



Appeal Decision

Site visit made on 28 January 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 11 May 2020

Appeal Ref: APP/X1545/C/19/3225696

Land at 14 The Brambles, Foxhall Road, Southminster, Essex CM0 7LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Adam Watts against an enforcement notice issued by Maldon District Council.
 - The enforcement notice was issued on 18 March 2019.
 - The breach of planning control as alleged in the notice is: Unauthorised erection of a dwellinghouse (use class C3) and associated material change of use of the land.
 - The requirements of the notice are to:
 - a. Cease the unauthorised use of the Land as a separate dwellinghouse (use class C3).
 - b. Demolish the dwellinghouse and remove from the Land all associated or resulting materials, items, paraphernalia, debris or detritus.
 - c. Remove from the Land all buildings, structures, items, materials, paraphernalia, debris or detritus associated with the use of the unauthorised dwellinghouse on the Land.
 - The period for compliance with the requirements is six (6) calendar months after the date this Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended, and falls to be considered.
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Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. At the outset of the appeal process appeals were also lodged by two other parties, Mrs Katie Watts and Mrs Barbara Petit, and were registered as APP/X1545/C/19/3225697 and APP/X1545/C/19/3225698, respectively. However, as these were advanced on ground (a) only and the requisite fees were not paid both these appeals have effectively lapsed.

Background

3. From my understanding of the planning history planning permission has been refused twice by the Council for the erection of a detached bungalow at the site; firstly, in 2015 (ref FUL/MAL/15/01027), and subsequently, and retrospectively, in 2018 (ref FUL/MAL/17/00871). Neither decision was appealed.
4. Following, the latter decision, and in view of the application's retrospective nature, the Council considered it expedient to issue the notice, now at appeal.

The Appeal on Ground (a) and the deemed planning application (DPA).

Main Issues

5. The main issues are:

1. whether this is a suitable location for new residential development;
2. whether the development provides for a satisfactory standard of living conditions for its occupiers, with particular regard to any noise and dust pollution from neighbouring uses;
3. whether the development is acceptable in terms of foul-water drainage; and
4. whether the development gives rise to an increased risk of flooding.

Reasons

Location

6. There are other residential properties in the locality and, more particularly, those off the unmade drive that leads to No 14 Brambles, set back considerably from Foxhall Road, namely Nos 5 and 10 The Brambles. I understand that Barbara Pettit who lives at the latter property is the appellant's mother-in-law. The Council indicates that neither of these dwellings enjoyed the benefit of planning permission but, instead, were found to be immune from planning enforcement action. In both cases it appears that matters were regularised and formalised by certificates of lawfulness being issued.
7. Nonetheless, the appeal site falls in an area of rural character, outside the Council's identified settlement boundaries. Policies S1 and S8 of the Maldon District Local Development Plan (LDP), adopted in July 2017, says that the countryside will be protected for its landscape and ecological value as well as its intrinsic character and beauty. It is indicated that planning permission will only be granted for development where this is not adversely impacted upon and provided that the development is compliant with other policies in the LDP.
8. Both the appellant and the Council has provided an account of the site's history, indicating that a mobile structure was first sited on what is now the dwelling's footprint, in 1997. I understand that this was removed in 2011, following which the current dwelling was erected, with occupation indicated as taking place in 2013. However, from my site visit, although the dwelling's walls and roof are in place, internally it is not complete. Further, I noted that although the appellant has provided a copy of the proposed plans that were submitted to accompany application FUL/MAL/17/00871 in 2018, these do not reflect the dwelling's elevations, as built.
9. Barbara Pettit has made representations in support of the appeal saying that, as she requires care, she needs her daughter to be close by so as to provide this. The site arrangement, the general character, the essence of the appellant's case and also Mrs Pettit's comments all suggest that this development, given the contextual setting, represents something of an anomaly in the wider locality.
10. I acknowledge that the development falls outside of the Southminster Village boundary, and it is not a sustainable location in terms of public transport. However, given the site's history and the fact that it is incorrect to describe it

as an isolated dwelling, I am satisfied that the local spatial policy which serves to direct development to sustainable locations could be set aside in this particular instance. In this regard I am also mindful that from first occupation of the dwelling in 2013 it took until 2019 to issue the enforcement notice requiring for cessation of the use. There may be a number of reasons for this, and I note the planning applications submitted in 2015 and 2017, but such delay does not give an impression of particular urgency.

11. That said, as the 'proposed' plans provided for my purposes are not properly representative of the development and there are no details before me as to the intended curtilage nor the site layout in this regard, I am not fully convinced, given the site's history and lack of detail provided to date, that this would be adequately resolved by way of retrospective conditions imposed should I be minded to allow this appeal and grant planning permission.
12. In such circumstances, on this first main issue, I find that the development, given the material considerations involved, would not compromise the Council's strategic objectives and LDP policies S1, S2, and S8. Neither has the rural landscape been adversely affected by the development. I note also that the Council has assessed the development as being contrary to LDP policies D1 and H4 and the Maldon District Design Guide which are essentially concerned with character and design. As a building, though, I find that the development reflects the character of its immediate surroundings. Approval of external features and finishes apart, I am satisfied that the dwelling is not in material conflict with paragraph 127 of the National Planning Policy Framework (The Framework).
13. Weighing all matters up I conclude that this is an appropriate location for the form of residential development proposed.

Living conditions

14. Immediately to the east of this small settlement is a road surfacing contractors use which, given its associated yard, would appear to involve heavy vehicles visiting and leaving the site. This gives rise to inherent noise and dust pollution. The Council has drawn my attention to the fact that, despite the previous planning applications made, the appellant has never provided any assessment as to levels of pollution nor any measures of mitigation in this regard.
15. The appellant has confirmed that no such assessment was prepared and appears to question the need for such given that there are two other existing properties on the wider site which it is claimed were not subject to such a requirement. However, as I have already mentioned these dwellings did not receive conditional planning permission but, instead, were accepted as having immunity from planning enforcement action due to the passage of time, and certificates of lawfulness were issued, accordingly.
16. On this main issue, in order to achieve an acceptable form of development an assessment as to the impact from the neighbouring industrial use is necessary. Moreover, in the absence of such to demonstrate otherwise, I must conclude that the development does not provide a satisfactory standard of living conditions for its occupiers, contrary to the objectives of LDP policies D1 and D2 and paragraphs 180 and 127(f) of the Framework.

Drainage

17. The government's planning practice guidance (PPG) advises that if there are concerns arising from a planning application about the capacity of waste-water infrastructure, applicants will be asked to provide information about how the proposed development will be drained and waste water dealt with. Accordingly, applications for developments relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment.
18. When drawing up waste-water treatment proposals for any development, the first requirement is to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works (those provided and operated by the water and sewerage companies). This should be done in consultation with the sewerage company of the area.
19. The appellant says that the dwelling is connected to a non-mains septic tank, but the advice is that septic tanks should only be considered if it can be clearly demonstrated that discharging into a public sewer to be treated at a public sewage treatment works or a package sewage treatment plant is not feasible (taking into account cost and/or practicality). No evidence has been adduced by the appellant in this regard. He does refer to an Anglian Water drainage map provided, but this has very scant detail and more information would certainly be necessary in order to make a proper assessment.
20. The appellant indicates that planning permission was previously granted for a dwelling nearby, Hazelville, Foxhall Road, with connection to a non-mains sewage system. In such circumstances, and usually by way of proposals for development rather than retrospective applications, it is possible to request details by way of planning condition, requiring for the Council's approval of such prior to first occupation. However, in this instance, and due to the site's planning history, again I am not convinced from the evidence before me that this matter will be adequately resolved by way of retrospective conditions imposed should I be minded to allow this appeal and grant planning permission.
21. In the circumstances, in the absence of any details in this respect, I conclude that the development is unacceptable in terms of foul-water drainage, contrary to LDP policy D2, paragraphs 180 and 127(f) of the Framework and the PPG.

Flood risk

22. The Council has raised concerns as to the appellant not having demonstrated that the development has not increased flood risk in the area. However, I understand that the site only has a low level of flood risk, falling within Flood Risk Zone 1. The Council has not provided evidence otherwise and I have not seen any objection raised against the development from the Environment Agency. Moreover, I note that, when refusing retrospective planning permission for the bungalow in 2018, this issue was not a reason for refusal.
23. Were I minded to allow this appeal and grant planning permission then conditions regarding any surface water drainage matters could be dealt with by means of planning condition so, given the circumstances, I do not accept that the development gives rise to an increased risk of flooding. Accordingly, I find

no material conflict with LDP policy D5 nor relevant advice within the Framework or the PPG.

Conclusions

24. I have found that the development is acceptable in terms of its location. However, in view of the absence of significant details on two out of the other three main issues which might have supported the appeal and the DPA there is, as it stands, too much uncertainty as to whether or not the development can be considered acceptable in its entirety; so much so that it would not be appropriate to leave these matters to be potentially resolved through the submission of details for approval by the Council. Accordingly, were I to grant planning permission there would remain the real possibility that the development would be left in a form of suspended animation.
25. In the balance, therefore, rather than allow the appeal and grant planning permission subject to a series of retrospective conditions – although I note the Council has made suggestions in this regard - I shall dismiss the appeal and uphold the enforcement notice. Nonetheless, in light of my findings, the responsibility is on the appellant to enter into negotiations with the Council and, in the event that a new planning application might be prepared, provide the authority with suitable information and a sufficient level of detail so as to enable the proposal to be properly assessed. Any outstanding design issues could also be potentially resolvable by way of this approach. Hitherto, none of this has proved possible and there has been considerable delay.
26. The stated time period for compliance is six months and, given that no appeal was brought on ground (g) as to any claim that the time period was considered unreasonably short, I am unable to consider its extension. In the circumstances, any negotiations as to the possibility of an alternative acceptable solution would need to be initiated by the appellant at the earliest opportunity. The Council, also, does hold powers under s173A(1)(b) of the 1990 Act as amended to extend the period for compliance should it see fit.
27. For the above reasons, and having had regard to all matters raised, the application for planning permission deemed to have been made under s177(5) does not succeed.

Timothy C King

INSPECTOR