

Appeal Decision

Site visit made on 6 December 2016 and 7 February 2017

by **J Dowling BA(Hons) MPhil MRTPI**

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

Decision date: 8th May 2017

Appeal Ref: APP/X1545/W/16/3152730

Mansion House Farm, Burnham Road, Althorne, Essex CM3 6DR

- 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 William Procter Limited against the decision of Maldon District Council.
 - The application Ref OUT/MAL/16/00171, dated 17 February 2016, was refused by notice dated 18 May 2016.
 - The development proposed is demolition of all buildings on site (save for C19th former dairy building which is a non-designated heritage asset on the site frontage) and residential redevelopment of 47 dwellings and conversion of former dairy to a dwelling, new access and associated works to include site open space, sustainable urban drainage and associated strategic landscaping.
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Decision

1. This appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters except access reserved. An indicative site layout was submitted with the planning application, this plan was for illustrative purposes only and I have determined the appeal on this basis.
3. This appeal was originally the subject of a Hearing which was held on 6 December 2017, at the Hearing the appellant submitted additional information introducing new evidence with regards to the Council's position on 5 year housing land supply. Following a round table discussion with both parties it became clear that the Council considered that in addition to needing more time to assess the new evidence they felt that it would need to be tested through cross examination. As a result the Hearing was ended and arrangements put in place to convert the appeal into an Inquiry. However, the appellant subsequently contacted the Inspectorate (PINS) and advised that, as a result of a recent appeal decision¹, they accepted that the Council could demonstrate that they had 5 years' worth of housing land supply. As a result following discussions between PINS and the parties it was agreed that the appeal could proceed by way of the written representations process. Revised statements were submitted by both parties and it is on the basis of these revised statements and not the previously submitted evidence that this appeal has been considered.

¹ PINS ref: APP/X1545/W/15/3139154

4. I visited the site on an unaccompanied basis on the 6 December 2016 prior to holding the Hearing. I revisited the site on an accompanied basis on the 7 February 2017.
5. The original application was for outline planning permission with all matters reserved apart from access. However, the description of development made reference to the retention and change of use of the C19th former dairy building. Changes of use are not matters that can be dealt with via an outline application. As a result the proposal is in fact a hybrid application. Full plans (elevations and floorplans) for the change of use element of the scheme should have been submitted as part of the application process. However, no such plans have been submitted. In order not to further delay determination of this appeal it has been agreed with the parties that the description of development should be changed to 'demolition of all buildings on site (save for C19th former dairy building which is a non-designated heritage asset on the site frontage) and residential redevelopment for 47 dwellings and conversion of former dairy to a dwelling, new access and associated works to include on site open space, sustainable urban drainage and associated strategic landscaping' and that should I be minded to approve the appeal that the submission of floorplans/elevational details for the former dairy building could be dealt with by means of a suitably worded condition. I have therefore amended the banner heading and considered the appeal on this basis.
6. Finally, in terms of procedural matters the Council referred to policy BE11 in their second reason for refusal. The Council have confirmed that this was a typographical error and that they should have referred to policy BE16. I have therefore considered the appeal on this basis.

Main Issues

7. The main issues are:
 - the effect that the proposal on the character and appearance of the area;
 - the location of site;
 - the effect of the proposal on the setting of a listed building; and
 - the provision of affordable housing.

Reasons

Policy Background

8. The development plan for the area consists of the saved policies of the Maldon District Replacement Local Plan (2005) (the RLP). The Council are in the final stages of preparing a new local plan the Maldon District Pre-Submission Local Development Plan 2014-2029 (the ELP).
9. The National Planning Policy Framework (the Framework) is clear that for the purposes of decision taking the policies in a Local Plan should not be considered out of date simply, as in this case, because they were adopted prior to the publication of the Framework². However, the weight that can be attached to

² Paragraph 211

the policies will depend upon how close they are to the policies in the Framework³.

10. The policies cited by the Council as relevant to the determination of this appeal are policies S2, H1, BE1, CC6, BE16 and PU1 of the RLP and policies S1, S8, D1, D3, H1 and I1 of the ELP.
11. Policies S2 and H1 of the RLP constrain the supply of housing by not allowing new housing outside of the defined development boundaries. These policies in my view are inconsistent with the Framework's approach to delivery of housing and as a result I consider them to be out of date and consequently I have afforded them very limited weight.
12. RLP policies CC6 and BE1, although relevant to the supply of housing, are concerned with landscape protection and character and appearance matters; policy BE16 deals with the setting of listed buildings and PU1 requires, where necessary, planning contributions from new housing development to support the development or mitigate its impact. As such I consider that these policies are broadly consistent with the Framework and therefore I have afforded them significant weight.
13. With regard to the policies S1, S8, D1, D3, H1 and I1 of the ELP whilst the examination of the ELP was completed in January the Council are currently in the process of consulting on a number of proposed modifications which they consider are required to make the plan sound and appropriate for adoption. As a consequence I have only been able to afford the policies in the ELP limited weight in determining this appeal.

The effect of the proposal on the character and appearance of the area

14. All parties are in agreement that the proposal would affect the character and appearance of the area by introducing housing and its related infrastructure into what is predominantly a greenfield site. However, it is the harm that may result from this change and the effect that this would have on the character and appearance of the area that needs to be assessed.
15. Althorne village is a long linear settlement stretching east to west along Burnham Road (the B1010) with the main part of the village extending northwards along the Summerhill Burnham Road (the B1018). The appeal site is located to the eastern edge of the village just outside of the settlement boundary. With the exception of the development along the eastern side of the Summerhill Burnham Road, which extends behind the houses fronting the road, the village is a predominantly ribbon development. Furthermore, as one continues to the edges of the village gaps begin to develop between the houses and the village takes on a more rural character.
16. Whilst the scheme would be at a relatively low density, the proposal would result in the introduction of a significant amount of development that, in order to accommodate the number of units proposed, would need to extend some distance back from the road. Although it would be viewed against the backdrop of the existing village it would result in a different layout and urban grain to the established pattern of development and given the location of the site it would not integrate with or reflect the established character of this part of Althorne. As a consequence I consider that the proposal would result in the

³ Paragraph 215

urbanisation of this section of the road and the extension of the built form of Althorne out into open countryside which would change the character and appearance of the site from an open agricultural landscape to a suburban one.

17. In order to mitigate the impact of the development a landscaping/ tree buffer is proposed along the eastern and western boundaries of the site in addition to reinforcement of the existing planting along the frontage. The appellant advocates that this would ensure that the site would continue to be perceived by many receptors as a rural landscape. However, I observed at my site visit that whilst there are trees within the wider landscape in the context of the eastern side of Althorne the landscape is characterised by occasional trees within field boundaries and as a result I consider that a heavily treed boundary treatment would appear out of character in this relatively open landscape.
18. Whilst I acknowledge that views of the site from the wider area may be relatively limited I consider that as a whole the site does contribute positively to the character and appearance of the area and the setting of Althorne. As a consequence I consider that the proposal would be contrary to policies CC6 and BE1 of the FLP which requires that proposals for development in the countryside be compatible with their surroundings and not cause harm to the landscape character. Furthermore it would be contrary to the Framework⁴ in that it would be harmful to the intrinsic beauty of this part of the countryside and would not appropriately respond to local character.

The location of the site

19. I observed at my site visit that the amenities available in the village are fairly limited but do include a village shop/post office, a pub, village hall and a church. Whilst I acknowledge that it would be possible to walk or cycle from the site to these facilities the village shop/post office which, due to its location at the opposite end of the village, is some distance from the site and provides a limited range of goods and services. As a consequence I consider that to meet their day to day needs future residents would need to access facilities in the larger neighbouring settlements of Maldon and South Woodham.
20. To the south west of the village there is a railway station from which it is possible to catch regular trains to Wickford and Southminster. However, the train station is some considerable distance from the site and at the bottom of an unlit hill with no dedicated pavement. I also note that in addition to the bus stop adjacent to the site there were other bus stops within the village which provided access to Chelmsford albeit that the service provided appears very limited. As a result I consider that it is unlikely that future occupants of the units would find using the bus or train services to be an attractive option for travel on a regular or frequent basis.
21. From what I observed on site opportunities for employment within the village and the immediate surrounding are very limited. As a result given the number of units proposed I consider that the majority of future occupants would have to travel outside of the local area to work.
22. Therefore, I believe that future occupiers of the site would be highly likely to need to travel outside of the village for the majority of their daily needs. Given the limited access to public transport I consider that the majority of these trips

⁴ Paragraphs 17 and 58

would be undertaken by private car. As a result, I do not consider that the appeal site is in a particularly sustainable location.

23. I recognise given its rural location that Althorne is not unique in having access to limited facilities and residents who are reliant on the car to meet their day to day needs. However, the proposed development would not accord with one of the core aims of the Framework which states that planning should actively manage patterns of growth to make the fullest use of public transport, walking and cycling and to focus development in locations which are or can be made sustainable⁵.

