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**Chief Executive**

## AGENDA

**Committee:** DEVELOPMENT CONTROL

**Date and Time:** Tuesday 5<sup>th</sup> September 2017 at 7.30 p.m.

**Venue:** Council Chamber

**N.B. This meeting will be webcast live on the internet.**

**Membership:** Councillors Hart (Chairman), Smith (Vice Chairman), Acott, Anderson, Bayley, Blackwell, Cole, Mrs King, Mumford, Sharp, Taylor, Varker and Walter.

**Substitutes:** Councillors Ladzrie, Palmer, Mrs Sach and Mrs Wass

**Canvey Island Town Councillors :** Greig and Tucker

**Officers attending:** Rob Davis – Planning Development and Enforcement Manager  
Fiona Wilson – Head of Legal Services

**Enquiries:** Cheryl Salmon, ext. 2454

### PART I (Business to be taken in public)

#### 1. Apologies

#### 2. Members' Interests

#### 3. Minutes

A copy of the Minutes of the meeting held on 1<sup>st</sup> August 2017 is attached.

#### 4. Public Speakers

The Chairman will announce the names of those persons who wish to speak in support /objection under Agenda Item No. 5 (if any).

## 5. Deposited Plans

The reports are attached.

	Application No	Address	Page No
1.	17/0555/FUL	Land adj 81 May Avenue, Canvey Island (Canvey Island South Ward)	1

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**DEVELOPMENT CONTROL COMMITTEE**

**1<sup>ST</sup> AUGUST 2017**

**PRESENT:** Councillors Hart (Chairman), Smith (Vice-Chairman), Acott, Anderson, Bayley, Blackwell, Mrs King, Ladzrie, Mumford, Sharp, Taylor, Varker, Walter and Canvey Island Town Councillors Greg and Tucker.

Councillors Campagna, Palmer, Sach and Riley also attended.

An apology for absence was received from Councillor Cole.

**7. MEMBERS' INTERESTS**

With reference to the Development Control Committee on 6<sup>th</sup> June 2017 Councillor Sharp declared a Non Pecuniary Interest in Agenda Item No. 1, 17/0249/FUL – 30 Hellendoorn Road, Canvey Island, as it had subsequently been brought to his attention that the applicant was known to him.

**8. MINUTES**

The Minutes of the meeting held on 1<sup>st</sup> August 2017 were taken as read and signed as correct.

**9. DEPOSITED PLANS**

**(a) 17/0555/FUL – LAND ADJACENT TO 81 MAY AVENUE, CANVEY ISLAND (CANVEY ISLAND SOUTH WARD) – ERECTION OF DETACHED DORMER BUNGALOW – MR DEAN BULLOCK**

The application sought permission for the provision of a single dwelling on part of a larger site that had previously been refused permission for two dwellings. The application related to a piece of land known as Voorne Avenue, which consisted of a grassed area, a width of approximately 11m, located between Handel Road and May Avenue. There was a footpath running along the southern side of the area, linking the two roads.

The Planning Officer explained that during the appeal for the previous scheme the Planning Inspector had not agreed with the Council's reasons for refusal about the loss of greensward or lack of information about surface water drainage, the latter being capable of being dealt with by way of a planning condition. He did, however, go on to dismiss the appeal on the basis of its impact on 42 Handel Road, specifically the loss of outlook for these occupiers and a loss of privacy arising from the relocation of the footpath. It was considered that the current scheme overcame the reasons why the previous

appeal had been dismissed and did not raise any significant new issues. The proposal was therefore recommended for approval.

The application was presented to the Committee as the previous scheme for development had been a Committee item (July 2016).

Mr Oliver and Mr Lee-Sang, local residents, spoke in objection to the application.

Mr B Bullock, a representative of the applicant, spoke in support of the application.

Councillor Campagna, a Ward Member, spoke in objection to the application.

Canvey Island Town Councillor Greig, spoke in objection to the application.

During debate Members stated that whilst the comments of the Planning Inspector at the appeal were noted it was still felt that the proposed development would result in the loss of an attractive area of greensward and that this would be detrimental to the the character and amenity of the area. The Committee was concerned that the scheme would set a precedent on Canvey Island and that many other areas of greensward, which were considered by Members to be part of the character of the Island, could be at risk from development.

The Committee also raised concern that the development could increase flooding in the area and requested further information regarding the flood risk Sequential Test.

In response to comments regarding the effect of the development on additional on-street parking in an already congested area the Planning Officer explained that the proposal made adequate parking provision for two cars. Whilst the width of the car port parking area would be approximately 2.9m rather than the required 3m it was not considered that this deficiency would be so great as to prejudice its use for parking purposes.

