



Appeal Decision

Site visit made on 8 October 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024.

Appeal Ref: APP/B1550/W/23/3333565

54 High Road, Rayleigh, Essex SS6 7AD

- 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 Tim Kirley against the decision of Rochford District Council.
 - The application Ref is 23/00737/FUL.
 - The development proposed is the demolition of existing garage and erection of a two storey detached dwelling to the rear of No. 54 High Road, utilising existing access, and erection of detached garage to front of existing dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
3. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework as published in December 2023, and any reference to paragraph numbers are to this version.

Main Issues

4. The main issues are the effect of the proposed development on:
 - Trees including a Corsican Pine subject to a Tree Preservation Order (TPO);
 - Living conditions of neighbouring occupiers with specific regard to privacy; and
 - Character and appearance.

Reasons

Impact on trees

5. Part of the proposal seeks to demolish the existing garage flanking the donor property and erect a new garage to the front of the site in close proximity to the Corsican Pine (T19) which is subject to a TPO. The appeal is accompanied

by an Arboricultural Survey¹ and Arboricultural Method Statement (AMS)². T19 has been assessed as a Category C tree under the relevant British Standard³, with an estimated remaining life expectancy of at least 10 years.

6. The location of T19 has a significant impact on the visual amenity of the surrounding area, being located on an important corner of High Road. Given its size and prominence, T19 has a high amenity value and contributes significantly to the verdant and tree lined character of High Road, hence its TPO status. Nevertheless, both parties agree that the tree is suffering from some decline with deadwood/dieback evident on the specimen. It was also evident from the site visit that the tree leans towards the roadside.
7. The Council's arboricultural officer has raised concerns that despite its decline T19 should not be removed from the site as part of the proposed development, indicating that there are alternatives to the current location of the garage which could retain the existing tree. As the tree has been given Category C status, I have given careful consideration to its life expectancy. However, given its significant contribution to the visual amenity in the locality, coupled with the limited locations for replacement specimens and the length of time it would take them to reach maturity to make a similar contribution, I consider its loss would cause harm to the character and appearance of the area.
8. The appellant contends that an amended AMS could be conditioned as part of any approval which would seek to retain T19. However, the positioning of the proposed garage (approximately 3m from the tree) would provide a significant incursion within the root protection area (RPA) of the TPO. I share the concerns of the Council's arboricultural officer in that despite the use of raft and pile construction methods, ground levelling within the RPA would also be required which could have further impacts on the health of T19. As such, I am not persuaded that the proposed position of the garage would not cause harm to the protected tree and its longevity, even if it was to be retained.
9. There are two off-site Category B⁴ trees which are located close to the proposed driveway, adjoining the garage associated with the proposed dwelling at the rear of the site, which are not under the control of the appellant. Both these trees would be subject to incursion within their RPAs. I acknowledge that further details could be submitted through the use of conditions to protect these trees. However, to maintain the required levels of light as a result of the new residential accommodation in this location, pressure for additional works to the trees would inevitably be placed on them, which would diminish the contribution these trees make to the local area. This would impact negatively on the character of the area. As such, I am not persuaded that the imposition of conditions would mitigate the likelihood of further harm to the character and appearance of the area arising from the development's effect on the trees in the longer term.
10. The proposal would also require further arboricultural works to the trees located at the rear of the site, which as detailed in the AMS includes the removal of a further eight individual trees, five groups/hedges/shrub groups and the partial removal of two groups/hedges/shrub groups. These trees are

¹ Prepared by Arbtech dated 08/03/2023

² Prepared by Arbtech dated 04/06/2023

³ BS5387:2012 "Trees in relation to design, demolition and construction- recommendations"

⁴ T11 - Cider gum and T12 - Silver birch

generally Category C trees and I agree that these trees are not significant within the context of the local or wider landscape. As such, I consider that the loss in the amenity if these trees were to be removed can be satisfactorily offset by the planting of new and replacement trees, which could be subject to a condition.

11. Overall, the proposal would be detrimental to the long-term future of the trees including T19 which is subject to a TPO. As such it would be contrary to Policies DM1(iv) and DM25 of the Rochford District Council Development Management Plan (RDMP), adopted December 2014, which amongst other things, seek to ensure that existing trees and hedges are conserved and enhanced and that the design of new development takes account of trees and landscaping which bring amenity value to the surrounding area. I also find conflict with paragraph 136 of the Framework which states that trees make an important contribution to the character and quality of urban environments.

