



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/20/3264609
112C, High Street, Maldon, CM9 5ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Paul and Max Morris against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00890, dated 14 August 2020, was refused by notice dated 15 October 2020.
 - The application sought planning permission for conversion of games store to holiday accommodation without complying with a condition attached to planning permission Ref 18/00510/FUL, dated 19 June 2018.
 - The condition in dispute is No 6 which states that: The building shall only be used as/for holiday let accommodation purposes and for no other purpose including any purpose as defined within Class C3 of the Schedule to the Town & Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order).
 - The reason given for the condition is: Due to the lack of private amenity space and vehicle parking provision on the site and to ensure that the development is carried out in accordance with the details as approved.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The site falls within the Zone of Influence for one or more European designated sites scoped into the emerging Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS). It is the duty of a competent authority to undertake a Habitats Regulations Assessment (HRA) to secure any necessary mitigation and record this decision within the planning documentation. Any new residential development has the potential to cause disturbance to European designated sites and therefore the development must provide appropriate mitigation. This is necessary to meet the requirements of the Conservation of Habitats and Species Regulations 2017. The Essex Coast RAMS requires that a tariff of £125.58 (index linked) is paid per dwelling unit, to be transferred to the RAMS accountable body in accordance with the RAMS Partnership Agreement. This payment had not been made or an s106 undertaking entered into to secure payment, hence the fourth reason for refusing planning permission. However, the council has since confirmed that the appropriate

payment has now been made, and therefore this refusal reason has been overcome.

3. The appeal documents predate the recent revision to the National Planning Policy Framework (the Framework) that was published on 27 March 2021. Since it is only paragraph 11 of the Framework that I have mentioned in my consideration of the appeal below, and that is unchanged from the 2019 version, save for an amendment to the footnote numbers, I have not found it necessary to seek comments from the parties.

Main Issues

4. The main issues in this case are: i) the suitability of the appeal building for use as holiday accommodation or normal residential accommodation, bearing in mind the limited amount and quality of living space, the lack of external private amenity space, and that space for cycle and car parking cannot be provided; ii) whether use as an ordinary dwelling would lead to car parking causing conditions of obstruction, congestion and danger to residents and other road users.

Reasons

The loss of tourist accommodation and suitability for residential accommodation

5. The application building is located to the rear of Nos.110 and 112 on the southern side of High Street within Maldon Conservation Area. The site is occupied by a building which was used as a smoke house for curing meat and subsequently for storage prior to its conversion to holiday accommodation. The building is accessed via a shared access drive between No.112 and No.114 High Street. To the south-west of the building is a small group of new residential units, with commercial buildings to the south, also accessed from the access drive.
6. The building is of 3 storeys. Apart from a right of access, the building occupies the entirety of the site, with no exterior land being associated with it. The plans of the existing and proposed accommodation that were submitted for the change of use to holiday accommodation show that the internal space between the 4 exterior walls measures 3.8m by 2.5m (both dimensions rounded up), but I am told that the dimensions, since measured more accurately, are 3.96m by 2.69m. The existing accommodation has a central doorway on the longer elevation, giving direct access to a kitchen. On the right-hand side of the kitchen is a staircase that occupies almost all the wall on that side of the building. On the other side of the kitchen is a shower room and toilet. The first floor is devoted to a living area, whilst at second floor level there is a single bedroom. The floorspace on all 3 floors is diminished for living accommodation by the staircase.
7. As I have already noted, the building is set within the Maldon Conservation Area and was originally a smoke house. Its singular form and previous use gives it an interest and a role contributing to the character and appearance of the conservation area. For this reason, it is clearly right that it should be retained and maintained in some form of economic use, in addition to the normal desirability of re-using existing resources wherever possible. Its small footprint and lack of outside curtilage limits the uses to which it might be put.

These characteristics also limit the extent to which the development management policies of the approved Maldon District Local Plan can be met.

8. Nevertheless, policy E5 – ‘Tourism’ is clear, giving support for local tourism development. In the second section of the policy, where existing tourism is protected, such as the appeal building in its currently permitted use, considerations as relevant in this case are, at items b) and c), a change of use will only be permitted if the existing business/service is not and cannot be made viable, or there is no known demand for existing or alternative tourism uses and the site has been effectively marketed.
9. In respect of this policy, the appellants’ arguments are that the appeal building amounts to such a small element of tourist accommodation that its loss is immaterial, and that its use as a permanent dwelling would be sustainable and a better use of the building, and as a small 1 bedroom unit, meets the need identified in the council’s Strategic Housing Market Assessment for 1 or 2 bedroom units.
10. However, the appellants have not addressed the question of whether the existing business/service is not and cannot be made viable, or there is no known demand for existing or alternative tourism uses and the site has been effectively marketed. I therefore regard policy E5 and items b) and c) as providing an objection to the intended use of the building as of some weight.
11. I therefore go on to consider the second limb of this issue – the suitability of the accommodation as permanent accommodation. I have described the accommodation available in paragraph 6 above. The appellants’ initial appeal document describes the floorspace as being of about 38m² in total internal floorspace and compares that with the 37m² (where a shower room is provided instead of a bathroom as in this case) minimum for a 1 person flat as set out in the Nationally Described Space Standard 2015 (NDSS), although, in response to a question by me, the floorspace figure has been amended to 31.95 m². Caution must be used when considering these national standards because they only deal with new dwellings, and in respect of 1 person flats, the 37m² floorspace is only for a single storey dwelling and therefore with no intrusive staircase. I estimate, from the scaled drawing, that the staircase over the 3 floors, allowing for some storage areas below parts of it, takes up approximately 3.6m² of floorspace. Therefore the effective available floorspace is of the order of 28.35m². What is clear is that the 3 storey appeal building would provide a very meagre dwelling for even a single person, in terms of living space, storage and general convenience, well below the 37m² for a 1 person flat on a single floor of the NDSS.
12. In addition to these considerations, the building has no private outside amenity space, which I would regard as being of less importance when used as holiday accommodation. I accept that other appeals for dwellings have found that the lack of private outside amenity space does not, in those cases, justify the refusal of permission, but the circumstances of those cases are not directly comparable with the current case. The lack of such outdoor amenity, coupled with the cramped and somewhat inconvenient internal accommodation can, at best, be described as very far from ideal.
13. At the time of the decision being made on the appeal application it appears that the council was able to demonstrate a 5-year supply of housing land. I am now told that this has slipped to 4.9 years of supply. A housing land supply figure of

under 5-years brings the 'tilted balance' set out in the presumption in favour of sustainable development at Framework paragraph 11. For decision making this means (at d) "*where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date*"⁷, (my emphasis) *granting permission unless:*

i. not applicable here; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole". (Footnote 7 refers to the 5 year land supply.)

14. The meaning of Framework paragraph 11 d) and footnote 7 is clear, where a 5 year supply of deliverable housing sites cannot be demonstrated, planning permission should be granted, subject to the provisos of item ii. However, whilst the tilted balance applies, the shortfall in the 5-year housing land supply is minimal, as is 1 extra very small dwelling. I therefore attach limited weight to this.
15. In view of the very limited and poor quality of floor area in the building, and the fact that this is not relieved by any private open amenity area, I have concluded that it is not suitable for use as permanent residential accommodation.

Car parking

16. The appeal site is in a sustainable location, being set just behind the frontage of Maldon High Street with access to a wide range of shops, services and employment, together with a range of bus services. Also, the continuing use of a building which contributes to the character and appearance of the conservation area requires that careful consideration needs to be given to how much weight should be given to meeting standards that are applicable to developments generally. In this case, it is also a consideration that holiday-makers may well wish to use a car for touring the area and enjoying its rural attractions and it is perhaps possible that the use of the building as a permanent home would attract a non-car owning resident. It appears that there has been at least one occasion when the council has decided that the sustainable nature of this locality has led it to conclude that there is no compelling justification for the provision of a parking space for a one bedroom unit. In brief, I am not satisfied that the lack of a parking space amounts to a justification for resisting the building being used as a permanent home.

Overall conclusion

17. For the reasons given above relating to the very limited and inconvenient floorspace, I consider that the building should not be permitted to be used as a permanent home, whilst its loss as holiday accommodation without convincing justification would be contrary to policy E5. I therefore dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR