
Appeal Decision

Site visit made on 21 July 2020

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 10 September 2020

Appeal Ref: APP/X1545/W/20/3252568

65 High Street, Burnham on Crouch, Essex, CM0 8AH

- 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 Tom Yau against the decision of Maldon District Council.
 - The application Ref FUL/MAL/19/01288, dated 6 December 2019, was refused by notice dated 31 January 2020.
 - The development proposed is erection of one three-bedroom dwelling at the rear of No 65 High Street, Burnham on Crouch, Maldon, Essex, CM0 8AH.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal:
 - On the character and appearance of the area and in particular the Burnham on Crouch Conservation Area;
 - On the living conditions of neighbouring residential occupiers, in particular Starboard Cottage;
 - On flood risk; and
 - On European Designated Nature Conservation sites.

Reasons

Character and appearance of the Conservation Area

3. The site lies to the rear of buildings fronting the High Street and would be accessed from a courtyard. The courtyard contains two other dwellings, a building used as a garage and workshop and the access to gardens. The existing buildings, either on or adjacent to the site, are of a mixture of ages and designs. There are glimpsed views into the site from the High Street.
4. The primary significance of the Burnham on Crouch Conservation Area lies in its dense, close knit, back of pavement, frontage development along its streets and the riverside frontage. In the vicinity of the site, behind the close knit, dense development on the High Street, there are gaps and spaces to the rear, between it and the frontage to the River Crouch. The Conservation Area is also characterised by buildings of different styles, materials, heights and designs and its relationship with the River Crouch. The majority of the buildings,

especially those fronting the High Street, or the River Crouch have pitched roofs and either a red brick or white rendered finish or a mixture of the two, with a few examples of weatherboarding. There is a mix of two and three storey buildings in the area.

5. The site is occupied by an undistinguished, modern (20th Century) flat roof, brick garage and workshop and gardens. Whilst the garage/workshop is visible within the courtyard, it has very little visibility in the wider Conservation Area. Given the undistinguished appearance of the building and its very limited visual impact on the character and appearance of the Conservation Area as a whole, the site has a neutral effect on its character and appearance.
6. The appeal building would be three stories in height with a mixture of pitched, flat and pyramid style roofs, white rendered, red brick and profile metal walls and roof. It would be set back in the courtyard, partially on the site of the existing garage and workshop. It would retain a significant amount of undeveloped space around it and not impinge on the views along the High Street or other surrounding streets. Glimpse views of the front elevation would be possible from the entrance to the courtyard from the High Street. I am not convinced that the proposal could be seen from the riverside walkway.
7. Whilst clearly contemporary in design, it would respect the character and appearance of the area by using materials which are common in the locality. It would not break the skyline when viewed from adjacent vantage points and would add variation and interest to the roofscape, especially through the proposed pyramid roof on the tower. The massing and bulk of the proposed dwelling would be broken up by its profile and the varying roof heights of the different elements of the dwelling. Its windows would generally have a vertical emphasis. Whilst it would be taller than 2.5 metres, it would not be located directly on the riverside, and it would not be visible from the riverside walkway.
8. For these reasons the proposed development would not harm the character and appearance of the Burnham on Crouch Conservation Area. Consequently, in this regard, it would comply with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paragraph 193 of the National Planning Policy Framework (the Framework). I have paid special attention to the desirability of preserving and enhancing the character and appearance of the Conservation Area and given great weight to the assets conservation, as required by the legislation and policy. I have assessed in paragraph 4 that the significance of the Burnham on Crouch Conservation Area lies primarily in its street pattern, dense back of pavement development and its relationship to the River Crouch. The proposal would therefore preserve the character and appearance of the Conservation Area as it does not harm any of these characteristics.
9. The development plan includes the 'Maldon District Approved Local Development Plan 2014-2029', of July 2017 (LDP) and the 'Burnham on Crouch Neighbourhood Development Plan', of September 2017 (NDP). The relevant policies are D1 (Design Quality and the Built Environment), D3 (Conservation and Heritage Assets), H4 (Effective Use of Land) and S1 (Sustainable Development) of the LDP and RI.2 (Design Sensitivity Riverside Developments) HO.8 (Housing Design Principles), HO.1 (New Residential Development) and HC.2 (New Development Features). For the reasons given above the proposal would accord with these policies of the development plan.

Living conditions of neighbouring residential occupiers

10. To the south of the proposed dwelling, between the site and the buildings on the riverside, lies Starboard Cottage, a single storey dwelling. It has a window which faces on to the appeal site.
11. The three-storey element of the appeal building would be roughly within 2 metres of the boundary of the site with Starboard Cottage and roughly within 3 metres of the dwelling itself. The balcony and window on the side of the proposed development facing Starboard Cottage would be above the height of its roof and thereby would have a view into its garden.
12. The three-storey element of the appeal proposal would result in an overbearing relationship being created between it and Starboard Cottage. It would also result in the loss of light to a room within the dwelling. Moreover, the balcony and the southern window serving bedroom 2 in the tower part of the proposed dwelling would potentially overlook the garden of Starboard Cottage, resulting in an unacceptable loss of privacy for the occupants.
13. Policy D1 of the LDP seeks to protect the living conditions of neighbouring residential occupiers by taking into account, amongst other things, privacy and overlooking. I find that the appeal proposal is in conflict with Policy D1 of the LDP as it fails to properly take into account its effect on the living conditions of Starboard Cottage in relation to overlooking, privacy and the creation of an overbearing relationship.

Flood Risk

14. The Framework applies a sequential test to proposals for new development to ensure that it is steered towards areas with the lowest risk of flooding. The appeal site lies in Flood Zone 3 (FZ3), an area identified at being of the highest risk of flooding. No sequential test has been supplied with the proposal. It is clear from the Flood Risk Assessment supplied with the planning application that much of the old part of the town is located in FZ3 and therefore development in this area would be subject to the sequential test in accordance with National Policy set out at paragraphs 157 and 158 of the Framework. Therefore, the proposed development could be at a high risk of flooding and there could be sites available elsewhere in the District where the flood risk would be lower.
15. The evidence indicates that the LDP has identified a five-year supply of deliverable housing sites and the Council currently has a housing land supply in excess of five years. The sites identified in the LDP and those identified in the five-year housing land supply would have been subject to a strategic flood risk assessment to ensure that they are safe from flooding. There are therefore sites available for housing in the District that are at lower risk of flooding than the appeal site. It is clear that the appeal proposal would not meet the requirements of the sequential test and therefore should not be permitted, as there are available sites for the proposed development in areas with a lower risk of flooding. This requirement is set out at paragraph 158 of the Framework.
16. I recognise that the requirements of the sequential approach have the possibility to affect the development potential of land within FZ3, such as in

this part of Burnham on Crouch. Nonetheless it is applied on a Districtwide basis and new housing development on land which is at lower risk of flooding around the town will contribute to sustainable development and assist in maintaining the vitality and viability of the old part of the town.

17. It is clear from the Framework that the exception test should be applied to development where it is not possible for it to be located in zones at a lower risk of flooding. Notwithstanding the non-compliance of the development with the sequential test, it would not fully meet the requirements of the exception test, as it would not provide wider sustainability benefits to the community that outweigh the flood risk. A single dwelling, whilst bringing benefits to the occupier, would provide limited wider sustainability benefit to the community in the form of increased use of local shops and services. These benefits would not outweigh the risk of flooding to the proposed dwelling, as they are relatively modest in relation to the importance of preventing new development being located in areas at risk of flooding, as set out in the Framework.
18. I therefore find that the proposal would be in conflict with Policy D5 of the LDP as it is proposed to be located in an area identified at being at high risk of flooding and there are sites available in areas which are at lower risk.

Effect of the proposal on European designated nature conservation sites

19. The proposal falls within the 'Zone of Influence' of one or more of the European designated sites scoped for the emerging Essex Coast and Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). It is my duty, as the competent authority, to consider whether the proposed development would constitute a likely significant effect on the sensitive interest features of the designated sites as set out within Regulations 63 and 64 of the Conservation of Habitats and Species Regulations 2017 (CHSR).
20. It is anticipated that, without mitigation, new developments in this area could have a significant effect on the sensitive interest features of these European designated sites, through increased recreational pressure, particularly when considered in combination with other plans and projects.
21. Therefore, by virtue of its protected status an Appropriate Assessment under the CHSR would be required were I minded to allow the appeal. Nevertheless, considering that the appeal is to be dismissed on other issues mentioned in this decision, no further consideration is required on this matter.

Other Matters

22. There is some suggestion in the evidence produced by the appellant that their personal circumstances should weigh in favour of the proposal. Whilst I have taken account of the information supplied by the appellant in considering this appeal, personal circumstances rarely carry significant weight in considering development proposals, as the development to which they relate and the harm which it causes can last long after the personal circumstances that gave rise to the need for it have gone. I therefore consider that the personal circumstances set out by the appellant do not outweigh the conclusions I have reached on the proposal.
23. The Council in its statement has raised the issue of whether the site is underused and therefore its compliance with criterion 1) of Policy H4. I note that this has not been used as a reason for refusal. Whilst I have had regard to

this conflict in considering this appeal it does not change the decision I have reached.

Conclusion

24. I find that the appeal should be dismissed.

Peter Mark Sturgess

INSPECTOR