



Appeal Decision

Site visit made on 20 October 2025

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2025

Appeal Ref: APP/M1520/W/25/3368688

26 Wilrich Avenue, Canvey Island, Essex SS8 7RR

- 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 Westley Fincham against the decision of Castle Point Borough Council.
 - The application Ref is 24/0666/FUL.
 - The development proposed is the demolition of existing garage and construction of detached chalet bungalow.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. As part of the appeal process, an updated site specific Flood Risk Assessment (FRA) was submitted. As the changes to the FRA involve points of clarification and do not seek to fundamentally change the proposal I have accepted the updated FRA and I am satisfied that this would not give rise to any procedural unfairness.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the living conditions of the occupiers of 11 Westerland Avenue with particular regard to outlook and light;
 - whether the proposed development is acceptable having regard to flood risk; and,
 - the effect of the proposed development on the Benfleet and Southern Marshes Special Protection Area (SPA) and Ramsar Site

Reasons

Character and appearance

4. The site is located in a residential area with a mix of dwelling types, including single and two-storey detached, terraced and semi-detached properties. The prevailing pattern is frontage development, with the front 'active' elevation of dwellings facing the main residential street, with dwellings set back from their front boundaries,

- behind areas of hardstanding and/or lawn. This arrangement creates a sense of spaciousness which contributes positively to the character of the area.
5. The appeal site comprises part of the rear garden associated with the end-terrace dwelling at 26 Wilrich Avenue, which benefits from a larger rear garden than the other properties within the terrace. The gardens of the terraces typically have modest flat-roof garages that front a service road at the rear. The appeal site would be accessed via this service road, which is located between No 7 and 11 Westerland Avenue. The service road provides access to parking and to the garages of the nearby properties on Wilrich Avenue, High Street and Baardwyk Avenue.
 6. Although the Council has no specific policy preventing backland development, the siting of the proposed 1 bedroom dormer bungalow to the rear of the existing property would be in marked contrast to the pattern of surrounding development. Its side elevation would face the access road and would be viewed predominantly alongside garages which front large parts of that road, which is in contrast to surrounding properties that have active frontages facing the residential street. The proposal would thus appear as a visually incongruous addition, at odds with the character and appearance of the area.
 7. The Residential Design Guide (RDG) policy RDG2, amongst other matters, outlines that the space around dwellings should be informed by the prevailing character of space around dwellings and seeks at least 1 metre between the property and the boundary. While some nearby dwellings have been built up to their boundaries, this is typically up to their side boundaries, and not front boundaries where dwellings are set back from the street.
 8. I acknowledge that the flank elevation of the proposed dwelling, which faces the access road, would align with the building line of the side elevation of No 11 Westerland Avenue. However, the proposed dwelling would be sited significantly closer to its front boundary than other residential properties. This lack of setback harmfully conflicts with the prevailing pattern of development in the area, resulting in a cramped form of development that lacks adequate setting and would fail to relate well to its surroundings.
 9. Whilst the appellant considers that a 1 metre setback has been achieved, the submitted plans show sections of the side and rear elevation located directly adjacent to the boundary, contrary to the guidance. In any event, the 1 metre distance is a minimum and does not change my observations above.
 10. The rear elevation of the proposed property, which faces No 11 Westerland Avenue, is blank. I acknowledge that this design choice is to ensure no overlooking into the rear garden of No 11, and as such, I do not find the use of a blank elevation in itself, to be inappropriate. The elevation includes an unconventional blind dormer that merges with a gable end. This design would not strictly accord with policy RDG7 of the RDG, as roof verges would not be present on all sides. The proposed rendered finish and fascia board on the blind dormer increases its prominence and unduly draws the eye. However, the appellant has proposed alternative materials for the dormer, such as slate or lead cladding. I find that the alternatives would reduce the dormer's prominence on the roof. Given the small scale and subordinate design of the dormer, I am satisfied that, subject to an appropriate finish which

could be secured with a condition, this element would be acceptable and would not cause any harm to the character and appearance of the area.