Some Members commented that the proposal would result in the footpath being converted to an alleyway which could lead to an increase in anti-social behaviour in this area.

Following detailed discussion the Committee felt that it would benefit from reviewing the Planning Inspector's Appeal Decision and requested further detailed information from the Planning Officer regarding the flood risk Sequential Test. It was suggested that in light of the further information requested the application should be deferred.

**Resolved** – That the application is deferred so that the Committee can view the Planning Inspector's Appeal Decision and receive a written report from the Planning Officer regarding the Sequential Test.

**(b) 17/0283/FUL – 4 THUNDERSLEY CHURCH ROAD, THUNDERSLEY, BENFLEET (ST PETER'S WARD) – LOFT CONVERSION WITH HIP TO GABLE EXTENSIONS AND FRONT AND REAR DORMERS – MISS DROGMAN AND MR SHELDON**

The applicant sought planning permission for the conversion of the loft space with hip to gable roof extension and front and rear dormers. With the exception of the provision of amenity space the proposal was consistent with the Council's adopted policies and design guidance. It was recommended that the application be approved.

This application was presented to the Committee as Councillor Andrew Sheldon was the applicant.

Following consideration of the item it was:-

**Resolved** – That the application is approved subject to conditions as set out in the Planning Officer's report.

Chairman

## ITEM 1

<b>Application Number:</b>	<b>17/0555/FUL</b>
<b>Address:</b>	<b>Land Adj 81 May Avenue Canvey Island Essex (Canvey Island South)</b>
<b>Description of Development:</b>	<b>Erection of detached dormer bungalow</b>
<b>Applicant:</b>	<b>Mr Dean Bullock</b>
<b>Case Officer:</b>	<b>Mr Keith Zammit</b>
<b>Expiry Date:</b>	<b>22.08.2017</b>

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### Summary

The application seeks permission for the provision of a single dwelling on part of a larger site that has previously been refused permission for two. It is considered that this scheme overcomes the reasons why the previous appeal was dismissed and does not raise any significant new issues. The proposal is therefore recommended for APPROVAL.

Consideration of this application was deferred at the meeting of 1<sup>st</sup> August 2017 in order that members could view the appeal decision letter for the last application on this site (16/0336/FUL), so members could receive a full report on the sequential test, and so that further consideration could be given to the impact of the precedent that would be set by allowing this proposal on other similar areas of green space around Canvey Island.

A copy of the previous appeal decision letter has been provided to members in paper form and the committee report has been updated.

### Site Visit

It is recommended that members undertake a visit the site prior to the determination of the application.

### Introduction

The application relates to a piece of land known as Voorne Avenue, which consists of a grassed area located between Handel Road and May Avenue. It has a width of approximately 11m. There is a footpath running along the southern side of the area, linking the two roads, but there are bollards preventing vehicles being driven over or parked on the land.

In May Avenue there is a chalet to the north of this site and a bungalow to the south. In Handel Road, there is a bungalow to the north of this site and a house to the south.

### The Proposal

Permission is sought for the erection of a detached dormer bungalow with front gable fronting May Avenue. It has two bedrooms and a bathroom at first floor and an open plan lounge/kitchen and car port parking.

The proposed ridge height of the dwelling is 7.2m.

The proposed external materials are grey concrete interlocking roof tiles, grey UPVC windows and doors, lbstock yellow stock brick and grey weatherboarding.

### Supplementary Documentation

The application is accompanied by a covering letter and Flood Risk Statement with appendices which are available to view on the Council's website.

## **Planning History**

July 2016 – permission refused for erection of two detached dormer bungalows and relocation of footpath (16/0336/FUL) for the following reasons:

1. The proposed development would result in a loss of an attractive area of greensward, to the detriment of the character and amenity of the area, contrary to Policy EC2 of the Council's Adopted Local Plan and Government advice as expressed in the National Planning Policy Framework.
2. The proposed dwellings, by reason of their height and proximity to the bungalows at 42 Handel Road and 83 May Avenue, would be likely to result in undue dominance of those dwellings, to the detriment of the amenity of the occupiers of those bungalows, contrary to Policy EC2 of the Council's Adopted Local Plan and Government advice as expressed in the National Planning Policy Framework.
3. Inadequate information has been submitted to satisfactorily demonstrate how surface water run-off from the proposed dwellings and hardsurfaces is to be managed without increasing the risk of flooding elsewhere, contrary to Government guidance as contained in the National Policy Planning Framework.

