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## Appeal Decision

Site visit made on 11 October 2021

**by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 January 2022**

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**Appeal Ref: APP/A1530/W/21/3267627**

**Land north of The Maltings, Mersea Road, Abberton CO5 7NR**

- 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 Mrs Cohen against the decision of Colchester Borough Council.
  - The application Ref 201163, dated 18 May 2020, was refused by notice dated 30 July 2020.
  - The development proposed is the erection of one dwelling.
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### Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of one dwelling at Land north of The Maltings, Mersea Road, Abberton CO5 7NR, in accordance with the terms of the application, Ref 201163, dated 18 May 2020, and the plans submitted with it, subject to the conditions at the end of this decision.

### Preliminary Matters

2. The application was made in outline, with all matters reserved. I have considered the appeal on the same basis and assessed accompanying imagery as merely indicative insofar as it may refer to reserved matters.
3. The Council has referred to policies in its emerging Local Plan (eLP). As I have little information about any unresolved objections to the Plan, this limits the weight I can give to its policies. The Council no longer pursues its reason for refusal relating to Habitats sites mitigation.

### Application for costs

4. An application for costs was made by Mrs Cohen against Colchester Borough Council. This application is the subject of a separate decision.

### Main Issues

5. The main issues are:
    - whether the proposed development would preserve the setting of The Maltings, a Grade II listed building; and,
    - whether the appellant's undertaking meets the tests for planning obligations, with particular regard to the undertaking in connection with the provision for community facilities sought by the Council.
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## **Reasons**

### *Setting of The Maltings*

6. The Maltings is a late C16 timber-framed house with an adjoining stable range. The appeal site appears to be a parcel of open land, referred to as having once been part of the land belonging to the owner of the Maltings, but it was separated to a different ownership in the 1980s.
7. Notwithstanding this, part of the historic interest of the listed building is its former use, perhaps as a farmhouse or as a maltings set in a working agricultural landscape. Though the setting of the listed building has changed, with a tarmac road now in front of it and modern housing part of its wider context, the status and character of the building still demands sufficient space around it so that an observer can appreciate its special historic interest and its development.
8. The Council has rightly identified that the appeal site contributes to the spatial setting of the listed building. However, its contribution does not depend on the land being undeveloped or remaining empty or disused. Indeed, there is an apple store building on this same side of The Maltings, and it stands closer than the appeal site. This is a substantial building and now forms part of its setting. The wider context is linear, detached, street-facing housing fronting a road.
9. My impression from my site visit is that the appeal site is not so close to the listed building that the development of a single dwelling would diminish the character of its spatial setting or its historic significance in the wider landscape. The Council could control the siting of the dwelling, its height, form and appearance, and landscape under reserved matters.
10. In accordance with the duty imposed on me by section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990, I have given considerable importance and weight to the desirability of preserving the setting of the listed building. For the reasons above, its setting would be preserved, and there would be no conflict with policies ENV1 and UR2 of the Core Strategy 2008 (CS), and policy DP14 of the Development Policies 2010 (DP) which protect historic assets including listed buildings from adverse development. Nor would there be any conflict with the National Planning Policy Framework (the Framework) which recognises in paragraph 200 the potential for harm from development within the setting of a heritage asset.

### *Planning obligations*

11. The Council initially sought three contributions from the appellant to make the development acceptable in planning terms. The first of these, towards open space, sport and recreation, it no longer pursues. The second, towards community facilities, is contested, and the third, in connection with Habitats sites, is accepted by the appellant.
12. Community facilities: CS policy SD2 says that development will be expected to contribute to strategic projects that support sustainable development and the

- wider community. DP policy DP3 says that the Council will seek planning obligations with details set out in supplementary planning documents.
13. The Council's Provision of Community Facilities Supplementary Planning Document 2009 sets out a tariff of charges depending on the number of bedrooms and dwellings in a development. Normally, it says, contributions will be in relation to identified projects within the vicinity of the new development, to mitigate the impact of new residents on existing community facilities. Where there is no clear need in the area, and no practical options for enhancing local facilities, the contribution will be used for facilities that serve residents borough-wide. Community facilities contributions from outline applications can be reserved until the number of bedrooms in the development is known.
  14. The Council has identified that the Abberton Village Hall requires its car-park to be resurfaced, and it needs new windows and doors. While I do not doubt the Council's motivation to repair the facility, there are no details provided about the conditions of the car-park surface and the windows, the extent of work, nor any costings or estimates to justify the contribution sought. Without this I cannot be sure that the contribution sought is necessary to make the development acceptable in planning terms, nor that it is fairly and reasonably related in scale and kind to the development. The Council has not identified an alternative project which serves the whole borough.
  15. I therefore consider, on the basis of the information presented, that the contribution for community facilities does not meet the tests for a planning obligation as set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the National Planning Policy Framework. I am therefore unable to take account of this obligation.
  16. Habitats sites: The Essex coastline is extremely diverse and features a variety of habitats and environments which are internationally important for wildlife. Most of the coast is designated under the UK Conservation of Habitats and Species Regulations 2017, and contains 10 Habitats sites. Housing and consequent population growth in Essex is likely to increase the number of visitors to these sensitive coastal areas, creating the potential for impacts from increased recreational disturbance of the birds and their habitats, unless adequately managed, as set out in the Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy (RAMS) Habitats Regulations Assessment Strategy document 2018-2038.
  17. The proposed development, introducing a new dwelling on the site, would be located within the zone of influence of the Habitats sites as set out in the Essex Coast RAMS. The development is therefore likely to result, in combination with other projects and plans, in significant adverse effects upon the integrity of the Habitats sites including from the increased potential for disturbance of the protected habitats from the activity of residents. An appropriate assessment is therefore required under the Habitat Regulations 2017 (as amended).
  18. The Council has adopted the Essex Coast RAMS which sets out the mitigation requirements for development proposals. A unilateral undertaking (UU) has

been provided by the appellant. This provides for a contribution of £127.30 to be paid to the Council towards mitigation in accordance with the Essex Coast RAMS.

19. The Council has confirmed that it is satisfied with the content of the UU in respect of Habitats sites. I am satisfied that the UU would provide for appropriate mitigation in accordance with the Essex Coast RAMS and also that satisfactory measures are in place to ensure that the mitigation would be provided in a timely manner.
20. Consequently, I am satisfied that the proposed development, in combination with other projects and plans, would not result in the likelihood of any adverse effects upon the integrity of the Habitats sites. The proposal would therefore satisfactorily accord with the habitats and species protection criteria set out in policy DP21 of the Development Policies 2010 and the Habitats Regulations 2017. The Habitats obligation meets the relevant statutory<sup>1</sup> and national policy<sup>2</sup> tests and is therefore a material consideration in my assessment of the appeal.

### **Conditions**

21. I have had regard to the conditions suggested by the Council and where necessary I have amended them in the interests of clarity and to reflect the advice in the Framework and Planning Practice Guidance. I have imposed the standard condition relating to the submission of details of the reserved matters [1]; a condition specifying the timeframes for their submission [2]; and the commencement of development and the approved plans for the purpose of certainty [3,4].
22. Given the speed of traffic on the road, and its width, control of deliveries is necessary for highway safety. So too is the control of mud from the site which risks building-up on the road. To protect the privacy of surrounding occupiers, control over working and delivery hours is also necessary. I have therefore imposed a construction method statement condition [5] so these matters can be properly considered before the development begins. Given the limited scale of the development, I see no need to require details of staff parking, site storage and security hoardings.
23. Given the site's location on the edge of a historic Green, and the potential to encounter medieval and post medieval occupation remains on the site, I have also imposed conditions [6,7] to secure a written scheme of archaeological investigation.
24. The Council suggests conditions in relation to landscaping, refuse/recycling bins, and a vehicle charging point. These however would fall to be considered under the landscaping and layout details required to be submitted as part of the reserved matters. These have therefore not been imposed.
25. Paragraph 53 of the Framework states that planning conditions should not be used to restrict permitted development rights unless there is a clear justification for doing so. The PPG also states restricting the future use of

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<sup>1</sup> Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

<sup>2</sup> Paragraph 57 of the Framework

permitted development rights should only be used in exceptional circumstances. There are no exceptional circumstances which justify the removal of permitted development rights in this instance. The condition suggested by the Council is therefore unnecessary.

**Conclusion**

26. I have found that the proposed development would preserve the setting of The Maltings. While the undertaking for mitigation in connection with Habitats sites meets the statutory and policy tests, the contribution towards community facilities does not. For the reasons given above, the appeal is allowed.

*Patrick Whelan*

INSPECTOR

## **Schedule of Conditions**

- 1) Details of the appearance, access, layout, scale, and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved drawings: Location Plan 1:2500; and, on drawing C/01 Planning Drawing, the Location Plan 1:1250 and the Site Plan as existing 1:200.
- 5) 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 Statement shall provide for:
  - i) loading and unloading of plant and materials;
  - ii) wheel washing facilities;
  - iii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) No development shall take place, including any works of demolition, until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions and:
  - i) the programme and methodology of site investigation and recording;
  - ii) the programme for post investigation assessment;
  - iii) the provision to be made for analysis of the site investigation and recording;
  - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
  - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 7) No development shall take place, including any works of demolition, other than in accordance with the Written Scheme of Archaeological Investigation approved under condition No 6.

END OF CONDITIONS SCHEDULE