The effect of the proposal on the setting of a listed building

24. The building immediately adjacent to the eastern boundary of the appeal site is Mansion House Care Home which is a Grade II listed building. In addition a 19th Century former dairy building located within the site is considered to be a non-designated heritage asset.
25. All parties are agreed that the removal of the poultry sheds, silos and other modern agricultural buildings would benefit the setting of both of these buildings. However, the Council consider that the form and quantum of proposed development would harm the setting of these assets, albeit that they recognise that this harm would be less than substantial.
26. Whilst I acknowledge that the layout plan submitted with the appeal is indicative, its purpose is to illustrate that the development proposed could be accommodated within the site. The development overview shows that adjacent to the listed building and around the former dairy would be a substantial area of landscaping and open space with the proposed new development being sited further to the north and west. As a result I am satisfied that there is capacity within the site for development to be set off this sensitive boundary and away from the former dairy and that it could be laid out in such a way so that the setting of these buildings would not be harmed. Consequently I conclude that the proposal would be in accordance with policy BE16 of the RLP which advocate's that development should not harm a listed building, its setting or any features that contribute to its special architectural or historic interest and would not conflict with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The provision of affordable housing and other financial contributions

27. In order to comply with the Framework and policy H9 of the FLP a percentage of the proposed units would need to be affordable. The appellant has submitted an executed Unilateral Undertaking (UU). Under the terms of the UU, 19 of the units on-site would be affordable in addition to a financial contribution to offsite provision. The proposal would also deliver a new area of open space and the UU details how this would be maintained and includes provisions to ensure that the space would be publicly accessible to all, including people that would not be residents of the scheme.
28. On the basis of the evidence I have read I am satisfied that these obligations within the UU are necessary to make the development acceptable in planning terms; are directly related to the development and are fairly and reasonably

⁵ Paragraph 17

related in kind to the development. As a consequence I consider that they meet the tests within CIL regulation 122 and paragraph 204 of the Framework.

29. The UU would also provide a financial contribution towards the provision of school transport. However, the appellant has queried the amount required by the Council and whether it would adhere to the CIL regulations which places restrictions on the pooling of contributions. Had I been minded to allow the appeal I would have sought clarification from the Council as to how the contribution was calculated and whether it was CIL compliant prior to issuing the decision. However, as I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the parties.

Other matters

30. The appellant has cited a number of examples where the Council have supported development outside of settlement boundaries in other areas of open countryside where, the appellant considers that, the impact is greater than for the appeal site. However, these are in different locations and would be perceived in a different context and as a result they do not lead me to a different conclusion in this case.
31. Paragraph 14 of the Framework advocates a presumption in favour of sustainable development and states that where a development plan is absent, silent or relevant policies are out of date then planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Whilst the appellant has accepted that the Council can demonstrate that they have 5 years of housing land supply they consider that paragraph 14 is still engaged because the development plan policies are out of date.
32. I accept that the proposed development would not result in the loss of good quality agricultural land and would deliver a number of benefits including the provision of housing, including affordable housing in a rural area for which the Council recognise there is a need; it would deliver a range of housing types; it would help meet the windfall rural housing target of the ELP; it would result in the removal of unsightly agricultural buildings adjacent to a designated heritage asset and enable the retention and enhancement of a non-designated heritage asset; it would provide employment opportunities during construction and future residents would help support the limited local services within the village. Furthermore it was clear from the evidence that the site is available and therefore could come forward quickly. I therefore consider that the proposal would fulfil the economic and social dimensions of sustainability and help boost the supply of housing.
33. However, the proposal would result in the loss of open countryside which positively contributes to the setting of the village and would result in a form of development that would be out of character with the prevailing pattern of development.
34. Furthermore, the proposed development would not be sustainably located and as a result the majority of future occupiers would need to travel outside of Althorne to access services and employment opportunities. Given the limited access to alternative modes of transport the bulk of these trips are likely to be undertaken by car. As a consequence I consider that the proposal would not

promote sustainable patterns of growth or fulfil the environmental dimension of sustainability as advocated by the Framework.

Conclusion

35. In conclusion I find that the effect on the character and appearance of the area that would result from the loss of open countryside and the failure of the proposal to promote sustainable patterns of growth would significantly and demonstrably outweigh the benefits of the scheme that I have identified above. As a result when considered against the relevant development plan policies and the Framework as a whole the proposal would not amount to sustainable development.
36. For these reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

Jo Dowling

INSPECTOR