



Appeal Decision

Site visit made on 2 July 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th September 2019

Appeal Ref: APP/X1545/W/19/3222468

Land south west of Oak Acres, Maldon Road, Woodham Mortimer CM9 6TB

- 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 R Williams (Land Sourcing Ltd) against the decision of Maldon District Council.
 - The application Ref FUL/MAL/18/01298, dated 25 October 2018, was refused by notice dated 24 January 2019.
 - The development proposed is the removal of all buildings and hardstanding and construction of two detached dwellings and cartlodes.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form includes 'Chelmsford Road' in the site address. However, both the appeal form and the Council's decision notice show that the site is in 'Maldon Road'. I have therefore used this in the heading above for the sake of clarity.

Main Issues

3. The main issues are:
 - whether or not the appeal site is a suitable location for residential development having regard to local and national planning policy for the delivery of housing;
 - the effect of the proposal on the character and appearance of the area; and
 - whether satisfactory living conditions would be provided for future occupiers of the proposed development, with particular regard to noise and disturbance from the adjacent A414.

Reasons

Suitable Location

4. The appeal site is positioned on the southern side of the Maldon Road (A414). It is outside of the settlement boundary of Woodham Mortimer as defined by the Maldon District Approved Local Development Plan (LDP). For the purposes of planning policy it is therefore in the countryside.
5. Policies S1, S2 and S8 of the LDP set out the Council's spatial vision and development strategy. This vision seeks to support developments within

settlement boundaries and deliver the majority of new housing through extensions to Maldon, Heybridge and Burnham-on-Crouch in the form of Garden Suburbs and Strategic Allocations. Some housing will also be directed to rural villages in accordance with factors such as the size and physical capacity of these villages. Amongst other things, this is to ensure communities have access to local services to support their health, social and cultural well-being and that patterns of growth make the fullest use of public transport, walking and cycling. This strategy is supported by Policies D2 and H4 of the LDP, which seek to reduce the need to travel by private vehicles and ensure that proposals have regard to the accessibility of local services.

6. It is agreed that the appeal site represents previously developed land (PDL), as defined within Annex 2 of the National Planning Policy Framework (the Framework). It also forms part of scattered development in this rural landscape. Whilst it is not a part of the settlement, I find that it is not isolated in terms of the Framework.
7. Nevertheless, Woodham Mortimer is a smaller village and has only a limited range of services. These would be unlikely to meet all the day-to-day needs of future residents. Bus stops within 250m of the site provide regular services to facilities (such as medical facilities and schools) in larger settlements. However, there is no pedestrian footway along the southern side of this part of the A414. Safely walking to these bus stops, or indeed into the village, would involve crossing this busy road. This is potentially dangerous, especially so during inclement weather and hours of darkness. For the same reasons, cycling would not be a particularly attractive alternative. It therefore seems highly likely that future residents would find that using a car would be the most attractive and convenient means of getting to the services and facilities that they need.
8. I note that there are mechanisms under the provisions of the permitted development regulations for the conversion of commercial and industrial buildings to dwellinghouses. However, I have no substantive evidence to show that this proposal would meet the requirements of these regulations. This matter therefore carries only little weight in my assessment.
9. I am aware that an Inspector has granted permission for a two-bedroom dwelling just outside of a settlement boundary¹. However, this was done on the basis that the development contributed towards an identified need for small dwellings. As the proposal before me is for two, three-bedroom dwellings it is not directly comparable with that scheme. This therefore does not alter my conclusions on the issue of location.
10. There may be other examples of dwellings that have been granted permission close to villages. However, in the absence of details about their locations or how they were assessed, they carry little weight in my assessment of the appeal scheme, which I have performed based on its individual planning merits. There may also be dwellings within villages in the District that are further from services and facilities than the appeal site. Nonetheless, this is not a justification for permitting a scheme that would fail to comply with the Council's strategy for new housing growth.
11. For the reasons given, I conclude that the appeal site would not be a suitable location for residential development as it would not afford suitable access to

¹ APP/X1545/W/18/3207088

services and facilities and would not reduce the need to travel by private vehicles. The proposal would therefore conflict with the Council's spatial vision for growth which is set out by Policies S1, S2 and S8 of the LDP and supported by Policies D2 and H4 of the LDP.

12. The Framework, as well as elements of Policies S1 and S2 of the LDP, encourages the development of PDL and allows for windfall developments, in the right location, to contribute to housing requirements. However, this should not be at the expense of the plan-led spatial vision of the Council when read as a whole, which is the determining factor in this main issue. I have found that the proposal would undermine this vision. In addition, it would not contribute to giving people a real choice about how they travel and would fail to help towards the achievement of a low carbon future, as advocated by the Framework.

Character and Appearance

13. The site accommodates a number of disused buildings that are set back from the carriageway. These are accessed via an existing dropped kerb, but the access to the site is currently closed off by fencing. Although the buildings are in a state of disrepair, given the overgrown nature of the appeal site and the presence of established trees along the front boundary, they are not visible within the streetscene. These factors, together with the presence of open fields on either side of the site and along the northern side of this part of the A414, give the immediate area a distinctly rural feel.
14. The appeal scheme seeks permission to demolish the existing buildings on site and construct two detached residential properties and associated cartlodes. It follows the refusal of a similar scheme² by the Council. The proposed dwellings would be smaller than those previously refused. However, the proposal as a whole would introduce a significant number of urbanising features to the site. This would include residential buildings, hard surfaces and gardens with their associated domestic paraphernalia. This would be out of character with the rural setting. The small gap between the proposed dwellings and the close proximity of their cartlodes would concentrate the built residential form at the site and would draw the eye to this incongruity.
15. I appreciate that the condition of the existing buildings does not make a positive contribution to the appearance of the countryside. However, they are unobtrusive in the landscape. In contrast, the proposed dwellings would be taller and more visible. Consequently, the harmful urbanising impact of the proposal would be more apparent from the public domain. In addition, existing trees which bound the site are not protected in any way and their continued presence could therefore not be guaranteed. Thus, they cannot be relied upon to permanently screen the proposal. Taking this and all of the above into account, in my view the proposal would represent a conspicuous encroachment of built residential form that would fail to integrate effectively with its rural surroundings.
16. Considered in isolation, the design of the proposed dwellings would be acceptable. However, this would not diminish the identified harm to the rural setting through the unacceptable urbanisation of the site. Planting could help screen the proposal. However, the purpose of planting and landscaping is to

² FUL/MAL/17/00923/FUL

integrate development into its surroundings; it is not a means of hiding development that is otherwise unacceptable. Consequently, a condition requiring such planting would not mitigate the harm I have identified.

17. My attention has been drawn to an appeal decision³ in the District which permitted three dwellings on a 'greenfield' site. In concluding that this development would reflect the character of the area, I note that the Inspector considered that the proposal would add to a group of dwellings to help link them to the village. This would not be the case under this appeal scheme as the site is not immediately adjacent to any existing built form. Consequently, this development is not directly comparable to the appeal scheme, which I have assessed on its own merits.
18. For the reasons given, I conclude that the proposal would significantly harm the character and appearance of the area. It would therefore conflict with Policies H4, S1 and S8 of the LDP which, amongst other things, seek to ensure that developments have regard to the character of the surrounding area. Outside of settlement boundaries, they also require developments to maintain the character and beauty of the countryside. The proposal would also conflict with the design objectives of the Framework which seek to achieve high quality developments which function well and add to the quality of the area.

Living Conditions

19. The proposed dwellings would be approximately 25m away from the A414. There is therefore potential for noise and disturbance from this road to impact upon the living conditions of future occupants. The British Standard BS8233:2014, the ProPG: Planning and Noise – New Residential Development and the World Health Organisation (WHO) guidelines recommend design criteria for internal noise levels within residential properties. With suitable glazing, I am satisfied that the internal daytime noise levels at the proposed dwellings would be in line with this design criteria. In addition, the noise levels within their gardens would not exceed the recommended noise levels of between 50-55dB LAeq,16hr.
20. In terms of night time noise levels, it is recommended that 30dB should not be exceeded within bedrooms. The evidence before me appears to indicate that this noise level would only be exceeded within two of the bedrooms at one of the proposed dwellings when their windows are partially open. To meet the identified night time standards in these bedrooms, it would therefore be necessary for the windows to remain closed and for standard trickle ventilation to be incorporated into their design. If the development had been acceptable in all other respects, this could have been secured through the imposition of an appropriately worded condition, which would meet the tests set out at paragraph 55 of the Framework.
21. To preserve sleep patterns, it is also recommended that the LAmax at the facade of a building does not exceed 60dB for more than 10-15 times per night. From the evidence before me, it would appear that a noise level above 60dB would only be experienced at the facades of the ground floor study rooms at both of the proposed dwellings. The LAmax at more sensitive rooms, such as the bedrooms, would be below 60dB. In addition, internal LAmax levels would not exceed the recommended 45dB level. I am therefore satisfied that sleep

³ APP/X1545/W/18/3198063

patterns at the proposed units would not be disturbed by maximum noise levels at the A414.

22. For the reasons given, I conclude that the proposal would afford satisfactory living conditions for future occupants which would not be compromised by noise and disturbance from the adjacent A414. It would therefore accord with Policy D1 of the LDP insofar as it seeks to ensure that proposals are of a good quality of design and afford useable private amenity space. It would also accord with the Framework which seeks to ensure that developments afford a high standard of amenity for existing and future users. I have been referred to Policy D2 of the LDP. However, this concerns climate change and the environmental impact of new development. It is therefore not relevant to this main issue.

Other Matter

23. It would appear that the appeal site falls within a 'Zone of influence' for coastal European designated sites. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. In this case, the Council concluded that the proposal would be unlikely to harm European Sites without any mitigation.
24. However, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage⁴. As the competent decision making authority, if I had been minded to allow the appeal it would have therefore been necessary for me to go back to the parties to seek further information in order to complete an AA for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Planning Balance

25. The Government is seeking to significantly boost the supply of housing. Therefore, although the Council is able to demonstrate a five year supply of housing land, this is not a reason to resist additional housing on other suitable sites. The proposal for two dwellings would make a minor contribution to the Council's housing stock, with associated social economic benefits, and do so on PDL. These factors weigh in the scheme's favour.
26. In addition, I have found that the proposal would provide satisfactory living conditions for future occupants. I am also satisfied that it would meet some other requirements of the development plan, such as provision of a safe access. These are therefore neutral factors in the overall balance.
27. On the other hand, I have found that the appeal site would not be a suitable location for residential development as the proposal would not align with the Council's strategy of ensuring that new developments have suitable access to services and facilities and reduce the reliance on private transport. Neither would it comply with the Framework's aim of locating housing in rural areas where it would enhance or maintain the vitality of rural communities. Furthermore, I have found that it would result in harm to the character and

⁴ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

appearance of the area. These are matters which both individually and collectively attract significant weight.

28. In my view, the adverse effects would significantly and demonstrably outweigh the benefits associated with the provision of two dwellings. The proposal conflicts with the development plan and there are no material considerations, including the advice of the Framework, which outweigh this conflict.

Conclusion

29. For the above reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

M Heron

INSPECTOR