



Appeal Decisions

Hearing Held on 13 October 2021

Site visit made on 14 October 2021

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05/01/2022

Appeal A Ref: APP/X1545/W/20/3259936

Woodacre, D'Arcy Road, Tolleshunt Knights, Essex

- 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 Tern Developments against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00378, dated 7 April 2020, was refused by notice dated 16 June 2020.
 - The development proposed is 8 no new C3 dwellings (5 no 2 bed and 3 no 4 bed houses) together with access to existing paddocks, vehicular access, landscaping, sustainable urban drainage system and noise attenuation features.
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Appeal B Ref: APP/X1545/W/20/3262841

Woodacre, D'Arcy Road, Tolleshunt Knights, Essex

- 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 Tern Developments against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00752, dated 20 July 2020, was refused by notice dated 30 September 2020.
 - The development proposed is demolition of existing buildings and erection of 2 no new C3 dwellings together with vehicular access.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for 8 no new C3 dwellings (5 no 2 bed and 3 no 4 bed houses) together with access to existing paddocks, vehicular access, landscaping, sustainable urban drainage system and noise attenuation features at Woodacre, D'Arcy Road, Tolleshunt Knights, Essex in accordance with the terms of the application, Ref FUL/MAL/20/00378, dated 7 April 2020, subject to the conditions in Annex A.

Appeal B

2. The appeal is allowed and planning permission is granted for demolition of existing buildings and erection of 2 no new C3 dwellings together with vehicular access at Woodacre, D'Arcy Road, Tolleshunt Knights, Essex in accordance with the terms of the application, FUL/MAL/20/00752, dated 20 July 2020, subject to the conditions in Annex B.

Application for costs

3. At the Hearing an application for costs was made by Tern Developments against Maldon District Council. This application will be the subject of a separate Decision.

Preliminary Matters

4. For Appeal A the Council issued a decision notice on 16 June 2020 and subsequently amended it¹ to include a sixth reason for refusal. The Council confirmed its position regarding affordable housing and the amended decision notice at the hearing and the appellant had an opportunity to respond.
5. For Appeal A the appellant has provided amended plans. These plans were submitted with a revised scheme deposited with the Council² and primarily they amend the cartlodge buildings and the internal road layout. The plans were available at the point the Council notified interested parties regarding the appeal scheme. Therefore interested parties have had an opportunity to make further representations in response to the amended documents. Having considered the scale of the changes and that they could be viewed I am minded to accept these plans as part of the appeal on the basis that no parties' interests would be prejudiced by my taking them into account.

Main Issues

6. Accordingly the main issues are:

Appeals A & B

- The effect of the scheme on (a) the provision of specialist needs accommodation in the district and (b) the character and appearance of the area;
- Whether the proposal would provide suitable living conditions for future occupiers, having particular regard to noise;

Appeal A

- The effect of the proposal on highway safety;

Appeal B

- Whether the scheme should make provision for affordable housing.

Reasons

Appeals A & B – Provision of specialist needs accommodation

7. The loss of a community service or facility is tested against the Maldon District Local Development Plan (LDP) policy E3 which has two elements that require consideration. The appellant highlighted that the previous use was not publicly accessible. However, there is no dispute that it was a care facility and served the community and wider area. As such I consider that E3 is applicable. E3 refers to the need for 'effective marketing' to demonstrate that there is no viable and appropriate alternative community service based use. It is also

¹ Appendix 12 to the Appellant's final statement of case

² LPA Ref 20/00825/FUL

clear that the approach to the policy is to require reasonable and appropriate marketing. There was no dispute that the appeal sites contain buildings that are currently vacant and were previously owned by NHS property services. The previous use was as a home for adults with learning difficulties and it is not disputed that the NHS sold the site in 2019.

8. Essex County Council³ (ECC) provided background to the closure of Woodacre. This letter is clear that alternative ways of meeting the care and support needs of the people at Woodacre had been explored for some time. The reasons given were that the model of care at Woodacre was outdated and that the site is not fit for purpose due to its location in a rural village. Prior to closure the NHS property services sought confirmation from the West Essex Clinical Commissioning Group (CCG) that there were no future intentions for the site. Following this the site was offered to public sector partners⁴. It is stated that this did not get any interest. As a result the site was marketed to both public and private organisations.
9. Evidence of marketing was submitted with the planning application documents⁵. The documents date back to 2015 and includes a number of email exchanges between the ECC and NHS property services. The West Essex CCG confirm within these documents that there are no further commissioning intentions for the site. Offering the site to other public sector partners did not lead to any proposals to re use the site for a viable C2, health or community use. The site was then marketed by Savills⁶ for residential development in 2018.
10. There is no dispute that some marketing has been undertaken. There is no documentary evidence of non residential interest. However, at the hearing the appellant clarified that the site had been offered to two CCGs, placed on a public database for 40 days which is accessible by Councils and the NHS and that there was not an immediate move open residential marketing. In fact there was a 2-3 year gap that initially it was not solely limited to marketing for residential purposes. In addition the appellant explained that when the residential advert went out there was interest from care provider but this did not lead anywhere. Overall the evidence demonstrates that the marketing carried out was reasonable in this case.
11. Maldon District Specialist Needs Housing Supplementary Planning Document (SPD) supports policy H3 and reinforces the need for any proposal that includes the loss of housing for a specialist group to be informed by viability evidence to demonstrate that the use is no longer viable. In this case the strategic provider at county level and the NHS do not consider the appeal site to be a suitable location for the provision of specialist accommodation. Whilst there is no specific viability assessment provided it is fair to take the views of these experts as a clear indication that the former use of the site is not tenable long term. There has been a clear shift in the approach to provision of this type of accommodation.
12. The residents of Woodacre were supported to move into their own homes within Essex. ECC position is that it no longer requires the site for its previous

³ Appendix 3 Appellant's Planning Statement

⁴ Through the EPIMS database

⁵ Appendix 5 of Planning Statement

⁶ Appendix 2 of Planning Statement

care use. However, it does go onto state that as a result there is no suitable accommodation now located within Maldon district.

13. To meet the requirements of the district the ECC letter⁷ sets out that planning permission has been sought for 28 dwellings, including specialist accommodation at a site known as Friary East in the heart of Maldon. Since the letter from ECC an appeal has been considered for the Friary East site⁸. This application for up to 30 dwellings was dismissed at appeal and the listed building consent was allowed. The matter of specialist accommodation was considered by the Inspector under public benefits of the scheme. This identifies that there is a significant general demand for adult social care across Essex. Nonetheless the decision goes on to identify that the scheme did not secure the units for learning-disabled occupation in that case. Therefore, for consideration of the appeals before me the Friary East appeal decision does not represent an alternative location for specialist accommodation nor is it directly comparable to the appeal schemes. As such I attach it very limited weight.
14. Whilst not within the reason for refusal the Council's officer report refers to LDP policy E1. This relates to the loss of the site in terms of the employment offer it formerly provided in the district. However, the officer report also identified that this policy identifies employment sites as being B1, B2, B8 and that the former use of appeal site would not fall within these use classes. Therefore I do not consider that the appeal schemes can be considered to be in conflict with this policy.
15. At present Maldon district does not appear to have provision for specialist accommodation and the scheme would remove a site that was lawfully used in this way. However, it is significant that the evidence shows that the appeal site would not be pursued as an option by the County Council as provider. Furthermore, the evidence is that the provision for the district and across Essex has changed and therefore the loss of the appeal site would not undermine future provision or any future strategy to address the need. I therefore conclude that the appeal schemes would not have a harmful effect on the provision of specialist accommodation in the district. As such they would not be in conflict with Policy H3 of the LDP which refers to proposals that may result in the loss of specialist accommodation and sets out that in order for a proposal that involves the loss of such accommodation to be acceptable it is clear that it needs to be demonstrated that there is no longer a need for it in the district or an alternative provision is being made. It would also accord with policy I2 which seeks to resist the loss of existing health facilities unless appropriate new provision has been secured and policy E3 which refers to the loss of community facilities and the need for effective marketing to demonstrate that there is no viable and appropriate community service based use.

Appeals A & B – Living conditions of future occupiers

16. The appeal schemes would be located adjacent to an existing site that is in a commercial use and shares two boundaries with the appeal site. The Council is concerned regarding the effect of the existing use on the internal and external noise levels for the new residential units within the appeal schemes. Plots 2,3 & 8 would be those that would be closest to the shared boundary with the

⁷ Appendix 3 of Planning Statement

⁸ Appeal refs APP/X1545/W/19/3236693; APP/X1545/Y/19/3236694

neighbouring use. In Appeal A concerns regarding plots 2,3 & 8 were raised at the hearing and for Appeal B plot 2.

17. In accordance with the requirements of the Maldon District Design Guide, Planning and Noise (DG) the appellant has undertaken a noise assessment based on measured noise levels at the site and has made noise mitigation recommendations based on relevant national standards and planning policy requirements. The assessment considered the main noise sources. These were identified as being vehicles on the B1023 and the intermittent commercial/industrial noise from the business operating. The typical processes are described as vehicle manoeuvres, tonal reversing alarms, general unloading and loading as well as workers communicating. Between these sporadic noises the background level is described as low with natural sounds. Measurement locations were identified to capture this and assess impact on the proposed residential scheme. It also considered the worst case scenario, that is the doubling of the use of the existing use on the adjacent site, and proposed mitigation. The Council did not dispute this methodology.
18. The Council's evidence at the hearing was that Maldon district is a quiet rural district and that the natural instinct of future occupiers would be to open windows, particularly in summer months. This judgement is reinforced by the DG. As such internal environments should be considered carefully. The noise assessment identified that between sporadic site noises the background level was relatively low. The early hours of the morning were identified as being the most sensitive period for residential noise impact. The most sensitive internal space would be a first floor bedroom at night. Therefore the internal areas of the new dwellings would rely on the mitigation in response to the potential effect from the commercial/industrial site activity in the early hours (0600-0700).
19. The DG refers to an ideal scenario and seeks to avoid the use of closed windows as a noise control method where it affects habitable rooms. In this case the mitigation for the internal environment would be to close the windows to some rooms for some parts of the day. The amount that the windows would be closed would be dependent upon the frequency of the noise impact from the adjacent site. The noise survey describes the noise from the commercial operations as being intermittent rather than continuous. The Planning Practice Guidance (PPG) refers to the use of closed windows and consequently the use of mechanical ventilation when providing mitigation. The DG also considers noise mitigation. The main point of dispute at the hearing was the application of mitigation in the form of closed windows. The Council did not dispute that the mitigation would be effective but rather that reliance upon it would not lead to satisfactory living conditions. Overall the question is whether the use of closed windows and mechanical ventilation would be reasonable mitigation in this case.
20. I understand that the Council submit that the DG prohibits this and that it would be substandard. However, there are several parts of the DG some of which suggest that this form of mitigation could be considered. A straight read of Section 3.2 of the DG does not rule out the use of closed windows for mitigation but it does make it clear it is the final option in the hierarchy of mitigation options. It goes on to say that in some cases it may be an option for a small number of habitable rooms where none of the other options are viable. In this case the appellant would not have control of the noise source, distances

from the shared boundary have been maximised as far as possible and the control of the hours of operation is not within the gift of the appellant and could not be controlled by condition or obligation. As such mitigation at the receptor could reasonably be considered here. In addition at 3.3 it goes on to set out that *'On some sites, where it is not possible to achieve acceptable mitigation fixed windows and mechanical ventilation may be required'*.

21. The Design and Access Statement sets out an acoustic strategy for the appeal site. This does not apply to all windows and the evidence at the hearing from the acoustic consultant was that it would not be necessary for windows to be closed at all times. This is supported by the assessment which identifies the sensitive times. The acoustic strategy identifies elevations of dwellings within the appeal schemes where there would be no first floor habitable rooms facing toward the adjacent commercial site. These elevations are on plots 1,2,3 & 8. Where required the internal noise levels are shown to be controlled by appropriate specification, construction of windows and ventilation systems and also by the building layout. The scheme includes measures to control the internal noise levels where appropriate specification and construction of windows and ventilation systems would be used⁹ when windows are closed. Plots 2, 3 and 8 have been orientated to place facades with little or no glazing to habitable rooms facing the commercial site. Plot 8 would have a separation to the boundary of about five metres. The ventilation proposed would be of an acoustic standard. The full height window on the south elevation of plot 8 would be non opening and as such would require a trickle vent system. The submitted noise assessment is clear that the appropriate acoustic environment could be achieved with the windows closed. Therefore, overall, the approach undertaken to manage the internal noise environment for future occupiers would accord with the PPG and also the hierarchy of the DG.
22. Turning to the external areas the submitted plans show the provision of a 2.1m acoustic fence along both of these shared boundaries between the appeal schemes and the adjacent site where appropriate and the retention of the existing boundary wall adjacent to plot 8. The wall varies in height from about 3.4m to 4.25m. The use of the solid screens, in the form of a wall or double fence, is recommended to bring the resultant level of noise in the worst case scenario down to a level below the Lowest Observable Adverse Effect Level (LOAEL).
23. It is not disputed that with mitigation in place that within the garden areas of the new dwellings predicted noise levels would be below the LOAEL. Where a level is below the LOAEL then national planning policy and guidance sets out that no action is required to control noise and that this level of noise would be present but not intrusive. This means that the noise exposure of future residents in the outdoor areas would, with mitigation, be below the point where the PPG hierarchy indicates that noise begins to become a problem. In addition the appellant has undertaken an assessment with a penalty¹⁰ for external areas on the basis of the operations on the adjacent site doubling. With mitigation in place and considered on this basis the resultant increase in noise level would be equal to the LOAEL. Therefore based on the existing situation and taking into account future intensification the appeal schemes would not result in inappropriate living conditions for future residents, having regard to noise.

⁹ Noise Statement – Appendix 3 to Appellant's Full Statement of Case

¹⁰ Para 4.20 of noise assessment

24. At the hearing a condition was suggested for final details of noise mitigation for barriers, windows to relevant plots and including details of a vent system. The level of detail set out in the noise assessment and at the hearing is sufficient to demonstrate that mitigation would be acceptable in this case. The use of a suitably worded condition can secure the final detail and implementation of these measures, which is proportionate and reasonable.
25. The adjacent use is unfettered and reference was made to paragraph 187 of the Framework which sets out that existing businesses should not have unreasonable restrictions placed upon them as a result of development permitted after they were established. The PPG sets out how to establish whether noise is in fact likely to be a concern. The appellants initial and subsequent noise submissions adopt the approach set out in the PPG, which in turn reinforces the approach of the Noise Policy Statement for England. There is no dispute that there were no recorded noise complaints from the previous use of the site. Nevertheless, the layout of the previous use and the appeal schemes would be different and I do not consider that the lack of previous complaints adds any weight to consideration of the appeal schemes.
26. The PPG is explicit regarding the risk of conflict between new development and existing business or facilities. The appellant has clearly identified the effects that would arise from the existing business that would have an impact on the new residents. In addition the noise survey takes into account the activities that the business is permitted to carry out, even though the level of operation had not increased at the point the appeal was made. The mitigation proposed has been clearly identified and the effect it would have on the new residents to achieve a satisfactory living environment. Moreover the dwellings would not be solely reliant upon mechanical ventilation and the character of the use on the adjoining site is characterised as sporadic. Therefore, it is reasonable to conclude that there would be times when windows could be opened. Overall, the approach taken would be reflective of the Framework and PPG.
27. I therefore conclude that the proposals would provide suitable living conditions for future occupiers, having particular regard to noise and would not be in conflict with LDP policies D1 and D2 and the DG in so far as they set out the need to protect the amenity of the surrounding area.

Appeals A & B –Character and appearance

28. The existing village has a mixed character and appearance. There is no specific architectural style and the buildings vary in age. There are older buildings interspersed with newer ones and suburban elements of housing. The existing built form on the site comprises a number of buildings of varying height and design which were used by the former care facility. There is also parking and turning and other ancillary elements associated with the former use. In terms of wider landscape character the site is located within the Tolleshunt Knights Wooded Farmland. This is characterised by a mosaic of small to medium sized fields, wooded farmland, a linear settlement pattern in Tolleshunt Knights, remnants of heathland to the north and an intimate and semi enclosed character.
29. The entirety of Appeal B would be located within the built up area of the village. Within Appeal A plots 1-3 would be within the built up area and the remaining five dwellings would be located in the countryside. The plans show that the footprints of plots 6,7 & 8 would extend further into the countryside

than the existing buildings. There are also open areas where the plans demonstrate that the footprint of built form would be reduced or redistributed. This would be as a result of a number of outbuildings being removed. The open, green paddock area of the site would not be significantly reduced by the layout of the schemes. Within the site the existing buildings are described as having a contemporary 90s style. Across the appeal schemes changes in volume compared to existing would vary. In some areas the volume of built form would increase and in some areas it would be removed, broken up or a gap introduced. Therefore, the overall impact of the footprints and volumes on the countryside would be neutral.

30. The Council is concerned about the loss of the existing frontage building. There is no specific policy basis to resist redevelopment of the site frontage if it can accord with the requirements of LDP policies. The appeal schemes would sit between two existing properties, one of which has a gable ended element. In terms of scale in both schemes plots 1 & 2 would replace a two storey building with a pair of two storey dwellings. The appellant acknowledged that this building and others in the street scene were probably built together and that the design and appearance of these plots would differ from the existing dwelling in form. However, the plans demonstrate that the scale of the new dwellings would not be significantly greater than the existing building they would replace.
31. The eaves of the new dwellings would be lower than the nearby dwellings and I understand that the Council consider the resultant roof pitch would appear squat. Nonetheless, this design approach would provide a transition within the street scene. Further, the use of gables within the design, whilst differing from existing buildings, would provide articulation to the dwellings and lessen the overall impact of the built form. Overall the new frontage dwellings would sit comfortably and unobtrusively in the street scene.
32. I understand that within Appeal Scheme A the Council is concerned about the details of plots 6,7,8. In particular whether the windows would appear out of place and whether the roof forms would appear complicated. The appellant explained with reference to the design and access statement the concept of the scheme design. In particular that as a whole the scheme would appear ordered with just two types of roof form evident. Subsidiary elements, such as dormers and projecting bays are used consistently across the scheme. Plots 2 and 3 would have side elevations facing onto the site access road. I acknowledge that this would not create a frontage to the access road. Plots 1 and 2 rightly face onto D'Arcy Road and as such would primarily read within that street scene. Therefore the remaining issue would be the side of plot 3 which would also have a single secondary window at ground floor level facing the access road. Whilst this would not create an active frontage within the overall context of the scheme it would not be significantly harmful. The main courtyard area beyond plots 1-3 seeks to emulate the existing site layout. The dwellings would be grouped to enclose the space within them around the SUDS pond and the view along the access route would be terminated by plot 4. The design and access statement explains that the scheme has been designed on a courtyard basis. It generally follows the layout of the existing buildings and access to the paddock, grass and field area would be maintained. Overall, the detail of the scheme would be acceptable.

33. A Landscape Appraisal (LA) was undertaken as part of the planning application submissions¹¹. The Council does not dispute the methodology of this document. The main area of dispute relates to viewpoints (VP) 2 and 3 and the use of landscaping to provide mitigation.
34. The LA provides a study of significant vegetation and other landscape elements in the locality. VP2 and 3 are highlighted as having an adverse impact during construction but that this would reduce over time. In making the assessment the LA relies upon the existing context within which they would be appreciated. The existing site is a cluster of built form which is seen amongst existing fields, landscaping and built form in the wider village. The appeal schemes would not fundamentally alter this. I appreciate that they would introduce garden areas and associated domestic paraphernalia. Nevertheless, they would be well laid out with proportionate garden areas for the dwellings and where larger areas are proposed paddock areas would be allocated.
35. VP3 would be within the street scene. The existing view reads as mixed detached dwellings fronting the road with some interspersed landscaping and hedgerows. This view would change in so far as the existing frontage building would be replaced with plots 1 and 2. Views in the street would be altered but not significantly. The feel of a detached building with a hedgerow between would remain and a garden area would be provided to the front of plots 1 & 2 giving some relief to the road. The LA acknowledges that changes to the built form would be adverse. Nonetheless this would reduce over time and within the context of the wider street scene I do not consider that it would be harmful.
36. VP2 would be further along D'Arcy Road and I was able on site, with the permission of the adjacent landowner, to view the appeal site from their access track and land. From this perspective there are short range views of the existing built form which is broken up by existing trees and landscape features. The views of appeal scheme A would be slightly more prominent due to the provision of dwellings and changes in materials. Nevertheless, the built form would have a cohesive courtyard design and would be balanced by the provision of soft landscaping within the scheme and its edges. Overall I do not consider that the change from existing would be so significant as to harm the character of the area.
37. Overall the LA concludes that the longer views would either attract no change or the effects would be limited. The Council did not dispute this and I have no evidence that would lead me to a different conclusion.
38. LDP policies S1, S2 and S8 seek to support sustainable developments within defined settlements and protect the intrinsic character and beauty of the countryside. Within policy S8 it sets out that Outside of Suburbs and the Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it is for one of the list of exceptions set out. Whilst the scheme would not harm character and appearance the policy is worded as 'and' when applying the exceptions and none are applicable to appeal scheme A. As such for Appeal scheme A there would be in principle policy conflict with S8 which I return to in the planning balance. Policies S1 and H4 seeks to promote the effective use of land and prioritise development

¹¹ Landscape Appraisal, Andrew Hastings Landscape Consultants

on previously developed land and the appeal schemes would accord with this aim. I therefore conclude that overall the built form of the two proposals would not have a harmful effect on the character and appearance of the area.

Appeal A – Highway safety

39. It was agreed at the hearing that the Councils concerns regarding the internal access road would be overcome by the amended plans. In particular the inclusion of a passing place and detail regarding refuse vehicle passing. There was agreement that these matters should be secured by condition and that the Local Highway Authority did not object to the scheme. I have no evidence to lead me to a different conclusion.
40. I therefore conclude that the scheme would not have a harmful effect on highway safety. It would not conflict with LDP policies T1, T2, S1 and D1 which amongst other things seek to create safe and accessible development proposals.

Affordable housing

41. LDP Policy H1 requires affordable housing provision at 40% for schemes of 10 or more or with a combined gross floorspace of more than 1000sqm. Neither scheme is over 10 units as such the relevant consideration is the gross floorspace. There was dispute regarding the application of this element of the policy to the appeal schemes. The Council's Affordable Housing and Viability SPD provides further detail regarding floorspace calculations¹². In particular paragraph 4.3 refers to schemes that include demolition.
42. Appeal A includes a significant amount of demolition that would leave a gross floorspace below the applicable trigger. Appeal scheme B would have a gross floor space significantly below the trigger without considering any demolition. Therefore, in both cases policy H1 would not be applicable based on the guidance set out in the SPD.
43. I therefore conclude that Appeal B and Appeal A would make appropriate provision for affordable housing. The schemes would therefore not be in conflict with LDP policy H1 and the Affordable Housing and Viability SPD which seek to secure the provision of affordable housing in new development.

Other matters

Effect on protected habitats

44. Both appeal schemes propose dwellings on a site that lies within the Zone of Influence of the Essex Estuaries Special Area of Conservation (SAC), Blackwater Estuary Special Protection Area (SPA) and Ramsar site, Dengie SPA and Ramsar site, Crouch and Roach Estuaries SPA and Ramsar site. The interest features include the international importance of the Essex coastline for birds and their habitat.
45. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the protected habitats. The effects arising from the proposal need to be considered in

¹² Paragraphs 4.1, 4.2, 4.3

combination with other development in the area and adopting a precautionary approach.

46. Appeal B was accompanied by a unilateral undertaking when it was submitted to the Council. For Appeal A a signed and dated unilateral undertaking was submitted with the appeal. In both appeals the number of additional recreational visitors from the proposed development, either alone or in combination with other projects could adversely affect the integrity of the protected habitats. As such both schemes would have an adverse effect on the integrity of the protected habitats but regard can be had to whether these adverse effects can be mitigated.
47. Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) SPD¹³, which is based on the advice of Natural England, seeks mitigation in the form of a financial contribution per dwelling. The financial contribution in both appeals would be secured by the submitted unilateral undertakings. The Council confirmed at the Hearing that with the undertakings in place it would not be defending reason 5 for Appeal A.
48. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites. Consequently, the proposals would not adversely affect the integrity of the protected habitats.

Site location

49. Whilst not a reason for refusal the Council's evidence and delegated reports refer to the location of the schemes being in a small residential village with limited local facilities and the Parish Council raise the potential reliance on private motor vehicles. The appellant undertook an assessment of the suitability of the appeal site as a location for new development¹⁴. Within the LDP Tolleshunt Knights is identified as a third tier settlement within the settlement hierarchy, that is designated as a smaller village. Smaller villages are described as having few or no services and facilities with limited or no access to public transport but as the appellant points out the site would not be isolated but rather on the edge of the settlement. I saw on my site inspection that there are footpaths along parts of D'Arcy Road and the closest bus stop is along Brook Road. Overall in this case it is probable that future residents would be largely reliant on private car in order to support services within nearby villages and maintain or enhance the vitality of those communities and to access services further away. As such the location of the sites would be a neutral factor.

Conditions – Appeals A & B

50. I have considered the conditions put forward and discussed at the hearing against the Framework, the Planning Practice Guidance and where necessary I have amended the wording in the interests of precision. In both appeals conditions 1 & 2 are required because they set the necessary time limit and the approved plans and documents as this provides certainty.

¹³ Appendix 1 to the Council's Statement of Case

¹⁴ Statement of Case Appendix 10

51. In the interests of the character and appearance of the area I consider that it is necessary to impose a condition that would secure the detail of hard and soft landscaping and boundary treatments and secure their management as well as require submission of an arboricultural method statement. A condition for the submission of materials was not suggested at the hearing. Detail of material finishes is shown on the plans and could therefore be enforced via the plans condition.
52. I have amended the wording from that suggested in conditions 7 and 9 in the list discussed at the hearing. This combines both of the suggested conditions to include one that is necessary and reasonable to control construction management issues in the interests of the living conditions of existing occupiers of nearby dwellings.
53. In the interests of highway safety and methods of sustainable travel it would be necessary to secure layout of parking spaces, secure cycle parking facilities and residential travel information packs. It would also be necessary to secure the roadway specification for refuse vehicles. In appeal A ¹⁵ it would be necessary to secure the detail of a passing place and refuse vehicle passing. The transport statement¹⁶ includes a plan detailing these items and this plan is included in condition 2 to secure the implementation of these details.
54. Noise mitigation measures for the new dwellings should be secured to ensure adequate living conditions for their occupiers. As such a condition is necessary that would ensure the measures outlined are implemented.
55. In the interests of the living conditions of existing occupiers nearby it is necessary to secure the submission of full details of finished levels. A condition to address contaminated land was not suggested in the documents but was discussed at the hearing in light of the comments made by the Council's environmental health officer on this matter. I consider that the application of such a condition would be reasonable and necessary.
56. To manage the water environment of the development and mitigate the impact on flood risk and water quality a condition to secure the submission of both a foul and surface water drainage strategy and its subsequent implementation are necessary.

Planning Balance

Appeal A

57. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the Development Plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework which is of course a material consideration to which substantial weight should be attached. There is no dispute¹⁷ that the Council does not have a five year supply of deliverable housing and therefore the tilted balance in the Framework is engaged.
58. In this case there would be in principle conflict of appeal scheme A with policy S8 by reason of the provision of new housing in the countryside. That said in

¹⁵ Para 39 refers

¹⁶ Appendix 4 to Appellants Statement of Case

¹⁷ Statement of common ground para 3.2

terms of built for I have found that Appeal scheme A would not harm the character and appearance of the area. In addition there would not be an adverse effect on the living conditions of future occupiers and the schemes would not undermine the provision of specialist accommodation in the district. There would be no harmful highway safety impacts and appropriate provision for affordable housing. The planning obligation makes provision for mitigation such that there would be no harm to protected habitats. Therefore I consider that the adverse impact arising from the location of part of Appeal A in the countryside and consequent policy conflict would not significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework as a whole. As such the Framework is a material consideration which weights in favour of the scheme.

59. There would be some conflict with the adopted development plan, policy S8, regarding the location of Appeal A in part in the countryside. There would be compliance with the development plan in terms of policies S1, H4, S3, I2, E3, H3, D1, D2, T1, T2, H1, N1 and N2. The design approach would not harm the character and appearance of the area or highway safety, it would provide acceptable living conditions for future occupiers, would not harm the provision of specialist accommodation in the district. As such I consider that the totality of the compliance with the development plan policies taken together with other material considerations outweigh the limited conflict identified.

Appeal B

60. The site area of appeal scheme B is within the settlement boundary and as such there would be no in principle conflict with the development plan. The scheme would not harm the provision of specialist accommodation in the district, the character and appearance of the area and would provide appropriate living conditions for future occupiers, would make appropriate provision for affordable housing and there would be no harm to protected habitats. As such appeal scheme B would be in accordance with the development plan.

Conclusion

61. Therefore, for the above reasons and having regard to all other matters raised I conclude that the appeals should be allowed.

D J Board

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

L Ryder MPlan MRTPI	CODE Development Planners
C Bentley BSc (Hons) CIEH MI	Sharps Acoustics LLP
EnvSc	
P Heather RIBA	Robert Hutson Architects
K Pickering	Tern Developments

FOR THE LOCAL PLANNING AUTHORITY:

K Mathews MRTPI	Maldon District Council (MDC)
J Fairweather	Environmental Health Specialist MDC

INTERESTED PERSONS:

E Dwyer	Near Neighbour
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DOCUMENTS SUBMITTED AT THE HEARING

- 1 Housing & Economic Land Availability Assessment Call for Sites Exercise Information
- 2 Maldon District Council - Response to application for Costs

Annex A - Conditions Appeal A

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall not be carried out except in complete accordance with the approved drawings and specifications: 908-PL-01W, 908-PL-02H, 908-PL-03B, 908-PL-04C, 908-PL-05E, 908-PL-06E, 908-PL-07E, 908-PL-08C, 908-PL-15A, 908-PL-16, 908-PL-17, 908-PL- 18, 908-PL-19, 908-PL-20, 908-PL-021C, 908-SUR-01B, 908-SUR-02A, 908- SC-02A, 908-SUR-03A, 908-SUR-04A, 908-HT1-01P, 908-HT1-02E, 908- HT1-03H, 908-HT2A-01P, 908-HT2A-02E, 908-HT2B-01P, 908-HT2B-02G, 908-HT2B-03E, 908-HT2C-01N, 908-HT2C-02H, 908-HT3-01K, 908-HT3- 02F, 908-HT5-01G, 908-HT5-02G, 908-SC-02B, 908-SC-03E, 7551-DAIA REV A; 194002 – 003 Rev C.
3. No development shall take place above ground level until a scheme of hard and soft landscaping, including boundary treatment, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be completed prior to the occupation of the dwellings hereby permitted.
4. The parking spaces proposed shall be laid out and provided in accordance with the approved details prior to the occupation of the dwellings hereby approved.
5. Prior to the first occupation of the proposed dwellings the occupiers of each dwelling shall be provided with a Residential Travel Information Pack for sustainable travel.
6. Prior to occupation details of secure cycle parking facilities shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and thereafter retained for use at all times.
7. No development shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority. The development shall be only be carried-out in accordance with the approved details.
8. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for, where appropriate:
 - The parking of vehicles of site operatives and visitors
 - Loading, unloading and storage of plant and materials and the manoeuvring of all vehicles
 - Storage of plant and materials used in constructing the development
 - The erection and maintenance of security hoarding

- Wheel washing facilities
 - Measures to control the emission of dust and dirt during construction
 - A scheme for recycling/disposing of waste resulting from demolition and construction works
 - working hours.
9. The dwellings shall not be occupied until the details of the mitigation measures set out in the Noise Impact Assessment report dated 20th March 2020 have been submitted to and agreed in writing by the local planning authority (including acoustic glazing, means of ventilation and the screening of external amenity areas) and fully installed on the site and into the dwellings where they are required. The development shall be retained as such in perpetuity.
10. The roadway shall be constructed to withstand use by 26 tonne waste collection vehicles.
11. No development shall take place above slab level until a system of surface water and foul drainage have been provided in accordance with details which shall have been submitted to and gained the prior approval in writing of the local planning authority. The systems shall be retained as approved in perpetuity.
12. No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
13. No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing by the local planning authority.
- END**

Annex B – Conditions Appeal B

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall not be carried out except in complete accordance with the approved drawings and specifications: 908-PL-100A, 908-PL-101A, 908-PL-102A, 908-PL-103C, 908-PL-104B, 908- PL-105B, 908-PL-112C, 908-PL-107B, 908-PL-108, 908-PL-109, 908-PL-110, 908-PL-111, 908-PL-106A, 908-SUR-01B.
3. No development shall take place above ground level until a scheme of hard and soft landscaping, including boundary treatment, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be completed prior to the occupation of the dwellings hereby permitted.
4. The parking spaces proposed shall be laid out and provided in accordance with the approved details prior to the occupation of the dwellings hereby approved.
5. Prior to the first occupation of the proposed dwellings the occupiers of each dwelling shall be provided with a Residential Travel Information Pack for sustainable travel.
6. Prior to occupation details of secure cycle parking facilities shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and thereafter retained for use at all times.
7. No development shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority. The development shall be only be carried-out in accordance with the approved details.
8. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for, where appropriate:
 - The parking of vehicles of site operatives and visitors
 - Loading, unloading and storage of plant and materials and the manoeuvring of all vehicles
 - Storage of plant and materials used in constructing the development
 - The erection and maintenance of security hoarding
 - Wheel washing facilities
 - Measures to control the emission of dust and dirt during construction

- A scheme for recycling/disposing of waste resulting from demolition and construction works
 - working hours
9. The dwellings shall not be occupied until the details of the mitigation measures set out in the Noise Impact Assessment report dated 20th March 2020 have been submitted to and agreed in writing by the local planning authority (including acoustic glazing, means of ventilation and the screening of external amenity areas) and fully installed on the site and into the dwellings where they are required. The development shall be retained as such in perpetuity.
10. The roadway shall be constructed to withstand use by 26 tonne waste collection vehicles.
11. No development shall take place above slab level until a system of surface water and foul drainage have been provided in accordance with details which shall have been submitted to and gained the prior approval in writing of the local planning authority. The systems shall be retained as approved in perpetuity.
12. No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
13. No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing by the local planning authority.

END