
Appeal Decision

Site visit made on 7 September 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCMl

an Inspector appointed by the Secretary of State

Decision date: 11 October 2022

Appeal Ref: APP/M1520/W/21/3288304
2 Aspen Close, Canvey Island, SS8 9JJ

- 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 Carol Smith against the decision of Castle Point Borough Council.
 - The application Ref. 21/0547/FUL dated 28 May 2021, was refused by notice dated 29 July 2021.
 - The development proposed is demolition of garage and construction of detached chalet-style dwelling on land adjacent to existing dwelling with parking and vehicle access onto Maple Way
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are: i) the effect of the proposed development on the character of the local area, ii) the effect of the proposal on the living conditions of the occupiers of No. 2 Aspen Close with regard to daylight and outlook, and iii) whether the living conditions of the occupiers of the proposed dwelling would be of an acceptable standard with particular reference to the kitchen/dining area.

Reasons

The effect of the proposed development on the character of the local area

3. The appeal site is part of the curtilage of a semi-detached bungalow on the eastern corner of Aspen Close and Maple Way. It has front and side garden areas separated from the highway by a low cross-slatted fence. Its rear garden has a 1.8m high close-boarded fence forming the boundary with Maple Way. The surrounding area is generally residential with dwellings of mixed character lining both sides of Aspen Close and Maple Way. The immediate neighbours of the appeal site, fronting onto Aspen Close, and on the north side of Maple Way, are bungalows, together with some chalet bungalows a little further to the east, whilst on the southern side of Maple Way there are 2-storey houses.
4. The site of the proposed dwelling has a frontage of 12.1m. Within this width there would be a 1m separation from the boundary with No.41 Maple Way, the proposed dwelling would have a width to its front elevation of 6.3m, and the separation between the building and the new curtilage boundary of the donor

dwelling would be of the order of 4.3m. The rear elevation of the proposed dwelling would also be set just 1m off the boundary of the rear garden of No.6 Aspen Close.

5. The remaining plot of the donor dwelling would provide a depth of garden from the rear elevation of 2.5m, while the side garden, which would have to serve as the main private open amenity area, would have a width from the flank elevation to the roadside fence of 5m. The actual garden areas for the existing and proposed dwellings would be acceptable, but the configuration would be very much at odds with the surrounding housing. The result would have the appearance of a cramped form of development, out of character with the locality. Apart from the visual effect, the close proximity of private open spaces would concentrate activity into a smaller area than is normal in Aspen Close and this part of Maple Way. This is compounded by the fact that this cramped form of development would be situated on the corner of Aspen Close, and would be at odds with the generally pleasant openness of these corner locations that are beneficial to the character of the area.
6. As a result of the factors dealt with above, there would be a detrimental effect on the character of the local area as a result of the proposed development, contrary to the aims of policies EC2 and H17 of the adopted Local Plan, and RDG1 and RDG2 of the council's Residential Design Guidance.

The effect of the proposal on the living conditions of the occupiers of No. 2 Aspen Close with regard to daylight and outlook

7. This issue relates to the effect of the proposed fence dividing the appeal plot from that of the donor dwelling in terms of a reduction in light. I have been provided with no evidence demonstrating such loss of light from the 1.8m fence that would be some 2.5m away. I am not persuaded that any such loss of light would be significant. However, I consider that there would be a poor outlook from the rooms at the back of No.2, which would normally be onto a reasonably substantial rear garden in this location, as at present.
8. Since the appellant is the current occupier of the donor property, it is argued that it is entirely a matter for her whether the living conditions are acceptable. That assumes that she will continue in occupation, but in any event, it is likely that the proposed dwelling will outlast the preferences of the current occupier. To the extent that the proposal would reduce the amenity of the occupier, including future occupiers, it is a planning matter. As such, this issue carries some weight in the balance, against the development.

Whether the living conditions of the occupiers of the proposed dwelling would be of an acceptable standard with particular reference to the kitchen/dining area

9. The appellant argues that a kitchen - dining room is not usually considered a habitable room. There are a number of definitions of habitable rooms in use, but I note that recent planning legislation, the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020, provides the following definition "*habitable rooms*" means any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms;". It certainly seems to me that a reasonable outlook from a kitchen, as well as a dining area, is something that, at the very least, is desirable. In this

case, in my opinion, the outlook would be poor. Again this matter carries some weight in the balance against the development.

Other matters

10. My attention is drawn to the latest Authority Monitoring Report 2018- 20 which reveals that, at the date of publication, the council could only demonstrate a 4-year supply of deliverable housing land. To address this the council has proposed a stepped trajectory for inclusion in the new Local Plan to overcome this issue, but since this plan has not yet been through its examination, relatively little weight can be placed on this approach. Therefore the 'tilted balance' of National Planning Policy Framework (the Framework) paragraph 11d comes into play. This means that permission should be granted unless (item ii.) *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."* I also bear in mind that the Framework, in strongly supporting the provision of additional housing, makes the point that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly (paragraph 69).
11. Nevertheless, the appeal proposal would only provide 1 additional dwelling, whilst bringing negligible benefits in terms of the overarching objectives of the planning system – economic, social and environmental. Nor does it have the weight of paragraph 119 of the Framework behind it, which emphasises the desirability of making as much use as possible of previously developed 'brownfield' land; this does not apply since this is residential garden land within a built-up area and therefore is excluded from the definition of previously developed land. Furthermore, this is not a case where the refusal is based on the principle of the development, and the policies that are determinative of the decision in this case are generally in accord with the policies of the Framework.

Conclusions

12. I have found in paragraph 6 above that there would be a detrimental effect on the character of the local area as a result of the proposed development, and that issues concerning living conditions of the occupiers of No. 2 Aspen Close and the occupiers of the proposed dwelling, with regard to outlook, carry some weight against the appeal proposal. I conclude that these matters outweigh the benefits of the scheme, and that therefore the appeal should be dismissed.

Terrence Kemmann-Lane

INSPECTOR