
Appeal Decision

Site visit made on 28 February 2023

by H Lock BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2023

Appeal Ref: APP/D1590/D/22/3306117

14-15 The Gardens, Leigh-on-Sea, Essex, SS9 2DW

- 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 Richard Piercy against the decision of Southend-on-Sea City Council.
 - The application Ref. 22/00657/FULH, dated 12 March 2022, was refused by notice dated 16 June 2022.
 - The development proposed is to erect part single/part two storey extension to north and east elevations with roof garden including access terrace, and associated remodelling of ground levels, installation of roof lights to front and to rear projection, and elevation and roof alterations including erection of chimney stack following removal of existing stack.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development above has been taken from the Council's decision notice and the appellant's appeal form. Whilst normally this would be taken from the original application form, it is clear from the plans and accompanying details that the development is more extensive than a part one-storey, part two-storey eastern and northern extension, as described on the application form. The Council dealt with the proposal on the basis of the above description and I have done the same.
3. As part of the appeal, the appellant has offered the reinstatement of windows of the original size and form to the first-floor of No.14 (front elevation) and restoration of a ground floor canted bay, both details which were included in a previous grant of planning permission¹ (the '2021 permission'). Ordinarily, there is no scope to amend plans as part of a householder appeal. Whilst I appreciate that these works form part of an extant planning permission, it is not known how much weight the Council would have placed on these elements in its assessment of the current scheme, and this is therefore a matter which the Council should have had the opportunity to consider. I have not therefore accepted these revisions as part of this appeal, and have determined the proposal as originally submitted.

¹ 21/01037/FUL: Revert dwelling into two self-contained dwellings, demolish existing two storey side extension, erect single storey rear extension, two storey side extension, alter elevations – granted 09.08.2021

Main Issues

4. The main issues are the effect of the proposal on (1) the character and appearance of the appeal property and the wider area, including the Leigh Conservation Area and the Seafront; (2) the living conditions of occupants of 13 The Gardens, with particular reference to outlook; (3) cliff stability; (4) protected species; and (5) trees on neighbouring public land.

Reasons

Character and Appearance

5. The appeal property is an end-terrace Victorian dwelling located on rising land between a railway line and Leigh Hill above. The terrace has no vehicular access, and several paths lead to the rear of the properties from the road above, with the facades facing out over the railway line to the estuary beyond. Despite being set down from Leigh Hill, the terrace is reasonably prominent in the Leigh Conservation Area, with the local topography meaning that views of the group are visible from roads above.
6. The appeal property in particular is a notable feature due to its position at the end of the terrace, and next to a public open space with modest boundary screening. The seasonal planting means that wide-ranging views of the dwelling were available at the time of the appeal site visit. There is a well-used footpath between the railway line and the waterfront with clear views back towards The Gardens terrace. A two-storey flat-roofed former coastguard's watchtower is located on the side of No.15, and despite its form it appears reasonably subservient. The dwellings within this group are not uniform, with changes to original fenestration and materials, but on the whole these alterations have not undermined the character and appearance of the terrace.
7. The Council's published Leigh Conservation Area Appraisal (LCAA) sets out the origins of Leigh on top of the hill above the original fishing village, and its expansion with the arrival of the railway. It notes that the defining feature of the conservation area is the cliff and the way the settlement has accommodated itself to it, with steep residential roads and paths, terraces of houses stacked up the hill, and seaward views. Green open spaces are also noted as a feature of the area. This is the westernmost part of the Seafront, which is an important part of the City's evolution and heritage. The appeal site is within a character zone where development is required to add to the overall quality of the area, but will be resisted if it materially changes the existing character, appearance and form.
8. Within this context, the LCAA identifies the appeal property as a building that is potentially positive but in need of improvement or restoration. This improvement would have been secured in the grant of the 2021 permission to replace the watchtower with a two-storey side extension, and to add a single-storey rear extension. The 2021 permission established the principle of additional flat-roofed extensions to the building, but as a 'fallback position' that development was more modest in scale than now proposed, and did not appear to include such extensive changes to ground levels. Whilst the analysis of the 2021 scheme in the Heritage Statement (HA) submitted with the appeal sets out a number of design shortcomings, this is nevertheless an approved scheme.

