

Appeal Decision

Hearing held on 31 May 2017

Site visit made on 31 May 2017

by Joanna Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 29th June 2017

Appeal Ref: APP/X1545/W/17/3166607

Blackwater Marina, The Esplanade, Maylandsea, Essex CM3 6AL

- 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 Ian Wilson of Blackwater Marina Ltd against the decision of Maldon District Council.
 - The application Ref FUL/MAL/16/00814, dated 20 June 2016, was refused by notice dated 12 September 2016.
 - The development proposed is residential development (four detached houses).
-

Decision

1. The appeal is dismissed.

Main issues

2. The main issues are the effect that the proposal would have on:
 - the character and appearance of the surrounding area,
 - the living conditions of the future occupiers, with regard to noise and disturbance,
 - the supply of land for employment purposes, and
 - whether the proposal would comply with national policy which aims to steer new development away from areas at the highest risk of flooding.

Reasons

3. The Development Plan includes the saved policies of the *Maldon District Replacement Local Plan* (LP). The relevant ELP Policies carry forward the thrust of policies in the LP, and the consultation on modifications to the *Maldon District Pre-Submission Local Development Plan 2014-2029* (ELP) closed in about April 2017. As the ELP is at a fairly advanced stage and the relevant Policies were subject to relatively minor modifications, they can be afforded moderate weight. The Mayland Neighbourhood Development Plan (ENP) is at a very early stage, and no ENP policies were drawn to my attention.

Character and appearance

4. The appeal site has a wide timber-fenced frontage to the roughly north-west side of the Esplanade. The openness above the tall fence, over the boatyard and through the tops of boats, their masts, and lifting gear within it, towards the Blackwater Estuary contributes positively to the maritime character and appearance of the locality. On the opposite side of the road and on the same

side to roughly north-east, the mostly detached 2-storey dwellings with good-sized back gardens are set back in soft landscaped front gardens with drives. To roughly south-west of the site is a tall shed within the boatyard, with the bar and restaurant beyond. Whilst there are a few 3-storey dwellings at Mayland Quay, with their upper floors in their roof spaces, they are not typical of the wider area and their height respects their relationship with the boatyard buildings. The suburban character and appearance of the dwellings and their gardens are also important to local character. Along the frontage of the site the Esplanade provides a visual break between the mainly residential area and the industrial and commercial waterside uses in and around the boatyard, both of which contribute positively to the sense of place.

5. The proposal includes 2 3-bedroom and 2 4-bedroom 3-storey family houses with integral garages and upper floors lit by dormers and roof lights in their tall gabled roofs. The fairly well separated dwellings would be sited in shallow back and front gardens in a linear pattern on the north-west side of the Esplanade. The willow that is subject to The District Council of Maldon Tree Preservation Order No. 19/95 Blackwater Marina Esplanade, Maylandsea would be retained.
6. Because of the tall gabled form and the design of the dwellings, they would have a bulky top-heavy appearance and an urban character that would be out of keeping with the range of generally low-profile dwellings close by. Due to the alignment of the Esplanade, their bulk and mass would harmfully erode the important openness over the site that is edged by the tall shed to the south-west. Whilst the gaps between the dwellings would give views toward the estuary, the substantial depth and height of the dwellings would enclose those funnelled views. Their dominant form would also look out of place in the views in either direction along the Esplanade. Moreover, the urban form of the dwellings would detrimentally erode the maritime character of the boatyard and it would disrupt the mainly open character of the wider estuarine landscape. Thus, the proposal would be unacceptably at odds with its surroundings and it would harmfully damage the existing sense of place.
7. Therefore, I consider that the proposal would harm the character and appearance of the surrounding area. It would be contrary to LP Policy BE1 which aims for proposals to harmonise with the general character of the area, ELP Policy D1 which seeks respect for character and local context, and the Framework which aims to always seek to secure high quality design and to take account of the character of different areas.

Living conditions

8. The appeal site is presently part of the boatyard, where industrial and commercial noises including banging, drilling, grinding, sanding, machine noise, clattering, vehicular comings and goings, and so on, would be expected with varying frequency throughout the day and throughout the year, in the buildings and in the open. The Council's reasons for refusal refer to LP Policy CON5 but there was no suggestion that the proposal would contribute to noise pollution. So LP Policy CON5, which aims to prevent pollution, is not directly relevant.
9. The appellant's acoustic consultant's noise survey and assessment (the assessment) aims to avoid significant adverse impacts on health and quality of life as required by the Noise Policy Statement for England. The assessment uses methodology in BS 8233:2014 *Guidance on sound insulation and noise*

reduction for buildings but this is applicable to steady continuous noise. Whilst it refers to BS 4142:2014 *Methods for rating and assessing industrial and commercial sound* (BS 4142) it is not supported by adequate survey data and it includes references to British Standards that have been withdrawn. Instead, an assessment in accordance with well-established industry practice using the methodology in BS 4142 would have been more relevant. That is because it would have enabled the noise rating level of industrial and commercial noise at the boatyard, including the use of plant, machinery and power tools, and any noise due to the bar, to be assessed against the background noise level at the nearest noise sensitive receptor, and it would have enabled the character and nature of the various noise sources to be taken into account.

10. So, little weight can be attached to the assessment's findings that an acceptable environment could be achieved within the dwellings with double glazed windows closed when boatyard plant is in use, or partly open when boatyard plant is not in use. Also, the assessment does not explain how boatyard noise on the balconies or in the gardens would be mitigated. Even if such noise could be mitigated by a tall solid boundary fence or wall, as suggested at the hearing, this would not be appropriate for the living room balconies that would face the boatyard.
11. Moreover, the assessment says that the boatyard has 2 main busy periods in the year around April and November, which is in line with times when boats would be prepared for the season and made ready for winter storage. However, monitoring was carried out in February, when the boatyard was noted to be generally quiet, which would be expected as people would be less likely to work outside during short daylight hours and inclement weather. Thus, there is insufficient evidence to show that the future occupiers' living conditions would be acceptable inside or outside their homes.
12. Furthermore, if the proposal were to be allowed, the need to safeguard its future occupiers' living conditions could unreasonably restrict the ability of the existing business to operate or expand. So, the proposal would be contrary to the Framework, which recognises that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.
13. The Council has almost no recorded complaints about noise from the boatyard, but it is an established use, many nearby dwellings appear to predate current planning policy, and the threshold for statutory nuisance is much higher than for living conditions for planning purposes. As sound generally diminishes with distance, most nearby dwellings and back gardens benefit from their siting and the acoustic shadow of any intervening buildings. By contrast, the back gardens of the dwellings would adjoin the boatyard, where industrial and commercial noise could legitimately occur next to the boundary fence or wall.
14. Thus, I consider that the proposal would harm the living conditions of the future occupiers, with regard to noise and disturbance. It would be contrary to LP Policy BE1 which seeks appropriate amenity space, ELP Policy D1 which seeks usable private amenity space, ELP Policy D2 which aims to avoid, alleviate and mitigate any detrimental impacts due to noise, and the Framework, which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Employment land

15. The appeal site is within the boatyard and includes 2 gated vehicular accesses from the Esplanade. At my visit the site appeared to be mainly used for storing boats. Whilst the southern access led to a building that had been used for manufacturing, it was damaged by fire and has since gone, so its footprint is now part of the boatyard. In terms of local policy, the boatyard amounts to employment land. The residential use of the site would therefore cause the loss of employment land. LP Policy E6 and ELP Policy E1 seek to resist the loss of land in employment use unless a number of criteria are met in similar terms. In line with the Framework these Policies aim to avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose.
16. Whilst some traditional maritime industries have declined, the Council's District Economic Prosperity Strategy (2013-2029) says that 'The District's strong links with its maritime past are further evident through the marinas, docks and boatyards, and a colourful calendar of traditional barge matches, regattas, races and festivals has put the area on the map as a destination for maritime leisure and water recreation,' which recognises the importance of this sector. The wider boatyard site includes slipways, pontoons, swinging moorings, various buildings and a wide attractive frontage to the Esplanade. The loss of the site would leave the wider boatyard with an irregularly-shaped area of land by the sea wall. Thus, regardless of its ownership, the loss of the site, which is physically associated with Blackwater Marina, could adversely affect its present use, and its potential future use, say in whole or part for tourism and leisure, and little evidence to the contrary was put to me. As the boatyard is in keeping with its surroundings, not unacceptably harmful to amenity, and the proposed dwellings would not be a greater benefit to the local community, the first 2 criteria in LP Policy E6 and ELP Policy E1 would not be met.
17. Between about April 2016 and September 2016, the site was marketed for sale or lease as a storage yard. The appellant has submitted some marketing details, but there is insufficient evidence of a robust marketing campaign, such as copies of adverts from published journals and prints of web pages. There is also insufficient evidence to show that the site, which is a narrow strip of open land with no connected services mostly within Flood Zone 3, and with nearby housing on 2 sides and industrial uses on the others, has been available to suitable prospective occupiers at an appropriate rate or cost. Furthermore, in respect of the third criterion in ELP Policy E1, there was little to show that the present use of the site is no longer viable. Little weight can be attached to the employment development off Steeple Road because its existing buildings and its site specific circumstances differ significantly from those at the boatyard.
18. Thus, I consider that the proposal would cause the unacceptable loss of land in employment use. It would be contrary to LP Policy E6 and ELP Policy E1 and the Framework, which aims to encourage sustainable economic growth.

Flood risk

19. The Framework explains 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. Planning Practice Guidance (PPG) says that the Sequential Test aims to steer new development to areas with the lowest

probability of flooding, being Flood Zone 1, then Flood Zone 2. Only where there is no reasonably available land within these zones should development be considered in Flood Zone 3, which has the highest risk of flooding. In line with the Framework and PPG, ELP Policy D5 aims to minimise the risk of flooding and states that all development must be located in areas where the use is compatible with national planning policy, and demonstrate that the Sequential Test and, where necessary, the Exception Test has been satisfactorily undertaken in accordance with national planning policy.

20. The appellant's flood risk assessment (FRA) identifies tidal flooding as the main source of flooding. The appellant's flood risk consultant explained that the risk to people from flooding would be negligible and only likely from a major catastrophe such as a breach or over topping by an event that exceeds the 200 year design of the embankment, and for projected, hypothetical future (higher) tidal levels under changed climate conditions. The habitable rooms would be on the middle and upper floors of the dwellings and the minimum level of the middle floor could be controlled by condition so that both upper floors would provide a safe refuge. Maximum flood depths would occur some hours after a breaching event, so there would be sufficient time for occupiers to reach the refuge or evacuate. Although potential overtopping of the defences would not be a threat until 2065, a breach could occur before. So future occupiers would need to be advised to use the Environment Agency flood alert and warning services. Whilst an evacuation route was identified from the dwellings by way of the Esplanade to Marine Parade, there was insufficient detail to show that it would be safe, and there do not appear to be other safe evacuation routes that would be within the control of the appellant. Moreover, these matters are relevant to the Exception Test.
21. In respect of the Sequential Test, which is the starting point, the FRA identifies that most of the site is within Flood Zone 3, and that the proposed dwellings would fall within the 'more vulnerable' category. The FRA says that the need for the development is borne out by the Council's current lack of an identifiable 5 year housing land supply. However, the fairly advanced stage of the ELP and recent appeal decisions including APP/X1545/W/16/3154913 dated 11 April 2017 support the Council's stance that it can demonstrate a deliverable 5-year supply of land for housing. The FRA says that alternative sites have been considered, but insufficient evidence was put to me to show that there would be no reasonably available sites appropriate for the proposal in areas with a lower probability of flooding in the mainly rural District. Thus, the proposal would fail to satisfy the Sequential Test, and there would be no need to satisfy the Exception Test. The Council confirmed that the group of dwellings in the Esplanade to roughly north-east were permitted under previous local and national policy, so they attract little weight.
22. Therefore, I consider that the proposal would fail to comply with national policy which aims to steer new development away from areas at the highest risk of flooding. It would be contrary to ELP Policy D5 and the Framework.

Other matters

23. The benefit of 4 new dwellings would be substantially outweighed by the harm identified in the main issues. Furthermore, even if the Council were to be unable to demonstrate a 5-year supply of land for housing, and the proposal were to be acceptable in all other respects, because the proposal would be

contrary to specific policies in the Framework that indicate development should be restricted, namely those policies regarding locations at risk of flooding (footnote 9 to Framework paragraph 14), it would not be in accordance with the presumption in favour of sustainable development. I have also had regard to my colleague's appeal decision ref APP/X1545/W/15/3006320 but it was for a different proposal on a dissimilar site and I have not heard and read the same evidence as my colleague. So I have dealt with the proposal before me on its merits and in accordance with its site specific circumstances and relevant local and national policy and guidance.

Conclusions

24. For the reasons given above and having regard to all other matters raised, the appeal fails.

Joanna Reid

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Kratz BA(Hons) Solicitor LMRTPI	Appellant's agent, Birketts LLP
James Dent BSc FRMetS CMet CEnv	Flood consultant
James Williams BSc(Hons) MIOA	Acoustic consultant, Pace Consult
Peter Ottley	Petro Designs Limited, Chartered building surveyors and architectural consultants

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Leigh BA(Hons) MA MRTPI	Group manager, Planning Services, Maldon District Council
John Fairweather Member CIEH	Environmental health officer, Maldon District Council

INTERESTED PERSONS:

Jacqueline Miles	Local resident
Margaret Gilmore	Local resident

DOCUMENTS PUT IN AT THE HEARING

- 1 Plan of Mayland Neighbourhood Area
- 2 The District Council of Maldon Tree Preservation Order No. 19/95
Blackwater Marina, Esplanade, Maylandsea
- 3 ELP Post Examination Modifications to Policies D1, D2, D5 and E1
- 4 Mr Dent's notes and addendum to appellant's flood risk
assessment for Blackwater Marina