The Planning Inspectorate

Appeal Decision

Site visit made on 7 February 2017

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 01 March 2017

Appeal Ref: APP/X1545/W/16/3158808
Glen Loy, Latchingdon Road, Cold Norton, Essex CM3 6HR

- 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 Mr Ted Law against the decision of Maldon District Council.
- The application Ref OUT/MAL/15/01319, dated 17 December 2015, was refused by notice dated 4 April 2016.
- The development proposed is outline planning application for twelve dwellings, including four affordable units.

Decision

1. The appeal is dismissed.

Application for Costs

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

Preliminary Matter

3. As set out in the banner heading, the appeal proposal is in outline form, with all matters reserved for subsequent approval with the exception of access. Any other details shown which would be a reserved matter, such as the layout, I shall treat as being indicative only.

Main Issues

4. The main issues are:

    - The effect of the proposed development on the character and appearance of the area;
    - Whether the proposed development makes adequate provision for affordable housing;
    - The effect of the proposed development on the local highway network;
    - The effect of the proposed development on wildlife; and
    - Whether the proposal would amount to sustainable development for the purposes of the National Planning Policy Framework (the Framework) taken as a whole.

Reasons

Policy context

5. The development plan consists of the saved policies of the Maldon District Replacement Local Plan 2005 (RLP). The main parties agree that the appeal site is outside the settlement boundary as defined in the RLP. RLP policies S2 and H1, which constrain the supply of new housing outside of settlement boundaries almost without exception, and have been cited by the Council in its objection to the principle of the proposed development, are in my judgement unduly restrictive and inconsistent with the Framework's general approach to significantly boosting the supply of housing. They are therefore out-of-date I afford little, if any, weight to them in my decision.

6. The Council's emerging Maldon District Pre-Submission Local Development Plan 2014-2029 (LDP) has been submitted for examination. The previous Local Plan Inspector had concluded that LDP policy H6 (provision for travellers) was unsound, which accordingly had ramifications for the plan as a whole. The LDP was subsequently called in for consideration by the Secretary of State who has advised that the Plan as a whole is not unsound, and that examination may proceed. However, because the LDP has yet to complete this examination, I cannot give more than limited weight to policies in the LDP at the current time.

Character and appearance

7. The appeal site is a detached dwelling on a sizeable plot, and benefits from a well landscaped rear garden featuring numerous trees and planting, and large pond. The property fronts Latchingdon Road, which I observed to be a busy thoroughfare and where a steady stream of traffic passed by. The adjoining dwellings Nos 70 and 68 Latchingdon Road are also detached properties on generous but much smaller plots than the appeal site. While I noted a number of smaller backland plots in the immediate vicinity, I nevertheless find that the prevailing character of the area is of frontage development on spacious plots.

8. I appreciate that the proposed development would not amount to a particularly dense scheme on the site. Nevertheless, I find in contrast to the character of the area, the proposed development would appear cramped and discordant, notwithstanding the indicative landscaping shown. I am not persuaded that a landscaping scheme would be sufficient to mitigate the significant increase in built development on the plot, including large areas of hard surfacing for internal navigation and vehicle parking. I also note that the indicative layout shows all the properties facing into the site, turning their backs on both Latchingdon Road and Burnham Avenue. I accept that as layout is a reserved matter this could be changed at a later stage, but it indicates the contrast between a development of this nature and the surrounding area.

9. I have particular concerns regarding the impact of the development on the Public Right of Way (PRoW) to the rear of the site. This currently has a pleasant, open aspect, not undermined by the existence of fencing and hedging along parts of its length. The proposed development would not only introduce a far more dense and consistent screen to the northern boundary necessary to provide privacy to the small rear gardens of the backland properties, but would result in significant expanses of built development in close proximity to the

path. This would combine to have an overbearing and enclosing effect on the footpath, to the detriment of its existing character and the amenity of users.

10. For these reasons, I find that the proposed development would cause significant harm to the character and appearance of the area. It would not accord with RLP policies CC6 and BE1 or with LDP policies D1 and H4. These state that development must be design-led and that development in the countryside will only be permitted where no harm is caused, and would make a positive contribution to the landscape character in the locality and with the surroundings and open countryside. RLP policy S1 seeks to direct new development to a settlement hierarchy and is not particularly relevant to these matters.

Whether adequate provision for affordable housing

11. The Council relies on LDP policy H1 to justify a 40% quantum of affordable housing from the proposed development, which rounded upwards, would equate to five of the total number of dwellings. However, for the reasons given above, I can afford only limited weight to the policy. The main parties agree the proposed development would comply with RLP policy H9, which requires 30% affordable housing requirement, and I attach greater weight to the adopted policy at the current time. Reliance on RLP policy H9 would not in this case and in any event result in a significant difference in affordable housing provision over that required by the emerging policy, and I am satisfied that four dwellings would nevertheless make an welcomed contribution to the affordable housing stock in the borough.

12. I am satisfied that affordable housing could be secured through the imposition of a planning condition, and subject to this, I find that the proposed development would accord with RLP policy H9. I do not find that RLP policies S2 and H1, which refer to the resistance of development outside settlement boundaries and the protection of the countryside for its own sake, are particularly relevant to affordable housing matters. I am equally not persuaded LDP policies S1, S8 and I1 are particularly relevant here as these policies relate to an approach to sustainable development and a settlement hierarchy for development, and the provision of infrastructure more generally.

Effect on local highway network

13. The main parties dispute the appropriate regulations and guidance that should be applied in respect to calculating the visibility splays at the Burnham Avenue and Latchingdon Road junction. The appellant contends that visibility splays should accord with the requirements for 'Manual for Streets' (MfS), on which he says the scheme complies. The Council states that the sizes should adhere to the distances prescribed in the 'Design Manual for Roads and Bridges' (DMRB), which are greater than the MfS.

14. The Council states that the MfS is, as the name suggests, designed for streets rather than roads; that it is appropriate for town centre locations only; and it should not be used for measuring suitable visibility splays for the road conditions such as at the appeal site. The appellant has not countered this specifically or adequately justified why MfS should be used in this instance. Furthermore, I can find no record or evidence in which he says the Council ultimately altered its position to accept the MfS requirements.

15. I note that the appellant has sought to allay the Council's concerns by amending its original highway drawing numbered F15042/01 Revision E with that of a Revision G, which is intended to demonstrate that the proposed visibility splays are appropriate, and that the conditions on the ground have been taken into consideration. However, for the reasons given above, I cannot conclude with any degree of certainty that the shown visibility splays, albeit not insignificant in size, would be appropriate and safe for these road conditions. Equally, because the DMRB requirements have not been demonstrated as being capable of being implemented whether necessary or not, I do not find that the matter could be controlled by planning condition.

16. I therefore will take a precautionary approach and find, on the evidence before me, that it has not been sufficiently demonstrated that the visibility splays would be adequately sized to cater for the proposed development. The proposed development would not accord with RLP policy T2 and LDP policy T2. These state that the layout for new developments will be acceptable where appropriate provision is made for safe access to and from the highway including adequate visibility and junction capacity. The Council also cites RLP policy T1 and LDP policy T1 in its objection on these grounds. However, as these policies relate to new development within defined development boundaries and relate to the delivery of sustainable transport networks, they are not particularly relevant.

17. The Council has also raised concerns in respect of the effect of the proposed development on the PRoW, which delineates along Burnham Avenue before turning 90 degrees and along the back of the appeal site. I note however, that the submitted drawings indicate that only a very small part of the overall proportion of the PRoW would be affected at the intersection between Burnam Avenue and Latchingdon Road. I am not persuaded that the proposed development would undermine its use or function, particularly given that Burnham Avenue is already used by vehicular traffic on a greater proportion of its length. I therefore find no conflict from the proposed development with RLP policy T2 and LDP policy T2, which state that new development must enhance and protect the provision of Public Rights of Way.

18. Concerns have been raised by local residents in respect to the effect of the proposed development on the local highway network caused by increased traffic in the area. I did not observe any particular traffic issues at my site visit, and no sufficient evidence is before me which suggests that the proposed development would cause any significant harm in this regard. The Council has not raised this as an issue, and I am satisfied there would be no conflict with the development plan policies cited above.

Effect on ecology

19. The appellant submitted two ecological appraisals of the appeal site. The first, dated June 2015, was found by the Council to be inadequate, in that it failed to thoroughly assess onsite habitats as well as making a number of other comments. The appellant appears to have accepted some if not all of these criticisms, and a second and updated ecological appraisal dated February 2016 was submitted, which the Council acknowledges was received prior to its determination of the scheme.

20. The updated ecology appraisal states, amongst other things, that there are no protected habitats or habitats of importance on the site, and that there is a low

probability of the existing pond area supporting great crested newts. It also states that with the exception of possibly a low number of nesting birds and hedgehogs in the boundary hedgerows, the site has a low and unimportant ecological value, and that any loss of ecology is unlikely to have any significance.

21. The appellant states that the Council's expert on ecology matters accepted these findings; and the only matters that were outstanding were in respect to biodiversity improvements and enhancements on the appeal site. While the details of this response are not before me, the Council does not dispute this, merely finding that the appellant's ecology appeal statement provides no further information from the updated ecological appraisal.

22. It is somewhat inexplicable to me that, having received the updated ecology statement, the Council determined the proposed development, as set out in its officer's report, on the evidence provided in the original ecological appraisal of June 2015. The Council has not explained why chose to do this. Furthermore, the Council has not explained why it deemed insufficient the appellant's findings on the absence of suitable habitat on the appeal site necessary to support populations of slow worm, common lizard and grass snake. In respect of biodiversity enhancements, given the site's low ecological value, I see no obvious reasons why a planning condition could not secure such enhancements, and the Council has not provided sufficient evidence as to whether it considered this approach before determining the scheme unfavourably on this matter.

23. On the evidence before me, I find that the appellant's updated ecological appraisal to be robust and I am satisfied it has adequately demonstrated that the appeal site is of a low ecological value, and that the imposition of suitable planning conditions would ensure those measures set out in the conclusion section of the updated ecology report would be carried out including adequate provision for improvement of biodiversity on the site. I therefore find no conflict with RLP policy CC5 or with LDP policy N2. These state that that planning permission will not be granted for any development that would be liable to cause demonstrable harm to a species of animal or plant, or its habitat; and that all development should seek to deliver net biodiversity and geodiversity gain where possible. It would also accord with LDP policy H4, details of which I have already stated above

Whether sustainable development

24. Paragraph 47 of the Framework requires local planning authorities to boost significantly the supply of houses. The Council states that it can demonstrate a five year housing land supply, and cites a recent appeal decision (*Ref: APP/X1545/W/15/3139154 for residential development comprising up to 150 dwellings)* in which the Inspector supports the Council's position in this matter. However, the Inspector did so cautiously, because he recognised as I do, that the objectively assessed need (OAN) is a matter to be examined as part of the LDP process and therefore there is some uncertainty in this respect. But unlike other appeal decisions referred to by the appellant, the Inspector here was able to progress matters further by examining OAN in some detail and thus able to draw a tentative conclusion on housing land supply. I have no substantive evidence before me to take a different view from that Inspector, and accordingly I will also tentatively accept the Council housing position.

25. However, as I have stated above, because RLP policies S2 and H1 are out-of-date and little if any weight can be attached to them, paragraph 14 of the Framework is engaged and the existence of a five year land supply does not alter this. Paragraph 14 of the Framework states that a presumption in favour of sustainable development exists, and where the development plan is absent or silent, or relevant policies for the supply of housing are out-of-date as is the case here, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

26. I acknowledge the appellant's assertion that the proposed development would have social and economic benefits in providing new market and affordable dwellings for future generations and would contribute to the Council's housing supply figures; would have the potential to create local construction jobs; and is located sufficiently near to Cold Norton such that it would have the potential to generate custom for existing local services and facilities. I attach moderate weight to these benefits, having regard to the scale of the proposed scheme. I also acknowledge that the proposed development would not significantly harm ecology as I have discussed above.

27. However for the reasons given above, I find that the proposed development would cause substantial environmental harm to the character and appearance of the area, and it has not been adequately demonstrated that visibility splays would be provided. In applying the tilted balance required by paragraph 4(1) of paragraph 14 of the Framework, I find this harm would significantly and demonstrably outweigh the benefits of housing provision I have identified. I find that the proposed development would therefore not amount to sustainable development when applying the Framework as a whole, and it would conflict with LDP policy S1 which I have set out above, and as such the balance lies against the scheme.

Other Matters

28. Concerns have been raised from local residents in respect to the effect of the proposed development on flooding. However, this has not been substantiated in evidence before me, and the Council has not identified that the area is at any particular risk from flooding or that the proposed development would cause any significant harm. I therefore have not considered the matter any further in my decision. Insufficient evidence is before me as to the effect of the proposed development on local infrastructure. The Council has not raised this as an issue and I have no reason to take an alternative view.

Conclusion

29. For the reasons given above I conclude that the appeal should be dismissed.

R Allen

INSPECTOR