



Appeal Decision

Site visit made on 13 JULY 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2021.

Appeal Ref: APP/X1545/W/20/3260009

Land Rear of St Vincent, 2A King Edward Avenue, Burnham-on-Crouch, CM0 8PA

- 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 Ms Emma Regan against the decision of Maldon District Council.
 - The application Ref. FUL/MAL/20/00299 dated 12 March 2020, was refused by notice dated 24 July 2020.
 - The development proposed is the erection of a 2 bedroom bungalow and access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a 2 bedroom bungalow and access on land at the rear of St Vincent, 2A King Edward Avenue, Burnham-on-Crouch, CM0 8PA, in accordance with the terms of the application, Ref FUL/MAL/20/00299, dated 12 March 2020, subject to the conditions set out in the schedule at the end of this decision.

Preliminary matters

2. The second reason for refusal refers to the absence of a necessary financial contribution towards Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy or an appropriate mitigation strategy to overcome the impacts of the development on the European designated nature conservation sites. The proposed development would have an adverse impact on those European sites. However, I have been provided with confirmation that the sum, £125.58, was paid on 7 January 2021, which is the required contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy. This satisfies the obligation of the competent authority to ensure that the required mitigation has been provided for. Thus this reason for refusal falls away.

Main Issue

3. The main issue in this case is the effect of the proposed dwelling on the existing character and appearance of the site and on the prevailing pattern of development within the area, bearing in mind the backland nature of the site.

Reasons

4. The site is located within the settlement boundary of Burnham-on-Crouch. It has an access off Maldon Road, but is currently part of the curtilage of 'St Vincent House' in Kind Edward Avenue which runs off Maldon Road. It is in a rather dense urban residential area consisting largely of cul-de-sac streets with

conventional frontage dwellings with rear gardens. The access is currently a narrow track from Maldon Road running between Wedgewood, at the junction of King Edward Avenue, and No.91 Maldon Road. The gates to the proposed development are shown to be 10m from Maldon Road, the access then continuing for 28m to the point where the site opens up behind the Maldon Road frontage development.

5. The policies of the development plan that principally govern the consideration of the proposal are S1 and H4 of the Maldon District Development Plan (MDDP). The proposed development would comply with the requirements of policy S1 which directs new residential development to within established settlements thereby preserving the appearance and character of the countryside. Burnham-on-Crouch is recognised as being a 'Main Settlement' which has a range of service facilities as well as good public transport links and opportunities for employment. The location would therefore be regarded as sustainable.
6. Policy H4 relates to backland and infill development. It states that: "*Backland and infill development will be considered on a site-by-site basis to take into account local circumstances, context and the overall merit of the proposal. Backland and infill development will be permitted if all the following criteria are met:*
 - 1) *There is a significant under-use of land and development would make more effective use of it;*
 - 2) *There would be no unacceptable material impact upon the living conditions and amenity of nearby properties;*
 - 3) *There will be no unacceptable loss of land which is of local social, economic or historic environmental significance; and*
 - 4) *The proposal will not involve the loss of any important landscape, heritage features or ecological interests*".
7. The third and fourth criteria of this policy are not material to the consideration of the appeal as the site has no local social, economic or historic environmental significance; nor any important landscape, heritage features, or ecological interest.
8. As far as the second criterion of policy H4 is concerned, and the intentions of policy D1 of the MDDP (which deals with the protection of the amenity of surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight), the officer's report deals fairly extensively with the impact on the living conditions and amenities of neighbouring occupiers. The conclusion of this part of the report are that the proposed development will not result in a significant loss of light or privacy and will not have overbearing impacts on neighbouring occupiers, nor will it result in unacceptable noise levels. Thus, in this regard the proposal is in accordance with policies S1, D1 and H4 2) of the MDDP.
9. Therefore, the main consideration in this case comes down to the effect of the first criterion of policy H4: whether there is a significant under-use of land and development would make more effective use of it. This needs to be viewed in the generally permissive tone of policy H4, that backland and infill development will be considered on a site-by-site basis to take into account local

circumstances, context and the overall merit of the proposal, and will be permitted if all the criteria are met.

10. The curtilage of St Vincent House is significantly larger than those of the majority of houses in the area. At present, save for the siting of a caravan (which showed no sign of being in active use) and 2 rather delapidated outbuildings, it is not unreasonable to say that the site is underused, if not actually unused. It is true that this is the choice of the occupier, and a change of occupier might bring a different decision on how the land should be used. Underuse of land is perhaps most usually a matter of the owner's decision, and might well change as circumstances change. Furthermore, the situation is not one where it could be said that this lack of use should be over-ridden as a consideration because it deprives the host dwelling of reasonable amenity of private outdoor space, or some other deficit conflicting with the reasonable enjoyment of that dwelling. It seems to me, in the absence of tangible harm arising from the proposed development, that a new dwelling would make more effective use of the land.
11. Against this, the council seeks to rely of 3 arguments; erosion of the pattern and grain of development in the area, no distinct frontage or outlook onto a street scene, and that it is a contrived backland development cramped and shoehorned into the site. Taking these in turn, the immediate area around King Edward Road does not have a very formal layout; there are a variety of garden sizes and configurations. Whilst for the most part the area comprises frontage development, since all that would be seen of the proposed development from the public realm would be an entrance, I cannot see that the pattern and grain of development would be materially changed other than from the air. The lack of a distinct frontage and outlook onto the street would be a personal consideration, and there is no reason why the curtilage of the proposed dwelling could not be well designed to make it attractive to the occupiers. The meaning of contrived can include cleverly planned, but in the context of this appeal, 'contrived' and 'shoehorned' are not particularly explicit, whilst 'cramped' does not seem apt when there is space for a 2 bedroom dwelling with sufficient private garden space, and adequate parking and manoeuvring, etc.

Other matters

12. The matter of the 5-year supply of housing land has been mentioned in the documentation. However, since I have decided that there is no policy objection to development in this sustainable location, and I am granting planning permission, there is no further comment necessary.

Conclusion

13. In view of the considerations that I have dealt with above, I have concluded that there is no sustainable objection on the basis of policies S1, H4 and D1 of the MDDP. I will therefore allow the appeal.

Conditions

14. The council has suggested a number of conditions that it considers should be imposed on any planning permission. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with PPG I have amended some of the text. The council's condition 5 includes the

submission of details that are either sufficiently illustrated in the proposal, such as parking layouts, or go beyond what is reasonably necessary for a scheme of this scale, for example 'other vehicle and pedestrian access and circulation areas' and 'minor artefacts and structures (eg furniture, play equipment, refuse or other storage units, signs, lighting)'. I will therefore omit these elements of that condition.

15. I consider that the conditions in the schedule below should be imposed for the following reasons: condition 2 for clarity and the avoidance of doubt as to the development permitted; condition 3 to ensure that the details of the materials respond appropriately to the character and appearance of the area; condition 4 to ensure that the convenience and safety of neighbouring occupiers and users of the highway will be safeguarded; condition 5 to ensure the soft and hard landscaping of the development enhances it and the surroundings; condition 6 to ensure the treatment of boundaries maintains privacy for adjoining occupiers and relates to the character and appearance of the area; condition 7 to ensure that facilities are provided on site to encourage sustainable modes of travel; condition 8 is to ensure the satisfactory drainage of the development in a sustainable form; conditions 9, 10, 11, 12 and 13 are to ensure the safety and convenience of highway users; conditions 14 and 15 are to ensure the privacy of neighbouring occupiers is safeguarded from additional windows or openings in the roof or the raising of ground levels.
16. As drafted, the council's condition 4 was a pre-commencement condition. Such conditions can only be imposed with the consent of the applicant/appellant. The appellant commented on this in a non-consenting form. I have amended the condition so that it is no longer pre-commencement, but provides that the requirement of the condition can be met at an appropriate time in the development. The council's condition 14 would remove permitted development rights in respect of garages, extensions or separate buildings. General permitted development rights provided in legislation should only be removed where explicit reasons can be shown. I do not consider that to have been done in this case, and I will not impose that condition. I have also taken account of the appellant's other comments on the proposed conditions and made amendments that I consider appropriate.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 1589 05 Rev A, 1589 04 Rev C, 1589 02 Rev A, 1859 03 Rev A, 1859 07 Rev A
- 3) Prior to their use in the development hereby approved, written details and photographs of the external materials to be used shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details as approved.
- 4) No development shall take place other than demolition and clearance of outbuildings, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) delivery, demolition and construction working hours.The methods approved in the statement shall be adhered to throughout the construction period of the development.
- 5) No development shall take place other than demolition and clearance of outbuildings, until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include, for example:
 - i. means of enclosure;
 - ii. Hard surfacing materials;
 - iii. Details of trees and shrubs to be planted, planting layouts and planting numbers/densities.The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of any part of the development hereby approved unless otherwise agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted as its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.
The hard landscape works shall be carried out as approved prior to the first use / occupation of the development hereby approved and retained and maintained as such thereafter.

- 6) No development shall take place other than demolition and clearance of out buildings until details of the siting, height, design and materials of the treatment of all boundaries including hedging, gates, fences, walls, and railings have been submitted to and approved in writing by the local planning authority. The screening as approved shall be constructed prior to the first occupation of the development and be retained as such thereafter.
- 7) Prior to occupation of the development, details of cycle parking shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of the development.
- 8) Other than demolition and clearance of out buildings no works above ground level shall take place until details of the surface water and foul drainage scheme to serve the development has been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.
- 9) Prior to the first occupation of the development hereby approved, the provision of the highway access arrangements shall be constructed as shown on drawing 1859 07 A – proposed dropped kerb and pavement re-alignment.
- 10) Any gates provided at the access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the highway boundary.
- 11) There shall be no discharge of surface water from the development onto the Highway.
- 12) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 13) All loading / unloading / reception and storage of all building materials and the manoeuvring of all vehicles, including construction traffic shall be undertaken within the application site, clear of the public highway.
- 14) Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no dormer window or other form of addition or opening shall be constructed in the roof of the building hereby permitted without planning permission having been obtained from the local planning authority.
- 15) No development shall take place other than demolition and clearance of out buildings until details of existing ground level and its relationship to the adjoining land have been submitted to and approved in writing by the local planning authority. No raising of ground level above the established level shall take place without submission of the details to the local planning authority and approval in writing. No subsequent change in the ground level shall take place other than in accordance with that approval.