

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/16/3154913

The Old Dairy, Broad Street Green Road, Great Totham, Essex 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/15/01200, dated 16 October 2015, was refused by notice dated 26 January 2016.
 - The development proposed is to replace existing B1 industrial building with proposed children's day nursery and 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. An application for a dwelling on a site immediately to the west of the appeal site and in the ownership of the appellant was submitted to the Council on 10 June 2016, after this scheme had been refused, Ref: FUL/MAL/16/00743. This other scheme was refused on 25 August 2016 and I am also determining the appeal in relation to that application. 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 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 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.
 5. 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
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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).

6. 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

7. The main issues are the effects of the proposed development on the:
 - a) character and appearance of the area;
 - b) supply of employment land;
 - c) living conditions of future users and occupiers in relation to risks from contamination on the site.

Reasons

Character and appearance

8. The appeal site is located on the west side of Broad Street Green Road 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. Nevertheless, for planning purposes the site is in the countryside.
9. It is currently occupied by two single-storey, low profile buildings. Firstly, a brick built building which is close to the western boundary of No 28 Broad Street Green Road. This is being used in connection with the appellant's business providing bar/catering equipment to a variety of commercial premises. The second, industrial style building is larger and comprises steel walls above a brick plinth and a corrugated roof. It is set well away from the site's northern boundary. On my site visit I saw that this building is being used in part to store redundant kitchen equipment, along with some personal possessions including a car and motor-home.

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

10. With the exception of a number of steel containers close to the southern boundary, the remainder of the site is open. Much of it is laid to concrete to enable vehicles to park and manoeuvre. There are also areas of gravel, limited areas of grass, a few trees and some vegetation marking the boundaries, particularly on the northern and western sides. However, part of the northern boundary is marked only with a post and wire fence which provides views towards the open flat fields that characterise the surrounding countryside on the western side of Broad Street Green Road.
11. The proposal seeks to retain the office building, but demolish the industrial-style building and replace it with a children's nursery and a five/six-bedroom detached house served by a cul-de-sac that would go through the site and terminate at its western boundary. Although the site is in the countryside, public views of it are currently limited by the restricted height of the existing buildings and the extent of the roadside vegetation. When looking in a southerly direction along Broad Street Green Road the industrial building is barely visible. However, the roofs of the two storey dwellings along Poplar Grove Chase to the south of the appeal site can be seen from the road.
12. The height and bulk of the proposed dwelling and children's nursery would add to the mass of development on the site and increase the amount of built form in an area that is currently characterised by low level development. The additional height of the proposed buildings would be visible in southerly views along Broad Street Green Road. The development as a whole would therefore represent an encroachment into the countryside. However, given its restricted visual impact, I am satisfied that it would cause only limited harm to the appearance of the area.
13. Of greater concern is the effect of the proposal on the character of the area. There is almost continuous residential ribbon development along the eastern side of Broad Street Green Road between Heybridge and the appeal site, all of which appears to face the highway. However, development on the western side is more sporadic. From what I saw and heard short cul-de-sacs serving a mix of commercial, residential and community uses are not a characteristic of the area. Whilst infill residential development has been permitted on Poplar Grove Chase, there is an absence of commercial activity and the new properties each have direct street frontage. Similarly, where recent residential development has taken place on the eastern side of Broad Street Green Road all the houses face the street, even when they share an access onto this busy, straight road. The proposed layout would therefore be at odds with that of surrounding development.
14. Plans of the surrounding area also indicate that the dwellings are set in well-proportioned plots that reflect the size of the particular property. By contrast the footprint of the proposed dwelling would occupy a larger proportion of its plot, some of which would have restricted use due to the presence of a ditch close to the site's western boundary. It therefore seems to me that the introduction of a large dwelling on a modest-sized plot, almost at right angles to the street and served by an access shared with other very different activities, would be out of keeping with the prevailing pattern of residential development in the locality.
15. In addition, the mix of proposed uses with the retention of the office, the introduction of a children's nursery and a dwelling would significantly intensify

the use of the site. There would be an increase in the number of daily movements in and out of the site, as well as potential for conflict between different users of the various buildings. I appreciate that locating a children's nursery on a road that may be a route used by commuters would enable parents to drop off and pick up their children on their way to and from work. However, I am not persuaded that a countryside location on a busy road is a suitable or sustainable location for such activities to be taking place. Access to the appeal site would be predominantly by car. Notwithstanding the lack of objection from the highway authority, pedestrian access would be severely restricted by the lack of footways in the immediate vicinity of the site and the perceived dangers caused by fast moving traffic on a stretch of road that is subject to a 40mph speed limit. Although Broad Street Green Road is a bus route, this is unlikely to be a practical means of pre-school age children accessing the site.

16. To my mind these factors demonstrate that operating a nursery, serving approximately 12-16 children and employing six members of staff, alongside a new dwelling and the continued operation of the existing business would fundamentally change the character of the site. The combination of uses would be harmful to the character of the area arising from the site's location outside the built-up area and within the countryside.
17. The location of an undesignated employment site in such close proximity to open countryside might appear to be incongruous, particularly given that to the east and south of the site there is a limited amount of residential development. However, the current use arises from the historic use of the site as a dairy and its links with agricultural activities. In my view the existing low profile buildings on appeal site play an important role in marking a transition between the built-up area to the south, predominantly characterised by two storey buildings, and the open countryside that lies within the Special Landscape Area to the north and west. This may well become more important when the major urban extension, the North Heybridge Garden Suburb⁴, to the west of Broad Street Green Road and to the south of Poplar Grove Chase is built.
18. Taking all these matters into account, I conclude that the proposal would be harmful to the character and appearance of the area. It would therefore be contrary to saved Policies S2, BE1, H1 and CC6 of the MDRLP which, amongst other things, seek to restrict new housing outside development boundaries and require development to be compatible with its surroundings, to protect the traditional quality of the District's landscape and to make a positive contribution to the open countryside. It would also be contrary to saved Policy T2 of the MDRLP, which seeks to ensure that development is accessible by a range of transport modes.
19. I accept that there would be no conflict with saved Policy CC7, since this policy only applies to proposed development within Special Landscape Areas. However, the proposal would fail to comply with emerging Policies D1, S1, S8, H2, H4 and T2 of the MDLDP, which seek to focus residential development within defined settlement boundaries and require all development to respect its context in relation to layout and landscape setting. It would also fail to prioritise sustainable means of access through an absence of safe and direct walking routes to nearby services and facilities.

⁴ Doc 8 – submitted at the hearing

Supply of employment land

20. There was some disagreement at the hearing about the precise nature of the B1 uses that are currently permitted on the appeal site. Regardless of this matter, I am in no doubt that the site's lawful use is as an undesignated employment area and that the requirements of saved Policy E6 of the MDRLP and emerging Policy E1 of the MDLDP are the relevant policies for assessing the acceptability of the proposed change of use. These policies are concerned with sites that operate in the B1, B2 and B8 use classes.
21. Since the appellant acquired the site in 2009 it appears that his business has only operated from the office building. He contends that the remainder of the site is vacant, notwithstanding the fact that from my observations at the site visit there is evidence that the industrial building and some of the land around the buildings is being used for storage. I understand that he currently employs six people, three of whom are part time. The loss of the existing building and its replacement with a dwelling and a children's nursery would significantly reduce the amount of space available on the site for B1, B2 and B8 uses. Whilst I appreciate that the nursery would generate employment, neither Policy E6 nor Policy E1 deal with the need for employment that could be generated by such a land use, which would fall into a different use class. Both the saved and emerging policies seek to resist the loss of sites in B1, B2 and B8 use in order to support the economic performance of the District.
22. 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.
23. 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 any site which is currently operating as B1/B2/B8 uses requires clear and substantive justification.
24. 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) is therefore not relevant and would not be a reason for permitting the building to be lost and replaced with one with an alternative use.
25. Criterion (b) allows a change of use where the alternative would provide a greater community benefit. The appellant contended that as the children's nursery would provide employment and would be a benefit to the community it would meet this requirement. At the hearing it was suggested that there are other nurseries in the area that are operating at capacity and there is a demand for additional places. However, other than the addresses of three local pre-school facilities, these claims were not supported by any details of the

existing operations or substantive evidence that quantified the need or demand for additional nursery places. Neither was the proposal supported by a business plan demonstrating that the children's nursery would be viable and would support the suggested number of jobs.

26. It is recognised that there will be additional demand for two early-years facilities arising from the implementation of the North Heybridge Garden Suburb. However, this demand is unlikely to present itself in the immediate future. Furthermore, the draft Masterplan Framework for the urban extension has identified a local centre within the development as the most suitable location in which to provide a variety of facilities to serve future residents, including at least one of the early-years facilities along with shops, a primary school, a community centre and a medical centre. The draft Masterplan Framework suggests the second early-years facility should either be in the local centre or closer to the initial phases of the development, which would be closer to the existing urban area. As the appeal site is beyond the boundary of the urban extension, its use for the provision of a children's nursery would be contrary to this approach. It would also be at odds with the objective of locating facilities in an area that is well connected by footpaths and cycle routes.
27. I am therefore not persuaded that the proposal would amount to a greater community benefit if used as a children's nursery, even if it did generate some additional employment. The scheme therefore fails to meet the requirements of criterion (b) of saved Policy E6 and criterion (2) of emerging Policy E1.
28. Criterion (c) requires the site to have been the subject of a marketing exercise. Saved Policy E6 suggests that this should be through a variety of methods for at least three months and at an appropriate price. Emerging Policy E1 does not stipulate a specific time period for the marketing in its criterion (3), but includes a requirement to demonstrate that the site is no longer viable for employment purposes, taking into account the site's existing and potential long-term market demand.
29. The appellant states that this was the only company showing commercial interest in the site when he acquired it in 2009. In his view there is no local demand for B8 uses in the area and as he believed the proposal met criterion (b) of saved Policy E6, no marketing exercise was considered to be necessary. In view of my conclusion in relation to the lack of community benefit arising from the scheme, I cannot agree that it would be appropriate for the site to be lost to B1/B2/B8 uses in the absence of a robust marketing exercise.
30. Furthermore, emerging Policy E1 is seeking to create jobs in the district through the regeneration, modernisation and expansion of existing employment sites as well as the allocation of new sites. The existing industrial building on the appeal site is in good condition and equipment related to the previous use as a dairy has largely been removed. I was not presented with any definitive evidence as to why the building could not be adapted to provide for current or future business requirements and marketed accordingly.
31. 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.

Contamination risks

32. The site's previous use as a dairy/milk depot could have left some residual contamination on the site. It was therefore not unreasonable for the Council to require information about potential risks as part of its assessment of the scheme. However, this should have been made clearer to the appellant at the time who should have been directed to the Council's relevant guidance, notwithstanding the lack of reference to it in the extracts from the local plan documents that I have seen.
33. At the hearing I was presented with the Council's technical guidance for applicants and developers⁵ relating to land affected by contamination. This sets out a two stage process for addressing potential associated risks. The guidance clearly states that for all residential development a minimum of a Phase 1 desktop study and preliminary risk assessment must be carried out and that failure to do so could result in the refusal of planning permission.
34. From what I have read about the Phase 1 investigation it does not appear to be an onerous requirement. However, it should identify any significant sources of contamination, pathways through which contaminants could travel and receptors that could ultimately be affected. Given that the proposal is for a dwelling and a children's nursery, the potential receptors in this case are sensitive ones. Legislation makes it clear that it is for the developer to satisfy the local planning authority that the proposal would not give rise to an unacceptable harm. However, the appellant presented only limited evidence with the appeal to support his claim that the risk of contamination is extremely remote. I therefore cannot be certain about the potential risk of contamination on the appeal site.
35. In the event that the appeal was allowed the Council suggested conditions that could be imposed to address potential contamination risks. Although these were complex, the appellant did not object to them. They would have required firstly, the provision of a report identifying potential risks and appropriate remediation measures and secondly, the completion of any necessary remediation prior to undertaking the development. On balance, I therefore consider that this matter could have been addressed through the imposition of conditions, if the development had been acceptable in all other respects.
36. In these circumstances I conclude that, subject to imposition of appropriate and stringent conditions relating to the identification and remediation of the risks of contamination, the proposal would not conflict with saved Policy CON5 of the MDRLP of emerging Policy D2 of the MDLDP which, amongst other things, require development to remediate land affected by contamination.

Conclusions

37. The appeal site lies outside the defined settlement boundaries of Heybridge and Great Totham as identified in the MDRLP and in the emerging MDLDP, which is at an advanced stage of preparation. It is therefore not a site where new housing development would normally be permitted. From evidence presented at the hearing I am satisfied that the Council is able to demonstrate a five year supply of deliverable housing sites and the District's housing need is for small dwellings, rather than provision of an additional five/six bedroom house. There

⁵ Doc 5 – Land Affected by Contamination: Technical Guidance for Applications and Developers

is therefore no justification for setting aside the requirements of the development plan and permitting a new dwelling outside the existing settlement boundaries.

38. I have found that the extra bulk and height of the proposed buildings would result in limited harm to the appearance of the countryside. In addition the proposal as a whole would result in an unacceptable intensification of uses on the site that would be harmful to the character of the area.
39. Furthermore, the proposal would result in the loss of an undesignated employment site, contrary to the adopted and emerging local plan's aims of resisting such losses and providing additional land for employment uses to support the local economy.
40. Whilst issues of potential contamination could be addressed through the imposition of conditions, this does not diminish the harms I have identified in relation to the other main issues. There are no other material considerations that outweigh the conflict with either the adopted development plan or the policies within the emerging plan.
41. For the reasons given, 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

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.