

Appeal Decision

Site visit made on 12 June 2017

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 11th August 2017

Appeal Ref: APP/X1545/W/17/3169458

The Old Dairy, Broad Street Green Road, Great Totham MM9 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 (JAP Contracts) against the decision of Maldon District Council.
 - The application Ref FUL/MAL/16/01231, dated 17 October 2016, was refused by notice dated 12 January 2017.
 - The development proposed is an extension to office building to form an attached live/work unit.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Secretary of State approved the Maldon District Local Development Plan (MDLDP) on 21st July 2017, incorporating main modifications recommended by the plan Inspector and minor modifications proposed by the Council and it now forms part of the statutory development plan for Maldon District.

Main Issues

3. The main issues in the appeal are the effect of the proposal on:
 - the character and appearance of the surrounding area;
 - the supply of employment land in the District; and
 - the living conditions of future occupiers in relation to potential for land contamination.

Reasons

Character and appearance

4. The site is located on the western side of Broad Street Green Road, and is enclosed by trees and vegetation along the western, southern, and part of the northern boundary with open fields beyond. Whilst part of the eastern boundary of the site has a road frontage, about two thirds of that boundary abuts the residential curtilage of a detached dwelling with a principal elevation which faces south and there is extensive, dense planting along the common boundary with the appeal site.
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5. The site lies outside any designated settlement, about 1 mile to the south of the village of Great Totham, and is thus within the open countryside. There is some ribbon development of dwellings along this part of Broad Street Green Road, particularly along the eastern side, but only very limited housing development on the western side of the road, including Poplar Grove Chase, about 100 metres south of the site, and the single dwelling adjacent to the appeal site. Policies S2 and S8 of the MDLDP seek to avoid new development outside defined development boundaries, and MDLDP Policy D1 requires new development to be of a good standard of design and to contribute to and enhance local distinctiveness.
6. Within the appeal site is a single storey brick and rendered building used as offices with an adjacent double garage with roller shutter doors. Vehicular access is taken from Broad Street Green Road. Within adjacent land also owned by the appellant but outside the red line boundary there is a large corrugated metal warehouse, a parking area and a small yard containing shipping type containers.
7. The proposal would involve the redevelopment of the southern part of the single storey office building, currently in use as a communal kitchen and staff toilets and the double garage with a residential dwelling. The proposed residential section would have a hipped roof with a ridge height of about 1.7m higher than that of the existing building. There would also be a small section of flat roof with a roof light serving a kitchen dining area.
8. Given the relatively modest scale of the development and its position set back behind an existing dwelling, there would be limited visibility from the street, although the roofline of the dwelling might be visible from the neighbouring garden. The development would also incorporate similar external materials to the existing building, including brick and render. However, the roof of the proposed building would have an awkward relationship with that of the existing commercial property, and as a result would appear incongruous in its surroundings.
9. Moreover, the development would be only a few metres from the large corrugated metal warehouse and the shipping containers to the west of the office building, as shown on the existing site plan. Whilst the proposed site plan shows the warehouse as being demolished, as it does not lie within the red line of the site this would not fall within the scope of the present appeal. My consideration of the proposal must therefore take into account its proximity to the proposed residential unit, and this further underlines the incongruous character of the proposal within and adjacent to an existing commercial site. The proposal is described as a live/work unit to be occupied by the appellant, but the residential unit is entirely self-contained and could thus be occupied by anyone independent of the commercial premises. It would appear entirely out of character with the nature of the remainder of the site and thus would be harmful to the character and appearance of the surrounding area.
10. I have had regard to the appeal allowed for two semi-detached dwellings on Poplar Grove Chase in April 2015. In that appeal the Inspector found that given the relationship of the site with adjacent developments there would be no unacceptable impact on the character or appearance of the surrounding area, which is not the case in this instance.

11. The appellant has also pointed out that recent executive type housing has been built on Broad Street Green Road. I am not aware of the details of these developments, or the planning context in which any planning applications may have been determined, but the proposed dwelling has a very different context to properties along the main road frontage and thus these examples have little bearing on my assessment of the appeal.
12. For the above reasons I conclude that the proposal would harm the character and appearance of the surrounding area, contrary to MDLDP Policy D1, and the National Planning Policy Framework (the Framework), which seeks to secure a high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Supply of Employment Land

13. Paragraph 51 of the Framework states that local planning authorities should normally approve planning applications for changes to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.
14. The Decision Notice referred to Policy E6 of the saved Maldon District Local Plan (2005), which seeks to resist the loss of existing employment land unless the use is causing irreparable harm to the character or amenity of the surrounding area; if the alternative would provide a greater community benefit and if a marketing exercise has been carried out for at least three months which demonstrates that there is confirmation of a lack of interest in the premises. MDLDP Policy E1 has a broadly similar thrust.
15. The majority of the firms in the District employ less than 10 people and the retention of existing employment land prevents further development of greenfield sites to replace employment land lost to other uses. Further to the above, the most recent update of employment land, the Employment Land Review¹ and Employment Evidence and Policy Update² published in May and June 2015 respectively indicate that the district has a large number of small businesses and is a relatively strong location for smaller businesses and those working at home.
16. Nonetheless, it faces competition from the nearby centres of Chelmsford and Braintree, and it is therefore important to retain smaller employment sites. The study also notes that there are a limited number of employment sites which are not often located within business parks or industrial estates, and an identified need for more employment land. Consequently the loss of land operating as a B Use Class needs careful consideration based on up to date evidence, given the need for employment sites of this nature within the District.
17. The proposal would result in the loss of the kitchen area and staff toilets. Whilst this is a relatively modest amount of floorspace, the loss of these facilities would reduce the attractiveness of the office building to tenants, and could therefore prejudice the viability of the premises in the medium to long term. Furthermore no marketing evidence has been submitted by the

¹ Maldon District Employment Land Review – May 2015

² Maldon District Council Local Development Plan (LDP): Employment Evidence and Policy Update – June 2015

appellant in support of the application. Consequently there is insufficient justification for the loss of this employment floorspace.

18. I have also had regard to a recent appeal on part of the same site by the appellant involving the loss of employment land³. Whilst the appeal related to the adjacent warehouse which lies outside the current appeal site, the Inspector in the earlier appeal found that the loss of employment land within a District of growing need for similar sites was not justified. The location of the proposed dwelling in such close proximity to the adjacent warehouse could also prejudice the future operation of that premises and thus its long term viability.
19. Taking all of the above into account I conclude that the proposal would have an unacceptably adverse effect on the supply of employment land in the district, and would therefore be contrary to MDLDP Policy E1.

Effect on living conditions

20. The site was previously in use as a dairy depot, and thus there is potential for some residual contamination at the site. Future occupiers of the residential unit would be sensitive receptors that could be harmed by the existence of contamination, for example within residential gardens. Whilst the appellant maintains that the risk of contamination being found at the site is extremely remote, the proposed residential use means that a precautionary principle should be adopted.
21. The Council has referred to technical guidance⁴ for the consideration of schemes on land which may be affected by contamination. This sets out a two stage approach, the first being a Phase 1 desktop study and preliminary risk assessment. No such assessment has been provided by the appellant, and consequently there is insufficient information to assess the potential risk of contamination on site. Accordingly I cannot be certain that there would be no risks to future occupiers of the proposed live/work unit.
22. Whilst maintaining an objection to the proposal on this basis, should the appeal be allowed the Council has suggested conditions which would require investigation and risk assessment, and remediation where necessary, in accordance with the Council's contaminated land guidance and model procedures produced by DEFRA⁵ and the Environment Agency.
23. On the basis of the evidence before me, I consider that this matter could be adequately addressed by a condition, if the appeal proposal were acceptable in all other respects, and there is no compelling evidence from the Council that would lead me to reach a different conclusion to that of the Inspector in the earlier appeal in regard to this matter.
24. I therefore conclude that the proposal would not have a materially adverse effect on the living conditions of future occupiers, and it would accord with MDLDP Policy D2, which requires, amongst other things, for contaminated land to be subject to remediation where appropriate.

³ Appeal Decision APP/X1545/W/16/3154913 paragraph 23

⁴ Land Affected by Contamination: Technical Guidance for Applicants and Developers (Essex Contaminated Land Consortium)

⁵ Department for the Environment, Food and Rural Affairs (DEFRA)

Balancing and Conclusion

25. I have found in the appellant's favour in respect of the living conditions main issue. Nonetheless, the proposal would cause harm to the character and appearance of the area and to the supply of employment land in the Borough. Although the provision of one additional residential unit would be a modest benefit, it would not be sufficient to outweigh the harm that I have identified.
26. The appellant disputes the five year housing land supply in the District but the Council asserts it is able to demonstrate a 6.04 year supply and has provided a number of recent appeal decisions, including two at the appeal property, where the Inspector found the Council was able to demonstrate a five year supply of deliverable housing sites. No more recent evidence has been provided to me to suggest that this is no longer the case. Moreover, since the appeal was submitted the MDLDP has been found sound.
27. For the reasons set out above I conclude that the appeal should be dismissed.

Claire Victory

INSPECTOR