



Appeal Decision

Site visit made on 25 October 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2024

Appeal Ref: APP/H1515/W/24/3340222

Burgess Court, Burland Road, Brentwood, Essex CM15 9BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by CM Burgess Limited against the decision of Brentwood Borough Council.
 - The application Ref is 23/01389/PHNF.
 - The development proposed is described as 'a single-storey roof extension to Burgess Court to provide eight flats of which two are two bed and six are one bed homes, additional parking, cycle parking and refuse'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by CM Burgess Limited against Brentwood Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. Under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended ('the GPDO), planning permission is granted for new dwellings on detached blocks of flats, subject to limitations and conditions. The Council do not dispute that the proposal meets the criteria set out at paragraph A.1 and as such it would constitute permitted development, subject to the conditions set out.
4. The condition at paragraph A.2(1) requires that, before beginning the development, the developer must apply to the local planning authority for prior approval as to the matters listed. This includes: (e) the external appearance of the building and, (g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light.
5. The GPDO states that, when determining such an application for prior approval, the local planning authority must take into account any representations made to them as a result of any consultation or notice given, and have regard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval, as if the

application were a planning application. There is no requirement to have regard to the development plan. Nonetheless, the policies of the development plan can be a consideration insofar as they relate to the matters for consideration.

6. On 30 July 2024 the Government published a consultation on proposed reforms to 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. In reaching my decision I have therefore had regard to the Framework published in December 2023, unless it is stated otherwise.

Main Issues

7. The main issues in this appeal are the effects of the proposal on the amenity of the existing building and neighbouring premises, and on the external appearance of the building.

Reasons

Amenity- Existing Building

8. Burgess Court comprises three storeys of self-contained residential flats. It comprises an L-shape formed of two main elements, 'the southern element' being the larger part of the building facing Burland Road, and 'the northern element' being a smaller section located behind it, and linked via a communal stairway.
9. Due to the shape of the existing building and proposed enlargement, the proposal has the ability to reduce sunlight and/or daylight to the existing flats in Burgess Court. This may particularly be the case for those flats at the lower levels of the building which would face towards parts of the proposed extension. The ground level flats in the northern element of the building (which I understand to be Flats 1 and 2) have dual aspect, however their main living areas and private outdoor spaces and balconies are on its southern elevation. The proposed enlargement would be positioned directly to the south of those windows and outdoor spaces, and could cause a harmful reduction in the provision of sunlight and daylight to those flats, creating dark and oppressive conditions.
10. The flats in the southern element of Burgess Court are similarly dual aspect, but have windows facing north, including kitchen and bedroom windows, some of which face directly towards the northern element. While acknowledging those rooms are smaller, and already north facing, the proposed extension above the northern element could nonetheless cause a harmful reduction in daylight received by those windows and rooms.
11. The appeal is accompanied by a Daylight and Sunlight Review, however this considers the effects of the proposal on the neighbouring buildings rather than the flats within Burgess Court itself. On this basis, given the layout of those existing flats discussed above, together with the shape and orientation of the building, the effects of the proposal on the lighting of the existing flats cannot be established. In the absence of evidence to the contrary, the proposal would not have acceptable impacts on the amenity of the existing building in terms of loss of light.

12. The Council have raised concerns for the effects on the privacy of the existing flats, arising in particular from the proposed balconies and new habitable room windows to the northern element. However, I observed that there is already a significant degree of intervisibility between the windows and balconies of the two parts of the building. Concerns have also been raised by third parties for new occupants peering down from the new windows into existing flats below. However, this would be at a very acute angle, would not be the dominant direction of outlook from the windows, and could already occur between existing windows. Having considered all the matters raised, the proposal would have acceptable impacts on the privacy of the existing flats.

