m, bringing the terrace closer to the façade of No. 18 by around 5.2m. There is some disagreement between the parties about the separation distances between the flank wall of the new dwelling and the rear façade of No. 18. Based upon the plans before me the distance would be between approximately 12.4m and 13.1m. Both parties have referred to the Council's Making Places Supplementary Planning Document (2008) (the SPD) which looks to achieve a minimum separation distance of 12.5m in such cases. The development would appear to largely meet the distance sought. The appellant's statement has referred to an on-site survey measurement demonstrating a minimum of 12.9m distance, although this is not before me.
8. What is not depicted on the plans is the nature of what appears to be a significant land level increase from the dwelling and garden of No. 18, up to the appeal site. Given the proximity and size of the proposed new dwelling, this increase would considerably increase the overbearing impact of the proposed dwelling.
9. By reason of the height, depth and massing of the new dwelling, its positioning and proximity to the rear garden and windows of No. 18, and the increase in ground levels from No. 18 up to the location of the dwelling, the proposed development would appear significantly overbearing and oppressive when viewed from the windows and garden of No. 18.
10. I note the appellant's view the development would comply with paragraph 123 of the Framework, and that it would be similar to arrangements in more recent developments where garden size is reduced, including a specific reference to the arrangement between Nos. 26 and 36 Gunson Gate. Due to the angle between the two dwellings the distance ranges from approximately 11.5m – 16m, although the land levels are unclear. However, based on the information before me I'm not aware of their detailed relationship or circumstances under which they were approved, and therefore not able to make a direct comparison to the appeal proposal. I have assessed this appeal proposal on its own merits and impacts, and similar development nearby does not provide justification for allowing a harmful development.
11. Being to the south of No. 18, the proposed development would increase the degree of overshadowing. The submitted shadow impact analysis shows this would be more notably so around midday during spring and autumnal months although it would appear very limited. I see no justification that the very limited increase in overshadowing for a seemingly very limited duration of the day, over a few months of the year, would have any significantly harmful impact to overall daylight. Based upon the information before me, the effect of the overshadowing on overall daylight to No. 18 would be likely to be very limited and would not be likely to be unacceptable or result in harmful living conditions.

12. I conclude therefore, that whilst the development would not have a harmful effect on the living conditions of the occupiers of 18 Gunson Gate with regard to light, it would have a harmful effect on the living conditions on the occupiers of 18 Gunson Gate with regard to outlook. That is the prevailing consideration. For these reasons the development would conflict with Policy DC4 of the Chelmsford Core Strategy and Development Control Policies Development Plan Document 2001-2021 (adopted in 2008, reviewed and adopted in 2013) (the CSC). This expects development to safeguard the amenities of the occupiers of nearby properties through not adversely prejudicing outlook. It would also conflict with paragraph 127(f) of the National Planning Policy Framework (2019) (the Framework) which requires planning decisions should create places that promote health and well-being with a high standard of amenity.
13. The development would not be contrary to Policy PA1 of the CDLP, which seeks to safeguard the amenities of nearby neighbours and ensure that development does not result in unacceptable impacts in respect of loss of light. However, for the reasons given above I conclude that the proposal conflicts with the development plan as whole.

Other Matters

14. The appellant has suggested that the proposed development would not have a significantly greater impact than a two storey side extension. This is not the development before me and any such development would also need to be considered in the light of the relevant development plan policies and guidance.
15. The Council's second reason for refusal relates to a failure to address the impact of the development on a European designated Special Protection Area (SPA) and Ramsar site, by reason of increased recreational pressure, as a development within its designated 'zone of influence'. The appellant has subsequently agreed to pay a financial contribution and provided a completed and signed Section 106 Unilateral Undertaking to secure a contribution towards mitigation measures for the SPA and Ramsar site. However, in light of my findings on the main issues above, it is not necessary to look at this matter in detail, given that the proposal is unacceptable for other reasons.
16. I note the appellant's view that the proposed development would be acceptable in terms of its overall character and appearance. It would also make more efficient use of the land, provide adequate access and parking arrangements, provide adequate living conditions to the new occupants in terms of living space, and not result in harmful living conditions to neighbouring occupants in respect of privacy. However, the lack of harm in such respects does not alleviate or negate the harm I have found in respect of the significant adverse impact to the living conditions of No. 18, by reason of outlook.
17. I recognise that the proposed development would contribute towards the delivery of the economic and social aspects of sustainable development in the Framework, and it has addressed environmental matters from a previous proposal.
18. The proposal would also make an albeit very limited contribution towards the supply of housing in the area. Nevertheless, the Council has provided its Five-Year Housing Land Supply Position Statement (April 2019), which confirms a deliverable supply of 6.61 years.

19. Taking into account all matters raised in support of the proposal, I find they do not, either individually, or collectively, outweigh the harm I have identified in respect of the main issue above.

Conclusion

20. I conclude therefore, for the reasons given above, that the appeal should not succeed.

Dan Szymanski

INSPECTOR