
Appeal Decision

Site visit made on 24 November 2020

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2020

Appeal Ref: APP/X1545/W/20/3245694

Glen Loy, Latchingdon Road, Cold Norton CM3 6HR

- 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 Ted Law against the decision of Maldon District Council.
 - The application Ref OUT/MAL/19/01013, dated 20 September 2019, was refused by notice dated 18 November 2019.
 - The development proposed is one detached dwelling and garage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was made in outline with all matters except access reserved for further approval.

Main Issues

3. The main issues are the effects of the proposal on:
 - the character and appearance of the area;
 - European designated nature conservation sites.

Reasons

Character and appearance

4. The appeal site forms part of the extensive grounds of the detached bungalow known as Glen Loy. The site falls outside of the settlement boundary for Cold Norton and is therefore defined as countryside for the purposes of Policy S8 of the Maldon District Local Development Plan 2017 (LDP).
 5. Whilst Glen Loy fronts onto Latchingdon Road, the appeal site has a frontage to and would be accessed from Burnham Avenue. This unmetalled cul de sac is lined by built development on its east side. The west side is largely formed by a tall and substantial hedge marking the boundary of Glen Loy, although a single detached property (Langleys) is located to the south.
 6. An earlier appeal decision for two dwellings at the appeal site (Appeal ref APP/X1545/W/18/3207877) drew a distinction between the differing characters of the east and west sides of Burnham Avenue. I agree that the east side comprises a discrete cluster of dwellings (albeit some of which have been relatively recently approved and constructed as identified in the appellant's
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statement). In contrast, the west side has a far less developed character. Whilst the appeal site falls within the grounds of Glen Loy, it is free of built development and sufficiently separated from the bungalow and its immediate curtilage to retain a distinct rural character. The looser pattern of development, with properties fronting Latchingdon Road, continues further west. Langleys is something of an anomaly with regard to this general pattern of development and does not provide a robust justification for the appeal proposal.

7. Although scale and layout are reserved for further approval, a Proposed Site Layout Plan has been submitted for illustrative purposes and shows the proposed dwelling located centrally within the site and set back from Burnham Avenue with a detached garage to the north. A new residential curtilage, with associated domestic paraphernalia, would be created. The appellant anticipates a 1½ storey chalet style building.
8. The Proposed Site Layout Plan indicates that the existing boundary hedge would be replaced with a narrower hedge. The Arboricultural Report submitted with the appeal (ref 150214-Proposed Development-21) also shows the existing boundary hedge (G21) removed, along with other trees within the site. The appellant's statement indicates that the existing boundary hedge would be retained except to provide access to the site. It also suggests that the hedge could be removed without notice. However, no reason for doing so has been proffered.
9. On the other hand, I share the earlier Inspector's concern that retention of the hedge so close to the front of the proposed dwelling would lead future occupiers to have the hedge removed or substantially reduced in height. Whilst of little arboricultural value, by virtue of its size and continuity, the hedge makes a positive contribution to the local distinctiveness of Burnham Avenue. Notwithstanding that the proposed dwelling would be set back from Burnham Avenue to a degree, removal or reduction of the hedge would expose the development to views from Burnham Avenue and part of Latchingdon Road.
10. I consider that the introduction of the proposed dwelling, garage and curtilage on the appeal site would be at odds with, and have an urbanising effect on, the prevailing looser, more rural, character of the west side of Burnham Avenue. Further that the loss or reduction of the existing boundary hedge would have a damaging effect on local distinctiveness.
11. The appellant argues that permitted development rights could be used to erect outbuildings within the curtilage of Glen Loy, although no firm evidence of any intention to do so has been provided. Moreover, as the Council's evidence indicates, there is a doubt as to whether the appeal site falls within the curtilage of Glen Loy and therefore benefits from permitted development rights. In addition, any such outbuildings would be unlikely to be of the scale of the proposed dwelling or have an independent access and site boundary. As such, their effect on the character and appearance of the area would be likely to be less damaging. Consequently, I give limited weight to this consideration.
12. I have no reason to doubt that the appearance, massing and form of the proposed dwelling could be designed to fit in with local distinctiveness. Nor that landscaping could be used to soften its appearance to a degree. However, this would not overcome my concerns regarding the scale and siting of the development and the effect on the boundary hedge.

