
Appeal Decision

Site visit made on 25 March 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2024

Appeal Ref: APP/W1525/W/23/3326474

Land rear of 21 to 23a Broomhall Road, Broomfield, Chelmsford, Essex CM1 7HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr D Pearce against the decision of Chelmsford City Council.
 - The application Ref is 23/00313/FUL.
 - The development proposed is the construction of two single storey dwellings using the existing access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The parties disagree on whether the lawful use of the site is a residential garden. Within the context of this appeal under section 78 of the Act, it is not my remit to determine the lawful use of the site. If the appellant wishes to ascertain this, an application can be made under section 191 of the Act.
3. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties were not invited to make further comments.

Main Issues

4. The main issues in this appeal are:
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposed development on the living conditions of the occupiers of 21 Broomhall Road, with particular regard to noise, disturbance and visual intrusion.

Reasons

Character and appearance

5. The appeal site lies within a residential area consisting of varied dwelling types fronting the roads. It comprises a vacant piece of land enclosed by close boarded fences, with a small part occupied by the remnants of a Nissen hut. Accessed from Broomhall Road, it lies between the rear gardens of properties fronting Jubilee Avenue and Broomhall Road. The site and the substantial amount of surrounding garden ground, together with the significant distance between the houses to the rear, give the area a very open, spacious character.

6. The proposal is for two detached bungalows located to the rear of 21, 23 and 23a Broomhall Road (Nos 21, 23 and 23a) accessed from the driveway to the side of No 21.
7. There is no other residential backland development close by, and the height and footprint of the proposed houses would be in stark contrast to the existing low, small-scale outbuildings in the surrounding gardens and much higher than the boundary fences. Further, the proposal would result in increased activity to the rear of the existing dwellings from cars and people using the access and parking area. Whilst a condition could control external lighting, there would be light from within the buildings. For these reasons, the proposed scheme would be harmfully at odds with the existing open, dark, rear garden environment.
8. The site is not designated open space and the proposal would make more efficient use of vacant, underused land. There would be good separation to the boundaries and the houses would be within reasonably sized plots. Further, planting within the site would improve its appearance and have biodiversity benefits. Nevertheless, introducing sizeable built development into a spacious, largely undeveloped area would harm the sense of openness.
9. Existing buildings would largely screen views of the proposed structures from Jubilee Avenue. Further, the properties at Nos 21, 23 and 23a would partially screen the development in views from Broomhall Road. However, a significant part of the dwelling on plot 1 would be visible in the gap between 19 and 21 Broomhall Road which, due to its location behind the row of existing houses fronting the street, would appear out of character.
10. The parties disagree on whether the site is previously developed land. I observed that there is only the steel roof of a Nissen hut on a small part of the site with no other structures on the land. Therefore, regardless of whether the site was previously part of the garden of No 21, most of it is undeveloped and its existing use would not justify the proposed development.
11. There is no dispute over the detailed design of the proposed dwellings which would reflect other buildings nearby. Further, the structures would be smaller than some in the vicinity and those previously refused by the Council in 2015 (application ref 14/01936/FUL), with some changes to the parking layout compared to the previous scheme. Nevertheless, this would not overcome the harmful impacts on open character caused by the proposed development.
12. Consequently, I conclude that the proposal would harm the character and appearance of the area. This would conflict with Policy DM23 of the Chelmsford Local Plan 2020 (CLP) which requires development to respect the character and appearance of the area in which it is located, and to be compatible with its surroundings having regard to scale and siting, amongst other things. It would also be contrary to the Framework which requires development to be sympathetic to local character.

Living conditions

13. The site is within an urban area with street lighting. No 21 is a house in multiple occupation with three side bedroom windows facing the driveway, the only ones serving those rooms. The proposed properties would be accessed via the existing driveway, with a new hedgerow and 1.2m fence beside No 21.
14. The development would result in more intensive use of the driveway from residents, visitors and delivery drivers accessing the proposed dwellings, with vehicles entering and leaving the appeal site passing close to the property at No 21. I note that not all trips would be made by car. However, due to the proximity of the driveway to the existing bedroom windows, which are higher than the proposed fence, vehicles coming and going from the site would cause harmful noise and disturbance to the occupiers of those bedrooms. The height of the proposed fence means that a condition requiring it to be to a noise attenuation standard would not be effective in mitigating this harm.
15. The appellant states that the height of the planting and fencing would be above car light level. However, the hedgerow could be removed, become damaged or diseased and may only provide screening in the spring and summer months. Further, the fence would not be sufficiently high to prevent light spill from vehicle headlights into the neighbouring bedrooms at night, causing harmful visual intrusion to their occupants.
16. I acknowledge that a condition could control external lighting within the appeal site which would remove the potential for light spill to rooms at No 21 from outdoor illumination.
17. Therefore, I conclude that the proposed development would harm the living conditions of the occupiers of 21 Broomhall Road with particular regard to noise, disturbance and visual intrusion. This would be contrary to Policy DM29 of the CLP where it requires proposals to safeguard the living environment of the occupiers of nearby residential property and to not result in excessive noise, activity or vehicle movements. In addition, it would conflict with the Framework which requires decisions to provide a high standard of amenity for existing users.

Other Matters

18. The proposal would make more efficient use of vacant land in the Chelmsford urban area, contributing two dwellings towards the supply of housing in a settlement with access to services and public transport. The Council currently has a housing land supply exceeding the five years required by the Framework. This tempers the weight I have attached to housing delivery, notwithstanding that it is still a limited benefit to be factored into the planning balance.
19. There would be some economic benefits during the construction phase when the development would provide jobs. However, given the relatively small scale of the proposal, these benefits would be limited.
20. The Council does not raise concerns or find development plan conflict in relation to several other matters, including parking, highways, biodiversity net gain, impacts on existing residents in terms of light, privacy and outlook, and living conditions for future occupants. However, even if I were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the scheme.

21. The proposal is within the Zone of Influence for one or more of the European designated sites scoped into the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2020 and, as such, would have potential impacts on one or more of them. However, there is no need to consider the implications of the proposal on the protected site or sites because the scheme is unacceptable for other reasons.

Planning Balance and Conclusion

22. I have found harm to the character and appearance of the area and to the living conditions of neighbouring occupiers. These are planning harms which attract considerable weight. The delivery of housing and the economic benefits each attract limited weight and the remaining matters only neutral weight, which accordingly do not outweigh the harm I have found.
23. For the reasons given above, the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

A Wright

INSPECTOR