

Appeal Decision

Site visit made on 12 October 2021

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

an Inspector appointed by the Secretary of State

Decision date: 18 October 2021

Appeal Ref: APP/X1545/W/21/3267306

Romans Farm, Mill Road, Burnham on Crouch CM0 8PZ

- 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 Bonne and Son Ltd (Mr Darren Bonne) against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00111, dated 31 January 2020, was refused by notice dated 24 July 2020.
 - The development proposed is the demolition of existing dwelling house and surrounding outbuildings barns and the development of 8no. dwelling houses and associated parking and access road.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The National Planning Policy Framework (the Framework) has been revised since the appellant submitted its statement. Both parties were given the opportunity to comment on the relevance of the changes but neither did so. Where necessary, I have referred to appropriate paragraph numbers of the revised Framework and these are generally consistent with the equivalent paragraphs of the earlier version.

Main Issues

3. The main issues are:
 - whether the proposal would be suitably and sustainably located having regard to development plan and national policies;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal, including the car parking provision, on highway and pedestrian safety;
 - whether sufficient information has been provided to establish the effect of the proposal on protected species with particular regard to bats and great crested newts;
 - the effect of the proposal on flood risk;
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- whether the proposal would be likely to have a significant effect or an adverse effect, alone or in combination, on the Essex Coast Special Protection Areas or, if necessary, provide satisfactory mitigation.

Reasons

Whether suitably and sustainably located?

4. The appeal site falls outside of the settlement boundaries where Maldon District Local Development Plan 2017 (LP) Policy S8 seeks to protect the intrinsic character and beauty of the countryside. Among other things, LP Policies S1, D1 and H4 seek to maintain the rural character of the District and minimise the need to travel. Policy S8 also defines the categories of development which will be acceptable outside of the settlement boundaries. The appellant argues that the appeal proposal falls within category e) (re-use of a redundant or disused building). However, the proposal is for the demolition of the existing buildings on the site and erection of eight new dwellings and, therefore, would not fall within this category.
5. The appellant contends that the Council's refusal under Policy S8 is in conflict with appeal and application decisions for two proposals at land south of Charnwood¹. There are material differences between the appeal proposal and the Charnwood schemes. The Inspector in the Charnwood appeals found that an extant consent for two bungalows at that site was a realistic fall-back position and an important material consideration. There is no evidence of a comparable fall-back position in this case.
6. The Inspector also found that, although the site was outside the settlement boundary and adjacent to open countryside, it was an integral part of the Stoney Hills area and *'visually and physically associated with the semi-suburban residential area rather than the adjacent open countryside.'* Further that *'the proposed developments would not be to the detriment of the intrinsic character and beauty of the countryside.'*
7. In this case the appeal site is clearly separated from the southern edge of the built-up area at Mill Lane to the north by open farmland. Romans Farm Chase, which runs from the site to Mill Lane, has the character of an informal farm track and does little to create any visual linkage. There are areas of open countryside to the east and west of the site. The site's eastern boundary is formed by a post and wire fence and intermittent vegetation which does not form an effective visual demarcation between the site and the countryside beyond. Although there is more substantive planting along the western site boundary, clear views in are available from the site entrance.
8. Residential development is currently under construction to the south of the site (the Taylor Wimpey site). This development was allocated through the development plan process. As such, although its physical effect on the setting of the appeal proposal is relevant, the grant of permission does not offer a robust justification for the appeal proposal on unallocated land outside of the settlement boundary.

¹ Appeal decisions APP/X1545/W/17/3187513 and APP/X1545/W/17/3192426 and planning application ref19/00681/FUL. It is apparent from the officers report for the planning application that that proposal involved minor changes to the schemes approved on appeal and did not raise new issues of substance relevant to this appeal.

9. While the Taylor Wimpey scheme will bring the edge of the built-up area closer to the appeal site, they will remain visually and physically separated by Pannel's Brook, a fairly strong belt of substantial vegetation and the fall and rise of the land on either side of the Brook. The appeal site is occupied by a single dwelling, a collection of loosely spaced agricultural style buildings accessed by gravel surfacing. Although the appearance of the buildings varies, the group as a whole has a rustic quality which is not unsightly. Much of the eastern and southern parts of the site comprise grass and planting. Therefore, it has the character of a farmstead typical of rural locations and has a far stronger affinity with the countryside than with the existing or emerging built-up area. Again this serves to distinguish the appeal proposal from the Charnwood schemes.
10. The proposed dwellings would be fairly evenly spaced across the site with reasonably generous gaps between the buildings. The north-east part of the site would retain an existing pond and earth mound. Parking would be provided on the western part of the site, including in two new cart lodges. Although the site would not be densely developed, there would be a considerably greater coverage of buildings and urbanising features, including plot boundaries and domestic paraphernalia, across the site than currently exists. Moreover, the substantial, mainly two storey, dwellings would, notwithstanding the use of timber in the external materials, have an unmistakeably domestic appearance which would be alien to the rural character of the site and its setting.
11. Consequently, I consider that the proposal would have a significantly urbanising effect on the character of the appeal site. This would be apparent particularly from the public footpath which runs to the west of the site. Medium range views of the dwelling roofs at least would be available over the boundary hedge on the approach from the north. Closer range views into the site, including the concentration of parking spaces, would be available from the site entrance. Having regard to the site's rural character and separation from the built-up area, I consider that these effects would be detrimental to the intrinsic character and beauty of the countryside.
12. The nearest bus stops are in excess of 500m from the site on Southminster Road. I have not been made aware of any local facilities or services within a reasonable walking distance of the site. As such, it has not been adequately shown that the site is well located for sustainable travel. Overall therefore, I find that the appeal proposal would not be suitably and sustainably located and would conflict with LP Policies S1, S8, D1 and H4. Nor would it accord with Framework paragraph 105 insofar as it requires patterns of growth to support sustainable travel or paragraph 130 which requires development to be sympathetic to local character, including the landscape setting.

Character and appearance

13. I have already found that the proposal would be detrimental to the intrinsic character of its countryside setting. The houses would feature large areas of glazing on the south elevations and much smaller openings and porches on the north elevations. As a result, when viewed from the proposed access running between the two rows of dwellings, the elevations on the north side would have a very different character from those to the south. Those to the north would appear more like rear, private-facing elevations. I recognise that this

arrangement is intended to optimise the energy efficiency of the dwellings. Nevertheless, its awkwardness would add to the alien appearance of the dwellings in this setting. The effect would not be justified by the appearance of the existing buildings on the site which, although varied, is essentially rural.

14. Consequently, I find that the proposal would have a harmful effect on the character and appearance of the area. It would, therefore, conflict with LP Policies S8, D1 and H4 inasmuch as they require proposals to respect and enhance the local character and context including in their design features, layout and orientation. Nor would the proposal comply with Framework paragraph 130 to the extent that it has similar aims.

Highway and pedestrian safety

15. The appeal proposal is supported by a letter dated 23 April 2020 from ADL Traffic and highways Engineering Ltd. The Council casts doubt on the trip generation figures in this letter due to the effects of the Covid lockdown. The figures are derived from the TRICS database and there is no substantive evidence to suggest that they are influenced by the effects of the lockdown, although it is not clear whether they include movements by delivery and service vehicles. Neither party has provided firm evidence on the nature and level of traffic movements generated by the existing or any lawful former use of the site. Nevertheless, I saw on my visit that there are a number of storage and workshop buildings on the site. It would, therefore, be reasonable to expect a moderate number of vehicle movements to be generated, including by heavy goods vehicles (HGV). In the round therefore, I consider it likely that the appeal proposal would generate a broadly similar number of vehicle movements to the current or former uses, albeit with fewer HGV movements. However, the movements would likely be more concentrated in the peak hours.
16. Considerable local concern has been expressed regarding congestion along Mill Lane. This is the only route from the site to the wider highway network. I saw on the visit that this road is narrow and subject to on-street parking which inhibits the free movement of traffic. My visit also confirmed the view locally that the bend in Mill Lane at the junction with Romans Farm Chase acts as a much needed passing place. The appellant appears to recognise this role since the proposal includes a waiting area for vehicles at the junction. However, the waiting area is outside of the application site boundary and the appellant has not disputed the Council's contention that it should not be taken into consideration. In the absence of the waiting area, there is the potential for conflict between vehicles from the site and those travelling along Mill Lane.
17. The application drawings show a total of 12 parking spaces, including eight in cart lodges. The Council considers that the proposed development would require a total of 25 spaces in order to comply with its adopted standards. Further, that the spaces shown on the plans do not comply with the sizes set out in the parking standards. The appellant argues that the proposed parking provision is a sensitive design response, but does not dispute that there is a shortfall in the number and size of the spaces proposed.
18. The appellant's attempt to minimise the visual impact of the parking is commendable. However, the acknowledged sensitivity of the site does reinforce my concerns regarding the effect of the proposal on the character and appearance of the area. Moreover, I have already found that the site is not well located for sustainable travel and this would be likely to result in future

occupiers being particularly reliant on use of the private car. In this context, the very considerable shortfall in the planned parking provision would be likely to lead to parking in inappropriate places, congestion and unsafe manoeuvres within and potentially beyond the site. Any parking displaced to Mill Lane would heighten the congestion along that road.

19. The proposal includes the provision of passing places along Romans Farm Chase. The public footpath which shares the route between the Mill Lane junction and a point just north of the site access would not be segregated. That said, the provision of the passing places, together with the maintenance of the accesses to the existing properties on the route, would provide a reasonable number and spacing of pedestrian refuges. Notwithstanding the traffic generated by the proposed development therefore, I consider that there would be sufficient provision to prevent conflict between vehicles and pedestrians using the public footpath.
20. Nevertheless, overall I consider that the combined effects of the absence of a waiting area at the junction with Mill Lane and the very significant shortfall in parking provision would have a harmful impact on highway safety. Consequently, the proposal would conflict with LP Policies D1 and T2 insofar as they require proposals to be located where there is the physical and environmental capacity to accommodate the amount of traffic generated and to provide safe and secure vehicle parking. The proposal would also conflict with Framework paragraph 111 which presumes against development that would have an unacceptable impact on highway safety.
21. In reaching this conclusion I have had regard to the absence of an objection from the local highway authority. My assessment is based on the submitted evidence and the site visit.

Protected species

22. A Preliminary Ecological Appraisal and Preliminary Roost Assessment (PEA) for the site has been submitted². Among other things it recommends the need for further surveys for bats and great crested newts which are protected species. The further surveys are required in order to design appropriate impact avoidance, mitigation and/or compensation measures. With regard to great crested newts, mitigation suggested includes providing additional habitat on the site by reducing the size of the gardens and increasing 'wild' habitats. However, such changes may have other implications for the design and layout of the proposal not related to bio-diversity and which have not been assessed. If such mitigation was found to be necessary, it would call into question whether the current proposal could be implemented. Paragraph 99 of Circular 06/2005 is relevant in this regard. It states that it '*is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision*'.
23. I also note that the supporting surveys were carried out in January 2020. Table 2 of Natural England's standing advice for protected species and development states that the most appropriate time for carrying out bat foraging and commuting surveys is April to October and for great crested newts

² Adonis Ecology Project ref 1270

mid-March to mid-June. Moreover paragraph 5.1.13 of the PEA advises that, if works do not commence within 18 months of the surveys, the ecology of the site should be re-assessed. More than 18 months has elapsed since the surveys were undertaken.

24. The appellant argues that a requirement to carry out further survey work prior to determination of the appeal would not be proportionate to the likelihood of protected species being found on the site or within the zone of influence. However, this is not supported by the recommendations in section 5 of the PEA or by its Table 2 which finds moderate potential for roosting and foraging bats and dispersing and refuges for great crested newts. Together with the sub-optimal timing of the original surveys therefore, I consider that insufficient information has been provided to properly assess the effects of the proposal on bats and great crested newts.
25. As such, the proposal would not comply with LP Policy N2 which requires development which could have an adverse effect on sites with protected species to be assessed in accordance with the relevant legislation or national planning guidance. Framework paragraph 180 advises that planning permission should be refused if significant harm to biodiversity resulting from development cannot be avoided. In this case, the uncertainty regarding the effects of the proposal means that compliance with paragraph 180 cannot be assured.

Flood risk

26. A Flood Risk Assessment (FRA) for the proposal has been submitted³. The Environment Agency (EA) Flood Zone map shows the south western part of the site falls within Flood Zones (FZ) 2 and 3. Figure 4 of the FRA overlays the FZ map on the proposed site plan and shows that part of the house on plot 5 would fall within FZ 2. In the absence of full modelled flood levels from the EA, the FRA uses the FZ map information, together with a topographical survey of the site, to estimate a FZ 2 flood level of 9.25m AOD. Based on the contour lines shown in FRA Figure 4, this would suggest that the rear of the house on plot 6 would also fall within FZ 2. Whether or not that would actually be the case, it indicates a degree of uncertainty regarding the findings of the FRA.
27. The FRA states that a Sequential Test has been carried out in accordance with the Framework. However, the Test has only been applied to the appeal site itself, whereas the Planning Practice Guidance states that '*the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed*⁴'. There is no indication that a catchment area has been defined or other potential locations for the proposed development have been considered. Even if the Test is applied only within the site, since the house on plot 5 falls within FZ 2, the Exception Test should be applied. This requires two elements to be satisfied. While the appellant has sought to demonstrate that the house would be safe for its lifetime, there is no substantive evidence to show that it would provide wider sustainability benefits to the community that outweigh flood risk (Framework paragraph 164). I deal with housing land availability matters in the Planning Balance below.

