



Appeal Decision

Site visit made on 15 March 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th May 2022

Appeal Ref: APP/X1545/W/21/3276004

Holmwood Farm, Slough Lane, Purleigh CM3 4LX

- 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 Tony Hutton against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/01221, dated 26 November 2020, was refused by notice dated 22 January 2021.
 - The development proposed is described as the “proposed erection of two three-bedroom dwelling houses”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the submission of the appellant’s appeal, the revised National Planning Policy Framework (the Framework) was published and came into force on 20 July 2021. In this instance, the issue most relevant to the appeal remains unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action.

Main Issues

3. The main issues in this appeal are 1) whether the location of the development is acceptable having regard to the development plan, and its effect on the character and appearance of the area, 2) the effect of the development on ecology, and 3) European designated nature conservation sites.

Reasons

Location/Character and Appearance

4. The site does not lie within any of the settlements defined within Policy S8 of the Maldon District Council Local Development Plan 2017 (the LDP) and thus, is considered to be within the countryside. Policy S8 states that in order to protect the intrinsic beauty and character of the countryside, outside of such settlements, permission will only be granted provided it is for one of those exceptions as listed therein, none of which have been advanced by the appellant.
5. The appellant acknowledges that the site has limited access to local services and public transport. Moreover, as Slough Lane lacks footpaths and streetlighting it is not conducive to walking, with Maldon some 5km away where one can access services and amenities. Thus, it is highly probable that the location of the appeal site will result in future occupiers relying heavily on

the private car to access the services and amenities required for day to day living, including any commuting to work.

6. The appellant refers to the Braintree judgement¹, which, for the purposes of paragraph 80 of the Framework, confirmed that the term 'isolated' means a home that is physically separate or remote from a settlement. Although there are other dwellings in the vicinity of the appeal site, these are spread along Slough Lane and other than sharing a frontage upon a rural road, I have not been presented with any compelling evidence that they form a settlement in their own right.
7. Moreover, the appeal site is some 530m north of the village of Cock Clarks, which the Council confirm has no or few facilities or services. The village of Bicknacre is also some 2.5km to the west of the appeal site and, as already established, Maldon is also some 5km away. With open fields and agricultural land settled in between these areas, I am not persuaded that the appeal site can be viewed as anything other than being physically separate or remote from Maldon and indeed the surrounding villages of Cock Clarks and Bicknacre. Consequently, the proposal would result in the erection of dwellings within an isolated location and the specific circumstances at paragraph 80 of the Framework would apply in this instance.
8. I also acknowledge that paragraph 79 of the Framework states that where there are groups of smaller settlements, development in one village may support services in a village nearby. However, I consider that the appeal site has poor accessibility even allowing for its rural location and given the lack of facilities available close to the appeal site, there is no guarantee that future occupiers would support surrounding villages and would be likely to draw mainly on services and facilities at Maldon. Moreover, spatially the appeal location is not a "smaller settlement" or "village" at which the Framework envisages at paragraph 79 may be considered sustainable development by supporting the services in a village nearby. Furthermore, return trips of some 10km to Maldon cannot be considered to be short.
9. I accept that paragraph 105 of the Framework states, amongst other things, that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Arguably, the lack of options available to the appeal site in terms of access to means of transport other than the private car is reflective of its rural location. However, although the Framework recognises the challenges rural areas face, it should not be used as a justification for the siting of development in locations that are not well served by sustainable transport options.
10. The appellant also refers to paragraph 78 of the Framework which states that decisions should be responsive to local circumstances and support housing that reflect local needs. However, in this instance, there is nothing before me to demonstrate that the proposed housing would meet a local need.
11. Turning to the effect of the development on the character and appearance of the area, the appeal site is a roughly rectangular parcel of land that is mainly laid to grass and bound to Slough Lane by mature hedging. The area contains individual dwellings and groups of buildings that are dispersed across the landscape, and has a verdant, open and distinctly rural character that is

¹ Braintree Council v SSCLG and others [2017] EWHC 2743 (Admin)

reinforced by mature landscaping within this countryside setting. Although there are dwellings and other buildings in the vicinity, the appeal site relates more to the rural land that surrounds it, to which it makes a positive contribution.

12. The proposed dwellings and associated access would result in the loss of undeveloped countryside. The development would suburbanise the site, thereby eroding its open and spacious qualities. This would be to the detriment of the character and appearance of the area and harmful to its rural setting. Furthermore, it is also necessary to consider the visual impacts of the residential use such as the vehicle movements and parking associated with the development, along with fencing, domestic cultivation and items such as garden furniture, lighting and washing lines for each new dwelling which would add to the suburbanising effect. This harm would be clearly visible from the site's prominent location on Slough Lane.
13. Whilst I acknowledge that paragraph 119 of the Framework promotes the effective use of land in meeting the need for homes, decisions should also safeguard and improve the environment. For the reasons as set out above, I am not persuaded that would be the case through the development of the site with two dwellings. Moreover, although it is not within an area covered by landscaping designations, the appeal site nonetheless contributes towards the intrinsic natural beauty of the countryside.
14. Thus, the appeal site is not within a suitable location and the development would result in harm to the character and appearance of the area. It would be in conflict with Policies S1, S8, D1 and H4 of the LDP and paragraphs 104 and 130 of the Framework which seek, amongst other things, to reduce the need to travel to promote accessibility for all and ensure that developments have regard to the existing character and density of the surrounding area.

Ecology

15. The Council state that there are a number of ponds in the area and that the site sits within an amber risk zone for great crested newts. Furthermore, there are recordings of other species within the area, such as bats, hedgehogs, and birds. As the appellant had failed to provide an ecological survey of the site, to include a roost assessment for bats, it was considered that the appellant had failed to demonstrate that the development would impact on protected species and/or habitats.
16. As part of the appeal submissions, the appellant provided an Ecological Impact Assessment² (EIA), which I have considered under the principles established by the Courts in *Wheatcroft*³. I am satisfied that it does not change the development to such a degree that to consider it would deprive those who should have been consulted on the change, the opportunity of such consultation. In any event, the Council has had the opportunity to consider the EIA as part of its submissions.
17. I have therefore determined the appeal taking into account the EIA which demonstrates that no protected species were identified at the site and that there are no ecological constraints that would hinder its development. Moreover, there are opportunities for enhancement measures such as planting

² Low Impact EcIA, Gemma Holmes BSC (Hons) ACIEEM, Version 10, April 2021

³ *Bernard Wheatcroft Ltd v SSE & Harborough DC* [1982] P&CR 233

and bat and bird boxes, which could be secured by an appropriately worded planning condition.

18. Thus, I am satisfied that the development would not have an unacceptable impact on ecology. It would not be in conflict with Policy D1 of the LDP and paragraph 174 of the Framework which seek, amongst other things, to ensure that developments make a positive contribution in terms of the natural environment particularly in relation to sites of biodiversity value.

Other Matters

19. I acknowledge that the design of the dwellings is acceptable and that appropriate materials could be employed. I also note that no objection to the development was raised on highway safety or residential amenity. However, neither this nor any other material consideration that has been raised outweighs the harm that I have identified above.

Planning Balance

20. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites. In such circumstances, the policies that are the most important for determining the application are considered to be out-of-date and the tilted balance at paragraph 11 of the Framework is engaged.
21. I acknowledge that there would be social benefits from the provision of two dwellings, helping to boost housing supply in a rural part of the district. There would be economic benefits resulting from the construction of the new dwellings and through local taxation such as council tax. The occupants of the dwellings are also likely to assist the local economy through additional spending in the area. As a small windfall site, it could be built-out relatively quickly, further assisting the Council in boosting its supply of housing. Combined, given that the development is for two dwellings, I would attach moderate weight to these benefits.
22. However, the Framework identifies good design as a key aspect of sustainable development, along with recognising the intrinsic character and beauty of the countryside. For the reasons already rehearsed, I do not find the site to be within a suitable location, with future occupiers being heavily reliant upon the private car to access even basic day to day services. There would also be harm to the character and appearance of the area as a result of the development. Accordingly, given my findings outlined above, the proposal would fail to meet the environmental dimension of the Framework.
23. Consequently, the harm I have found is serious and, in my view, that significantly and demonstrably outweighs the benefits of the scheme when assessed against the policies in the Framework taken as a whole. Thus, the application of the tilted balance in paragraph 11 of the Framework does not indicate that planning permission should be granted.

European Designated Sites

24. The site lies within the zone of influence for one or more European designated sites, identified within the Essex Coasts Recreational disturbance Avoidance and Mitigation Strategy (RAMS). To ensure the requirements of the Conservation of Habitats and Species Regulations 2017 are met, the Council

requires the collection of payments from relevant developments towards the mitigation measures set out in the RAMS.

25. As the appeal is being dismissed on other substantive issues, it is not necessary to look at this matter in detail. Moreover, had I been minded to allow the appeal, I would have explored the necessity for undertaking an Appropriate Assessment and whether any payment provided by the appellant would off-set the impact of the development on the sites identified above.

Conclusion

26. The proposal would conflict with the development plan and there are no other considerations, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict. For the reasons given above, I conclude that the appeal should be dismissed

Graham Wyatt

INSPECTOR