An appeal was made against this refusal of permission. The inspector did not agree with the Council about the loss of greensward or lack of information about surface water drainage, the latter being capable of being dealt with by way of a planning condition.

He did, however, go on to dismiss the appeal on the basis of its impact on 42 Handel Road, specifically the loss of outlook for these occupiers from the presence of a bedroom window in the flank wall of that bungalow, and a loss of privacy arising from the relocation of the footpath due to people passing close to, and being able to look into, the bedroom window.

## **Relevant Government Guidance and Local Plan Policies**

### National Planning Policy Framework

Section 7 – Requiring good design

Section 10 – Meeting the challenge of climate change, flooding and coastal change

### Adopted Local Plan

EC2 Design

T8 Parking standards

### Residential Design Guidance

RDG1 – Plot size

RDG2 – Space around dwellings

RDG3 – Building lines

RDG5 – Privacy and living conditions

RDG6 – Amenity space

RDG7 – Roof development

RDG8 – Detailing

RDG12 – Parking and access

## **Consultation**

### Highways

The highway does not wish to raise an objection to the above planning application subject to the following conditions being applied.

- The proposed use shall not be commenced and subject land as determined by the red line shall not be enclosed from the Highway until such time as an order has been confirmed extinguishing all highway rights therefrom to protect the public's right and ease of passage over the Highway. The applicant should establish title to the land.
- The existing footpath shall remain on its present alignment thereby maintaining a pedestrian link between May Avenue and Handel Road.

#### Canvey Town Council

Object on the basis of lack of information relating to the sequential test.

#### Environment Agency

No objection subject to the following condition:

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) prepared by Contour Architectural Designs, referenced CAD/PP/16008/FRS-A and dated 10th June 2016 and the following mitigation measures detailed within the FRA:

1. Finished ground floor levels are set no lower than 2.31metres above Ordnance Datum (AOD)
2. Finished first floor levels are set no lower than 4.93 metres above Ordnance Datum (AOD).

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

#### **Public Consultation**

Comments have been received that cover the following points:

- Don't want every spare piece of land built on
- Plans are ugly
- More on-street parking in an already stressed area
- Land is a public right of way
- Loss of drainage and increased risk of flooding
- Dominate neighbouring properties
- Alleyway that will be created may become a location for antisocial behaviour
- Narrow plot
- Narrow parking area
- Dwelling on blind bend, increase highway risk
- Conflict with EC7, loss of amenity
- Overlooking and spoil view
- Alley will become a dumping ground
- Inconvenienced by dust, dirt, noise during construction

#### **Comments on Consultation Responses**

Construction works are temporary in nature and not a material reason for refusing permission. There is no right to a view across neighbouring land.

Other material planning issues raised are discussed below.

#### **Evaluation of Proposal**

At the meeting of 1<sup>st</sup> August 2017, members raised the issue of the impact of the precedent that would be set by allowing this proposal on other similar areas of land.



Some 15 other pieces of land with similar characteristics to the application site, that is former roads now closed to vehicular traffic but retained as pedestrian thoroughfares, have been identified on Canvey Island.

These pieces of land have pedestrian access through them however they are not amenity greenspaces. Whilst the development of these former roads may affect the outlook of residents immediately surrounding them it is considered that they are not sufficiently commonplace across Canvey Island to be described as a defining feature of the island.

The loss of this 'greenspace' cannot therefore be said to set a precedent that would adversely affect the character and appearance of Canvey Island as a whole.

Following the previous appeal decision, officers do not consider that there can be an objection to the proposal on the basis of loss of greensward area or a lack of information about surface water drainage, as the inspector ruled that the former did not amount to a valid reason for refusal following his assessment of the locality, and the latter was suitable to be dealt with by way of a planning condition.

The design of the proposed dwelling is unchanged so there cannot be any objection on design grounds.

The omission of the eastern dwelling facing Handel Road leaving only the western one facing May Avenue and the retention of the footpath in its current location obviate the concerns relating to the loss of privacy and to outlook from 42 Handel Road, which were the only reasons for identified by the previous appeal inspector for dismissing the appeal.

The main issue for consideration as part of this application is whether the amended siting of the dwelling alters its impact on adjacent residents.

The retention of the footpath in its current location means that the proposed dwelling would be sited closer to the northern boundary of the site and thus closer to 81 May Avenue. There is a window in the flank wall of this property at first floor level and a door at ground floor level.

The planning authority holds no records of this property however from its external design it appears that these openings are not a primary light source to a habitable room. Furthermore, a high fence runs along the side boundary of the dwelling which will mitigate the effect of the proposal on the privacy and outlook of the occupiers.

The proposed dwelling has been designed so as not to have any primary windows in the side elevations at first floor level therefore it would not be likely to lead to overlooking of the adjacent sites. The rear garden is short at approximately 7m, where normally 9m is required to prevent undue overlooking from first floor rear windows. However, in this instance the windows overlook a grassed area.

Moreover, the rear dormer window, set back some 7.8m from the boundary, serves a bathroom, which is a room that requires a high level of privacy and could be conditioned as obscure glazed without detriment to the living conditions of the occupiers.

Two roof lights are also proposed on the rear elevation however these are set back from the rear boundary of the site by some 9m and located well above head height.

Whilst recent appeal decisions indicate that the future development of adjoining undeveloped land is not a justification for applying restrictive conditions to a proposal, in this particular instance, given the history of the site and likelihood of future submissions on the land to the rear of the

application site it is considered that an obscure glazing condition in respect of the rear first floor bathroom window is appropriate. The applicant has agreed to this and provided amended plans accordingly.

The proposal makes adequate parking provision for two cars. It is noted that the width of the car port parking area would be approximately 2.9m rather than 3m as would normally be required, but it is not considered that this deficiency would be so great as to prejudice its use for parking purposes. No objection is therefore raised on the basis of parking provision.

The proposal provides some 65 square metres of private amenity, which exceeds the minimum required and is adequate for the size of accommodation proposed.

Following discussions with the applicant the proposal has been amended to provide a high fence around only the rear and flank boundary of the dwelling until level with the front of the neighbour's garage. The fence would then drop down to 0.9m in height as it approaches May Avenue.

This would not look out of place in the context of the area and the provision of a lower fence towards the front part of the flank boundary of the site would help to retain some degree of openness for users of the footpath.

At the meeting of 1<sup>st</sup> August 2017, members requested further information about the sequential testing of residential development on Canvey Island.

The aim of the sequential test as set out in the National Planning Policy Framework is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

Before an application can be sequentially tested, the catchment area for the test must be decided upon. At the meeting it was suggested that the catchment area for the sequential test should also include Benfleet. However, there are a number of reasons why that is not a suitable approach.

First, as the whole of Canvey Island is in Flood Zone 3a (with the highest probability of flooding) and the only areas zoned as Flood Zone 1 and 2 in Castle Point District are on the "mainland" part of the borough, it places reliance on land in and around Benfleet, Hadleigh and Thundersley to meet all of Castle Point's housing growth needs, when there are limited opportunities for new housing due to the various constraints such as the Green Belt.

Second, Canvey Island is a self-contained community with its own housing needs that if not met by development on Canvey would force existing residents with housing needs that cannot be met on Canvey to move off the island, thereby splitting up families and reducing community cohesion.

Third, Canvey needs continued development if it is to continue to thrive economically. A lack of housebuilding on the island could mean that the island stagnates in economic terms which is likely to affect opportunities for employment.

Taking these factors into account, the boundaries of Canvey Island are considered to represent an appropriate catchment area for the sequential test. As the whole of Canvey Island is located in Flood Zone 3 there are no sequentially preferable sites for this development available and the sequential test is considered to be passed.

"More vulnerable" uses such as dwellings within Flood Zone 3a are also required to pass the exception test. This has two elements, both of which need to be passed for the development to be permitted:

- o it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and
- o a site-specific flood risk assessment must demonstrate that 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

In respect of the first criterion, as has already been mentioned, it is considered that continued development is necessary in order that the settlement of Canvey can continue to thrive economically and socially.

In respect of the second criterion, this requires the submission of a site-specific Flood Risk Assessment. The application is accompanied by such an assessment. The Environment Agency has commented that finished ground floor level of 2.31m above Ordnance Datum (AOD) and the finished first floor level of 4.93m AOD are secured by way of condition. Subject to condition(s) that these floor levels are achieved, the second criterion of the exception test is considered to be passed.

The application is accompanied by a flood response plan and schedule of flood resistant/resilient construction measures which are satisfactory.

## **Conclusion**

This amended scheme for the provision of only a single property overcomes the previous reasons for dismissal and does not raise any new issues.

The revised application is consistent with the previous submission in respect of flood risk matters however a condition is necessary on any grant of permission requiring the applicant to demonstrate that the building can withstand the water pressures that may act upon it in a flood event.

