



Appeal Decision

Site visit made on 10 January 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2022

Appeal Ref: APP/X1545/W/21/3269661

Land South of Marsh Road, Burnham-On-Crouch CMO 8NB

- 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 Matthew Homes Ltd against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00831, dated 24 July 2020, was refused by notice dated 6 November 2020.
 - The development proposed comprises the erection of 9 dwellings, the creation of an adoptable and private access road, and associated landscaping and ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has put forward revised plans, drawing numbers GAR 01, Rev C, GAR 02 Rev C, BLP 01 Rev B, DBML 01 Rev B, SE 01 Rev B and SL 01 Rev D. The additional information shown on these drawings relates to amendments to the sizes of the proposed parking spaces. This additional information does not materially alter the proposal. In accepting these drawings, I do not consider the interests of parties who might wish to comment would be prejudiced. For this reason, I have had regard to the plans.
3. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.

Main Issues

4. The main issues in respect of the appeal are: -
 - a) The effect of the proposed development on the character and appearance of the area; and
 - b) The delivery of affordable housing.

Reasons

Character and appearance

5. The site forms part of a recently constructed residential development that was granted outline planning permission on appeal. Provision of open space formed

- part of the description of the proposed development at outline stage. Within the subsequent reserved matters approval, the land relating to the current appeal site was allocated as public open space. The public open space wraps around the northern and eastern sides of the development where the site abuts the open countryside. The proposal seeks the erection of nine detached houses as a continuation of existing linear development that backs onto the northern boundary of the site within the northern area allocated as public open space.
6. Although the Council contends that the proposal would be outside the defined settlement boundary of Burnham-on-Crouch and, as such, not allocated for housing development, the appeal site was nonetheless part of the outline and subsequent reserved matters applications and permissions for the development of up to 75 houses. This established the principle of residential development on this land and the requirement to provide public open space within the development. As such, the proposal would not be located beyond the settlement boundary.
 7. The land to the north and east of the site is open undeveloped countryside. The allocated areas of open space within the development provide an open undeveloped break between the residential development and the open countryside. This provides a sensitive transitional buffer at the edge of the settlement between the urban and rural areas.
 8. There is discussion relating to the density of the proposed development comparable to that of the new development recently constructed and some tandem parking arrangements. The issue as I see it is the impact of placing urbanising residential development within the area allocated as public open space and how this would impact upon the transition between the urban and rural environments at this newly created edge of settlement boundary.
 9. Erecting nine dwellings within the northern area of allocated public open space would run contrary to the approved development. Furthermore, a number of the dwellings proposed would project beyond the existing easterly properties. This would create a projection of built development beyond the existing urban development into the public open space and toward the open countryside. The proposal would create a harsh urbanising edge and substantially diminish the landscaped openness that allows for the sensitive transition from the countryside at the edge of the settlement.
 10. In addition, the properties would have their rear gardens adjacent the countryside. The appellant's Arboricultural Planning Statement by ADAS that supports the appeal indicates that most of the existing trees and vegetation along the northern boundary of the site are to be retained. However, it is extremely likely that future occupiers would seek to erect domestic boundaries to afford them privacy. This would add to the resulting urbanising development at the edge of the settlement.
 11. Given the extent of built development proposed at the northern and, in part, north-eastern boundaries of the recently developed site, the proposal would not be sympathetic to the rural context north and northeast of the site and would create a visually harmful settlement edge directly adjacent to the countryside. Creating urbanised development within the area allocated for public open space and diminishing the open transition between the urban and rural environments would be substantially visually harmful at this edge of settlement location. The visual harm arising from the development would be

clearly visible in public views from the wider area, including views from Marsh Road further north of the appeal site.

12. The previous Inspector commented that the outline scheme would be seen against the backdrop of existing development and that the proposal would provide the opportunity to soften the boundary between the built and natural environment. To some extent the proposed development would be seen against the backdrop of existing built development. By placing the public open space between the residential development and the open countryside, this has embraced the opportunity to soften the boundary between the built and natural environment as envisaged by the previous Inspector. The proposal before me would run contrary to this.
13. I acknowledge that the proposal would retain the area of public open space to the east of the development. The appellant highlights that of the 43% of public open space created as part of the approved scheme, 34% would be retained if the nine dwellings are erected. Furthermore, the proposed development would incorporate sympathetic materials similar to that used within the recent development. Even if some public open space is retained and the development would be of a high-quality design and appearance, this does not overcome my above concerns or justify the proposed development.
14. The Council's adopted guidance does not endorse a method of calculating how much public open space would be required at new developments. However, the issue as I see it in this case is not the amount of public open space provided, it is the role that this space plays in relation to the settlement boundary.
15. The proposal would, therefore, conflict with Policies D1 and H4 of the Maldon District Local Development Plan (LDP) and Maldon District Design Guide Supplementary Planning Document (SPD). These policies require all development to respect and enhance the character and local context and that seek to avoid the loss of any important landscape interests.

