
Appeal Decision

Site visit made on 23 June 2020

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2020

Appeal Ref: APP/X1545/W/20/3245200

Sunnybanks, Sandpit Lane, Burnham-on-Crouch, Essex CM0 8EE

- 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 Stephen Foster against the decision of Maldon District Council.
 - The application Ref FUL/MAL/19/00689, dated 7 June 2019, was refused by notice dated 5 September 2019.
 - The development proposed is the demolition of a bungalow to be replaced by two houses.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Stephen Foster against the Maldon District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are:
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties, particularly in relation to overlooking of the garden to Smugglers Reach;
 - whether the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to the provision of outdoor amenity space for Plot A; and
 - the effect of the proposal on on-street car parking and associated effects on traffic congestion and highway safety, with particular regard to the proposed off-street car parking for Plot B.

Reasons

4. The site comprises a bungalow with associated driveway and garden. There is substantial hedging to the rear, dividing the site from the rear garden of the neighbouring property, Smugglers Reach, which wraps around the rear of the appeal site. It is accessed from a single lane, gravel road. It is proposed to construct two 2-storey houses, one 2-bed and one 3-bed, with the bedrooms to the upper floor.

Living conditions of neighbouring occupiers

5. Both proposed houses would introduce bedrooms with windows directly overlooking the rear garden of Smugglers Reach, where it wraps around behind the appeal property. These windows would be close to the boundary. It is proposed on the drawings to provide a 1.8m tall wooden fence along the relevant boundary, and the appellant suggests a 2m tall boundary fence in their appeal submissions. In either case, this would not be high enough to prevent overlooking from the upper floor windows to a significant part of the useable area of the garden. The garden slopes away from the site down towards Hester Place but I observed on site that this slope is not so steep so as to significantly mitigate overlooking of the garden from the appeal site.
6. The garden is not currently overlooked by the bungalow on the site, because it is only one storey and there is a substantial hedge along the boundary. There is a degree of overlooking of the garden from the properties along Hester Place that back onto the garden, but this is from a greater distance than the proposed appeal buildings and is an established relationship. The Coldstream property to the other side of Smugglers Reach only affords oblique views of the garden and is at a greater distance than that to the appeal development.
7. I acknowledge that there is an existing, substantial hedge that would largely prevent overlooking of the garden from the proposal. However, this cannot be relied upon for screening because it could be removed, or significantly reduced, without applying for consent. In addition, this is likely to take place as part of the proposal which indicates on the proposed drawings a wooden fence to this boundary.
8. Consequently, the proposal would allow for a significant increase in overlooking of the garden to Smugglers Reach and would therefore result in a loss of privacy that would unacceptably harm the living conditions of the occupiers of Smugglers Reach. It would therefore fail to comply with the relevant parts of Policies D1 and H4 of the Maldon District Local Development Plan 2014-2029, Adopted 2017 (the LP) which, amongst other criteria, seek to resist overlooking and loss of privacy to neighbouring occupiers. The proposal also fails to comply with Paragraph 127 of the National Planning Policy Framework (the Framework) which, amongst other criteria, requires a high standard of amenity for existing users.

Living conditions of future occupiers

9. The Council have stated that the useable area of garden to Plot A would be 81 sq m, which is not disputed by the appellant. However, the appellant states that one of the side accesses could provide storage and should therefore be included within the private amenity space calculation. Given that there are two side access ways, I agree with the appellant that one of them could be used for storage in a manner that would provide utility to the future occupiers, without hindering access to the rear garden. However, even if this is allowed for, the total private amenity space would be around 90 sq m. This falls short of the minimum standard for 3-bed houses of 100 sq m, as set out in the Maldon District Design Guide SPD 2017 (the MDDG).
10. No compelling justification or reason for this shortfall has been provided. The garden could not be easily increased in size, because to do so would impinge on the garden to proposed Plot B and would be very close to the rear elevation

of that plot. I acknowledge that there is a park nearby with a children's play area, that there is also a larger country park also within walking distance of the site, and that there is a large allotment area adjacent to the site. However, this public open space and allotment provision does not perform the same function as private open space directly attached to a proposed 3-bed, family-sized dwelling. This does not therefore mitigate the sub-standard provision of private outdoor amenity space for Plot A.

11. Consequently, the proposal would not provide satisfactory living conditions for future occupiers due to the insufficient provision of private amenity space to Plot A. The proposal therefore fails to comply with the relevant parts of Policy D1 of the LP, which seeks the provision of sufficient and useable private amenity spaces and that development should meet the standards set out in the MDDG. It also fails to comply with Paragraph 127 of the Framework which, amongst other criteria, requires a high standard of amenity for future users.

Car parking and highways

12. Plot B would be a 2-bed dwelling. The Vehicle Parking Standards SPD 2018 (the VPS) does not set a minimum number of car parking spaces for 2-bed dwellings, although it does state that 1-bed dwellings should provide at least 1 space, and 3-bed dwellings at least 2 spaces. The minimum parking standard for a 2-bed dwelling is therefore ambiguous. In this instance, although the appeal site is not in a town centre, it is within the built-up area of Burnham-on-Crouch. It is within walking distance of the train station, several bus stops and the high street. I observed on site that the walking routes are safe, mostly along well-lit footways. The only section which is not is along the private Sandpit Lane, but this is only for a short section and along a gravel, private and narrow lane where traffic speeds are naturally curtailed and there is an expectation of shared use of the highway.
13. The site is therefore relatively accessible. Given this and the ambiguity in the policy regarding the minimum parking standards, I am persuaded that the one off-street car parking space proposed for Plot B would be sufficient to serve the needs of the proposed dwelling. The proposal would therefore be unlikely to increase traffic congestion or affect highway safety as a result of increased on-street parking pressure.
14. Consequently, the proposal complies with the relevant parts of Policies T2 and H4 of the LP which, amongst other criteria, seek sufficient car parking provision allowing for the accessibility of the site. It also complies with Paragraphs 108 and 109 of the Framework which, amongst other criteria, seek safe and suitable access and that proposals should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matter

15. Representations were made to the effect that a neighbour's rights under Article 1 of the Human Rights Act 1998 would be violated if the appeal were to be allowed. However, as I have decided to dismiss the appeal my decision would not lead to any violation.

Planning Balance

16. The provision of two new dwellings to replace one dwelling would add to the Council's housing stock and would provide temporary economic benefits from

construction of the proposal and long-term economic benefits to local services when occupied. However, these benefits are limited because only one additional dwelling is proposed.

17. Suitable off-street car parking would be provided and therefore there would be no unacceptably harmful effect on traffic congestion or highway safety. This weighs neutrally in the planning balance.
18. Weighing against the proposal is the harm that I have identified to the living conditions of neighbouring occupiers as a result of the overlooking of, and loss of privacy to, the garden of Smugglers Reach, and the unsatisfactory living conditions that would be provided to the future occupiers of Plot B due to the insufficient size of the private outdoor amenity space. These factors outweigh the limited benefits of the proposal.

Habitats

19. The site falls within the Zone of Influence of the Blackwater Estuary Special Protection Area (SPA) and Ramsar, the Dengie SPA and Ramsar, the Foulness Estuary SPA and Ramsar, and the Crouch and Roach Estuaries SPA and Ramsar, as defined in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority. However, the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an AA is only necessary where the competent authority is minded to approve planning permission, so I have therefore not undertaken an AA.

Conclusion

20. For the reasons above, I conclude that the appeal be dismissed.

O S Woodward

INSPECTOR