

Appeal A Ref	APP/B1550/C/07/2050959
Appeal B Ref	APP/B1550/C/07/2050962
Application No	05/00249/BLDG_B
Appellant	Mr McKinnon (Appeal A) Mrs McKinnon (Appeal B)
Location	Oaktree, Clements Gardens, Hawkwell, Hockley, Essex SS5 4DX
Decision	Appeals dismissed and enforcement notice upheld (18.04.08)

The breach of planning control as alleged in the notice is the erection of a bungalow used as separate living accommodation to that of the property known as "Oaktree". The requirements of the notice are (i) Permanently and completely remove from the site the bungalow used as separate living accommodation. (ii) Remove from the site all structures, building materials and rubble arising from compliance with requirement (i) above and restore the land to its condition before the breach took place by levelling the ground and re-seeding with grass. The period for compliance with the requirements is six months.

Oaktree is a detached 1920s bungalow built in an area of loose-knit residential development on the eastern edge of Hockley, within the Metropolitan Green Belt. At the time the McKinnon's purchased the property in June 2004, there was a long established outbuilding/chalet/caravan known as Sun Cottage to the east of the bungalow known as Oaktree. Sun Cottage comprised two bedrooms, a reception room, kitchen and bathroom. An application for a Lawful Development Certificate (LDC) for the 'siting of a caravan as a self-contained residential unit' (which related to Sun Cottage) was refused in December 1997 and a similar application was also refused in May 1998. Mr McKinnon stated his intention was either to replace Sun Cottage or convert it into a leisure facility and guest accommodation to complement the main dwelling.

The original Sun Cottage has been demolished and replaced by the appeal building which is close to the boundary with the adjoining bungalow (Sunnyside). It is 20.4m long by 6.7m wide with a ridge height of 4m.

It is maintained that the new building was erected pursuant to an LDC issued on 15 September 2005 (Ref: 05/00603/LDC) for "The erection of an outbuilding to be used as a private games room and guest accommodation incidental to the dwellinghouse known as "Oaktree"". The plan attached to the LDC shows a building of about 20m by 7.5m which is 5m to the east of Oaktree, adjacent to the boundary with Sunnyside and 4m high to the ridge.

Apart from some minor differences the layout of the building as constructed accords with Plan 962-11A dated 7 October 2005 entitled "Proposed leisure building" which was approved under the Building Regulations. Mr McKinnon and his wife and young children moved into the building on 15 July 2006 after defects were discovered in the structure of Oaktree. The appeal building has been named Sun Cottage and a new access has been created from Clements Gardens. The original access to Oaktree is to the west of the bungalow.

The appellants argue that the appeal building itself is authorised (i.e. it accords with the 2005 LDC) but they accept that the use of the building as living accommodation is in breach of planning control. The family seek permission to live there for a temporary period of two years until the refurbishment of Oaktree is complete. It is hoped that the building would remain thereafter, subject to a condition limiting its use to purposes incidental to the residential use of Oaktree, which is the purpose for which it was built.

The Inspector noted that neither the wording of the LDC nor the accompanying plan was very specific and exactly what has been approved as being lawful is open to interpretation. The Certificate was not satisfactory in professional terms. What has been built is a reasonable interpretation of what had been recognised as lawful. The appellants' witness agreed that the plan submitted with the LDC was a "relatively scanty plan" but said that the reference to "guest accommodation" in the LDC implies overnight accommodation and this would include a need for a bathroom and WC, somewhere to sit and somewhere to get a drink.

The appeal building is in approximately the same position as that approved in the LDC and has similar proportions, but the footprint is not the same. Even if it had been built in accordance with the LDC it was never used for the purposes described in the LDC. It has had a kitchen installed from the outset and has all the characteristics of a bungalow. Having regard to all the evidence, the dates of the various plans and the sequence of events it seemed to the Inspector that on the balance of probabilities Mr McKinnon's intention was to design and construct a building that was capable of being (and was intended to be) occupied as an independent dwelling from the outset. The building is not an "outbuilding to be used as a private games room and guest accommodation incidental to the dwellinghouse known as "Oaktree"", it is a bungalow which is used as separate living accommodation. Therefore, the appeal fails on ground (b).

There is a general presumption against inappropriate development within Green Belts. Such development should not be approved, except in very special circumstances. It is for the applicant (or the appellant) to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other consideration.

The appellant argued that the site of the appeal building had not been open garden land, but had previously been occupied by Sun Cottage and that the impact of the original structure should reasonably be taken into account when assessing the relative impact of the "replacement" building upon the openness of the Green Belt. The Council pointed out it was a much less substantial structure, being about 1/3 size of the replacement.

The appeal building is now the McKinnon family home and their need for temporary accommodation during refurbishment of "Oaktree" is a material consideration which could amount to very special circumstances. The Inspector felt that the needs of the family can be met by allowing a temporary period of occupation of the appeal building and to this extent very special circumstances are found to exist.

The Inspector concluded that the enforcement notice be varied by deleting “6 months” as the period for compliance in paragraph 6 of the notice and substituting “two years”. Subject to this variation he dismissed the appeals, upheld the enforcement notice, and in the case of Appeal A, refused to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

APPEAL BULLETIN FOR APRIL 2008



Appeal A Ref APP/B1550/A/08/2060721
Application No 07/00703/FUL
Appellant Newman Design and Build Ltd
Location 68-72 West Street, Rochford, Essex SS4 1AS
Decision Dismissed (23.04.08)

Appeal B Ref APP/B1550/E/08/2060814
Application No 07/00704/CON
Appellant Newman Design and Build Services Ltd
Location 68-72 West Street, Rochford, Essex SS4 1AS
Decision Dismissed (23.04.08)

The Inspector dismissed the appeal proposed demolition of existing commercial buildings. Erection of 41 dwellings and associated external works. The Inspector took into consideration the Rochford District Replacement Local Plan (policy CS7, CS8 and BC2).

The main issue in the planning appeal was the effect of the proposed development on the appearance of the Rochford Conservation Area and on the setting of the neighbouring Listed Building at 64-66 West Street. The main issue in the conservation area consent appeal is whether or not such consent should be granted in advance of planning permission.

The appeal site is prominently located on the western approach to the town centre. The proposed development would consist of a mix of one, two and three bedroom flats, two bedroom maisonettes and a bed sit flat located in three and four storey blocks arranged around a courtyard.

It was common ground at the Hearing that the bulk, scale and appearance of any redevelopment of the site should be in sympathy with its location in the conservation area. The Inspector's principal concern is that the tower feature proposed at the corner with Union Lane fails to achieve this. The tower would have the appearance of a late addition to the proposed building rather than an integral feature of it. It would, with its lower portion oversailing the pavement and supported on a pillar, be a contrived and elaborate feature, and as such would be out of keeping with the rest of the building which otherwise seeks to respect the domestic form of development in the area and it would be alien to the generally restrained appearance of the conservation area.

The Inspector was satisfied that in townscape terms the appeal scheme would successfully relate to the neighbouring Listed Building, being of a similar height to that building and set back over 4 metres from its front corner. It is also the case that the appeal scheme would make effective use of previously developed land, lead to the removal of the unattractive light industrial buildings on the site and provide an element of affordable housing.

However, these points are outweighed by the failure of the proposed development, particularly the proposed tower feature, to either preserve or enhance the appearance of the Rochford Conservation Area or preserve the setting of the neighbouring Listed Building at 64-66 West Street. In this respect, it would conflict with the aims of policies CS7 and CS8.

Policy BC2 indicates that consent for the demolition of buildings in a conservation area will only be granted where, amongst other things, planning permission has been granted for the after use of the site. The purpose of this policy is to avoid the situation in which buildings are demolished and sites stand vacant for long periods thus harming the character and appearance of the Conservation Area.

The Inspector considered this to be a situation in which the granting of conservation area consent should follow the granting of planning permission as to do otherwise would cause unacceptable harm to the aims of policy BC2.

The Inspector considered that in townscape terms the proposed building would relate well to the neighbouring Listed Building but noted that the window to a first floor flat in the Listed Building would look directly onto the blank end wall of the proposed building which would be only a metre or so away. This would lead to unacceptably oppressive and gloomy conditions within that flat.

The Inspector concluded the planning appeal for the proposed development would cause harm to the appearance of the Conservation Area, to the setting of the neighbouring Listed Building and to the living conditions of the occupants of the first floor flat in that building and with regards to the conservation area consent appeal, considered that the demolition of the existing properties on the site without planning permission being granted for an acceptable after use would harm the character and appearance of the Conservation Area. For those reasons, dismissed both the appeals.

Appeal Ref APP/B1550/A/08/2064606
Application No 07/00837/FUL
Appellant Mr & Mrs D Reeve
Location 16 Woodstock Crescent, Hockley, Essex SS5 4XG
Decision Split decision (25.04.08)

The development proposed is an additional bedroom with an en-suite in the roof space with an addition at the rear and a dormer window at the front. The Inspector took into consideration the Rochford District Replacement Local Plan (Policy HP6) and Supplementary Planning Document 2.

The rear addition would be provided within a flat-roofed dormer. Although it would be lower than the roof ridge and a roof verge would remain at the gable end of the roof, the face of the dormer would be flush with the main rear wall of the house, leaving only a modest roof verge below the dormer. Due to its excessive width, only a narrow roof verge would remain between the side of the dormer and the roof-slope of the attached house at No 18. It would be highly visible from the public domain as there is a footpath close to the side of the property. It would also be clearly visible from the car parking area at the opposite end of the terrace. The Inspector felt it would seriously detract from the appearance of the host property and would have a materially harmful effect on the character and appearance of the area.

There is no objection to the front dormer window, subject to a condition controlling the details of the external materials to be used, it would not harm the character and appearance of the area.

The Inspector dismissed the appeal insofar as it relates to an additional bedroom with an en-suite in the roof space with an addition at the rear and allowed the appeal insofar as it relates to a dormer window at the front and granted planning permission for a dormer window at the front at 16 Woodstock Crescent, Hockley, Essex SS5 4XG in accordance with the terms of the application Ref 07/00837/FUL and plans submitted with it so far as relevant to that part of the development hereby permitted and subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Appeal Ref APP/B1550/A/08/2061196
Application No 07/00763/OUT
Appellant Alan Gershlick and Glen Bartlett
Location 36 The Approach, Rayleigh, Essex SS6 9AA
Decision Dismissed (28.04.08)

The Inspector dismissed the outline application development proposed to demolish an existing dwelling and to construct a two-storey building comprising 6 one-bedroom flats with access to parking at the rear. The Inspector took into consideration the Rochford District Replacement Local Plan (Policy HP6, HP11 and HP3) and Supplementary Planning Document 2: Housing Design.

The main issues are whether the proposal amounts to an overdevelopment of the site, particularly with regard to the amount of outdoor amenity space available for the occupants, and whether the development would be harmful to the character and appearance of the area.

The Council maintains that the layout incorporates insufficient space for outdoor recreation, storage and drying facilities, and this would be detrimental to the expectations of amenity that can reasonably be expected to be enjoyed by the residents of the flats.

The Council's guidance requires a useable communal residents' garden on the basis of a minimum 25m² for each flat i.e. 150m². The Council maintains that the available private amenity space is 123m² which is 27m² short of the requirement, but as the appellants point out, there is an error in the calculations and the correct figure is 165m² which exceeds the requirement. Despite the assertion of the Council, the area does meet the standard in terms of the measured area, but the area does need to be useable if it is to be of any amenity value to the residents.

The plan divides the amenity area into sections. Area (a) tapers to a point and the furthest metre or so would be of no beneficial use for sitting out or anything else. Area (b) is immediately next to parked cars and the amenity value of part of it would be compromised by this. Area (d) (some 4.2m by 4.8m) lies between the boundary fence and two parked cars. It is also immediately outside the ground floor window of one of the flats which raises privacy issues as it is intended to be available to all residents.

In the Inspector's view the layout of the site fails to have sufficient regard to the unusual shape of the plot and simply puts forward the "left over" space as shared amenity space. The proposed layout conflicts with Policy HP3 and HP11 and planning permission should be refused.

The general form of the building reflects the character of other houses and flats in the Approach but the Inspector felt the brick enclosed rear external staircase is a particularly unattractive and oppressive feature that conflicts with Policy HP11 which added weight to the decision to refuse the application.