



Appeal Decision

Site visit made on 23 May 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Appeal Ref: APP/X1545/W/22/3305866

Manor House, 20 Kelvedon Road, Tolleshunt D'Arcy CM9 8TE

- 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 and Mrs Smee against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00090, dated 26 January 2022, was refused by notice dated 24 June 2022.
 - The development proposed is described as "Divide the existing plot to create a separate dwelling out of an existing garage/outbuilding."
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Decision

1. The appeal is allowed and planning permission is granted to divide the existing plot to create a separate dwelling out of an existing garage/outbuilding at Manor House, 20 Kelvedon Road, Tolleshunt D'Arcy CM9 8TE in accordance with the terms of the application reference FUL/MAL/22/00090, dated 26 January 2022, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan 0244_slp

Site Block Plan 0244_GA_BP Rev A

Existing/Proposed Floor Plans 0244_GA

Existing/Proposed Elevations 0244_GE

Existing/Proposed Street Elevation 0244_GEstreet
 - 3) The dwelling hereby permitted shall not be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
 - 4) For the duration of construction work, areas within the curtilage of the site for the purposes of loading, unloading, reception and storage building materials and manoeuvring of vehicles, including construction traffic shall be provided clear of the highway.

Preliminary Matters

2. The evidence includes a unilateral undertaking on behalf of the appellant. I will return to this later in my decision.

Main Issues

3. The main issues are:
 - the effect of the proposal upon the character and appearance of the area, and;
 - the effect of the proposal upon European Designated Sites.

Reasons

Character and Appearance

4. The appeal proposal relates to an existing outbuilding situated within the garden of Manor House, a property located at a focal junction within the village. The building is situated adjacent to the boundary of the garden and is visible from the road.
5. The proposal would result in the conversion of the existing outbuilding into a single residential property, with the existing garden of Manor House being sub-divided to provide private outdoor space for both properties.
6. In many respects, the proposal would have no effect upon the character and appearance of the area as no external alterations to the building are proposed. Furthermore, it is located adjacent to an existing vehicular access to the garden, which would serve the new dwelling, with Manor House retaining existing off-street parking accessed from Kelvedon Road. Although inward facing, the proposed dwelling would have a visual presence from the road, and by being served by its own access, would not comprise a harmful form of backland development.
7. The proposal would result in the sub-division of the existing garden of Manor House, and the indicated division indicates that the larger existing property would retain a smaller garden than that proposed for the new dwelling.
8. This would leave Manor House with a garden of smaller size than perhaps would usually be expected of a dwelling of such a size and age, and would not reflect the size of gardens at other properties on Kelvedon Road. This would be apparent from private views from Manor House and the proposed dwelling.
9. However, the sub-division of the garden would not be widely apparent from public vantage points due to intervening boundary treatments and vegetation, and accordingly, would not harm the character and appearance of the area. There is no indication that either garden would be of insufficient size to serve the future occupiers of these properties.
10. The existing outbuilding is of timber weatherboard, pantile roof construction, and incorporates roof lights. Whilst existing dwellings in the area are predominantly of brick and slate construction, there are other examples of the use of weatherboard evident, both in dwellings and outbuildings. At present, the existing building is not a harmful feature within the street.

11. Although the change of the use of this building would mean it would become a dwelling of slightly unusual form, as no changes are proposed to its external appearance, no harm to the character of the area would occur as a result of its change of use.
12. I therefore conclude that the proposal would not harm the character and appearance of the area. It would be in accordance with Maldon District Local Plan (MDLP) Policies D1 and H4 which together, and amongst other criteria, require development to respect and enhance the character and local context, make a positive contribution, and to make effective use of land through design-led schemes. It would also accord with the Framework which states that new development seeks to deliver well-designed places, and the broad aims of the Maldon Design Guide, which highlights the value of good design and responding to the context of a development.

European Designated Sites

13. The appeal site lies within the zone of influence for the Essex Estuaries Special Area of Conservation, the Blackwater Estuary Special Protection Area ('SPA') and Ramsar, Colne Estuary SPA and Ramsar, as well as Dengie SPA and Ramsar ('the Protected Sites'). These are European Protected Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitat Regulations'). The evidence indicates that the Protected Sites provide coastal habitat for internationally important numbers of breeding and non-breeding birds, and that recreational pressures in area of high levels of public access has the potential to adversely affect the Protected Sites. In these circumstances, the Habitat Regulations require that an appropriate assessment is carried out. I have sought further evidence on this matter, as well as the views of Natural England.
14. While the appeal site is not within the Protected Sites, due to the proximity of the proposed single dwelling to these sites, there is a reasonable likelihood that future occupiers would access them for recreational purposes. Although the scale of recreational pressure would be minor in itself, when considered in combination with other residential properties in the vicinity of the Protected Sites, a significant effect on the integrity of the Protected Sites would occur.
15. The Habitat Regulations require that permission may only be granted after having ascertained that doing so would not affect the integrity of a Protected Site. I may consider measures to secure mitigation with a view to ensuring that the proposal would not adversely affect such integrity.
16. Due to the small scale of the proposal, there is no scope for providing on-site mitigation. There is, nonetheless, a strategic mitigation approach in the form of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), which has been prepared by the Council and Natural England. It includes measures to secure payments from new residential development in order to deliver mitigation through a variety of measures, including the provision of Rangers to provide education and communication with the public and other stakeholders, and habitat interventions. Natural England has confirmed its involvement and endorsement of this mitigation strategy.
17. The RAMS identifies that a tariff of £122.30 per dwelling should be paid in order to contribute towards mitigation measures, and that this figure shall be

index linked and regularly reviewed. Natural England has advised that the most up-to-date figure is now £156.76.

18. The appellant has provided a signed and dated unilateral undertaking to provide the RAMS tariff. Although the undertaking refers to a figure £137.71, which reflects the RAMS tariff for the 2022/23 financial year, as opposed to the current figure, the agreement makes provision to provide an index linked contribution at the commencement of development. I am therefore satisfied that required payment would be secured.
19. Paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Levy ('CIL') Regulations sets out three tests that planning obligations must meet. Firstly, they must be necessary to make the development acceptable in planning terms, secondly, they must be directly related to the development, and thirdly, they must be fairly and reasonably related to the proposal in scale and kind.
20. I am satisfied that the financial contribution is necessary to in order to make the proposal acceptable in planning terms. The obligation would enable the provision of mitigation measures, and given the location of the site within the zones of influence of the Protected Sites, the contribution would be directly related to the appeal scheme. Furthermore, as it relates to a standard figure based on the scale of residential proposed, it would be fairly and reasonably related to the proposal in scale and kind. On this basis, I am satisfied that the planning obligation would meet the requirements of the Framework and CIL Regulations, and I therefore afford it significant weight in reaching my decision.
21. Having regard to the above, I am satisfied that with the mitigation measures set out within the RAMS being delivered as a result of the payment of the secured tariff, the development would not have an adverse effect on the Protected Sites. The development would therefore be in accordance with the Habitat Regulations. It would also accord with MDLP Policies S1, D1, N1 and N2 which together, and amongst other factors, aim to protect and enhance the natural environment and green infrastructure, including areas designated as of international, national and local importance.

Other Matters

22. The appeal site lies within Tolleshunt D'Arcy Conservation Area ('the CA'), and close to several Grade II listed buildings including The Post Office, The Old Bakery, The Gables, D'Arcy Pottery and D'Arcy House. Despite the Council's more general concern with regard to the effect of the development upon the character and appearance of the area, there is no dispute between the parties as to whether the proposed development would preserve or enhance the character or appearance of the CA, or preserve the special interest of the listed buildings.
23. The significance of the CA insofar as it relates to this appeal, is derived from the rural character and linear form of the village, along with the age and variety of buildings within it. As I have set out above, as the only proposed external alterations which would result from the appeal proposal would relate to the division of an existing garden which is well-screened from external views, I have no reason to find that the appeal proposal would harm the special interest of these designated heritage assets.

Conditions

24. I have had regard to the various planning conditions that have been suggested by the Council. Where necessary, I have amended the conditions in order to ensure that they meet the relevant tests as set out at Paragraph 56 of the Framework.
25. In addition to the standard time limit condition, I have attached a condition requiring adherence with the approved plans in the interests of clarity, and securing a satisfactory form of development in the interests of the character and appearance of the area.
26. I have also attached a condition relating to foul drainage in order to ensure that adequate provision is made for the management of wastewater from the proposed dwelling, in the interests of the living conditions of future occupiers of the dwelling, and in the interests of preventing pollution. Additionally, a condition is required in order to secure provision within the site for the storage and unloading of construction materials and vehicles in the interests of highway safety, and the living conditions of occupiers of neighbouring properties.

Conclusion

27. The proposal would be in accordance with the development plan. There are no material considerations, including the Framework, that indicate that a decision should be taken other than in accordance with it. For the reasons given, I conclude that the appeal should succeed.

C Harding

INSPECTOR