
Appeal Decision

Site visit made on 13 July 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal Ref: APP/X1545/W/20/3263727

Faggots, Mountains Road, Great Totham, Maldon, CM9 8BY

- 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 and Mrs S and C King against the decision of Maldon District Council.
 - The application Ref. OUT/MAL/20/00797 dated 4 August 2020, was refused by notice dated 20 October 2020.
 - The development proposed is the erection of a dwelling within the garden of Faggots with shared access onto Mountains Road.
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Decision

1. The appeal is dismissed

Preliminary matters

2. The application is in outline, with appearance, landscaping and scale being matters reserved for later consideration.
3. The council has confirmed that a payment of £125.58 was received on 29 January 2021 as the necessary financial contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, and therefore the second reason for refusal falls away.

Main Issue

4. The main issue in this case is the suitability of the appeal site for a dwelling taking into account the countryside location outside of a settlement boundary, and the 'tilted balance' of paragraph 11 of the National Planning Policy Framework (the Framework)¹.

Reasons

5. The principal development plan policies, which are the starting point for this appeal, are S1 and S8 of the Maldon District Local Development Plan (LDP). Policy S1 carries the presumption in favour of sustainable development, in line with the Framework. This policy covers a range of matters, the most relevant in this case being: "2) *Deliver a sustainable level of housing growth that will*

¹ The appeal documents were written before the recent revision to the Framework which was published on 27 March 2021. The only difference between the 2019 version and the current version, as far as the contents are concerned of the 2 versions that are relevant in this appeal, is a change of paragraph and footnote numbers. Paragraph 11 remains No 11, and the text remains the same. For this reason I have not gone back to the parties for comment on the current version.

meet local needs and deliver a wide choice of high quality homes in the most sustainable locations; and 6) Create sustainable communities by retaining and delivering local services and facilities;”.

6. Policy S8: ‘Settlement Boundaries and the Countryside’ sets out the hierarchy of settlements and provides clarification in terms of the types of development that may be more suitably located in the countryside with reference to other relevant policies within the LDP. The main thrust of this policy, as far as development outside of settlement boundaries is concerned, is to protect the countryside for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. Outside of the defined settlements and allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted. There is a list of acceptable development types that may be permitted, given in this policy, but none are relevant here.
7. Policies D1 and H4 are also mentioned in the refusal reason. Policy D1 is about achieving good design, but as the application is in outline with appearance and landscaping reserved for later consideration, this policy and the references in the appellants’ case to design issues are not relevant. Policy H4 is about using land effectively, which it seems to me would only come into consideration once the proposed development is found to be satisfactory in principle. Clearly any proposal for a dwelling on garden land could be described as using land more effectively, but is hardly an argument that is persuasive in itself.
8. The appeal site is the eastern part of the garden of ‘Faggots’ which fronts onto Mountains Road. In the immediate vicinity there are 2 other dwellings, Little Mountains and Mountains Cottage, which together occupy about 200m of road frontage. At the western end of this group is a range of farm buildings comprising old barns and modern agricultural buildings. The general area within which the appeal site sits is of open agricultural countryside within which there are a number of small settlements. Of these, Great Totham North to the east of the site and Great Totham South, to the south-west, and Wickham Bishops beyond, have settlement boundaries. Further west still is the town of Witham, about 4.5 miles away by road.
9. Having regard to this description of the area surrounding the appeal site, I consider that it is not in a sustainable location: the occupants of the proposed dwelling would almost certainly rely on private vehicles for most everyday needs. In addition, the very rural character of the area is typical of what the LDP policies are designed to protect. The Framework at paragraph 78² supports rural housing where it will enhance or maintain the vitality of rural communities; its thrust is about development in villages. A single dwelling is unlikely to have any material effect on the vitality of the small settlements that I have mentioned, and the occupants are likely to be mainly drawn to Witham or other larger settlements beyond for shopping, recreation, health and education, etc. The fact that the compasses public house, a florist and a bus stop, are some 300m from the site, does not cause me to reconsider this judgement.
10. In support of the appeal the appellant refers to other paragraphs of the Framework, but I do not accept the interpretation that has been placed on

² See footnote 1 in paragraph 4. Paragraph 78 mentioned above has become paragraph 79. The text remains the same.

- them. Paragraph 84³ is about a prosperous rural economy and meeting the needs of local business and community needs, not about meeting housing needs. The use of previously developed land is also referred to in this paragraph, the definition of which I accept is met by the site, but again the paragraph refers to business and community needs, and also refers to sites physically well-related to existing settlements, which I have already judged not to be the case here. In addition, reference is made to section 15 of the Framework, which is about conserving and enhancing the natural environment, and does not appear to me to be supportive of the appeal proposal.
11. It is also suggested, with regard to LDP policy S2, that the appeal site is part of the village, which I cannot accept; nor do I accept that policy H4, that relates to infill and backland, is relevant, since the site is not backland and cannot reasonably be referred to as infill development. I note that other cases (application OUT/MAL/16/01490/appeal reference 3216494, and application 20/00678/FUL) are referred to, but the former was clearly in very close proximity to a substantial amount of existing housing development, whilst the latter was within a location with a greater number of dwellings than the appeal site, and the proposal involved replacement of barns with a lawful storage use. Appeal reference 3252706 at Cock Clarks is also referred to, but the context is not clear to me and the nature of the development was materially different. I do not find these examples comparable or persuasive in relation to the current proposal.
 12. At the time that the appeal application was refused the council had undertaken a full assessment of the 5-Year Housing Land Supply in the district and it concluded that such supply was demonstrated. However, since then the supply has fallen. The council says the latest figure is 4.9 years.
 13. A housing land supply figure of under 5-years brings the 'tilted balance' set out in the presumption in favour of sustainable development at Framework paragraph 11, which for decision making means (at d) *"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date"*⁸, (my emphasis) *granting permission unless:*
 - i. not applicable here; or
 - ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*". (Footnote 8 refers to the 5 year land supply.)⁴
 14. A housing land supply of 4.9 years is obviously close to a 5 year supply, but the meaning of Framework paragraph 11 d) and footnote 8 is clear, where a 5 year supply of deliverable housing sites cannot be demonstrated, planning permission should be granted, subject to the provisos item ii. Of the policies that I have mentioned above, it is only policy S8 that I consider comes within the bounds of the tilted balance. Therefore planning permission should be given unless the benefits are outweighed by any adverse impacts.
 15. Beginning with the benefits of the appeal proposal, it would produce a single dwelling. The application does not specify the number of bedrooms that the dwelling would provide, but it might well be a 2-bedroom unit (and the council

³ Now paragraph 85.

⁴ Here I quote from the revised version of the Framework that was published 20 July 2021. The footnote has been renumbered, but apart from this renumbering, paragraph 11 is unchanged from the 2019 version.

suggests that, if the appeal were allowed, it could be conditioned to that number), in which case it would meet the need identified in the Strategic Housing Market Assessment for a higher proportion of 1 and 2 bedroom units. It would bring a small short term economic benefit during the construction phase. There could be a small benefit to the businesses in Great Totham North and South, but due to the location, as I have already stated, I consider that its occupiers would very largely rely of private motor vehicles to travel elsewhere for most everyday needs. In respect of these villages there could be a small social benefit, but these benefits would be at the environmental cost of the use mainly of motorised transport that I have already mentioned. Furthermore, the proposal would not meet the aim of policy S8 to protect the countryside for its landscape, natural resources and ecological value as well as its intrinsic character and beauty.

Overall conclusion

16. Bearing these considerations in mind, the shortfall in the 5-year housing land supply is minimal, as is 1 extra dwelling. I therefore afford limited weight to the 'tilted balance' of paragraph 11 of the Framework in this case. I conclude that the fact that the appeal site is not a sustainable location, with the occupiers of the dwelling likely to rely on motor vehicles for most everyday needs, means that the appeal site is not a suitable location for a dwelling, taking into account the countryside location of the site outside of a settlement boundary and the conflict with LDP policy S8. For these reasons, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Therefore I will dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR