

Appeal Decision

Site visit made on 8 May 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 22nd May 2017

Appeal Ref: APP/X1545/W/16/3166974

Sailing Club Clubhouse (East of), The Quay, Burnham-on-Crouch, CM0 8AS

- 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 James Cumming against the decision of Maldon District Council.
 - The application Ref FUL/MAL/16/00673, dated 10 June 2016, was refused by notice dated 7 September 2016.
 - The development proposed is described as 'Existing land and use of class A3 tea room and storage accommodation: to change of use of one dwelling house class C3 with no structural changes to the property'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Maldon District Replacement Local Plan (MDRLP) pre-dates the National Planning Policy Framework (the Framework) and the emerging Maldon District Local Development Plan 2014 – 2029 (LDP) is at an advanced stage of preparation but the examination is yet to be concluded. I have therefore ascribed weight to relevant saved and emerging policies for the purposes of this appeal in my reasoning on the main issues, having regard to Paragraphs 215 and 216 of the Framework.

Main Issues

3. The main issues are i) whether the proposed development would be safe from flooding and ii) the effect of the proposed development on highway safety.

Reasons

4. The appeal site consists of a modest detached building situated immediately adjacent to the promenade along The Quay. It is set a little back from the promenade behind an area of decking. There is a small grassed area to one side and the Burnham Museum to the other. There is no vehicular access to the site, which can only be entered on foot from the promenade.
 5. The building, which was constructed in around 2003, has planning permission for use as a tea room with associated storage. However, I understand it has never been used as such and it is unclear in what capacity it has been used since construction. The floorplans indicate that it has one main room and WC at first floor level, which is accessed from the promenade, with a further WC and storage rooms on the ground floor below. It is proposed to use the
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building as a dwelling, comprising a bedroom/lounge and WC on the first floor and bathroom/kitchen diner on the ground floor.

Flooding

6. The site lies within Flood Zone 3, where there is a high probability of flooding ignoring the presence of any defences. The residential use proposed is a 'more vulnerable' use in flood risk terms, as set out in the Planning Practice Guidance (PPG). The Framework seeks to direct development away from areas at highest risk of flooding, and where necessary, ensure it would be safe without increasing flood risk elsewhere, including by satisfying the requirements of the Sequential and Exceptions Tests.
7. Paragraph 103 of the Framework sets out that development should only be considered appropriate in areas at risk of flooding where it is demonstrated, as informed by a site-specific flood risk assessment (FRA) that it would be appropriately flood resilient and resistant, among other things. Furthermore, contrary to the appellant's view, footnote 20 specifies that a site specific FRA is required for all proposals for change of use in Flood Zone 3, together with the application of the Sequential Test, and Exception Test where necessary.
8. No site specific FRA has been provided with the appeal. While I note the presence of defences including a wall and flood gates along the waterfront in front of the site, and the appellant's view in regard to the condition and flood protection standard provided by these, in the absence of an appropriate site-specific FRA I am not satisfied that it has been demonstrated that the dwelling would be safe from flooding. The appellant is also of the view that the residential use of the building would reduce the number of users compared to a tea room. However, the tea room use has never been implemented and so in this case it is not clear that the number of users would be reduced. Moreover, a tea room is a use 'less vulnerable' to flooding, as set out in the PPG.
9. I note that the upper storey of the building is set higher than the level of the promenade, however this is only by a limited amount and with insufficient evidence about the flood risk posed, due to the lack of a detailed site specific FRA, it is not clear whether this is pertinent. I am also not persuaded that simply advising occupants to subscribe to a flood warning service satisfies the Framework's requirement to demonstrate that the development would be appropriately flood resilient and resistant. Ensuring that the building would be appropriately safe from flooding for the lifetime of the development, including taking account of climate change, is fundamental to assessing its suitability for residential occupation. Therefore I consider this is not a matter that can reasonably be addressed by requiring a subsequent site-specific FRA by condition.
10. In light of this I conclude that it has not been demonstrated that the proposed development would be appropriately safe from flooding. It would therefore conflict with the Framework, the requirements of which are set out above. The Council has not referred to any development plan policies in its reason for refusal but this does not diminish the conflict with national policy.

Highway safety

11. The site lies within the centre of Burnham on Crouch, within reasonable walking distance to a range of shops and facilities, and train and bus services are

available in the town. The location of the dwelling would therefore accord with the general locational aims of adopted MDRLP Policy T1 in relation to access to sustainable transport.

12. The site does not benefit from vehicular access and therefore no on-site parking can be provided. The closest public parking is on-street in nearby Coronation Road, which is a no through road and lacks a turning head. The promenade is accessible on foot via steps leading up from Coronation Road. Given the short distance involved, it is likely that residents and visitors to the proposed house would seek to park in that road, where there is some unrestricted parking available, albeit this is limited by the multiple drives and accesses along the road. At the time of my visit, on a Monday afternoon, there were a number of on-street spaces available, although I accept that parking demand may be greater at other times of the day and at weekends in this principally residential street.
13. Coronation Road has a footway along both sides, which can be accessed via the steps from the promenade, giving safe pedestrian access between the site and the town. I therefore find no conflict with saved Policy T2 of the MDRLP, which relates to transport infrastructure in new developments, in particular the layout in relation to the highway and access to alternative modes of transport. This policy therefore has limited relevance to the appeal proposal, which has no internal transport layout requirements and no access to the highway is proposed.
14. The proposal would also be generally consistent with the requirements of emerging Policy T2 of the LDP, which sets out a number of accessibility criteria. However, the Council is concerned that the proposal would not provide off-street parking in accordance with its adopted Vehicle Parking Standards (VPS), as required by emerging Policy T2 and saved Policy T8 of the MDRLP. I have not been provided with a copy of the VPS but the Council's report advises that for a one bedroom dwelling in a sustainable location a maximum of one space would be required. The report further advises that the VPS is expressed as a maximum to encourage reduced reliance on the car and to promote methods of sustainable transport.
15. This apparent approach relating to the VPS is not entirely consistent with Paragraph 39 of the Framework and the parking related content of the Written Ministerial Statement of 25 March 2015, which should be read alongside it and advises that local planning authorities should only impose local parking standards where there is a clear and compelling justification that it is necessary to manage the local road network. On the basis of the evidence before me, and my site visit, I am not persuaded that a clear and compelling justification has been demonstrated in this case.
16. Notwithstanding any identified parking standard, given the very modest scale of the dwelling proposed and its generally accessible location, it is unlikely to give rise to significant levels of parking demand. Therefore, if residents and visitors to the dwelling were to park in Coronation Road, or other nearby roads, the impact in terms of parking pressure and the availability of parking nearby would be very modest. The limited traffic movements I observed in Coronation Road were at low speeds and it is very unlikely that the low level of parking that might reasonably be expected to arise in Coronation Road in connection with the proposed dwelling would result in any significant detriment to

pedestrian and highway safety, or the efficient operation of the local highway network. Moreover, I note that the local highway authority has raised no objections in this regard.

17. Furthermore, it is not clear what the relative parking demand implications of the implementation of the tea room use might be. While the Council considers that there would be ample provision in public car parks for such visitors, it is also possible that they would seek on-street parking closer-by. This factor can therefore carry little weight either for or against the appeal.
18. I therefore conclude that the proposal would not have a detrimental effect on highway safety and I find no conflict with saved Policy T2 of the MDRLP, which is generally consistent with the Framework and I afford it significant weight in so far as it is relevant to this appeal. On the other hand, the proposal would conflict with saved Policy T8 of the MDRLP, which requires off-street parking provision in accordance with the VPS except in certain circumstances, and emerging Policy T2 in so far as it also requires parking provision in accordance with the Council's adopted standards.
19. In arriving at this conclusion I have considered the relevant content of appeal decisions APP/X1545/A/00/1037364 and APP/X1545/A/02/1081354, which relate to earlier proposals on the appeal site. The first related to a two bedroom dwelling with boat store and ice cream kiosk and tea room and the second proposed a tea room and kiosk with an additional storey. In dismissing both appeals, the respective Inspectors found harm arising in relation to parking demand and highway safety. While I accept that some underlying principles may have changed little, those appeals date from 2000 and 2002, relate to local policies that are no longer in force, and pre-date the Framework. Significantly, they also relate to somewhat larger scale development proposals than that before me. These decisions therefore do not outweigh my findings above.

Other Matters

20. The site lies within the Burnham on Crouch Conservation Area (BoCCA), a designated heritage asset. Given that the proposal would not result in any structural alterations to the building or significant alterations to its external appearance, I consider that its effect on the character and appearance of the BoCCA would be neutral.

Conclusion

21. While I have not identified significant harm in relation to highway safety, I am not persuaded that it has been demonstrated that the proposal would be adequately safe from flooding. Therefore, for the above reasons, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR