



Appeal Decision

Site visit made on 3 August 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/X1545/C/19/3236798

1 & 2 Rosedale Cottages, Maldon Road, Tiptree, Essex

- 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 J Purdy against an enforcement notice issued by Maldon District Council.
 - The enforcement notice was issued on 5 August 2019.
 - The breach of planning control as alleged in the notice is the unauthorised erection of two dwellinghouses.
 - The requirements of the notice are:
 - a. Demolish the unauthorised dwellings on the Land.
 - b. Remove from the Land all materials, items, paraphernalia and debris or detritus associated with the unauthorised dwellings on the Land.
 - The period for compliance with the requirements is 4 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a)&(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of two dwellinghouses on land at 1 & 2 Rosedale Cottages, Maldon Road, Tiptree, Essex referred to in the notice, subject to the conditions in the schedule at the end of this Decision.

Preliminary Matters

2. Originally an appeal was brought on ground (d), but this was subsequently withdrawn. The appeal proceeds on grounds (a) and (f) only.

Reasons

Background

3. The development enforced against replaces a detached house which stood previously on the site. Planning permission was granted on 5 September 2013 under Council ref: 13/00576/FUL for the 'demolition of substandard 2 storey detached dwelling with subsidence issues and erection of No. 2 semi-detached dwellings' at the appeal site. The permission was granted subject to a number of pre-commencement conditions and the standard time limit condition requiring commencement of development within a period of 3 years.

4. The development has been built out and the dwellings occupied for a period in excess of 3 years. The housing appears to correspond with that previously granted permission in 2013, but without fulfilment of all the conditions.
5. The Council maintains that the development was commenced in breach of condition precedent and lapsed. Whilst the appellant protests (under ground (f)) that the Council had in September 2017 confirmed that an application could still be made to discharge the pre-commencement conditions, no appeal is brought on ground (c) to argue that the development benefits from planning permission. Indeed, the appellant says that three of the four conditions are not conditions precedent and in so doing appears to acknowledge that the fourth (requiring approval of external materials) is a condition precedent. Where there is a breach of a true condition precedent the development as a whole is unlawful and there is development without planning permission. It is not within the gift of the local planning authority in those circumstances to discharge the conditions and a fresh planning application is required. No retrospective planning application has been made in this case. The 2013 permission has now expired.

The appeal on ground (a) and the deemed planning application

Main Issues

6. The main issues are:
 - whether the appeal site represents a suitable location for housing, having particular regard to local and national policies, access to service and facilities and the effect on the character and appearance of the area;
 - the effect on living conditions of the residential occupiers with particular reference to noise and disturbance; and
 - the effect on highway safety.

Reasons

Suitability of the location for housing

7. The deemed application is for the development as built on the date the enforcement notice was issued. They are a pair of semi-detached houses.
8. The appeal site is located along Maldon Road being the main road between Maldon and Tiptree. It lies outside the settlement boundary as defined in the Council's development plan and is in the countryside for the purposes of planning policy. Although located within the parish of Great Braxted the nearest settlement is Great Totham.
9. This is not an allocated site for development, but a single detached house stood previously on the site which was demolished.
10. Pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004 new development must be determined in accordance with the development plan unless material considerations indicate otherwise.
11. The Council's Approved Local Development Plan 2014-2029 ('LDP') was adopted in July 2017. Outside the defined development boundary LDP Policy S8

provides that planning permission will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it was for one of the purposes listed. The list includes 'other development proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance.'

12. Having undertaken a full assessment, the Council submits that it is able to demonstrate a 5 year supply of specific deliverable sites against the district's housing requirements as set out in its 'Five Year Housing Land Supply Statement 2018/19' (dated November 2019). At the time of the Council's last decision it was unable to do so and the proposal was considered against the principles of sustainable development within the National Planning Policy Framework as then in force. As the Council recognises, this change in its position does not preclude the grant of planning permission for further residential development. What it does mean, is that the Council's development plan policies are not to be considered out-of-date by reason of its housing land supply position as provided within the updated National Planning Policy Framework ('the Framework').
13. The Framework emphasises that the purpose of the planning system is to contribute to the achievement of sustainable development which has three interdependent overarching objectives; economic, social and environmental. At the heart of the Framework is a presumption in favour of sustainable development which is reflected in LDP Policy S1.
14. The parties disagree on whether LDP Policy H4 is engaged which concerns replacement dwellings in rural areas. The Council argues the development is not a replacement dwelling because the dwelling which stood previously on the site had been demolished and the two dwellings erected in its place. It is not entirely evident why the Council considers that does not constitute a replacement dwelling. When the planning application was made in June 2013 it was for the demolition of the previous dwelling and erection of 2 semi-detached dwellings. The application indicated that no works had commenced. What has been built replaces what was there before albeit with two dwellings instead of one. Policy H4 is subject to certain criteria including matters of design, scale and setting which were found to be acceptable before and do not appear to have changed. It seems to me that this policy requirement is met, but I will go on to consider other relevant policies as raised by the Council.
15. The environmental objective, as set out in the Framework, aims to contribute to protecting and enhancing our natural, built and historic environment. This includes making effective use of land. Good design is a key aspect of sustainable development. Therefore, developments should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping and sympathetic to local character including the surrounding area.
16. This part of Maldon Road is predominantly rural in character with sporadic housing and ribbon development including where the appeal site is located. A builder's yard lies immediately next to the appeal site. Beyond the yard there is a farm shop selling various produce with a garden centre and coffee/gift shop to the rear. A detached dwelling lies to the south of the appeal site and there are other dwellings next to the farm shop.
17. When the Council resolved to grant planning permission for two semi-detached dwellings on the appeal site in 2013, the Officer's report acknowledged that the

site is located outside any defined settlement boundary but highlighted the materiality of the circumstances of the application, the individual circumstances and locality. The report stated:

'In this instance, the site is previously developed for residential purposes and the proposed use would not change, just simply increase. The site is adjacent to other residential properties and so the visual impact of development would not be significant in this instance. In addition, the site is adjacent to bus stops with regular services running seven days per week, and a farm shop with everyday essentials within only a few metres. On this basis, the proposal is considered acceptable in this instance and is therefore recommended for approval subject to conditions.'

18. The dwellings have been constructed of red brick with painted render and tiled roof. The Council accepts that it previously considered the development acceptable in terms of design and impact on the character and appearance of the area, subject to conditions addressing materials, boundary treatments and hard and soft landscaping. Whilst highlighting that the development comprises two semi-detached houses in an area of spacious detached properties, the Council accepts there is nothing new to alter its stance on this issue. Indeed, the dwellings have been designed to give the appearance of a large single dwelling. It is the implementation of the development without its approval to the details required by condition to which the Council points.
19. However, the Council does not identify any specific issues or harm arising from the materials actually used at the development to indicate that they would not have been approved had approval been sought as required by the previously imposed condition. It refers in the enforcement notice to poor materials without further elaboration. The Council states that not all the detailing shown on the 2013 plans were implemented but does not specify which details are missing or why that is a matter of concern. In the absence of any clearly identified harm, I am not satisfied that the development is harmful to the character and appearance of the area in terms of the materials utilised.
20. The Council expresses concern that the development has close boarded fencing and hardstanding without any soft landscaping. It has not explained why this is harmful in the given context although I accept that without any conditions imposed the layout could be altered and be highly detrimental to the character and appearance of the site and its surroundings. Such concerns are capable of being addressed by way of a planning condition.
21. Thus, there is no information before me to indicate that the development as built fails to meet local or national policy objectives for high quality design (including those within the Maldon District Design Guide 2017) or which could not be achieved through the implementation of suitable conditions.
22. There has been an effective use of land through the development of previously developed land¹. Not only that, the site was previously used for housing. These are important factors in assessing the environmental credentials of the appeal site. Indeed, a key principle within LDP Policy S1 is to promote the effective use of land and prioritise development on previously developed land.

¹ Defined within Annex 2: Glossary to the Framework as land which is or was occupied by a permanent structure, subject to certain exclusions.

23. The economic objective is concerned with ensuring that sufficient land of the right types is available in the right places and at the right times. The social objective seeks to ensure that a sufficient number and range of homes can be provided to meet the needs of present and future generations. There is no reason to suppose that the presence of housing on this site would pose a future threat to the neighbouring business given that the residential and commercial uses have co-existed alongside each other for many years.
24. The Council flags up that its housing stock currently provides an imbalance of large dwellings and its greater need is for one and two bedroom units. The development provides two 3 bedroom houses for which the Council's Strategic Housing Market Assessment still identifies a 40% need i.e. for those with 3+ bedrooms. In light of the Council's housing supply position, the delivery of housing through this development of two semi-detached houses would not be essential to meet housing delivery targets. Nevertheless, they still assist in meeting those targets and delivering a mix of housing, albeit to a very limited extent, in furtherance of economic and social objectives.
25. The environmental and social benefits are no different from when the previous scheme was approved in terms of access to local services. In fact, the appellant points out that following approval for the re-developed farm shop/garden centre/cafe and gift shop the appeal site is more sustainable than it was when the last permission was issued in 2013. The range of services available within easy walking distance remain limited given the absence of a footway to reach those found 1.6 miles away in Great Totham. However, bus stops are situated in close proximity (one is directly opposite the appeal site) with twice hourly services between Maldon and Colchester facilitate access to a wide range of services, including those in Tiptree, without reliance on the private car. This adds to the environmental and social benefits of the site.
26. To promote sustainable development in rural areas Paragraph 78 of the Framework provides that housing should be located where it will enhance or maintain the vitality of rural communities. The development provides a very limited contribution in this regard given its close proximity to the commercial uses and other dwellings. Furthermore, Paragraph 127e) of the Framework encourages development that optimises the potential of a site to accommodate and sustain an appropriate amount and mix of development and support local facilities and transport networks. Therefore, the provision of two dwellings where there previously stood one is part of achieving well-designed places.
27. When looked at in the round the development performs reasonably well against the three objectives of sustainable development.
28. The Council considers that there is a substantially and materially different planning landscape since 2013 given that it can now demonstrate a 5 year housing land supply and has a new approved Local Development Plan.
29. Even so, when assessed against the latest LDP and the Framework, the development does amount to sustainable development as described in the Framework and promoted in LDP Policy S1. There is no adverse impact upon the intrinsic character and beauty of the countryside in conflict with LDP Policy S8. I find no conflict with LDP Policy D1 which, amongst other things, requires high quality design including through the use of materials, layout and appropriate parking provision or Paragraphs 124 and 127 of the Framework which also promote good design. Nor is there conflict with LDP Policy D2 which

seeks to reduce the need to travel by encouraging sustainable transport modes or LDP Policy T2 which seeks to ensure development is appropriately linked to accessible services. In addition, I find no conflict with LDP Policy H2 which seeks a range of housing to reflect local housing need.

30. That being so, there is compliance with other development plan policies (including Policy H4) for the development to accord with LDP Policy S8 which controls development in the countryside.
31. Therefore, on the first main issue I find that the appeal site represents a suitable location for housing, having particular regard to local and national policies, access to service and facilities and the effect on the character and appearance of the area.

Living conditions

32. The appellant says the builders' yard located immediately adjacent to and behind the appeal site has operated in excess of 20 years and is primarily used for the static storage of reclaimed building materials. It is operated by the appellant.
33. The access to the yard extends beside the north-eastern boundary of the appeal site. Noise generated from activities within the yard and use of the access when materials are transported in and out, could be capable of causing disturbance to the residential occupiers. The use of a forklift truck is described by the appellant as occasional, but that may not always be the case.
34. Nevertheless, this was not identified as an issue at the time the Council approved the authorised scheme which might reasonably have been expected if it was a matter of real concern. Indeed, the Council appears to acknowledge that any issues could be addressed through planning conditions, including acoustic barriers, as imposed before.
35. On the second main issue I find that, subject to such conditions, there would not be an adverse effect on living conditions of the residential occupiers in terms of noise and disturbance contrary to LDP Policy D1 which, amongst other things, seeks to protect amenity against noise or Paragraph 127f) of the Framework which seeks a high standard of amenity for existing and future users.

Highway safety

36. The Council notes that sufficient off-road parking is provided with no loose material used to the front of the dwellings. It further notes that the frontage is block paved and slopes with surface water currently said to be discharged via an adjoining ditch. Its concerns arise from the absence of conditions to ensure the retention of the parking, type of surfacing or approval of details to ensure that surface water drainage is sufficient and maintained.
37. Those are legitimate concerns but these matters are capable of being addressed through the imposition of conditions retrospectively in order to fulfil LP Policies D1, T1 which aim to safeguard highway safety. Subjects to those conditions, I find no adverse effect on highway safety contrary to the aforementioned policies.

Conclusion on ground (a) and the deemed planning application

38. For the reasons given above, I conclude that the appeal on ground (a) and the application for deemed planning permission should succeed.

Conditions

39. The Council has suggested two conditions in this eventuality which I have considered in accordance with Paragraph 55 of the Framework and the national Planning Practice Guidance. The appellant disputes the need for the conditions.
40. The appellant argues that the previously approved plans contained no provision for landscaping as the frontage was to be hard surfaced to provide parking for four vehicles and there is no space for soft landscaping. However, the plans did show hedgerow along one front side boundary and a condition had required the submission of details for both hard and soft landscaping. I consider a condition is necessary to ensure a satisfactory appearance is maintained in this countryside location and to fulfil the policy requirements of LDP Policy S8. The same applies to boundary treatments.
41. The condition sought by the Council also requires the submission and approval of acoustic barriers to the northern and eastern boundaries. Despite what the appellant says there is a commercial use in the immediate vicinity with scope to cause disturbance to residential occupiers from noise. Even though there was previously a house on the site and the appellant operates the reclamation yard neither of these factors diminishes the need to ensure that living conditions of the residential occupiers is protected. There may not have been disturbance in the past, but that does not mean it will not occur in future. I consider a condition is necessary and appropriate.
42. The appellant notes that whilst the Council raised concerns over surface water drainage arising from the amount of hard surfacing, no condition in this regard was suggested. This must be an oversight rather than an acknowledgement that such a condition is not needed as the appellant suggests. There is a clear risk from surface water run-off onto the highway. Unless details of surface water drainage are submitted and approved there is no mechanism to ensure that an appropriate system remains in place and that highway safety is maintained. The appellant says a mechanism is already provided and so compliance with such a condition should not be onerous. I consider that a condition is necessary and reasonable to make the development acceptable.
43. The purpose of the conditions is to require the appellant to comply with a strict timetable for dealing with the submission and implementation of details following approval which need to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters because the development has already taken place.
44. The conditions will ensure that the development cannot remain if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the Council or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with the approved timetable.

45. The wording proposed by the Council requires adjustment for clarity and precision and to ensure that the details are retained as approved.

Overall Conclusion

46. The appeal succeeds on ground (a) and I shall grant planning permission for the development as described in the notice. In view of that decision, the enforcement notice shall be quashed and the ground (f) appeal does not need to be considered.

KR Seward

INSPECTOR

Schedule of 2 Conditions

- 1) The dwellings hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 9 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision details of a scheme for:
 - (a) the hard and soft landscaping to the front of the site whilst retaining at least two off road parking spaces for each dwelling and including the means to prevent the discharge of surface water from the development onto the highway; and
 - (b) the siting, height, design and materials of the treatment of all boundaries including appropriate acoustic barriers to the northern and eastern site boundaries,shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for implementation.
 - ii) If within 9 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved details shall have been carried out and completed in accordance with the approved timetable.
 - v) Upon implementation of the approved details specified in this condition, those details shall thereafter be retained as approved.
 - vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 2) The off road parking provision, as specified through condition 1, shall be retained in perpetuity for use as off road parking.

-END-