



Appeal Decision

Site visit made on 7 January 2020

by D Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th January 2020

Appeal Ref: APP/V1505/W/19/3237742
28 Hillside Road, Billericay, CM11 2DA

- 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 Jonathan Bradford of Grange Europe Ltd T/a The Hygiene Company against the decision of Basildon Borough Council.
 - The application Ref: 19/00331/FULL dated 27 February 2019, was refused by notice dated 25 April 2019.
 - The development proposed is a new two-storey house.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During this appeal the appellant has provided amended plans (Ref: P1000 Rev. A, P1001 Rev. A and P1003 Rev. A). Amongst other things the plans increase the extent of the red line to the north east of the appeal site to incorporate a visibility splay, amend the internal layout of the first floor and move the window of bedroom 1 from the west to southern elevation.
3. The Basildon Borough Revised Publication Local Plan 2014 – 2034 (October 2018) (the BBRLP) was submitted to the Secretary of State in March 2019. At the time of my consideration of this appeal the BBRLP is yet to undergo examination and could be subject to change, therefore I afford its policies limited weight.

Main Issues

4. The main issues are the effect of the proposed development upon:
 - the living conditions of the future occupiers of the proposed new dwelling with particular regard to outdoor amenity space provision;
 - the living conditions of the occupiers of No. 26 Hillside Road with particular regard to outlook and privacy;
 - the character and appearance of the area; and,
 - highway safety.

Reasons

Outdoor amenity space

5. The development proposes the subdivision of the rear garden of No 28 Hillside Road, to create the plot for the proposed new two-storey dwelling which would front Gainsborough Close. The new dwelling would be located in a roughly central location within the new plot. It would result in a space only approximately 2m – 2.5m deep to the rear of the dwelling. Along the south side of the proposed dwelling the space would be approximately 3.5m wide bound by its shared boundary with No. 24 Gainsborough Close. In close proximity to the shared boundary is the gable wall of the garage and the deep two storey gable wall of the main dwelling of No. 24.
6. The appellant suggests a private amenity area of 56 square metres (sqm) to meet the standard in guideline DC21 of the Basildon District Council Development Control Guidelines (1997) (the DCG). However, there is no demarcation of private space by fencing on the plans before me and it is unclear how this would be achieved. Private amenity space should be both sufficiently private and be capable of meeting the likely needs of future occupiers as outdoor living space for domestic activities. This includes activities such as bin storage, drying clothes, sitting outside, play space, and gardening or landscaping opportunities.
7. As set out above, the areas to the south side and the rear of the dwelling are narrow and would be enclosed considerably by the new dwelling, fencing and No. 24 Gainsborough Close. Even if I were to assume a sufficient quantity of space could be made private, the narrow shape and considerable enclosure means these areas would not be pleasant or particularly useable as outdoor living spaces. The outdoor amenity space would be so narrow and enclosed that it would provide poor quality and harmful living conditions to the future occupiers of the dwelling.
8. For the reasons set out above the development would conflict with paragraph 127(f) of the National Planning Policy Framework (2019) (the Framework), which requires decisions should create places that promote health and well-being with a high standard of amenity.

Outlook and privacy

9. The rear of the proposed dwelling would be approximately 2m to 2.5m from the shared boundary with the garden of No. 26 Hillside Road. Along this part-gable elevation the new dwelling would have a width of approximately 6.2m and be approximately 4.6m high to the eaves and 7.2m high to the ridge. The scale and the position of the dwelling in relation to the depth and shape of the rear garden of No. 26 means the development would appear significantly over-dominant from the garden area and raised terrace of No. 26. The resulting loss of outlook would be significantly harmful to the living conditions to the occupiers of No. 26.
10. If I were to have assessed the development on the basis of the appellant's amended scheme, the blank first floor gable elevation increases the massing of the rear gable wall. This would increase over-dominance and the harm to the outlook from No. 26. As suggested by the appellant, the development appears to meet many DCG distances for spacing of new dwellings. However, these

distances are guidance only and not the only indicator of harm. DCG guideline DC2 requires developments should not lead to a loss of residential amenity. For the reasons I have set out above, the development does not comply with guideline DC2.

11. For the reasons set out above the proposed development would result in harm to the living conditions of the occupiers of No. 26 Hillside Road by reason of over-dominance and a loss of outlook. This would conflict with Policy BAS BE12 of the Basildon District Local Plan Saved Policies (September 2007) (the Local Plan) which states that permission will be refused for new development which would cause material harm by reason of being over-dominant. It would also conflict with paragraph 127(f) of the Framework, the relevant provisions of which I have already referred to above. For similar reasons that I have already outlined, there would be conflict with guideline DC2 of the DCG.
12. Part of the Council's reason for refusal relates to a loss of privacy from overlooking from the proposed first floor rear window of bedroom 1 to the rear garden area of No. 26 Hillside Road. The distance and position of this window would give clear and close proximity views resulting in a loss of privacy to the rear garden and terrace, that would be significantly harmful to the living conditions to the occupiers of No. 26. Moving the rear bedroom window to the southern side elevation as set out in the amended scheme, would mean the bedroom window faces onto the gable wall and roof of No. 24 Gainsborough Close. That amended arrangement would be likely to resolve the concerns in respect of overlooking into the garden of No. 26. However, based upon the evidence before me, it might give rise to other concerns such as a poor quality of outlook from the proposed bedroom 1.
13. In respect of loss of privacy, the scheme upon which the Council's decision was based would conflict with Policy BAS BE12 of the Local Plan and paragraph 127(f) of the Framework. In combination and amongst other things, these require development has adequate regard to and ensures development provides an adequate level of privacy.

Character and appearance

14. The two storey cross gable design would be a similar height and integrates similar design features to other properties on Gainsborough Close, which the front of the proposed development would face. In regard of height and design there would be no harm to the existing character and appearance of the area.
15. The dwellings on Gainsborough Close, have relatively shallow front gardens and parking areas, some as shallow as 4m between the front façade and highway boundary. The front façade being positioned only approximately 2.4m from the front boundary would be shallower than the other front gardens. However, when taken together with the spacing either side of the new dwelling, on balance the front and side spacings would be acceptable and not harmful to the character and appearance of the area.
16. The shallow depth of the rear amenity area however, would appear unusual in the area, which appears to be characterised by plot sizes and verdant rear gardens considerably larger than that proposed in the development before me. The proposed arrangement would result in such a shallow plot, that it would be likely to be highly discernible and appear incongruous from the street scene and from some of the neighbouring properties including Nos. 24, 26 and 28

Hillside Road. The small size of the rear amenity area would result in the development appearing cramped within its plot and being significantly at odds with and harmful to the character and appearance of the area.

17. For the reasons set out above the development would be harmful to the character and appearance of the area. It would therefore conflict with Policy BAS BE12 of the Local Plan which states that development will be refused which causes material harm to the character and appearance of the area. It would also conflict with paragraphs 127 and 130 of the Framework, which expect development to be sympathetic to and maintain local character and add to the quality of an area. The dwelling would appear to comply with guidelines DC3, DC9 and DC10 of DCG in respect of its relationship with neighbouring properties and frontage width. However, the considerably shallow nature of the rear amenity area would conflict with guidelines DC1 and DC2 of the DCG, which requires development respects or enhances the existing character of the area.

Highway safety

18. The Council's decision notice makes reference to the limited of visibility of pedestrians, when cars are egressing from the new parking spaces on the driveway. This is as a consequence of the parking being positioned close to the northern appeal site boundary, such that adequate visibility splays could not be incorporated on the northern side of the driveway. The amended scheme seeks to address this matter through amending the application area to incorporate 1.5m visibility splays, as requested by the Highway Authority. However, it has not been confirmed by the Council that the revised arrangement addresses the concerns. Therefore, I am unable to confirm that the concerns raised and the conflict with Policy BAS BE12 of the Local Plan has been resolved. However, even if the development were to provide adequate parking and visibility, this does alleviate or mitigate the other harm I have found above.

Other Matters

19. The appellant has referred me to a development close to the appeal site approved under Ref: 14/00680/FULL, although I've not been provided with the full details and circumstances of that development. I note the appellant's commentary on the scheme in relation to development to the rear of other dwellings and the spacing between those new properties. However, that development is significantly different and in a different context to the development subject of this appeal. In 14/00680/FULL where the new buildings are close to other neighbouring gardens, the new buildings are either single storey, or, those existing neighbouring gardens appear significantly larger and deeper than those adjoining this appeal site. These factors appear to significantly mitigate the impact of that development. Therefore, the approval of that development does not justify approval of the appeal scheme before me.
20. I note the appellant's commentary with regard to parking provision, flood risk, land contamination, landscape, ecology, air quality and meeting the requirements for the National Described Standard for internal space. Even if I were to assume the development is compliant in all these respects, compliance with those policies would be neutral factors.

21. The appellant has suggested that the policies most relevant to the supply of housing in the Local Plan are time expired and out of date with reference to their consistency with the Framework. Policy BAS BE12 of the Local Plan is saved by a direction from the Secretary of State, and its objective of seeking to ensure development does not cause material harm to living conditions, the character and appearance of the area and highway safety, is broadly consistent with the Framework. Therefore, Policy BAS BE12 is not time expired, and is broadly consistent with the Framework, and therefore attracts due weight.
22. Paragraph 59 of the Framework seeks to significantly boost the supply of homes. Paragraph 68 recognises the benefits of small sites, highlighting such sites are often built-out relatively quickly, giving great weight to the benefits of using suitable sites within existing settlements for homes. I have had regard to the appellant's quotes from appeal Ref: APP/H1840/A/13/2199426 and APP/H1840/A/12/2171339 in relation to the tilted balance, the benefits of the development, the level of harm, and the objectives of the Framework.
23. At the time of considering the application, the Council was of the view it could demonstrate a deliverable housing land supply of 2.4 years, whereas the Council's Five-Year Land Supply Report (2018 – 2023) suggests a deliverable supply of 2.6 years. Therefore, in accordance with paragraph 11 of the Framework the tilted balance applies.
24. The proposed development would result in the provision of a new dwelling, making more efficient use of land, in what can be considered a sustainable location well placed to access facilities and services. There would be a small temporary economic benefit resulting from construction, and once occupied a small sustained benefit to the local economy, some local facilities and services. There would be some small benefit from supporting strong, vibrant and healthy communities through the supply of a single two bedroom dwelling.
25. However, the harm to the living conditions of future occupiers with reference to outdoor private amenity space, the living conditions of occupiers of No. 26 Hillside Road with reference to outlook, and to the character and appearance of the area, would significantly and demonstrably outweigh the benefits of the development when assessed against the policies in the Framework as a whole.
26. I have found that the development would conflict with the development plan with regard to the harm to the living conditions of future occupiers, the living conditions of occupiers of No. 26 Hillside Road, and character and appearance. Therefore, in the context of paragraph 68 of the Framework it would not be a suitable site for the provision of a new dwelling and does not attract great weight. There are no other material considerations that would lead to a decision other than in accordance with the development plan.

Conclusion

27. For the reasons given, the appeal should not succeed.

Dan Szymanski

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