13. Therefore, I find that the proposal would have a significantly harmful effect on the character and appearance of the area. Consequently, it would conflict with LDP Policy S8. This policy seeks to protect the intrinsic character and beauty of the countryside and restricts most forms of development in countryside locations. The appeal proposal does not fall within any of the specified exceptions.
14. The appellant considers that Policy S8 is inconsistent with the National Planning Policy Framework (the Framework) since it seeks to protect the countryside '*for its own sake*'. However, that phrase does not appear in the policy, whereas Framework paragraph 170b does require planning decisions to recognise the intrinsic character and beauty of the countryside. Whilst Framework paragraph 78 supports housing located where it would enhance or maintain rural communities, it also refers to development in villages. To my mind Policy S8 is not inconsistent with these aims. The Council has referred to other appeals¹ where this policy has been considered. Whilst the site specific circumstances in those cases are not applicable to this appeal, inconsistency between Policy S8 and the Framework was not found.
15. The appeal proposal would also conflict with LDP Policies S1, S2 and D1 insofar as those policies require development to achieve a high quality of design and enhance the rural character and local context in terms of its landscape setting and layout, among other things.
16. The first reason for refusal also cites LDP Policy H4 which deals with the effective use of land, including backland and infill development. It requires proposals to be considered having regard to local circumstances and the overall merit of the proposal. It also requires the development to make more effective use of significantly under-used land. Whilst the appeal site may not fall within the residential curtilage of Glen Loy, it contributes to the overall external space of the occupiers, is well maintained and visually attractive. As such, I consider that it is not significantly under-used. Given my finding on the harm to the character and appearance of the area, the proposal would not respond well to local circumstances and this consideration also detracts from its overall merit.
17. The appellant cites Framework paragraph 111 in connection with the use of brownfield land. However, this appears to be a reference to a superseded version of the Framework. Paragraph 117 of the current version, whilst encouraging the effective use of land also requires the environment to be safeguarded and enhanced. Paragraph 118 refers to brownfield land '*within settlements*' and, therefore, does not apply in this case. Consequently, the proposal would not comply with development plan or national policies for the effective use of land.

European Nature Conservation Sites

18. Natural England has produced interim advice which indicates that the whole of Maldon District falls within the Zone of Influence of four European Designated Sites. As required under the Habitat Regulations, the Council, as a competent authority, has undertaken an Appropriate Assessment (AA) which concludes that the proposal would have a likely significant effect on the sensitive features of interest of these sites due to its scale and location. Mitigation in the form of a financial contribution is, therefore, required. These matters are not

¹ Appeal refs APP/X1454/W/17/3186253 and APP/X1545/W/19/3224512

contested by the appellant. The appellant has submitted a unilateral undertaking (UU) to secure a financial contribution in accordance with the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS).

19. Nevertheless, the appellant considers that there is insufficient basis for seeking a contribution since the RAMS has not been adopted. However, the appellant does not dispute the conclusions of the AA and has not proposed an alternative form of mitigation. In the absence of the mitigation provided by the UU therefore, it would be necessary to find against the proposal on the basis of its likely significant effects on the sensitive features of interest of the European Sites. In those circumstances, the proposal would conflict with LDP Policies S1 and I1 which require development to conserve the natural environment and protect and provide for green infrastructure.
20. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 sets out the tests for a UU to constitute a reason for granting planning permission. In this case the undertaking is necessary and directly related to the development since it would mitigate the effects of the proposal on the European Sites. Whilst the RAMS has not been adopted, it is at an advanced stage in the process and there is no firm evidence to show that the financial contribution required in this case is not fairly and reasonably related in scale and kind to the development. I am satisfied that the submitted UU would secure the required contribution. Therefore, I have taken the UU into account and find that it would overcome the second reason for refusal.

Planning Balance and Conclusion

21. The proposal would make a very modest contribution to the supply of housing in the District. It, therefore, derives support from Framework paragraph 59, although that is tempered by the Council's ability to demonstrate a five year supply of housing land. The proposal would make a modest contribution to the local economy during the construction phase in the short term and through support to local services and facilities by future occupiers.
22. I recognise that the principle of residential development at the site is not disputed and that no harm in respect of access and highways, parking, contamination, drainage, or neighbour impact has been identified. The second reason for refusal would be overcome by the submitted UU. However, the absence of further harm does not amount to a positive benefit in favour of the proposal.
23. I have found that the proposal would cause significant harm to the character and appearance of the area and conflict with relevant development plan policies to which I attach full weight. The modest benefits of the proposal do not amount to material considerations that indicate that the appeal should be determined other than in accordance with the development plan. As such, the proposal does not benefit from the presumption in favour of sustainable development and the appeal should be dismissed.

Simon Warder

INSPECTOR