



Appeal Decision

Site visit made on 1 November 2023

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

Appeal Ref: APP/X1545/W/22/3308377

Seal Point, 10 Sea View Parade, Mayland CM3 6EL

- 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 Mr Geoff Wood against the decision of Maldon District Council.
- The application Ref VAR/MAL/21/00720, dated 7 July 2021, was refused by notice dated 9 May 2022.
- The application sought planning permission for a replacement dwelling to re-establish the street frontage along Sea View Parade without complying with conditions attached to planning permission Ref FUL/MAL/16/01492, dated 14 March 2017.
- The conditions in dispute are Nos 2 and 6 which state that:
 - 2. The development shall be carried out in accordance with the following approved plans and documents: - Drawing Nos 188-200-001B, 188-200-002A, 188-200-004A, 188-200-005A, 188-200-006A, 188-200-100E, 188-200-101E, 188-200-102C, 188-200-110D, 188-200-111D, 188-200-112D & 188-200-113D and application form.*
 - 6. No development shall commence until details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers have been submitted to and approved in writing by the local planning authority. The screening as approved shall be constructed prior to the first use/occupation of the development to which it relates and be retained as such thereafter.*
- The reasons given for the conditions are:
 - 2. In order to ensure that the development is carried out in accordance with the approved details and in accordance with Policy BE1 of the adopted Maldon District Replacement Local Plan and emerging policy D1 of the Submitted Local Development Plan.*
 - 6. To ensure that the details of development within this sensitive estuary location area (sic) acceptable and comply with the requirements of policies BE1, CC7 and CC11 of the Maldon District Replacement Local Plan.*

Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling to re-establish the street frontage along Sea View Parade at Seal Point, 10 Sea View Parade, Mayland CM3 6EL in accordance with the application Ref VAR/MAL/21/00720 made on the 7 July 2021 and the plans numbered SV.01 102, SV.01 103, SV.01 100, SV.01 200, SV.01 201, SV.01 202, SV.01 203, SV.01 204, SV.01 205 and SV.01 206, without complying with conditions Nos 2 and 6 set out in planning permission Ref FUL/MAL/16/01492 granted on 14 March 2017 by the Maldon District Council, but otherwise subject to the conditions set out in the attached schedule.

Background

2. The Council granted permission for a replacement dwelling in 2017. The dwelling was subsequently constructed but some elements of the building are not in accordance with the approved plans. Condition 2 attached to the planning permission requires the development to be carried out in accordance with the approved plans.
3. Condition 6 requires details of boundary treatments including gates, fences and walls to be submitted to the Council for approval and for the approved boundary treatments to be constructed and retained. The application submits details of boundary fencing and entrance gates.

Main Issues

4. The main issues in the appeal are:
 - i) The acceptability or otherwise of the changes to the design having regard to the character and appearance of the area; and
 - ii) The acceptability or otherwise of the submitted gate and fence details.

Reasons

Changes to the design

5. The site lies outside, but adjacent to the settlement boundary as defined in the development plan for the area. It faces part of the Blackwater estuary. To the south there is residential development along North Drive. The site is accessed via an unmade road which extends from the end of North Drive.
6. The Council's decision to grant permission for a dwelling outside the settlement boundary was on the basis that this would be of an exceptional design. The dwelling has a cantilevered structure, with the living accommodation at first floor level, thereby withstanding flood risk. The approved detailed design elements also reflected its location overlooking the estuary. These included full-height glazing under overhanging gabled roofs, with sliding screens which would have laser-cut patterning. The gable soffits were to be faced with timber cladding.
7. The overall design of the dwelling as built is in accordance with the approved plans, but there are detailed differences. The most significant of these in terms of the appearance of the dwelling are that the soffits are faced with render, instead of weathered larch cladding, the glazing is not full-height and the laser-cut screens have not been included.
8. The dwelling has a garden area immediately adjacent which is enclosed by a bund wall to mitigate flood risk. In the approved design there were in addition two smaller bunds which would have the effect of stepping up the ground levels in front of that wall. The smaller bund walls have been omitted.
9. On the north elevation, the recessed central staircase element is faced with dark shiplap cladding instead of fair faced concrete as approved. A glazed rooflight feature at the top of the staircase has been omitted, and there are changes to fenestration.

10. The changes to the glazing and omission of the screens, together with the altered soffit material are the most noticeable aspects of the altered design as these are at first floor level and visible from Sea View Parade. They have diluted the design quality of the approved development. I find that the alterations to the north elevation have limited effect on the design quality. That elevation is also less prominent in views from the road. The omission of the stepped bunding means that the bund wall is more visible than it otherwise would have been, but this element of the development is not unduly harsh or prominent.
11. In relation to the original application, the Council's Urban Design Officer noted that the design would be innovative in terms of flood resilience. He considered that it would take full advantage of views over the estuary, and that it would nestle quietly within the immediate setting without being overly dominant. Although the height of the glazing has been reduced, this, together with the balcony on three sides of the dwelling still affords extensive views over the estuary.
12. While the design quality of the dwelling in terms of its architectural features has been reduced from that which was approved, the form of the dwelling still respects its landscape setting similarly to the previously approved scheme. It is clearly of an innovative design in terms of its form, and this alone makes it exceptional.
13. Policy D1 of the Maldon Local Development Plan (2017) (LDP) requires development to respect and enhance the character and local context in terms of architectural style. Policy H4 requires design-led development, with replacement dwellings being of an appropriate design in relation to their setting. Policy S1 of the LDP requires sustainable development including high quality design. Policy S8 requires that, outside the settlement boundaries, the intrinsic character and beauty of the countryside is not adversely affected. The development accords with those policies.
14. For these reasons I am satisfied that the changes to the design are acceptable having regard to the character and appearance of the area.
15. The Council has advised that it cannot demonstrate a five-year supply of deliverable housing sites. This would mean that relevant policies including those for housing provision would be deemed to be out-of-date. However, this appeal concerns only the conditions which should be imposed and not the principle of the development.
16. The policies that are most important for my decision, which I refer to above, are concerned with the effect of development on the character and appearance of the area. The design requirements of the policies are consistent with the Framework and these requirements are not out of date. Paragraph 11(d) of the Framework is not engaged in this instance, but this is immaterial to my decision as I have found no harm.
17. Because the development has been built, it is not necessary to retain condition 2. I have, however referred to the plan numbers in my decision in order to provide certainty in this respect.

Gates and boundary fencing

18. I saw on my visit that the gates and boundary fencing have been constructed. The gates are suspended from rendered piers and are limited in height, permitting views of the house from the road. I do not find the width of the gates and piers to be excessive. The boundary fencing is unobtrusive post and rail fencing. I find both of these details visually acceptable in the context of the location. There is no need to retain condition 6 on the original permission because these details are acceptable.

Conditions

19. The Council provided a list of suggested conditions. I have imposed those conditions with the exception of that requiring the development to be carried out in accordance with the approved plans. I have made some minor alterations to the suggested conditions to ensure that they accord with the tests in the Framework. These conditions are consistent with those imposed on the original permission.
20. The conditions requiring retention of trees and replacement planting where necessary are needed to ensure the appearance of the development is acceptable in its setting.
21. It is necessary to limit permitted development rights for extensions and other structures in order to ensure that the positive contribution of the dwelling to its setting is maintained.
22. Conditions are necessary to ensure that the development is in accordance with details which have been approved by the Council in respect of levels, drainage, flood resilience measures and access, in order to ensure adequate drainage, pollution control, safety from flooding and highway safety. It is necessary to control lighting in order to protect the visual character and ecology of the site.

Conclusion

23. For the reasons given I conclude that the appeal should be allowed.

Nick Palmer

INSPECTOR

Schedule of Conditions

- 1) If, within a period of five years from the date of planting of any tree or plant, or any tree or plant planted in its replacement, that tree or plant 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.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification):
 - i) No garage, other than that expressly authorised by this permission, extension, separate building, other structure or swimming pool shall be erected.
 - ii) No dormer window or other form of addition or opening shall be constructed in the roof or gable walls of the building.
 - iii) No wall, fence, gate or other means of enclosure (other than those expressly authorised by this permission) shall be erected within or around the site.
- 3) All trees shown as being retained on the Tree Protection Plan at Appendix 5 of the Arboricultural Report dated 15 August 2016, which forms part of planning permissions reference 16/01492 and 19/00704/FUL shall be retained. If within five years from the completion of the development a retained shrub or hedge is removed, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, a replacement shrub or hedge shall be planted within the site of such species and size and planted at such time, as specified in writing by the local planning authority.
- 4) The ground levels shall be as approved under application reference 18/05093/DET.
- 5) The foul sewer shall be implemented in accordance with the details approved under application reference 18/05093/DET and retained thereafter.
- 6) The surface water drainage shall be implemented in accordance with the details approved under application reference 18/05172/DET and retained thereafter.
- 7) The proposed vehicular access and the means of stopping up the existing vehicular access shall be implemented in accordance with plan nos. 188-200-156 Rev A; 188-200-004F and OS 1424-17.3 Rev F of planning permission reference 19/00704/FUL. The existing access shall be stopped up and cease to be used within 3 months of the new access becoming available.
- 8) The development shall be implemented in accordance with the flood resilience measures approved under the planning application reference 18/05093/DET and retained thereafter.
- 9) There shall be no other lighting of the external areas of the site other than in accordance with the details of all external illumination as approved under the planning application reference 18/05172/DET.

