
Appeal Decisions

Site visit made on 28 July 2020

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2020

Appeal A, Appeal Ref: APP/X1545/W/20/3245743 144B High Street, Maldon CM9 5BX

- 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 V Wilkinson against the decision of Maldon District Council.
 - The application Ref FUL/MAL/19/00903, dated 20 August 2019, was refused by notice dated 1 November 2019.
 - The development proposed is the extension and refurbishment of the existing coachhouse to form 1 no. residential unit.
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Appeal B, Appeal Ref: APP/X1545/W/20/3247030 144B High Street, Maldon CM9 5BX

- 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 V Wilkinson against the decision of Maldon District Council.
 - The application Ref FUL/MAL/19/01234, dated 26 November 2019, was refused by notice dated 21 January 2020.
 - The development proposed is the extension and refurbishment of the existing coachhouse to form 1 no. residential unit.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Application for Costs

3. In respect of both appeals, an application for costs was made by Mr V Wilkinson against Maldon District Council. These applications are the subject of separate Decisions.

Preliminary Matter

4. There are two linked appeals for separate proposed development at the same site. The proposals are substantially similar apart from the provision of a car parking space and external amenity area for Appeal B.

Main Issues

5. The main issues for both appeals are:
 - whether the proposal would provide adequate living conditions for the future occupiers of the dwelling, with particular regard to the provision of private amenity space

- whether the proposals would have an adverse effect on European Designated Sites; and
 - whether the loss of employment use at the site is acceptable.
6. The potential effect of the proposal on European Protected Sites was only listed as a reason for refusal for Appeal B. However, the potential effect of both developments on such sites would be identical. The provisions of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038 (the RAMS) apply equally to both appeals, and because of the potential effects on European Designated Sites is of fundamental importance to both appeals.
7. The appellant has been aware from the start of the appeal process of the need to respond to the issue in relation to Appeal B. I am therefore content that the addition of this main issue in relation to Appeal A has not prejudiced the interests of the appellant and that it complies with the principles of natural justice.

Reasons

8. The site provides an access way from the High Street and a 2-storey, vacant, brick building. For both appeals it is proposed to refurbish and extend the building to create a 2-bedroom dwelling. For Appeal B it is additionally proposed to landscape the areas to the side and front of the building to provide amenity space and a surface level car parking space.

Living conditions

9. No private amenity space is provided for Appeal A. For Appeal B, a 19 sq m private amenity space is proposed to the front of the building. However, this would partially be used for a proposed car parking space. It would be a part of the courtyard between the appeal building and the rear of the buildings along the High Street, not properly enclosed or with a genuine feeling of privacy. It would also be directly adjacent to an access road that runs through the site to dwellings to the rear. The amenity space would therefore be heavily compromised. It would also be significantly smaller than the recommended minimum size for a 2-bedroom dwelling of 50 sq m, as set out in the Maldon District Design Guide SPD, dated December 2017. The lack of area and the compromises to the usability and privacy of the space would not allow for the practical use of the space by future occupiers of the proposed dwelling.
10. The appellant has highlighted that many of the properties at Quest Place, Maldon provide little or no amenity space, nor do the properties currently under construction to the rear of the appeal site. Quest Place is a fairly large development, from several years ago, of a mixture of townhouses and flats and is of a completely different character to the appeal site. I have not been provided with details of the amenity spaces to be provided for the properties under construction to the rear. I am not familiar with all the circumstances of these other cases, and I have judged the appeal proposals on their own merits.
11. Both proposals would not therefore provide adequate living conditions for the future occupiers of the dwelling due to either the absence of (Appeal A), or the sub-standard and compromised provision of (Appeal B), private outside amenity space. Consequently, the proposals fail to comply with Policies D1 and H4 of the Local Development Plan 2014-2029, dated July 2017 (the LP) which, amongst other criteria, require that developments provide sufficient and usable

private amenity spaces. The proposals also fail to comply with Paragraph 127 of the National Planning Policy Framework (the Framework) which, amongst other criteria, requires a high standard of amenity for future users.

Habitats

12. The site falls within the Zone of Influence of the Essex Estuaries Special Area of Conservation, the Blackwater Estuary Special Protection Area (SPA) and Ramsar, the Dengie SPA, and the Crouch and Roach Estuaries SPA and Ramsar (hereafter collectively referred to as the Sites), as defined in the RAMS. These are European Designated Sites.
13. Natural England have stated that new residential development in this area is likely to have a significant effect on the sensitive interest features of the Sites, through increased recreational pressure when considered 'in combination' with other plans and projects. The proposed provision of a dwelling is therefore, both on its own and in combination with other development projects, likely to have significant effects on the integrity of the Sites. As the Competent Authority, and in accordance with the Conservation of Habitats and Species Regulations 2017, I have therefore undertaken an Appropriate Assessment.
14. The Sites provide breeding and non-breeding habitat for a number of waterbirds, and important mudflats, sandflats, intertidal and subtidal habitats. The conservation objectives include to maintain and restore the habitats and therefore the population and distribution of a number of wild birds.
15. The mitigation measures proposed in the RAMS are to increase the resilience of the Sites to recreational pressure, including through education and awareness raising, fencing, waymarking and screening, controlling access, and greater enforcement of the rules and regulations. I have considered the proposed measures to mitigate the potential for significant effects, and I am satisfied that these would be effective in ensuring that the proposals would cause no adverse effect on the Sites.
16. The RAMS requires that, in the case of proposals for fewer than 100 dwellings, a contribution is made in order to help secure the mitigation measures. No such provision has been made by the appellant for either appeal. I acknowledge that the RAMS has not yet been adopted, but the proposals would have a likely significant effect on the Sites and no mitigation measures have been proposed. There are no alternative solutions that would still allow for a residential unit to be provided which would have a lesser effect on the Sites, because the effect on the Sites is due to increased recreational pressure, and therefore flows from the principle of additional residential accommodation. The proposal for one residential unit is not essential and does not serve an overriding public interest which outweighs the harm to the integrity of the Sites.
17. Consequently, in the absence of adequate mitigation, it has not been demonstrated that the proposals would have no adverse effect on the integrity of the Sites. Both appeals therefore fail to comply with the relevant parts of Policies S1 and I1 of the LP which, amongst other criteria, seek contributions towards strategic infrastructure necessary to support the proposed development, and to protect and increase biodiversity and geodiversity. They also fail to comply with Paragraph 175 of the Framework which, amongst other criteria, finds that planning permission should be refused if harm to biodiversity cannot be avoided or adequately mitigated.

Loss of employment

18. Planning permission¹ was granted for the use of the building as a live/work unit. No convincing evidence has been provided that this was implemented. Even if the permission has been implemented through some minor works, it is clear from its vacant and dilapidated state that the building has not been in use as a live/work unit at any point since the permission was granted. The evidence before me is that the last use of the building was for commercial purposes.
19. I have been provided with limited evidence of when commercial use of the building ceased, but the appellant has stated it ceased in the 1970s and this is not contested by the Council. The Council have stated that a planning permission² for use of the building in class B1 has been implemented, through the digging of an excavation trench. However, no evidence has been provided of this. In any event, even if this permission has been implemented, the evidence indicates that the building has not been in operation for commercial use since the permission was granted. I therefore place limited weight on this factor. Therefore, although the building may last have been used for commercial purposes, I am persuaded that it has not been occupied or in use for some considerable time.
20. Policy E1 of the LP sets out three criteria for the consideration of the loss of existing employment sites. The proposals do not meet any of these. The building, although vacant and in a poor state of repair, is a relatively attractive, unassuming brick building that sits unobtrusively behind the main building line along the High Street. The use of the building for residential purposes would be of lesser benefit to the local community than the use of the building for commercial use. Although some limited marketing evidence has been provided, it has not been demonstrated that a robust and comprehensive marketing campaign has been undertaken to secure a commercial tenant for the property.
21. However, because of the length of time since the building was last used for commercial purposes, I am not persuaded that the proposed change of use to residential would, in any meaningful sense, result in the loss of an employment site. No jobs would be lost. The stock of potential employment land would be reduced but given that the site has lain vacant for very many years, I place limited weight on this. The loss of the employment site is therefore acceptable, despite the technical conflict with Policy E1 of the LP. The proposals would comply with Policy H4 of the LP which only seeks that there would be no unacceptable loss of land which is of local economic significance, which is not the case at the appeal site.

Other Matters

22. The site lies in the Maldon Conservation Area. It also lies to the rear of 140, 142, and 144 High Street, which are all grade II listed buildings. The character and appearance of the proposed works is not in dispute between the parties, subject to the control of the detailed design and materials by condition if the proposals were otherwise acceptable. The combination of the extension and the new fenestration would have an overall neutral effect on the intrinsic architectural quality of the building. However, the proposals would bring back into use a currently near derelict building and they would therefore enhance

¹ Ref 13/00230/FUL

² Ref 09/00591/FUL

the character or appearance of the conservation area and the setting of the listed buildings.

Planning Balance

23. The provision of a new 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. Boosting the supply of new homes is an important objective of the Framework. However, for both appeals, these benefits are limited because only one additional dwelling is proposed. The works would also lead to the re-use of a currently vacant building in a town centre location, which would be an efficient use of land. By bringing back into use a vacant building, the works would enhance, to a limited degree, the character and appearance of the conservation area and the setting of the listed buildings. I place moderate weight on these benefits.
24. That there would be no meaningful loss of employment land is a neutral factor. The sub-standard, or non-existent, provision of private outside amenity space would harm the living conditions of future occupiers of the proposed developments. In the absence of adequate mitigation, it has not been demonstrated that the proposals would not have an adverse effect on the integrity of European Protected Sites. Providing a high standard of amenity for future users is a requirement of the Framework, as is the protection of biodiversity and habitats sites. I therefore place substantial weight on these factors. These harms consequently outweigh the relatively limited beneficial aspects of the proposals.

Conclusions

25. For the reasons above, I conclude that both appeals be dismissed.

O S Woodward

INSPECTOR