
Appeal Decision

Site visit made on 12 October 2016

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 09 March 2017

Appeal Ref: APP/X1545/W/16/3152589

Land Rear of 60-68 Colchester Road, Great Totham (North), Essex, CM9 8DG

- 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 CCC Property against the decision of Maldon District Council.
 - The application Ref OUT/MAL/15/00946, dated 26 August 2015, was refused by notice dated 16 December 2015.
 - The development proposed is to extend and alter access drive, erect ten houses comprising 9No. two-storey houses and 1No. bungalow, construct garages, layout parking and turning areas, and form amenity areas.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by CCC Property against Maldon District Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with all matters except access and layout reserved for further approval. The appellants have submitted an amendment in the form of a revised accommodation schedule. This does not alter the dwelling types but amends the gross floor space of some of the dwellings. Therefore I consider that there would be no prejudice to parties from my taking them into account. The appeal is considered on this basis.
4. I have been referred to two decisions on the appellants land (shown in blue on the submitted plans)¹. I have considered these cases carefully and the relationship to the current appeal site. Nevertheless, I have considered the individual circumstances of this current proposal in the light of current national policy and guidance.
5. The Council has prepared its new Local Development Plan (LDP) which is intended to replace the Maldon District Replacement Local Plan 2005 (MDRLP). The plan remains one that has not been examined and found sound. For this reason I am unable to accord any significant weight to the policies of the LDP.

¹LPA refs FUL/MAL/12/00714 & OUT/MAL/13/00787 (appeal ref APP/X1545/A/14/2215795)

Main Issues

6. The main issues are:

- The effect of the proposal on the (a) character and appearance of the area and (b) highway safety;
- Whether the proposal would make appropriate provision for affordable housing;
- Whether the proposal would make appropriate provision for surface water drainage.

Reasons

Character and appearance

7. The site is located outside of but would abut the settlement boundary of Great Totham (North). The site does not contain any buildings or other structures at present. It is effectively part of the open countryside. The site falls within the 'Tolleshunt Knights Wooded Farmland' character area within the Maldon Landscape Character Assessment (LCA). This area is described as having a medium sensitivity to change.
8. The LCA describes the settlement pattern as dispersed within a gently undulating and tranquil landscape. The appellants Landscape and Visual Impact Assessment (LVIA) also identifies that the LCA describes the enclosed landscape of wooded farmland and patches of wooded farmland and remnant heathlands. It identifies that the character of the surrounding landscape is a combination of woodland blocks and arable fields with well-established hedgerow boundaries that lead to 'containment' across the landscape.
9. The appellants have drawn my attention to the approved detached dwelling² that would front Colchester Road adjacent to No 68. This dwelling when constructed would form part of the group of dwellings that front the road in this location. However, the siting of this dwelling would be distinct from the substantial area that forms the appeal site.
10. I note the appellants point about containment of the appeal site. Further I accept that the existing frontage dwellings, including those recently allowed, would be in close proximity to the site boundaries. However the site would be a substantial distance from the remaining dwellings within the settlement boundary to its south and south west. In addition it would be located at the northernmost point of the settlement. The site has a semi rural character and appearance and its location is at a clear transition between the main settlement and the open countryside to the north and east.
11. The positioning of 10 dwellings on this piece of land would not have any particular physical or visual affinity with the existing frontage development. In this regard the scheme would involve the piecemeal development of one existing piece of land which contributes to the distinctive, semi-rural character of the locality. I note that the appellants submit that the detail of the scheme could use quality materials and could be well landscaped. However, fundamentally, the scheme would be out of keeping with the character of the immediate locality and it would be inappropriate to its context.

² APP/X1545/A/14/2215795

12. The LVIA submits that the site area would only be visible from immediately adjacent spaces. Further that the local setting would also contain immediate views and that within the surrounding landscape that views would already contain residential properties. The LVIA also suggests that the site is an unkempt area of edge of settlement scrubland and as such development would not represent a notable change. However, I cannot agree. Irrespective of the various modest view of the site and the appellants' view of the current landscape quality of the site it sits within the identified pattern of blocks and fields that contribute to the tranquil and semi rural landscape in this edge of settlement location.
13. I therefore conclude that the proposal would have a harmful effect on the character and appearance of the area. It would therefore be in conflict with policies S2, H1, BE1 and CC6 of the MDRLP and emerging policies D1, S1, S8 and H4 of the LDP in so far as they require new development to be compatible with their surroundings and harmonise with the general character of the area in which they are located. It would also be in conflict with National Planning Policy Framework (the Framework) which requires new development to respond to local character and reinforce local distinctiveness.

Highway safety

14. The Council indicated that its concern with the scheme related to the absence of information regarding the access point and associated visibility. The appellants' submissions contain an additional plan. This shows the existing access point, which would be used for the scheme, and includes visibility splay information that would meet the requirements of the Local Highway Authority (LHA). The Council does not dispute this. The LHA has confirmed that it would not object to the access subject to the imposition of appropriate conditions.
15. It would be acceptable to use conditions to secure the splays. I therefore conclude that the proposal would not have a harmful effect on highway safety. It would therefore not be in conflict with policies T2 and BE1 of the MDRLP and emerging policy T2 of the LDP in so far as they require new development to provide safe access to and from the highway.

Affordable housing

16. The key area of dispute on this issue is the application of planning policy. The Councils' decision relies on emerging policy H1 of the LDP and the Framework. The appellants have drawn my attention to development plan policy H9 from the MDRLP and the Planning Practice Guidance (PPG).
17. The Hearing the Court of Appeal issued a judgement³ on the Secretary of State's appeal against a previous High Court Judgement⁴ regarding the Secretary of State's Written Ministerial Statement of 28 November 2014 and subsequent alterations to the PPG for affordable housing and social infrastructure contributions. The Court of appeal upheld the Secretary of State's appeal on all grounds. Therefore the policies in the Written Ministerial Statement (WMS) should once again be considered as national planning policy

³ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

⁴ West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government CO/76/2015 [2015] EWHC 2222 (Admin)

defining the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build development and the PPG has been updated.

18. The WMS and changes to the PPG are government planning policy. They set out that contributions for affordable housing should not be sought from developments of ten units or less and which have a maximum combined gross floor space of no more than 1000 sq m (gross internal area). The appeal scheme would provide ten dwellings and the amended plans indicate that the floor space would be below 1000 sq m. The WMS establishes clearly that the government does not want contributions to be sought in cases such as this.
19. Paragraph 2 of the Framework reiterates that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan would not require affordable housing. In addition national policy in the PPG and WMS would also weigh in favour of this position. I appreciate that the LDP would weigh in favour of provision of affordable housing.
20. One of the tests set out in CIL Regulation 122 is that an obligation is necessary to make the development acceptable in planning terms. Therefore to be acceptable in planning terms the application must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the WMS is a significant material consideration that supports the development plan policy position and the proposal falls below the thresholds indicating that an affordable housing contribution should not be sought. Therefore, the absence of a contribution for affordable housing does not count against the scheme.

Surface water drainage

21. The Council's main concern regarding surface water drainage centres on the lack of information on how surface water drainage from the development would be managed. In particular how it would be managed to ensure that it would not have an adverse impact or lead to flooding off site.
22. I note that detailed information on this matter was not available to the Council when the proposal was determined. Nevertheless, the Council's appeal statement acknowledges the provision of the appellants Surface Water Drainage Strategy and that subsequently the County Council have not objected to this scheme subject to conditions. I have no reason to disagree.
23. Therefore I consider that, had I been minded to allow the appeal, subject to the imposition of planning conditions the proposal would not be likely to be at risk of flooding or increase the risk of flooding elsewhere. It would not therefore be in conflict with MDRLP policy CON5 or emerging LDP policy D5 which amongst other things seek to resist development that would have an adverse impact on the environment by means of water and encourage the use of environmental best practice.

Other matters

24. The Council has referred to a recent appeal decision⁵ regarding housing land supply in the district. I have carefully considered this decision. However,

⁵ APP/X1545/W/16/3152589

housing land supply is not in dispute in this case. Further, as the appellants point out, there are differences between the main issues in the cases. As such I have afforded this decision very limited weight.

Conclusion

25. The scheme would be for ten dwelling which, irrespective of the matter of housing land supply, would boost the supply of housing in the district. In addition I have found that there would be no risk of flooding and that the absence of affordable housing would not weigh against the scheme. Nevertheless, I have found that there would be harm to the character and appearance of the area if the development were to go ahead in conflict with the development plan. As such I have attached significant weight to the harm that the development would cause to the character and appearance of the area and the conflict with the development plan in this regard.
26. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board

INSPECTOR