
Appeal Decisions

Site visit made on 20 July 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2021

Appeal A Ref: APP/D1590/W/20/3266084

26 and 30 Lime Avenue, Leigh on Sea SS9 3PA

- 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 Anthony Bishop and Mr Steve Avery against the decision of Southend-on-sea Borough Council.
 - The application Ref 20/00923/FUL, dated 11 June 2020, was refused by notice dated 11 September 2020.
 - The development proposed is described as 'two new dwellings to the rear of 26 and 30 Lime Avenue'.
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Appeal B Ref: APP/D1590/W/21/3269166

26 and 30 Lime Avenue, Leigh on Sea SS9 3PA

- 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 Anthony Bishop and Mr Steve Avery against the decision of Southend-on-sea Borough Council.
 - The application Ref 20/01970/FUL, dated 19 November 2020, was refused by notice dated 21 January 2021.
 - The development proposed is described as 'two new bungalows to the rear of 26 and 30 Lime Avenue'.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. As set out above, there are two appeals on this site. I have considered each proposal on its own individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. The appellant has submitted a Preliminary Ecological Assessment with Appeal A. This is technical evidence that does not materially change the proposal. It can be accepted without prejudicing the interests of any parties. Following consideration of this information, the Council has advised that they no longer wish to contest the fourth reason for refusal relating to local ecological assets.
5. The Government published a revised version of the National Planning Policy Framework (the Framework) on 20 July 2021. The main parties were given the opportunity to comment on any implications for the appeals of this change, and

I am satisfied that no prejudice would be caused by my consideration of the appeal in light of the revised Framework.

Main Issues

6. The main issues for Appeal A are:

- i. the effect of the proposed development on the character and appearance of the area; and,
- ii. the effect of the proposed development on the living conditions of the occupiers of No 2A Belfairs Close, with particular regard to privacy; and,
- iii. whether the proposed development would provide an acceptable living environment for future occupiers, with particular regard to privacy.

The main issue for Appeal B is the effect of the proposed development on the character and appearance of the area.

Reasons

Character and appearance (Appeals A and B)

7. The area predominantly consists of residential buildings of varied architectural design that are positioned in a linear arrangement set back from the road behind front gardens. Lime Avenue has a leafy, suburban character due to the grassed verges and street trees, and the gaps between the buildings which enable glimpsed views of trees and vegetation to the rear. There is a verdant character to the rear of the properties in the vicinity of the appeal site due to the long rear gardens, which include mature trees and greenery. I note the appellant's comment that the appeal site is not currently used as a residential garden, nevertheless its openness and greenery contribute positively to the green and spacious character of the area.
8. The proposals in Appeals A and B each consist of 2 dwellings located to the rear of Nos 26 and 30 Lime Avenue. The dwellings proposed in Appeal A are designed with a half-hipped roof and feature a 2 storey glazed front gable with first floor front and rear dormer windows, which would facilitate first floor living accommodation. The dwellings proposed in Appeal B are designed with a hipped roof, with rooflights to the side and rear. No first floor living accommodation is proposed in Appeal B. The dwellings would have a single storey front projection with a hipped roof.
9. The proposals in both Appeals A and B would constitute development of a significant scale in this back garden setting. The proposed dwellings would be of a much greater height, bulk and footprint than neighbouring domestic outbuildings and would appear prominent from adjacent properties and their gardens. The location of the proposed dwellings to the rear of the established built frontage, with associated access road and parking, would add considerable built form and hard-surfacing, resulting in a loss of greenery and openness, which would significantly erode the verdant character of the area. The proposed dwellings would be isolated and at odds with the prevailing linear arrangement of dwellings in Lime Avenue. Whilst there are trees and vegetation around the site boundaries which could be supplemented, I find that this would not provide adequate mitigation.

10. I acknowledge that there is an existing development of 3no houses to the rear of the appeal site in Belfairs Close, nevertheless this is in a different context as it forms part of a group of dwellings accessed from the end of the cul-de-sac in Belfairs Close. The prevailing pattern of development in Lime Avenue consists of a linear arrangement of dwellings with long rear gardens, and I have considered the appeal scheme on its own merits.
11. For the above reasons, I conclude that the proposed development in Appeals A and B would cause significant harm to the character and appearance of the area. The proposals would therefore be contrary to Policies KP2 and CP4 of the Southend-on-Sea Core Strategy 2007 (the Core Strategy), Policies DM1 and DM3 of the Southend-on-Sea Development Management Document 2015 (the DMD) and the advice contained within the Southend Design and Townscape Guide (2009), which, amongst other things, state that all development should add to the overall quality of the area and respect the character of the site, its local context and surroundings. The proposals would also conflict with Chapter 12 of the National Planning Policy Framework and advice contained in the National Design Guide, which, amongst other matters, seek the creation of high quality places and ensure that developments are sympathetic to local character.

Living conditions of neighbouring occupiers (Appeal A)

12. The proposed dwellings would have first floor dormer windows in the rear elevation. Given the orientation and relationship of the dormer windows to the main habitable windows in the rear elevation of No 2A Belfairs Close, there would only be oblique views from the proposed dwellings towards the neighbouring habitable rooms. Furthermore, I note that No 2A has windows in the side elevation which face the appeal site, however these windows appear to be secondary in nature and the boundary fence provides some screening to the ground floor windows. Taken together with the degree of separation that would be provided between the proposed and existing windows, the appeal scheme would not cause an unacceptable loss of privacy to neighbouring occupiers.
13. The proposed first floor dormer windows would look towards the rear garden of No 2A. Nevertheless, the appeal site is located in a settlement where a degree of mutual overlooking of gardens is to be expected. Having regard to the first floor position of the dormer windows and the distance maintained to the boundary, the proposal would not cause an unacceptable level of overlooking into the neighbouring garden.
14. The Council has drawn my attention to a previous appeal decision¹ for a proposal to the rear of No 30 Lime Avenue where the Inspector identified a significant loss of privacy for the occupiers of No 2A. Nevertheless, that proposal related to a 3 storey dwelling including large second floor windows. The proposal before me does not include second floor rear windows and it would be 2 metres further from the boundary. It is therefore a materially different scheme. Whilst I have had regard to the previous appeal decision, I have considered the proposal on its own merits.
15. For the reasons above, I conclude that the proposed development would not cause significant harm to the living conditions of the occupiers of No 2A Belfairs Close, with particular regard to privacy. The proposal would therefore accord

¹ Appeal ref: APP/D1590/W/15/3003827

with Policies KP2 and CP4 of the Core Strategy and Policies DM1 and DM3 of the DMD, which amongst other things, seek to protect the amenity of immediate neighbours having regard to matters including privacy and overlooking. The proposal would also accord with paragraph 130 of the Framework, which amongst other things, seeks a high standard of amenity for existing and future users.

Living environment for future occupiers (Appeal A)

16. As noted above, the appeal site is located in a settlement where a degree of mutual overlooking of gardens is to be expected. The upper floor windows of No 2A Belfairs Close would afford views towards the rear gardens of the proposed dwellings, however these would be oblique in nature and maintain a reasonable separation. Therefore, I find that the future occupiers of the proposed dwellings would be provided with sufficient privacy.
17. For the reasons above, I conclude that the proposed development would provide an acceptable living environment for future occupiers, with particular regard to privacy. The proposal would therefore accord with Policies KP2 and CP4 of the Core Strategy and Policies DM1, DM3 and DM8 of the DMD, which amongst other things, seek to provide high quality residential layout. The proposal would also accord with paragraph 130 of the Framework, which amongst other things, seeks a high standard of amenity for existing and future users.

Other Matters

18. The proposed development would be located within the Zone of Influence of the Benfleet and Southend Marshes Special Protection Area and Ramsar (the SPA). The SPA is a designated habitat site which is subject to statutory protection under the Habitat Regulations. Had the proposals been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority. However, regulation 63(1) of the Habitat Regulations indicates that the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. As I am dismissing the appeals for other reasons, it has not been necessary for me to consider this matter further.

Planning balance and conclusion

19. The Council is unable to demonstrate a deliverable 5 year housing land supply. Furthermore, the Housing Delivery Test results published 19 January 2021 show that the Council has a measurement of just 36% of homes delivered against its requirement over the previous 3 years. In these circumstances, the most important policies for determining the application are out-of-date in accordance with footnote 8 of the Framework. Paragraph 11(d) ii of the Framework is therefore engaged.
20. Paragraph 60 of the Framework sets out the Government's objective of significantly boosting the supply of housing. The developments proposed in Appeals A and B would provide 2 dwellings in an accessible location close to various modes of transport, services and facilities, which would make a small contribution towards the supply of housing in the Borough. Small sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly, as indicated in paragraph 69 of

the Framework. The proposals would also create some employment at the construction stage, although this would be relatively short lived and so a relatively limited benefit. The occupiers of the proposed dwellings would help to support local facilities and services, although the economic contribution arising therefrom would be limited again by the scale of the proposals. Taking the benefits together, and for the reasons I have given, I would afford them modest weight.

21. Paragraph 124 of the Framework states that planning decisions should support development that makes efficient use of land, taking into account the desirability of maintaining an area's prevailing character and setting, amongst other matters. In this case, whilst the proposals would make a contribution of 2 dwellings towards housing supply, the developments proposed in Appeals A and B would cause significant harm to the character and appearance of the area and so the environmental role of sustainable development would not be achieved. The Framework sets out the importance of achieving well-designed and attractive places, and to ensure that developments are sympathetic to local character. Consequently, I afford significant weight to the harm to the character and appearance of the area and the associated conflict with the development plan.
22. Even if I had found that the proposals would avoid an adverse effect on the integrity of the SPA, and hence that there was not a clear reason for refusing the development proposed, I conclude that the identified adverse effects of the proposal would significantly and demonstrably outweigh the benefits outlined above, when assessed against the policies in the Framework taken as a whole.
23. The proposals would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeals are dismissed.

C Osgathorp

INSPECTOR