



## Appeal Decision

Site Visit made on 8 June 2021

**by Graham Wyatt (BA Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> July 2021**

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**Appeal Ref: APP/X1545/W/20/3265939**

**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 planning permission.
  - The appeal is made by Mr Law against the decision of Maldon District Council.
  - The application Ref FUL/MAL/20/00546, dated 3 June 2020, was refused by notice dated 11 August 2020.
  - The development proposed is described as a “full planning application for the subdivision of a single bungalow into two dwellings”.
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### Decision

1. The appeal is allowed and planning permission is granted for full planning application for the subdivision of a single bungalow into two dwellings at Glen Loy, Latchingdon Road, Cold Norton CM3 6HR in accordance with the terms of the application, Ref FUL/MAL/20/00546, dated 3 June 2020, subject to the following conditions:
  - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Plan and plans with Prefix LAW1633 20065: PL-002 Rev A, PL-001 Rev B, PL-010 Rev B, PL-011 Rev A, PL-012 Rev A, PL-030 Rev B, PL-100 Rev B, PL-101 Rev B, PL-102 Rev B, PL-300 Rev B and PL-003 Rev A.
  - 3) The materials used in the construction of the development hereby approved shall be as set out within the application form/plans hereby approved.

### Application for costs

2. An application for costs was made by Mr Edward Law against Maldon District Council. This application is the subject of a separate Decision.

### Main Issues

3. The main issues in this appeal are:
  - the effect of the development on the character and appearance of the area,
  - whether the appeal site is an appropriate location for the development having regard to the development plan and
  - the effect of the development on European Designated sites.

## Reasons

### *Character and Appearance*

4. The appeal site lies within an area that is generally rural in character and contains a variety of size and style of property. The proposal seeks to sever the existing detached bungalow to create two detached bungalows, with each property provided with its own private garden area. The Council acknowledge that the small amount of development required to separate the building, and the new access, would not cause harm to the character and appearance of the area. I find no reason to disagree with that assessment.
5. The existing appeal site is larger than the majority of properties in the vicinity with a greater expanse of curtilage that extends to the rear and side of the property. Although the development would create two detached dwellings, I am not persuaded that this would result in harm to the character of the area, which itself is comprised mainly of detached properties within generous garden areas, and which the proposal seeks to replicate.
6. Moreover, the resultant garden areas would be provided on the land that already contains various items of domestic paraphernalia such as parking, garaging, garden furniture, decked areas, ornamental planting, bird feeders, washing lines and external lighting. In this instance, given the existing character of the curtilage, the creation of two smaller dwellings through the subdivision of an existing single dwelling is unlikely to alter the character of the area to a significant degree.
7. Thus, the proposal would not result in harm to the character and appearance of the area. It would not be in conflict with Policies S1, D1 and H4 of the Maldon District Council Local Development Plan 2017 (the Local Plan) and paragraph 127 of the National Planning Policy Framework (the Framework) which seek, amongst other things, to ensure that a development has regard to the existing character and density of the surrounding area. In reaching this decision I have also had regard to the Maldon District Council Design Guide Supplementary Planning Document 2017.

### *Location*

8. The appeal site lies beyond the settlement boundary of Cold Norton and is therefore defined as being within the countryside. Policy S8 of the Local Plan states that outside of defined settlements, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and it is for those developments as listed at a) – m). The proposal seeks to subdivide the existing bungalow to create two dwellings, which is not one of the developments supported by Policy S8 of the Local Plan.
9. The village of Cold Norton provides a number of facilities such as a primary school, a church, a sports field and an allotment which would cater for the limited day to day needs of occupiers of the proposed dwellings. There is a footpath that connects the site to Cold Norton which is not fully illuminated and could deter some walkers from using it, especially during bad weather and the winter months, or those with low mobility or with small children. Nonetheless, the pavement provides a safe and convenient route for those walkers that wish

to access the limited services that the village offers. Furthermore, cycling to Cold Norton would also be possible.

10. Access to public transport is also available with bus stops within walking distance of the site. However, whether would walk from the nearest bus stop laden with shopping or with small children is uncertain. Moreover, bus services are limited and from the information that has been provided, they do not run into the evening and there is nothing before me to confirm that services run at weekends, thereby limiting their appeal. A convenience store also lies some 175m to the west of the site which, although small, offers a range of products to assist occupiers of the dwellings in their day to day living arrangements. However, the lack of facilities such as medical services and larger stores means that it is highly likely that future occupiers of the proposed dwelling would travel further afield to access such amenities and given the limited bus services and facilities that are available close by, this is likely to be by private car.
11. Although a previous Inspector<sup>1</sup> found that the appeal site was suitable because of its accessibility to everyday local services, I am not aware of the evidence that was considered as part of that appeal and the decision letter does not record the “*many services*” that are available within the village nor does it discuss the frequency of the bus services.
12. Nevertheless, the site forms part of a cluster of dwellings that are within walking distance of the settlement of Cold Norton and, for the purposes of paragraph 79 of the Framework, the appeal site is not isolated from it. Thus, I find that the appeal site is not within an isolated location and, on balance, is one that has opportunities to maximise sustainable transport solutions such as walking, cycling and public transport.
13. Consequently, it would not be in conflict with those specific elements of Policies S1, T2 and H4 of the Local Plan which seek, amongst other things, to ensure that developments minimise the need to travel and where it is necessary, prioritise sustainable modes of transport and provide safe walking and cycling routes to nearby services and public transport where appropriate. Nonetheless, the development would be in conflict with Policy S8 of the Local Plan, the specific requirements of which are specified above.

### *Essex Coast*

14. The site falls within the 13 kilometre ‘Zone of Influence’ for one or more of the European designated sites which are scoped into the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which are used for public recreation. There is no dispute between the parties that it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have likely significant effects on the qualifying features of the designated sites due to the increased recreational use.
15. After carefully reviewing the evidence, it is incumbent upon me to undertake an Appropriate Assessment. As part of this process, I may consider any conditions or other restrictions which could secure mitigation of this harm, and which would therefore allow development to proceed in the knowledge that the conservation objectives of this site would not be compromised. The Council has indicated that there is an agreed strategic solution to mitigate the effects of the

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<sup>1</sup> APP/X1545/W/18/3207887

proposal, in the form of the RAMS. This strategy requires financial contributions from developments and allocates detailed and costed infrastructure and non-infrastructure projects to proposals dependent on their scale and location. Moreover, the development falls below the threshold for bespoke advice from Natural England.

16. Mitigation can be delivered via the unilateral undertaking (UU) submitted by the appellant during the appeal and pursuant to section 106 of the Town and Country Planning Act 1990 which addresses the financial contributions. Therefore, the completed undertaking would serve to mitigate the impacts arising from the proposal. On this basis, I am able to conclude that the required mitigation would be properly secured and that the development would not have an adverse effect on the identified designated sites, either alone or in combination with other projects. The contributions would be necessary to make the proposal acceptable in planning terms and would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. Therefore, taking the UU into account, it would overcome the third reason for refusal.

### **Planning Balance**

17. The proposal would conflict with Policy S8 of the Local Plan which carries a significant amount of weight. However, the Council is unable to demonstrate a five year supply of deliverable housing sites. The presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework is therefore engaged and provides that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
18. I have found that the proposal would not harm the character and appearance of the area as a result of the additional dwelling and that it is within a location that has access to services, amenities and transport links. I acknowledge that the extent of the benefit towards local housing would be limited by the small amount of development, but I nevertheless give this moderate weight in light of the housing under-supply position. There would also be social and economic benefits associated with construction and occupation of the dwelling, albeit these would also be limited given the modest scale of the development.
19. In the context of paragraph 11(d) of the Framework, I find that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development therefore applies and is a material consideration that weighs in favour of the proposal. While the development would not fully accord with Policy S8 of the Local Plan, I find that there are thus material considerations which indicate that the appeal should be allowed, notwithstanding the conflict with the development plan.

### **Conditions**

20. The Council has suggested a number of conditions that I have considered in accordance with the Framework and the national Planning Practice Guidance (PPG). Along with the standard time condition, the approved plans should be specified to provide certainty. In the interest of the visual amenities of the area, the materials to be used for the development must be those as specified on the approved plans and application forms.

21. Given the nature of the site and that it already contains a large dwelling with landscaped gardens, I do not find that condition 4 requiring the submission of a landscaping scheme, and condition 5 requiring foul drainage details necessary. Condition 6 seeks to remove permitted development rights for alterations to the roof. However, the PPG<sup>2</sup> makes it clear that the removal of such rights are unlikely to pass the test of necessity. Thus, I am not persuaded that this particular condition is necessary either.
22. There is no evidence before me that sufficient space within the site for the loading and unloading of vehicles cannot be provided. Thus, I also find that condition 7 is unnecessary. The grant of planning permission does not authorise any obstruction to, or interference with, a public right of way. Therefore, condition 8 suggested by the Council would be unreasonable.

### **Conclusion**

23. For the reasons given above, the appeal is allowed.

*Graham Wyatt*

**INSPECTOR**

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<sup>2</sup> Paragraph: 017 Reference ID: 017-20190723 Revision date: 23 07 2019