³ Ambiantal Environmental Assessment ref 5101

⁴ Paragraph: 033 Reference ID: 7-033-20140306

28. The appellant has also suggested that the proposal could be amended to revise the position of plot 5. However no indication of the revised position, or its implications for the site layout have been provided. Nor have the Council or others with an interest in the proposal been consulted. Annex M of the Planning Inspectorate's Procedural Guide advises that the appeal process should not be used to evolve a scheme. While, exceptionally, amendments can be considered using the Wheatcroft principles, in this case the implications of the amendment are uncertain and it would prejudice the interests of those who should be consulted for me to consider the amendment suggested by the appellant.
29. Overall therefore, on the basis of the submitted information, I find that it has not been adequately demonstrated that the proposal would not be at risk from flooding. Consequently, it would not comply with LP Policy D5 which requires proposals to minimise the risk of flooding and demonstrate that the Sequential Test and, where necessary, Exception Test has been undertaken in accordance with national planning policy. Nor would the proposal accord with Framework paragraph 167 insofar as it has similar aims.

Special Protection Area

30. Natural England has produced interim advice which indicates that the whole of Maldon District falls within the Zone of Influence of a number European Designated Sites including Special Protection Areas (SPAs). As required under the Habitat Regulations, the Council, as a competent authority, has undertaken an Appropriate Assessment. It concludes that mitigation in the form of a financial contribution is required in order to prevent residential development, alone or in combination, from having a likely significant effect on the integrity of the SPAs due to recreational disturbance.
31. The appellant argues that a financial contribution was not justified by the Council prior to the determination of the application. However, the matter was raised in the seventh reason for refusal of the application and the appeal process provided an opportunity to submit a unilateral undertaking (UU) or otherwise address the issue. However, no UU or other means for securing a financial contribution in accordance with the Essex Coast Recreational Avoidance and Mitigation Strategy has been submitted.
32. In the absence of the mitigation provided by a financial contribution therefore, the proposal would be likely to have a significant effect on the integrity of the SPAs. As such, it would conflict with LP Policies S1 and I1 which require development to conserve the natural environment and protect and provide for green infrastructure.

Other Matters

33. 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

34. The proposal would provide a net increase of seven housing units and the Framework seeks to significantly boost the supply of new homes, particularly on small sites. The appellant also argues that much of the appeal site comprises previously developed land and derives support from Framework paragraph 120c (formally paragraph 118c). However, that support is for

brownfield land within settlements and the appeal site is outside of the settlement boundary. The appellant's evidence also refers to an Annual Monitoring Report dated November 2020 which concludes that the Council can only demonstrate a 4.9 year supply of available housing land. The Council has not responded on this issue in its final comments. Nevertheless, the shortfall suggested by the appellant would be relatively modest, although I recognise that the five-year supply figure is not a ceiling to further housing development.

35. Framework paragraph 11d(i) advises that, where the policies for determining an appeal are out of date, planning permission should be granted unless Framework policies that protect areas of particular importance provide a clear reason for refusing the development. Such policies include areas of flood risk⁵ and I have found that the proposal would not accord with Framework paragraph 167 on this matter. Consequently, I consider that the relevant development plan policies should not be regarded as out of date and can be afforded full weight for the purposes of this appeal.
36. The second exception in paragraph 11d states that planning permission should not be granted where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As well as the risk of flooding, I have found that the proposal would be contrary to Framework, and development plan policies, on sustainable travel and patterns of growth, character and appearance, highway safety, protected species and Special Protection Areas. No development plan policies in favour of the proposal outweigh these conflicts and, therefore, the proposal conflicts with the plan as a whole.
37. I have had regard to this significant weight of policy conflict and also to the limited contribution which the proposal would make to the housing supply of the District. Even if there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
38. Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal conflicts with the development plan as a whole. The proposal does not benefit from the 'tilted balance' in Framework paragraph 11d and the contribution it would make to the supply of housing, albeit on a small site, is limited. Therefore, material considerations do not indicate that the appeal should be determined other than in accordance with the development plan.
39. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR

⁵ Framework footnote 7