9. There is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising planning functions. The current appeal scheme has much to commend it, but its scale would mask the form of the original end-terrace building. Although the rear elevations of the terraced dwellings in The Gardens have been much altered, the pattern of outriggers in the group remains a dominant feature. In contrast, the outrigger on Nos. 14-15 would be visually overwhelmed by extensions, and I do not share the view in the HA that the proposal would be subservient to the host building. This would conflict with Policy DM1 of the Southend on Sea Development Management Document 2015 (DMD) which requires development to respect its local context in terms including architectural approach, size, scale, form, and massing.
10. I appreciate the assessment in the HA that the quality of the proposed extension means that it is something that deserves to be seen and celebrated. However, by contrasting so significantly from the form and design of the host terrace I consider that it would undermine the contribution of the group to the character and appearance of the conservation area. Design is a subjective matter, but I am persuaded more by the Council's view that elements would be out of place: rather than a 'bit of fun', the battlement would be an incongruous detail, and together with the balustrade and mix of glazed openings would emphasise the mismatch with the more consistent design of the existing dwelling and the terrace. However, the existing watchtower is not fully glazed, and therefore I do not consider that an obscure section to the full height glazing would detract from the 'lookout' concept.
11. As noted above, the area of the proposed extensions would be highly visible in views from the road above, across the neighbouring open space, and from the cinder path next to the waterfront. Whilst there is a mix of contemporary and traditional buildings in the conservation area, few meld designs to the extent proposed, and I am not convinced that the transition would respect the character and appearance of the dwelling, the terrace of which it forms part and the area.
12. Having regard to paragraph 202 of the National Planning Policy Framework (the Framework), the proposal would lead to less than substantial harm to the significance of the conservation area as a designated heritage asset, but this harm should be weighed against the public benefits of the proposal. Renovation of the building and the site would be beneficial to the terrace, the conservation area and the wider seafront setting, but this would be undermined by the design and scale of the proposal. Improving accessibility into the building would be valuable for its users and the long-term adaptability of the property, but this benefit would be offset by the harm that the remodelling to achieve it would create for neighbouring residents.
13. I therefore conclude that, as a result of the scale, form and design, the proposal would detract from the character and appearance of the dwelling, and would not preserve or enhance the character and appearance of the Leigh Conservation Area and the Seafront. The benefits of the proposal would not outweigh the identified harm. This would conflict with the Framework, as reflected in DMD Policy DM5, and DMD Policy DM6, which seeks to avoid development to buildings with a historic context that would adversely affect their character, appearance, setting and the importance of the Seafront; and with DMD Policies DM1 and DM3, as supported by the Council's Design and

Townscape Guide (DTG), which together seek development that adds to the overall quality of the area and makes a positive contribution to the character of the original building and the surrounding area. It would also conflict with the Core Strategy (CS) Policies KP2 and CP4, to respect, conserve, enhance, and safeguard, the historic environment.

Living Conditions

14. The terrace includes two-storey outriggers that span pairs of properties, creating recessed 'wells' in between. No.13 has a ground-floor rear-facing habitable room window in the well between its own outrigger and No.14. There are also side openings facing towards the appeal property. There is no boundary division between the two dwellings at this point.
15. The proposal would include a rear extension with privacy screen to a terrace above, that would also act as a retaining wall to the remodelled ground levels. Whilst these works may not result in any material light loss to the ground-floor habitable rooms of No.13, they would create an unacceptable and oppressive sense of enclosure to the detriment of the outlook from that property. This adverse impact would be greater than arising from the existing arrangement and the 2021 permission, which is less extensive than now proposed.
16. I therefore conclude that the proposal would diminish the outlook from No.13, to a degree that the living conditions of current and future occupants would be harmed. This would be contrary to the 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 (iv), the DTG, and CS Policy CP4, which expects proposals to maintain and enhance the amenities, appeal and character of residential areas, securing good relationships with existing development. 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.

Cliff Stability

17. The LCAA advises that the cliff within the conservation area is unstable and inclined to slumping, leading to structural instability in some buildings². DMD Policy DM14 (2) requires all development in the vicinity of the cliff frontages to take full account of the risk of ground instability.
18. I note the appellant's view that cliff stability can be addressed through a planning condition requiring a Construction Method Statement (CMS), as agreed for the 2021 permission. However, it is not just construction access but also the proposed earthworks that could have implications for cliff stability. Given the extent of the proposed ground works, it is appropriate to fully assess the implications for land stability and safety on this and neighbouring land prior to the grant of any planning permission. This is consistent with paragraph 183 of the Framework, for planning decisions to ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability; and that adequate site investigation information, prepared by a competent person, is available to inform these assessments.

² Paragraph 1.4.3

19. I therefore conclude that it has not been demonstrated that the development can safely be undertaken without undermining cliff stability, contrary to the Framework, DMD Policy DM14, and CS Policy KP2 (11f).

Protected Species

20. The third reason for refusal refers to a lack of information regarding the effect of the proposal on protected species. However, on the basis of the information supplied it is unclear what, if any, protected species would be at risk. The principle of extending the property has already been accepted with the 2021 permission and no specific concerns appear to have been raised on this point in the determination of that application. As such, I am not convinced that further information is required to demonstrate that protected species would be unharmed by the development. I therefore conclude that there would be no conflict with CS Policies CP4 and KP2, and DMD Policy DM6, but that does not alter my overall conclusions.

Trees

21. The original application was accompanied by an Arboricultural Impact Assessment that considered the effect of the proposal on a group of trees around the boundary of the site with the neighbouring public open space. The report concluded that no trees would be removed, and set out mitigation measures which included tree protection and foundation design. The Council's delegated report confirmed that, subject to conditions the proposal would on balance be acceptable on the grounds of impacts to trees and their contribution to the wider conservation area.
22. The Council's concern appears to be the effect on neighbouring trees arising from accessing the site to construct the development; noting that a construction management plan which involves access over protected green space has not been agreed in principle in the past. As the extant permission included construction access via the existing pedestrian path, there would appear to be no reason to assume that the same could not apply with this scheme, thereby avoiding any potential harm to neighbouring trees. Indeed, the appellant confirms that the approved arrangements would be adequate and that there is no need to access from the open land to the west³.
23. On this point I conclude that, on the basis of the information supplied, the proposal would not cause harm to neighbouring trees, thereby complying with CS Policy CP4 and DMD Policy DM6, but that does not alter my conclusions on the other main issues.

Other Matters

24. I have had regard to the letters of support for the proposal but public consultation is only one aspect to be taken into account in the planning balance.

Conclusion

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

H Lock INSPECTOR

³ Appeal Statement – paragraph 5.7