The Planning Inspectorate

Appeal Decision

Site visit made on 14 February 2017

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

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

Decision date: 14 March 2017

Appeal Ref: APP/X1545/W/16/3162631
Land opposite 34 Hall Road, Great Totham, Essex CM9 8NN

- 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 J & M Developers (Mr M Payne) against the decision of Maldon District Council.
- The application Ref OUT/MAL/16/00289, dated 17 March 2016, was refused by notice dated 5 October 2016.
- The development proposed is residential development.

Decision

1. The appeal is allowed and planning permission is granted for residential development at land opposite 34 Hall Road, Great Totham, Essex CM9 8NN in accordance with the terms of the application, Ref OUT/MAL/16/00289, dated 17 March 2016, subject to the conditions set out in the attached schedule.

Preliminary Matter

2. All matters have been reserved for further approval. However, drawing numbers 15.3072/P201 Rev A and 15.3072/P202 Rev A were submitted with the application. They are labelled as illustrative and I have treated them as such. The drawings show a layout and house types for the proposed development.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

4. The appeal site is adjacent to, but falls outside the settlement boundary defined in the Maldon District Replacement Local Plan 2005 (LP) where Policies S2 and H1 seek to restrain residential development. Polices BE1 and CC6 seek to preserve or enhance the character and natural beauty of the countryside. Policy BE1 also requires development to be compatible with its surroundings in terms of layout and visual impact, among other things.

5. The Council has drawn my attention to the Landscape Character Assessment (LCA)[1] for the District. It identifies the area as 'Totham Wooded Farmland' whose key characteristics include wooded ridges and hillsides, agricultural fields enclosed by woodland patches and hedgerows and colour washed buildings. It

[1] Prepared by Chris Blandford Associates in 2006

also finds that the new residential development on Hall Road, Great Totham is visually out of character with the surrounding landscape in terms of colour, style and density.

6. The appeal site is part of a former gravel pit which was subsequently subject to landfill. The land rises to the north and is now characterised by a gently undulating surface with scattered trees, generally low level scrub vegetation and rough grassland. The western, and much of the southern, boundary of the site adjoins established residential development at Seagers, Millways and Hall Road. The eastern boundary is unmarked, but the land to the east, which is the same ownership as the appeal site, has the same character and is enclosed by substantial hedgerow and tree planting. The area as a whole can, therefore, be distinguished from the wider agricultural landscape to the east and north and is not typical of the landscape character identified in the LCA. The site is also reasonably well screened in views from the east along Hall Road.

7. The illustrative site layout shows an access from Hall Road serving 30 dwellings and two areas of public open space with planting belts along the eastern and western site boundaries. The dwellings would be arranged with rear gardens adjoining the eastern boundary. The layout would, therefore, be fairly loose and responsive to the site's location at the edge of the settlement. As such, the current proposal can be differentiated from the scheme for 50 dwellings on the same site area which was dismissed at appeal in 2015[2]. In that case the Inspector found that the development would be largely devoid of open space, with little opportunity for meaning landscaping along its boundaries and would appear as a harsh and dominant residential estate providing an abrupt transition with the rural landscape.

8. I have reservations about the siting of plots 1 to 10 which would be close to the eastern site boundary. I also consider that the planting belt all the way along that boundary should be significantly deeper. However, site layout is illustrative and the smaller number of units now proposed would provide sufficient scope for those adjustments to be made at the reserved matters stage. They would allow the development to achieve a softer, more gradual transition between the built up area and the rural landscape. The deeper planting would also reinforce the visual screening of the development in views from the east. Consequently, I find that the proposal would overcome the concerns expressed by the previous Inspector. With appropriate house designs, which could be controlled at the reserved matters stage, it would also avoid the shortcomings of earlier residential development in Hall Road identified in the LCA.

9. Inevitably, the built form and domestic activity associated with residential development would have an urbanising effect on the site. Nevertheless, even allowing for two storey development on the higher, northern part of the site, the effect would be visually contained and, for the reasons set out above, the development would not impact significantly on the wider landscape. The vehicle and pedestrian movements generated by the development, as well as domestic activity, would lead to some noise and disturbance. However, the site adjoins established residential development to the west and south and, although, currently undeveloped, it cannot be regarded as remote or isolated. As such, I am not persuaded that the likely level of noise and disturbance would materially erode the tranquillity of the countryside.

[2] Appeal reference APP/X1545/W/14/3000595

10. Therefore, I find that the proposal would not be harmful to the character and appearance of the area and would not conflict with LP Policies BE1 or CC6. The proposal would not accord with LP Policies S2 or H1 although, having regard to the absence of harm to the character and appearance of the area, the degree of conflict would be limited. Moreover, the Inspector in the 2015 appeal found that LP Policy S2, which seeks to protect the countryside for its own sake, is inconsistent with the Framework and should be afforded little weight.

11. The reason for refusal also cites LP Policy CC7 which seeks to protect Special Landscape Areas. However, this policy has been found to be inconsistent with paragraph 113 of the National Planning Policy Framework (the Framework) which requires that policies for development in protected landscape areas be criteria-based[3].

12. The reason for refusal also refers to Policies S8, D1 and H2 of the emerging Maldon District Development Plan 2016 (ELP). That plan is still at the examination stage and I have not been made aware of the extent of any unresolved objections or proposed modifications to the cited policies. In accordance with Framework paragraph 216 therefore, this limits the weight to be attached to the policies. In any event, there is nothing in the Council's evidence regarding Policies S8 or D1 to lead me to reach a different conclusion on the main issue.

13. Policy H2 of the ELP requires proposals to provide a suitable mix and range of housing types, sizes and tenures. The officer's report for the appealed application found that the proposed housing mix and provision of affordable housing would meet the requirements of the Council's Strategic Housing Market Assessment and would help to meet the housing needs of the District. There is nothing substantive in the Council's appeal statement to invalidate that conclusion. The proposed mix of house types could be secured by condition and the affordable housing provision by a Planning Obligation. Consequently the proposal draws support from ELP Policy H2.

Planning Obligation

14. The appellant has submitted a signed unilateral undertaking (UU) dated 16 February 2017. It would provide for: 12 affordable housing dwellings of which 80% would be for rent by an approved body and 20% would be for Intermediate Affordable Housing for rent or sale below market levels; the provision and future management of open space within the site; the provision of Residential Travel Information Packs for occupiers of the proposed dwellings; highway improvements works to the southbound bus stop on Maldon Road and associated works to street lighting, road signs and drainage structures; and financial contributions towards primary and secondary school transport.

15. I note that the terms of the UU in relation to the highways improvements and the residential travel information are slightly different from the obligations sought in the Council's appeal statement. Nevertheless the Council was given the opportunity to comment on the signed UU did not object to its provisions. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 requires planning obligations to be necessary, relevant and reasonably related in scale and kind to the development.

[3] Appeal reference APP/X1545/W/16/3152640

16. Policy H1 of the ELP requires the provision of 40% affordable housing on sites in the Great Totham area. Whilst I have found that limited weight can be attached the policies of the ELP, the affordable housing requirement is supported by a Strategic Housing Market Assessment and the Framework seeks the provision of affordable housing where a need has been identified. There is nothing to suggest that the level or mix of affordable housing sought would make the proposal unviable. Having regard to the identified need and Framework support for affordable housing, I consider that the proposed 40% provision (12 units) would meet the Regulation 122 tests and amount to a significant benefit of the proposal.

17. I have already found that the proposed areas of open space would help to integrate the development into the landscape. They would also provide recreational space for future and neighbouring residents in accordance with Framework paragraph 73. Consequently, the mechanisms to secure and provided for the maintenance of the spaces are necessary, relevant and reasonably related the development.

18. Whilst there is no dispute that the appeal site is reasonably accessible to local services and facilities in Great Totham, the range of those facilities and the bus services to larger centres are limited. As such, I consider that the proposed bus stop improvements and the provision of travel information for future residents would help to facilitate sustainable travel patterns in accordance with Framework paragraph 29.

19. Essex County Council Education department has indicated that there is no surplus capacity in Great Totham Primary School and no scheme to increase its capacity. The spare capacity in the relevant secondary school (The Plume School) will be taken up by pupils coming from housing sites allocated in the ELP and further contributions to increase the capacity of the school would be precluded by the pooling restrictions set out in CIL Regulation 123. The Education department, therefore, requested financial contributions to allow primary and secondary school pupils from the proposed dwellings to travel to schools elsewhere. The amounts sought are based on published information and relate to the number and type of dwellings proposed.

20. Therefore, I consider that the highways improvements and travel related contributions and information packs would meet the Regulation 122 tests. Consequently, I have taken all of the obligations in the signed UU into account in reaching my decision.

Other Matters

21. Local residents have expressed concern regarding the effect of the proposal on roads in the area. The proposal is supported by a Transport Statement[4] which finds that the development would generate up to 24 vehicle movements in the peak hour. The Statement accepts the alterations to Hall Road proposed in the earlier scheme. Using automatic traffic counter data to establish background traffic volumes, it finds that the local highway network has adequate capacity to accommodate the number of movements generated by the current proposal. There is no substantive evidence of highway safety problems in the area. With trimming of the roadside boundary hedgerows, the visibility achievable at the proposed access would comfortably exceed the recommendations set out in the

[4] Prepared by Intermodal Transportation March 2016

relevant guidance in Manual for Streets 2. Again, this conclusion is supported by traffic speed survey information. I also note that the Essex County Council Highway department did not object to the proposal. As such, I consider that the effect of the proposal on the local highways network would not provide a robust justification for dismissing the appeal.

22. Concerns have been raised regarding the stability of the landfill beneath the site as well as its health and environmental implications. A Ground Investigation Report[5] submitted with the appeal used desktop and intrusive investigations to establish the ground conditions at the site. It found that the risk of contamination of the underlying aquifer is low, that remediation in the form of a system of covering material over the landfill would be necessary to protect end users from contamination and that gas protection measures would also be required. The buildings would require piled foundations, although that is a Building Regulations, rather than planning matter.

23. Whilst the Report found that further investigations are necessary, they could be secured by planning conditions. The Environment Agency has reviewed the Report and recommended a series of conditions to address these points and to ensure that the necessary remediation and other protection measures are implemented. With the recommended conditions in place, I find that the ground conditions at the site do not preclude the proposed development.

24. I recognise that the remediation scheme is likely to require the importation of a significant volume of material by road. Whilst this would result in noise and disturbance to local residents, it would be for a limited time. I will impose a condition requiring the approval and implementation of a Construction Method Statement with the aim of minimising the effects of construction works on highway safety and the living conditions of neighbouring occupiers.

25. The site is not subject to any nature conservation designations and Natural England did not comment on the application. An Extended Phase 1 Habitat Survey and great crested newt, reptile and badger surveys[6] have been submitted with the appeal. They find that the site supports reptiles and has the potential to support nesting birds, amphibians and foraging bats. I note that observations undertaken by local residents also found the presence of a range of bird, mammal, reptile and invertebrate species at the site. The submitted Survey recommends a series of measures to mitigate the effects of the proposal on reptiles, bats and nesting birds and further surveys to confirm the presence or otherwise of great crested newts. The illustrative site layout allows for the retention of some existing trees, as well as areas of new planting within and along the boundaries of the site. I consider that these features, together with the recommended ecological mitigation measures, which can be secured using conditions, would ensure that the proposal would not have an unacceptable effect on the biodiversity value of the site.

26. Information has been submitted by local residents which indicates that the drainage system in Hall Road has been subject to flooding in the past. Clearly this is an existing issue and it is not clear how or whether it would affect, or be affected by, the proposed development. A Flood Risk Assessment was submitted with the earlier 50 unit scheme and updated for the current proposal[7]. It is

[5] Richard Jackson Engineering Consultants March 2016
[6] DF Clark Bionomique Ltd Updated March 2016
[7] Richard Jackson Engineering Consultants letter dated 11 March 2016

proposed to deal with surface water from the development using sustainable urban drainage systems. This approach has been reviewed by Essex County Council as the Lead Local Flood Authority for the area and found to be acceptable. Details of the scheme and its implementation can be secured by condition.

27. Concern has also been expressed locally regarding the capacity of the nearest doctors' surgery at Wickham Bishops. Nevertheless, such pressures are widespread and I am not persuaded that the demand arising from the occupiers of 30 additional houses, some of whom may use medical services elsewhere, would significantly affect the service provided by the Wickham Bishops surgery.

