



Appeal Decision

Site visit made on 8 December 2020

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd January 2021

Appeal Ref: APP/M1595/W/20/3256193

7 Churchill Road, Grays RM17 6TW

- 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 Gediminas Racinkas against the decision of Thurrock Borough Council.
 - The application Ref 19/01518/FUL, dated 6 October 2019, was refused by notice dated 27 March 2020.
 - The development proposed is described as the "erection of new 1no 2 bed dwelling to flank wall of existing property with vehicular access and associated landscaping".
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the development in the banner above is taken from the Council's decision notice as it more accurately reflects the proposed development.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on:
 - flood risk;
 - highway safety; and;
 - the living conditions of the host property and adjoining occupiers with particular regard to overbearing effect and outlook.

Reasons

Flooding

4. The site lies within Flood Zone 3a which has a high probability of flooding. The National Planning Policy Framework (the Framework) requires at paragraphs 157 and 158 that the application of a sequential test is undertaken which seeks to steer new development to areas with the lowest probability of flooding. Although the appellant has not undertaken a sequential assessment, the Council confirm that there are no other sites in this location that are at a lower flood risk level.
5. Consequently, if it is not possible for a development to be located within zones with a lower risk of flooding, the exception test at paragraph 160 of the Framework may have to be applied. For the exception test to be passed, it

- should be demonstrated that a) the development would provide wider sustainability benefits to the community that outweigh the flood risk and b) the development would be safe for its lifetime without increasing flood risk elsewhere. Paragraph 161 of the Framework states that both elements of the exception test should be satisfied for the development to be permitted.
6. The Council accepts that the development would provide a dwelling that contributes towards its five year housing land supply position. It would also make effective use of land within an accessible location. Consequently, there are wider benefits of the development that would comply with part a) of the exception test. However, in considering part b) of the exception test, the Council argue that the appellant has failed to demonstrate that the development would be safe for its lifetime without increasing flood risk elsewhere.
 7. The appellant submitted a Flood Risk Assessment¹ (FRA) in support of the development which states that it considered setting finished floor levels (FFL) above the 1 in 200 year annual probability of tidal flooding, including an allowance for climate change. However, the appellant states that it is not possible to set the FFL above this level due to other planning constraints, with the residual risk mitigated by implementing flood resistance and resilient measures.
 8. The Environment Agency (EA) considered the appellant's FRA stating that it does not comply with the requirements of the national Planning Practice Guidance and it does not provide a suitable basis for assessment to be made of the flood risks arising from the development. The FRA is also lacking on several grounds such as assessing breach risk for the development, correctly calculating expected flood depths on site and within the building, providing FFL above design levels with climate change and failing to provide a topographical survey.
 9. Without a more comprehensive and site specific FRA, which deals with the deficiencies identified by the EA, and also demonstrates that the development will be safe from flooding and will not increase risk elsewhere, an objection to the development from the EA remains. Therefore, in taking the precautionary approach, I am not persuaded that it has been satisfactorily demonstrated that the development would be safe for its lifetime without increasing flood elsewhere. Thus, it would be in conflict with paragraph 160 of the Framework.

Highway safety

10. The appellant has provided a plan detailing two parking spaces that would be associated with the proposed dwelling and accessed off Churchill Road. The Council's Highways Officer has requested additional information regarding the forward visibility splays and pedestrian splays as these matters could result in safety issue at the site. The appellant states that a condition to control such matters would be acceptable.
11. At my visit I saw the proposed parking spaces which have already been provided at the site. It is clear that in order to navigate from the spaces onto the highway, a vehicle would be required to cross the pavement to the front of the site. However, visibility to the south would potentially be impeded by the

¹ UK Flood Risk Consultants, Ref QFRA 1069 v1.0 dated 16/07/2018

fence that adjoins 9 Churchill Road. Thus, I cannot be certain that the proposal would be safe in terms of both pedestrian and highway safety. In such circumstances it is essential that the appellant is able to demonstrate suitable visibility splays can be achieved for the development and I am not satisfied that this matter should be the subject of a planning condition.

12. Thus, the development would result in harm to highway safety. It would be in conflict with Policies PMD8 and PMD9 of the Thurrock Borough Council Core Strategy and Policies for Management of Development 2015 (CS&PMD) which seek, amongst other things, to ensure developments provide appropriate access, prevent inappropriate on street car parking, and ensure developments do not impinge upon highway safety.

Living Conditions

13. The appeal site lies on the corner of Churchill Road and Medlar Road and as a result, has a larger rear garden than surrounding properties which extends to the side of the property. It is proposed to erect a dwelling that would be sited between the host property and 9 and 11 Churchill Road (9 and 11) to the south. It would be attached perpendicular to the host property, severing the garden area to provide an amenity area for each unit.
14. The Council argue that the siting of the proposed dwelling would have a dominant and overbearing impact on the neighbouring properties at 9 and 11 Churchill Road, as well as the host property. Specifically, the Council cite the effect of the flank wall that would face onto 9 and 11 and the rearward projection that would be close to a bedroom window of the host property.
15. The Council calculate that the flank wall of the proposed dwelling would be sited some 14m and 16m from the neighbouring dwellings at 9 and 11 respectively, which is not disputed by any party. I find this to be a comparable distance between other properties in the vicinity such as that between 1 and 5 Churchill Road to the north of the site. Moreover, the development would not be sited immediately adjacent to the shared boundary with 9 and 11, allowing the proposed dwelling to be set back within its site. For these reasons, I am not persuaded that the proposal would result in an overbearing or indeed a domineering development that would have a detrimental impact on the living conditions that the occupiers of 9 and 11 currently enjoy.
16. The Council also refer to the window serving the second bedroom of the host property. Although I acknowledge that the proposed dwelling would extend beyond the rear elevation of the host property by some 3.8m, the outlook from the bedroom window would still allow views across the rear of the site and towards the property at 2 Medlar Road, to the east of the site.
17. Thus, the proposal would not result in harm to the living conditions of adjoining occupiers as a result of over dominance or an overbearing development. It would not be in conflict with Policies CSTP22, PMD1 and PMD2 of the CS&PMD and paragraph 127 of the Framework which seek, amongst other things, to ensure that developments do not cause unacceptable effects on the amenities of the area.

Other Matters

18. I acknowledge that the development would boost the supply of housing in the area and that it would create economic benefits during its construction and

potentially from increased local spending from the occupiers of the dwelling. I also accept that there are both employment and economic challenges resulting from the Covid-19 pandemic. However, neither this nor any other material consideration that has been advanced outweighs the harm that I have identified above.

19. Given the orientation of the development to the north of 9 and 11, it is unlikely to result in overshadowing to their rear gardens. Furthermore, as windows are not proposed in the side elevation, overlooking towards 9 and 11 would not occur. I have not been presented with any substantive evidence that the subdivision of the plot would increase noise within the site. The planning system is concerned with land use in the public interest and as land values are a private interest, it is not material to the determination of this appeal.

Conclusion

20. For the reasons given above, and having regard to the development plan when read as a whole, the appeal is dismissed.

Graham Wyatt

INSPECTOR