
Appeal Decision

Hearing held on 23 August 2016

Site visit made on 23 August 2016

by Kevin Gleeson BA MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 October 2016

Appeal A Ref: APP/X1545/W/16/3147227

Grove Farm, Stoney Hills, Burnham-on-Crouch, Essex CM0 8QA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs F Pitt against the decision of Maldon District Council.
 - The application Ref OUT/MAL/15/00445, dated 1 May 2015, was refused by notice dated 24 September 2015.
 - The development proposed is one dwelling including determination of access.
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Appeal B Ref: APP/X1545/W/16/3147572

Grove Farm, Stoney Hills, Burnham-on-Crouch, Essex CM0 8QA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mrs F Pitt against the decision of Maldon District Council.
 - The application Ref OUT/MAL/15/01082, was dated 9 October 2015.
 - The development proposed is the erection of five bungalows in lieu of existing commercial and agricultural buildings.
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Decisions

Appeal A

1. The appeal is allowed and outline planning permission is granted for one dwelling including determination of access at Grove Farm, Stoney Hills, Burnham on Crouch, Essex CM0 8QA in accordance with the terms of the application, Ref OUT/MAL/15/00445, dated 1 May 2015, subject to the conditions in Annex A.

Appeal B

2. The appeal is allowed and outline planning permission is granted for the erection of five bungalows in lieu of existing commercial and agricultural buildings at Grove Farm, Stoney Hills, Burnham on Crouch, Essex CM0 8QA in accordance with the terms of the application, Ref OUT/MAL/15/01082, dated 9 October 2015, subject to the conditions in Annex B.

Application for Costs

3. At the hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.
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Preliminary Matters

4. The application which led to Appeal A was submitted in outline, with access submitted for determination at this stage. The application which led to Appeal B was also submitted in outline, with access and layout for determination.
5. Appeal B was made on the basis of the Council's failure to determine the application within the prescribed period. Following the lodging of the appeal the Council indicated that they would have refused the scheme for four reasons had they been in a position to determine the application: firstly, that the proposed development would be outside the defined settlement boundary where policies of restraint apply; secondly, that it would be out of character with the surrounding area; thirdly, that it would result in an unacceptable intensification of development served by an unmade road and fourthly, that the development would result in the loss of employment.
6. Prior to the hearing the Council indicated that they would not be defending the third reason for refusal in relation to Appeal A and the third putative reason for refusal in relation to Appeal B. At the appeal it was confirmed that the reason for this was that it had revisited its position in the light of the appeal decisions in respect of land at Mill Farm, Stoney Hills.¹
7. At the hearing the Council also confirmed that it would not be defending the fourth putative reason for refusal in respect of Appeal B regarding the previous employment use of the site. The Council accepted that any employment use on the site in addition to the previous agricultural use had not taken place for many years and in any event would have been very small scale.
8. The Maldon District Replacement Local Plan (RLP) was adopted in November 2005. It is proposed to be replaced by the Maldon District Local Development Plan (LDP) which is in the process of Examination. The weight to be given to the relevant policies of both documents in my consideration of the main issues below is in accordance with paragraphs 215 and 216 of the National Planning Policy Framework (the Framework).

Main Issues

9. In the light of the consideration of preliminary matters the main issues are:
 - a) the effect of the proposals on the character and appearance of the area; and
 - b) whether the proposals would provide suitable sites for housing having regard to the principles of sustainable development.

Reasons

Character and Appearance

10. Grove Farm comprises a single storey dwelling together with a range of traditional farm outbuildings and stables. The residential property is generally centrally located within the plot frontage with vehicular access provided on either side of the house.

¹ APP/X1545/W/15/3134072, APP/X1545/W/15/3134076 and APP/X1545/W/15/3134078.

11. The site of Appeal A is directly to the north of the existing dwelling at Grove Farm. It is occupied by a single storey outbuilding as well as a garage building which would be retained as part of appeal scheme. The site of Appeal B comprises the entire Grove Farm site with the exception of the existing residential property and therefore includes the site of Appeal A. The site of Appeal B has well defined boundaries on all sides with those on the north and south contiguous with other residential properties and the western boundary extending no further into the countryside than neighbouring properties.
12. Stoney Hills is located outside of the settlement boundary of Burnham-on-Crouch. It has been the subject of many redevelopment proposals over recent years which have changed the area, and continue to do so, from a rural character to a more suburban residential one. Distinct physical boundaries to the residential area of Stoney Hills are provided by garden boundaries whilst much of the character derives from the infilling of gaps and spaces between residential properties.
13. The character also derives from the variety of individual detached bungalows and houses in terms of height and scale which are generally set within large plots. Substantial houses can be found on many sites including at Linden Lea, the neighbouring property to the south whilst a number of recently approved developments exemplifying the trend towards larger properties are currently under construction including at Mill Farm, opposite the appeal site. In addition there are examples of the original small scale dwellings such as Grove Farm.
14. Plot widths, building set back and the detailed design of properties throughout Stoney Hills also demonstrate considerable variety. There is evidence that Stoney Hills was originally characterised by a linear form of development, but as redevelopment has taken place buildings have been sited with less uniformity resulting in what the parties agreed was a loose semi-suburban character. With redevelopment the area has also seen a tightening of built form with distances between buildings and boundaries reduced but there is limited commonality in terms of the scale, design and layout of residential properties.
15. The proposals would involve the removal of the outbuildings on the Grove Farm site and the development of a single dwelling in the case of Appeal A and five dwellings in the case of Appeal B.
16. For Appeal A the proposed site plan illustrates the dwelling occupying much of the footprint of the outbuilding, centred within the plot and located approximately 20 metres from the frontage. The proposed dwelling would therefore be some distance behind the existing dwelling at Grove Farm. It would be within two metres of the northern site boundary and approximately 2.4 metres of the southern site boundary with its own access provided by the existing access to the north of Grove Farm. Whilst all matters apart from access are reserved for future determination an indicative plan shows how the design, materials and landscaping could ensure that the proposed dwelling complements the character and appearance of the area.
17. For Appeal B the proposed development would comprise a residential cul-de-sac for four dwellings served from the existing southern access to the site. The siting of the fifth dwelling forming part of Appeal B reflects that shown on the indicative drawing submitted as part of the Appeal A proposal. In each case it

- is suggested that the proposed dwelling would be a bungalow of one or one-and-a-half storeys of either two or three bedrooms.
18. The layout of the proposed development of Appeal B would be in keeping with recent developments including Mill Farm and land west of Mirfield where houses are set back from the frontage of Stoney Hills and layouts respond to site constraints and opportunities rather than following a rigid linear form.
 19. The subdivision of the frontage to Grove Farm would not be harmful because in spite of the reduced frontage to the northern boundary the proposed new dwelling would be set back from the frontage and therefore have little impact on the streetscene.
 20. It is the Council's view that none of the recently approved developments have resulted in a tightening of built form or urbanisation to the extent of that proposed by the Appeal B proposals. However, whilst demonstrating a tighter form than other recently approved dwellings the space around the proposed dwellings and relationship to existing dwellings would not be unacceptable recognising that layout is for determination as part of Appeal B. Additionally, the overall footprint of the proposed development would be significantly less than the existing development on site and the proposed density at approximately 14 dwellings per hectare would not be excessive or harmful in this context.
 21. The layout of parking in the centre of the appeal site in a communal car parking arrangement would be in keeping with some of the other recently approved developments in Stoney Hills where redevelopment has increased the amount of hard landscaping. Consequently, the proposed development would contribute to the evolving tighter urban form within Stoney Hills and there would be no conflict therefore with the prevailing pattern of development within the vicinity.
 22. On the basis that the area is residential in character with well-defined property boundaries the proposed development would not be an intrusion into the open countryside. In addition, it would not have an urbanising effect on the countryside as adjoining sites to the north and south have residential boundaries and the appeal site does not have the character of a rural landscape. Additionally, it has not been demonstrated that the proposed development would detract from the countryside visually or in terms of landscape character.
 23. Based on the information provided, taking account of both appeals being in outline form, I can see no reason why the development cannot respond to the requirements to address architectural style, scale, bulk, height, materials and visual impact at reserved matters stage. Neither appeal proposal would be harmful to the character or appearance of the area nor would they conflict with Policy BE1 (a) of the RLP which aims to ensure that new development is reflective of its setting.
 24. Whilst the appeal site is outside of the defined settlement boundary where Policy BE1 (c) states that development should make a positive contribution to the landscape and open countryside it forms part of a residential area and as I have found, has a residential character. Beyond the residential boundaries there would be no adverse effect on the openness of the rural landscape. As a result I find no conflict with Policy BE1 (c) or Policy CC6 of the RLP which seeks

to protect conserve, and enhance the natural beauty, tranquillity, amenity and traditional quality of the District's landscape.

25. There would also be no conflict with Policy D1 of the draft LDP which aims to protect landscape character and requires new development to be acceptable with its surroundings. Additionally I find no conflict with paragraph 55 of the Framework which seeks to avoid isolated new homes in the countryside or with the requirement in the Framework for good design.

Suitability of the Site for Housing

26. The site is located outside of any defined settlement boundary as defined on the Local Plan Proposals Map. Policy S2 of the RLP states that outside of development boundaries the countryside will be protected for its own sake and particularly for its landscape. Policy H1 of the RLP also restricts new housing outside development boundaries unless it complies with other policies in the plan.
27. Policy S1 of the draft LDP confirms that the Council will take a positive approach to development that reflects the Framework's presumption in favour of sustainable development whilst Policy S8 of the draft LDP states that development outside of defined settlement boundaries will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it is for one of a range of uses including other development proposals that are in compliance with policies within the LDP.
28. The Council acknowledges that previous decisions at Stoney Hills concluded that the development is within a sustainable location in terms of the principles of the Framework. However it now concludes that it is able to demonstrate a supply of specific deliverable sites sufficient to provide more than five years' worth of housing against the Council's identified housing requirement in line with the requirement of paragraph 47 of the Framework.
29. Both the Council and the appellant provided their own assessment in relation to the objectively assessed housing need and whether or not a five year supply of housing land can be identified. Nevertheless as the LDP has not yet reached its Examination there is no tested or agreed figure as part of the development plan process available.
30. The Council considers that the site's sustainability is reliant upon it not having a five year housing land supply. It argued that, only if it did not have a five year supply would policies for the supply of housing be out-of-date and paragraphs 14 and 49 of the Framework regarding housing supply and the presumption in favour of sustainable development would apply.
31. However, irrespective of whether there is a five year supply of housing sites the Framework seeks to boost significantly the supply of housing and the ability to meet the five year supply should not be seen as a maximum. The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development.
32. Although the appeal sites are outside the development boundary of Burnham-on-Crouch I consider them to be within a residential area. Based on the evidence before me and my observations during my visit to the area I also agree with previous Inspectors that Stoney Hills is a sustainable location for

development. Moreover I have not identified any harm in respect of character and appearance arising from the proposed developments.

33. Whilst I attach limited weight to draft LDP policies S1 and S8 because they have not been tested at Examination, I note that they reflect the principles of the Framework. Further, I consider there is no conflict with either policy particularly as Policy S8 provides for development outside of defined settlement boundaries in circumstances where there is no conflict with other policies of the LDP which would be the situation here.
34. Taking the Council's argument that it does have a five year housing land supply then the developments would conflict with Policies S2 and H1 of the RLP as they would be outside of the development boundary. However, as stated I conclude that the location of the proposed developments would be suitable and sustainable and no harm has been identified in terms of character or appearance. Further, although providing only a small number of dwellings, the proposals would make a contribution to the supply of housing to which I attach significant weight. They would also provide small scale units which is also policy compliant in terms of mix. They would therefore conform with paragraph 54 of the Framework which requires local planning authorities to respond to local circumstances and for housing to reflect local needs. As such I consider the proposals would meet the three dimensions of sustainable development set out at paragraph 7 of the Framework.

Other Matters

35. A number of local residents raised concerns about the proposed developments. Some of these relate to issues which are not planning matters and are therefore not relevant to my consideration of these appeals. With regard to infrastructure and traffic, based on my observations when visiting the area and the lack of evidence to support these objections I do not consider that the addition of five dwellings would be detrimental to infrastructure or the flow of traffic or highway safety in Stoney Hills. I also note that the Council withdrew its reason for refusal relating to highway matters and that the highway authority has not objected to the proposals. Other issues raised by neighbours have been addressed earlier in my decision or can be addressed through planning conditions.

Conditions

36. The Council suggested a number of conditions to be imposed were I to allow the appeal. These were discussed with the main parties at the hearing and I have also had regard to the Framework and Planning Practice Guidance.
37. Conditions relating to the submission of reserved matters and the timing of commencement are needed due to the outline nature of the application (Conditions 1, 2 and 3). A condition specifying the relevant drawings is required as this provides certainty (4). I have imposed a condition requiring details of the parking layout to ensure an appropriate layout in the interests of safety (5). It is also necessary to require the submission and approval of details of surface water and foul drainage to ensure the proper drainage of the site (6). Following consultation with the main parties after the close of the hearing I also impose a condition to address ground contamination and require its remediation before residential occupation because of the history of previous use on the site (7).

38. The Council had suggested conditions requiring the submission of details or samples of materials and boundary treatments to be submitted to the local planning authority for approval. However, as these are covered by reserved matters they are not required at this stage. Similarly a condition relating to the details of landscaping works which is also a reserved matter is not necessary at this stage.

Conclusion

39. The proposals would result in development outside of the defined settlement boundary in conflict with Policies S2 and H1 of the RLP. However, even if the Council has a five year housing land supply, and full weight can therefore be given to these policies, I have found that in other respects the proposed developments would accord with Development Plan policies to which the Council has referred. I have also concluded that the developments would meet the three dimensions of sustainable development set out in the Framework. These are very significant considerations that are sufficient to outweigh conflict with Policies S2 and H1 in this case.
40. For these reasons, and taking into account all matters presented in evidence and raised at the hearing, I conclude on balance that the appeals should be allowed.

Kevin Gleeson

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Russell Forde BEng (Hons) DipTP (Dist) MRTPI	Smart Planning
Emma Gladwin BSc (Hons) MSc	Smart Planning
Jessica Stanbury	Granddaughter of the Appellant

FOR THE LOCAL PLANNING AUTHORITY

Matthew Leigh MRTPI	Maldon District Council
Kara Elliott	Maldon District Council
Tim Parton	Maldon District Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Extracts from the Maldon District Replacement Local Plan submitted by the Council.
2. Update to Document SPL 1 submitted by the appellant.
3. Update to Document SPL 7 submitted by the appellant.

DOCUMENTS SUBMITTED AFTER THE HEARING CLOSED

- 4 Maldon District Council Five Year Housing Land Supply Statement, August 2016, submitted by the Council.
- 5 Maldon District Council Five Year Housing Land Supply Advisory Note , August 2016, submitted by the Council.
- 6 Letter from LDP Inspector, Simon Berkeley dated 8 September 2016, submitted by the appellant.
- 7 Maldon District Council letter dated 12 September 2016 and response from LDP Inspector, Simon Berkeley dated 15 September 2016 submitted by the Council.

ANNEX A

APPEAL A: SCHEDULE OF CONDITIONS

1. Details of the layout, appearance, landscaping and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2. Application(s) for approval of all the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun on or before the expiration of two years from the date of the approval of the last of the reserved matters.
4. The development hereby permitted shall be carried out in accordance with the following approved plans insofar as they relate to access: P201 and P202.
5. The scheme to be submitted as part of the reserved matters shall make provision for car parking within the site in accordance with the Council's adopted car parking standards. Prior to the occupation of the development the parking areas shall be constructed, surfaced, laid out and made available for such purposes in accordance with the approved scheme and retained as such thereafter.
6. No development shall commence until measures to be taken for the disposal of surface water and foul drainage shall be submitted to and approved in writing by the local planning authority. The works shall be carried out prior to first occupation of the development.
7. The development hereby permitted shall not be commenced until a scheme to deal with any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the local planning authority and until the measures approved in that scheme have been implemented. The scheme shall include all of the following measures, unless the local planning authority dispenses with any such requirement in writing:
 - a) A desk top study including two copies of the study and a non-technical summary documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS10175:2001 – Investigation of Potentially Contaminated Sites – Code of Practice.
 - b) A site investigation report documenting the ground conditions of the site, identifying and evaluating all potential sources of contamination and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2001; a conceptual model of the site indicating sources, pathways and receptors; and an analysis of the potentially unacceptable risks arising from contamination at the site.
 - c) A detailed scheme for remedial works and measures to be undertaken to avoid risks from contaminants and / or gases when the site is developed and proposals for future maintenance and monitoring. Such a scheme shall include the nomination of a competent person to oversee the implementation of the works.

Should any ground conditions, or the existence, extent and concentrations of any contamination be found that was not previously identified or not considered in the scheme agreed in writing with the local planning authority,

the site or part thereof shall be reassessed in accordance with the above and a separate scheme to bring the site to a suitable condition in that it represents an acceptable risk shall be submitted to and agreed in writing with the local planning authority.

The development hereby permitted shall not be occupied or brought into use until there has been submitted to the local planning authority verification by a competent person approved under the provisions of c) above that any remediation scheme required and approved under the provisions of c) above, has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation). Unless otherwise agreed in writing by the local planning authority such verification shall comprise:

- 1) Photographs of the remediation works in progress;
- 2) Certificates demonstrating that imported and / or material left in situ is free from contamination.

ANNEX B

APPEAL B: SCHEDULE OF CONDITIONS

1. Details of the appearance, landscaping and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application(s) for approval of all the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun on or before the expiration of two years from the date of the approval of the last of the reserved matters.
4. The development hereby permitted shall be carried out in accordance with the following approved plans insofar as they relate to access and layout: P204B.
5. The scheme to be submitted as part of the reserved matters shall make provision for car parking within the site in accordance with the Council's adopted car parking standards. Prior to the occupation of the development the parking areas shall be constructed, surfaced, laid out and made available for such purposes in accordance with the approved scheme and retained as such thereafter.
6. No development shall commence until measures to be taken for the disposal of surface water and foul drainage shall be submitted to and approved in writing by the local planning authority. The works shall be carried out prior to first occupation of the development.

8. The development hereby permitted shall not be commenced until a scheme to deal with any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the local planning authority and until the measures approved in that scheme have been implemented. The scheme shall include all of the following measures, unless the local planning authority dispenses with any such requirement in writing:
- a) A desk top study including two copies of the study and a non-technical summary documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS10175:2001 – Investigation of Potentially Contaminated Sites – Code of Practice.
 - b) A site investigation report documenting the ground conditions of the site, identifying and evaluating all potential sources of contamination and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2001; a conceptual model of the site indicating sources, pathways and receptors; and an analysis of the potentially unacceptable risks arising from contamination at the site.
 - c) A detailed scheme for remedial works and measures to be undertaken to avoid risks from contaminants and / or gases when the site is developed and proposals for future maintenance and monitoring. Such a scheme shall include the nomination of a competent person to oversee the implementation of the works.

Should any ground conditions, or the existence, extent and concentrations of any contamination be found that was not previously identified or not considered in the scheme agreed in writing with the local planning authority, the site or part thereof shall be reassessed in accordance with the above and a separate scheme to bring the site to a suitable condition in that it represents an acceptable risk shall be submitted to and agreed in writing with the local planning authority.

The development hereby permitted shall not be occupied or brought into use until there has been submitted to the local planning authority verification by a competent person approved under the provisions of c) above that any remediation scheme required and approved under the provisions of c) above, has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation). Unless otherwise agreed in writing by the local planning authority such verification shall comprise:

- 1) Photographs of the remediation works in progress;
- 2) Certificates demonstrating that imported and / or material left in situ is free from contamination.