



Appeal Decision

Site visit made on 21 January 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2021

Appeal Ref: APP/Z1510/W/20/3259741

44 Allectus Way, Witham, CM8 1NZ

- 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 Ms Juliette De Crem against the decision of Braintree District Council.
 - The application Ref 19/01618/FUL, dated 13 September 2019, was refused by notice dated 24 March 2020.
 - The development proposed is change of use from public open space to garden land.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect of the proposal on the character of the area and the street scene.

Reasons

3. The application site is located within a residential part of the town, the immediate area of which has been laid out with blocks of 4 attached houses around axes in the form of a cross so that the houses have 2 adjoining outward-facing elevations. These houses are set within large open spaces between the groups of dwellings. The proposal is to adopt part of the open space, designed as public amenity space, as part of the garden of No. 44 Allectus Way.
4. The proposal is therefore for the change of use of public open space to private garden land. The Adopted Local Plan seeks to ensure that there would be no adverse impact on the character and appearance of the surrounding street scene from such change of use. Policy RLP25 of that plan states that garden extensions in built up areas will only be permitted where (as applicable in this case):
 - there would be no adverse effect on the amenities of neighbouring properties;
 - it would not take away open areas originally designed, or intended to function as open space.
5. It appears that the owners of the estate are Greenfields Community Housing (Greenfields) which, it seems, had previously permitted a number of occupiers of houses in the area to extend gardens in the same fashion as proposed in this

appeal. The appellant had applied to Greenfields, seeking permission to do the same. This apparently was initially met with a positive response, but after much delay the appellants were advised by Greenfields that this was no longer allowed by them as it was a change of use of land. The appellant was told to apply for planning permission, which has led to the refusal now the subject of this appeal.

6. The appellant's case can be put simply: that at least 10 properties have extended their gardens in a similar manner, the garden extension applied for would allow the sun to be enjoyed later in the day, adding to the amenity of the house, and that the precedent had already been set by Greenfields in allowing public land to be leased for private gardens.
7. This case depends upon public planning policy, rather than the policy of a landlord, as a change of use of open space to a private garden requires planning permission. The fact that there are other cases in the area where changes have occurred without planning permission does not amount to a precedent. The estate layout of this area depends on the amount of public open space that surrounds the blocks of dwellings for its character and its success as a very open environment. I can see that the proposal would not be particularly harmful to the living conditions of the immediate neighbours to the appeal property, but it would take away open areas originally designed and intended to function as open space. As can be seen from the other examples cited, there is some appetite for garden extensions in the area, and to allow this proposal would make it more difficult for the council to resist similar proposals in the future. Considerable harm to the character of this housing estate could occur if this proposal and others were permitted.

Conclusion

8. I conclude that, whilst there would be private benefits to the appellant's household from the change of use sought, this would be at the expense of harming the character and appearance of the area and the wider street scene within which it sits. It would thus be contrary to Policy RPL25 of the adopted Local Plan. For this reason I shall dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR