



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: 6th December 2019

Appeal Ref: APP/W1525/W/19/3229264
69 Torquay Road, Chelmsford CM1 7NX

- 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 S Oldroyd against the decision of Chelmsford City Council.
 - The application Ref: 18/01655/FUL dated 20 September 2018, was refused by notice dated 28 November 2018.
 - The development proposed is described as two dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development from the original planning application form is set out in the banner heading above. The description set out in the Council's decision notice is 'Part single, part two-storey rear extension. Construction of two new dwellings, including associated works. Widening of the dropped kerb to provide new access'. This encompasses all aspects of and more accurately describes the development, and I have considered the proposal on this basis.
3. The absence of a completed and signed Section 106 Unilateral Undertaking by the appellant to secure a contribution towards mitigation measures on a Special Protection Area (SPA) and Ramsar site in the area, was originally a reason for refusal in the Council's decision notice. The appellant has provided a signed Section 106 Unilateral Undertaking and the Council no longer has an objection in this respect. I return to this matter later.
4. In the Council's evidence they have referred to the Chelmsford Draft Local Plan Pre-Submission Document (the CDLP) which 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. 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 and the Development Standards in Appendix A limited weight.

Main Issues

5. The main issues are the effect of the proposed development on:
- the living conditions of the occupiers of No. 67 Torquay Road, with particular reference to privacy, noise and general disturbance; and,
 - the living conditions of the occupiers of No. 5 Paignton Avenue, with particular reference to whether or not there would be any overbearing effects.

Reasons

No. 67 Torquay Road – privacy

6. The appeal site comprises a detached dwelling (No 69 Torquay Road) occupying a corner plot at the end of a cul-de-sac, and its large side/rear garden. The proposed development includes a substantial ground and first floor rear extension to the host dwelling, and the provision of two new link detached two storey three-bedroom dwellings, associated gardens, garages and driveways. The new dwellings would be served by a new driveway running from a new dropped kerb on Torquay Road along the approximately 1.8m high shared boundary fence with No. 67 to the east.
7. The new dwellings would be set out in a staggered arrangement fronting the access drive and boundary with No. 67. The first-floor windows of the dwelling on plot 2 would comprise a bathroom window which could be obscure glazed, and two eaves level rooflights serving a bedroom, securing an adequate degree of privacy towards No. 67. The plot 1 dwelling proposes a bathroom (whose windows could be obscure glazed) but also a substantially sized bedroom window giving direct views into the garden of No. 67 at (based upon the appellant's plans) a proximity of approximately 7.5m.
8. A single storey side extension and garage gives privacy to a small proportion of the garden nearest the house, however, the significant majority of the rear garden would be visible and not private from direct views from plot 1. This prejudices privacy of the rear garden of No. 67 to a significant and unacceptable degree, such that it would be harmful to the living conditions of the occupiers of No. 67.
9. The appellant draws comparisons with arrangements at Nos. 7 – 13 Paignton Avenue, although has provided no information with respect to layouts, windows or distances, so making an informed comparison is not possible. However, it is likely that any views to/from adjacent dwellings would be obliquely angled, adequately safeguarding privacy. In the case of the appeal site plot 1 faces across the garden of No. 67, which coupled with the short distance, would result in significant harm to privacy. I have noted the provisions in the extract of the Essex Design Guide in this regard, however, this guidance does not provide justification or standards that would lead me to any alternative conclusion.

10. For the reasons set out above 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 by not adversely prejudicing privacy and not resulting in excessive overlooking. It would also conflict with paragraph 127(f) of the National Planning Policy Framework (2019) (the Framework) which requires that planning decisions should create places that promote health and well-being with a high standard of amenity. There would also be conflict with Policy PA1 of the CDLP which states permission will only be granted for proposals that safeguard the amenities of nearby occupiers through not resulting in unacceptable overlooking. However, due to the stage of the plan I give this emerging policy limited weight.
11. Part of the Council's reason for refusal relates to the views from the front bedroom of plot 1 into the dwelling at No. 67. However, the Council has provided little substantive information as to the harm in this regard. Having regard to comments provided by the occupiers from No. 67, the extracts of the Essex Design Guide, the Development Standards from the CDLP, and from my site visit, the only window of potential concern is to a stairway, which is not itself a habitable space, and the doors to the habitable spaces are some distance further back from the window. At a distance of approximately 15.4m between the windows in question (based upon the drawings submitted), this is considered an adequate distance not to unacceptably impact upon privacy.
12. The appellant has suggested the provision of boundary landscaping to address this matter, although not confirmed the details or what height this would need to be. I am not persuaded that landscaping would grow to a sufficient height in a reasonable timescale to mitigate impacts to an acceptable level, or that its long-term survival could be guaranteed. Furthermore, at a height that it would be effective, in-light of any details to the contrary, I have concerns that it might be oppressive and overbearing, to both No. 67 and plot 1.