Affordable housing

16. Policy H1 of the Maldon District LDP requires new residential development of more than 10 units to make 30% provision for affordable housing. The supporting text relating to Policy H1 states that "*The need for a contribution towards affordable housing will be based upon the gross number of homes developed on all sites in cases where a site is segregated into smaller sites.*" The Council's adopted Maldon District Affordable Housing and Viability SPD indicates that there is a significant need in the district for affordable housing and sets out an identified need for provision of 130 affordable units each year for the next 15 years from the SPD's publication in 2019.
17. The appeal site would be within the red line application boundary of the outline planning application, however being a development of nine dwellings it would not meet the threshold of Policy H1. The Council contends that the proposal would be an artificial sub-division of the site to that of the previously approved outline scheme and that the affordable housing provision should be considered collectively, that is, as a development resulting in a total 84 dwellings.
18. The parties have referred to a High Court Judgement (Westminster City Council v FSS and Branlord) that suggests three ways in which a conclusion might be

reached on this matter. The first is whether the site is in single ownership. The Council indicates that the site is within the same ownership as the wider site. The second sets out whether they constitute a single site for planning purposes. The site is part of the original red line outline planning application and permission boundary. The third is whether the proposal can be deemed to constitute a single development. The proposal is within the outline permission site area and would be served by the same site entrance and estate roads and could readily be viewed as part of the residential development.

19. It has been explained that the appellant, Matthew Homes, purchased the site subsequent to the grant of outline planning permission and at a point when the affordable housing provision had been agreed. However, as I see it, despite the sale of the site, the site before me remains in the same ownership as the wider site, although now owned by Matthew Homes, it remains part of the site that formed part of the original outline planning permission that is served by the same entrance and estate roads.
20. I conclude that the proposal would represent an artificial sub-division of the site to that of the previously approved scheme and that the affordable housing provision should be considered collectively, that is, as a development resulting in a total 84 dwellings. As such, the proposal does not make adequate provision for affordable housing for which there is a clear need within the district. This brings the proposal into conflict with Policy H1 of the Maldon District LDP and the Framework.

Other Matters

21. Policies S1, D1, N1 and N2 of the Maldon District LDP indicate that new residential development which is likely to have a significant effect on the ecological integrity 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 will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects arising through increased recreational pressure. Such measures are required to be agreed with Natural England.
22. The site falls within the 'Zone of Influence'. A legal Unilateral Undertaking has been provided by the appellant that would secure a financial contribution towards mitigation. Whilst the Council indicate that a financial contribution towards Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) would ensure that the proposal would not adversely impact the SAC, SPA and Ramsar sites, there is insufficient information before me to enable me to form a view on this. However, given my findings in respect of the other main issues I do not consider it necessary to explore this matter further.
23. Since the determination of the planning application the local planning authority is no longer able to demonstrate a five-year deliverable supply of land for housing. The Council's most recent Five-Year Housing Land Supply Statement indicates there to be 3.26 years of deliverable housing land. If there is not a five-year supply of deliverable sites in place, the provisions of paragraph 11d)ii of the Framework should be applied.
24. The adverse impacts arising from the proposal relate to the harmful effect of the development on the character and appearance of the area and failure to

make adequate provision for affordable housing. The proposal would conflict with relevant development plan policies.

25. On the other hand, the Government's objective is to significantly boost the supply of homes and recognises the cumulative impact developing small sites can make to meeting supply. However, nine dwellings would make little difference to the overall supply of housing and the support nine extra household would provide to the social and local economy would also be minimal. The harm that I have identified relating to the character and appearance of the area and failure to make adequate provision for affordable housing is not outweighed by the contribution to housing land supply or those limited social and economic benefits associated with the proposal.
26. Consequently, the adverse impact on the character and appearance of the area and failure to make adequate provision for affordable housing would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

27. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons give, the appeal should be dismissed.

Nicola Davies

INSPECTOR