



Appeal Decision

Site visit made on 1 October 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal Ref: APP/M1520/D/20/3254428

53 Rhoda Road North, Thundersley, Benfleet, Essex SS7 3EH

- 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 G Mitchel against the decision of Castle Point Borough Council.
 - The application Ref 19/0845/FUL, dated 14 November 2019, was refused by notice dated 26 March 2020.
 - The development proposed was originally described as a two storey rear extension.
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Decision

1. The appeal is dismissed.

Preliminary Matter.

2. The description used above has been taken from the planning application form. At Part E of the Appeal Form it is stated that the description has not changed but, nevertheless, a different description has been entered that replicates that used by the Council in their decision notice. The amended description identifies that permission is sought for the retention of an existing single storey extension that has already been built and the addition of a first floor extension along with fenestration alterations. The appellant's statement identifies that the amended description is more accurate and, therefore, whilst I have used the original description in the heading above, I shall proceed on the basis of the amended description.

Main Issue

3. The main issue is the effect of the development on the living conditions of the occupiers of the dwellings of 51A and 55 Rhoda Road North with particular regard to privacy.

Reasons

4. The Council's Officer Report identified three relevant development plan policies but found no conflict with those policies. However, the Council concluded that the proposal would conflict with the National Planning Policy Framework (The Framework) and the Council's Residential Design Guidance Supplementary Planning Document (2013)(The RDG).
5. Along with extensions at the rear of the dwelling, one of which has been undertaken, the proposal would involve the insertion of a first floor window at each side of the existing building to serve bedrooms that would no longer have a rear facing window. Although the appellant's submissions do not provide definitive clarification, the use of the rooms served by those windows and the content of the appellant's submissions suggests that they would be clear glazed.

6. The proposed window facing 55 Rhoda Road North would enable occupiers of the dwelling at the appeal site to have views towards the windows and door in the side elevation of the neighbouring dwelling. Although some of those windows are fitted with obscured glazing and the positioning and use of the front door at the side of the neighbouring dwelling would reduce the privacy within the rooms served by some of the ground floor windows, which are also visible from the public domain at an acute angle, the proposed window would cause increased overlooking of the habitable rooms of the neighbouring dwelling. Although existing outbuildings would restrict views into parts of the neighbouring garden and the elevated position of the balcony at that property would reduce the privacy expectations of its users, the proposal would face the neighbouring dwelling in a manner that would increase the perception of overlooking that would be likely to detract from the living conditions of the occupiers of that property.
7. The Framework states that consideration should be given to whether unacceptable development could be made acceptable through the use of conditions and I have, therefore, considered the potential use of a condition to require the window to be fitted with obscured glazing and partially fixed shut. Whilst the appellant has indicated that such mitigation may be tolerated in the interests of providing enhanced living conditions in other respects, limiting the outlook of the habitable room served by that window would not be conducive to the provision of a high standard of amenity for future users as is required by The Framework. In this regard, The RDG also identifies that such measures should only be used for secondary windows or to serve rooms that are not occupied for a substantial period of time. Accordingly, it would not be reasonable to impose a condition to require those mitigation measures to be provided.
8. I do not find that considering whether to impose a condition similar to that which is contained within some Classes of Part 1 of Schedule 2 of The GPDO¹ indicates that The GPDO was used by the Council as a reason to refuse permission and, in any event, I have made my assessment based on the circumstances of the site and the guidance contained within The Framework.
9. The neighbouring dwelling of 51A Rhoda Road North, which is set at a lower ground level than the dwelling at the appeal site, features a clear glazed ground floor window in the side elevation that serves a study. As a result of the height of the proposed window in the elevation facing that dwelling, the angle of intervisibility between the proposed and existing windows would be sufficient to avoid an unacceptable loss of privacy within either dwelling.
10. Moreover, as the first floor windows in the neighbouring dwelling have been fitted with obscured glazing and the appellant's submissions indicate that those windows serve a bathroom and are required to be fixed shut below a defined height, the proposed window would not have a view into the first floor windows of the neighbouring dwelling. Furthermore, the relationship between the properties ensures that any overlooking of the neighbouring garden would be at an obscure angle and partially obstructed by the neighbouring dwelling. Therefore, the proposed window facing 51A Rhoda Road North would not cause an unacceptable loss of privacy within that dwelling or its garden.
11. The evidence before me indicates that installing first floor windows at the side of the existing building would materially change the external appearance of the building and, therefore, would be likely to constitute an act of development having regard to the definition provided by Section 55 of The Town and Country Planning Act 1990. Moreover, whilst the appellant has suggested that there is no condition

¹ The Town and Country (General Permitted Development) Order 2015 (as amended).

in place to prevent the insertion of windows in the side elevation of the building, a condition of The GPDO would restrict the type of window that could be installed. For these reasons, and as this appeal is not the arena to test the lawfulness of installing the proposed windows without obtaining planning permission, these factors do not lead me to assess the proposal differently.

12. The appellant has identified other windows at the side elevation of dwellings around the appeal site, some of which feature clear glazing, and suggests that the Council has acted inconsistently. However, as each proposal should be considered on its own merits, my assessment is based on the relationship between the proposed development and neighbouring properties rather than any other development. Moreover, the absence of objections from neighbouring residents does not alter my assessment of the effect of the proposal.
13. For the reasons given above, whilst the relationship of the proposal with the neighbouring property of 51A Rhoda Road North would be acceptable, the development would have an unacceptable effect on the living conditions of the occupiers of 55 Rhoda Road North with particular regard to privacy. The development would, therefore, be contrary to paragraph 127 of The Framework which states that development should create a high standard of amenity for existing and future users.
14. The proposal would also be contrary to Policy RDG5 of The RDG which, in addition to the requirements set out above, states that windows serving habitable rooms should be provided on principal elevations and that first floor windows at side elevations should be no closer than 9 metres from the boundary of the site unless the circumstances of the site or the design of the proposal indicates otherwise. Whilst the appellant has identified that the guidance within The RDG constrains opportunities to make efficient use of land, it is consistent with the abovementioned requirement of The Framework relating to the creation of a high standard of amenity and I therefore afford that guidance substantial weight.

Other Matters

15. The appellant has identified that the provision of two additional bedrooms to serve the occupiers of the existing dwelling would be a benefit of the proposal. Moreover, the appellant has suggested that the proposal would represent the optimisation of the use of the site and an increase of the intensity of occupation of the dwelling in a manner that accords with The Framework. However, as the proposal would amount to the provision of two additional bedrooms and the retention of a ground floor extension, the public benefits arising in these respects would be minimal.

Conclusion

16. Whilst the development would be acceptable in some respects and no conflict with any development plan policies has been brought to my attention, the proposal would have an unacceptable effect on the living conditions of the occupiers of 55 Rhoda Road North and would, therefore, be contrary to The Framework and The RDG. The harm caused in this respect demonstrably outweighs the limited benefits of the proposal that have been identified by the appellant. Therefore, I conclude that the appeal should be dismissed.

Ian Harrison

INSPECTOR