No. 67 Torquay Road – noise and disturbance

13. With the inclusion of the integral garages, plot 1 would have three car parking spaces and plot 2 would have two parking spaces accessed off the shared driveway. The arrangement would require vehicles to undertake reversing manoeuvres next to the boundary fence with No. 67 to leave the driveway in a forward gear.
14. The use of the driveway by occupiers of, and visitors to Plots 1 and 2, would result in an amount of unrestricted pedestrian and vehicular activity, including the revving of cars and occasional light spillage. This increased noise and disturbance would result some effect on the living conditions of the occupants of No. 67. However, the level of likely vehicular and pedestrian activity from the new dwellings would be limited, and the positioning of plot 1 would ensure that most manoeuvring would be adjacent to the front garden and garage of No. 67 which is not an uncommon arrangement for adjacent dwellings.
15. On-balance, the likely level of noise and distance would be unlikely to be so significant that it would result in harmful living conditions to the occupants of No. 67. For these reasons the development would not conflict with Policy DC4 of the CSC, by reason of excessive noise, activity or vehicle movements, neither would it conflict with the Framework, the relevant provisions of which I

have referenced above. It would also not conflict with Policy PA1 of the CDLP by reason of excessive noise, activity or vehicle movements. However, due to the stage of the plan I give this policy limited weight.

16. The Council has provided appeal decision Ref: APP/W1525/W/18/3205058 to support the view that noise and disturbance would be unacceptable. As a development for three dwellings, 10 spaces and a more extensive driveway and circulation area, it is not directly comparable with the appeal proposal which I have considered on its individual merits.

No. 5 Paignton Avenue

17. Plot 2 would be adjacent to the rear (northern) boundary of the gardens of the properties on Paignton Avenue. Based upon the submitted drawings the new dwelling gable would measure approximately 11.6m in depth, 2.2m to the ground floor eaves, 5m to the first floor eaves, 8m to the ridge. The gabled flank elevation would be sited across the full width of the rear garden of No. 5 with only small gap between the flank and boundary.
18. The appellant has suggested the gap between No. 5's rear façade and the plot 2 dwelling is 16m, however, by virtue of some alterations to the rear of No. 5, the distance appears somewhat less. Even if this distance was, as advanced by the appellant, compliant with the draft minimum standards and guidance in Appendix A of the CDLP, and compliant with the Essex Design Guide, based upon my observations on site the extensive gabled flank wall would be harmful by reason of the height, depth, massing and close proximity to the boundary with No. 5. It would be such that it would result in a dominating and overbearing affect upon No. 5's garden and a significant loss of outlook from the rear windows.
19. The appellant has referenced the boundary hedgerow to mitigate the impact of the development. The narrow gap of approximately 1.2m – 1.3m between the new dwelling and boundary of No. 5, gives me little reassurance of the ability for the hedgerow to be retained and maintained to the effect the appellant suggests. In any event it would not adequately alleviate the harm.
20. For the reasons set out above, the development would conflict with Policy DC4 of the CSC, which expects development to safeguard the amenities of the occupiers of nearby properties by ensuring that development would not be visually intrusive or prejudice outlook. It would also conflict with paragraph 127(f) of the Framework, the relevant provisions to which I have referred to earlier. There would also be conflict with Policy PA1 of the CDLP by reason of being overbearing. However, due to the stage of the plan I give this policy limited weight.
21. The Council has provided appeal decision Ref: APP/W1525/W/18/3216528 to support their view that this development is unacceptable by reason of overshadowing, overbearing and visual intrusion. Whilst I note the contents of that decision, I have no other plans or details before me, and am not aware of the full circumstances that lead to the Inspectors decision. Consequently, I cannot make a meaningful comparison between the two proposals. In any event, I have assessed this appeal proposal on its own merits and impacts.

Other Matters

22. Reason for refusal No. 2 on the Council's decision notice 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. As it would provide a contribution towards mitigating impacts on the SPA and Ramsar site, as such, it would not have benefits that would weigh in favour of the scheme. However, in light of my findings on the main issues above, it is not necessary to look at this matter in detail, given the proposal is unacceptable for other reasons.
23. Although notably increasing the size of the existing dwelling, the proposed rear extensions to No. 69 Torquay Road would be acceptable in size and form and not result in harm to the character and appearance of the area or the living conditions of the occupiers of neighbouring properties. The new dwellings and extensions would be compliant with national and local planning policies concerning matters such as character and appearance, parking provision, amenity space provision, accessibility, the provision of residential accommodation in urban areas, and more efficient use of land.
24. The application was accompanied by a Tree Report which concludes the development would necessitate the removal of three low grade (category U) trees of low amenity value, which are not considered worthy of retention. All higher grade trees (A, B and C) would be retained and protected during construction.

Planning balance

25. The provision of two new dwellings and an enlarged dwelling on the appeal site would provide new residential accommodation in a relatively sustainable location, result in a small temporary economic benefit during construction, and once occupied a small sustained benefit to the local economy. These benefits attract modest weight in favour of the scheme. There would be a benefit from supporting strong, vibrant and healthy communities to which I attribute modest weight for the scheme. As the proposal would not be harmful to the character and appearance of the area, provide adequate parking and access, and living conditions for new occupants, these are a neutral factor in the balance.
26. However, I have found that the proposal would result in significant harm to the living conditions of the occupiers neighbouring properties, which attracts significant weight against the scheme. This leads me to conclude that the adverse impacts of the development significantly outweigh the benefits when assessed against the policies in the development plan and the Framework as a whole.
27. I have noted that the appellant advocates the proposed development is a sustainable development that meets the attributes of a sustainable development and should be approved without delay in accordance with paragraph 11 of the Framework. I do not have the evidence before me to suggest the approach in paragraph 11d) of the Framework would be engaged. I have determined the proposals in accordance with the development plan and other considerations do not indicate a different decision should be taken.

Conclusion

28. The proposed development would result in significant harm to the living conditions of the occupants of neighbouring properties. There are no considerations advanced which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR