



Appeal Decisions

Site Visit made on 12 October 2021

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th November 2021

Appeal A Ref: APP/X1545/W/21/3277767

Land Adjacent to Theedhams Farm, Southminster CM0 7BD

- 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 Bradley Faulkner (BF Ground Maintenance Ltd) against the decision of Maldon District Council.
 - The application Ref OUT/MAL/20/01181, dated 18 September 2020, was refused by notice dated 5 January 2021.
 - The development proposed is described as the "demolition of existing building and construction of new building to be divided into up to 8 business units for Class E (formerly Class B1 and/or use Class D1) purposes".
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Appeal B Ref: APP/X1545/W/21/3268138

Land Adjacent to Theedhams Farm, Steeple Road, Southminster CM0 7BD

- 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 Bradley Faulkner (BF Ground Maintenance Ltd) against the decision of Maldon District Council.
 - The application Ref OUT/MAL/19/01335, dated 17 December 2019, was refused by notice dated 5 August 2020.
 - The development proposed is described as the "demolition of existing building and construction of new building to be divided into up to 8 business units for use Class B1 and/or use Class D1 purposes".
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. For ease of reference, I refer to the different cases as Appeal A and Appeal B in this decision letter as set out in the headers. I have dealt with each appeal on its own individual merits but to avoid duplication, I have considered the appeals together in this document. Although there are two appeals, I have used singular terms in places for the ease of reading.
4. The planning applications for Appeal A and Appeal B were submitted in outline form with all matters reserved for future consideration. Nevertheless, the appellant has provided indicative layouts and visualisations of the proposal which I have treated as illustrative for the purposes of this appeal.
5. Since the submission of the appellant's appeals the revised National Planning Policy Framework (the Framework) was published and came into force on 21 July 2021. In light of this I have sought the views of the main parties in writing.

6. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987. These Regulations amend and simplify the system of Use Classes, revoking, amongst others, Classes B1 (business) and D1 (non-residential institutions) and creating a new broad 'Commercial, business and service' into a single use Class E.

Main Issues

7. The main issues in this appeal are the effect of the proposed development on:
- Appeal A and B – Flood Risk, and
 - Appeal B – the character and appearance of the area.

Reasons

Flood Risk – Appeal A and Appeal B

8. The Council state that the northern half of the appeal site lies within Flood Zone (FZ) 3b and the southern half of the appeal site lies within FZ3a which is not disputed by the appellant. The Framework sets strict tests to protect people and property from flooding and where these tests are not met, paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It also states that where development is necessary, it should be made safe for its lifetime without increasing flood risk elsewhere. To this end, paragraphs 167 and 168, along with Footnote 55, require a site-specific Flood Risk Assessment (FRA) to be provided for all development in FZ2 and FZ3.
9. The appellant states that the proposed building would be located entirely within FZ3a and that the development will alter the FZ through the regrading of the site to create a depression to increase flood water storage capacity. Although the development is classified as 'less vulnerable' and Table 3¹ of the national Planning Practice Guidance (PPG) states that 'less vulnerable' development may be acceptable within FZ3a, as the appeal site lies within FZ3, the PPG and Framework require a sequential test (ST) to be undertaken to determine whether there are other sites available for the development that are at a lower risk of flooding.
10. In this instance, the appellant has provided FRAs for Appeal A and Appeal B which includes a ST and considered alternative sites for the proposed Class E use. Although the ST's refer to Policy E1 of the Maldon District Council Local Plan 2017 (LP) which does not identify areas within Southminster for new employment space, such space is identified at Burnham Business Park, Wycke Hill Maldon, Great Braxted and Stow Maries. It is inferred that as these sites are outside of Southminster, it will require employees to be reliant on the motor car to access them which is not considered sustainable.
11. In addition, the appellant undertook searches of the area² in January and June 2021 and concluded that there are no reasonably available Class E developments or premises available within Southminster and the surrounding five mile area. Moreover, as none of the properties identified would be within walking distance for Southminster residents, the appellant argues that the ST is passed.

¹ Table 3: flood risk vulnerability and flood zone 'compatibility' Paragraph:067 Reference ID:7-067-20140306
Revision date: 06 03 2014

² Appendix 5 of Appellant's written statement – Appeal A

12. Thus, the appellant has discounted sites because of their distance from the appeal site or that they have 'poor accessibility'. However, although the PPG requires a pragmatic approach to be taken on the availability of alternatives, the Framework is quite clear that, to prevent harm to people and property, new developments must be steered to areas with the lowest risk from flooding.
13. Therefore, although alternative sites may require employees to drive, the Council has identified sites for employment use in the District, such as that at Burnham-on-Crouch, which are at a lower risk of flooding and could potentially be used for Class E uses. I am not persuaded that distance or accessibility should be an obstacle to this. Moreover, there is nothing before me to demonstrate that the appellant has considered sites that have not been allocated for employment use within the LP, but have been granted planning permission for the development proposed, or indeed windfall sites that do not have planning permission which may also be suitable for the proposed development.
14. Additionally, even if the site is regraded to increase capacity for flood water, such actions would not remove the fact that it would still remain within FZ3. Moreover, the advice from the EA is that although the site could be developed along the lines indicated, this is provided the ST has been passed.
15. Consequently, it has not been demonstrated that there are no other sequentially preferable alternative sites for the proposed development. On the basis of the information before me, the proposal does not pass the sequential test and there is no need to consider flood risk in this regard any further. Thus, the proposal conflicts with paragraphs 159, 161 and 162 of the Framework and Policies S1 and D5 of the LP, which reference the sequential test requirements in this regard and seek to direct development towards lower risk areas.

Character and Appearance – Appeal B

16. The appeal site occupies a prominent position on the corner of Steeple Road and Queen Street. The area is generally rural in character and contains a variety of size and style of property. The site extends to the north and abuts a housing estate that has recently been erected with other dwellings surrounding the site. The appeal site currently contains a single storey building that is of utilitarian design and sits on the site's southern boundary and does little to enhance this mainly residential area.
17. The Council argue that due to the amount of floorspace proposed, its potential size and scale, coupled with its positioning towards the southern end of the site, the proposal would be visually incongruous in the street scene resulting in harm to the character and appearance of the area.
18. Although matters relating to layout, scale and appearance of the development are reserved for future consideration, the appellant has provided visualisations of the proposal. It would take the form of a two storey building with single storey elements projecting into the site and constructed using horizontal cladding over a brick plinth with the main roof covered in plain tiles and hipped at either end.
19. Whilst accommodation would be provided over two floors, the building nonetheless retains an agricultural appearance and would be perceived as a large barn style development when viewed from Steeple Road. To that end, I find the development to be architecturally pleasing and although for a Class E use, appropriate for its setting. Furthermore, notwithstanding the flooding issues at the site, the proposed block plan demonstrates that the development could be set back from its southern boundary to allow a footpath to the front of the building. Therefore, in this

instance, I find that the visualisation provides suitable evidence that it would be possible to erect a well-designed building on the site.

20. Furthermore, paragraph 84 of the Framework is relevant and states that, in supporting a prosperous rural economy, planning policies and decisions should enable the sustainable growth and expansion of businesses in rural areas through the conversion of existing building and well-designed new buildings. Furthermore, paragraph 85 of the Framework also supports the use of sites that are physically well related to existing settlements and I am satisfied that a well-designed development, such as that visualised by the appellant, could be erected on the site without causing undue harm to the character and appearance of the area.
21. Thus, the development would not result in harm to the character and appearance of the area. It would not be in conflict with Policy D1 of the LP and paragraph 130 of the Framework which seek, amongst other things, to ensure that developments respect and enhance local character and context.

Other Matters

22. The appellant argues that as a result of the residential development surrounding the appeal site, it should be considered as being within the settlement of Southminster. Consequently, Policy S8 of the LP supports the development, along with Policy E1 of the LP which also supports high quality employment opportunities, subject to design, environment and infrastructure considerations. However, notwithstanding the level of development that has occurred adjacent to the appeal site, it does not lie within the settlement boundary of Southminster. Consequently, it does not benefit from support from Policy S8 of the LP. Furthermore, any support for the development through Policy E1 does not override its location within FZ3.
23. There is also a disagreement between the parties whether the site represents previously developed land. However, this particular issue is not before me and whether the site does represent PDL is not a reason in itself to disregard its position within an area that is susceptible to flooding. Moreover, although Policy S1 of the LP seeks to ensure a healthy and competitive economy by providing sufficient space within the District, it also seeks to ensure that new developments are located away from areas that are at risk from flooding.
24. I also note the benefits that would ensue from the development in providing additional employment space at the site. However, neither this nor any other material consideration that has been advanced outweighs the harm that I have identified above.

Conclusion

25. Therefore, I conclude that there are no material considerations of such weight as to indicate that a decision be taken other than in accordance with the development plan. Therefore, the appeal is dismissed.

Graham Wyatt

INSPECTOR