
Appeal Decision

Site visit made on 9 March 2022

by H Lock BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21ST March 2022

Appeal Ref: APP/D1590/D/21/3288590
3 Southsea Avenue, LEIGH-ON-SEA, SS9 2AX

- 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 Mrs Wendy Macdonald against the decision of Southend-on-Sea Borough Council.
 - The application Ref. 21/01971/FULH, dated 28 September 2021, was refused by notice dated 23 November 2021.
 - The development proposed is two-storey rear extension.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of occupants of 5 Southsea Avenue (No.5), with particular reference to outlook and the potential for overshadowing.

Reasons

3. The appeal property is a detached dwelling with a 'T' shaped layout created by a central two-storey rear wing. It also has a mix of single-storey extensions that wrap around the wing and link to the main section of the house.
4. I share the Council's view that the proposal would be acceptable in terms of its impact on the character and appearance of the site, the street scene and the wider area. Although deep, the extension would be more sympathetic to the dwelling than the existing mix of extensions that it would replace.
5. However, Policy DM1 of the Development Management Document¹ (DMD) requires all development to protect the amenity of immediate neighbours in matters including outlook, visual enclosure, daylight and sunlight. This is reinforced by the Design and Townscape Guide² (DTG), which advises that extensions must respect the amenity of neighbouring buildings and not adversely affect light, outlook or privacy of their habitable rooms; and that proposals which would result in a neighbouring window, as the sole source of light to a habitable room, being contained between two projections will require

¹ Southend on Sea Borough Council Local Planning Framework Development Management Document 2015

² Southend on Sea Borough Council Supplementary Planning Document 1, Design and Townscape Guide 2009

careful consideration to ensure that light, outlook and spaciousness to the adjoining property is retained.

6. The neighbouring dwelling, No.5, is deeper than the appeal property, and with its own two-storey rear wing set away from the boundary. It has a first-floor rear-facing window in the main rear wall of the dwelling, and a ground-floor extension that infills part of the gap between the shared boundary and the rear wing of No.5. This addition has two windows facing towards the boundary.
7. The appellant advises that the gap between the proposal and the boundary would be 0.88m, but I agree with the Council that this distance would be around 0.7m. Although No.5 has its own pedestrian side access, the distance between the side-facing windows and the proposed extension would be modest. Given the height and depth of the proposed extension at this point it would create an unduly dominant addition to the outlook from that part of the property, and an oppressive sense of enclosure. I note the appellant's view that a higher boundary fence could be installed, but although closer, this would have a materially different impact on outlook than a two-storey height wall.
8. The appellant suggests that the reason for refusal relates to the ground floor windows only, but the Council's report refers to "the nearest" windows, and I consider this includes the first-floor rear facing window of No.5. The 'well' created between the proposed extension and the wing of No.5 would be reasonably narrow, and would change the outlook from that first-floor room. However, as the depth beyond that window would be reasonably modest the effect of the extension would not be so significant as to cause material harm.
9. With regard to the potential for overshadowing, the appeal property is sited to the south of No.5, and this orientation means that the proposal would cause overshadowing of the neighbouring windows for part of the day. The appellant advises that there are no "rights-of-light" to these windows. However, whilst legal rights to light would be a civil matter, it is appropriate to consider access to daylight and sunlight, and the potential for overshadowing, insofar as they affect the reasonable enjoyment of the adjacent property.
10. The appellant has provided a plan showing a 45-degree angle taken from one of the side-facing extension windows of No.5. There is no indication that the Council's policies or guidance include this 'rule of thumb', or that it would normally be applied to opposing elevations. In any event, such a measure does not address the orientation in this case or the effect on outlook. I am not persuaded by the view that, if the extension had not been built, there could be no objection to the proposal; the development is in place and forms part of the context in which the proposal must be assessed.
11. I therefore conclude that, as a result of its height, depth and proximity to the boundary the proposal would diminish the outlook from, and cause overshadowing of, the closest ground floor windows of 5 Southsea Avenue, to a degree that the living conditions of occupants would be harmed. This would be contrary to the National Planning Policy Framework, which advises that planning decisions should create places which promote health and well-being, with a high standard of amenity for existing and future users; and contrary to DMD Policy DM1, the DTG, and Core Strategy (CS) Policy CP4, which expects proposals to maintain and enhance the amenities, appeal and character of residential areas, securing good relationships with existing development.

12. I find no conflict with the requirements of DMD Policy DM3 or the more strategic aims of CS Policy KP2, but that does not alter my conclusion.

13. For the above reasons, I conclude that this appeal should be dismissed.

H Lock

INSPECTOR