A condition is also needed to require approval of details of surface water disposal, as insufficient details have been provided. It is also necessary to impose a condition requiring enactment of the Flood Response Plan contained within the Flood Risk Statement, and to require the finished floor levels of the dwellings to be provided no lower than the heights shown, so that occupiers are not at unacceptable risk from flooding.

In view of the constrained nature of the plot, it is considered reasonable to withdraw permitted development rights for extensions to be erected as the uncontrolled extension of the dwelling could lead to loss of amenity to adjacent residents, or an unacceptable diminution in outdoor amenity space provision.

Conditions are also needed to require the dwelling to be built in accordance with the approved materials to ensure a satisfactory appearance, and to require the provision and retention of the parking area, in order that the proposal does not unreasonably add to on-street parking in the locality.

Finally, it is necessary to require the side window serving the stairs to be obscure glazed and with limited opening to ensure that unacceptable overlooking of the property to the south does not occur.

I have taken all other matters raised by interested parties into consideration, but none are sufficient to outweigh the considerations that led to the recommendation.

**My Recommendation is Approval with the following conditions**

- 1 The development hereby permitted shall be begun on or before the expiration of three years beginning with the date of this permission.

REASON: This condition is imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

- 2 Prior to construction of the development above raft level, a scheme prepared by a qualified structural engineer demonstrating the ability of the proposed structure to withstand the hydrostatic and hydrodynamic pressures likely to be acting on the building in a 1 in 200 year and 1 in 1000 year flood event shall be submitted to the local planning authority.

REASON: To ensure the ability of the approved building to withstand the effects of flooding in the interests of the safety of the future occupiers of the site.

- 3 The development shall be constructed in accordance with such details as may be approved pursuant to condition 2.

REASON: To ensure the ability of the approved building to withstand the effects of flooding in the interest of the safety of the future occupiers of the site.

- 4 Prior to occupation of the dwelling, details of the means of surface water disposal shall be submitted to and approved in writing by the local planning authority, with reference to accurately scaled plans.

REASON: To ensure that hazards from surface water flooding are not exacerbated and because the details submitted were insufficient for consideration of this aspect of the proposal.

- 5 Any such surface water drainage system as may be approved in relation to condition 4 shall be installed in accordance with the approved details and thereafter maintained at all times that the dwelling is occupied.

REASON: To ensure the continued operation of the system to prevent exacerbation of hazards from surface water flooding.

- 6 Upon occupation of the dwelling, the approved Flood Response Plan shall be enacted and thereafter maintained at all times that the dwelling is occupied. Any revisions to the plan shall be submitted to and approved in writing by the local planning authority.

REASON: In order to ensure the appropriate protection of occupiers of the building in the event of a flood.

- 7 Finished ground floor level shall be set no lower than 2.31m above Ordnance Datum.

REASON: To reduce the risk of flooding to the proposed development and future occupants.

- 8 Finished first floor level shall be set no lower than 4.93m above Ordnance Datum.

REASON: To reduce the risk of flooding to the proposed development and future occupants.

- 9 No development of the type specified in Classes A, B, and C of Part 1 of the Second Schedule to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or the equivalent provisions of any statutory instrument revoking, amending or re-enacting that Order) shall be carried out without the express permission of the local planning authority.

REASON: In view of the constrained nature of the site, the local planning authority is of the opinion that the uncontrolled exercise of such rights could lead to loss of amenity to adjacent residents by way of obtrusiveness, dominance or overlooking or an unacceptable diminution in the amount of amenity space on the site.

- 10 The development shall be treated in accordance with the Materials Specification prepared by Contour Architectural Designs received by the local planning authority on 27th June 2017.

REASON: In the interest of the visual amenity and character of the area.

- 11 Prior to occupation of the dwelling, the car port parking shall be provided and made available for use, together with properly constructed vehicular access to the highway.

REASON: To ensure the availability of off-street parking in the interest of highway safety.

- 12 The car port shall be retained as an open structure for the purpose of vehicle parking and not enclosed by any doors, windows, walls or other means of enclosure.

REASON: To ensure the retention of adequate off-street parking facilities in the interest of highway safety.

- 13 The proposed first floor side window serving the stairs and rear first floor window serving the bathroom shall be:

- (i) obscure-glazed, and
- (ii) non-opening, unless the parts of the window which can be opened are more than 1.7m above the floor level adjacent to the window (such distance to be measured at the centre of the window)

and retained as such thereafter.

REASON: To prevent overlooking and loss of privacy to adjacent residents.

- 14 No development shall commence until an order has been confirmed extinguishing all highway rights on the site but retaining the existing public footpath on its present alignment.

