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## Appeal Decision

Site visit made on 9 March 2022

**By Terrence Kemmann-Lane JP DipTP FRTPI MCI**

an Inspector appointed by the Secretary of State

Decision date: 24<sup>th</sup> March 2022

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**Appeal Ref: APP/X1545/W/21/3281036**

**Land south of Charwood and east of Orchard House, Stoney Hills, Burnham-on-Crouch, CM0 8QA**

- 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 K Burrows against the decision of Maldon District Council.
  - The application Ref. FUL/MAL/20/01166 dated 14 October 2020, was refused by notice dated 11 June 2021.
  - The development proposed is construct cul-de-sac road with turning head and vehicular and pedestrian access off Stoney Hills, erect one detached bungalow and garage, lay out parking spaces.
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### Decision

1. The appeal is allowed and planning permission is granted to construct cul-de-sac road with turning head and vehicular and pedestrian access off Stoney Hills, erect one detached bungalow and garage, lay out parking spaces on land south of Charwood and east of Orchard House, Stoney Hills, Burnham-on-Crouch, CM0 8QA accordance with the terms of the application, Ref FUL/MAL/20/01166, dated 14 October 2020, subject to the conditions set out in the schedule at the end of this decision.

### Application for costs

2. An application for costs was made by Mr K Burrows against Maldon District Council. This application is the subject of a separate Decision.

### Main Issues

3. The main issues in this case are: i) the effect of the design of the proposed dwelling on the character and appearance of the surrounding area; and ii) the effect of the proposed development on the living conditions of the neighbours at Orchard House by virtue of a loss of outlook.

### Reasons

4. Stoney Hills is located outside of the settlement boundary of Burnham-on-Crouch. Apparently it originated as 'plotland' development of the early to mid-twentieth century. Over the years the character has changed from a rural area with dispersed development into one of a more suburban character. There have been significant numbers of new dwellings approved in the locality in recent times. The properties within the general area are mainly individual detached

two storey houses, chalet style dwellings and bungalows with a variety of styles, scale and form.

5. The site, within the northeast corner of the Stoney Hills area, abuts the rear boundaries of Myrtle Cottage and Orchard House and it shares the access point from the eastern side of Stoney Hills with the dwelling Charwood and others which have been approved surrounding Charwood. As I saw at my site visit, development is currently underway for the continuation of the cul-de-sac and the construction of 6 dwellings on both sides of the road.

The effect of the design on the character and appearance of the surrounding area

6. Paragraphs 4 and 5 above provide a brief description of the area within which the appeal site sits. There is no particular form of dwelling that dominates the character of the area, other than that most of the recent development in the immediate vicinity has been in the form of single or one and a half storey dwellings. As such the design of the appeal bungalow is unremarkable. At the front of the proposed bungalow the central section projects forward with the main bulk of the dwelling set back and projecting to the south. There is also a further projecting element at the rear which comprises a utility room that links to the garage. The main roof is hipped, but the projecting elements are gabled. These roofs are shown to be finished with plain tiles, with the walls above a brick plinth being either weather boarding or rendered. The articulation of the accommodation provides interest to the design, whilst the materials relate well to the palate of materials used locally. There is no specific criticism of the design by the council, and for my part I consider that it relates well to the character and appearance of the surrounding area, making a positive contribution to it.
7. With particular reference to whether it would be 'incongruous and contrived', the lack of windows in the rear elevation maybe somewhat unusual, but there is no requirement in terms of the internal environment of the dining room, kitchen or utility room for windows, and it does mean that there can be no overlooking, perceived or real, to or from the neighbours to the west. In addition, the articulation of the rear elevations relieves what otherwise might be a monolithic appearance.

The effect on the living conditions of the neighbours at Orchard House by virtue of a loss of outlook

8. The effect on Orchard House, specified in the refusal reason, is that the proposed bungalow would cause a loss of outlook, thus bringing a detrimental effect on the living conditions of the occupiers. Such alleged loss of outlook has not been explained, and I can only think that it might be justified in terms of it being oppressive in the outlook of the affected property.
9. That outlook would be potentially from rooms in the eastern elevation of the house and from the garden. The rooms in the eastern elevation serve a living room at the southern end, a kitchen, and a garden room next to the main garden area on the ground floor. At first floor level there are windows to the master bedroom and another bedroom. Orchard house has its main garden area to the north of the building, rather than towards the appeal site, but has a patio area between the house and the appeal site. Orchard House also has a projecting 2 storey element at the back (facing the appeal site). The distance of the nearest part of Orchard house to the rear elevation of the appeal

dwelling is 9.3m (rounded down). On the boundary of the appeal site and Orchard House there is a 2m high fence with a trellis on top.

10. Taking account of the features mentioned above, the fence and trellis limit views of the proposed bungalow from ground floor windows and the patio, leaving the roof as the element that would be apparent. This roof is of a hipped form, reducing its mass and impact compared to a gabled roof, and the fact that the roof slopes away from Orchard House further reduces any impact of overbearing oppressiveness. With the main garden area of the proposed bungalow not backing onto the rear of Orchard House, there could be expected to be limited activity at the rear of the proposed dwelling that should not disturb to the users of the patio. There is no reason why the patio should not be an attractive and tranquil sitting out area. I therefore judge that there would be no oppressive intrusion into the outlook of the ground floor rooms or the patio area of Orchard House arising from the proposal.
11. Turning to the outlook from the bedroom windows of Orchard house, I am told, and it has not been contradicted, that the lower ridges of the proposed bungalow would be at a level 1m above floor level of the 2 bedrooms of that dwelling. This does not amount to an unreasonable impact on the outlook or amount to an oppressive feature. The highest ridge in the proposal is at the apex of a small triangle, with a base of 2.5m, some 12.6m away from the nearest position for someone looking from the Orchard House bedroom windows. I consider that it would be unreasonable to regard this level of intrusion into the outlook as amounting to oppression justifying the refusal of permission.

#### Development within the Zone of Influence for the Essex Coast Recreational Avoidance Mitigation Strategy

12. I see from the officer's report that the appeal site falls within the 'Zone of Influence' for one or more of the European Designated Sites scoped into the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). This means that residential developments could potentially have a significant effect on the sensitive features of these Coastal European Designated Sites, through increased recreational pressure, etc. To accord with Natural England's requirements and standard advice, a RAMS Habitat Regulation Assessment (HRA) Record was completed by the council to assess if the development would constitute a 'Likely Significant Effect'. The HRA outcome was that a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements.
13. As I am now the competent authority in this case, I have a duty to ensure that there is no impact on the Special Protection Area. I am satisfied with the council's screening in this case. Provided the mitigation mentioned above is secured, it can be concluded that the grant of planning application will not have an adverse impact on the integrity of the European sites from recreational disturbance, when considered in combination with other development. The appellant has dealt with this issue by way of a submitted signed and dated legal agreement made pursuant to section 106 of the Town and Country Planning Act 1990. This provides for a payment of the standard tariff of £125.58 (index linked) prior to the commencement of the development, as required under the RAMS. The RAMS is an adopted document, and I am

satisfied that the planning obligation meets the 3 tests set out in paragraph 56 of the National Planning Policy Framework.

### **Conclusions**

14. For the reasons that I have set out above, I conclude that there would be no harmful effect on the character and appearance of the surrounding area from the appeal development, and nor would it have a harmful effect on the living conditions of the neighbours at Orchard House by virtue of a loss of outlook. I will therefore allow the appeal, subject to conditions, which I deal with below.

### **Conditions**

15. The Council has suggested a number of conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG I have amended some of the text. I consider that the conditions should be imposed for the following reasons: condition 2 is required for certainty and avoidance of doubt as to the development permitted; condition 3 is to ensure that the appearance of the development integrates with the existing in a visually satisfactory manner; conditions 4 and 5 are to ensure that the scheme is landscaped and enclosed in a manner that reflects and adds to the appearance and character of the area; conditions 6 and 7 are to ensure no loss of privacy or amenity to the neighbouring properties; condition 8 is to ensure that the construction of the development is carried out so as not to inconvenience neighbours or users of the access road; conditions 9, 10 and 11 are to ensure that any contamination of the site is found and remedied appropriately to ensure that there is no danger to humans, property, or wildlife, etc; condition 12 is to ensure that means of foul drainage are put in place to avoid contamination and safeguard amenity; condition 13 is to ensure that surface water drainage is put in place to avoid flooding or inconvenience to road users; condition 14 is to provide for renewable energy in the interests of the environment; condition 15 is to ensure that the development relates satisfactorily to its surrounding in terms of the height of building; condition 16 is to ensure satisfactory car parking is provided to avoid hazard or inconvenience to users of the highway; condition 17 is to ensure that the garage accommodation remains available for its intended purpose to avoid parking on the highway.
16. The condition suggested by the council concerning footpath number 5 has not been explained or its location identified to me, and appears not to be relevant to the development. There is also a suggested condition that seeks to protect 'Oak tree T1'; but the Arboricultural Impact Assessment & Method Statement (AIAMS), submitted with the appeal, shows this tree to be well away from the appeal dwelling. Nor does the AIAMS support the proposed condition dealing with trees and hedges generally. For these reasons I have not imposed these conditions.
17. The pre-commencement conditions have been agreed by the appellant.

*Terrence Kemmann-Lane*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1150/10 rev A, 1150/18 rev A, 1150/19 rev A, 1150/20, 1150/21.
- 3) Prior to their use in the development hereby approved, written details and photographs of the external materials to be used in the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the details as approved.
- 4) Prior to works above ground level, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include, for example:
  - i. Proposes finished levels contours;
  - ii. Means of enclosure;
  - iii. Car parking layouts;
  - iv. Other vehicle and pedestrian access and circulation areas;
  - v. Hard surfacing materials;
  - vi. Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting);
  - vii. Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc, indicating lines, manholes, supports);
  - viii. Retained historic landscape features and proposals for restoration, where relevant.

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of any part of the development hereby approved unless otherwise agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, 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.

The hard landscape works shall be carried out as approved prior to the first use/occupation of the development hereby approved and retained and maintained as such thereafter.

5. The Details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers shall be submitted to and approved in writing by the local planning authority prior to

first use/occupation of the development hereby approved. 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.

6. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no garages, extensions or separate buildings (other than incidental outbuildings not exceeding 10 cubic metres in volume) shall be erected within the site without planning permission having been obtained from the local planning authority.
7. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no dormer window or other form of addition or opening shall be constructed in the roof or gable walls of the building hereby permitted without planning permission having been obtained from the local planning authority.
8. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - The parking of vehicles of site operatives and visitors
  - Loading and unloading of plant and materials
  - Storage of plant and materials used in constructing the development
  - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - Wheel washing facilities
  - Measures to control the emission of dust and dirt during construction
  - A scheme for recycling/disposing of waste resulting from demolition and construction works
9. Notwithstanding the details submitted with this application, no development shall commence, other than that required to carry out additional necessary investigation which in this case includes demolition, site clearance, removal of underground tanks and old structures, until an investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The report of the findings must include:
  - i) A preliminary risk assessment to include historical information of how each part of the site has been used in the past;
  - ii) A survey of the extent, scale and nature of contamination;
  - iii) an assessment of the potential risks to:
    - a) Human health,
    - b) Property (existing or proposed) including buildings, crops, livestock, etc, woodland and service lines and pipes,
    - c) Adjoining land,
    - d) Groundwaters and surface waters,
    - e) Ecological systems
    - f) Archaeological sites and ancient monuments;
  - iv) An appraisal of remedial options, and proposal of the preferred option(s). This shall include timescales and phasing of remediation works

This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

10. No development shall commence, other than where necessary to carry out additional investigation, until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures.

The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The development hereby permitted shall not commence until the measures set out in the approved scheme have been implemented, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority may give approval for the commencement of development prior to the completion of the remedial measures when it is deemed necessary to do so in order to complete the agreed remediation scheme.

This shall be conducted in accordance with the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers' and DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The development hereby permitted shall not commence until the measures set out in the approved report have been implemented.

11. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and submitted to the Local Planning Authority for approval.

The written verification shall include that:

- i) All contaminated material removed from the site is removed by an appropriate licensed contractor to a facility approved by the Environment Agency
- ii) All imported material is suitable for its intended use
- iii) All agreed remediation measures identified as necessary in the contaminated land assessment have been undertaken to render the site suitable for the use specified

This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

- 12.No development works above ground level shall occur until details of the foul drainage scheme to serve the development have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented as approved prior to the first occupation of the development.
- 13.No development works above ground level shall occur until details of the surface water drainage scheme to serve the development have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development. The scheme shall ensure that for a minimum:
  - 1) The development should be able to manage water on site for 1 in 100 year events plus 40% climate change allowance.
  - 2) Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1 year event) inclusive of climate change should be no higher than 10/l/s and no lower than 1/l/s. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield).
- 14.Prior to occupation of the dwelling hereby permitted, an Air Source Heat Pump shall be installed at the site and shall be retained as such thereafter.
15. No works related to the alteration of ground levels at the site and no works above ground level shall occur until details of existing ground levels and proposed finished ground levels, and their relationship to the adjoining land, and floor levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 16.The dwelling hereby approved shall not be occupied until two car parking spaces have been provided, one on the driveway and one in the garage, as shown on plan 1150/18. The car parking hereby approved shall be retained for the use of occupiers or visitors to the dwelling in perpetuity.
- 17.The garage hereby approved shall not be used other than for the accommodation of private motor vehicles or for any other purpose incidental to the enjoyment of the dwelling house as such and shall not at any time be converted or used as habitable space/living accommodation.