

Appeal Decision

Hearing held on 28 March 2017

Site visit made on 28 March 2017

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 11th April 2017

Appeal Ref: APP/X1545/W/16/3162966

Land to the west of The Old Dairy, Broad Street Green Road, Great Totham CM9 8NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Lawson against the decision of Maldon District Council.
 - The application Ref FUL/MAL/16/00743, dated 10 June 2016, was refused by notice dated 25 August 2016.
 - The development proposed is described as "one dwelling".
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Decision

1. The appeal is dismissed.

Costs

2. Applications for costs were made by both parties against each other. These applications are the subject of separate decisions.

Preliminary Matters

3. The appeal site includes part of an area that was the subject of an application, Ref: FUL/MAL/15/01200, to demolish an industrial building and construct a children's day nursery and a dwelling. This other scheme was refused by the Council in January 2016, prior to the submission of this application. I am also determining the appeal in relation to that scheme. The hearing into both appeals was held on the same day, enabling common issues to be dealt with in a manner that avoided unnecessary repetition. However, as the appeals relate to different sites, they are the subject of separate decisions.
 4. The application form described the proposal as "one dwelling". However, in order to construct the dwelling it would also be necessary to demolish an industrial building and construct a new driveway into the site. It was therefore agreed at the hearing that the proposal would be more accurately described as "demolition of existing B1 building, construction of new access driveway and one dwelling". I have determined the appeal accordingly.
 5. The Council is currently towards the end of a protracted process in relation to the development and examination of its emerging local plan, the Maldon District Local Development Plan (MDLDP). At the hearing the Council provided an update on the situation following the second Examination in Public (EiP) that took place in January 2017. As a consequence the Inspector agreed some further modifications to the plan which were subsequently published on
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17 March 2017. The consultation period closes on 28 April 2017. The responses will be considered by the Inspector with a view to making a recommendation in relation to the formal adoption of the plan.

6. In view of the advanced position on the MDLDP, I asked the Council to provide me with the most up-to-date wording of the emerging policies that are referred to in its decision notice on the appeal proposal¹. From the information presented in this document it appears that there are no unresolved objections to these policies and modifications proposed by the Inspector following the recent re-examination hearings are of a minor nature. Since these emerging policies are at an advanced stage of preparation, I am able to give them significant weight in my consideration of the appeal, in accordance with paragraph 216 of the National Planning Policy Framework (the Framework).
7. As a result of the time which has elapsed since the determination of the application, the issue as to whether or not the Council could demonstrate a five-year supply of deliverable housing sites has been subject to significant change. This variability has been reflected in various appeal decisions to which I have been referred by both parties, both before and at the hearing². However, from the extract of evidence presented by the Council as part of the recent EiP³, and from all that I heard and have read in relation to the appeal proposal, I am satisfied that the Council is currently able to demonstrate a five-year housing land supply. Consequently, having regard to paragraph 49 of the Framework, the policies in the Maldon District Replacement Local Plan (MDRLP) cannot be considered to be out-of-date.

Main Issues

8. The main issues are the effects of the proposal on the:
 - a) character and appearance of the countryside;
 - b) supply of employment land.

Reasons

9. The larger part of the appeal site lies to the rear of an area occupied by an industrial style building (B1) on the west side of Broad Street Green Road. Most of the site is an open field immediately to the north of houses in Poplar Grove Chase which is used as a paddock for the grazing of donkeys. Access to the proposed dwelling would be via the existing junction with Broad Street Green Road and through the site operated by JAP Contracts, but would require the demolition of the B1 building and the construction of a new driveway. The proposed, substantial dwelling would include seven bedrooms, a basement, an annexe and an integral triple bay car port.
10. The site lies outside the defined development boundaries of Great Totham and Heybridge. It was agreed at the hearing that the site is also outside the Special Landscape Area (SLA) referred to in saved Policy CC7 of the MDRLP. The boundary of the SLA appears to coincide with that of the western side of the appeal site. Nevertheless, for planning purposes the entire site is in the countryside, an area characterised by large fields in a predominantly flat

¹ Doc 7 - Details of proposed modifications to policies arising from the Examination in Public of the Local Plan that were referred to on the Council's decision notice

² Docs 1-3: APP/X1545/W/16/3152640, APP/X1545/W/16/316 and APP/X1545/W/16/3152589

³ Doc 4 - Note on progress of the Council's Local Plan and five year housing land supply

landscape with only slightly undulating arable fields and some woodland. There are views through gaps in roadside and field boundaries, so the few scattered buildings to the north and west of the site are visible within this sensitive, open landscape.

11. The proposal would be to the rear of existing development on Broad Street Green Road and Poplar Grove Chase. It would therefore be unrelated to any of the existing ribbon development along the road and where the houses have a direct relationship with the street. Although the site could not be described as remote it would, nevertheless, be an isolated development that would result in a material incursion of built form into the open and undeveloped countryside. Although the proposed dwelling would not be especially visible from the public realm its height, bulk and significant size would be seen in long southerly views along Broad Street Green Road. From here it would appear intrusive in the surrounding landscape. It would also be highly prominent from the rear of the homes in Poplar Grove Chase. The location would not only be harmful to the appearance of the countryside but also contrary to the Council's spatial strategy of focusing new development within settlement boundaries.
12. The National Planning Policy Framework (the Framework) advises that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities. It also advises that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. The location of the proposed dwelling is likely to mean that any future occupants would be highly dependent on car travel to undertake their journeys, as this would be much more convenient than using the bus or walking to reach local facilities. There was no substantive evidence that a house of the size proposed would meet any identified need within the local community or support the vitality of the rural community. Neither was anything presented to convince me that any of the special circumstances set out in paragraph 55 of the Framework, including those relating to exceptional and innovative design, would be met in this case.
13. I therefore conclude that the proposed dwelling would be harmful to the character and appearance of the countryside, contrary to saved Policies BE1 and CC6 of the MDRLP and emerging Policy D1 of the MDLDP, all of which require development to respect its landscape setting. It would also fail to accord with saved Policy S1 of the MDRLP, which seeks to direct development within settlement boundaries. Although this policy was not referred to in the Council's decision notice in relation to this application, I consider it to be highly relevant to this case. It was brought to my attention in relation to the appeal on the adjacent site and was discussed at the hearing.

Supply of employment land

14. The eastern part of the appeal site is part of a larger, undesignated employment site to which the requirements of saved Policy E6 of the MDRLP and emerging Policy E1 of the MDLDP are relevant. Both policies seek to resist the loss of such employment sites in order to support the economic performance of the District. The proposal would require the demolition of the existing industrial building to make way for the new access driveway. Although the office building immediately to the south of the access would not be affected by the scheme, the amount of space available on the site for B1, B2 and B8 uses would be significantly reduced.

15. The Maldon District Council Local Development Plan: Employment Evidence and Policy Update of July 2015 provided new and updated evidence to support the emerging policy in the MDLDP. The study advises that there are a limited number of employment sites scattered throughout the District, which arises from the dispersed nature of local employment. Any erosion in the number of these sites would therefore have a detrimental impact on the ability of the area to provide opportunities for businesses in the District to start up and grow. This is particularly important given the district's greater reliance on smaller businesses rather than larger ones.
16. Furthermore, the study concluded that there is an identified need for more employment land within the District and emerging Policy E1 sets out an intention to identify and allocate additional sites. Both saved Policy E6 and emerging Policy E1 therefore seek to resist the loss of existing employment sites unless at least one of a series of criteria is met. In these circumstances it seems to me that the loss of the industrial building on the appeal site, which could be used as part of a B1/B2/B8 operation, would require clear and substantive justification.
17. Irrespective of whether or not the building is currently vacant or being used for storage purposes there is no evidence to suggest that its use is causing irreparable harm to the character or amenity of the surrounding area. Criterion (a) of saved Policy E6 is therefore not relevant and would not be a reason for permitting the loss of the building.
18. Criterion (b) allows for a change of use where the alternative would provide a greater community benefit. There would be none, as the scheme would only result in the loss of the existing building. It would therefore fail to meet the requirements of criterion (b) of saved Policy E6 and criterion (2) of emerging Policy E1. There was no evidence that there had been any attempt to market the existing building for employment use. Furthermore, I was not presented with any definitive evidence as to why it could not be adapted to provide for current or future business requirements and marketed accordingly. The scheme therefore fails to meet the requirements of criteria (c) and (d) of saved Policy E6 and criterion (3) of emerging Policy E1.
19. I therefore conclude that the proposal would result in the unacceptable loss of employment land, contrary to saved Policy E6 of the MDRLP and emerging Policy E1 of the MDLDP, which seek to retain and improve existing employment sites, having regard to their existing and potential long-term market demand for employment use.

Conclusions

20. The proposal to introduce a substantial dwelling into the undeveloped countryside would be harmful to the character and appearance of the countryside and contrary to the Council's spatial strategy which seeks to focus development within identified settlement boundaries.
21. I am satisfied that the Council is able to demonstrate a five-year supply of deliverable housing sites. Therefore, in the absence of special circumstances, there is no justification for locating a new dwelling on a site where housing development would not normally be permitted.

22. The proposal would also result in the loss of a building that could be used to provide employment opportunities and would significantly reduce the amount of land available for employment uses on an undesignated site.
23. There are no other material considerations that outweigh this conflict with either the adopted development plan or the policies within the emerging plan.
24. For these reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Peter Le Grys Principal Chartered Planner with Stanfords
MA Dip.TP MRTPI

Mr A Lawson : Appellant

Mrs D Lawson

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Leigh Group Manager Planning Services
BA(Hons) MA MRTPI

Ms Yee Cheung Planning Officer
MRTPI

Mr Mark Woodger Principal Planner (Strategic Sites)
BA CertM MRTPI

DOCUMENTS SUBMITTED DURING THE HEARING

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| Doc 1 | Appeal decision: APP/X1545/W/16/3152640 |
| Doc 2 | Appeal decision: APP/X1545/W/16/3162631 |
| Doc 3 | Appeal decision: APP/X1545/W/16/3152589 |
| Doc 4 | Note on progress of the Council's Local Plan and five-year housing land supply |
| Doc 5 | Land Affected by Contamination – Technical Guidance for Applicants and Developers: third edition – September 2014. Produced by Essex Contaminated Land Consortium. |
| Doc 6 | Site plans showing boundary of Special Landscape Area in relation to the appeal site. |
| Doc 7 | Details of proposed modifications to policies arising from the Examination in Public of the Maldon District Local Development Plan that were referred to on the Council's decision notice. |
| Doc 8 | Extracts from the Draft Strategic Masterplan Framework for the proposed North Heybridge Garden Suburb. (pages 5, 46 and 47) |

This is a complete list of the documents submitted at the hearing into this appeal and the appeal on the adjacent site. They have been included here for the sake consistency, even though not all the documents are necessarily relevant to this decision.