REASON: In order to protect the public's right and ease of passage over the public footpath and to maintain a pedestrian link between May Avenue and Handel Road.

## **Informatives**

- 1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently

determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

## 2 ESSEX COUNTY COUNCIL - HIGHWAYS AND TRANSPORTATION DEPARTMENT

### STOPPING UP PART OF THE HIGHWAY TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 247

#### GUIDE TO PROCEDURE

These notes are provided as a guide to anyone wishing to incorporate land presently forming part of the highway into their garden for private use. It can only be used for land that is not enclosed by a fence or similar boundary feature.

#### REMOVAL OF HIGHWAY RIGHTS

In order for the necessary consultations to be carried out please contact all the Statutory Undertakers, ie BT, Water Authorities, Electricity etc informing them of your intention of applying for the removal of highway rights and asking whether or not they would have any objection to this. Enclose a copy of a plan which shows the area of land. However, should highway rights be removed it is possible that the Statutory Undertakers will require their equipment to be relocated. The requestor/ landowner will therefore need to pay to the Statutory Undertaker all costs relating to the relocation of that equipment. In some cases an agreement can be reached to grant the Statutory Undertaker's access to their equipment when required which will avoid the cost of relocation.

##### a) Essex County Council Consultation

A number of consultations will be carried out by Essex County Council following your enquiry in order to determine if there are any objections to the removal of highway rights from the area of land.

Should there be no objections to your request, Essex County Council will confirm in writing that no objection will be raised by the Highway Authority.

There will be no charge for the consultations.

##### b) Planning Permission

It will then be necessary to apply to the local borough or district council for planning permission for change of use from highway to private. An accurate plan will be required for the application, preferably to scale of not less than 1/500.

There will be a charge by the District Borough Council for the planning application.

##### c) Application to Department of the Environment, Transport and the Regions

As a final stage an application needs to be made to the Department of the Environment, Transport and the Regions at the following address National Transport Casework Team, Department of Transport, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle upon Tyne NE4 7YH, telephone 0191 2265117 for an Order removing highway rights from the area of land.

#### PURCHASE OF LAND

Although the area of land forms part of the publicly maintainable highway it is very often not actually owned by the County Council. On most of post war estates such land is generally owned by the original estate developer or his successor in title. In the case of an established

property (ie pre war) there is a common law presumption that the land will revert back to the abutting landowners should highway rights be removed.

Although the purchase of the land is not essential for the stopping up procedure it would be prudent for documentary title of the land to be obtained and legal advice should be sought at this stage.

NOTE: It is important that enclosure of the land should not take place until a Stopping Up Order is actually confirmed by the Department of the Environment Transport and the Regions

#### ENCLOSURE OF THE LAND

Once a Stopping Up Order is made and confirmed by the Department of the Environment Transport and the Regions the land will remain as highway until the area is actually enclosed.

So that the highway records can be updated please notify the Highways Department when you have actually carried out the enclosure.

- 3 In order to minimise damage to the property in the event of a flood the development should be constructed in accordance with the approved Proposed Flood Resilience Plan. Further information about flood resilience measures can be found in the document 'Improving the flood performance of new buildings' at:  
[http://www.planningportal.gov.uk/uploads/br/flood\\_performance.pdf](http://www.planningportal.gov.uk/uploads/br/flood_performance.pdf).

Additional guidance can be found in publication 'Prepare your property for flooding', which can be found at:  
<https://www.gov.uk/government/publications/prepare-your-property-for-flooding>



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## Appeal Decision

Site visit made on 28 March 2017

by **Alex Hutson MATP CMLI MARborA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 April 2017

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**Appeal Ref: APP/M1520/W/16/3161965**

**Land adjacent to 81 May Avenue, Canvey Island, Essex**

- 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 Mr Dean Bullock – D.R Bullock Builders Ltd against the decision of Castle Point Borough Council.
  - The application Ref 16/0336/FUL, dated 3 May 2016, was refused by notice dated 6 July 2016.
  - The development proposed is "Construct two detached two bedroom chalets with associated facilities including relocation of existing public footpath".
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The submitted plans appear to show the floor plans, roof plan and full elevation plans for the proposed dwelling on Plot 2 only. However, the proposed site plan indicates that the proposed dwelling on Plot 1 would be a mirrored version of the proposed dwelling on Plot 2. I have considered the appeal on this basis.
3. The Council's reasons for refusal on its Decision Notice do not cite matters of privacy. However, a representation from the occupier of 42 Handel Road, submitted as part of the original planning application process, raised this matter as a concern. For the reasons set out below, I also have concerns in this regard and as such, I have included privacy in the main issue relating to living conditions. I am satisfied that the representation was available to the main parties and as such, they have had an opportunity to comment on it.

### Main issues

4. The main issues are:
    - The effect of the proposal on the living conditions of the occupiers of 42 Handel Road and 83 May Avenue with particular regard to outlook, and additionally, in respect of the occupiers of 42 Handel Road, privacy.
    - The effect of the proposal on the character and appearance of the area; and
    - The effect of the proposal on flood risk elsewhere from surface water runoff.
-



## **Reasons**

### *Living conditions*

5. The appeal site is located within the context of a wider residential area and comprises a plot of land which runs in an east-west direction between May Avenue and Handel Road. It predominantly comprises grass though has a public footpath running through it which provides pedestrian access between these two roads. The footpath currently runs along the southern boundary of the appeal site. The proposal would introduce two detached chalet style dwellings onto the appeal site; one which would face May Avenue and one which would face Handel Road. The footpath would be relocated close to the northern boundary of the appeal site and would be approximately 1.5 metres (m) in width.
6. I firstly address matters of privacy. A detached bungalow, 42 Handel Road, lies to the immediate north of, and in close proximity to the appeal site. It has two windows on its southern elevation which directly face the appeal site. One of these is obscure glazed and serves a bathroom. The other, according to the evidence, serves a bedroom. A low fence currently forms the boundary between the appeal site and the southern elevation of No 42. The existing position of the footpath away from the bedroom window limits the opportunity for any of its users to obtain views into this window and into the habitable room that it serves.
7. The proposed siting of the footpath close to the northern boundary of the appeal site would allow any of its future users the opportunity to look directly, and from a short distance, into the bedroom window of No 42. This would result in a significant and harmful loss of privacy for the occupiers of No 42. The proposed site plan does not indicate any intention to alter the height of the fence along the northern boundary of the appeal site to mitigate this harm. Moreover, even if this were feasible, the erection of a higher fence in such close proximity to the bedroom window of No 42 might have a detrimental effect on outlook for the occupiers of this property.
8. I now turn to matters of outlook. The occupiers of No 42 are likely to experience an open outlook from the bedroom window on the southern elevation of this property. This is due to the low boundary fence and the current undeveloped nature of the appeal site. The proposed dwelling on Plot 2 would be set back from the northern boundary of the appeal site by only a modest degree and would likely align directly with the bedroom window of No 42. The two storey height of the proposed dwelling combined with its close proximity to the bedroom window of No 42, would create a considerable sense of enclosure to and would appear overbearing in views from this window. Consequently, it would result in a material loss of outlook for the occupiers of No 42.
9. I observed that the detached bungalow, 83 May Avenue, which lies to the immediate south of the appeal site, has no principal windows facing the appeal site. The proposed dwelling on Plot 1, which would largely reflect the front and rear building line of No 83, would therefore not be apparent in any views from the main habitable rooms of this property. Nor would it be particularly apparent in any views from the rear conservatory or rear garden of No 83 for the same reason and given that a high fence currently runs along the rear garden of No 83 where it adjoins the appeal site. As such, there would be no

harmful effect on the living conditions of the occupiers of No 83 in respect of outlook.

10. Whilst I have not found harm to the living conditions of the occupiers of 83 May Avenue, I have found material harm to the living conditions of the occupiers of 42 Handel Road in respect of loss of privacy and outlook. This would considerably reduce the enjoyment of their home.
11. The Council cites conflict with saved Policy EC2- Design, of the Castle Point Borough Council Local Plan 1998 (Local Plan) in respect of living conditions matters. However, this policy does not relate to such matters and is therefore not relevant to this main issue. I therefore turn to the National Planning Policy Framework (the Framework). The proposal would be contrary to the policies of the Framework which seek, amongst other things, to secure a good standard of amenity for all existing occupants of land and buildings.

#### *Character and appearance*

12. Dwellings along May Avenue and Handel Road tend to be tightly spaced and display a wide variety of architectural styles. There is also a mix of single storey, chalet style and two storey dwellings along these roads. The appeal site provides a modest break in built form along May Avenue and Handel Road, though due to its narrow width and the tight spacing of dwellings, this is only particularly noticeable from vantage points immediately to its east and west. Whilst some other grassed plots of land with footpaths linking roads exist in the wider area, these do not occur on such a frequent basis to be a defining or characteristic feature of the area. This is apparent from the submitted Location Plan RUPC.1 and from my observations of the pattern of development in the area during my site visit. On this basis, whilst the appeal site provides some visual amenity within its immediate vicinity, I consider that the contribution it makes to the wider character and appearance of the streetscape and area is limited.
13. The proposed dwellings would be reflective of the size and style of other dwellings in the area and would maintain the linear pattern of development along May Avenue and Handel Road. I acknowledge that the introduction of these dwellings onto the appeal site would result in the loss of an area of grass. However, as set out above, the grassed area of the appeal site is not a defining or characteristic feature of the wider streetscape and area. Nor is it subject to any specific landscape designation. Consequently, I conclude that the proposal would respect and reflect the prevailing character and appearance of the streetscape and area.
14. It would therefore comply with saved Policy EC2, of the Local Plan. This policy requires, amongst other things, development to be of a high standard of design, to be of a scale, design and layout appropriate to its setting and to not harm the character and appearance of its surroundings. This policy is consistent with the policies of the Framework which require planning to secure high quality design and to take account of the different roles and character of different areas.

#### *Flood risk*

15. The Council raises the concern that inadequate information has been submitted to demonstrate how surface water runoff from the proposed dwellings and hard

surface areas would be managed without increasing the risk of flooding elsewhere.

16. The appellant's Flood Risk Assessment (FRA) sets out that a sustainable urban drainage system would be utilised to attenuate surface water from rainfall on the site. This would then feed the stored water into the existing main drainage system at a reduced rate. The appellant indicates that this may in fact have a beneficial effect on the surface water drainage of the appeal site on the basis that Canvey Island is predominantly made up of London Blue Clay soil which is largely impermeable. There is no substantive evidence before me to the contrary. I also note that the Council's Committee Report suggests that this matter could be effectively dealt with by way of a suitably worded planning condition to secure further details of the attenuation system and the implementation of such details. I have not been provided with any compelling reasons to justify why this would not be a reasonable approach to take. Moreover, the Environment Agency raised no specific concerns in respect of the FRA.
17. Therefore, I am satisfied that the proposal would not have a detrimental effect on flood risk elsewhere from surface water runoff. The Framework promotes using opportunities offered by new development to reduce the causes and impacts of flooding.

#### *Other matters*

18. The appeal site lies within Flood Zone 3a, as identified on the Environment Agency (EA) Flood Zone Map. This is a high probability zone at risk of tidal flooding. Residential use is classified as a More Vulnerable Use by the EA. The Framework indicates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. This translates into an approach whereby local planning authorities should only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test (ST), it can be demonstrated that the development is appropriately flood resilient and resistant. The aim of the ST is to steer new development to areas with the lowest probability of flooding. Notwithstanding the submission of a FRA and that Canvey Island benefits from flood defences, the EA sets out that a ST is required. I have not been provided with any evidence that a ST has been undertaken. Nevertheless, on the basis that I am dismissing the appeal anyway, I do not consider that it is necessary for me to consider this matter further.
19. A number of interested parties have suggested that the appeal site, in its entirety, benefits from public access rights. However, the evidence demonstrates that the appeal site is within private ownership. Moreover, it is not designated as a public open space. It is also my understanding of the evidence that public access rights through the appeal site, from its eastern to western boundaries, are limited to the existing footpath which has been adopted by Essex County Council. This footpath would be relocated to allow continued public access between May Avenue and Handel Road. As such, on the basis of the evidence before me, I am confident that the proposal would not result in the loss of any public amenity space or access rights.

20. The appellant states that the Council cannot demonstrate a five year supply of housing. I recognise therefore, that two new dwellings would assist the Council in meeting any housing supply shortfall in this context. Nevertheless, in the wider scheme of things, such a contribution to housing supply within the Borough would be modest. As such, the harm I have identified to the living conditions of the occupiers of 42 Handel Road would significantly and demonstrably outweigh this benefit.

### **Conclusion**

21. I have not found harm to the character and appearance of the area. Nor have I found that there would be a detrimental effect on flood risk elsewhere from surface water runoff. In addition, I have not found harm to the living conditions of the occupiers of 83 May Avenue. However, I have found material harm to the living conditions of the occupiers of 42 Handel Road with regard to loss of privacy and outlook. Such harm would significantly and demonstrably outweigh any benefits.
22. Thus, for the reasons set out above and having regard to all other matters, including parking, highway safety, private amenity space provision, antisocial behaviour, telegraph poles, litter, land ownership, strain on current infrastructure, light, noise and disturbance and the privacy and outlook of the occupiers of neighbouring properties other than those considered above, I conclude that the appeal should be dismissed.

*Alex Hutson*

INSPECTOR

