
Appeal Decision

Site visit made on 20 December 2016

by Simon Warder BSc(Hons) MA DipUD(Dist) MRTPI

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

Decision date: 19 January 2017

Appeal Ref: APP/X1545/W/16/3158007

Drinkwater Farm, Maldon Road, Bradwell-on-Sea, Essex CM0 7HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Coldunell Limited (Mr John Aoun) against the decision of Maldon District Council.
 - The application Ref FUL/MAL/16/00388, dated 24 March 2016, was refused by notice dated 23 June 2016.
 - The application sought planning permission for development of 12 new houses with workshops without complying with conditions 6, 7 and 8 attached to planning permission Ref FUL/MAL/07/00842, granted on appeal under Ref APP/X1545/A/08/2064100, dated 23 June 2008.
 - The conditions in dispute are Nos 6, 7 and 8 which state that:
'6) The business floorspace of each live/work unit shall be finished ready for occupation before the residential floorspace for each unit is occupied and the residential use shall not precede commencement of the business use.'
'7) The business floorspace of the live/work unit shall not be used for any purpose other than for purposes within Class B1 in the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order without modification.'
'8) The occupation of the residential floorspace of the live/work unit shall be limited to a person solely or mainly employed, or last employed, in the business occupying the business floorspace of that unit, or a widow or widower of such a person, or any resident dependants.'
 - The reasons given for the conditions set out in paragraph 16 of the appeal decision is to ensure that the Class B1 element of the proposal is provided and that there is a tie between the work and live uses.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by Maldon District Council against Coldunell Limited (Mr John Aoun) and by Coldunell Limited (Mr John Aoun) against Maldon District Council. These applications are the subject of separate Decisions.

Preliminary Matter

3. It is proposed to remove the words 'of each live/work unit' from conditions 6 and 7 and to delete condition 8. The effect of the proposal would, therefore, be

to allow the Class B1 floorspace to be provided separately from the dwellings. Application drawing no 0275_PL Rev A shows 480 square metres of B1 use in a building in the south east corner of the site. The adjoining dwelling would be sub-divided into two units in order to retain the 12 dwellings originally proposed.

Main Issues

4. The main issues are whether the proposal would:

- result in sustainable travel patterns having regard to development plan and national policies;
- make adequate provision for affordable housing;
- result in a loss of employment opportunities.

Reasons

Sustainable Travel Patterns

5. The appeal proposal would remove the direct physical link between the live and work elements of the scheme. The appellant has indicated that a Planning Obligation could be used to allow the residential occupiers to occupy the employment floorspace at favourable rates. However, no such Obligation is before me and, therefore, there is nothing to prevent the live and work elements of the scheme from being occupied independently.
6. As a consequence, residential occupiers would be far more likely to need to travel elsewhere to work and occupiers of the B1 floorspace would need to travel from elsewhere to the site.
7. The appeal site is located in the countryside. While it may be feasible to cycle to the settlements at Saint Lawrence, Steeple and Bradwell on Sea, there is nothing to suggest that those settlements have an extensive range of employment opportunities. I understand that a bus service passes the site, but have not been made aware of the times or frequency of services. Consequently, I consider that most trips to and from the site would be by private car.
8. The previous Inspector reached a similar conclusion. Nevertheless, he found that, by virtue of the site's planning history, a scheme of live/work units would be acceptable. However, the current proposal removes the linkage between those elements and would be likely to significantly increase the number of trips to the proposed employment unit and from the proposed dwellings. Since most of those trips would be by private car, I consider that the travel patterns generated by the proposal would not be sustainable.
9. Whilst there is nothing to indicate that the additional movements would pose a risk to highway safety, the Transport Note attached to the appellant's statement appears to be based in the assumption that a link between the live and work elements of the scheme would be retained. However, for the reasons set out above, that would not be the case. Consequently, the Transport Note does not lead me to different conclusion on the sustainability of the travel patterns generated by the proposal.

10. As such, the proposal would conflict with National Planning Policy Framework (the Framework) paragraph 32 which requires consideration to be given to opportunities for sustainable transport modes depending on the nature and location of the site, paragraph 35 which requires development to give priority to pedestrian and cycle movements and paragraph 37 which seeks to minimise journey lengths for employment and other activities.
11. The first reason for refusal cites Maldon District Replacement Local Plan 2005 (LP) Policies S2, H1, CC6 and BE1 and emerging Maldon District Local Development Plan (ELP) Policies S8 and D1. However, these policies deal with housing outside of settlement boundaries, countryside protection and the design of new development. The appeal proposal would not increase the amount of residential accommodation at this location and there is no substantive evidence to demonstrate that it would result in greater harm to the countryside or the character and appearance of the area than the existing permission. Consequently, these policies offer little assistance in my consideration of this issue.
12. The first reason for refusal also refers to ELP Policy S1. For the reasons set out below, I find that the ELP carries limited weight. Nevertheless, to the extent that Policy S1 is consistent with the Framework in seeking to minimise the need to travel and to prioritise sustainable transport modes, it provides some support for my conclusion on this issue.

Affordable Housing

13. The existing planning permission makes no provision for affordable housing. Planning practice Guidance paragraph reference ID: 17a-019-20140306 advises that decisions made under Section 73 of the Act should focus their attention on national and development plan policies and other material considerations which may have changed significantly since the original grant of permission.
14. The Council has referred to Policy H1 of the ELP to justify the requirement for 25% affordable housing as part of the current proposal. The Framework advises that, where local planning authorities have identified a need for affordable housing, they should set out policies for meeting that need. However, the policies of the ELP have yet to be found sound by an examining Inspector and I have not been provided with information on the extent of unresolved objections to Policy H1. In accordance with Framework paragraph 216, I can give limited weight to this policy. It does not form part of the development plan and I consider that it does not amount to a significant change since the grant of the original permission. Consequently, I find that the absence of affordable housing provision does not weigh against the appeal proposal.

Employment Opportunities

15. The existing permission would create 12 elements of employment floorspace linked to the dwellings, whereas the appeal proposal would result in a single employment unit. The Council has not disputed the appellant's statement that the overall amount of floorspace created would not change. However, it considers that the existing scheme would provide 12 different employment opportunities, supporting a prosperous rural economy. Whilst that may be so, there is nothing to suggest that the appeal proposal would lead to fewer job

spaces at the site or that the single employment unit could not be occupied by a number of businesses. I am not persuaded therefore, that the proposal would result in a loss of employment opportunities or economic output. No firm evidence has been provided to show that the single employment unit would fail to integrate into the site.

16. As such, I find that the proposal would not conflict with LP Policy E6 which presumes against the loss of employment sites except in specified circumstances. I have already found that limited weight can be given to the ELP. Nevertheless, the proposal would not conflict with the aims of Policies S1 and E1 to the extent that they are consistent with the LP Policy E6.

Other Matters

17. The parties disagree over whether the Council can demonstrate a five year supply of housing land as required by the Framework. The appellant considers that the absence of a five year supply should weigh in favour of the proposal. However, even if I were to conclude that there is not a five year supply, the proposal would not lead to an increase in the supply of housing units delivered by the appeal site.
18. The appellant also argues that there is a very low demand for live/work units and that prospective occupiers would find it difficult to secure a mortgage for such properties. However, no substantive evidence has been provided in support of these contentions. Nor is it claimed that the permitted scheme is unviable and incapable of delivering the proposed housing and employment opportunities. Therefore, neither this matter nor the housing land supply position, outweighs the concerns set out above.
19. The Council and the appellant disagree over the extent to which the Council engaged proactively in its consideration of the proposal. However, my decision is based on the planning merits of the proposal.

Planning Balance and Conclusion

20. Framework paragraphs 7 and 8 require the three roles of sustainability to be considered together. I have found that the proposal would lead to unsustainable travel patterns. It would not, therefore, meet the environmental role of sustainability. Having regard to my conclusions on the second and third main issues, the proposal would be neutral with regard to the social and economic roles.
21. Overall therefore, even if the Council cannot demonstrate a five year supply of housing land, I find that the proposal's harmful effects on the environment significantly and demonstrably outweigh its benefits when assessed against the policies of the development plan and the Framework as whole. Consequently, I conclude that the proposal would not amount to sustainable development and so is not supported by the presumption in favour of sustainable development set out in Framework paragraph 14.
22. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR