

Appeal Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 14 June 2017

Appeal Ref: APP/X1545/W/17/3167607

Glebe Meadow, Adjacent to King Georges Field Pavilion, Station Road, Southminster, Essex.

- 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 Chelmsford Diocesan Board of Finance against the decision of Maldon District Council.
 - The application Ref OUT/MAL/16/00105, dated 1 February 2016, was refused by notice dated 22 July 2016.
 - The development proposed is for the provision of up to 13 dwellings, provision of public open space and a new vehicular access from Vicarage Court.
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Decision

1. The appeal is allowed and planning permission is granted for the provision of up to 13 dwellings, provision of public open space and a new vehicular access from Vicarage Court at Glebe Meadow, Adjacent to King Georges Field Pavilion, Station Road, Southminster, Essex in accordance with the terms of the application, Ref OUT/MAL/16/00105, dated 1 February 2016, subject to the conditions set out in the Schedule of Conditions at the end of this decision.

Preliminary Matters

2. The main parties agreed at the Hearing that the correct address for the site is that referenced in the banner heading above, which differs from that prescribed in the application form. I am content to make this change, as the location of the appeal site is obvious to all parties.
3. The appeal proposal is in outline form, with all matters reserved for subsequent approval with the exception of the site access. Any other details shown which would be a reserved matter, such as the layout including the internal site route, I shall treat as being indicative only. An obligation under Section 106 of the Planning Act is before me dated 15 May 2017. I discuss the content and adequacy of this obligation below.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area.
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Reasons

Policy context

5. The development plan consists of the saved policies of the Maldon District Replacement Local Plan 2005 (RLP). The main parties agree that the appeal site is outside the Southminster settlement boundary as defined in the RLP. RLP policies S2 and H1 constrain the supply of new housing in such locations almost without exception, while RLP policy CC6 only permits development in the countryside where no harm is caused to the landscape. I find that these policies are unduly obstructive, and inconsistent with National Planning Policy Framework (the Framework), which seeks to significantly boost the supply of housing and to apply a balanced approach to new development. Accordingly, I find they are out-of-date and I afford little weight to them in my decision. This does not extend to RLP policy BE1, which is design related, and which is consistent with the Framework.
6. The Council's emerging Maldon District Pre-Submission Local Development Plan 2014-2029 (eLDP) is currently awaiting a final decision from the Secretary of State as to whether it is sound; a decision is expected sometime in the summer 2017. The eLDP can be said to be at an advanced stage in the adoption process, and I accept that policies D1, S1 and S8 accord with the general principles of the Framework in respect to design, sustainable development and settlement hierarchy.
7. That said, the weight to be afforded to the eLDP must be taken on the plan as a whole; the ability to 'cherry pick' emerging policies and apportion individual weight to them is not an option available to me. As the Council acknowledges that outstanding objections remain on the eLDP particularly in regard to objectively assessed housing need, I find I am unable to afford anything more than little weight to the plan as a whole in my decision. The existence of an appeal decision (*Ref: APP/X1545/W/16/3154913*) in which an alternative view was formed by the Inspector does not alter my findings.
8. The Council states that it can demonstrate a five year housing land supply, which is not disputed by the appellant and I have no obvious reason to take an alternative view. However, because of the inconsistency between the adopted RLP policies S2, H1 and CC6 and the Framework, I find that the tests of paragraph 14 of the Framework are engaged irrespective of the existence of a five year housing land supply. I will return to this aspect later in my decision.

Character and appearance

9. The appeal site is a rectangular parcel of land surrounded on three sides with residential development, a school and the King Georges Field. The southern boundary abuts the Goldsands Road Pits and Lakes Local Wildlife Site, which the Council states incorporates a geological Site of Special Scientific Interest. I observed that the perimeters of the appeal site are substantially planted with trees and shrubbery, while the site itself is predominately grassland. It is, I find, attractive meadow.
10. Notwithstanding the reason for refusal, it is common ground between the main parties that the principle of developing the site is acceptable. The Council stated at the Hearing that its concerns relate only to the visual harm caused by the quantum of development, specifically when viewed from the site's eastern

- boundary; identified as viewpoints 4, 5 and 6 within the appellant's landscape and visual assessment.
11. However, I find that from these viewpoints, the proposed dwellings would be largely seen against the backdrop of the existing residential properties in Vicarage Court and Vicarage Meadows, and the village more generally. An alternative layout to the indicative one before me would not change this, thus the dwellings would not be particularly intrusive. I am satisfied that the proposed dwellings would not be unduly distant or detached from the settlement edge, or that the heights would be incongruously taller than the surrounding built form. The main parties agree that there would be little or no visual effect from other locations around the village, or that the proposed scheme would amount to any significant landscape harm. On the evidence before me I have no reason to disagree.
 12. Layout is not a matter before me. Nevertheless, while I share the Council's concerns in respect to whether the positioning of a parking court close to the entrance of the site represents good design, I do not find that the overall approach to layout is overtly urban, poor or uncharacteristic of the area. In any event, I find that there is sufficient space on the site for an alternative layout to be advanced at reserved matters stage, and I see no obvious reason why a mutually agreed solution could not be found between the parties at that stage.
 13. I also agree with the Council that the proposed layout should successfully address its settlement edges, with some form of open space buffer where it adjoins the King Georges Field and the Goldsands Road Pits and Lakes Local Wildlife Site. The indicative layout more than provides for this. However, even if an alternative layout were to be advanced at reserved matters stage, little evidence is before me which suggests that such buffers would be severely diminished or incapable of being implemented. I am satisfied that an adequate landscaping scheme would further ensure the proposed development would be successfully integrated into its surroundings.
 14. I do not underplay the loss of an attractive field, and replacement with residential dwellings and its accompanying paraphernalia will evidently amount to some harm to the character and appearance of the area. However, because of the site's relatively enclosed nature; the scheme's low-density and subsequent generous areas of open space and landscaping that would be provided; and the limited viewpoints from which the proposed development would be readily visible from, I am satisfied the scale of harm would not be considerable.
 15. The proposed development would not accord with RLP policies H2, S1 and CC6, but would accord with RLP policy BE1 and with eLDP policies S8 and D1, details of which I have set out above, albeit that only little weight can be attached to those policies. I do not have the specific details of other appeal decisions referenced by the Council to draw any direct comparisons to them. In any event my decision is made on the evidence before me.

Other Matters

16. Concerns have been raised by local residents in respect to the limitations of Vicarage Court, and its ability to accommodate the level of residential and construction traffic associated with the proposed development. I observed the

width of road, noting in particular the bend which lies close to the access point for the appeal site. However, no evidence is before me to suggest that it could not accommodate what would not be a significant increase in traffic from the proposed development. The Council did not raise this as an issue, and in the absence of sufficient evidence to the contrary, I have no reason to find otherwise.

17. The appeal property lies close to the southern boundary of the Southminster Conservation Area. Neither party expresses a view regarding any effect of the proposal on the character or appearance of the said Conservation Area. Moreover, I have not been provided with any relevant development plan policies relating to such matters. Nonetheless, I have had special regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In this respect, having regard to the size of the development, the site's relatively enclosed nature and its relationship with the surrounding environment, I am satisfied that those interests would be preserved.

Conditions

18. I have considered the conditions suggested by the Council against paragraph 206 of the Framework, and made changes necessary to comply with those requirements. Conditions relating to boundary treatments, specifications of landscaping, and alterations of site levels are necessary to ensure the appearance of the development would be satisfactory. A condition to ensure the development is properly and adequately drained is necessary in accordance with the submitted details. While no evidence is before me that the appeal site is contaminated, a condition to ensure such contamination, if subsequently found, is appropriately managed and mitigated is necessary to ensure the health of the future occupiers of the dwellings would not be compromised.
19. Conditions requiring details of car parking, access, pedestrian and road visibility splays, service and delivery vehicles, surface treatment and the vehicular accesses between the properties and the highway are necessary in the interests of highway safety. In accordance with the recommendations of the submitted Extended Phase 1 Habitat Survey dated November 2014, conditions requiring additional badger surveys, street lighting, and a landscape and ecological management plan to secure public open space at the southern end of the site are necessary in the interests of wildlife protection. A condition requiring infrastructure provision to allow superfast broadband to be provided to the dwellings is necessary to ensure the needs of the future occupiers are adequately provided for and in accordance with the relevant parts of the Framework.
20. While the submitted Archaeological Desk-Based Assessment dated December 2014 found no evidence of occupation of the site and that disturbance was likely to be limited to past agricultural activity, it could not rule it out completely. I therefore find that a condition requiring an archaeological investigation is necessary to ensure archaeological remains if any are appropriately managed. I find that a condition requiring the submission of materials for the dwellings is not necessary as this would be required at reserved matters stage.

Legal Agreement

21. The Council seeks a legal agreement to secure at least 30% of the dwellings to be provided as affordable housing, equating to four dwellings, and for at least 20% of the site area to be provided as open space land. These requirements are duly provided for in the Obligation before me, and neither main party has advanced any objections to it.
22. Paragraph 204 of the Framework says requests for planning obligations must meet three tests, which are: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably relate in scale and kind to the development. Paragraph 50 of the Framework seeks that development provides a wider choice of housing. In light of the evidence before me, I am satisfied that the Obligation would be consistent with the tests of Framework. I am further satisfied on the evidence before me that the requirements are site specific and as such would comply with provisions contained within the Community Infrastructure Levy Regulations 2010 in respect of pooled contributions.

Planning Balance and Whether Sustainable Development

23. Paragraph 14 of the Framework is engaged because I have found that the relevant policies within the adopted Local Plan are out-of-date. It states that a presumption in favour of sustainable development exists and should be seen as a golden thread running through decision-taking, and where relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
24. The main parties agree the appeal site is sustainably located; being sited close to a good number of local services and facilities as well as a railway station, and I have no reason to disagree. The proposed development would provide new market and affordable dwellings to meet the needs of present and future generations. It would also provide additional and accessible public open space, which I was told at the Hearing would go some way to meeting a long-standing objective of the Council for the site as set out within the RLP, but which has not been capable of being delivered owing to the site being within private ownership. The proposed development could also provide local construction employment opportunities as well as additional custom for local services in the village. I attach considerable weight to all of these benefits.
25. In applying the tilted balance of bullet point 4(1) of paragraph 14 of the Framework, the harm that I have identified to the character and appearance from the loss of the field, which would not be considerable, would accordingly not significantly and demonstrably outweigh the considerable benefits the proposed development would bring. I therefore conclude that the proposal would amount to sustainable development in applying the Framework as a whole, and the balance would therefore lie in the scheme's favour. The proposed development would accord with eLDP policy S1, albeit that little weight can be attached to the policy for the reasons given above.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed.

R Allen

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to the Local Planning Authority for approval in writing before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 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) No development shall commence until details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers have been submitted to the Local Planning Authority for approval in writing. The screening as approved shall be constructed prior to the first use/occupation of the development to which it relates and be retained as such thereafter.
- 5) Details pursuant to Condition (1) shall include the layout of the hard landscaped areas with the materials and finishes to be used and details of the soft landscape works including schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers/densities and details of the planting scheme's implementation, aftercare and maintenance programme. The hard landscape works shall be carried out as approved prior to the beneficial occupation of the development hereby approved. The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place.
- 6) Prior to the commencement of the development, detailed plans of any alterations to the levels of the site shall be submitted to the Local Planning Authority for approval in writing. The development shall be undertaken in accordance with the scheme as approved.
- 7) The development hereby approved shall be carried out in accordance with the details set out in the submitted Foul Sewage and Utilities Assessment and the Site Specific Flood Risk Assessment, both dated September 2015; and with drawing 46533-P-SK01 Rev A in respect to foul and surface water strategy, and shall be implemented prior to the occupation of any part of the development hereby approved.
- 8) No development including any site clearance or groundworks of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has secured the implementation of a programme of archaeological investigation and recording for the site shall be submitted to the Local Planning Authority for approval in writing. The development shall be carried out in a manner that accommodates the approved programme of archaeological work.

- 9) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to the Local Planning Authority for approval in writing. These approved schemes shall be carried out before the development is resumed or continued. Following completion of measures identified in the approved remediation scheme, a verification report demonstrating the effectiveness of the remediation scheme carried out must be submitted to the Local Planning Authority for approval in writing.
- 10) Details pursuant to Condition (1) shall show a scheme for on-site car parking which shall be implemented prior to the first occupation of any part of the development and retained in perpetuity.
- 11) The access to the site should be provided as a continuation of Vicarage Court straight for at least the first 12m within the site.
- 12) Each internal estate road junction shall be provided with a clear to ground level visibility splay with dimensions of a minimum of 25m by 2.4m by 25m on both sides. Such visibility splays shall be provided before the road is first used by vehicular traffic and shall be retained free from obstruction clear to ground.
- 13) Prior to the proposed accesses being brought into use, pedestrian visibility splays measuring a minimum of 1.5m. x 1.5m, relative to the highway boundary, shall be provided on both sides of that access and shall be maintained in perpetuity free from obstruction clear to ground. These splays must not form part of the vehicular surface of the access.
- 14) Details of a turning facility for serviced and delivery vehicles of at least size 3 dimensions shall be submitted to the Local Planning Authority for approval in writing. The approved scheme shall be constructed and operational prior to the occupation of any part of the development hereby approved and shall be maintained free from obstruction in perpetuity.
- 15) No unbound materials shall be used in the surface treatment of the proposed vehicular accesses within 6m of the highway boundary or proposed highway.
- 16) Prior to first occupation of the proposed development, each individual proposed vehicular access shall be constructed at right angles to the highway boundary and to a width of a minimum of 3.7m and each shared vehicular access shall be constructed at right angles to the highway boundary and to a minimum width of 5.5m and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge.
- 17) The gradient between the highway boundary and the proposed dwellings shall be not steeper than 4% (1 in 25) for at least the first 6m, and not steeper than 8% (1 in 12.5) thereafter.
- 18) No development shall take place until further badger surveys have been carried out on the site. The additional survey work shall be submitted to

the Local Planning Authority for approval in writing. The development shall be carried out in accordance with the agreed details.

- 19) No development shall take place until a landscape and ecological management plan which shall allow for an area of public open space at the southern end of the appeal site shall be submitted to the Local Planning Authority for approval in writing. The development shall be carried out in accordance with the agreed details.
- 20) Prior to occupation of any part of the development hereby approved, details of street lighting and a timetable for its implementation shall be submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details and retained thereafter in perpetuity.
- 21) No development shall take place until a strategy to facilitate superfast broadband for the future occupants of the dwellings hereby approved, either through below ground infrastructure or other means, has been submitted to the Local Planning Authority for approval in writing. The development shall be carried out in accordance with the agreed details.

APPEARANCES

FOR THE APPELLANT:

Mrs Hayley Morley B.Sc (Hons) BPI MRTPI	Planning Consultant
Mr Alasdair Sherry MPLAN	Planning Consultant
Mr Nigel Cowlin BA (Hons) DipLA CMLI	Landscape Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Leigh BA (Hons) MA MRTPI	Group Manager Planning Services
Ms Hannah Bowles	Planning Officer
Councillor Adrian Fluker BA (Econs) MBA	Ward Member

INTERESTED PERSONS:

Councillor Brian Beale MBE	District Councillor representing Southminster Parish Council
Mrs Linda Bridger	Local Resident

DOCUMENTS SUBMITTED

1. Maldon District Council Statement of Case submitted by the Council.
2. Missing Appendix 3 of Maldon District Council Statement of Case: Appeal Decision APP/X1545/W/16/3153793 submitted by the Council.
3. Map of the Southminster Conservation Area boundary submitted by the Council.
4. Unilateral Undertaking dated 15 May 2017 submitted by the appellant.