



Appeal Decision

Site Visit made on 7 June 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2021

Appeal Ref: APP/X1545/W/20/3259862

132/132A Mill Road, Maldon, CM9 5JA

- 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 Mrs Bird against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00066, dated 20 December 2019, was refused by notice dated 25 March 2020.
 - The development proposed is described as 'demolish existing single storey shop and build two bed attached dwelling'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the development would provide adequate living conditions for existing and future occupiers, with regard to private amenity space;
 - whether it would make sufficient provision for cycle and car parking; and
 - its effect on European designated nature conservation sites.

Reasons

3. The appeal site is located at one corner of a crossroad junction in a mainly residential area of Maldon. A two storey building with rooms in the roof (the main building) occupies the centre of the site in retail use on the ground floor and a 3-bedroom flat above (the flat). On one side of the main building is a detached double garage (the double garage) and on the other side is an attached single storey retail building (the retail building). There is an enclosed courtyard behind the main building and the retail building. A forecourt runs alongside the pavement facing Mill Road. The appeal proposal would demolish the retail building and, in its place, erect a 2-bedroom house (the house) attached to one end of the main building.

Living conditions

4. The courtyard would be apportioned into two private amenity spaces. It is common ground between the main parties that existing or future occupiers of the flat would be assigned 12m². I have no reason to differ in this regard. I agree with the appellant that this space would be 'sufficient to accommodate refuse facilities, a washing line and cycle storage facilities'. I also acknowledge

that not every resident may wish to have a large garden and that occupiers of flats often rely on residents communal open amenity space.

5. However, 12m² would be less than half of the Council's adopted minimum amenity space standard for a flat (ie 25m²).¹ Consequently it would be a substantial quantitative under-provision. Furthermore, the amenity space that would be provided would be largely overshadowed by the proximity and scale and massing of the main building and the house for most of the day. It would also have a narrow triangular shape. It would not therefore be convenient or conducive for most normal private outdoor domestic activity, such as sitting out, entertaining or relaxation and in the case of family occupation of the flat, outdoor play. Consequently, it would also be a significant qualitative under-provision of amenity space.
6. The appellant claims that the house would have 51m² of amenity space and, on that basis, exceed the Council's minimum standard for a 2-bedroom house (ie 50m²).² However, I note that the appellant's drawing number 18-2326-1D does not contain a scale bar and despite some indicated dimensions, it is not possible to reliably conclude the area of proposed amenity space. Furthermore, while the plan shows the extent of the existing fenced courtyard, the floorplan of the house would erode part of this area and, moreover, there is no annotated boundary shown for the proposed amenity space.
7. It is not therefore clear that even the Council's estimate of 34m² of proposed amenity space would be achieved. In any event, nor can it be determined with any confidence whether the space that would be provided would be suitable and appropriate for amenity use, for example having regard to its shape, layout and orientation in relation to the house and to adjacent buildings, roads and uses or activity. Moreover, the appellant's Planning Statement and Grounds of Appeal³ do not clarify these matters. On the evidence before me, the appellant has not therefore substantiated or justified that satisfactory amenity space would be provided for the house.
8. At my site visit I walked to the nearby open spaces at Promenade Park and Primrose Meadow, which have been referred to by the appellant. These include areas of grass in a landscaped setting. However, there is a significant qualitative difference between open space provided for general recreation, such as 'informal walking' or 'organised play facilities', which can be conducted in public, and the provision of private amenity space for domestic activity, such as I refer to above. The latter could not be conducted with a satisfactory degree of privacy in a public place and would not therefore provide an acceptable substitute for a lack of adequate on-site private amenity space. I also saw the leisure centres in Park Drive⁴. However, these provide for indoor or outdoor formal recreational and sports activity, with little external natural open space.
9. The appellant has also referred to an unreferenced appeal decision elsewhere, suggesting that public open space used for private amenity purposes was accepted by another Inspector. I do not have any details of that case before me in this appeal and, moreover, I note that it relates to another Council and

¹ Maldon District Design Guide Supplementary Planning Document, December 2017 (the Design SPD)

² The Design SPD

³ Prepared by Stanfords

⁴ Referred to in the Appellant's Grounds of Appeal and plan at Appendix PLG2

so to a different development plan context. It can therefore be distinguished from the circumstances of the current appeal.

10. Accordingly, I find that the appeal proposal would not provide adequate living conditions with regard to private amenity space. It would cause significant harm to the living conditions of the existing and future occupiers of the flat and the future occupiers of the house. The development would not accord with Policy D1 of the Maldon District Local Development Plan, July 2017 (the LDP). This policy includes that development should provide sufficient and usable private amenity space. Nor would it accord with the Design SPD in this regard. It would also conflict with the National Planning Policy Framework (the Framework) paragraph 127(f) which indicates that development should promote health and well-being with a high standard of amenity for existing and future users.

Cycle and car parking

11. In the first main issue above, I have found that sufficient cycle parking could be provided for the flat. Despite my concerns regarding the overall amount of private amenity space for the house, it seems to me that it would nonetheless be possible to provide sufficient cycle parking, albeit that this may reduce the useable area of private amenity space. Subject to that caveat, details of cycle parking could otherwise be secured by a planning condition, were I minded to allow the appeal.
12. I appreciate that off-street car parking may already occur on the appeal site, including in the double garage, the two spaces in front of it and some spaces elsewhere in the forecourt. While some or all of this parking may not accord with the Council's current adopted standards⁵, in terms of the number or size of spaces, on the evidence before me, the double garage and the two spaces in front of it could continue to be used for the retained retail use and the flat. Having regard to the appellant's description of development, these uses are not part of the proposed development and no new floorspace would be generated for either use. Alternatively, the owner or occupier of the appeal site could decide not to use some or all of this parking and instead rely on on-street parking nearby, which I saw was reasonably well-used but with some available capacity.
13. However, as part of the proposed development, the appellant seeks to re-organise the off-street parking so that the house would have one car parking space in the forecourt. This would be 50% below the Council's adopted maximum standard for a 2-bedroom house (ie 2 spaces)⁶. The appellant has drawn my attention to the Council's decision to grant planning permission for six 2-bedroom houses opposite the appeal site⁷. I note that five of these houses would have one car parking space. The Council accepted that this development was 'in an easily accessible location to the High street with a bus stop located within close proximity to the site' and that it was 'a sustainable location where Maldon High Street (local shops, services and facilities) are located within walking distances. Also, there is public transport available which are frequent'. I have no reason to disagree in these regards.

⁵ Maldon District Vehicle Parking Standards Supplementary Planning Document, November 2018 (the Parking SPD)

⁶ The Parking SPD

⁷ Appellant's Grounds of Appeal and Appendix PLG1, and Council's reference 18/00500/FUL

14. While the Council also had regard to an existing under-provision of car parking to serve the original use on that site, nonetheless, given its close proximity to the appeal site, I consider that the future occupiers of the house would have the same access to local services and facilities by these alternative travel modes than the private car, as well as cycling. Accordingly, I consider that one on-site car parking space for the house would be sufficient in this appeal, with any additional parking met nearby on-street.
15. The appellant claims that the proposed parking space for the house would have minimum dimensions of 2.9m by 5.5m and, on that basis, I agree that it would meet the Council's preferred size for a car parking bay⁸. However, for the same reasons as I refer to in the first main issue above, it is not possible to reliably conclude from the appellant's drawing number 18-2326-1D that a 5.5m long parking space could be achieved, as is shown, between the front elevation of the main building and the edge of the forecourt. Indeed, I was able to pace out this space on site, which suggests a distance of about 5m. On that basis, it would be significantly less than the required 5.5m.
16. It is not therefore clear that the requisite size of car parking space for the house would be achieved. Consequently, I am concerned that such a limited space would cause some cars to overhang the appeal site and obstruct a significant proportion of the reasonably narrow pavement width. This would not be conducive to pedestrian movement, especially for reduced mobility buggy or wheelchair users or parents with pushchairs and children. There would also as a result be an unacceptable risk of such users entering the carriageway in order to pass by and coming into conflict with cyclists and vehicles or causing unnecessary delay or congestion.
17. In any event, even if 5.5m could be achieved, I am also concerned that the width and position of the car parking space would be in close proximity to a front entrance door into the main building (not shown in drawing number 18-2326-1D) and consequently either unduly obstruct the door or the use of the parking space or both. Furthermore, the space would be in close proximity to a street lighting column at the back edge of the pavement on one side. It would as a result be an appreciable hazard to vehicle manoeuvring and therefore unduly restrict safe and convenient use of the parking space. On the evidence before me, the appellant has not therefore substantiated or justified that a satisfactory car parking space would be provided for the house.
18. The appellant proposes to reduce parking elsewhere in the forecourt, which is otherwise in reasonably close proximity to the cross-road junction and pedestrian crossing point central refuge areas. I accept that this may result in a modest highway safety benefit but it would not therefore overcome or outweigh the significant harm that I have identified above in this main issue. I also appreciate that the Highway Authority did not comment on the proposed development, but in this appeal the relevant parking standards are adopted by the Council.
19. Accordingly, I find that the appeal proposal would not make provision for a car parking space of sufficient size for the house. The development would not accord with LDP Policies T2 and D1. These policies include that development should provide sufficient and safe parking facilities and, in layout, maintain a safe, accessible environment. Nor would it accord with the Parking SPD in these

⁸ The Parking SPD

regards. It would also conflict with Framework paragraphs 102, 109 and 110. These indicate that parking should be integral to the design of schemes and contribute to making high quality places, and that development should create places that are safe which minimise the scope for conflicts between pedestrians, cyclists and vehicles and avoid unacceptable impact on highway safety.

European designated sites

20. The appeal site is within a zone of influence of one or more European designated nature conservation sites⁹ (EDS) which include nationally and internationally important habitat for birds. Accordingly, a significant individual or in-combination effect on the EDS would be likely to occur from the proposed net increase in residential development at the appeal site, leading to an increased population, in an area where the inhabitants of the development would be within such proximity to the EDS that they would be likely to visit it for recreational purposes.
21. In consultation with Natural England, the Council has adopted the East Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document, May 2020 (the RAMS). I note that the main parties agree that subject to securing a financial contribution towards appropriate mitigation, via a suitable planning obligation, the appeal proposal would not have a significant adverse effect on the ecological integrity of the EDS. However, while I understand that the appellant intends that 'A Unilateral Undertaking covering this aspect will be submitted in due course'¹⁰, there is no planning obligation before me to this effect in this appeal¹¹. In these circumstances I cannot therefore be certain that the proposal would not adversely affect the nature conservation interest and integrity of the EDS.
22. Accordingly, I find that the appeal proposal would cause harm to the EDS. It would not accord with LDP Policies S1, D1, N1 and N2. Amongst other things, these policies seek to conserve the natural environment by protecting and enhancing biodiversity and green infrastructure, including mitigation of adverse impact on designated sites. It would not accord with the RAMS in these regards. It would also conflict with Framework paragraphs 170(a) and (d), 175(a) and 176 which indicate that development should protect and enhance sites of biodiversity value, minimise impacts on biodiversity and adequately mitigate harm to biodiversity.

Other Matters

23. Land in built-up areas, such as the appeal site, is by definition¹² not previously developed 'brownfield' land, as the appellant otherwise suggests. The appellant has referred to a paragraph 51 from a previous version of the Framework (it appears, the 2012 Framework). However, the Framework does not contain this same provision — 'should normally approve planning applications for change of use to residential use' — and, in any event, the development in this appeal is not for a change of use of a building to residential use.

⁹ Council's officer report and reason for refusal No 3

¹⁰ Appellant's Grounds of Appeal

¹¹ Planning Inspectorate Procedural Guide Planning Appeals - England, March 2021 – paragraphs N.2.1 (Part 2 written representations process) and N.2.2

¹² Framework glossary

24. The rear elevation of the house would face towards the house and rear garden at No 175 Wantz Road. However, there would be a significant gap between it and No 175. The development would not therefore unduly affect daylight received by a kitchen window and a secondary living room window or the use of the rear garden. The appeal site is not located in any area of special or designated landscape value. Matters relating to the design and appearance of the proposed house, loss of retail floorspace, drainage and flood risk would be acceptable. The absence of harm in these regards is a neutral factor in my decision. Moreover, any impact of the development on the structural integrity of the house at No 175 due to any subsidence would be a private matter between the respective parties. I note that the Council did not object to the development in these regards.
25. I appreciate that the appeal proposal is a revised scheme and that the appellant considers that it overcomes the Council's previous concerns, including that it was supported by Maldon Town Council. However, I have determined the appeal on its individual planning merits.

Conclusion

26. For the reasons given above, I conclude that the appeal does not succeed.

Robin Buchanan

INSPECTOR