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# 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: 11 December 2020**

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**Appeal Ref: APP/X1545/W/20/3256293**

**95 The Street, Latchingdon CM3 6JS**

- 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 Hoe Mill Developments Ltd (Mr S Hawkins) against the decision of Maldon District Council.
  - The application Ref FUL/MAL/20/00241, dated 28 February 2020, was refused by notice dated 16 June 2020.
  - The development proposed is the demolition of an existing building and construction of two residential dwellings.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. The third reason for refusal of the application concerns the absence of a planning obligation to secure a financial contribution to mitigate the effect of the proposal on European designated nature conservation sites. During the course of the appeal, the appellant submitted a unilateral undertaking (UU) to secure the required financial contribution. The Council has confirmed that it is content with the UU and I am satisfied that it meets the requirements of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. As such, the third reason for refusal has been overcome and I have framed the main issues accordingly.

## Main Issues

3. The main issues are the effects of the proposal on:
  - the living conditions of future occupiers and the occupiers of the neighbouring dwellings at 9 and 10 Granary Close with particular regard to privacy;
  - highway and pedestrian safety with particular regard to the vehicular parking and turning facilities proposed.

## Reasons

### *Living conditions*

4. The appeal proposal is for a pair of semi-detached dwellings laid out in a staggered arrangement. The rear elevation of the eastern dwelling would be some 20m from the rear wall of the properties at 9 and 10 Granary Close. The
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rear wall of the western dwelling would be some 23m away. The rear walls of the proposed dwellings have first floor windows serving bedrooms. There are also windows at first floor level in the facing wall of 9 and 10. The appellant contends that these windows are obscure glazed. However, on my site visit I saw that is not the case for all of the windows.

5. Policy D1 of the Maldon District Local Development Plan 2017 (LDP) requires development to protect the amenity of surrounding areas taking into account matters including privacy and overlooking. Developments are also required to have regard to the Maldon District Design Guide Supplementary Planning Document 2017 (MDDG). This seeks a minimum separation distance of 25m where new development backs on to the rear gardens of existing housing. The appellant suggests that the 25m distance is overly cautious and that other local authorities use shorter distances. Nevertheless, the MDDG has been prepared following consultation to meet the requirements of Maldon District. Moreover, the separation distance for the eastern dwelling in particular falls significantly short of the minimum distance required by the MDDG.
6. The appellant argues that the eastern dwelling has been pulled back from the road frontage in order to avoid blocking a side window in the neighbouring property at No 97. Planning permission for that property was granted in 2012 and the appellant considers it was unusual to grant consent for a dwelling which relied on a neighbouring site to achieve adequate sun and day light. Further, that effective use of the appeal site should not be compromised because of the Council's earlier decision.
7. Planning decisions should be based on the best information available at the time and there is nothing to suggest that residential development of the appeal site was contemplated at the time permission for No 97 was granted. Therefore, whilst I recognise that having regard to the side window in No 97 constrains the development of the appeal site, the need to work within such limitations is not uncommon where new buildings are proposed in built up areas. This is reflected in LDP Policy H4 which, whilst requiring proposals to make effective use of land, also required the effect on the living conditions of nearby properties to be taken into account. Similarly, paragraph 117 of the National Planning Policy Framework (the Framework) promotes the effective use of land while also ensuring safe and healthy living conditions.
8. The appellant has referred to a number of examples in Latchingdon where residential developments have back to back distances of less than 20m, as well as a large residential development in Maldon (application ref: FUL/MAL/14/00581). However, all of these developments pre-date the adoption of the LDP and the MDDG. The MDDG makes reference to the Essex Design Guide which was in existence at the time the Maldon development was approved. However, I attach particular weight to the MDDG since it supports a development plan policy (Policy D1 of the LDP).
9. Given that the windows in question face each other directly, and that the proposal would introduce a new two storey building into an established residential setting, I consider that the separation distance for the eastern dwelling would not be sufficient to maintain the privacy of the occupiers of the neighbouring dwellings. It would also result in an inadequate level of privacy for future occupiers of the eastern dwelling. As such, the proposal would not provide satisfactory living conditions for the occupiers of the affected dwellings

and would conflict with LDP Policies D1 and H4 as well as the MDDG. It would also conflict with Framework paragraph 127 which requires proposals to achieve a high standard of amenity for existing and future users.

10. The appeal site currently accommodates a single storey building in commercial use. The first reason for refusal also alleges conflict with LDP Policy E1. Amongst other things this policy presumes against proposals leading to the loss of employment spaces unless the present use significantly harms the amenity of the area or the proposed use would have a greater benefit to the local community. There is no firm evidence that either of those stipulations apply in this case. Nevertheless, the principle of the replacement of the existing commercial use of the site with residential use has been established through the grant of prior approval (application ref: 19/01331/COUPA) to convert the existing building into a single residential dwelling. Consequently, I find that LDP Policy E1 weighs neither for nor against the appeal proposal.

#### *Highway and pedestrian safety*

11. The proposal includes two parking spaces for each dwelling with access from The Street. The appellant has produced tracking plots to demonstrate that a large car could manoeuvre into and out of the spaces in forward gear. However, in the case of the spaces for the eastern dwelling, this would require numerous forward and reverse movements within the site. In my view, it is unlikely that most drivers would routinely undertake such convoluted manoeuvres and would be much more likely to reverse into or out of the spaces.
12. As such, the level of manoeuvring would be likely to be typical of a residential development of this scale. Having regard to the existing commercial use of the site, which includes parking, and its proximity to The Street, I consider that these manoeuvres would not result in levels of noise and pollution which would harm the living conditions of future or neighbouring occupiers. Consequently, this aspect of the proposal would not conflict with LDP Policies D1 or H4 insofar as they seek to protect the living conditions of surrounding areas taking into account noise, and pollution.
13. The appellant argues that reversing into the spaces would not be unsafe. Reference has been made to an application (ref: FUL/MAL/11/00630) and appeal decisions (refs: APP/X1545/A/14/2224882 and APP/Z2505/W/16/3148531) where parking spaces accessed directly from the road have been allowed. My attention has also been drawn to other properties along The Street which have no space for vehicles to turn within the site and must reverse onto or off of the road.
14. Such manoeuvres, therefore, already take place along The Street and might reasonably be anticipated by drivers using the road. They have also been found to be acceptable elsewhere in the District. No evidence that they have led to highway safety problems has been provided and I note that the highway authority did not submit consultation responses to the application or appeal. If the highway authority had concerns regarding highway safety, it would be reasonable to expect it to have responded accordingly.
15. The site is located along a fairly straight section of the road where forward visibility is good. The Council argues that the presence of the zebra crossing and bus stop close to the site distinguishes it from the cases cited by the

appellant. It considers that these facilities would have a harmful effect on the visibility of vehicles entering and exiting the site and lead to conflict with pedestrians on the crossing. However, the appellant's tracking plots show that vehicles could enter and leave the site without conflicting with the crossing. Nor do I consider that the occasional presence of a bus at the nearby bus stop would hamper the visibility of drivers approaching the site.

16. Therefore, I find that the proposal would not have a harmful effect on highway and pedestrian safety and would not conflict with LDP Policy T2 to the extent that it seeks an accessible environment where there is capacity to accommodate the proposed development and to provide safe pedestrian routes.

#### *Other considerations*

17. I have had regard to the other concerns expressed locally, but they have not led me to a different overall conclusion.

#### **Planning Balance and Conclusion**

18. Taking into account the prior approval scheme, the proposal would provide a net addition of one dwelling to the supply of housing in the District. This amounts to a very modest contribution to the housing needs of the area. It, nevertheless, derives some support from Framework paragraph 59, although that is tempered by the Council's ability to demonstrate a five year supply of housing land. Moreover, notwithstanding that the policy objection to the loss of employment space has been overcome by the grant of prior approval, the loss would still be real and weighs against the proposal.
19. Whilst the proposal would create two fairly attractive new dwellings, they would be set behind parking spaces and there is no firm evidence to demonstrate that the existing development on the site is unduly unsightly. Therefore, I give little weight to any slight beneficial effect of the proposal on the character and appearance of the area.
20. The proposal would have harmful effects on the living conditions of future and neighbouring occupiers and, therefore, conflicts with relevant development plan policies and the Framework. Whilst I have found that the proposal would not have a harmful effect on highway and pedestrian safety, the absence of further harm does not amount to a positive benefit in its favour.
21. The very 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 identified conflict with the development plan means that the proposal does not benefit from the presumption in favour of sustainable development. The appeal should be dismissed.

*Simon Warder*

INSPECTOR