

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: 8 November 2021

Appeal Ref: APP/X1545/W/20/3260695
14 Southminster Road, Tillingham CM0 7UF

- 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 Elm Park Services Ltd (Mr Mannix) against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00352, dated 23 March 2020, was refused by notice dated 8 June 2020.
 - The development proposed is the demolition of existing dwelling and erection of 9 dwellings and associated garages, parking areas, gardens, access and amenity areas.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) has been revised since the parties submitted their statements. 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.
3. The appellant's final comments included information contending that the Council cannot demonstrate a five year supply of housing land. The Council was given the opportunity to comment on this information but did not do so. I deal with housing land supply in the Planning Balance and Conclusion below.
4. The appellant has submitted amended plans with the appeal¹. These change plots 1 and 2 from four bed to three bed dwellings and alter their rear boundary positions, change the positions of the houses on plots 1 and 6, including making plots 5 and 6 into a semi-detached pair and plot 7 detached, and change the garages on plots 7 and 8.
5. Annex M of the Planning Inspectorate's Procedural Guide is clear that the appeal process should not be used to evolve a scheme. The Wheatcroft Principles advise that an important criterion where amendments are proposed is whether the development is so changed that to grant permission would deprive those who should have been consulted the opportunity of such consultation. In this case, the amended scheme has not been seen or consulted on by the Council and the

¹ Proposed Location and Site Plan 1904.B1.1 Rev 5; Proposed Tracking Plan 1904.B1.2 Rev 1; Proposed Floor and Elevation Plans of Dwellings 1904.B1.3 Rev 3; Proposed Garage Plans & Street Scene 1 1904.B1.4 Rev 2; Proposed Street Scene Plans 2 & 3 1904.B1.5 Rev 2

amendments would directly affect matters leading to three of the reasons for refusal. Consequently, it would not be appropriate to take the amended drawings into account.

Main Issues

6. 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 living conditions of the occupiers of 18 Southfields with particular regard to outlook;
- the effect of the amount of car parking proposed on highway and pedestrian safety;
- the effect of the proposal on the protected cedar and horse chestnut trees at the site;
- whether the proposal would be likely to have a significant effect, alone or in combination, on Essex Coast Special Protection Areas or, if necessary, provide satisfactory mitigation.

Reasons

Whether suitably and sustainably located?

7. The appeal site falls outside of the settlement boundary for Tillingham as defined in the Maldon District Local Development Plan 2017 (LDP) where Policy S8 requires development not to harm the intrinsic character and beauty of the countryside and to fall within one of a number of defined exceptions. While there is no substantive evidence to demonstrate that the appeal proposal would harm the character of the countryside, it does not fall within any of the exceptions. Consequently, the proposal would not comply with this part of LDP Policy S8.
8. The policy also defines a settlement hierarchy which categorizes Tillingham as a smaller village with few or no services and facilities and very limited or no opportunities for employment and access to public transport. Policies S1, S2, T1, T2 and H4 of the LDP seek sustainable development which minimises the need to travel and prioritises sustainable modes. The appellant has drawn my attention to the local facilities and services in Tillingham, including the Demand Responsive Transport service (DaRT). They are within 1km of the appeal site and linked by a footpath.
9. The Council argues that the facilities would not meet the day to day needs of future occupiers and that the DaRT does not provide a regular and convenient service to larger centres such as Southminster. However, the facilities and services available in Tillingham are more extensive than the Policy S8 categorization would imply and the DaRT service provides a reasonably viable alternative to travel by private car. Moreover, the Framework advises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making (paragraph 105). Further, that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities and that policies should identify opportunities for villages to grow and thrive, especially where this will support local services (paragraph 79). The appellant has referred to the

Braintree High Court decision². While that decision is not directly relevant since it is not suggested that the current proposal is 'isolated' for the purposes of Framework paragraph 80, it does affirm the aims of the Framework in respect of the differing expectations of access to local facilities in urban and rural areas.

10. The appellant has also referred to earlier planning permissions for residential development close to the appeal site, including instances where the Council's committee report found the location to be sustainable³. That said, I note that in two of these decisions the Council considered it necessary to have regard to previous approvals of the respective sites and, therefore, were based on a fairly dated consideration of what constitutes a sustainable location. The Council has referred to two appeal decisions⁴ where residential proposals were found to be unacceptable with regard to access to local facilities. However, the proximity and range of the facilities available in those cases appears to be less advantageous than in this case.
11. The decisions referred to by the parties pull in differing directions but, in the round, they do not alter my view that the appeal site is passably located for sustainable travel. To that extent, the proposal would not conflict with LDP Policies S1, S2, T1, T2 and H4 and derives a measure of support from Framework paragraphs 79 and 105.

Living conditions

12. The two storey gable end wall of plot 6 would be sited just over 1m from the common boundary with the neighbouring property at 18 Southfields and 5.3m from the corner of the dwelling itself. The view from the rear windows and modestly sized rear garden of the neighbouring property would, therefore, be dominated by the substantial blank gable wall of plot 6. This would have an oppressive effect on the outlook of the neighbouring occupiers to the detriment of their living conditions. Consequently, the proposal would be contrary to LDP Policies D1 and H4 insofar as they require development to protect the amenity of surrounding areas including outlook. Nor would it accord with Framework paragraph 130(f) which has similar aims.

Highway and pedestrian safety

13. The Council's adopted Vehicle Parking Standards require four bedroom houses, such as those on plots 1 and 2, to have three parking spaces. The submitted site layout plan shows each plot would have only two spaces. Although I have found that the appeal site is passably located for access to local facilities, future occupiers are likely to depend on private car use and to need the full complement of parking provision required by the Standards. Given the proximity of plots 1 and 2 to the site entrance, under-provision of parking on these plots would be likely to result in cars parking inappropriately close to the site entrance and pose a risk to highway and pedestrian safety. As such, the proposal would not comply with LDP Policies D1 and T2 in that they require proposals to include safe vehicle parking in accordance with the Council's Standards and safe walking and cycling routes. It would also conflict with Framework paragraph 103(f) which also requires the creation of safe and accessible places.

Protected trees

² Braintree District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 2743

³ Application refs 13/00945/FUL, OUT/MAL/17/01327 and OUT/MAL/19/00447

⁴ Appeal refs APP/X1545/W/16/3152730, APP/X1545/C/18/3215521

14. A Tree Preservation Order (ref TPO 03/20) was made following the refusal of the application. It protects the horse chestnut tree on the western boundary of the site (T1) and the cedar tree on the southern boundary (T2). A revised Arboricultural Report (dated 8 April 2020) was submitted with the appeal and takes into account the TPO. However it is also based on the revised Proposed Location and Site Plan (ref 1904 B1.1 Rev 5). Therefore, although it provides more information on protection measures, it does not assess the proposal considered by the Council and on which my decision is based.
15. Having regard to the extent to which the proposed access encroaches into the root protection area of T1 and T2 and plot 1 infringes the root protection area of T1, it has not been adequately demonstrated that the proposal would not have a harmful effect on these protected trees. As such, the proposal is contrary to LDP Policies D1 and N2, as well as Framework paragraphs 131 and 174, which require development to make a positive contribution to its landscape setting and biodiversity.

Special Protection Areas

16. Natural England has produced interim advice which indicates that the whole of Maldon District falls within the Zone of Influence of four European Designated Sites. 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 proposals from having a likely significant effect on the integrity of the European Sites due to recreational disturbance. These matters are not contested by the appellant. Framework paragraphs 179 and 180 and LDP Policies S1 and I1 require proposals to conserve or mitigate the effects of development on the natural environment, including habitats sites.
17. A signed unilateral undertaking (UU) has been submitted with the appeal which would secure a financial contribution towards the protection of the European sites. The Council advise that the contribution per dwelling has increased since the UU was submitted. The appellant has indicated that it would be willing to revise the UU to cover the increase. As such, although the proposal would conflict with Framework paragraphs 179 and 180 and LDP Policies S1 and I1 as things stand, had I been minded to allow the appeal, it is possible that a revised UU could have been submitted and would overcome the fifth reason for refusal.

Other Matters

18. 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

19. The appellant's final comments refer 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. Given the opportunity, the Council did not contest this position. Nevertheless, the shortfall suggested by the appellant would be modest. Framework paragraph 11d(ii) advises that, where the policies which are most important for determining an appeal are out of date⁵, planning permission should be granted unless any adverse impacts of doing so would

⁵ Including situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

- significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
20. The proposal would provide a net increase of eight housing units and the Framework seeks to significantly boost the supply of new homes. Six of the units would be two bedroom houses which would accord with the need for smaller units identified in the Council's Strategic Housing Market Assessment. The proposal's contribution to the District's housing supply therefore carries considerable weight. Spending by future occupiers would also help to support local facilities and both of these considerations are supported by Framework policies.
 21. There is no firm evidence to indicate that the proposal would be unacceptable in terms of its design, landscape impact, internal space standards, site access, biodiversity or flood risk. However the absence of harm in these regards does not amount to a positive point in favour of the proposal.
 22. I have found that the proposal conflicts with LDP Policy S8 insofar as the site falls outside of the settlement limits. I have also found that it conflicts with LDP Policies D1, H4, T2, N2, S1 and I1 in respect of living conditions, highway and pedestrian safety, protected trees and the effect on European habitat sites and, therefore, with the development plan as a whole. Although the relevant policies are out of date by virtue of paragraph 11d(ii), because the Council's housing land supply falls just slightly short of the five year requirement, the weight to be attached to the conflicts is only somewhat reduced. Moreover, the proposal also conflicts with relevant policies of the Framework with regard to these matters.
 23. Collectively, this amounts to a significant weight of policy conflict. While the need to boost housing supply, particularly where there is a shortfall, carries considerable weight, the eight additional units proposed would make a limited contribution to the housing supply needs of the District as a whole. Overall therefore, I consider that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
 24. 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. Nor does the proposal benefit from the presumption in favour of sustainable development in Framework paragraph 11d and the contribution it would make to the supply of housing is limited. Therefore, material considerations do not indicate that the appeal should be determined other than in accordance with the development plan.
 25. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR