
Appeal Decision

Site visit made on 28 September 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021.

Appeal Ref: APP/D1590/W/21/3268361

46 Theobalds Road, Leigh-on-Sea SS9 2NE

- 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 Helen Laudat against the decision of Southend-on-sea Borough Council.
 - The application Ref 20/01782/FUL, dated 23 October 2020, was refused by notice dated 31 December 2020.
 - The development proposed is described as 'a two-storey, two-bedroom dwelling replacing an existing, single-storey garage in a suburban, residential area'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the character and appearance of the street scene and the surrounding area.
 - The effect of the proposed development on the living conditions of the occupiers of neighbouring properties at Nos 32, 36 and 38 Western Road, with particular regard to outlook and privacy.
 - Whether the proposed development would provide an acceptable living environment for future occupiers, with particular regard to the size and usability of the outdoor amenity space.

Reasons

Character and appearance

3. Theobalds Road predominantly consists of a linear arrangement of 2 storey dwellings and chalet bungalows of varied architectural design that are set back from the road behind front gardens. Whilst there is some variation in the spacing of the buildings, the gaps are generally quite large. Having regard to the setback of the houses from the road; the degree of separation between the buildings; and, the trees and soft landscaping, I saw that the street scene has a spacious, suburban character. The appeal site currently comprises a single storey garage and a driveway/lawn, which provides a generous visual separation between the rear of the properties in Western Road and No 46 Theobalds Road. This contributes positively to the spacious character of the area.

4. The ground floor of the proposed dwelling would have a roughly square footprint, which would be sited to run parallel with the dwellings in Western Road, whereas the first floor would be rectangular in plan and orientated to align with the properties in Theobalds Road. The rendered walls of the first floor would project forward of the brick ground floor walls and would be supported by posts.
5. I accept that a contemporary design approach can be acceptable where it responds positively and sympathetically to its context. This is recognised in broad terms by paragraph 130 of the National Planning Policy Framework 2021 (the Framework), which sets out how development should be 'sympathetic to local character and history'. In this instance, I find that the diverging alignment of the ground and first floors would create a disjointed and incoherent appearance that would not respect the regular siting and alignment of the dwellings in the local context. In this regard, the proposal would not achieve high quality design.
6. Based on the appellant's 'Site Analysis' overhead image¹, it appears that the dwelling would be sited to respect the building line in Theobalds Road. Nevertheless, the proposed site plan only shows the positioning of the proposed dwelling in relation to the site boundaries and so it does not demonstrate its relationship to the surrounding buildings. Whilst the plot is relatively wide at the site frontage, it narrows to the rear. The proposed dwelling would cover most of the width of the plot and it would have a small rear garden compared with the typical garden sizes in the area. Because of the location of the proposed dwelling close to the rear of the dwellings in Western Road and the uncharacteristic proportion of site coverage compared to the surrounding housing, the proposal would be cramped on the site and harm the spacious character of the area.
7. For the above reasons, I conclude that the proposed development would cause significant harm to the character and appearance of the street scene and the surrounding area. The proposal 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 proposal would also conflict with Chapter 12 of the 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 properties

8. The appeal site includes an existing detached garage which is positioned across most of the width of No 36 Western Road's rear boundary. The visual impact of the garage on the neighbouring property is limited by its height and the pitched roof which slopes away from the boundary. The proposed development would replace the garage with a brick side wall of greater prominence. Whilst the first floor element would be sited further from the boundary and feature a pitched roof, I find that the overall bulk of the proposal and its location in relation to

¹ Appendix 2 of the Appellant's appeal statement

the boundary would appear overbearing and cause an unacceptable sense of enclosure to the main outdoor amenity area of No 36 Western Road, which would harm the living conditions of the occupiers of the neighbouring property. This would not be adequately mitigated by the vegetation in the rear garden of No 36 because it is a natural feature which cannot be relied upon in perpetuity to screen the proposed development.

9. The proposed dwelling would have a more oblique relationship to Nos 32 and 38 Western Road and so it would not cause a significant loss of outlook to these properties.
10. Regarding privacy, the appeal site is located in a settlement where a degree of mutual overlooking of gardens is to be expected. However, in this instance, the first floor rear Juliet balcony serving the bedroom would be very close to the rear boundary, and its orientation would afford elevated views directly towards the main outdoor amenity area of No 32. Whilst the vegetation within the appeal site would provide some screening, this would be less so during winter months when vegetation is not in leaf, and its natural qualities mean that it cannot be relied upon as a permanent screen. The proposal would therefore cause an unacceptable level of overlooking and a significant loss of privacy to the occupiers of the neighbouring property.
11. I have had regard to the appellant's reference to an appeal decision at Brentwood Blood Centre², however full details of that case are not before me and I have considered the appeal scheme on its own merits. Moreover, I note the Inspector's comments that whilst there would be some overlooking of the end of the gardens, the windows would be set a substantial distance from the private sitting out areas. This is not the situation in respect of the current appeal.
12. The main upper floor windows would not afford direct views into Nos 36 and 38 Western Road and so there would not be a significant loss of privacy to the occupiers of these properties.
13. For the reasons above, I conclude that the proposed development would cause significant harm to the living conditions of the occupiers of Nos 32 and 36 Western Road. The proposal would therefore be contrary to 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, overlooking outlook and visual enclosure. The proposal would also conflict with paragraph 130 of the Framework, which amongst other things, seeks a high standard of amenity for existing and future users.

Living environment

14. The Council does not operate measurable standards for minimum garden size. Therefore, judgements need to be made in relation to the size and functionality of the garden. In this regard, the proposal comprises only 2 bedrooms and I find that the size of the garden would be adequate for the purposes of recreation and sitting outside. Furthermore, I do not consider that No 46 Theobalds Road would appear overbearing in relation to the proposed garden space. Nevertheless, the modest garden area would be significantly

² Appeal ref. APP/H1515/W/20/3247990

overlooked by the nearby first floor rear windows of No 32 Western Road, which would harm the privacy of the future occupiers of the proposed dwelling.

15. For the reasons above, I conclude that the proposed development would not provide an acceptable living environment for future occupiers. The proposal would therefore conflict 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, including provision for usable private outdoor amenity space for the enjoyment of intended occupiers. The proposal would also be contrary to paragraph 130 of the Framework, which seeks a high standard of amenity for existing and future users.

Other Matters

16. 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 proposal 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 appeal for other reasons, it has not been necessary for me to consider this matter further.

Planning balance and conclusion

17. 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.
18. Paragraph 60 of the Framework sets out the Government's objective of significantly boosting the supply of housing. The proposed development would provide one dwelling 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 proposal would also create some employment at the construction stage, although this would be relatively short lived and so a limited benefit. The occupiers of the proposed dwelling would help to support local facilities and services, although the economic contribution arising therefrom would be limited again by the scale of the proposal. Taking the benefits together, and for the reasons I have given, I would afford them modest weight.
19. 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 proposal would make a contribution of one dwelling towards housing supply, it 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. Furthermore, the proposal would be harmful to the living conditions of the occupiers of Nos 32 and 36 Western Road, and it would not provide an acceptable living environment for future occupiers, which attracts significant weight.

20. Even if I had found that the proposal 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.
21. The proposal 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 appeal is dismissed.

C Osgathorp

INSPECTOR