11. In conclusion, although I find no harm with the use of a blind dormer and blank elevation, by reason of its siting, the proposal would harm the character and appearance of the area. As such, it would be contrary to Saved Policy EC2 of the Castle Point Borough Council Local Plan (1998) which requires new development to achieve a high standard of design, be appropriate to its setting and to not harm the character of the area. It would also conflict with Policy RDG2 of the RDG as well as failing to accord with the design objectives of the National Planning Policy Framework (the Framework).

Living conditions

12. The proposed dwelling would be sited immediately next to the shared boundary with No 11, spanning approximately half the length of the shared boundary. Although it would be single storey and with a pitched roof design, it would nevertheless project significantly above the shared boundary and above the flat roof of the existing structures in the garden of No 11. Given its close proximity, it would appear as a highly visible and overly dominant addition from the ground floor windows and garden of No 11. This would be to the detriment of the occupiers living conditions.
13. While there is some existing vegetation along the shared boundary, it is limited and I am not persuaded that it would screen the proposal to any substantive degree. Moreover, its permanency cannot be guaranteed. Its presence therefore does not mitigate against the harm identified.
14. The Council have also raised concern that as the proposal would be located to the south of No 11 it would create unacceptable shadowing on to the rear garden of No 11. However, as approximately half of the rear elevation of the proposed dwelling would be located adjacent to the outbuilding at No 11, and because of its single storey height, only a small proportion of the garden would likely experience overshadowing. Therefore, I do not consider the proposal would have an unacceptably adverse effect on the levels of light received by the occupiers of No 11.
15. In conclusion, although I have found the proposal would not have an adverse effect on light, it would adversely affect the outlook of the occupiers of No 11. Although no local plan policy has been cited, it would conflict with Policy RDG3 of the RDG which requires proposals to not dominate elevations of adjoining properties. It would also conflict with the Framework which seeks development that provides a high standard of amenity for existing and future users.

Flood risk

16. The appeal property is located within Flood Zone 3a, an area defined as having a high probability of flooding. In such areas, the Framework requires that proposals satisfy a Sequential Test to ensure that development is directed away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

17. Given that all of Canvey Island falls within Flood Zone 3a, the Council are satisfied that that the proposal passes the Sequential Test. I see no reason to come to an alternate view. Given the flood-risk vulnerability of the site, the proposal is also required to meet the Exception Test. To pass the exception test it needs to be demonstrated that:
- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
 - b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
18. The Council's concern is focussed solely on part b) of the Exception Test, stemming in part from an objection raised by the Environment Agency (EA). The EA was concerned that because the FRA did not contain any details of finished floor levels or assess the risks arising from a flood breach (including flood depths), they could not be satisfied that the proposal would be safe for its lifetime and that there would be an acceptable level of risk to occupiers from flooding.
19. The appellant has addressed the EA's objection by submitting a revised site-specific FRA that provides the additional required information. The updated FRA now details flood-resilient construction methods, finished floor levels, flood depths and assesses the breach risk for the proposed development. Given the proposed first floor level of 4.4m AOD (in excess of the 0.1% breach flood level, including allowances for climate change) and a minimum ground floor level of 1.8m AOD, with no sleeping accommodation proposed on the ground floor, I am satisfied that the development would be safe for its lifetime, with safe refuge provided. The proposal therefore passes the Exception Test.
20. In coming to this view, I have had regard to the concern raised by the Council regarding the proposed surface water drainage strategy. However, I am satisfied that, were I minded to approve the development, this issue could be overcome by way of a condition requiring submission of a revised surface water drainage strategy, agreeing with the Council on this issue.
21. For the above reasons, as the proposal has passed the Sequential and Exception Test I find it has been satisfactorily demonstrated that the proposal dwelling would be acceptable having regard to flood risk. It would therefore accord with the Framework which seeks to ensure that development should be safe for its lifetime.

Habitats sites

22. The appeal site is within the zone of influence (ZOI) of the designated habitats sites of the Benfleet and Southend Marshes Special Protection Area (SPA) and Ramsar site, Foulness SPA and Ramsar Site, the Blackwater Estuary SPA and Ramsar and the Essex Estuaries Special Area of Conservation. These are part of the Essex Coast which is home to internationally important numbers of breeding and non-breeding birds and their coastal habitats.
23. The Council have identified that population growth in Essex is likely to increase the numbers of people visiting the habitats sites for recreational purposes, including for walking, sailing and bird watching among other activities. It has been identified that the majority of this activity is undertaken by people who live in Essex.

24. The proposal would involve new residential accommodation within the ZOI. New residents of the proposed development could cause harm to the birds and coastal habitats of the SPA and Ramsar sites through their recreational activities throughout the lifetime of the development. As such, and adopting the precautionary principle, a likely significant effect on the habitats sites from the proposed development, either alone or in combination with others, cannot be ruled out.
25. In partnership with Natural England and other local authorities, the Council has prepared a Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This provides a strategic approach to mitigation and identifies measures to avoid and mitigate the likely significant effects of new residents through applying a tariff to new residential development within the ZOI.
26. During the course of the appeal the appellant made an upfront payment to the Council of the required tariff amount. The Conservation of Habitats and Species Regulations 2017, requires that, where a project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, the competent authority must, before any grant of planning permission, make an Appropriate Assessment (AA). However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, and that mitigation measures would not represent a benefit of the proposed development to be weighed in the planning balance, it has not been necessary to pursue this matter in any further detail.

Other Matters

27. While the provision of a window on the flank elevation of the proposed dwelling, facing the access road, would offer active overlooking and increase security, this benefit does not outweigh the harm I have identified.
28. The proposal has sought to overcome concerns raised from a previously refused application by the Council, including reducing the height of the proposal. However, the amendments would still result in a proposal that would harm the character and appearance of the area.
29. Although the proposal would provide internal and external living accommodation that meets the required space standards, would not cause harmful overlooking into neighbouring properties and has appropriate parking provision, these are general expectations of new development and an absence of harm on these matters is a neutral consideration.
30. The appellant has drawn my attention to paragraph 125 c) of the Framework, which requires decisions to give substantial weight to using underutilised suitable brownfield land. However, the definition of brownfield land in the Framework defers to the definition of previously developed land, the definition of which excludes land in built-up areas such as residential gardens. I am therefore not compelled to give this substantial weight; however, I do come back to this matter in the planning balance.

Planning Balance

31. The Council cannot currently demonstrate a five-year supply of deliverable housing sites. The evidence indicates that the current supply is between 0.55 and 0.69 years. Whatever figure is used, this is a very significant shortfall. For the purposes of decision making the policies most important for determining the application are thus deemed 'out of date.'
32. Consequently, permission should be granted 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
33. Despite the age of the Council's adopted policies and guidance, the policies with which I have identified conflict are broadly consistent with key policies within the Framework which seek to secure well designed places. The conflict identified with the local plan consequently attracts substantial weight.
34. The proposed dwelling would represent an efficient use of underutilised land in an accessible location and would make a small but nevertheless useful contribution towards housing given the significant shortfall in the Borough. The Framework seeks to significantly boost housing supply and highlights the important contribution small and medium sized sites can make. The proposal incorporates sustainability measures into its design, including in its construction and the use of solar panels. It would also provide economic benefits during both construction and occupation. However, any related social, economic or environmental benefits would be very modest and overall, I attribute moderate weight to these benefits, given the scale of the proposal.
35. I have found that the scheme would have an adverse effect on the living conditions of the neighbouring occupiers in conflict with the Framework which seeks development that provides a high standard of amenity for existing and future users. I have also found the proposal would cause harm to the character and appearance of the area.
36. Together these factors weigh significantly against the scheme, especially as paragraph 11(d)(ii) requires me to have particular regard to securing well-designed places. I thus find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development does not apply.

Conclusion

37. 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. The appeal is therefore dismissed.

T Bennett

INSPECTOR