Living conditions

12. The properties most effected by the proposal are the donor property at 54 High Road; Nos 52 and 56 High Road which flank the proposal; and Jahara which adjoins the property at the rear. Both parties agree that the proposal would not meet the minimum spacing of 25m between the rears of the properties as set out in the Essex Design Guide, which is required to safeguard reasonable privacy conditions. Nevertheless, I acknowledge that the back land location would provide a degree of screening at the ground floor level, given the presence of the existing fencing, hedges and vegetation along these boundaries. However, the effectiveness would lessen at the upper floors.
13. The proposal has been specifically designed to limit openings at the upper floor level to reduce impacts of overlooking and loss of privacy. The flank elevation adjoining No 52 contains no openings at the first-floor level and it is the same arrangement on the opposite flank adjoining No 56. The elevation facing the rear of the donor property has two openings at the first-floor level. These serve a wardrobe and bathroom and have been annotated as being obscured glazed which would mitigate impacts of overlooking and loss of privacy. Restrictions on additional openings and retention of the obscured glazing could be secured by condition if I were to allow the appeal.
14. However, there are also upper floor windows at the rear of the proposal that provide a single aspect for habitable rooms (bedrooms). The additional windows at the upper floor would provide unrestricted views of the garden area at Jahara. Given their elevated position and modest separation distance between the proposal and the boundary, these windows would provide significant overlooking from a higher vantage point to the detriment of the living conditions for these occupiers. Whilst a degree of mutual overlooking is to be expected in a suburban setting, the orientation of the proposal and the close relationship with Jahara would create an unacceptable degree of overlooking and a loss of privacy harmful to their living conditions.
15. The appellant highlights other properties nearby that have similar separation distances to that proposed here. However, I am not aware of the full circumstances and/or planning history associated with these cases, but it is evident from the limited details presented that they turned on their own particular merits. I therefore give these examples limited weight, as I cannot be certain that these are directly comparable.

16. Consequently, the proposed development would have an unacceptably harmful effect upon the living conditions of the adjoining neighbour at Jahara with specific regard to overlooking. The proposal is therefore contrary to the relevant provisions of RDMP Policies DM1(ix) and DM3(iv) and (x) which among other things, requires new development to provide an appropriate standard of amenity, including privacy and overlooking for occupiers of the proposed development and neighbouring properties. It would also be contrary to the Framework which, amongst other things, expects planning decisions to ensure healthy living conditions and create better places to live, indicating that higher densities should not be at the expense of acceptable living standards.

Character and appearance

17. The surrounding area has a suburban appearance with a mixture of residential properties located in the vicinity. There is significant variety in the size, layout and materials used in the area. Generally, dwellings of traditional form front the street scene, however there are several examples of developments located behind properties fronting the roadside, which are accessed via smaller driveways leading from the main road. As such, whilst the proposal would be set back from the street scene in a back land location, this is not an uncommon feature within the locality, and the proposal would not be considered out of keeping in that regard.
18. There is a varied nature in terms of plot sizes in the area including the nearby back land developments which have been identified by the appellant, thus the immediate context provides some flexibility to the established pattern of the built environment. The proposed dwelling would harmonise with the varying design, plot sizes and orientation of existing properties within the immediate vicinity. Furthermore, the scale and mass of the development when viewed from High Road would be moderated by its back land location and subservient height and appearance. As such, the introduction of the tandem development in this location would not adversely impact upon the character.
19. I therefore conclude that in terms of design the proposal would not lead to an adverse effect on the character and appearance of the surrounding area. The proposed development, in this regard, would comply with the relevant design requirements of RDMP Policies DM1 and DM3 which requires new development to be of a high-quality design that makes a positive contribution to the character and appearance of its surroundings. The proposal would also accord with the provisions of the Framework which amongst other things, also seeks to secure high quality design that is sympathetic to local character including the surrounding built environment, while not preventing or discouraging appropriate innovation or change such as increased densities.

Other Matters

20. The Framework highlights the Government's objective to significantly boost the supply of housing. The proposal for a new dwelling in a relatively sustainable location, would provide a modest benefit towards the Council's housing stock and given it is a small site, could be brought forward relatively quickly.
21. The proposal would also provide benefits such as employment opportunities during the construction phase and the benefits that future residents could bring in accessing and supporting local services. Whilst I recognise these benefits, given its small scale the proposed development would make only a modest

contribution to the Councils housing supply, and accordingly I attach only limited weight to the benefits it would provide.

Conclusion

22. The proposal does not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this. Therefore, I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR