



Appeal Decision

Site visit made on 7 September 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2022

Appeal Ref: APP/D1590/W/22/3291101

34 and 36 Undercliff Gardens, Leigh-on-Sea, SS9 1EA

- 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 P Strickland and Mr M Monk against the decision of Southend-on-Sea Borough Council.
 - The application Ref. 21/01905/FUL dated 15 September 2021, was refused by notice dated 2 November 2021.
 - The development proposed is erect 2 no. residential annexes to the rear of 34 and 36 Undercliff Gardens.
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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 streetscene and on public views, ii) the effect of the proposed development on the living conditions of the neighbour at No. 38 Undercliff Gardens in terms of outlook and privacy.

Reasons

3. The appeal site comprises the curtilages of Nos.34 and 36 Undercliff Gardens which rise north from Undercliff Gardens up to Grand Parade. The Undercliff Gardens properties have vehicular access from Grand Parade, with a pedestrian way along the south of the slope between the properties and the railway line to London Fenchurch Street station. Undercliff Gardens contains a variety of dwelling types with detached modern and traditional units, as well as a diverse range of apartments from two to four storeys in height.
4. The appeal site slopes very significantly down from Grand Parade at the north with a fall down to Undercliff Gardens of some 13m. Numbers 34 and 36 each have garages at the top of the site. Each garage has a driveway that slopes down to the garage doors with their slab level being at about 1m below the footway level of Grand Parade. The site of the 2 proposed residential annexes (top of slab level) at 19.50m/19.75m, is some 6.75m below footway level. Grand Parade has housing on its north side, and has views to the south, over the garages, parking areas, etc, across the Thames Estuary towards Kent. Grand Parade is a scenic route, and the public views of the estuary from this street are clearly important.

5. The current dwellings on the appeal site, situated at the bottom of the sloping ground, are 3-storey detached houses. The appeal proposals are for 2 residential annexes, 1 for each host dwelling, that would provide accommodation ancillary to the existing houses to cater for the elderly appellants, with a view to their children's families occupying the host dwellings. They would each provide 2 bedrooms, a living room, a kitchen, a utility room, en-suite and separate WC spread over the two floors, and a balcony at the upper level. A lift would also be provided to create stair-free access between the floors. There would be shared open-air steps from the driveway to the entrance doorways at the upper level, putting a question mark over the intended wheel-chair access.
6. Each annex would be to an individual, high quality design in a very modern idiom. The appeal statement goes to some length to explain the design influences, although the council has offered no adverse criticism of the design, and nor do I. Bearing in mind other material in the appellants' statement, I emphasise that the proposed development is in a sustainable location, where new residential development is acceptable in principle, and the 2 annexes would add much needed housing accommodation of a specialised type that meets the needs of an increasing aging population.
7. It certainly fits with paragraph 126 of the National Planning Policy Framework (the Framework) which states:

"The creation of high-quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities" and paragraph 134, that significant weight should be given to (item b) *"outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, (but [my insertion]) so long as they fit in with the overall form and layout of their surroundings"*.

The effect of the proposed development on the streetscene and on public views

8. Policy DM6 – 'The Seafront' of the Development Management Document of July 2015 includes the following statements which are relevant in this case:

"4. Development within or near the Seafront Area must not detrimentally impact upon the Thames Estuary's openness or views across and backdrops to the River Thames and Southend's beaches.

and

"6. All development within the Seafront Area must accord with the development principles set out in Policy Table 1."

9. Undercliff Gardens and Grand Parade fall within seafront character zone 3. The development principles for this character zone include, again, as relevant to this case:

*"(i) To continue to protect and enhance the open character and undeveloped, green space, frontage and estuary views from Grand Parade, Cliff Parade, The Gardens, Undercliff Gardens, Leigh Hill and The Ridgeway.
(ii) Development will be considered acceptable where it adds to the overall quality of Undercliff Gardens, Grand Parade, Cliff Parade, The Gardens, Leigh Hill and The Ridgeway".*

10. Since the annexes are proposed to be below the garages, the appellants argue that their massing would not block the view, and would be barely visible, from public vantage points. A section through each annex seeks to demonstrate this from an average person's eyelevel when standing on the footway above the garages. But I also note that both annexes are substantially wider than their respective garages.
11. What I observed at my site visit leads me to conclude that there would be a significant amount of the proposed buildings intruding into the view from the southern footway along Grand Parade. In particular, a view of No.34's annex from a length in the vicinity of the garages to the east of No.34, across the fencing and over the roofs of the garages that gradually sit lower down the slope, and from the gap to the left (east) of No. 34's garage. There would also be a clear view of No.36's annex through the gap between the 2 garages on the appeal site, and again across the parking deck to the west of the garage to No.36. The appellants illustrations, site layouts and sections, figures, etc, have not convinced me otherwise.
12. Clearly the proposed annexes would not obliterate the more distant views across the estuary, and it is only a small proportion of the length of Grand Parade that is affected. It is also a fact to my mind that the very good design of the proposed buildings, which contrast with the architecture of Grand Parade itself, means that the eye would be drawn to them, bringing a greater awareness of their presence. The policies of DM6 and the development principles for the Seafront Character Zone 3 place considerable importance on the open character and estuary views. This open character is more evident to the west, where a wide panorama is available, albeit that the near view as one looks down the slope does not always equal the splendour of the outlook on the estuary itself.
13. It is a fact that the garages on the appeal site already intrude on the openness and view that would otherwise be available, and I would see it as a retrograde decision to allow further intrusion, even though modest, on this valued defining local character.

The effect of the proposed development on the living conditions of the neighbour at No. 38 Undercliff Gardens in terms of outlook and privacy

14. As is known to the appellants, I was asked by the neighbouring occupier to view the proposed site of the annexes from within his property at No.38. This I agreed to do in the interests of fairness and of having the best understanding to inform my decision. The neighbour objects to the 2 annexes on the basis of loss of privacy. Whilst my understanding that his concern is about the effect on his rear garden generally, he particularly makes the point concerning his patio area (referred to as patio 4 by the appellants) which is a little down the slope from the position of the annex at No.36.

15. For the appellants it is pointed out that there appear to be 4 patio areas within the curtilage of No.38. The first (Patio 1) is a front facing (southerly) first floor balcony on No. 38 which appears to be a very attractive place as it has a south facing orientation, with no overshadowing from trees. Patio 2 is the area to the immediate rear of No. 38 which benefits from a reasonable level of privacy, albeit the orientation is such that it will be partly in shadow for much of the day throughout the year. Patio 3 is some 12m or so from the rear of No.38 and Google Earth reveals it has had a table and chairs on it going back over several years. Patio 4 is located approximately 33m from the rear of No. 38 and would appear to be the most recent of the patio type areas, and has only very recently had the table and chairs from patio 1 moved onto it. It appears that the origin plan was for car access to be taken from the adjoining Seabrink access road to provide car parking, but no agreement for a grant of access was forthcoming. As to the quality of amenity provided by patio 4, it would seem the most exposed to external comings and goings by virtue of the adjacency of the access route, and its lack of use demonstrates that it is the least attractive of the four patio areas referred to.
16. Whilst the appellants' analysis is interesting, I take the view that it is for an individual householder to decide how to arrange sitting out areas; but that is not the most telling point. The fact is that there would be 2 large balconies to one side of this garden and at a substantial height. The purpose of a balcony is to provide a vantage point, where relaxing times can be enjoyed, including taking in the view. Certainly the proposed balcony at No.36 would be a dominant feature from the rear garden of No.38, and would intrude greatly on the privacy of a large part of the garden. It would provide actual overlooking and certainly a perception of no longer having privacy in this garden. I note that the proposed balcony to No.36 annex actually has its rear glazed balustrade canted towards the garden of No. 38.
17. I do not find the appellants' points about normal distances between the rear elevations of houses persuasive. The situation that would arise from the proposed annexes and their balconies high above the neighbouring dwelling's garden would not be acceptable, leading to a harmful intrusive effect on the living conditions of the neighbour at No. 38 Undercliff Gardens in terms of outlook and privacy. Such harm could not be overcome by the suggested condition relating to obscure glazing to the privacy screens which could not reasonably be imposed on the southward looking balustrade, certainly not to a height that would be effective.

Conclusions

18. I have taken account of all other matters raised, including other development along Grand Parade, and an appeal decision that appears to have some relevance in terms of housing for the elderly and disabled. However the considerations in that appeal are wider than those in this case and I do not find these matters helpful in my consideration of the merits of the proposals. I certainly can understand the benefits that the proposed development would bring to the appellants and their families, and the desirability of providing for a variety of households, and for the elderly and infirm in particular.
19. However, the policies of DM6 and the Sea Front Character Zone clearly stand against the proposal since there would be a significant amount of the proposed buildings intruding into the view from the southern footway along Grand Parade

in the vicinity of the garages to the east of No.34, from the gap to the left (east) of No. 34's garage, through the gap between the 2 garages on the appeal site, and again across the parking deck (with the existing foliage) to the west of the garage to No.36. Thus the effect of the proposed development would be harmful to the streetscene and on public views. In addition, the effect of the proposed development on the living conditions of the neighbour at No. 38 Undercliff Gardens in terms of outlook and privacy that I have described in paragraphs 16 and 17 add to my conclusion that the appeal should be dismissed.

Terrence Kemmann-Lane

INSPECTOR