Amenity- Neighbouring Premises

13. The Council have raised concerns regarding the effects of the proposal on the lighting of no.33 Burland Road, which it asserts has habitable room windows facing the appeal site which serve bedrooms. This is at odds with the appellant's Daylight and Sunlight Review. Based on my site visit, it cannot be ruled out that those side windows of no.33 are habitable. Given the proximity of those windows to Burgess Court, it cannot be concluded that the effects of the proposal on the amenity of that building would be acceptable, particularly in terms of lighting.
14. On the opposite side of Burland Road are the rear elevations and private rear gardens of 44, 45 and 46 Brentwood Place, which are approximately 25m from the south facing elevation of Burgess Court, using the Council's figure. These properties are separated from Burland Road by dense foliage including shrubs and tall trees on the edge of the highway. These include some evergreen species which severely limit intervisibility between those properties and Burgess Court.
15. Third parties note that those trees may be removed in the future to provide a cycle lane to the edge of the road. However, even if the extent of foliage and natural screening were to be reduced, given the distances involved, together with the presence of the intervening road and existing south facing windows and balconies of Burgess Court, the effects would not cause unacceptable harm to the amenity of those properties.
16. Given the distance of separation to other neighbouring properties, the positions of existing windows and openings, and given the findings of the appellant's Sunlight and Daylight Review, together the effects on the amenity of those other neighbouring properties would be acceptable.
17. However, in conclusion on the matter of amenity, for the reasons given and based on the evidence before me as part of this appeal, the proposal would have unacceptable impacts on the amenity of the existing building and no.33 Burland Road by way of loss of light. This would conflict with the Framework insofar as it relates to healthy living conditions and high standards of amenity.

External Appearance

18. Burgess Court is set within a predominantly residential area where the grass verges and mature trees together give a relatively spacious and verdant character. The surrounding area comprises clusters of housing of varying character and appearance. This includes, for example, traditional housing of two storeys and pitched roofs to the western side of Burland Road, as well as

modern two storey housing set around a series of cul-de-sacs of Brentwood Place to the south and Sawyers Grove to the east. There are also blocks of similar age and appearance to Burgess Court peppered around the area, including Lavenham Court and Highmead Court, as well as taller developments at Ravenscourt and Argyll Court beyond to the north. The area can be considered as having a mixed character when considered as a whole.

19. Burgess Court is set among landscaped grounds which provide a visual break between the building and its neighbours and it is separated from no.33 Burland Road by an access road and grass verge which provide a break in the frontage. The set back position of Burgess Court on its plot, and separation from the edge of Burland Road by a long expanse of hedgerow and trees, give the site its distinctive character.
20. The proposal would increase the height of the building above the prevailing maximum building heights on Burland Road and increase the visual prominence of the building in localised views. However, the resulting building would sit comfortably within the prevailing building heights of the wider area, particularly those further north which form part of the character of Sawyers Hall Lane. The building's set back position on its plot and surrounding landscaping would also assist in reducing the effects of its increased prominence. Alterations are proposed within the site itself to increase the extent of hard surfaces to provide parking. However, details of soft landscaping to reduce those visual effects could likely be secured by condition if the proposal were otherwise acceptable.
21. In conclusion on this main issue, the proposal would be acceptable in terms of the effects on the external appearance of the building. It would comply with the design objectives of the Framework including where it requires developments to be sympathetic to local character and the surrounding built environment.

Other Matters

22. I have had regard to the other matters raised by third parties and the Council's officer report, which finds the proposal to be acceptable in other respects, and which is informed by relevant consultation responses. I have no strong reason to doubt the Council's conclusions on those other matters, which include highways impacts. Other concerns have been raised which lie outside the remit of considerations set out in Condition A.2 of the GPDO and which are not for consideration as part of this appeal.
23. I note the appellant's comments in respect of the Council's housing land supply, and the objectives of the Framework to boost the supply of homes. This includes the importance of windfall sites and use of previously developed land, and these matters are emphasised in the recent consultation version of the Framework and Written Ministerial Statement. However, the prior approval relates to a principle of development which has already been established and the deliberations of this appeal are confined to those matters set out in the GPDO for which prior approval must be sought. As such these other matters do not amount to considerations to alter the above judgement.

Conclusion

24. For the reasons given, the appeal is dismissed.

C Shearing

INSPECTOR