



Appeal Decision

Site visit made on 23 January 2017

by Graham Chamberlain BA MSc MRTPI

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

Decision date: 16th February 2017

Appeal Ref: APP/X1545/W/16/3160991

Land to the rear of 60a Maldon Road, Burnham-on-Crouch, Essex CM0 8NR

- 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 Dr Hamid Latif against the decision of Maldon District Council.
 - The application Ref OUT/MAL/16/00120, dated 1 February 2016, was refused by notice dated 26 April 2016.
 - The development proposed is the demolition of No 58 Maldon Road and the erection of 6 number residential units of 79-240sqm with ancillary works including a new vehicular and pedestrian access off Maldon Road and an estate road.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of No 58 Maldon Road and the erection of 6 number residential units of 79-240sqm with ancillary works including a new vehicular and pedestrian access off Maldon Road and an estate road at Land rear of 60a Maldon Road, Burnham-on-Crouch, Essex CM0 8NR, in accordance with the terms of the application, Ref: OUT/MAL/16/00120, dated 1 February 2016, subject to the conditions in the attached schedule.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for subsequent approval. I have considered the appeal accordingly. I have treated the appeal drawings as an illustration of how the development could proceed rather than a firm proposal. I have referred to the appeal scheme drawings where necessary in considering the principle of development.
3. I have taken the site address from the Council's decision notice as this more accurately describes the appeal site.

Main Issues

4. The appeal site is situated beyond the settlement boundary for Burnham on Crouch as detailed on the Proposals Map for the Maldon District Replacement Local Plan 2005 (RLP) and is therefore within the countryside. Saved Policy S2 of the RLP restrains development beyond the settlement boundary. However, this policy is not wholly consistent with the National Planning Policy Framework, which takes a more flexible approach to development in the countryside.
 5. When applying the policies of the Framework, in particular Paragraph 55, the proposal would not be a form of development that would be isolated from services or a settlement. The Council are content that the appeal site is in a 'sustainable'
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location. As such, the principle of development beyond the settlement boundary is not a determinative issue. Consequently, the main issues in this appeal are:

- The effect of the proposed development on the character and appearance of the area; and
- Whether the proposed development makes sufficient provision for affordable housing and education infrastructure.

Reasons

The effect on character and appearance

6. The appeal site encompasses a parcel of land located to the rear of 58-60 Maldon Road. It is broadly flat, open and given over to grass but there is hedging at different stages of maturity delineating the site boundaries with the adjoining farmland as well as a small copse in the north eastern corner. The appeal site is visible from Green Lane to the north, which broadly runs parallel with Maldon Road and currently has a semi-rural character due to the scattering of houses along its length. There is also maturing woodland to the immediate west of the appeal site.
7. The properties along Maldon Road have a linear layout that affords the street a suburban character. This suburban appearance is reinforced by the presence of small residential cul-de-sac estates including Pinners Close, The Hawthorns and Corinthia Mews to name but a few. However, there is currently a large undeveloped area between the development along Maldon Road and Green Lane. The appeal scheme would project somewhat incongruously into this area to the detriment of its open and rural character.
8. However, the area around the appeal site is undergoing considerable change with new developments planned to the east and south as well as smaller developments along Green Lane¹. In particular, my attention has been drawn to the Council's resolution to approve a large development to the east of the appeal site in the agricultural fields between Maldon Road and Green Lane (Site S2(j) as defined on the Proposals Map). There is nothing before me to suggest that this development is unlikely to proceed. If it does, the countryside to the east of the appeal site will become more urban in character and it is within this evolving context that the appeal scheme must be considered. In this respect, the inherent urbanisation of the appeal site, which would occur if the appeal scheme were implemented, would not appear contrived, isolated or overly prominent when viewed from Green Lane or elsewhere. This is especially so if the houses were designed to respond to local distinctiveness, which is a design aim outlined by the appellant.
9. This finding contrasts from the conclusions of an Inspector determining an appeal at Land off Creeksea Lane². But this decision pre dated the Council's approval of housing at Site S2(j), which is a material consideration of particular significance that was not before the Inspector. As such, the context of the appeal scheme before me is different to the circumstances that were extant when the appeal at Creeksea Lane was decided. Thus, the appeal scheme should be determined on its own merits.

¹ Strategic site S2(j) for 180 homes approved under application FUL/MAL/16/00093 subject to a s106 Agreement, strategic site S2(i) also for 180 homes approved under application FUL/MAL/14/00356 and housing approved under application APP/X1545/W/16/3142883 and at High House.

² APP/X1545/W/15/3132302

10. The impact of the appeal scheme upon the rural character of Green Lane, including localised views, would also be softened by the position of the appeal site back from this road, which is a similar set back to the development approved at Site S2(j). The appeal scheme could also incorporate high levels of soft landscaping, including the retention of the existing copse and an additional planted area in the south eastern corner. This would leave much of the site undeveloped, filter localised views of the development and integrate it with the semi natural open space approved as part of the development at Site S2(j).
11. Additionally, the indicative site plan demonstrates that a spacious and low density layout can be achieved with high levels of landscaping within and between plots. Such a verdant layout would assist in integrating the development with the softer, more rural character of Green Lane and the countryside beyond. It would also ensure the landscape value of the maturing woodland to the west of the appeal site is not unduly affected, as there would be views through the appeal site towards it. A high level of landscaping would also ensure there is a sense of 'flow' between the woodland, the appeal site and the open space approved to the east.
12. The access into the development would result in a gap within the street scene of Maldon Road, which would disrupt its existing linear character. However, the limitations of this would be outweighed by the overall townscape benefits that would accumulate from providing a greater degree of permeability through the appeal site, including a link between the developments approved at Sites S2(j) and S2(i). This would enable the future residents of the development at Site S2(j) to have an improved access to Maldon Road, which would ensure the access to the appeal properties would have the potential to be a well-used and vibrant route rather than an anonymous access to a cul-de-sac. It would also ensure the appeal scheme is a connecting section of urban fabric rather than a dislocated backland development.
13. The Council are concerned that the access may not be feasible and should only be afford limited weight. I disagree. It is not uncommon to seek to link adjoining developments in this way and I have seen nothing to suggest the link would be impossible or that the adjoining land owner would block a connection.
14. Furthermore, the proposed access could be wide enough to be robustly landscaped. A dwelling could also be orientated at its northern end to interact with Maldon Road and have natural surveillance along the access, as shown on the illustrative layout. These aspects would ensure the resulting gap could be visually pleasing if designed with some imagination. Moreover, I have seen nothing to suggest the road itself could not be sensitively designed with attractive surfacing materials, which could reinforce it as a pedestrian and cycle route as well as an access to the six homes proposed.
15. Taking the above points together, I conclude that the proposed development would preserve the character and appearance of the area. As such, the appeal scheme would accord with Policies S2, CC6 and BE1 of the RLP, which seek to conserve the qualities of the countryside and landscape character. Nor would there be any conflict with emerging Policies D1 and N2 of the LDP³, which have similar aims and are at an advanced stage of preparation, which thereby enables moderate weight to be afforded to them.

³ The emerging Maldon District Local Development Plan

16. The appeal scheme would also meet the aims of Paragraphs 17 and 56 of the National Planning Policy Frameworks, as it would safeguard the countryside and landscape character and represent good design that reflects, and positively respond to, the evolving local context.

Whether the proposed development makes sufficient provision for affordable housing and education infrastructure

17. Emerging Policy H1 of the LDP requires developments proposing more than five homes (gross) to provide affordable housing in line with the sub regional requirement. The appellant was willing to provide affordable housing but a legally binding obligation that would secure this is not before me. As such, the scheme is at odds with the emerging policy, which can be afforded noteworthy weight. Planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
18. A material consideration of considerable importance and weight in this instance is the Written Ministerial Statement (WMS) of the 28 November 2014. The WMS states that *'for sites of 10-units or less....affordable housing and tariff style contributions should not be sought'*. The intention of the WMS is to ensure these obligations do not become a disproportionate burden for small scale developers and thus frustrate housing supply. This statement has been translated into national planning guidance in the National Planning Practice Guide (PPG). As such, there is a conflict between the WMS and the PPG and the requirements of the development plan. It is for the decision taker to weigh any conflict between the development plan and other material considerations.
19. The LDP explains that there is a significant shortfall in the availability of affordable housing and this weighs in favour of affordable housing being provided through the development. Nevertheless, the Council has provided insufficient evidence to enable me to ascertain whether the shortfall in affordable housing in the district is typical when compared to national, regional and local circumstances and therefore whether an exception to the WMS would be justified in this respect. Furthermore, it is also unclear how well the Council is performing against any targets for the provision of affordable housing and to what extent small sites are necessary for achieving them. There is also little substantive evidence that the affordable housing at small sites has not hampered the viability of small scale developments.
20. As such, and based on the evidence in front of me, the WMS outweighs the requirements of the development plan in this instance and thus a planning obligation in respect of affordable housing is not necessary and cannot reasonably be required in this instance. Therefore, the development makes adequate provision for affordable housing.
21. The Council have also suggested that a planning obligation towards education infrastructure is also required in accordance with Policies PU1 of the RLP and I1 of the LDP. However, no figure or evidence has been provided to support this proposition so it is entirely unclear what the Council is seeking in this respect. Such a contribution would also be subject to the WMS and I am not satisfied there is any substantive evidence before me to suggest the requirements of the WMS do not outweigh the requirements of the development plan. As such, an obligation towards education infrastructure is unnecessary.

