



Appeal Decision

Site visit made on 2 July 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2019

Appeal Ref: APP/X1545/W/19/3224602

White House, Wyke Hill CM9 6SH

- 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 Ward against the decision of Maldon District Council.
 - The application Ref OUT/MAL/18/00583, dated 15 May 2018, was refused by notice dated 14 September 2018.
 - The development proposed is the erection of a detached two storey 3-bedroom dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant asserts that a caravan has been sited within the site for the last 20 years, and the caravan has officially been recorded on the latest ordnance survey map as a dwelling. However, I have no substantive evidence that the caravan has lawful use as a dwelling and the Council has confirmed that neither planning permission nor a certificate of lawfulness has been granted for the caravan. I am therefore unable to give this matter weight.
3. The application is in outline with all matters reserved and I have therefore dealt with the appeal on this basis.
4. I have amended the description of the proposal to remove wording that is not a description of development.

Main Issues

5. The main issues are:
 - Whether the proposed dwelling would provide satisfactory living conditions for future occupants with respect to noise; and
 - Whether the proposed development would be in a suitable location, with particular reference to policies concerned with housing in the countryside and the effect of the proposed development on the character and appearance of the area.

Reasons

Living conditions

6. The appeal site comprises part of the garden to the White House which is located off the A414, Wyke Hill, a road which I saw was well used by vehicles. The plot is roughly rectangular in shape and is bound by a close boarded fence and mature vegetation. An oak tree outside of the site is subject to a Tree Preservation Order (TPO).
7. The appellant has submitted a noise assessment in support of the appeal scheme which indicates that the dominant source of noise is road traffic and, based upon my observations, I concur with this conclusion. Daytime average noise levels within the site were identified to be 73dB $L_{Aeq,16hr}$ and night time average noise levels were 67dB $L_{Aeq,8hr}$. Mitigation proposed includes moving the proposed dwelling to the rear of the plot, installing a 2m close-boarded fence and not locating habitable rooms on the side of the dwelling which faces towards Wyke Hill.
8. Policy D1 of the Maldon District Approved Local Development Plan (LDP) 2014-2029¹ seeks to ensure that development provides sufficient and useable private and public amenity space, amongst other things, and Policy D2 states, in part, that any detrimental impacts and potential risks to the human and natural environment will need to be adequately addressed by appropriate avoidance, alleviation and mitigation measures.
9. Maldon District Design Guide Planning and Noise: Technical Document to Maldon District Design Guide December (Design Guide) 2017, advises that the noise levels for amenity spaces and habitable rooms should ideally be met without the need for mitigation measures incorporated into the building itself. Where mechanical ventilation is proposed, full justification should be provided that demonstrates that alternative methods of mitigation are not practical.
10. Whilst it may be possible to design the dwelling with glazing and in wall ventilators or whole house mechanical ventilation, future occupants of the proposed dwelling may still choose to open windows, irrespective of the efficiency of the ventilation system, particularly during the summer months. This would significantly reduce the effectiveness of the mitigation proposed and, could result in sleep disturbance for future occupants.
11. I have considered whether it would be reasonable to secure mitigation through condition, including that all windows to the property should be non-opening. However, I do not consider that this would be reasonable, particularly given the likely need to ensure means of escape. Indeed, the noise assessment advises that 'all windows at the development should remain openable for rapid ventilation or to avoid over-heating.'
12. The appeal scheme is for a 3 bedroom dwelling and, given the size and rectangular shape of the plot, it has not been demonstrated that it would be feasible to locate all habitable rooms away from Wyke Hill. Furthermore, whilst the noise assessment submitted by the appellant suggests moving the dwelling towards the rear of the appeal site, it has not been demonstrated that this would be a satisfactory solution given the proximity of the oak tree which is subject to a TPO.

¹ Adopted July 2017

13. The noise assessment concludes that the proposed screening of the dwelling from the road would reduce the level in the outdoor area by a minimum of 7dB. This would result in noise levels which are well above the upper limit set out in BS8233:2014. It is suggested that a garage could be used to screen the amenity space, however, this is not a matter which could be secured via condition, nor would the garage be likely to screen all of the outdoor amenity space. Consequently, occupants of the outdoor amenity space are likely to experience noise which is noticeable and disruptive.
14. Paragraph 180 of the National Planning Policy Framework (the 'Framework')(2019) seeks to ensure that decisions avoid noise giving rise to significant adverse impacts on health and the quality of life. I am not persuaded that the mitigation proposed by the appellant would secure compliance with the British Standard and World Health Organisation (WHO) Guidelines. Moreover, noise levels in the outdoor amenity space would be excessive. It is therefore likely that there would be significant adverse impacts on health and quality of life for future occupants of the proposed dwelling.
15. The appellant has drawn my attention a number of residential schemes in the area where noise was considered, including 14/00723/OUT, FUL/MAL/18/00186, FUL/MAL/18/00187. However, I do not have full details of these schemes before me and I am not persuaded that they would be comparable to the appeal scheme. Furthermore, I must consider the appeal on its own merits.
16. Thus, the appeal scheme would not provide satisfactory living conditions for future occupants with respect to noise, contrary to Policies D1 and D2 of the LDP, the requirements of which are set out above, the Design Guide and the Framework.

Character and appearance

17. The appeal site occupies a prominent location along Wyke Hill and is surrounded by a loose knit cluster of dwellings generally set back from the road. The proposed dwelling would be located on land which comprises part of the garden of the White House, between the White House and Wyke Cottage on the outskirts of Maldon. Mature vegetation around the site make it feel secluded. Although substantial built development is located to the east of Wyke Hill, the general setback of buildings from the highway and mature vegetation on both sides of the road contribute positively towards the verdant character of this part of Wyke Hill, giving the town a rural edge, helping to distinguish between the rural character of the District and the identity of Maldon.
18. The site is located just outside the development boundary and is therefore technically in open countryside. However, its close proximity to Maldon and relationship with existing dwellings mean it would not be an isolated dwelling. I acknowledge that there would be conflict with Policy S8 of the LDP which seeks to direct new development to within development boundaries. However, due to its edge of settlement location the facilities of Maldon would be easily accessible by foot. As such, I consider the policy conflict would be minor. Furthermore, Policy H4 of the LDP supports infill development subject to detailed criteria. Given the site's position between two dwellings which have frontages with Wyke Hill I consider that the appeal scheme would comply with Policy H4 in this regard.

19. Policy H4 also seeks to ensure that development optimises the use of land having regard to the existing character and density of the surrounding area, amongst other things. Policy D1 of the LDP seeks to ensure that development respects and enhances the character and local context and makes a positive contribution in terms of landscape setting and townscape setting amongst other things. Policy S1 seeks, in part, to ensure that development maintains the rural character of the District without compromising the identity of its individual settlements.
20. The appellant asserts that trees within the site, with the exception of those that are identified as unsuitable for retention, would be retained. However, it would be necessary to remove vegetation to facilitate access into the site. Furthermore, given the size of the plot and the location of trees and vegetation around its periphery, I consider it highly likely that future occupants would choose to lop, top or fell trees to allow more light into the site and to ensure that rooms within the dwelling are not heavily shaded. This would erode the verdant character of this part of Wyke Hill, which would harm the character and appearance of the area.
21. The appeal scheme is in outline and therefore the precise location of the dwelling within the site, its design and scale would therefore be subject to change. The appellant states that a condition restricting the size of the dwelling to a bungalow would be acceptable. Although it would be possible to limit the height of the building, the removal of vegetation would still be required to provide access which would diminish the verdant character of this part of Wyke Hill.
22. The appellant has drawn my attention to appeal decision reference APP/X1545/W/18/3199192. However, I have no substantive details of the scheme before me and am not convinced that this is comparable to the appeal scheme before me. Furthermore, I must consider the appeal on its own merits. I accept that the Framework does not preclude the development of all garden land and that the Council's ability to demonstrate a 5 year supply of housing does not mean that there should be no additional housing in the district.
23. Thus, the appeal scheme would diminish the verdant character of the area, which, given its prominent location, would harm the character and appearance of the area, contrary to Policies S1, D1 and H4 of the LDP, the requirements of which are set out above.

Other Matters

24. The appellant asserts that Policy H2 of the LDP encourages the provision of a greater proportion of smaller units and that the Councils Strategic Housing Market Assessment identifies that there is a need for a higher proportion of one and two bedroom units. The appellant has advised that he is willing for a condition to be imposed to secure up to two smaller one/two bedroom houses or bungalows instead of a three bedroom dwelling. However, I have no alternative proposals before me and am unable therefore to give this any weight.
25. The Town Council is supportive of the proposal and support was received from an interested party in response to the appeal. I acknowledge that some people may choose not to live on a modern housing estate and that there are other

developments in the area which have been permitted. However, I am obliged to consider the appeal scheme on its own merits.

Conclusion

26. For the reasons given above, and having regard to all matters raised, the appeal is dismissed.

M Savage

INSPECTOR