



Appeal Decision

Site visit made on 11 January 2023

by A. Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal Ref: APP/X1545/W/22/3293881

27 Spital Road, Maldon CM9 6DZ

- 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 Mr Simon Elvin against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/00877, dated 23 August 2021, was refused by notice dated 18 October 2021.
 - The development proposed is described on the application form as 'Planning permission is sought to construct 2 No. 3 bedroom dwellings with associated parking spaces for minimum 2 per property. The applicants wish to provide outstanding homes within the optimum potential of the site. The new buildings will contain the main living areas to the ground floor, three bedrooms on the first floor. The proposal also includes a small rear extension to the existing property together with new site enclosure and open car parking for vehicles.'
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Decision

1. The appeal is dismissed insofar as it relates to the construction of two dwellings with associated parking spaces. The appeal is allowed insofar as it relates to the small rear extension to the existing property at 27 Spital Road, Maldon CM9 6DZ in accordance with the terms of the application Ref FUL/MAL/21/00877, dated 23 August 2021, so far as relevant to that part of the development hereby permitted and subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01 Rev D, 06 Rev C, 0018/11.

Preliminary Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the proposed development comprises the construction of two 3-bedroom dwellings with associated parking spaces. The proposal also includes a small rear extension to the existing property together with new site enclosure and open car parking for vehicles. The Council dealt with the proposal on this basis and so shall I.
3. The Council has confirmed that the second and fourth reasons for refusal have been resolved and are therefore withdrawn. I have no reason to disagree with those findings and have assessed the appeal on that basis.
4. For the reasons that follow, I find the proposed single storey extension to be acceptable and it is clearly severable both physically and functionally from the

proposed new dwellings and other site works. Therefore, I intend to issue a split decision in this case and grant planning permission for the single-storey extension.

Main Issues

5. The main issues are:

- the effect of the proposed development on the character and appearance of the site and surrounding area;
- the effect of the proposed development on the living conditions of the occupants of neighbouring properties, with particular regard to privacy and outlook; and
- whether a satisfactory standard of accommodation would be provided for future occupants of the proposed development, with particular regard to privacy.

Reasons

Character and appearance

6. The appeal site comprises a semi-detached dwelling positioned within a deep, rectangular garden plot. There is limited landscaping within the site at present. Properties surrounding the site are of a varied appearance, scale and period. Despite this variety, there is a general sense of coherence within Spital Road and the surrounding area through the alignment of properties along the highway, which are generally set back behind small front gardens or parking areas.
7. The proposed development includes the erection of two new dwellings to the rear of the site. The dwellings would span much of the width of the appeal site, separated from 27 Spital Road by an area of retained garden, and proposed parking areas. A vehicular access would be created from the existing driveway, from which the site is already accessed.
8. Policy H4 of the Maldon District Local Development Plan (LDP, 2017) supports backland and infill development where, amongst other criteria, it makes efficient use of under-used land. The policy also requires that all development, assessed on a site-by-site basis, considers the location and setting of the site and the existing character and density of the surrounding area.
9. The proposed pair of dwellings would have limited visual prominence from much of Spital Road due to their considerable setback from the highway. From that perspective, the development would have little appreciable effect on the street scene. I also acknowledge that the dwellings have been designed with some sensitivity to prevailing materials.
10. Nevertheless, the proposed dwellings would be highly visible from the multiple private vantage points of neighbouring properties. Whilst I accept that some detailed design features and the materials would be acceptable, the footprint of the dwellings would be overly large relative to the more prominent and street-facing surrounding properties. This, combined with the two-storey scale of the dwellings, positioned very close to the shared boundaries, would result in them being visually dominant and cramped in the site. Notwithstanding the atypically large garden plot that forms the appeal site, and that limited landscaping exists

at present, the proposed development would be discordant and out of keeping with the established pattern and scale of development in this part of Spital Road. Although some established backland developments exist within the surrounding area, these are limited in number and do not form a dominant feature of the area. Moreover, where these exist, they are generally limited to a single dwelling and subservient to the main property.

11. There is no dispute between the Council and appellant in respect of the proposed single-storey extension to the rear of the main dwelling. I have no reason to conclude differently. The proposed extension would be of an appropriate scale and appearance, which would assimilate to an acceptable standard with the host property and surrounding area.
12. For the above reasons, I conclude that the proposed single storey extension is acceptable in respect of character and appearance. However, the proposed development insofar as the new dwellings are concerned, would harm the character and appearance of the site and surrounding area, contrary to the relevant provisions of LDP Policies D1 and H4. These policies, in summary, seek high quality design in development. This is in a similar vein to the objectives of the National Planning Policy Framework (the Framework) insofar as good design is concerned.

Living conditions – neighbours

13. The proposed development would introduce a two-storey development where there is currently none. This would be positioned very close to the site boundaries, shared with 9-12 Orchard Close, 2 St Peters Avenue and Crouch View.
14. Outlook from the rear facing windows of Nos 9-12 is currently towards and, in the case of the upper floor flats, over the rear garden of the appeal site. Notwithstanding the slight change in levels between the sites, the introduction of significant built form in this part of the appeal site is such that it would restrict outlook, resulting in an unacceptably harmful sense of enclosure to the occupiers of those dwellings. The fact that the rear facing upper floor windows serve kitchens does not change this, as these rooms would be used frequently throughout the day and evening.
15. In respect of privacy, first floor windows are proposed to the side elevations of the proposed dwellings. These would face towards Nos 9-12, 2 St Peters Avenue and Crouch View. The Council acknowledges that these windows would serve bathrooms and could be fitted with obscured glazing, and this could be imposed by condition. This would ensure that no harm would arise in respect of overlooking. Whilst the windows would be visible to the occupants of the established neighbouring dwellings, this is a typical arrangement in a residential area and there would be no unacceptably harmful perception of overlooking as a result of those windows.
16. Although I find no harm in respect of privacy, I do find harm in respect of outlook. Therefore, I conclude that the proposed development would harm the living conditions of occupants of neighbouring properties. The proposed development would therefore conflict with the relevant provisions of LDP Policy D1, which in summary seeks to protect the amenity of occupiers. This is in a similar vein to the objectives of the Framework insofar as amenity is concerned.

Standard of accommodation – future occupants

17. The proposed dwellings would each have a dedicated area of garden space to the rear. Due to the limited separation distance between the appeal site and neighbouring properties along Orchard Close, the garden areas of the proposed dwellings would be directly overlooked by neighbouring upper floor windows in close proximity. This would result in an unacceptably harmful effect on the privacy of future occupants when using those spaces. That the rear facing upper floor windows serve a kitchen does not lead me to an alternative conclusion as these rooms would be used frequently throughout the day and evening.
18. Natural outlook from the rear of 5-8 Orchard Close would be towards and over the gardens of the proposed dwellings and not into their rear facing bedroom windows, which are angled away. In respect of the proposed side facing windows, these serve bathrooms which could be conditioned to be fitted with obscured glass. From that perspective, there would be no harm in respect of overlooking towards the internal rooms of the proposed dwellings. However, this does not overcome the lack of privacy in the proposed gardens.
19. Overall, I conclude that the proposed development would fail to provide satisfactory living conditions for future occupiers. The proposed development would therefore conflict with LDP Policy D1, which in summary seeks to protect the amenity of occupiers. It would also conflict with the Framework, which indicates that development should provide a high standard of amenity for existing and future users.

Other Matters

20. The submitted evidence indicates that the Council cannot demonstrate a five-year housing land supply. This stands at 3.66 years, well below the required level. As such, and noting the Government's objective of significantly boosting the supply of homes, the provisions of Framework paragraph 11.d are engaged.
21. The proposed development would represent a contribution of two extra dwellings to housing supply in an area with an acknowledged lack of future provision, together with 3-bedroom homes for which there is an identified need. There would also be other social, environmental and economic benefits of the proposed development. These include supporting employment during construction and the bringing about of extra trade to nearby services and facilities once occupied. I, too, note the site's reasonably sustainable location within a defined settlement boundary and near to the town centre, making efficient use of a small, under-utilised site.
22. However, these benefits would inevitably be limited, both individually and cumulatively, by reason of the overall scale and nature of the proposed development. Accordingly, and given the significant harm I have identified above, the adverse effects of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

Conditions

23. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved

plans. This is for certainty. I have not imposed a condition in respect of materials, as this is sufficiently set out within the approved plans.

24. I have not imposed other conditions suggested by the Council as these relate to the development of the wider site, including the proposed two new dwellings, which has been dismissed.

Conclusion

25. For the reasons given above I conclude that the appeal should be allowed insofar as it relates to the small rear extension to the existing property, but dismissed insofar as it relates to the construction of two dwellings with associated parking spaces.

A Price

INSPECTOR