



Appeal Decision

Site visit made on 7 April 2022

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 July 2022

Appeal Ref: APP/X1545/W/21/3280861

Meadow Nursery, Park Lane, Tolleshunt Knights, Maldon, CM9 8HB

- 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 M Evans against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/00267, dated 15 March 2021, was refused by notice dated 10 May 2021.
 - The development proposed is full planning application for the retention of the existing dwelling.
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Decision

1. The appeal is allowed and planning permission granted for the provision of a dwelling on land at Meadow Nursery, Park Lane, Tolleshunt Knights, Maldon, CM9 8HB in accordance with the details set out in planning application LPA REF:FUL/MAL/21/00267 subject to the conditions set out in the attached schedule.

Procedural Matters

2. In the description of development given on the application form the proposal is described as "*Full planning permission for the retention of the existing dwelling*". It is clear to me that the dwelling that is the subject of this appeal was required to be demolished by virtue of conditions which were attached to a previous planning application for a replacement dwelling, ref FUL/MAL/17/00533.
3. This application is described as retention of the existing dwelling. Therefore, and notwithstanding the views expressed by the parties on this matter, I do not consider that this is an appeal that relates to the variation of conditions that were attached to a previous permission. However as retention of a dwelling is not in itself development I have treated this appeal as if it were for the construction of a single dwelling on the site which would have been sited, designed and constructed in the same manner as the existing dwelling. It is also clear to me that this is how the Council dealt with the application which is the subject of this appeal.
4. The site lies within the Zone of Influence of Habitat Regulation sites which are located in this part of Essex. At the hearing I requested that a properly executed copy of a Planning Obligation under s106 of the Town and Country Planning Act 1990, in the form of a Unilateral Undertaking (UU) be submitted. I confirm that I have received the UU and I will assess its necessity in

accordance with the Community Infrastructure Levy Regulations 2010 and paragraph 55 of the National Planning Policy Framework (the Framework) later in this decision.

Main Issues

5. I therefore consider that the main issues in this appeal are:

- whether the location of the proposal is suitable for residential development having regard to the Council's spatial strategy;
- the effect of the development on the character and appearance of the area;
- whether the occupants of the dwelling would have acceptable living conditions, having regard to the size of the garden;
- whether the occupants of the dwelling would have sufficient on-site parking so as not to cause harm to the users of the public highway.

Reasons

Suitability of the location

6. The site is located in a rural area outside the principal built up area of Tolleshunt Knights. However, the main built area of Tolleshunt Knights is around 600m away from the site and there is a bus stop within walking distance of the site giving access to services in the area. Furthermore the Framework at paragraph 79 recognises that development in one village may support services in a nearby village. Implicit in this paragraph is the assumption that in rural areas the private car will be used to some extent to access services.
7. The dwelling already exists therefore, should I be minded to dismiss the appeal then there would be one less family in the area which would make use of the local facilities. I recognise that the village of Tolleshunt Knights has limited facilities however there are other nearby settlements in the area that would benefit economically from the occupants of this dwelling staying in the area, albeit in a small way.
8. I also note that it is accepted by the parties that the Council cannot demonstrate a 5-year supply of deliverable housing sites. Therefore, the retention of the existing dwelling would make a small contribution to the supply of housing in the District.
9. The development plan for the area is comprised of the Maldon District Local Development Plan 2017 (MLP). Policies S1 and S8 are relevant to this issue.
10. Policy S1 seeks to deliver housing growth by allowing development that meets local needs and deliver a choice of high quality homes in sustainable locations. Moreover it seeks, amongst other things, to make effective use of land and prioritise development on previously developed land. The appeal proposal represents an existing house which by its very nature is sited on previously developed land. It also appears to be smaller than other dwellings in the locality and, as I have acknowledged above, appears to be in a sustainable location in the context of its rural location. Therefore I consider that the appeal proposal is broadly consistent with Policy S1.

11. Policy S8 relates to settlement boundaries and the countryside and appears to be aimed at protecting the character and appearance of the countryside rather than determining where new development is located per se. I will deal with the effect of the appeal proposal on the character and appearance of the area below. However, Policy S8 also seeks to restrict development outside settlement boundaries to specific categories which it outlines. It appears that the appeal proposal does not fall within any of these categories and so is not consistent with Policy S8 in this respect.
12. Overall the dwelling is sited in a location which has some accessibility to public transport, is within walking distance of a settlement (albeit with limited facilities), is within a short car journey of other settlements, would have a small economic benefit to the area and would contribute to housing land supply. Moreover, the site already contains a single house and so therefore makes use of land that is already developed. In terms of its character the house appears smaller than others in the locality and so therefore its retention would add to the housing choice in the area. In these respects I find that the appeal proposal is consistent with the development plan policies.
13. However the appeal proposal does not fall within any of the criteria for development in the countryside set out in Policy S8. In this respect I find the appeal proposal in conflict with this part of the Policy. In terms of the overall purpose of this Policy it is clear in the opening paragraph that it is about protecting the character and appearance of the countryside rather than preventing development taking place in locations outside settlement boundaries. I therefore give the conflict of the appeal proposal with this aspect of the policy limited weight in this decision.

Character and appearance

14. Whilst the site lies away from the main built area of Tolleshunt Knights it lies within a group of dwellings which either front Park Lane or lie to the rear of this frontage development. The area does not have the appearance of open countryside due to the number and density of houses located along the road. The appeal dwelling contributes to this character and even if it were removed the new dwellings to the rear of the site would assist in retaining the current residential character of the immediate locality. I therefore do not consider that the retention of the existing dwelling would add to the 'urbanisation' of the area as the dwellings that remain, should it be demolished, would still give the area immediate area a built character.
15. The MLP at Policies S1, S8 and D1 all seek amongst other things to ensure that new developments conserve and enhance the natural environment, deliver high quality design, protect the countryside and respect and enhance local character. It is clear to me that whilst the site lies away from the main built up area of Tolleshunt Knights it is surrounded by other residential development. Most of these dwellings are visible from Park Lane. The dwelling that currently occupies the appeal site appears to have been there for some time and its design, whilst not of outstanding quality, does not harm the character and appearance of the area and displays features such as a hipped roof with dormers which are found in dwellings in the countryside.
16. I have also considered the arguments concerning the size of the plot relative to others around it. Whilst it is undoubtedly smaller than most, if not all of the other plots in the area, I do not consider, given the limited visibility of the

gardens in the area from public vantage points, that this counts against the appeal proposal. The area still appears to be built up and would maintain this appearance should the dwelling which is the subject of this appeal be demolished.

17. I therefore consider that the site does not lie in the open countryside and neither are the design of the dwelling nor the size of its plot unsympathetic to the prevailing character and appearance of the area. In these respects and for the reasons given above I find that the appeal proposal is consistent with the policies of the development plan.

Living conditions of the occupiers

18. The current dwelling has outdoor spaces to its sides, front and rear with the access track to the new dwellings to the rear along one of its boundaries. I acknowledge that in its current form the majority of the garden to the appeal property is open to view from this access track. However I consider that an appropriate means of enclosure between the garden and the access track would remedy that position. Moreover this could be achieved through the use of an appropriate condition should I be minded to allow the appeal.
19. In terms of its overall size there was some disagreement between the parties at the hearing, with the Council arguing that the size of the usable space was 97 square metres, and the appellant arguing that the usable space was 120 square metres, against a Council standard of 100 square metres. The difference between the parties appears to arise over the definition of what constitutes 'usable' space.
20. I find that all the space around the appeal dwelling could be described as 'usable' in that the larger more open areas could be used for outdoor leisure activities such as gardening or sitting out, whilst the more enclosed spaces such as those between the appeal dwelling and its boundaries could be used for external storage. I therefore find that the living conditions of the occupiers of the dwelling would not be harmed by the amount of external space provided with the dwelling. In this respect therefore and for the reasons given above the proposal to retain the existing dwelling is consistent with both Policy D1 of the MLP and the Maldon District Design Guide of 2017.

Adequacy of on-site parking

21. The Council has adopted parking standards which require a house of the size which is the subject of this appeal to be served by 3 spaces. The plans upon which the Council made its decision show 2 parking spaces to the rear of the house.
22. Since the appeal was lodged a plan has been submitted that shows an additional car parking space at the front of the dwelling. Ordinarily the appeal process should not be used to evolve the scheme. However, I noted at my site visit that space at the front of the dwelling appears to be used for parking. It is also some distance away from neighbouring dwellings. Therefore I do not consider that the scheme has been so changed by this amendment that it would have deprived those which should have been consulted on the changed development of the opportunity of such consultation.
23. It therefore appears there is sufficient space on the site to provide 3 spaces (1 at the front and 2 at the rear) and retain the required garden space. Given the

limited opportunities for on street parking along Park Lane I consider it essential that the required amount of parking is provided on site. This is reinforced by Policies D1 and T2 of the MLP which both require dwellings to provide parking spaces and to have regard to the Council's adopted parking standards.

24. Therefore as the site is capable of accommodating the number of car parking spaces required by the policies I consider that the appeal proposal is consistent with the policies of the development plan. However should I be minded to allow the appeal a condition will need to be imposed which would require the details of the car parking spaces shown on the amended plans to be implemented within a reasonable length of time.

Unilateral Undertaking/Habitat Regulations

25. The Council has adopted a Supplementary Planning Document (SPD) that requires a contribution from residential developments in the District towards the implementation of a strategy designed to mitigate the impact of the development on Habitat Sites. The site is within the Zone of Influence (ZOI) of these sites and therefore could have a likely significant effect on these sites due to increased visitor pressure. The size of the contribution is formula base. It would be used for off-site visitor management measures which would mitigate the impact of the visitors from the proposed development on the designated Habitat Sites. I therefore find that the proposed contribution meets the tests set out in the Framework and the Regulations.

Compliance with the Conservation of Habitats and Species Regulations 2017

26. The site lies within the ZOI of the Essex Coast Habitat Sites¹. Whilst it is acknowledged in the officer's report that it will not have a direct effect on these sites it is likely to have a significant effect in combination with other developments in the County. In order to provide mitigation for these effects the Council has adopted a SPD which seeks to take a financial contribution from qualifying developments. These contributions would be pooled and used to help fund strategic off-site measures targeted to increasing the sites' resilience to off-site pressures.
27. In order to comply with the requirements of the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) a competent authority needs to carry out a project level Habitat Regulations Assessment in order to assess whether the project, in this case the appeal proposal, would have a 'likely significant' effect on the integrity of the Habitat Site/s.
28. The Habitat Regulations Assessment, set out in the officer's report, demonstrated that the appeal proposal would have a likely significant effect upon the interest features of the designated habitat sites. Therefore, an Appropriate Assessment (AA) to assess the recreational disturbance impacts on the designated sites was necessary.
29. At this appeal I am the competent authority who needs to carry out the HRA. I have had regard to the assessment already carried out by the Council, and as

¹ Essex Estuaries Special Area of Conservation (SAC), Hamford Water Special Protection Area (SPA), Stour and Orwell Estuaries SPA and Ramsar Site, Colne Estuary SPA and Ramsar Site, Blackwater Estuary SPA and Ramsar Site, Dengie SPA and Ramsar Site, Crouch and Roach Estuaries SPA and Ramsar Site, Foulness Estuary SPA and Ramsar Site, Benfleet and Southend Marshes SPA and Ramsar Site.

such, I cannot rule out any possible likely significant effects either alone or in combination on the special interest features of the habitat sites on the Essex Coast from the appeal proposal.

30. In terms of NE advice, it is clear that any adverse effects of developments such as the appeal proposal should be dealt with at a strategic level and would include a financial contribution towards mitigation measures within the coastal designated site. Therefore, it is clear to me that by complying with the guidance set out in the SPD and agreeing to a financial contribution mitigating the effects of the appeal proposal on the integrity of the Habitat Sites, it would not adversely affect the integrity of the site/s. Consequently, should I be minded to allow this appeal, planning permission could be granted subject to the provisions of the completed obligation.

Paragraph 11 d) ii

31. I have found that the appeal proposal is generally consistent with the development plan as a whole, in particular Policies D1, H4, S1, S2, H2 and T2. However I have also found that in terms of Policy S8, whilst the proposal is consistent with this Policy in so far as it does not harm the character or appearance of the locality or intrinsic beauty of the countryside it does not fall within any of the categories of development specified in the Policy that would be allowed outside settlement boundaries. In this respect therefore the appeal proposal is in conflict with this aspect of the Policy.
32. The Council have accepted that they cannot demonstrate a 5-year supply of deliverable housing sites as is required by the Framework. Policy S8 is one of the policies most important in determining the appeal, as it relates to the principle of development. In this respect Policy S8 is out of date and therefore I need to decide the weight that should be given to this conflict in order to assess the weight that should be given to this policy in this appeal.
33. I have indicated above that I give this conflict limited weight as the appeal proposal is consistent with the main purpose of the policy which is to protect the character and appearance of the countryside and protect its intrinsic beauty. Set against this conflict are the benefits of the proposal. These consist of a limited economic benefit to local businesses brought about by the retention of an additional family, the social benefit of the retention of an existing house that would contribute in a small way to the housing land supply and the environmental benefit of retaining the dwelling which reinforces the existing pattern of development in the area. Whilst the benefits themselves are small, in combination they are capable of outweighing the limited conflict I have identified with the policy.
34. On the whole therefore I find that the small adverse impact of the appeal proposal would not significantly and demonstrably outweigh the benefits of the appeal proposal when assessed against the policies in the Framework taken as a whole.

Planning balance

35. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. I have found that on the whole, with the exception of a conflict with part of Policy S8, the appeal

proposal is consistent with the development plan. I have assessed the weight to be given to this conflict above and I have found that the limited conflict with Policy S8 is outweighed by the benefits of the proposal. Therefore overall I find that the material considerations that apply to the proposal outweigh the limited conflict that the appeal proposal has with part of Policy S8 of the MLP.

Conditions

36. I have been supplied with a list of proposed conditions in the statement of common ground. I have also indicated above where conditions would be appropriate should I be minded to allow this appeal. As the appeal relates to an existing development it is not appropriate to apply the normal conditions regarding time limits for development.
37. In order to ensure clarity in this decision a condition is necessary to reference the approved plans.
38. In order to ensure the appeal proposal is provided with an adequate level and quality of garden space a condition is necessary for the Council to approve the boundary treatment along the access track, and to ensure that the approved scheme is implemented within a reasonable time.
39. In order to ensure that the site is provided with the required amount of parking a condition is necessary to ensure that the parking shown on the approved plans is implemented within a reasonable time.

Conclusion

40. The appeal is therefore allowed.

Peter Mark Sturgess

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Hannah Dungate	Planning Specialist, Development Management
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Michael Johnson	Head of Planning
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Matt Leigh	Lead Specialist Place
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FOR THE APPELLANT

Steven Hopkins	Agent/Solicitor
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John Crisp	Architect
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Mark Evans	Applicant
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INTERESTED PARTY

Councillor Maddie Thompson

CONDITIONS SCHEDULE

1. The development hereby permitted shall be retained in accordance with the following approved plans 16/19/30, 16/19/31 REV A and 16/19/32.
2. Within three months of the date of this decision, the details of the siting, height, design and materials in respect of the treatment of all boundaries including hedges, gates, fences, walls, railings and piers have been submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be constructed and/or planted within three months of the approval in writing by the local planning authority and shall be maintained thereafter.
3. Within three months of the date of this decision, three car parking spaces shown on drawing no 16/19/31 REV A shall have been laid out and made available for use. These spaces shall thereafter be kept available at all times and retained as approved for the parking of vehicles.

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