

Appeal Decision

Hearing held on 18 January 2017

Site visit made on 18 January 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 16th March 2017

Appeal Ref: APP/X1545/W/16/3153793

Land south of Rose Drive, Southminster, Essex, CM0 7JA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by M. Scott Properties Ltd. against the decision of Maldon District Council.
 - The application Ref. OUT/MAL/16/00167, dated 16 February 2016, was refused by notice dated 13 May 2016.
 - The development proposed is residential development with the construction of 37 No. two, three and four bedroom units, access roads and provision of public open space.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application is in outline format with all detailed matters, other than the access to the site, reserved for subsequent consideration. Nevertheless, a site layout plan of the proposed development has been submitted for illustrative purposes.
3. A Unilateral Undertaking, made under section 106 of the Act, dated 29 November 2016 and signed by the owners of the land, has been submitted with the appeal documents. The Undertaking covenants the owners of the land to make a specified financial contribution towards the provision of affordable housing and secondary school transport and in general terms the provision of affordable housing and public open space on the site. I have had regard to the Undertaking as a material consideration subject to my comments in paragraphs 22 & 23 below.

Main Issues

4. The main issues are:
 - Whether the proposal accords with the housing strategy in the development plan;
 - The effect of the residential development on the character and appearance of the area including the landscape setting of the village;
 - Whether the effects of the development on the wider local infrastructure and townscape can be mitigated;
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- Whether the proposal constitutes sustainable development.

Background

5. The appeal site comprises part of an open field of pasture which lies to the south of residential development fronting Rose Drive on the southern fringe of Southminster, a large village in open countryside. To the east of the site are extensive lakes in former mineral workings and these are now used for fishing. To the west are open fields which lie to the south of Southfield Way - a relatively recent partial by-pass to the village. The site and surrounding land is generally flat and is characterised in the Landscape Character Assessment (2006) as 'coastal farmland'.
6. It is proposed to use the land for residential development with the construction of 37 units including details of the means of access off Rose Drive. The illustrative layout shows the possible grouping of houses and bungalows and an area of open space around the western part of the site close to the roundabout junction with Southfield Way and a landscape buffer area along the southern edge of the site.
7. The detailed matters put in the Statement of Common Ground (SCG) indicate that Southminster is regarded as a larger village within the district and it is a relatively sustainable location.

Policy context

8. The development plan for the area includes the Maldon District Replacement Local Plan (adopted in 2005) with proposals for the period until 2011 (now referred to as the RLP). The Council are also preparing a Maldon District Local Development Plan (LDP). Notwithstanding a long and complex initial examination into its provisions, I understand that Hearings into its Examination were held about the same time as this appeal but the Council are unable to suggest a timescale for the adoption of the plan. Given that the provisions of the plan may change as a result of the Examination, I agree with the appellant's team that I can only place limited weight on the emerging plan at the moment depending on the degree of accord of individual policies with the National Planning Policy Framework (NPPF).
9. At the time of the lodging of this appeal it was part of the appellant's case that the Council could not demonstrate a five year supply of land for new housing development (HLS) in accordance with paragraph 49 of the Framework. However, at the time of the hearing it was common ground that the Council could meet these HLS requirements, notwithstanding that the new Local Development Plan is still emerging. The Council's most recent HLS position statement published in August 2016 concluded that there was a 6.04 years supply against identified housing targets.
10. After the close of the hearing for this case the appellant's team highlighted an appeal decision APP/X1545/W/16/3152640, dated 1 February 2017, in relation to residential development in Wickham Bishop elsewhere in the district where, amongst other issues, the Inspector recognised that the RLP policies that restrict the supply of housing had been found to be out of date at other appeals. When asked to comment on this additional evidence the Council referred to appeal decision APP/X1545/W/15/3139154, dated December 2016, where the Inspector concluded after a five day Inquiry where detailed evidence

on housing supply was tested, that in all probability the Council could at that time demonstrate a five year supply.

11. It is evident that the local position on HLS is dynamic particularly at this time pending the Examination and adoption of the Local Development Plan. Although there are differing recent appeal decisions on the topic, I have to place most weight on the direct evidence put before me on this appeal. Given that the appellant's team did not contest the five year HLS position at the hearing, I find that it has not been demonstrated that the requirements of paragraph 47 are not being met and therefore paragraph 49 of the NPPF is not engaged in this case. Accordingly, I find that the saved policies in the RLP are not 'out-of-date' subject to the degree of accord of individual policies with the NPPF as a whole.

Accord with the housing strategy in the development plan

12. Saved policy S1 of the RLP recognises Southminster as a settlement in which further development may take place. However, the appeal site lies outside the defined settlement boundary and forms part of the countryside. Here, saved Policy S2 applies and this indicates that the coast and countryside will be protected for their own sake, particularly for landscape, natural resources, ecological, historical, archaeological, agricultural, or recreational value. While the appeal site contributes to the surrounding general area of countryside it does not have any other special designation.
13. The intention of the saved Policy S2 is to maintain the character of this area of countryside. This is broadly in accordance with the NPPF which has a core principle of 'recognising the intrinsic character and beauty of the countryside' within the overarching aim of securing sustainable development. The policy should therefore be given full weight and sets a clear presumption in principle against the proposal.
14. In terms of the emerging plan, the Council has considered the merits of development on other land around Southminster in the preparation of the LDP but has chosen not to allocate the appeal site land for housing. Policy S.8 of the LDP continues to recognise Southminster as a 'larger village' and the policy supports sustainable development within the settlement but it goes on to indicate that additional development beyond the settlement boundary will only be granted where the intrinsic character and beauty of the countryside is not adversely impact upon.
15. I will consider this impact under the second issue, but if found to be harmful in the countryside landscape, there is a clear presumption in the development plan strategy against the appeal site being so developed for housing, notwithstanding the limited weight that can be placed on the emerging plan at this stage.

Effect on the character and appearance of the countryside landscape

16. In assessing this effect and the impact of the development proposed on the local landscape I have taken into account the specialist evidence from the appellant's team as set out at the hearing. Further, I note that the Council's Landscape and Visual Impact Assessment (2010) (LVIA) recognised part of the appeal site land (site S5a) as having 'low to medium landscape sensitivity'. At the part of the hearing held on site I considered the proposal from the

immediate environs of the appeal site; from Southfield Way in views looking eastwards, and from the south in views looking north from Southminster Road/B1021 in the vicinity of the access to the fishing lakes.

17. From the site itself the north-eastern section of the land is enclosed by the presence of the existing residential development along Rose Drive and the landscaping around the fishing lakes. These features would enclose and partially screen the impact of new housing development in this area and I do not consider that there would be any greater visual impact in the landscape when viewed from the north or the east.
18. In views from the south around Southminster Road, the edge of the existing development in Rose Drive is mostly screened by the presence of new landscape planting along the southern side of that road which appears to have been carried out as part of that development. As much of the appeal site is part of a larger field of open pasture, two storey housing development on most of the appeal site would be more prominent in the landscape and the presence of new houses would appear as a southerly incursion of the urban area into the surrounding flat open landscape. I have taken into account the degree of landscape buffer which the illustrative scheme puts forward along the southern edge of the site and such planting, in due course, could soften the visual impact of housing development. Nevertheless I judge that the physical form of the housing development would be isolated and exposed in the landscape and would not contribute positively to the landscape setting of the village.
19. Further, I am concerned about the effect of the development when seen approaching from the west along Southfield Way. To the west of the appeal site this road and its attendant landscaping provides a clear visual and physical distinction between the built up area and the countryside. Although the layout plan envisages that the new housing would be set back by an open area, I am concerned that the housing proposed to the south and west of the proposed access road, would be intrusive in the landscape as the Council suggests. This development would be a significant and prominent extension into the open farmland landscape and would be at odds with the established character of this land. Even with the illustrated open space on the corner of the site, I do not consider that development proposed there would result in a 'gateway and a positive terminus to the bypass edge' as the appellant's team suggests.
20. Although the LVIA considered area S5a to have 'low to medium landscape sensitivity' it appears to me that part the area now put forward for development extends further south than the area considered in the LVIA and into part of the wider tract of open field and that this landscape area has a greater sensitivity to the visual impact that would be caused.
21. Considered in the round I find that the development proposed would result in a serious visual impact on the local open farmland landscape on the edge of Southminster and would significantly harm the character and appearance of the area and would not make a positive contribution to the landscape. Although the appeal site is not of special designation, this harm to the countryside landscape means that the development proposed would not meet the requirements of saved policy BE1(c) and CC6 of the RLP and Policy D1(c) of the emerging LDP.

Whether wider impacts mitigated

22. The Council's concern over this issue relates to the provision of affordable housing; the arrangements made for the management of the open space on site; and problems associated with the movement of school children from the new housing development to the secondary school at Ormiston Rivers Academy. However, the Council now advises that the Obligation in the form of the Unilateral Undertaking as mentioned in paragraph 3 above, overcomes this concern. The parties further advise that the contribution offered for the part of the affordable housing not developed on site and the transport contribution, if considered to be infrastructure, would not exceed the limitation on 'pooled contributions' as referred to in Regulation 123 of the Community Infrastructure Levy Regulations.
23. On the basis of the Undertaking, and the other related evidence presented at the Hearing including the provision of affordable housing in accordance with the provisions of the development plan, I am satisfied that the terms of the Obligation are necessary to make the development acceptable in planning terms and are directly, fairly and reasonably related to the development in scale and in kind and satisfy the requirements of paragraph 204 of the Framework.
24. I therefore conclude on this issue that there is now a formal mechanism in place to reasonably mitigate the wider impact of the proposed development.

Other matters

25. Issues surrounding the access to the site and further traffic generation, together with the effects on wildlife were raised by the local community rather than the Council. In terms of highway matters, I noted the present junction at Southfield Way and Southminster Road at my visit and the proposed access off Rose Drive. The proposed junction and the existing one appeared to have good visibility with separate footpaths and the traffic evidence submitted with the application demonstrates that there is reasonable capacity in the highway network to accommodate the anticipated increase in vehicle movement. I also note that the highway authority do not raise objections to the proposal subject to the imposition of conditions. Taking all of that into account, I find that it has not been demonstrated that the proposal would be harmful to highway or pedestrian safety or cause inconvenience to other highway users.
26. In terms of the effect on wildlife, I have considered the findings of the Preliminary Ecological Appraisal (2015) which was submitted with the application. Subject to the further work identified as necessary in the report, from my observations at my site visit, I am satisfied that the effect on wildlife interests is acceptable in principle and that it is likely that the scheme proposed would not result in material harm to wildlife or habitats of recognised importance. Conditions can be imposed to ensure that the further assessment work is undertaken prior to details being drawn up as reserved matters stage.

Whether sustainable development

27. The NPPF has a presumption in favour of sustainable development and seeks to achieve this through the economic, social and environmental roles. Within this the government seeks to boost significantly the supply of housing. The appellant's team stress the social and economic benefits that would arise from

the development including: the economic activity during the construction stage; new residents contributing to the local economy and labour supply; additional new housing with 30% affordable housing and some bungalows for elderly residents; and the potential for a landscape buffer and ecological enhancement. It is also recognised that generally the site lies in a sustainable location and is relatively close to the range of facilities in Southminster.

28. These positive factors have to be balanced with the landscape harm that I have identified would result from the development. Nevertheless, the NPPF makes it clear that for development to be sustainable, all of the roles are mutually dependent and I do not consider that the proposal fulfils the environmental role because of the harm to the local landscape. I therefore find that the proposal does not constitute sustainable development in relation to the NPPF as a whole.

Planning Balance

29. Bringing together my conclusions on the main issues I have found that the proposed housing development does not accord with the housing strategy in the development plan in that the appeal site lies outside of the recognised settlement boundary of Southminster in the adopted and emerging parts of the development plan. These have to be considered in the context that it has not been shown that the Council cannot demonstrate an adequate supply of new housing sites in the district and therefore paragraph 49 and the final bullet point of paragraph 14 of NPPF of the Framework are not engaged in this case.
30. Further, I have found that the development proposed would result in serious visual impact on the local open farmland landscape on the edge of the village which would significantly harm the character and appearance of the area.
31. For the reasons I have given I find that the proposal does not accord with the relevant detailed policies or overall provisions of the development plan. This outcome has to be balanced with other material considerations. I recognise the benefits that the development would bring; in particular the contribution to housing supply and the development of a reasonable proportion of affordable houses. However, these specific factors, together with the other general benefits of development have to be balanced with the harm and my conclusion that overall the proposal is not sustainable development.
32. I conclude that these adverse effects are significant and do not outweigh the conflict with the development plan.

Conclusion

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

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Clews	Planning Consultant, Strutt and Parker.
Mr R Scott	Appellant, R Scott Properties Ltd.
Mr G McCormack	R Scott Properties Ltd.
Mr N Cowlin	Landscape Consultant, Nigel Cowlin Landscape Planning
Mr C Jackson	Senior Landscape Planner, Nigel Cowlin Landscape Planning.

FOR THE LOCAL PLANNING AUTHORITY:

Ms Y Cheung, MRTPI	Planning Officer, Planning Services, Maldon District Council.
Mr M Leigh, Bsc., MRTPI	Group Manager, Planning Services Maldon District Council.

INTERESTED PERSONS:

Mr R Innes	Local resident
Mr Hart	Local resident

DOCUMENTS

- 1 Extract from Essex Landscape Design & Landscape Visual Impact Assessment 2010.
- 2 Document submitted after the hearing by the appellant - Appeal decision - APP/X1545/W/16/3152640