28. The proposed development would alter the view westward for number of properties in Seagers and Millways. However, the planning system does not existing to protect private views generally. The illustrative site layout indicates that, with the exception of single storey domestic garages, the new buildings would not be sited close to boundaries with adjoining residential properties so as to affect the direct outlook of occupiers. The exact siting of the buildings would, in any event, be considered further at the reserved matters stage.

29. The illustrative layout shows a spur road adjoining the eastern boundary of the site and it has been suggested that this signals an intention to develop the land to the east of the appeal site. However, that is not part of the current proposal. Each application or appeal should be treated on its individual merits and my decision does not indicate that further development to the east would be acceptable.

30. My attention has been drawn to a Section 52 Planning Agreement dating from 1984 which places a covenant on the appeal land, preventing the erection of permanent buildings or structures on it. Procedures for the modification or discharge of planning obligations are set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992. No such application or appeal is before me and, therefore, the land would be bound by the 1984 irrespective of my decision. It would be for the decision maker in any subsequent application or appeal to determine whether the requirements of the 1984 Agreement remain valid.

Conditions

31. The Council has suggested a list of 28 conditions. I have omitted suggested condition 4 as it replicates the last part of condition 1. Suggested conditions 6 (external materials), 7 (means of enclosure) and 8 (landscaping scheme) are unnecessary as their requirements are covered by the appearance and landscaping reserved matters. The requirements of suggested conditions 11 and 12 overlap and I have, therefore, combined them into a single condition. Suggested condition 17 deals with the management of the proposed open space and is unnecessary since this matter is more appropriately covered in the UU. Suggested condition 25 replicates condition 18. Suggested conditions 26 to 28 replicate the requirements of conditions 13 to 16.

32. With amendments for clarity, I find that the remaining conditions meet the tests set out in the Planning Practice Guidance. I have amended the suggested condition specifying the housing mix to include the total number of dwellings permitted. This is necessary in order the safeguard the character and appearance of the area as well as to ensure that the development meets the

identified housing needs of the District. Conditions to secure a survey of the existing trees on the site, to prevent their unauthorised removal, protection during construction and subsequent retention are necessary in the interests of the biodiversity and character and appearance of the site. A condition to secure further ecological surveys and the approval and implementation of ecological mitigation and enhancement measures is required to safeguard biodiversity.

33. Conditions to require the approval and implementation of a contamination risk assessment, remediation strategy, verification report and long term monitoring and maintenance plan are necessary in the interests of public health and biodiversity. A condition dealing with any contamination not previously identified is necessary for the same reasons. A condition to secure the approval and implementation of a Construction Method Statement is necessary in the interests of highway safety and the living conditions of neighbouring occupiers. Conditions preventing commencement of development until highway and pedestrian access works and visibility splays at the proposed access have been approved, and preventing occupation until the works are completed, are necessary to safeguard highway safety.

34. Conditions requiring the approval and implementation of a surface water drainage scheme and details of its management are required in the interests of public health. A condition dealing with foul drainage is required for the same reason. A condition requiring details of the finished ground and floor levels to be approved is required to safeguard the character and appearance of the area.

Planning Balance and Conclusion

35. Framework paragraphs 7 and 8 require the three roles of sustainability to be considered together. The construction of the development would bring minor, short term, economic benefits.

36. The Council contends that it can demonstrate a five year supply of housing land in the District. This has not been disputed by the appellant. Nevertheless, the provision of 30 dwellings would make a meaningful contribution to the supply of housing and, in accordance with Framework paragraph 47, merits a measure of support for the proposal. I have also found that the provision of 12 affordable housing units would be a benefit. Future occupiers could be expected to make a worthwhile contribution to the vitality of the community. Consequently, I consider that the proposal would make a positive contribution to the social role.

37. Taking into account my conclusions on the main issue and the other considerations above, I find that proposal would be neutral with regard to the environmental role. Overall therefore, I conclude that the proposal would amount to sustainable development and so is supported by the presumption in favour of sustainable development set out in Framework paragraph 14. These considerations outweigh the proposal's limited conflict with LP Policies H1 and S2.

38. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR

Schedule of conditions attached to
Appeal Ref: APP/X1545/W/16/3162631
Land opposite 34 Hall Road, Great Totham, Essex CM9 8NN

1. Details of the access, appearance, landscaping, layout, 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 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 take place not later than two years from the date of approval of the last of the reserved matters to be approved.

4. The development hereby permitted shall include no more than 30 dwellings. The housing mix shall be in accordance with paragraph 3.5 of the Design and Access Statement ref: 15.3072 submitted with the application.

5. The landscaping details to be submitted pursuant to the reserved matters shall be accompanied by a detailed survey showing all existing trees (those with a girth exceeding 75mm as measured at a height of 1.5m above ground level) and hedges with full particulars of their location, species, height, canopy spread and girth.

6. No trees within the site shall be felled, cut back, damaged or removed, unless otherwise first agreed in writing with the local planning authority.

7. No development shall commence until details of tree retention and protection measures in accordance with BS5837:2012 (Trees in relation to construction) have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include:

   1. Trees to be retained

   2. Tree retention protection plan

   3. Tree constraints plan

   4. Arboricultural implication assessment

   5. Arboricultural method statement (including drainage service runs and construction of hard surfaces).

   The approved protection measures shall be erected before the commencement of any clearing, demolition or building operations and shall be retained until all equipment, machinery and surplus materials have been removed from the site.

8. If within five years from the completion of the development an existing tree is removed, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, a replacement tree shall be planted within the site of such species and size and shall be planted at such time, as specified in writing by the local planning authority.

9. No development, including any clearance works, shall be undertaken until the ecological surveys recommended in the DF Clark Bionomique Ltd Preliminary Ecological Assessment Updated March 2016 have been completed. Details of the

ecological mitigation and enhancement measures recommended in that report, any further measures arising from the subsequent surveys, and a programme for their implementation shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The approved measures shall be carried in accordance with the approved programme.

10. No development shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the local planning authority:

    1) A preliminary risk assessment which shall identify:

        - all previous uses
        - potential contaminants associated with those uses
        - a conceptual model of the site indicating sources, pathways and receptors
        - potentially unacceptable risks arising from contamination at the site.

    2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

    3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

    4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

    Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

11. No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

12. No development shall take place until a long-term monitoring and maintenance plan in respect of contamination, including a timetable of monitoring and submission of reports to the Local Planning Authority, has been submitted to and approved in writing by the Local Planning Authority. Reports as specified in the approved plan, including details of any necessary contingency action arising from the monitoring, shall be submitted to and approved in writing by the Local Planning Authority in accordance with the timetable. Any necessary contingency measures shall be carried out in accordance with the details in the approved reports. On completion of the monitoring specified in the plan, a final report demonstrating that all long-term remediation works have been carried out and confirming that remedial targets have been achieved shall be submitted to and approved in writing by the Local Planning Authority.

13. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in

writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

14. No development shall take place until the following has been submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority:-

15. No development shall take place, including any ground works or 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 and underbody washing facilities

16. No development shall commence until details of the following works shall be submitted to and approved in writing by the Local Planning Authority:

    1) The widening of Hall Road to 5 metres from a point approximately outside No.22 Hall Road to the site access and then tapering to align with the original carriageway.
    2) The extension of the existing footway on the southern side of Hall Road, from a point approximately outside of No.22 Hall Road to a point opposite the proposed footpath entrance into the site, including two dropped kerb crossing points with appropriate tactile paving across Hall Road.
    3) A bellmouth access into the development with minimum radii of 6m.
    4) A safe and suitable pedestrian access from the site onto Hall Road, to the west of the vehicular access, to facilitate pedestrian movement along Hall Road.

    No dwelling hereby approved shall be occupied until the approved works have been implemented.

17. The proposed vehicular access shall be provided with visibility splays of 2.4 metres by 70 metres (measured along the nearside edge of the carriageway) in both directions along Hall Road. The visibility splays shall be provided before occupation of any dwelling hereby approved and shall thereafter be retained free of any obstruction.

18. No development shall take place until details of a surface water drainage scheme and a programme for its implementation have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and subsequently maintained in accordance with the approved details and programme.

19. No development shall commence until details of who shall be responsible for the maintenance of the surface water drainage system in perpetuity, has been submitted to and approved in writing by the local planning authority. The

management of the surface water drainage system shall accord with the approved details thereafter.

20. Prior to the commencement of the development details of the foul drainage scheme to serve the development shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.

21. Prior to the commencement of development detailed drawings showing the finished ground and finished floor levels of the development in relation to the levels of the surrounding area shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the scheme as approved.