



Appeal Decision

Site visit made on 23 June 2020

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2020

Appeal Ref: APP/X1545/W/20/3245146

Stables to the rear of 10A Pony Tails, Totham Hill Green, Great Totham CM9 8DX

- 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 Mr & Mrs L & R De Belligny against the decision of Maldon District Council.
 - The application Ref OUT/MAL/19/00811, dated 23 July 2019, was refused by notice dated 1 November 2019.
 - The development proposed is to cease stables/livery use, demolish stables, lean-to's and barn, break-up hard surfaces and erect 3 No. detached dwellings, lay out parking and amenity areas, form turning area, and alter private drive onto Totham Hill Green.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with access and layout applied for in full. All other matters are reserved. A proposed layout plan has been provided, which also includes details of proposed landscaping and the roofs of the proposed buildings. The layout, access drive and roads, have been applied for in full. I have taken the landscaping and roof elements into account as indicators of the potential appearance, but it is important to clarify that this level of detail is indicative only and has not been applied for in full. This is reflected throughout my decision.
3. There are minor differences between the description of development on the application form, the decision notice, and the appeal form. The differences are not material and I have adopted the description from the application form. Although not affecting the description of development, for clarity, I am aware that the appellant has highlighted that the application form incorrectly identified the 3 proposed dwellings to be two 3-bed and one 1-bed units, whereas the proposal is actually for two 3-bed and one 2-bed units. I have reflected this as appropriate throughout my decision.
4. The appellant has submitted a Unilateral Undertaking (UU), dated 10 December 2019, in support of the appeal. This commits the appellant to making a payment in mitigation of the proposal's effect on European protected sites. This was the subject of the third reason for refusal of the appeal application. The Council have confirmed that they are content that the UU overcomes their objections to the appeal in this regard and have therefore withdrawn the third reason for refusal.

Main Issues

5. The main issues in this case are:

- the effect of the proposal on the character and appearance of the site and whether the site is an appropriate location for the proposal in the context of the character and appearance of the surrounding countryside; and
- whether the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to the provision of private amenity space for Plot 3.

Reasons

Character and appearance

6. The appeal site comprises a series of stables, outbuildings and associated open land. The site is partly surrounded by dwellings along Mount Lodge Chase and Totham Hill Green and partly presents an open aspect to fields and paddocks. Most of the site, and all of the existing buildings, lie within the Settlement Boundary, although a small portion of the open land of the site lies outside this boundary. The site is in a transitional character area between the built-up area of the village and the fields and equestrian land.
7. The barn and stables are in reasonably good condition and their form and construction reflect the semi-rural and transitional character of this area at the edge of the village. They complement the location of the site to the rear of the built-up area of the village and on the borders of the open fields and paddocks outside the village. The existing buildings are within the Settlement Boundary of the village but this does not alter the fundamental character of the site.
8. It is proposed to demolish the existing stables and outbuildings and to replace them with three dwellings, one of which would be a bungalow and two of which would be 'chalet' style bungalows. The proposed layout would be a cul-de-sac style arrangement, linked by a private drive to Totham Hill Green, and each proposed dwelling set in its own garden, with surface level parking. All of the proposed buildings would be within the Settlement Boundary, although the parking, garden and boundary treatment to the most southerly dwelling would be outside of the boundary.
9. The proposal is for the redevelopment of brownfield land. However, the construction of three dwellings within the site would result in a more urban appearance when compared with the existing situation and would domesticate the site. The proposed layout of the dwellings in a cul-de-sac formation and in relatively small plots would simultaneously spread development across the site to a greater degree than the existing buildings and provide a more intensive form of development compared to the existing situation. Therefore, despite the reduction in footprint when compared to the existing buildings, the proposed layout would result in a perceived increase in built form. The proposed boundary treatment of 2m high hedgerows would emphasise the uncharacteristic nature of the proposal when compared with the more open post and rail or wire mesh fencing of the existing site.
10. In addition, although the proposal would result in the cessation of existing storage and other equestrian related activities, such as horse boxes, these are not unusual in a semi-rural paddock and countryside setting and complement

the existing character and appearance of the site. I acknowledge that no buildings are proposed outside of the Settlement Boundary. However, the associated open space to the proposed dwellings would lead to the introduction of residential paraphernalia, such as car parking and garden tables. This would have a further domesticating and urbanising effect on the site, including in areas outside of the Settlement Boundary.

11. I have given consideration as to whether conditions could control the proposal so as to overcome the harm to the character and appearance of the area. However, even if permitted development rights for extensions and outbuildings were removed, this would not overcome the fundamental harm to the area caused by the proposal. Control of boundary treatments and landscaping through either conditions or reserved matters could not overcome the fundamental harm to the character and appearance of the site, because some form of landscaping and boundary treatment appropriate to residential development would still be required which would inevitably lead to urbanisation and domestication.
12. The proposal would therefore diminish the existing transitional semi-rural character of the site, both harming its relationship with the countryside beyond and with the housing of the village. Consequently, the proposal would harm the character and appearance of the site and is in an inappropriate location in the context of the character and appearance of the surrounding countryside. The proposal does not therefore comply with the relevant parts of Policies S1, D1 and H4 of the Maldon District Local Development Plan 2014-2029 Adopted 2017 (the LP), which, amongst other criteria, require development to respect and enhance the character and local context. The proposal also fails to comply with the relevant parts of Chapter 12 of the National Planning Policy Framework (the Framework) which, amongst other criteria, seeks high quality design.

Living conditions

13. Section C07 of the Malvern District Design Guide 2017 (the MDDG) sets the minimum size standard for the gardens of 3-bed dwellings at 100 sq m. Garden land is defined in the MDDG as the enclosed area within a dwelling curtilage from which the public is excluded. As proposed for Plot 3, this would be the rear garden and potentially also at least parts of the side and front gardens. There is dispute between the parties regarding the size of the garden, with the Council finding an area of 83 sq m and the appellant an area of 106 sq m. It is not clear how either party arrived at their area calculation and which land it included. I have not therefore been provided with conclusive proof that a sufficiently sized area of garden is proposed.
14. Plot 3 would have three main garden areas. The front garden would be difficult to enclose and create a fully private space, as would the front part of the side garden. There would be limited space to the rear garden and rear part of the side garden for true garden amenity areas after allowing for car parking, refuse stores, and boundary treatments. Therefore, irrespective of their size, I am not persuaded by the quality of the proposed private amenity spaces and how they would function.
15. The site is not close to any areas of public open space. Plot 3 is for a family-sized dwelling with three bedrooms. There are therefore no mitigatory factors that would justify allowing the provision of sub-standard private amenity spaces. Layout has been applied for in full and, given the relatively tightly

constrained site, I cannot be confident that a requirement for a sufficiently sized garden area could be achieved. This cannot therefore be secured by condition or at the reserved matters stage.

16. Therefore, the proposal would not provide adequate private amenity space to Plot 3 and would not thereby provide satisfactory living conditions for the future occupiers of that plot. Consequently, the proposal fails to comply with the relevant parts of Policy D1 of the LP which, amongst other criteria, seeks the provision of sufficient and useable private amenity space and that development should meet the standards set out in the MDDG. It also fails to comply with Paragraph 127 of the Framework which, amongst other criteria, requires a high standard of amenity for future users. Policy T2 of the LP and the Vehicle Parking Standards 2018 SPD are both referenced on the decision notice in relation to this reason for refusal. However, neither the policy nor the SPD contain guidance in relation to this issue and they are therefore not a relevant consideration.

Other Matters

17. Bean and Walnut Tree Cottages are two grade II listed houses located on Totham Hill Green. I observed on my site visit that they are set away from the appeal site, and there are intervening houses and/or vegetation. Given this, and subject to control of the detailed design as appropriate through future reserved matters and/or condition discharge submissions if the proposal were otherwise acceptable, the proposed development would preserve the setting of the listed buildings.
18. The appeal proposal follows a similar application for the site that was dismissed at appeal in 2018. The previous scheme was for 5 dwellings, with a different internal layout spread across more of the site and including some land outside of the current appeal site, and some built form outside of the Settlement Boundary. I have taken this into consideration as appropriate throughout my decision but the particular circumstances of the appeal scheme are materially different.

Planning Balance

19. The provision of three new dwellings would add to the Council's housing stock and would provide transitory economic benefits from construction of the proposal and long term economic benefits to local services when occupied. However, these benefits are limited because only three additional dwellings are proposed. The extinguishment of the existing use could possibly reduce noise and odour pollution and other disturbance to surrounding neighbours. However, this could be controlled, at least to a certain extent, through other legislation. This is also the existing situation and the only evidence provided of pollution is one complaint regarding odour from manure from 2016. I am not therefore persuaded that the existing use of the site is significantly harmful to the living conditions of neighbouring occupiers. I therefore place limited weight on this potential benefit.
20. Weighing against the proposal is the harm that I have identified to the character and appearance of the site and the wider area. Paragraph 124 of the Framework sets out that high quality buildings and places are fundamental to the aims of the planning process and I place significant weight on this harm. Also weighing against the proposal is the inadequate private amenity space

provision to Plot 3 and the resultant harm to the living conditions of future occupiers. I place moderate weight on this factor, particularly given that Plot 3 would be a family-sized dwelling. These harms therefore outweigh the limited beneficial aspects of the proposal.

Habitats

21. The site falls within the Zone of Influence of the Blackwater Estuary Special Protection Area (SPA) and Ramsar and the Dengie SPA and Ramsar, as defined in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038. Notwithstanding the UU and that the Council have withdrawn the relevant reason for refusal, had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority. However, the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an AA is only necessary where the competent authority is minded to approve planning permission, so I have not undertaken an AA in this instance.

Conclusion

22. For the reasons above, I conclude that the appeal be dismissed.

O S Woodward

INSPECTOR