Other Matters

22. The Council have suggested that the position of the estate road, between the flanks of 56 and 60A Maldon Road, could result in noise and disturbance to the occupants of these properties from vehicles passing and repassing. Given the likely distance between the road and the boundaries of these properties, and the space for significant planting, I am satisfied that the comings and goings associated with six homes would not result in a harmful level of noise and disturbance.
23. The appellant has suggested that the access could provide a vehicular link with the development to the east. I would have to see further evidence before I was satisfied the proposed access would be suitable for more than six dwellings in respect of its effect on the living conditions of the occupants of 56 and 60A Maldon Road. However, this link does not form part of the outline proposal before me and is thus outside the scope of this appeal.

Conditions

24. I have had regard to the advice in the Planning Practice Guide and the list of suggested conditions submitted by the Council. In addition to standard conditions in respect of a commencement and the submission of all of the reserved matters, it is necessary to secure the precise details of finishing materials before they are first used. To prevent unreasonable noise and disturbance to existing residents, it is necessary for a construction method statement to be approved. This must be approved before any works commence on site. Similarly, it is necessary to secure an archaeological investigation before works commence on site so as to protect any unknown archaeology.
25. In the interests of the privacy of future occupants, boundary screening must be erected before the houses are first occupied. The details of any boundary treatment would need to be approved as part of the 'landscaping' reserved matter, so a condition in this respect would be duplication. Likewise, as layout and access are reserved matters, the conditions suggested by the Council in respect of parking, the estate road and the highway access are unnecessary at this stage as these details fall to be considered as reserved matters.
26. As landscaping is a reserved matter it would be unnecessary duplication to require details through a planning condition. Nevertheless, any landscaping approved pursuant to the reserved matters must be implemented in accordance with a timetable and any soft landscaping that fails should be replaced. As such conditions in this regard are necessary. To adequately manage foul and surface water, it is necessary for details to be submitted and approved. As pedestrian links with site S2(j) are an important component of the overall design, a condition securing their provision is necessary.

Conclusion

27. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be allowed.

Graham Chamberlain
INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out in accordance with plans and particulars relating to the layout, access, scale, appearance and landscaping of the site (hereinafter called "the reserved matters"), for which approval shall be obtained from the local planning authority in writing before any development is begun. The development shall be carried out fully in accordance with the details as approved.
- 2) Application(s) for the approval of 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 within two years from the date of the final approval of the reserved matters. The development shall be carried out as approved.
- 4) Prior to their use in the construction of the development, details or samples of all materials to be used in the construction of the external surfaces of the development hereby permitted shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out using the materials and details as approved.
- 5) Any boundary screening approved pursuant to the submission of reserved matters shall be constructed, erected or planted prior to the first use/occupation of the development to which it relates and shall thereafter be retained in its approved form.
- 6) 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
 - Wheel washing facilities
 - Measures to control the emission of dust, noise and dirt during construction
 - Hours and days of construction operations
- 7) No demolition/development or ground works shall commence until a Written Scheme of Archaeological Investigation, in response to an archaeological brief, has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
 - The programme and methodology of site investigation and recording
 - The programme for post investigation assessment
 - Provision to be made for analysis of the site investigation and recording
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - Provision to be made for archive deposition of the analysis and records of the site investigation

No demolition/development shall take place other than in accordance with the

Written Scheme of Investigation approved under condition (A).

The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 12) Any hard landscape works approved pursuant to the submission of the reserved matters shall be carried out as approved prior to the beneficial occupation of the development hereby approved unless otherwise first agreed in writing by the local planning authority.

Any soft landscape works approved pursuant to the submission of the reserved matters shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development, unless otherwise first 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.

- 13) Prior to the commencement of the development details of the surface water and foul water drainage scheme to serve the development shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full prior to the first occupation of the development.
- 14) Prior to occupation of the third dwelling, the proposed footpaths as detailed in Figure 2 of the Planning Appeal Statement on behalf of Dr Hamid Latif prepared by Phase 2 Planning and Development Ltd dated September 2016 (one to the eastern boundary of the site and another linking the site to Maldon Road) shall be constructed and completed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.