
Appeal Decision

Site visit made on 13 June 2016

by Graham Chamberlain BA MSc MRTPI

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

Decision date: 17 June 2016

Appeal Ref: APP/X1545/D/16/3146541

Nuthouse, 4 Maldon Road, Burnham-on-Crouch, Essex CM0 8NS

- 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 Mrs Jane Smerald against the decision of Maldon District Council.
 - The application Ref HOUSE/MAL/16/00014, dated 7 January 2016, was refused by notice dated 4 March 2016.
 - The development proposed is the demolition of an existing outbuilding and the erection of an ancillary annexe.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of an existing outbuilding and the erection of an ancillary annexe at Nuthouse, 4 Maldon Road, Burnham-on-Crouch, Essex CM0 8NS, in accordance with the terms of the application, Ref: HOUSE/MAL/16/00014, dated 7 January 2016, subject to the attached schedule of conditions.

Main Issue

2. The main issue in this appeal is whether the proposed building would be an annex or an independent dwelling, and if the latter, whether it would be suitable for such occupation.

Reasons

3. The appeal site is located on the periphery of Burnham-on-Crouch and within the settlement boundary. It encompasses a large detached dwelling with an equally large rear garden. There is a single site access and this is from the B1010. The Council do not allege any harm to the countryside, highway safety, the character and appearance of the area or the living conditions of neighbours arising from the proposed annex. It is however concerned that the annex may be occupied as a separate dwelling.
4. It is a matter of fact and degree as to whether or not the proposed development would be occupied as an annex or an independent dwelling. In assessing this it is necessary to consider whether the proposed building could function as an annex. It does not necessarily follow that the presence of primary accommodation within the proposed annex means it would not, or could not, be occupied as ancillary to Nuthouse.
5. The proposed annex would be within the residential curtilage of Nuthouse. The occupants of the proposed annex would share the single site access and use of

the existing large rear garden. There is nothing before me to suggest the proposed annex would not stay in the ownership of the appellant and there is no intention to create separate curtilages or subdivide the site via the erection of a wall or fence. This is significant as such physical subdivision would erode the functional linkage between the proposed annex and main dwelling.

6. The annex would be reasonably close to the main dwelling and would overlook the garden. Access to the annex would be through the house or via the paths around the sides of the house. There would be no independent vehicular access. The creation of an independent access would result in a contrived subdivision of the plot. It would also require the occupants and visitors of the proposal, if functioning as a separate dwelling, to pass and repass in very close proximity to the windows and amenity space of the host dwelling. I therefore share the appellant's view that the proposed siting would render independent occupation of the annex (e.g. via sale or letting) by anyone other than a relative or guest of the occupants of Nuthouse as unlikely and undesirable.
7. Occupation of the annex is proposed to be by the appellant's mother. It is intended that she would take occasional meals in the house as well as complete her laundry and relax/watch television. Moreover, there would be no separate address and the utilities would be shared. I therefore find that the proposed annex would be located and occupied such that there would be an ancillary functional linkage with the occupation of Nuthouse.
8. The proposed building would have all of the accommodation available for independent occupation separate from Nuthouse. It would also be detached and sited a reasonable distance away, which together could further facilitate occupation independent of the main dwelling. However, given the siting of the annex within the main body of the garden, along with the restricted access, I consider occupation in a way wholly independent of Nuthouse to be highly unlikely. Nevertheless it is not inconceivable and thus I find that it would be possible for the proposed annex to be occupied in a way either ancillary to, or independent from, Nuthouse.
9. Independent occupation of the building would be undesirable as the access would be highly contrived. This would result in an awkward relationship with the main house with the occupants of Nuthouse suffering a loss of privacy and adverse impacts from noise and disturbance, especially from the use of the paths to the sides of the house, were this to occur. Occupation independent from the main house would therefore be an unacceptable form of development harmful to the living conditions of the occupants of Nuthouse.
10. However, I am satisfied that a planning condition requiring ancillary occupation of the annex would prevent the harm I have identified from occurring. Such a condition is therefore necessary. It would also be reasonable as I am satisfied that the occupation of the building as an annex would not be so unrealistic that the inevitable consequence of allowing this appeal would be to create an independent dwelling.
11. I therefore conclude on the main issue that the proposed development could be occupied as an annex or as an independent dwelling but the harm that would arise from the latter can be prevented by way of a planning condition. With such a condition, independent occupation could not lawfully occur and therefore an independent dwelling would materialise, thus retaining the proposed annex as a suitable domestic annex within the curtilage of the Nuthouse.

12. With such a planning condition imposed, I find no conflict with the aims of saved Policy H11 of the Maldon District Replacement Local Plan 2005 (LP), which seeks to protect the countryside from unacceptable residential growth and protect the amenities of the area. Aims consistent with Paragraph 17 of the Framework. The proposal would also adhere to Policies S1, D1 and H4 of the Maldon District Pre-Submission Local Development Plan 2014-2029, which have similar overarching aims to Policy H11.
13. The Council has made reference to saved Policy BE1 of the LP in its reason for refusal. However, neither the Council's reason for refusal or the Case Officer's report expand on how the proposal is considered to be contrary to this Policy. In fact, the Officer's report finds the proposal as being consistent with this Policy in respect of design, amenity and amenity space, conclusions I share. As such, I find no conflict with saved Policy BE1.

Conditions

14. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council. In addition to conditions relating to ancillary occupation as already discussed, and the standard commencement period, it is necessary to add conditions requiring implementation in accordance with the approved drawings and the details of external materials contained in the Design and Access Statement. This is in the interests of precise and safeguarding the living conditions of neighbours and the character and appearance of the area.

Conclusion

15. For the reasons given above, and having regard to all other matters raised, including the drainage byelaws, I conclude the appeal should be allowed.

Graham Chamberlain

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall commence before the expiration of three years from the date of this decision.
- 2) The development hereby approved shall be carried out strictly in accordance with the details shown on the following approved plans (or any approved non material amendment to the plans):
 - Drawing Nos 0368-11-15/03a (Proposed Site Plan), 0368-11-15/03a (Proposed Elevations and Floor Plans)
- 3) The external surfaces of the development hereby approved shall be constructed of materials and of a finish as detailed within Paragraph 3.20 of the Planning Design and Access Statement.
- 4) The additional residential accommodation/annex hereby approved shall only be occupied and used as ancillary accommodation to the main dwelling known at the time of this decision as Nuthouse, 4 Maldon Road and shall at no time be subdivided from the curtilage of, or used as an independent unit of residential accommodation separate from, Nuthouse, 4 Maldon Road.