



Appeal Decision

Site visit made on 12 December 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 29.12.2023

Appeal Ref: APP/D1590/W/23/3323500

Land adjacent to 46 Theobalds Road, Leigh-on-Sea, SS9 2NE

- 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 Helen Laudat against the decision of Southend-on-Sea City Council.
 - The application Ref.22/02202/FUL, dated 14 November 2022, was refused by notice dated 28 March 2023.
 - The development proposed is demolish existing garage and erect single storey detached dwellinghouse on land adjacent to 46 Theobalds road, raised decking area, associated amenity space and parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue in this case is the effect of the proposed development on the character and appearance of the site and the streetscene, and the presumption under paragraph 11 (d) ii of the National Planning Policy Framework (the Framework).¹

Reasons

3. The appeal site is a parcel of land located to the side of, and originally part of the curtilage of, No. 46 Theobalds Road, and to the rear of Nos. 36 and 38 Western Road. The site is roughly rectangular in shape and is currently occupied by a detached garage located close to the northern boundary of the site. It is accessed by a crossover from Theobalds Road. The surrounding area is residential in nature, predominantly two-storey and chalet-style detached properties. Many of the houses are substantial, whether detached or semi-detached, set back from the road behind front gardens with soft landscaping, giving a spacious suburban character to the area.
4. The proposal is for the erection of a bungalow replacing an existing garage. It would be set back from the road by about 7m or so, and run along the northern boundary with Nos. 36 and 38 Western Road, being off-set from that boundary by approximately 0.6m. The main part of the dwelling would come to within about 2.3m of the rear boundary. This part of the dwelling would accommodate 2 bedrooms, a kitchen and bathroom. The front half of this part of the bungalow would fan out to accommodate an entrance hall and

¹ See reference to latest published Framework under paragraph 11 below.

- dining/living area which would come to within just over 1m of the southern boundary of the plot. To the rear of this section and south of the longer section would be raised decking and garden area.
5. Viewed from the street, there would be a low profile pair of front gables, central front entrance door and a shallow, hipped roof form. Along part of the frontage to the road there is an existing row of planting which is shown to be retained.
 6. The policy background to this case is clearly one which encourages the provision of residential development. As this is an infill site, Policy DM3 of the Development Management Document is the most relevant policy. This states: "All development on land that constitutes backland and infill development will be considered on a site-by-site basis. Development within these locations will be resisted where the proposals:
 - (i) Create a detrimental impact upon the living conditions and amenity of existing and future residents or neighbouring residents; or
 - (ii) Conflict with the character and grain of the local area; or
 - (iii) Result in unusable garden space for the existing and proposed dwellings in line with Policy DM8; or
 - (iv) Result in the loss of local ecological assets including wildlife habitats and significant or protected trees.
 7. This is supplemented by the Design and Townscape Guide Supplementary Planning Document (SPD), which at paragraph 201, dealing with infill sites, includes: *"The size of the site together with an analysis of local character and grain will determine whether these sites are suitable for development. In some cases, the site may be too small or narrow to accommodate a completely new dwelling (including usable amenity space and parking) and trying to squeeze a house onto the site would significantly compromise its design quality and be detrimental to neighbouring properties and local character. In these circumstances, unless an exceptional design solution can be found, infill development will be considered unacceptable. Other options, such as an extension to an adjacent building or a garage may be more achievable. However, in certain situations, where the density, grain and openness of an area are integral to its special character, infill development of any kind will not be appropriate in principle."*
 8. I consider that Policy DM3 and the SPD are in accord with the Framework and, of course, in the circumstances where these policies come in to play, these policies will have been formulated against the need that arises for the provision of additional housing.
 9. Responding to the council's claim that the proposal would be a cramped, contrived and incongruous form of development, the appellant claims that the proposed bungalow would not appear cramped, and it would not be readily apparent from the street that the house has a shallower plot than some of its neighbours. The appellant is also of the opinion that, as shown on the streetscene elevation, drawing No.007, that the dwelling would appear as an unobtrusive presence on the street: it is low in height, lines up with its neighbours and has plenty of space around it, and there is a variety of dwellings in the street.
 10. However, the space around it, as shown on the streetscene drawing results largely from the rear garden of No.38 Western Road, behind a high boarded

fence, and the limited side garden of No, 46 Theobalds Road. As the dimensions given in paragraph 4 above show, the proposed development along the northern boundary with Nos. 36 and 38 Western Road would be off-set from that boundary by approximately 0.6m, and the front half of the bungalow would come to within just over 1m of the southern boundary of the plot. Thus the dwelling would cover most of the width of the plot and it would have a small rear garden compared with the typical garden sizes in the area. In addition to the cramped appearance from the road, in the context of the existing dwellings around it, this family dwelling would be at variance and harmful to the otherwise spacious character of the area. For these reasons, the proposal would be contrary to the development plan policies and the SPD. I therefore find that the proposed development would have a harmful effect on the character and appearance of the site and the streetscene.

11. Having viewed the proposal against the development plan, I need to turn to the housing land supply. The latest Housing Delivery Test (HDT)² results were published on 19 December 2023. They show that Southend-on-Sea City has substantially underdelivered against its housing requirement, delivering only 31% of the target number. The council acknowledges that there is a deficit in housing land supply in the City. Thus paragraph 11 d) of the December 2023 Framework³ must be considered. This reads:
"11(d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date(footnote 8), granting permission unless:
i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
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".
12. The Council's latest position with regard to the 5-year housing land supply, which was published in July 2023, after the application was determined, is set out in Appendix 1 to the council's letter of 30 October 2023. This confirms its view that, at worst case, it can demonstrate 4.18 years' worth of housing land supply, derived from the government's standard methodology with a 20% buffer that must be applied due to the 2021 HDT (and now the 2023 HDT). Since both parties are familiar with this appendix, I will not produce its details here. The council further argues that, whilst technically the 20% buffer should be applied due to the latest results of the HDT, the housing delivery figures have not been updated since 2022 (using 2021 figures). If the standard methodology is applied without the buffer, Framework paragraph 11 d) should not be applied in this case.
13. The council's case of course was written prior to the publication of the HDT December 2023 results. These results mean that a 20% buffer continues to be necessary. As to the claimed 4.18 years supply, this remains under a 5 year

² The latest Housing Delivery Test was published on 19 December 2023 as I was writing this decision. For Southend-on-Sea the result is no different to the Test published in January 2022, referred to by the appellant.

³ The latest version of the National Planning Policy Framework was published on 19 December 2023. Paragraph 11 has not changed, but footnote 8 now reads: *"8 This includes, for applications involving the provision of housing, situations where: (a) the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years".*

supply, but in any event footnote 8 states where there a 5 year supply cannot be demonstrated or the HDT was below 75% over the previous 3 years the buffer must be added. Consequently, in this case a presumption in favour of sustainable development applies, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

14. Assessing adverse impacts and benefits against the policies in the Framework taken as a whole, in relation to the circumstances of this case, must include the following: i) delivering homes; ii) meeting the 3 overarching objectives to achieve sustainable development; iii) making effective use of land; and iv) achieving well designed and beautiful places.

15. Taking these briefly in turn:

- i) In respect of delivering homes, section 5 of the framework sets the objective of significantly boosting the supply of homes; in this case the supply would be increased by 1 unit, that unit not being one which meets the greatest need in the City (officer's report paragraph 6.3), but there is a great need for all dwellings, so that great weight should be given to this.
- ii) The first 2 overarching objectives would be met to a limited extent by a low level of economic activity and the addition of a dwelling, whilst the third objective would partly be met by using the land to some effect, but at the expense of not protecting the built environment. On balance little positive weight derives from these objectives in this case.
- iii) In terms of making effective use of land, the site is not previously developed land (definition in the Framework Annex 2: Glossary). Little weight can be accorded to this.
- iv) Section 12 of the Framework sets out the requirement of 'Achieving well-designed and beautiful places', including statements that "*The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve*" (paragraph 131); and "*Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design*", taking into account any local design guidance and supplementary planning documents such as design guides and codes" (paragraph 139). Great weight should be given to this.

The main result that comes out of this is that great weight needs to be given to 2 matters that in this case pull in opposite directions.

16. However, the benefit of a single dwelling in delivering homes is not greatly significant. It also needs to be seen against the council's claim that it can now demonstrate a supply of housing land of 4.18 years. Significantly, this figure includes a 20% buffer. The appellant has not rebutted this figure. Whilst this figure must be seen against the poor past performance, it suggests that the addition of a single dwelling carries diminished weight.

Conclusions

17. Bringing these considerations to a conclusion, the starting point is the development plan. The main development plan policy for consideration of the proposal is Policy DM3 and the relevant part of the SPD. I consider that both the policy and the SPD are in accord with the Framework. Therefore they carry

the full weight of the development plan, and the refusal of permission is justified on that basis.

18. Against this is the important material consideration which is the Framework. Framework paragraph 11 (d) ii requires the grant of permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As I have found in paragraph 15 above, taking these policies as a whole, the 2 most telling pull in opposite directions. In my judgement the section 12 policies, requiring 'Achieving well-designed and beautiful places', which are adverse to the grant of permission, outweigh the benefits of delivering homes. This is because of the matters I have dealt with in paragraph 16 above.
19. For these reasons, the requirement s38(6), of the Planning and Compulsory Purchase Act 2004, of determining the proposal in accordance with the development plan unless material considerations indicate otherwise, means that planning permission should not be granted. Therefore the appeal will be dismissed.

Terrence Kemmann-Lane

INSPECTOR