



Appeal Decision

Site visit made on 7 February 2023

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/W1525/D/22/3309570 23 Acres End, Chelmsford, Essex CM1 2XR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr. Mark Greenhalgh against the decision of Chelmsford City Council.
 - The application Ref 22/01694/HHPAA, dated 8 September 2022, was refused by notice dated 18 October 2022.
 - The development proposed is construction of an additional storey of 3.5m on the existing building.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The decision letter contained a typographic error referring to Policy DM29 of the Chelmsford Local Plan (2020) (the Local Plan) in the second reason for refusal, rather than Policy DM23 of that document. The Council has confirmed that this was an error. I have, therefore, considered this appeal on this basis and I do not consider that any party would suffer injustice as a result.

Background and Main Issues

3. Subject to a number of qualifying criteria, paragraph AA of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) (Class AA) grants planning permission for the enlargement of a dwellinghouse consisting of the construction of up to two additional storeys, where the existing dwellinghouse consists of two or more storeys, immediately above the topmost storey of the dwellinghouse, together with any engineering operations reasonably necessary for the purpose of that construction. Paragraph AA.1 sets out the circumstances in which development is not permitted by Class AA. The council does not dispute that the proposal would be permitted development against the criteria in AA.1.
4. Paragraph AA.2 requires developers to apply to the local planning authority for prior approval as to a range of matters in (3) (a) (i) to (iv). Although not clearly stated on the decision notice, the Council's reason for refusal indicates that it refused prior approval under the matters described in (3) (a) (i) which is the impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light; and (ii), which is the external appearance of the dwellinghouse, including the design and architectural features of the principal

elevation of the dwellinghouse, and any side elevation of the dwellinghouse that fronts a highway.

5. The principle of development is established by the GPDO, and the provisions of Class AA do not require regard to be had to the development plan. Nevertheless, Policies DM23 and DM29 of the Local Plan are material considerations, as they relate to issues of appearance and amenity. In particular, Policy DM23, amongst other things, seeks to ensure that development, including extensions, is compatible with the character and appearance of the area in which it is located and is compatible with its surroundings having regard to scale, form and massing. Policy DM29, amongst other things, seeks to safeguard the living environment of the occupiers of any nearby residential property by ensuring that the development does not result in unacceptable overlooking. The National Planning Policy Framework is also a material consideration, and it includes a section on achieving well-designed places.
6. Therefore I consider that the main issues in this appeal are the effect of the proposed development on: -
 - The external appearance of the dwellinghouse; and: -
 - The amenity of adjoining premises with particular regard to overlooking.

Reasons

External appearance of the dwellinghouse

7. 23 Acres End (No 23) is a detached two storey house with a gable roof. Its principal elevation faces onto a shared accessway leading off a turning head. No 23 has an attached double garage projecting forward towards the accessway with a floor of accommodation above, in the roof. The roof of the garage projection has lower eaves and ridge than the main part of the house.
8. No 23 lies towards the end of a cul-de-sac of similar, close set detached properties with comparable design features. Whilst there is some difference in their configuration and finishes, there is little variation in the overall ridge heights of the dwellings. The dwellings on the cul-de-sac appear to have been built as part of a single development and there is a high degree of visual consistency between the dwellings, this gives Acres End a coherent character and appearance.
9. The additional storey would result in the dwelling being significantly higher than its neighbours to either side. It would, therefore, be markedly out of character with the two storey dwellings to either side and it would result in a three storey building that would be incongruous in the otherwise coherent street scene. This incongruence would be accentuated by the close proximity of the adjoining dwellings and it would be clearly noticeable to persons on Acres End and so, in this case, would amount to material harm to the appearance of No 23 and the street scene.
10. It is contended by the appellant that the proposal overcomes the concerns raised by the Council in a similar application that was refused planning permission (Council Ref: 2200969/HHPAA) by removing proposed black weatherboarding from the first floor level and removal of a tall window from the front elevation. There is no dispute in the appeal before me regarding the

acceptability of the proposed materials or form of fenestration on the front elevation. The Council acknowledges that the changes to these features between the previous application and the appeal scheme would, in comparison, contribute to improving the appearance of the proposed development. However, of themselves, they do not reduce the unacceptable impact of the bulk and massing of the proposed development on the host dwelling and, consequently, the street scene.

11. The appellant argues that a property being at a different height to others in the area is not a material consideration. However I find no overall exemption of consideration of differences in heights under Class AA in relation to the effect on the external appearance of the dwellinghouse.
12. For the above reasons, I conclude that the proposed development would result in the dwelling having an external appearance that, by reason of its height, would be incongruous in an area of visually coherent dwellings and that this incongruity amounts to material harm to the external appearance of the dwellinghouse.

Amenity of adjoining premises

13. To the rear of No 23 lie dwellings facing onto Highfield Road. These have relatively long rear gardens compared to No 23. The proposed additional storey to No23 would contain three windows on its rear face, and these would look directly towards the neighbours to the rear (the rear neighbours). These are indicated on the plans as bedrooms. The proposed windows would enable views down into the back gardens of the rear neighbours.
14. There is currently an evergreen hedge to the end of the closest rear neighbours' garden, and this provides screening from existing windows on the rear of No 23. This informal screening is augmented by the presence of mature deciduous trees within the garden of No 23. However, the informal screening provided by the evergreen hedge to the garden of the rear neighbours would not prevent occupiers of No 23 looking down into the gardens of the rear neighbours from the proposed windows. The short separation distance from No 23 to the rear garden boundary and overlooking that would result would intrude significantly upon the privacy of the principal outdoor amenity area of the rear neighbours.
15. Whilst the largest of the deciduous trees was, at the time of my site visit, significantly taller than the evergreen hedge, I observed that the screening that it provides during winter is limited. Whilst the gardens would be likely to be used less in winter there would, nonetheless, be an increased sense of overlooking within the rear neighbours' gardens when the tree is not in full leaf.
16. The rear facades of the dwellings facing onto Highfield Road contain windows facing towards No 23. However, the long back gardens of the rear neighbours' houses provide a substantial degree of separation between the dwellings, providing a high level of privacy. The distance between the dwellings would exceed the minimum standard within the Essex Design Guide. Whilst this is a minimum standard, in this urbanised setting the relationship between upper storey windows would not intrude upon the privacy of rear neighbours to an unacceptable degree.

17. The appellant has proposed that the retention of the existing deciduous tree could be safeguarded by condition. However, it will be seen above that, in periods when the tree is bare, the tree does not provide adequate screening to address the harm that I have found and so such a condition would not be effective.
18. Whilst a planning condition could be imposed requiring obscure glazing of the three proposed windows, two would provide the only outlook and source of natural sunlight for a bedroom and so such a condition would result in poor living conditions for the residents and thus use of such a condition would be unreasonable.
19. Whilst I have found that there would be no unacceptable overlooking of windows into the rear neighbour's properties, I have found that the proposed development would result in unacceptable overlooking of their private amenity space. I therefore find that the development would result in harm to the amenity of adjoining premises with particular regard to overlooking.

Other Matters

20. The appellant has been issued with a lawful development certificate (LDC) for the construction of a loft conversion with a rear facing dormer (Council Ref: 22/01328.CLOPUD) (the LDC scheme). Whilst this proposed development would, if built, introduce windows to the rear of No 23 that, in practical terms, replicate the arrangement of windows in the appeal scheme, I have no powerful evidence before me that, in the event that this appeal is dismissed, the LDC scheme would be implemented. Further, implementation of the LDC scheme would only be compatible to the harm that I have found to the overlooking of the rear neighbours' private amenity space and not the unacceptable impact on the external appearance of the dwellinghouse. I have therefore given limited weight to implementation of the LDC as a fall-back position.

Conclusion

21. I have found that the proposed development would result in material harm to the amenity of adjoining premises and to the external appearance of the dwellinghouse and so, for the reasons given above, I conclude that the appeal should be dismissed.

I A Dyer

INSPECTOR