The Planning Inspectorate

Appeal Decision

Site visit made on 9 January 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/P1560/W/22/3300746
5 Cottage Grove, Clacton-on-Sea, CO16 8DQ

- 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 D Martin against the decision of Tendring District Council.
- The application Ref. 21/01606/FUL dated 14 September 2021, was refused by notice dated 16 March 2022.
- The development proposed is construction of a two bedroom bungalow in the rear garden of the property.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are: i) the adequacy of the site to accommodate the proposed dwelling and the host dwelling in terms of the amount of private amenity space and its disposition in relation to both dwellings; ii) the effect of the proposal on the character and appearance of the area; iii) the effect of the proposal on the living conditions of neighbouring occupiers; iv) the adequacy of the proposals to provide car parking for both dwellings in order to safeguard the safety and convenience of highway users.

Reasons

3. The site is located in a residential area, within the settlement development boundary for Clacton, where there is a mix of dwelling types, sizes and styles, including single storey bungalows, dormer bungalows and two storey houses. The majority of the properties in the immediate area are detached. The proposed site is to the rear of the host dwelling - 5 Cottage Grove. It is shown to be accessed by a driveway on the southern side of the host dwelling, and along the flank wall of No.3 Cottage Grove. The host dwelling currently occupies a plot with a greater depth than the majority of houses in the immediate area, but similar to the plot of the neighbour at No.7.

4. As paragraph 2 of the National Planning Policy Framework (the Framework) explains, planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. In this case, the appeal site is clearly in as sustainable location and the question of whether it is sustainable development does not arise: there is thus no reason to consider the objectives of sustainable development in justification.

5. The council has an up-to-date development plan, which comprises Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans (not applicable here) that have been brought into force. The council can demonstrate a five-year housing land supply, and the latest Housing Delivery Test result quoted showed a measurement of 165%, meaning that there is no claim that there is a substantial need for further dwellings to counter a shortage. This does not mean that there is any cap on housing supply, simply that this is not an issue that justifies a departure from the development plan. Therefore, whilst extensive parts of the Framework are quoted, it is the relevant policies of the development plan that should primarily govern my decision, together with any material considerations. The most important policies bearing on the issues in the case are SP7, SPL3, LP4 and LP8.

6. Policy SP7 requires high standards of urban and architectural design, responding to the local character and context. Policies SPL3 and LP4 require that new dwellings are designed to high standards with a well-considered site layout. Policy LP8 'Backland Residential Development' sets out 6 criteria against which such proposals should be judged.

The adequacy of the site to accommodate the proposed dwelling and the host dwelling in terms of the amount of private amenity space and its disposition in relation to both dwellings

7. The access from Cottage Grove occupies the space between the flank wall of the host dwelling and the flank of the garage at No.3, which is some 4m wide. The proposed bungalow is shown to have a main gabled roof, with an enlargement on the northern side, set back from the front elevation, under another gabled roof running out from the main ridge. The dimensions of the bungalow are shown as it having a depth in the east-west direction of 10m, and a main front elevation 7m wide. The side extension would project out some 3m, giving a total width of 10m.

8. The proposed bungalow would be set 1m from the boundary with No.3 Cottage Grove and 4m from the boundary with No. 7. The gap at the rear of the building from the residential curtilage to the west would be 1m wide. The submitted plan showing the positioning of the dwelling indicates that its front would be 11m away from the new rear fence line of the host property, this area being the intended main private open space.

9. However, the appeal statement, when dealing with criticism of the parking provision, shows the whole of this area being utilised for parking and turning. This plan also shows a different arrangement for the dwelling which takes the form of a simple rectangle, with a separate square building set at the north-east corner of the main building. This may be intended as a garage building, because it has no possible internal communication between it and the bungalow. On this plan the only private open amenity space is shown behind the 'garage' measuring perhaps 7m x 4m.

10. Be that as it may, the development indicated on the plan in the appeal statement is so much at odds with the plans submitted to the council, that I cannot place any weight on it, except that it does suggest that if adequate parking and manoeuvring arrangements were provided, there would be a lack of any suitable private open amenity area for the dwelling.

11. Leaving aside the proposed bungalow for a moment, the plans appear to show that the host dwelling would be left with a private open amenity area that is far below the generality of the area and unlikely to be adequate for the occupiers of a 2-storey detached house that has been enlarged by a part single-story, part 2-storey rear extension. This is compounded by the fact that just beyond the boundary is almost the entirety of the proposed bungalow's open area. However the uses of this open areas are arranged, the small garden of the host dwelling would be subject to the use of the entrance drive at close quarters, and the accommodation of parked and manoeuvring vehicles just beyond the fence which would diminish any peace and tranquillity that it might have.

12. The conclusion that I reach is that the site is inadequate to accommodate the proposed dwelling and the host dwelling in terms of the amount of private amenity space and its disposition in relation to both dwellings, bearing in mind the other functions that the open space related to the proposed bungalow would have to serve. In particular, the proposal is contrary to criteria a and f of policy LP8. Criterion b is relevant to the fourth issue. The other criteria are either met or are not relevant – the proposal avoids tandem development, does not prejudice comprehensive development, and is not on the edge of the settlement.

The effect of the proposal on the character and appearance of the area

13. The proposed bungalow would not be visible from Cottage Grove, other than that, in the immediate vicinity of the entrance way, the bungalow would be seen through the double gates. To that extent, pedestrians, and those living in the immediate vicinity would be well aware of its presence, and the anomaly that it would create in the streetscene and the general 'grain' of the area. The more practical effect on the character of the area is that the development, because of its inadequate size for what is proposed, would bring activity close to the private areas at the rear of nearby properties which would be damaging to the character and seclusion of the private gardens. The combined effect of the degree to which the development would be seen to be at odds with the character and appearance of the area, with the increased activity and disturbance at the rear, would mark the proposal as having an unsatisfactory effect on this part of Cottage Grove and the block of development of which it is part.

The effect of the proposal on the living conditions of neighbouring occupiers

14. Again, the cramped form of development would have effects beyond its boundaries in respect of the living conditions of neighbouring occupiers. I have already identified effects on the inhabitants of the host dwelling, but the same would be true of at least those living at No.3 and No.7. In addition, the first floor windows would be in close proximity to the private open amenity areas of both the host dwelling and the properties to the rear of the site.

The adequacy of the proposals to provide car parking for both dwellings in order to safeguard the safety and convenience of highway users.

15. The council's parking standards require 2 parking spaces for a 2 bedroom dwelling. The appellant suggests that kerb-side parking would not be a problem in this area, which might be true in respect of a single dwelling. But the standards are there to ensure that each development caters for its own parking needs, and without their imposition on each new development, the situation

could deteriorate. There may be cases where departure from the standards could be justified, but the attempt to utilise a site for a form of development that it cannot reasonably accommodate is not one. In addition, a proposal that does not clearly allow for vehicles to enter and leave a fairly long and narrow drive in first gear is likely to endanger pedestrians and other road users, or at the very least, cause inconvenience. The proposal is contrary to criterion b. of policy LP8.

16. The appellant draws attention to Framework paragraph 111, which states that development should only be refused if there would be an unacceptable impact on highway safety, etc. But this paragraph follows that which seeks to ensure that safe and suitable access to the site can be achieved for all users [paragraph 110 b)]. A pre-development condition is also suggested to deal with this situation, but I am not clear what sort of pre-development condition could be drafted that would be effective. In any event, a pre-development condition can only be imposed with the consent of the applicant/appellant. Without knowledge of the form and text of such a condition, there could be no sensible consent given. I certainly do not accept that the vague reference to a pre-development condition is sufficient to meet the requirements of the regulations [see The Town and Country Planning (Pre-commencement Conditions) Regulations 2018, regulations 3 and 4].

17. It is also stated that the proposal retains 2 spaces for the host dwelling at the front, to the right-hand side. However, such spaces are not shown on the plans, and are uncertain.

Other matters

18. A number of other consideration have been raised. It is suggested that the appeal development would reflect the national drive to support development on brownfield sites or sites which already are in residential use. This site is clearly not brownfield land according to the definition in the Glossary of the Framework, which specifically excludes residential gardens in built-up areas. Furthermore, as already noted, Tendring can demonstrate a 5-year housing supply, so that there is no over-riding need for additional dwellings, which do not comply with planning policy.

19. An emphasis is put in the appellant's case that the area is 'close-knit', but that means that the opportunities to introduce additional development on backland is likely to introduce or exacerbate any existing lack of amenity.

20. A number of photographs of other bungalows are included in the appeal statement. These appear to be intended to demonstrate that the form and design of the appeal proposal would not be out of character. That is true as far as the general form is concerned, but the examples are not representative of the appeal proposal. There is also an example given of backland development in the same street, but this is of an entirely different character to the appeal development.

21. There are other matters raised by the council that I have not dealt with, such as cycle and bin storage, since the main considerations are decisive. But this is a further consideration that the proposal does not address satisfactorily.

22. I have taken account of all other matters raises, but none of them, singly or in combination affect the conclusions that I have reached.

Conclusions

23. For the reasons that I have given under each of the main issues above, I conclude that the site is not adequate to accommodate the proposed dwelling and the host dwelling, would not provide adequate space of amenity value, that it would be harmful to the character and appearance of the area, would adversely affect the living conditions of neighbours, and would not provide satisfactory car parking and manoeuvring provision. For these reasons the proposed development would be contrary to policies SP7, SPL3, LP4 and LP8 of the development plan, and therefore the appeal will be dismissed.

Terrence Kemmann-Lane

INSPECTOR