



Appeal Decision

Site Visit made on 14 June 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2021

Appeal Ref: APP/X1545/W/20/3261799

Mayflower Nursery, Mill Road, Mayland, CM3 6EQ

- 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 Ewan Cresswell (Mayflower Development and Estates Ltd) against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00054, dated 21 February 2020, was refused by notice dated 22 May 2020.
 - The development proposed is described as 'the development of 19 homes, landscaping, revised vehicular access, sustainable drainage and amenity space on the site at the former Dengie Garden Centre including the change of use from Sui Generis to dwellinghouses. The development includes the removal of the buildings and greenhouse structures and the development of high quality sustainable housing comprising of 8 affordable homes and 11 houses for private ownership'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (Framework) was published on 20 July 2021. The main parties were given an opportunity to comment on the implications of any changes they considered to be relevant to this case. No comments were received. I have taken the Framework into account in my decision.
3. During the appeal the appellant submitted an executed legal agreement. It relates to affordable housing and to designated European habitat sites. The Council has confirmed that it addresses its reasons for refusal 3 and 4 which are withdrawn. I deal with these considerations in 'other matters' below.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - whether the site is a suitable location for the proposed housing development having regard to local and national planning policy for the provision of housing.

Reasons

Character and appearance

5. The appeal site was established by 1920 as one of a number of small 'micro' farms arranged in regimented rectangular parcels of land on 5 acre plots in

Mill Road. It evolved into a plant nursery, then a garden centre, though subsequently declined and closed in 2011. Despite marketing for commercial use, it has been vacant since. It was covered by more structures in the past, including at the front and rear of the site, but many of these no longer exist and the site is now largely derelict or overgrown. The remaining two large buildings and some single storey glasshouses are centrally placed in a narrow belt across the width of the site next to hardstandings.

6. Mill Road is a long, straight private rural lane that ends in a cul-de-sac. Over its length it contains about 20 dwellings and some other buildings and uses of land which appeared to be commercial, agricultural or equestrian in nature, including some disused or in a state of disrepair. In places, some of the plots and buildings extend to the east and west in-depth, though the prevailing discernible pattern of development running along the road north-south, particularly the dwellings, is two intermittent and alternating parallel frontages. The gaps between give a looser knit grain to this built form and allow views of fields either side, behind hedgerows that line the road with some trees.
7. While some roads and dwellings in Mayland reflect individual elements or features of the Mill Road streetscene, Mayland has an appreciably more suburban form and pattern of residential development. The nearest proposed house would be about 200m from the closest nub of dwellings in Mayland to the south, along Steeple Road. These dwellings would not therefore be viewed in any meaningful mutual context. Moreover, the edge of the main built-up area of Mayland is significantly more distant, about 500m to the west of the site on the far side of a wide swathe of fields, rows of hedgerows and belts of trees. It is as a result visually, physically and functionally discrete from the site. Despite its present unkempt appearance, the site is demonstrably part of the more sporadic layout of development along Mill Road in its countryside setting. It is therefore distinctly separate from Mayland and rural, rather than urban, in nature.
8. The development would be laid out as a tree lined cul-de-sac and a loop around a central area of green space, with a series of detached and semi-detached dwellings in modest sized plots and parking between, set to the rear, within landscaped boundaries. However, although one dwelling would face Mill Road, the others would be sited perpendicular to it and extend appreciably in-depth on the site, into the more open part at the rear and towards the mainly undeveloped countryside to the east. This pattern of development would be out of keeping with the footprint of the existing buildings and glasshouses on the site and also at odds with the more limited, frontage arrangement of development along Mill Road, especially the dwellings.
9. Furthermore, the proposal would approximately double the number of dwellings in Mill Road, concentrated within the confines of the site. Such an accumulation of residential development would be without precedent in Mill Road. Moreover, the number of dwellings and gardens proposed would comprehensively sub-divide most of this single parcel of land and cause a substantial domestication of the site. This wholesale change would fundamentally unacceptably alter and unduly erode the integrity of the historic original plot layout and relationship to its landscape setting.
10. The proposed dwellings would be smaller in scale and massing than the main buildings on the site and similar in this regard to nearby dwellings in Mill Road.

Their contemporary design and appearance would be a contrast to most of these dwellings, though it would create a distinct homogenous identity to the development. However, most of the proposed dwellings would be 2-storey and so appreciably taller than the glasshouses, as would be all of the dwellings in relation to the hardstandings, and largely opaque in construction. Combined with greater dispersal across the site, the dwellings would as a result have a significantly increased three dimensional presence. The development would not, therefore, be counterbalanced by the removal of the more grouped arrangement of main buildings, glasshouses or hardstandings, even if there would be a quantitative reduction in the overall volume, floor area or footprint of built form on the site.

11. The proposed trees along one side of the internal loop road would be behind a pedestrian footway and close to the houses, which would not be set-back in depth from the road and leave little room for large trees to become established or generate any meaningful enclosure. Despite some larger trees in the central open space the proposed layout would not therefore achieve either of the two boulevard variations described and illustrated in the excerpts of the Essex Design Guide that I have been referred to. Nor would these smaller trees contribute meaningfully to a 'landscape dominated layout' or 'streetscene'.
12. Despite the existing and proposed landscape setting and low density, this development would therefore nonetheless be distinctly sub-urban in form. Moreover, it would be inserted between adjoining development to the north and south that appears is, or was, mainly used for agricultural purposes including glasshouses, and even if in other uses now, it is not in residential use.
13. The site is well screened by hedgerow and trees along most of both side boundaries. However, the width of the entrance into the site would be such that it would be evident (from the dwellings either side of the central open space) that a suburban residential estate of some substance and extent, jutting out in depth away from Mill Road, had been established in this rural area and that it did not integrate effectively with the prevailing pattern of development in Mayland or in Mill Road. This marked change would be reinforced by the proposed upgrade of a significant length of Mill Road to a minor access road which, albeit a shared surface, would take on a more urban rather than rural appearance.
14. Notwithstanding the low density of development and landscaping proposed, the unduly urbanising effect of the proposal would (despite their condition) be in contrast to the generally less conspicuous or congruous presence of the existing buildings and glasshouses on the site. This would be apparent to residents and other users of Mill Road and the road upgrade would be noticed in public views by users of Steeple Road.
15. Some of the proposed dwellings, including the largest towards the rear of the site and those on artificially raised land levels, would detract visually in more distant views from elevated land to the east and southeast — from two lay-bys at corners along Maldon Road and from parts of public footpaths No1 and No2. The landscaping proposed at site level, particularly along its rear edge, would not therefore mitigate such impact. Notwithstanding this, the absence of greater public visibility would not alleviate the negative effect of the proposal on the inherent character and appearance of the site and the countryside, which would take place irrespective of the proposed landscaping.

16. While the local landscape has a 'moderate' sensitivity to change, the development would nonetheless not maintain the open, undulating countryside or the appearance of the landscape and its rural and historic character or the scattered nature of development. It would not make a positive contribution to local character or settlement pattern, would not be well integrated into the surrounding landscape or conserve the mostly rural character of the immediate area. It would not therefore accord with findings and objectives of the relevant landscape character area assessments to which I have been referred.
17. The main parties disagree on whether an outline planning permission for a 60-bed nursing home remains extant¹. There is therefore doubt that it would or could be built on land next to part of the south boundary of the appeal site. Nonetheless, I note that this low level, single storey building would not extend significantly into the countryside setting to the east of Mill Road and would appear to be sited largely in the position of former glasshouses. Even if it were to be built and change the nature of development at the bottom end of Mill Road and along part of Steeple Road, it would not therefore have the same impact on the character and appearance of the area as would the current appeal proposal.
18. Moreover, I note that while the Council agreed the nursing home would be outside the defined settlement boundary for Mayland, it would be adjacent to it (unlike the appeal proposal); and, at the time, it had no development plan policies for nursing homes but does now. In addition, the Council considered there was a need for a nursing home which was unlikely to be met on a suitable site within a settlement. These factors appear to have been material to the Council's decision in that case and can be distinguished from this appeal, which I have determined on its individual planning merits.
19. Considering the above, I find that the proposal would cause harm to the character and appearance of the area. Consequently, it would be contrary to Policies S1, S2, S8 and D1 of the Maldon District Local Development Plan 2017 (LDP) and the equivalent parts of the Maldon District Design Guide Supplementary Planning Document 2017. These policies include that development should respect the local context and environmental constraints, protect the natural environment including its landscape, and avoid adverse impact on the intrinsic character and beauty of the countryside. It would also conflict with the Framework which contains policies to conserve and enhance the natural environment and the intrinsic character and beauty of the countryside.

Suitable location

20. LDP Policy S1 seeks to deliver housing growth in the most sustainable locations in the District and also aims to maintain the rural character of the District. According to Policy S2 the main settlements of Maldon, Heybridge and Burnham-on-Crouch are the focus for housing growth. A proportion of new development will be directed to rural villages to support rural housing needs, local services and facilities and the rural economy and strategic growth in rural villages will be related to the settlement hierarchy. This includes development within the defined settlement boundaries of the second tier 'Larger' villages, such as Mayland, as is confirmed by LDP Policy S8. This approach is consistent

¹ OUT/MAL/12/00452.

with aims of the Framework to balance meeting housing needs with protecting the countryside.

21. However, for the purposes of the Council's adopted development plan, the site is beyond the defined settlement boundary of Mayland. It is therefore in the countryside for planning policy purposes. Accordingly, the proposal would not be within Mayland under LDP Policy S8. Furthermore, although Mayland is a second tier settlement the site is not allocated for housing development as an extension to the village, including for strategic growth or as a Garden Suburb. In addition, while the proposal includes affordable housing it would not be for, or on, a rural exceptions site and the proposal would not fall into any of the other exceptions identified in LDP Policy S8 for development in the countryside.
22. The site is near some houses and other buildings in Mill Road and it may be perceived to be part of Mayland as some local people might recognise or understand the extent of the village. Despite most likely travelling mainly by car (due to the distance and time required) the occupiers of the proposed houses would help to enhance or maintain local services and facilities in Mayland and support the vitality of this rural community. The proposed upgrade to part of Mill Road would also improve access for existing and future residents to nearby bus stops in Steeple Road and travel to other destinations. It would also benefit other users of Mill Road.
23. However, the sporadic development in Mill Road has greater visual, physical and functional affinity as part of the countryside either side of this road, rather than as any part of Mayland. The main part of the site is not adjacent to the defined settlement boundary or to the built-up edge of the village. Moreover, the limited number of houses, residents and range of other uses in Mill Road does not form a tangible or meaningful community in its own right. Whilst Mill Road is largely agricultural and arcadian in nature and appearance, it is not, therefore, a separate settlement in any reasonable meaning of this word.
24. Consequently, whilst the proposed housing would be low density and not merge with Mayland, it would not have any apparent transitional purpose or function as a link at any interface between the edge of Mayland and the countryside. It would instead function as a separate, insular enclave of housing that would not integrate successfully with the existing urban area or with the countryside. Furthermore, while the proposal would otherwise make effective use of available, under-utilised land and buildings, the site is not within a settlement. Accordingly, the Framework confirms that this previously developed brownfield land is not suitable for the proposed housing development.
25. Indeed, it would also be inappropriate to categorise the entire site or the development as 'backland' or 'infill' in nature in the usual meaning of these terms for planning purposes. Moreover, even if, for the purposes of LDP Policy H4, it was backland or infill development the proposal would nonetheless result in an unacceptable loss of visible features at the site, such as areas of undeveloped openness, which contribute to the aesthetic appeal of the local landscape and are of significance to the natural environment.
26. Considering the above, I find that the proposal would be contrary to LDP Policies S1, S8 and H4 and would unduly undermine the Council's adopted spatial strategy. It would also conflict with objectives of the Framework with regard to the identification of land for homes and housing development in the countryside. Consequently, the site is not a suitable location for the proposed

housing development having regard to local and national planning policy for the provision of housing.

Other Matters

Affordable Housing

27. By virtue of the legal agreement, 8 of the proposed dwellings would be provided as affordable housing on-site, with a specified tenure mix and each with at least 2-bedrooms. The Council has given a written justification for these requirements which would comply with LDP Policies H1 and I1². There is a significant shortage in the availability of affordable housing in the District and this would be an appreciable benefit of the proposal. The legal agreement would therefore be necessary, related directly to the development and fairly related in scale and kind and, as such, accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the Framework tests for planning obligations.

European designated habitat sites

28. The appeal site is within a zone of influence of the Essex Estuaries Special Area of Conservation, the Blackwater Estuary Special Protection Area (SPA) and Ramsar, The Dengie SPA and Ramsar and the Crouch and Roach Estuaries SPA and Ramsar. A significant effect on these European designated habitat sites would be likely to occur from the proposed increase in residential development alone, or in combination with other plans and projects, in an area where the additional residents would be within such proximity to these habitat sites that they would be likely to visit for recreational purposes.

29. The Council has carried out a Habitat Regulations appropriate assessment and has adopted the 'Essex Coast Recreational disturbance Avoidance and Mitigation Strategy' to address this matter. In this case, mitigation measures have been identified and the appellant has agreed to the legal agreement which would secure a financial contribution towards their implementation. The Council agrees that on this basis the proposal would not adversely affect the integrity of these habitat sites. I have had regard to the Council's approach and to the legal agreement in reaching my conclusion below.

Other development

30. I do not have full details of the other proposals in Mill Road that I have been referred to. The Council has granted permission for the extension or alteration of some individual dwellings in Mill Road³. I note that these sites and this development is not therefore comparable to the location, size, scale, nature and extent of the appeal site or the appeal proposal. I also note that the excerpts of relevant Council officer reports provided do not find that 'Mill Road has a strong connection to the main body of the village'.

31. I note that the dismissed appeal for residential redevelopment of Whitecap Mushroom Farm⁴ can be distinguished from the current appeal in terms of the history and use of that site, its immediate surroundings, the proposal itself and

² This level of affordable housing provision would only 'exceed' the Council's minimum 40% requirement, as the appellant suggests, by virtue of the rounding up to the nearest whole dwelling (ie from 7.6 dwellings @ 40% to 8 dwellings, which equates to 42%).

³ 15/01144/HOUSE and 19/00925/HOUSE.

⁴ APP/X1545/W/17/3182361.

the planning context at the time of that decision. That said, given the proximity of that site to the appeal site, its similar size, previously developed nature and location, I also note that there is some commonality in the Inspector's reasoning and findings. In particular, with regard to granting planning permission for applications for piecemeal residential development in the countryside in this location (Mill Road) and its effect on the character and appearance of the area.

32. While I have had regard to these decisions, so far as they are relevant to the current appeal, I have nonetheless determined this appeal on its individual planning merits.

Planning Balance

33. Since its decision the Council accepts that it can no longer demonstrate a 5-year housing land supply. The appellant considers that there is a 4.48-year supply (and a shortfall of approximately 41 units), whereas the Council states that it has a 4.9-year supply. Either way, as a consequence, Framework paragraph 11(d) is engaged.
34. In terms of benefits, and even if the extent of the shortfall is as suggested by the Council, the provision of 19 dwellings would make a notable contribution to the District's housing supply and would be aligned with the Government's objective to significantly boost the supply of homes. The provision of affordable housing would help to address the needs of those who require such housing. The proposal would also help to meet an identified local need for smaller 1 and 2-bedroom homes and provide space for homeworking. The proposal would make effective use of under-utilised land and buildings and would achieve net environmental gains with regard to contamination, the re-use of some existing materials on the site and for biodiversity. Considering the scale of the proposal and the limited housing supply shortfall, these benefits (and the other economic, social and environmental benefits referred to by the appellant associated with building and occupying the homes) therefore have moderate weight.
35. I am satisfied that the proposed dwellings would comply with the Government's National Described Space Standards, meet Lifetime Homes standards and provide a satisfactory mix of types and sizes overall. The development would not be at risk of flooding, would have a satisfactory means of vehicular access and internal road layout, sufficient car and cycle parking (including electric charging points and opportunities for other renewable energy and water recovery technologies) and would not have any adverse impact on highway safety or the wider road network. It would also make adequate provision for drainage and public open space and would not have any permanent adverse effect on the living conditions of future residents or the occupiers of existing dwellings. These considerations comply with the requirements of the Council's development plan and the Framework and are, therefore, neutral factors in my decision.
36. The site is not in a Conservation Area or in close proximity to a listed building or within a designated special landscape area. These considerations are also neutral factors in my decision.
37. However, notwithstanding that the benefits would be aligned with the Framework, the Framework also seeks to manage the identification of suitable

land for housing development in the countryside and to protect the intrinsic character and beauty of the countryside. The proposal would conflict with the Council's relevant development plan policies in these regards, which are consistent with the Framework. The considerable harm to the character and appearance of the area arises primarily due to the location of the proposed development beyond Mayland and its failure to integrate satisfactorily into the immediately surrounding countryside. Moreover, the present condition and appearance of the site is not in itself sufficient justification to grant planning permission and the unsuitability of the site for the proposed development would fundamentally conflict with the Council's spatial strategy. Consequently, I give substantial weight to these considerations.

38. Mindful of the small housing supply shortfall, I consider that collectively the adverse impacts would significantly and demonstrably outweigh the moderate benefits of the additional homes, when assessed against the Framework as a whole. Accordingly, the presumption in favour of sustainable development does not apply.
39. Since I intend to dismiss the appeal for these reasons, there is no need for me to consider the appellant's legal agreement any further or to undertake an appropriate assessment with regard to the designated European habit sites.

Conclusion

40. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
41. Therefore, for the reasons given above, I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR