
Appeal Decision

Site visit made on 27 March 2017

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 5 June 2017

Appeal Ref: APP/X1545/W/16/3164833

Sunnyside, Stoney Hills, Burnham on Crouch, Essex CM0 8QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Levins against the decision of Maldon District Council.
 - The application Ref OUT/MAL/16/00418, dated 18 April 2016, was refused by notice dated 14 June 2016.
 - The development proposed is the demolition of existing garage and erection of 2 dwelling houses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with full details in relation to access, layout, scale, appearance and landscaping to be considered at a later date, as reserved matters. However a block plan shows the rear garden separated from the donor dwelling and subdivided into two plots, each with a detached dwelling, and access taken from Stoney Hills, to which I have had regard.
3. The Council has confirmed that it no longer seeks to contest the second reason for refusal, relating to highway safety, following the determination of a recent appeal at Hillcrest House, Stoney Hills¹.

Application for costs

4. An application for costs was made by Mr and Mrs Levins against Maldon District Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues in the appeal are therefore:
 - Whether the proposal would be likely to have an adverse effect on protected species;
 - The effect of the proposal on the character and appearance of the surrounding area; and

¹ Appeal Ref APP/X1545/W/16/3157183 dated 27 February 2017, and subsequent email from the Highway Authority on 3 March 2017

- The effect of the proposal on the living conditions of the occupants of Sunnyside with regard to noise and disturbance.

Reasons

Effect on protected species

6. The National Planning Policy Framework (the Framework) states that if significant harm to priority habitats and species resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.
7. The appeal site is a residential garden, mostly laid to lawn with trees and shrubs around the side and rear boundaries, and abutting open fields to the rear. The officer report stated that the site contains various features, including a pond; landscaping, trees, walls and mounds that may support protected species such as great crested newts, reptiles, bats or breeding birds. At the time of my site visit the pond had been filled in and there was no evidence of any mounds previously referred to.
8. Whilst trees and shrubs and walls are common features within many gardens, standing advice from Natural England (NE) notes that Great Crested Newts may be present even if the site has been ploughed, soil stripped or had ponds filled in within the last 4 years. The standing advice replaces individual responses from NE where, for example, applications are submitted without the relevant protected species surveys, and is a material consideration in the determination of applications.
9. Further to the above, the Planning Practice Guidance states that local planning authorities should only require ecological surveys where there is a reasonable likelihood of a protected or priority species being present. Applying a precautionary approach, given the presence of a pond within the site approximately 12 months ago, the existence of a linear hedgerow and mature trees along the rear boundary and the proximity to open countryside, the site would appear to have the potential of supporting a range of species, including Great Crested Newts. Although it is not clear whether the Council specifically requested an ecological survey after the application was submitted, the Council had raised the matter in relation to a previous application on the same site for a similar proposal within the rear garden area. As such the appellants would have been aware of the Council's concern in this regard.
10. I have had regard to the appellants' assertion that outbuildings could be built within the rear garden of the donor dwelling as permitted development, but two proposed dwellings, and associated domestic paraphernalia including additional outbuildings for each are likely to have a greater impact on biodiversity.
11. Consequently, the lack of information in relation to biodiversity is such that I cannot be certain that the development would not have an adverse effect on protected species, and thus I must conclude that the proposal would be contrary to LP Policy CC5 and Submission Maldon District Local Development Plan Policy N2, which seek to protect species and habitats that have statutory protection, and the Planning Practice Guidance. As the Submission Maldon District Local Development Plan is well progressed I give its policies substantial weight.

Character and appearance

12. The appeal site is located outside a defined settlement boundary. Policy S2 of the Maldon District Replacement Local Plan (LP) (2005) states that outside development boundaries defined in the local plan the coast and countryside will be protected for their own sake particularly for their landscape, natural resources and areas of ecological, historical, archaeological, agricultural and recreational value. The appeal site does not fall within an area with a specific landscape designation and the Council has not identified any other intrinsic value other than by virtue of the site's location outside a designated settlement with the exception of its ecological value, which I have dealt with as a separate matter above.
13. As the scheme is in outline, with the layout, scale and appearance reserved for future consideration, no proposed elevations are provided and the application form does not specify how many bedrooms each dwelling would have. However, the block plan indicates that the maximum ridge height would be 5 metres, and the maximum eaves height 3.7 metres. The two dwellings would be sited perpendicular to the host property within the rear garden, and would be served by an access to Stoney Hills following the demolition of the detached garage.
14. Stoney Hills is a residential area comprising predominantly of detached properties within large plots. Although there is no development to the rear of the neighbouring dwellings on either side, since the application was determined planning permission has been granted on appeal for three dwellings to the rear of Hillcrest House, in a similar backland location. There are also dwellings on land at the side of Mirfield, albeit these five dwellings are served by a single access to Stoney Hills.
15. Due to its secluded location the site would not be particularly prominent in wider views and there are mature trees and shrubs along the rear boundary that would provide substantial screening of the development from the open countryside to the rear of the site. Moreover, full details of landscaping would be required as reserved matters. Consequently the development could be assimilated satisfactorily into its surroundings and would not have a significant impact on the prevailing character of the area.
16. The Council considers that, following an update in August 2016, it can now demonstrate a five year housing land supply, and this has not been disputed by the appellants. Further to the above the Council has referred to an appeal at Nipsells Farm Lodge, Nipsells Chase², which notes that a good level of weight can be attached to Policy S2. The Inspector in that appeal noted that there is no pressing need to release sites outside of settlement boundaries to fulfil the Borough's housing needs over the next five years, particularly those that would cause harm to the character and appearance of the area. In the event the Inspector found the proposal would have demonstrable adverse impacts on the landscape.
17. Notwithstanding this, the Council's housing requirement is not a minimum or a ceiling to new development and the National Planning Policy Framework at paragraph 47 seeks to boost significantly the supply of housing. The two dwellings would make a modest contribution towards this. In addition the

² APP/X1545/W/15/3139154

Council concedes that Stoney Hills is a relatively accessible location and did not refuse permission simply because the site was outside the settlement boundary.

18. Taking all of the above reasons into account, the proposal would not harm the character and appearance of the area, and would accord with LP Policies BE1 and CC6, and Policy D1 of the Submission Maldon District Local Development Plan, which seek to ensure, amongst other things, that development is compatible with its surroundings in terms of layout, scale, height and visual impact and would not harm the landscape character in the locality. There would be a conflict with LP Policy S2, but in this instance, it would be outweighed by the absence of harm and other material considerations referred to above.

Living conditions

19. Sunnyside is located on a quiet road but there are dwellings on either side and it faces the rear gardens of dwellings on land adjacent to Mirfield. As such its occupants would be used to some comings and goings from neighbours including the movement of vehicles and domestic activity within rear gardens.
20. The Council's concerns relate to the potential for noise and disturbance due to the location of the access to the two proposed dwellings. This would pass the northern flank wall of the host property, but there are no windows in that elevation which serve habitable rooms. Furthermore, the garden between the boundary with the new properties and the flank wall would be sufficiently wide to provide adequate separation from the proposed access, and details of boundary treatment could be agreed by condition. In this way there would be sufficient separation to avoid undue noise and disturbance to that property.
21. There would be some noise generated by future occupiers of the dwellings within the garden and access road in association with typical domestic activities but this would be no greater than that experienced from existing neighbouring properties, and the rear garden of Sunnyside, at about 10m in depth, would provide sufficient space for the occupants of that dwelling to provide a buffer from the rear gardens of the new dwellings.
22. For the reasons set out above I conclude that the development would not harm the living conditions of the occupiers of Sunnyside, in relation to noise and disturbance. Thus the proposal would accord with LP Policy BE1 and emerging Policy D1 of the Submission Maldon District Local Development Plan, which both seek to prevent development which would have an adverse effect on neighbouring occupiers.

Other Matters

23. I have had regard to concerns that the dwellings would place additional pressure on local social and physical infrastructure, but the development is modest in scale, the Council has not set out any specific requirement in this respect and it did not form a reason for refusal. As such I have given this matter little weight in determining the appeal. I also note that Stoney Hills is a private road and thus its current and future condition is a matter for those responsible and outside the scope of this appeal.
24. The effect of the development on the value of adjacent properties is not a planning matter.

Conclusion

25. I have found that there would be no harm to the character and appearance of the surrounding area or to the living conditions of adjacent occupiers. Nonetheless, as there is insufficient information before me to be certain that the development would not harm protected species I conclude that the appeal must fail.

Claire Victory

INSPECTOR