The Planning Inspectorate

Appeal Decision

Site visit made on 10 November 2020

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st December 2020

Appeal Ref: APP/X1545/W/20/3248173
White House, Wycke Hill, Maldon 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/19/00978, dated 13 September 2019, was refused by notice dated 16 December 2019.
- The development proposed is an "Outline planning application for the subdivision of the existing residential garden and the erection of a detached one storey two bedroom dwelling with all matters reserved for future approval."

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is for outline planning permission with all matters reserved for future consideration. An indicative layout shows a dwelling, garage, private outdoor space, acoustic fencing, hardstanding and access. The dwelling and access are shown in the part of the site furthest away from the existing dwelling at the White House. A further layout plan shows internal room arrangement of the proposed dwelling. All these details have been treated as illustrative.

Main Issues

3. The main issues are (a) whether the proposed development would be in a suitable location, having regard to a spatial strategy for development and character and appearance, (b) the living conditions of the future occupiers of the proposed dwelling, having regard to noise and disturbance and (c) the ecological integrity of the Essex Estuaries Special Area of Conservation (SAC), Blackwater Estuary Special Protection Area (SPA), Dengie SPA and Crouch and Roach Estuaries SPA.

Reasons

Location

4. The appeal site comprises the side garden of the dwelling at White House and fronts onto Wycke Hill, the A414. It lies just outside the policy settlement boundary of Maldon which is on the other side of the Wycke Hill.

5. Policy S1 of the Maldon District Local Development Plan (LDP) 2014-2029 states that the Council will take a positive approach in considering development

proposals reflecting the National Planning Policy Framework's (the Framework) presumption in favour of sustainable development. Under this policy, key principles, including achieving sustainable level of housing growth meeting local needs, the promotion of the effective use of land and the prioritisation of development on previously developed land, the support of growth within the environmental ambits of the district and high quality design should be applied.

6. Under LDP Policy S8, the spatial strategy supports sustainable development within defined settlement boundaries. Permission will only be granted outside of the settlement boundaries, Garden Suburbs and allocated sites where intrinsic character and beauty of the countryside would not be adversely impacted upon and provided it is for developments listed within the policy. Notwithstanding the character and appearance considerations, the appeal development does not fall within any of these listed developments and thus, there would be a policy conflict.

7. LDP Policy H4 states infill development will be considered on a site-by-site basis taking into account local circumstances, context and the overall merit of the proposal. Amongst policy criteria to be met, the proposal should not result in the loss of any important landscape feature. Under LDP Policy D1, all development should respect and enhance character and local context and make a positive contribution in terms of landscape setting, townscape setting and layout.

8. The proposed dwelling would sit between the existing dwellings at the White House and Wycke Cottage. It is located near to the South Maldon Garden Suburb (SMGS) development which comprises a major housing area that is currently being built and will result in a marked change to the wider area. On the site, existing trees worthy of retention, including a large oak straddling one corner of the site, would be retained during the construction of any dwelling. Adjacent to Wycke Cottage, the loss of a group of Conifers would not be a significant loss.

9. However, the development would be within a group of four loose-knit dwellings on the periphery of Malton backing onto countryside. Although there is exposed fencing either side of the entrance to White House, mature vegetation predominates and is a quality contributing to an attractive verdant character and appearance.

10. The illustrative plan shows a tight layout and access arrangement on the site and even with alternative details, a significant part of the site would be dominated by canopies of trees and vegetation. The size of the plot is restricted, given its depth from the frontage, and therefore, residents would be likely to cut back, fell/clear trees and vegetation. This would be due to the need to ensure adequate light into the outside private space and main living areas, such as kitchen/diner and bedroom within the dwelling.

11. In respect of the illustrative room layout plan, light would be restricted to the kitchen/diner and adjacent bedroom because they would face onto the canopies of many of the trees. The bedroom window could face the rear of the plot but boundary treatments would block out light due to close proximity. The plan represents just one way of organising the internal layout but given the constrained nature of the plot, it has not been demonstrated that there are other ways of ensuring sufficient light to these living areas within the dwelling.

12. Tree and vegetation works would also be necessary to achieve vehicular access visibility and adequate construction of the acoustic fencing. Although for a previous scheme, a Noise Assessment (NA) proposes acoustic fencing around the perimeter of the site. Again, this would result in the removal or significant cutting back of vegetation. There is an existing fence behind the frontage vegetation. However, it has not been demonstrated how much of existing vegetation could be retained, if a new acoustic fence was constructed in a similar position. If vegetation was to be replanted, this would take many years for it to become established and effective.

13. The protected oak tree has a significant canopy and height. Although the Council would retain formal control over requests for works to the protected tree, in practice I consider that it is likely to be difficult to resist such pressure in the long term if a dwelling was built on such a constrained site. The loss of the established landscaping would adversely affect the verdant character and appearance of the area.

14. In summary, the development would be located outside a settlement boundary, but it would infill a gap within an edge of settlement location where there would be good accessibility to services and facilities in Maldon itself. In this respect, the harm to the plan's spatial strategy would be minor. However, the LDP policies require development not to impact upon the intrinsic character and beauty of the countryside and to respect and enhance character and local context. For these reasons, the proposal would conflict with LDP Policies S1, S8, H4 and D1.

Living conditions

15. The South Maldon Relief Road forms part of the SMGS development and would come forward as part of the development of this site. With this new highway infrastructure, the A414 would be downgraded to an urban road classification. The illustrative floor plan shows habitable rooms located to the rear of the dwelling away from the road frontage. The illustrative plan shows a garage sited roughly mid-point in the plot and an acoustic fence which are designed to ensure acoustic screening of a private outdoor space. A NA indicates an acoustic fencing around the perimeter of the site.

16. The NA was submitted for a similar proposal, dismissed at appeal. The NA concluded that ambient noise levels would be at an acceptable level within the habitable rooms to the rear. Mitigation measures included a 2 m high acoustic fencing along the boundaries of the site, in-wall ventilators or mechanical whole house ventilation, double glazing to the rear and enhanced double glazing.

17. However, the effect of the downgrading A414 on baseline noise levels has not been calculated and so the benefit of this cannot be assessed. It has indicated acceptable indoor ambient noise levels for the occupants of the dwelling on the basis that windows would be shut. Irrespective of the efficiency of any ventilation system, occupants will reasonably require open windows, particularly during the summer months, for unventilated outside air. Reasons for this could also include a need for rapid ventilation or avoidance of over-heating. As a result, the effectiveness of mitigation would be significantly reduced leading to sleep disturbance.

18. Under the NA, the noise levels for the private outdoor space were predicted not to be acceptable and further consideration of site layout was recommended at the architectural design stage of the project. As part of this appeal proposal, there is a garage and acoustic fence screening the private outdoor space, as well as possible perimeter acoustic screen. The A414 will also be downgraded. However, the NA provides no calculation on the predicted noise levels within the proposed private outdoor space under this appeal. It provides a noise prediction on a differently sited space which, in any case, was significantly above the upper limit set out in BS8233:2014.

19. The Planning and Noise Professional Practice Guidance in Planning and Noise New Residential May 2017 states ideally noise levels in private outside spaces should not be above guideline values but that this may not be achievable in all circumstances. It also indicates if private outdoor spaces exceed ideal noise levels, that impact may be partially off-set, if there is access to relatively quiet, protected, publicly accessible amenity space, such as a public park. The appeal site is within an easy walk of two nature reserves. However, it is not possible to consider this because the predicted noise levels for the proposed private outdoor space is not known. Furthermore, nature reserves cannot perform all of the functions of private outdoor space, such as immediately accessible recreation space.

20. In respect of a SMGS appeal, an Inspector allowed noise levels to habitable rooms and outdoor spaces on some dwellings to be above that recommended taking into account the downgrading of the A414. In the current appeal's NA, the predicted noise levels and mitigation, including acoustic fencing, are similar to that found with the SMGS appeal. However, the downgrading of the road was not the only consideration justifying the noise levels above that recommended as the SMGS Inspector also considered the limited number of affected rooms compared to the development as a whole to be material. Given the strategic nature of the SMGS development, this is a material difference distinguishing the two appeals and therefore, this commentary on noise levels would not act a precedent. In any case, every proposal has to be considered on its particular planning merits.

21. For all these reasons, it has not been demonstrated that residents of the dwelling would have acceptable living conditions, having regard to noise and disturbance. Accordingly, the proposal would conflict with LDP Policies D1 and D2, which collectively and amongst other matters, require all development to provide usable private amenity spaces and for all forms of possible pollution to be minimised and any detrimental risks to the human environment to be adequately addressed by appropriate avoidance, alleviation and mitigation.

Habitat Sites

22. Natural England has advised that the development would fall within a zone of influence of one or more of the SPAs or SAC scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). These habitat sites comprise internationally important populations of wintering birds, marine life and coastal habitat which are vulnerable to disturbance. Residents from new development would be able to access the habitat sites, including for recreation activities, such as dog walking, and this could adversely affect bird populations and habitat.

23. Therefore, the proposal would have a significant effect, either alone, or in combination with other plans or projects on the internationally important features of the sites. As a minimum, the nature conservation objectives of the habitat sites would include maintaining favourable conditions for the populations of these birds protected under Annex 1 of the Birds Directive. Thus, it cannot be ascertained that the proposal would not affect the integrity of the sites.

24. The RAMS sets out financial contributions to help fund off-site measures targeted towards increasing sites resilience to recreational pressure and to mitigate against the effect of the development. Despite the appellant's willingness to pay a contribution, there is no mechanism before me to secure these or alternative mitigation measures. No alternative solutions have been put forward that would have a lesser effect, or avoid an adverse effect, on the integrity of the SPAs or SAC, and nor do I consider any possible based on the nature of the proposal and the appeal documentation.

25. Priority species and habitat would be adversely affected by the proposal and there are no imperative reasons of overriding public interest for such a small-scale proposal. On this basis, the development would adversely affect the integrity of the SPAs and SAC. For all these reasons, the proposal would conflict with LDP Policies S1, D1, N1 and N2 which collectively and amongst other matters, states areas of significant biodiversity should be protected and that where potential adverse effects to conservation value of designated sites are identified, schemes will not normally be permitted.

Other matters

26. There has been a previous proposal for a two storey 3 bedroomed dwelling on the site which was dismissed on appeal in 2019. The current proposal is for a single storey 2-bedroom dwelling and shows different illustrative details and it has been considered on its particular planning merits.

27. The proposed dwelling would boost housing supply and would meet a need for smaller units identified by a Council Strategic Housing Market Assessment. It would be ideally suited for the older generation due to its single storey nature and wheelchair accessible qualities. It would make more effective use of land in a location with good access to facilities and services by non-private vehicle means. There would be benefit to the local economy through the dwelling construction process, employment of workmen and the purchase of materials from local suppliers, as well as the financial spend of new residents.

Conclusion

28. The development would be sited outside a settlement boundary but it would infill a gap within an edge of settlement location where there would be good accessibility to services and facilities and in this respect, there would be harm to the plan's spatial strategy of minor nature. There would be harm to character and appearance and therefore, the location of the dwelling would not be acceptable. It would also not provide acceptable living conditions for future residents of the dwelling and adversely affect the integrity of designated habitat sites. Set against this, there would be economic, social and environmental benefits as identified above.

29. However, such benefits would be limited given only one dwelling would be built. The harms to the character and appearance of the area and the living conditions of future residents would be permanent and substantial when combined together. The harm to the ecological integrity of habitat sites would be additionally significant. Accordingly, the proposal would conflict with the identified policies of the LDP and the development plan taken as a whole. There are no material considerations to outweigh that finding and planning permission should be refused.

30. For the reasons given above and having regard to all other matters raised, including support, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR