



Appeal Decision

Site visit made on 17 January 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2022

Appeal Ref: APP/D1590/W/21/3274494

34 Elmsleigh Drive, Leigh on Sea SS9 3DN

- 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 Duncan Reed (Eton-Southchurch Property Limited) against the decision of Southend on Sea Borough Council.
 - The application Ref 20/02157/FUL, dated 16 December 2020, was refused by notice dated 9 April 2021.
 - The development proposed is described as the “proposed demolition of existing bungalow and replace with 3no. town-house style dwellings”.
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Decision

1. The appeal is allowed and planning permission is granted for the proposed demolition of existing bungalow and replace with 3no. town-house style dwellings at 34 Elmsleigh Drive, Leigh on Sea SS9 3DN in accordance with the terms of the application, Ref 20/02157/FUL, dated 16 December 2020, subject to the conditions on the attached schedule.

Applications for costs

2. An application for costs was made by Mr Duncan Reed (Eton-Southchurch Property Limited) against Southend on Sea Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the submission of the appellant’s appeal, the revised National Planning Policy Framework (the Framework) was published and came into force on 20 July 2021. In this instance, the issue most relevant to the appeal remains unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action.

Main Issue

4. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

5. The appeal site contains a single storey dwelling located within an area that is generally suburban in character and lies close to the amenities, services and transport links within Leigh on Sea. Elmsleigh Drive itself is a predominantly residential street, containing a variety of style and size of property. Although

there are bungalows in the vicinity of the site, there are also examples of detached and semi-detached two storey dwellings.

6. The proposal seeks to demolish the existing bungalow and replace it with a terrace of three, town house style properties. The Council's reason for refusal refers to the cramped and over-intensified nature of the development which in turn is considered to represent overdevelopment of the site.
7. Although single storey, when viewed from the road, the existing building extends the width of the plot as a result of the garage that is attached to the dwelling. Whilst I accept that the proposed dwellings would be sited close to its side boundaries, pedestrian access to the rear is provided, similar to other properties in the area. Furthermore, it is evident that the proposed dwellings would meet expected space standards and provide adequate private garden areas to the rear of the properties. Parking would also meet expected standards required for the type and size of properties proposed.
8. On the whole, the area is varied and diverse and the introduction of the development as proposed would not result in the erosion of any identified or established character. I find the overall design and layout of the development to add interest to the street scene and given its variation, I also find that the area has the capacity to accept the development in the form proposed. The proposed development would assimilate with the surrounding pattern of development, without resulting in harm to its character or appearance.
9. Thus, I do not find the layout of the dwellings to be out of keeping with the general character of the area. It would not be in conflict with Policies KP2 and CP4 of the Southend on Sea Core Strategy 2007, Policies DM1 and DM3 of the Southend on Sea Development Management Document 2015 and paragraph 130 of the Framework which seek, amongst other things, to ensure that developments add to the overall quality of the area and respect the character of the site, its local context and surroundings.
10. In reaching this decision, I have also had regard to the Southend on Sea Design and Townscape Guide Supplementary Planning Document 2009.

Other Matters

11. I note that representations were made by local residents, raising additional concerns regarding the effect of the development on the living conditions of adjoining occupiers, with particular regard to outlook and privacy at 36 Elmsleigh Drive (No. 36). I had the opportunity to view the appeal site from the garden area and kitchen window within No. 36.
12. Although the sites are currently separated by a wall, the property within the appeal site is clearly visible from within No. 36. It is also evident that there are a number of examples of bungalows and two storey dwellings that are developed adjacent to one another. In such a tightly knit suburban location, it would be expected that properties would be positioned close to one another without unduly harming the living conditions that one would expect to enjoy. Moreover, the windows in the proposed flank elevation facing towards No. 36 would only contain a door at ground floor level and an obscurely glazed bathroom window at first floor level. This would not result in any undue overlooking occurring from the proposed development.

13. Furthermore, although the proposal would result in a two storey dwelling positioned where a bungalow previously stood, the outlook afforded to the kitchen and indeed the bathroom windows that face into the appeal site is already diminished. In this instance, given the distance of the proposal from the shared boundary, that the development would not extend beyond the rear elevation of No. 36, and its tight knit suburban location, I am not persuaded that the outlook or light afforded to No. 36 would be unduly affected to a significant degree.
14. Moreover, noise and disturbance is an unfortunate effect of development. However, to protect the amenities of surrounding occupiers, the hours of construction shall be limited. Additionally, the development shall also be carried out in accordance with the Construction Method Statement (CMS)¹ submitted by the appellant in support of the planning application. This includes details of vehicle manoeuvring, turning and parking during construction, dust suppression, noise mitigation measures and procedures to deal with complaints from local residents.
15. I am therefore satisfied that provided the development is carried out in accordance with the CMS, it will not affect the living conditions of surrounding occupiers to an unacceptable level. Landscaping details will also be the subject of a planning condition and the appellant has stated that asbestos identified within the existing building will be removed by specialist contractors before any demolition of the site occurs. Whether the properties are to be rented or sold privately is not material to the matters before me.

Conditions

16. The Council has suggested a number of conditions that I have considered in accordance with the Framework and the national Planning Practice Guidance. Along with the standard time condition (1), the approved plans should also be specified to provide certainty (2).
17. In the interest of the visual amenity of the area, samples of the materials (3) to be used in the construction of the development and landscaping (4) shall be agreed with the Council. To ensure that the proposal includes sustainable development measures, a scheme detailing at least 10% of the total energy needs of the dwellings shall be from renewable sources (5) and agreed with the Council. Additionally, to minimise the environmental impact of the proposal, water efficiency shall be designed into the development to limit internal water consumption (6).
18. In order to protect the amenities of surrounding occupiers the working hours (7) associated with the development shall be limited and details of refuse, recycling storage and cycle parking (8), shall be agreed with the Council. The development shall also be carried out in accordance with the CMS (10) submitted in support of the planning application and the first floor windows in the north and south elevations shall be obscurely glazed (11). In the interest of highway safety, the development shall provide parking spaces (12) as shown on the approved plans.

¹ Construction Method Statement, Eton Southchurch, 10th February 2021

19. To ensure that the development is fully accessible, the dwellings shall be constructed to conform with Category M4(2) – Accessible and Adaptable Dwellings of the Building Regulations 2010 (9).
20. The Council has also suggested a condition removing permitted development rights for Classes A, B and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore, the Planning Practice Guidance advises that the removal of permitted development rights may not pass the test of reasonableness or necessity². Therefore, in the absence of clear justification, I find it unreasonable to require the removal of permitted development rights at the appeal site.

Conclusion

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

Graham Wyatt

INSPECTOR

² Paragraph: 017 Reference ID: 21a-017-20190723 Revision date: 23 07 2019

Schedule of Conditions

1. The development hereby permitted shall begin no later than 3 (three) years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the approved plans: Sheet 1 of 2 Revision 02, Sheet 2 of 2 Revision 02.
3. Notwithstanding the details shown on the plans submitted and otherwise hereby approved, no development shall take place other than for demolition works and construction up to ground floor slab level, until samples of the materials to be used in the construction of the external elevations of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in full accordance with the approved details before it is occupied.
4. Notwithstanding the details shown on the plans submitted and otherwise hereby approved, prior to the construction of the development above ground floor slab level, full details of both hard and soft landscape work to be carried out at the site must be submitted to and approved in writing by the Local Planning Authority. The approved hard landscaping works shall be carried out in accordance with the approved details prior to first occupation of the development and the soft landscaping works within the first planting season following first occupation of the development, unless otherwise agreed in writing by the Local Planning Authority. The details submitted shall include, but not limited to:-
 - i. means of enclosure, of the site including any gates or boundary fencing;
 - ii. car parking layouts;
 - iii. other vehicle and pedestrian access and circulation areas;
 - iv. hard surfacing materials;
 - v. details of the number, size and location of the trees, shrubs and plants to be retained and planted together with a planting specification
 - vi. details of measures to enhance biodiversity within the site;
 - vii) site levels

Any trees or shrubs dying, removed, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed with the Local Planning Authority.

5. A scheme detailing how at least 10% of the total energy needs of the development will be supplied using on site renewable sources must be submitted to and agreed in writing by the Local Planning Authority prior to occupation of the development hereby approved and implemented in full prior to the first occupation of the development. This provision shall be made for the lifetime of the development.
6. Water efficient design measures as set out in Policy DM2 (iv) of the Development Management Document to limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water

consumption), including measures of water efficient fittings, appliances and water recycling systems shall be installed and made available for use prior to the first occupation of the development hereby approved and retained in perpetuity.

7. Demolition or construction works associated with this permission shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays, and at no time Sundays or bank or public holidays.
8. Prior to the first occupation of the development hereby approved, full details of refuse and bicycle storage facilities for the dwellings hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Prior to first occupation of the development, refuse and bicycle storage facilities shall be provided at the site in accordance with the approved details and retained in perpetuity thereafter.
9. The development hereby approved shall be carried out in a manner to ensure that it complies with Building Regulation part M4 (2) 'accessible and adaptable dwellings', before it is brought in to use.
10. The demolition and construction works hereby permitted shall be carried out in accordance with the submitted Construction Method Statement by Eton-Southchurch Property Developers dated 10 February 2021.
11. The proposed first floor windows in the north and south facing side elevations of the development hereby approved shall only be glazed in obscure glass (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal finished floor level. In the case of multiple or double-glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4 on the Pilkington scale. The windows shall be permanently retained thereafter.
12. Prior to the occupation of the development hereby approved two car parking spaces shall be provided for each dwelling and made available for use in accordance with the details shown on approved plan Sheet 2 of 2 Revision 02 and shall be permanently retained as such thereafter. The car parking spaces shall be kept available solely for the parking of motor vehicles of occupiers of the dwellings hereby approved and their visitors.

End.