



Appeal Decision

Site visit made on 22 June 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/X1545/W/22/3310558

Maison Bleu, Burnham Road, Althorne, Essex CM3 6BX

- 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 Martin against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00722, dated 15 June 2022, was refused by notice dated 22 August 2022.
 - The development proposed is replace swimming pool polytunnel covering with solid structure.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice contains only one reason for refusal relating to the effect of the development on the character and appearance of the area. However, the officer report clearly expressed concerns with respect to the effect of the development on the living conditions of neighbouring occupiers. The appellant has fully engaged with the issues raised in the officer report, including living conditions. From my observations at my site visit, I consider that the effect on the living conditions of neighbouring occupiers should be considered as a main issue in this appeal. As both parties have fully addressed this issue in their respective statements, I consider there would not be prejudice to any party arising from this.
3. The main and interested parties have referred to the use of the swimming pool. In particular, the Council refer to the potential for the development to result in an intensified use of the site for commercial purposes. The proposal before me is for a building operation only. Issues related to the use of the site are beyond the scope of this appeal and would be matters for the Council to address if necessary.

Main Issues

4. The main issues are the effect of the development on:
 - the living conditions of neighbouring occupiers with particular regard to enclosure; and
 - the character and appearance of the area.

Reasons

Living conditions

5. At the time of my site visit, there were three distinct structures within the appeal site in proximity to the neighbouring property known as Charmouth. These were the polytunnel, wood clad building providing the changing facilities and a further shed type structure which is not shown on the plans before me. The proposed development would be the same height as the existing changing facility building and a solid wood clad structure. Its length, height and proximity to the boundary mean that it would appear as a substantial and conspicuous structure when viewed from the neighbouring garden. It would dominate the garden space of the neighbouring property and the outlook from it would be unacceptably harmed.
6. The boundary treatment between the appeal property and Charmouth consisted of a mid-height boundary fence which allowed for views between the gardens. There was planting along this boundary on both sides which would provide an element of screening. However, there were notable gaps in this planting. I am not satisfied that it would effectively screen the proposed development and mitigate the adverse effects I have identified above.
7. While there is the existing polytunnel structure on the site, its effect on the living conditions of neighbouring occupiers is mitigated by its lower height, curved roof, and lightweight material. Taken together, these significantly reduce its mass. The presence of the existing polytunnel would not justify its replacement with a more substantial structure that would result in the harms I have identified above.
8. The proposed structure would not result in any adverse effects to occupiers of Herbs and Honey due to its distance from the boundary with that property. It also would not have an adverse effect on the living conditions of occupiers of Charmouth within the dwelling itself due to the proposed extension being set further into the garden. However these factors amount to a lack of harm and would not justify or mitigate the harms I have identified.
9. I have not been directed to any policies in the development plan that require outbuildings to be restricted in size in relation to the host dwelling. However, this does not change my conclusions with regard to the effect of the proposed building on the living conditions of neighbouring occupiers.
10. I therefore conclude the proposed development would have an adverse effect on the living conditions of neighbouring occupiers with particular regard to enclosure. This would be contrary to Maldon District Approved Local Development Plan 2014 – 2029 adopted July 2017 (LDP) Policy D1 which requires development to protect the amenity of surrounding areas and LDP Policy H4 which requires extensions or additions to be of an appropriate scale.

Character and appearance

11. The western side of Burnham Road is characterised by detached properties, set back from the road in substantial plots laid out in a regular pattern. The dwellings are typically bungalows or dormer bungalows, and built development generally occupies the full width of the plot, preventing views to the private

gardens to the rear. To the rear of the site is a substantial wooded area. I have not been made aware of any locations which offer views across Althorne.

12. The proposed development would be a considerable structure, although the footprint would not be greater than that of the existing polytunnel. However, it would not be readily visible from any public area. There are no designations which require special consideration of the character and appearance of the area.
13. The proposed structure would have a simple appearance with a pitched roof and proportionate openings. I observed the use of weatherboarding elsewhere in Althorne and its use would be characteristic of the area. The appeal site occupies a spacious plot, and although large, the proposed building would not take up so much of the plot as to be harmful to its character.
14. The existing polytunnel does not have any particular merits in its own right and its removal would have a neutral effect on the character and appearance of the area.
15. I therefore conclude the proposed development would have an acceptable effect on the character and appearance of the area. This would be in accordance with LDP Policy S1, D1 and H4 which require development to be of a high quality design and respect character and local context.

Other Matters

16. I acknowledge there have not been any objections from surrounding occupiers. However that does not lead to the conclusion that they believe it would increase the character of the area. This would not be a determinative factor in this appeal.
17. There would not be an adverse effect on the living conditions of occupiers of the host dwelling for whom adequate amenity space would remain.
18. There would be environmental benefits from improving the energy efficiency of the building. There would also be economic benefits from the continued operation of a small business and social benefits from the continued provision of a facility to enable people to enjoy healthy lifestyles and social interaction. However these benefits would be limited given the small scale of the proposal and would not outweigh the harm I have identified above.
19. Car parking is provided to the front of the dwelling and the proposed development to the rear of the site would not affect this.
20. The presumption in favour of sustainable development requires development that accords with policies of the development plan to be approved without delay. However, I have found that the proposal would conflict with the policies of the development plan
21. The public sector equality duty (PSED) set out under s149(1) of the Equality Act 2010 is that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

22. There is the potential for my decision to affect persons with the protected characteristic of disability. The negative impacts of dismissing this appeal will arise from the difficulties in finding alternative swimming facilities which offer provision for very small groups. However, having due regard to this, and to the principles set out in s149, in my view the adverse effects of dismissing the scheme on those with protected characteristics would be proportionate, having regard to the potential adverse effects of allowing the development.

Conclusion

23. I have found that the proposed development would have an adverse effect on the living conditions of neighbouring occupiers and I attach significant weight to this harm. While I have not found there to be harm to the character and appearance of the area, and there are other material considerations which weigh in favour of the development, none of these are of sufficient weight to merit allowing the appeal against the harm I have identified.

24. The appeal is therefore dismissed.

J Downs

INSPECTOR