



Appeal Decision

Site visit made on 6 September 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2022

Appeal Ref: APP/X1545/W/21/3284398

Land Adj To Glenworth, Maldon Road, Latchingdon CM3 6LG

- 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 Harry McDermott against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/00140, dated 11 February 2021, was refused by notice dated 13 May 2021.
 - The development proposed is Section 73A application for boundary fence and gates as well as change of use of land for siting of static mobile home.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development has already been carried out. As such, the appellant is seeking planning permission retrospectively. Elevation plans of the gates and fence have not been provided to me. Nonetheless, given that the development has already been carried out, I was able to consider its effects during the site visit.
3. On 20 July 2021, a revised version of the National Planning Policy Framework (the Framework) was published. The appellant has referred to the revised version and I have had regard to it in considering this appeal.

Main Issues

4. The main issues are:
 - Whether the site is a suitable location for the development with particular regard to access to services and facilities.
 - The effect of the development on the character and appearance of the area.
 - The effect of the development with regard to Flood Risk.
 - The effect of the development on European Sites.
 - The effect of the development on Highway Safety.

Reasons

Location of development

5. Given its close proximity to existing dwellings, the appeal site is not isolated¹. However, it is located within the countryside, given its location outside of any development plan defined settlement boundary. The development is not of a type which Local Plan² Policy S8 specifies as acceptable in the countryside. Furthermore, I have not been provided with any substantive evidence to indicate that the principle of development is supported by other Local Plan Policies. As such, the proposed development would conflict with Local Plan Policy S8.
6. Nonetheless, at the time that the Council determined the planning application it purported to have a housing land supply position of 3.26 years. The implications of this for the weight to be afforded to the conflict with this policy are discussed in relation to the 'planning balance' later in this decision.
7. Local Plan Policies S8, S1, D1, T2 and H4 collectively aim to direct development to sustainable locations, with good access to services and facilities, thereby reducing the need to travel, with an emphasis on sustainable modes of transport.
8. The appeal site is located within approximately 700 metres of the services and facilities in Latchingdon to the south east. Latchingdon is categorised as a 'smaller village' under Local Plan Policy S8. The Local Plan explains that these villages typically have few or no services and facilities, with limited access to public transport and employment opportunities. Despite this, Latchingdon does have a relatively good range of services and facilities, including, but not limited to, a primary school, village hall, shop, church and a garage. In addition, there are two industrial estates to the north of the appeal site within a short walking distance, which would provide some opportunity for employment.
9. The pedestrian route between the appeal site and Latchingdon includes a footway but this is unlit and narrow in places, which somewhat reduces its attractiveness as a suitable and safe walking route. Despite this, there are bus stops in very close proximity to the appeal site, on Maldon Road, which provide regular services to larger settlements with a wider range of services and facilities.
10. In summary, the appeal site is in close proximity to public transport infrastructure and there is at least some potential to travel on foot to Latchingdon. As a result, the occupiers of the development have good access to services and facilities via sustainable modes of transport. There would be a conflict with Local Plan Policy S8 given the countryside location. However, the development would comply with Local Plan Policies S1, D1, T2 and H4 insofar as they seek to ensure that development has good access to services and facilities, achievable by sustainable means.

Character and Appearance

11. The appeal site is located on Maldon Road, which has a varied character comprising of a mixture of development types set within a verdant context.

¹ Much of the Case Law referred to by the appellant relates to isolated homes in the countryside.

² Maldon District Approved Local Development Plan 2014-2029 – Adopted July 2017

Residential properties fronting Maldon Road typically have a varied appearance when viewed in the street scene and there are several examples of differing and prominent front boundary treatments in the surrounding area.

12. The development includes a variety of boundary treatments including tall black metal gates and close-boarded fencing. The access gates are set back from the highway such that they are not particularly prominent in the street scene. Given this limited visual impact, the development does not create a harmful urbanisation. Indeed, it is in keeping with the varied character of the surrounding area. The mobile home itself is not a common feature of the surrounding area. However, given its small scale, it is not prominent in the street scene and does not harm the wider character of the area.
13. For these reasons, the development is not harmful to the character of the area and it therefore complies with Local Plan Policies S1, S8, D1 and H4 insofar as they seek to ensure that development is in keeping with local character.

Flood Risk

14. The evidence indicates that the appellant did not submit a site-specific Flood Risk Assessment (FRA) as part of the planning application. Information pertaining to flood risk has been submitted as part of the appellant's Statement of Case in relation to this appeal. The appellant asserts that the appeal site has a low risk of flooding. However, this is based on an image which was purportedly taken from the EA website. It is by no means clear whether or not this image is up to date.
15. Indeed, the Environment Agency (EA) was consulted by the Council during determination of the planning application, and the Council indicates that the EA verbally confirmed that the site of the mobile home is in Flood Zone 3a - defined in the PPG as having a 'high' probability of flooding. Even if ignoring this (given the lack of a formal response from the EA), the image provided by the appellant still indicates that at least part of the appeal site is located in an area at 'high' risk from flooding from rivers or sea. The appellant's evidence also indicates that the appeal site, including the area where the mobile home is sited, is at risk of surface water flooding³.
16. Framework Paragraph 167 states that, where appropriate, applications should be supported by a site-specific FRA. Footnote 55 explains that an FRA is required for all development in Flood Zones 2 and 3 and on land subject to other sources of flooding. Based on the evidence provided by the appellant, the site is at risk of surface water flooding and at least parts of the site are likely to be within Flood Zone 3. As such, a Flood Risk Assessment is required.
17. The development includes the use of the land for the siting of a mobile home. Annex 3 of the Framework defines this type of development as 'highly vulnerable' to flood risk. The Government's Planning Practice Guidance (PPG) Table 2, on 'Flood risk vulnerability and flood zone incompatibility', outlines that highly vulnerable development in Flood Zone 3a should not be permitted. Indeed, this is part of the Council's basis for refusing planning permission.
18. However, based on the evidence before me, it is not possible to ascertain whether there is a conflict with this guidance. This is because there is insufficient evidence to confirm whether the development is located within

³ Including a flood depth of 300mm to 900mm in a 'low risk scenario'.

Flood Zone 3a. In addition, the site may include areas of land at lower risk of flooding within which the mobile home could be sited.

19. Indeed, more generally, in the absence of a FRA it is not possible to properly ascertain the effect of the development upon flood risk elsewhere, the effect of flooding upon the development, or whether measures to deal with these effects⁴ are appropriate.
20. In particular, the appellant has not undertaken a sequential test to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, as required by Local Plan Policy D5 and Framework Paragraph 162. I acknowledge that the appellant might not be able to find a suitable alternative site which meets his specific personal needs, but insufficient information has been provided to support this assertion and this consideration does not satisfy the requirements of Paragraph 162.
21. The appellant makes reference to the 'exception test' but this is only applicable once a sequential test has been undertaken.
22. As such, it has not been demonstrated that the development is not susceptible to a risk of flooding, or that it would not give rise to increased flood risk off-site. The development is therefore contrary to Local Plan Policies D5 and S1 and Framework Paragraph 167, which require that development proposals are accompanied by sufficient information pertaining to flood risk and that development is located in areas of low flood risk (subject to a sequential test).

European Sites

23. The evidence before me indicates that the appeal site is located within the overall Zone of Influence (ZOI) of the Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS). The Conservation of Habitats and Species Regulations 2017 as amended (Habitats Regulations) require that permission may only be granted after having ascertained that it will not affect the integrity of a European site.
24. Whilst the evidence indicates that the appeal site must be within the ZOI of at least one European Site, it is not clear how many or which of the European Sites located within the RAMS area include a ZOI covering the appeal site. Nonetheless, in general terms, adverse effects to European Sites within the RAMS area may arise from additional recreational pressure. Increased recreational pressure is likely to occur as a result of additional residential development in close proximity to these sites.
25. The appeal proposal, which includes the provision of one dwelling, would therefore likely have a significant effect on habitats and areas protected by at least one of these designations, in combination with other planned or consented dwellings within the ZOI. In order to mitigate these effects, the Council require a financial contribution towards the RAMS.
26. In the absence of a sufficiently robust mechanism to secure a financial contribution and satisfactorily show how any such contribution will be spent, such as a planning obligation in this case, I cannot be satisfied that the harm that would arise from the appeal scheme will be mitigated appropriately. The

⁴ For example, those outlined at paragraph 6.3 of the appellant's Statement of Case.

appellant indicates that some Essex Authorities collect this fee in advance of granting permission. However, regardless of the approach taken by certain Local Planning Authorities, a planning obligation is necessary in order to provide certainty as to how any such contributions would be spent.

27. As such, I cannot conclude that likely significant effects to the ecological integrity of European Sites within the RAMS area would not occur. Therefore, the proposed development would conflict with Local Plan Policy N2, which in part aims to conserve protected sites.
28. There would also be a conflict with Framework Paragraph 174a, which requires in part that planning decisions should protect sites of biodiversity value in a manner commensurate with their statutory status (in this case, a site afforded statutory protection under the Habitat Regulations).
29. Given that I am dismissing the appeal on other grounds, it is not necessary to undertake an appropriate assessment.

Highway Safety

30. The Council refused planning permission partly on the basis of an alleged harmful impact on highway safety as a result of the alleged lack of suitable visibility from the access. Essex County Council, the Highway Authority (HA), has made representations in relation to this appeal. These state that the HA has completed a site inspection and found that the access can achieve the required 2.4m x 120m visibility splays in each direction. The representation outlines that the HA 'withdraws its reason for refusal'. However, Maldon District Council has not confirmed its withdrawal of the reason for refusal.
31. Nonetheless, my observations at the site visit are consistent with those of the HA and I consider that there is suitable visibility in each direction from the proposed access to ensure that there would not be an adverse impact on highway safety.
32. Local Plan Policy T2 is not relevant, given that it does not relate to highway safety issues arising from vehicular accesses.
33. Nonetheless, the proposed development would accord with Framework Paragraph 111 which outlines that development should only be refused on highway grounds where there would be an unacceptable impact on highway safety.

Planning Balance

34. At the time that the planning application was determined the Council could only demonstrate a supply of 3.26 years' worth of deliverable housing sites. No substantive evidence has been provided to indicate that this position has improved. Given the shortfall, Framework Paragraph 11d applies.
35. Framework Paragraph 11d(i) states that permission should be granted, unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 clarifies that such policies include those relating to habitats sites and areas at risk of flooding. In this regard, I have identified conflict with Framework Paragraphs 174a and 167 respectively. The conflicts with both paragraphs each provide a clear reason for refusing the

development. As a result, the presumption in favour of granting permission at paragraph 11d does not apply.

36. In addition to the harm to habitat sites and the absence of information pertaining to flooding, there would also be a conflict with Local Plan Policy S8. However, as already identified, one of the purposes of this policy is to direct development to sustainable locations with good access to services and facilities. The other is to protect the character and appearance of the countryside. The proposed development would not conflict with either of these purposes. In addition, the existing shortfall reduces the weight to be afforded to this policy given its restrictive role. For these reasons, I afford limited weight to the conflict with this policy.
37. Despite this, the proposed development would conflict with Local Plan Policies D5, N2 and S1 (insofar as it relates to flood risk). None of these policies need have an overly restraining impact on housing supply in the district. As such, the conflict with these policies is afforded full weight.
38. There are social and economic benefits associated with the provision of a new dwelling. However, despite the HLS shortfall, given the small scale of the development, these benefits are of only moderate weight. The appellant's personal circumstances, in terms of his ability to find alternative affordable accommodation, do not add significantly to this weight, given the absence of detailed substantive evidence to support this position. Overall, these benefits are not sufficient to outweigh the conflict with the development plan policies.

Conclusion

39. The proposed development would conflict with the development plan taken as a whole. Other material considerations, including the approach in the Framework, either direct refusal, or are of insufficient weight to indicate that planning permission should be granted. As such, the appeal is dismissed.

Luke Simpson

INSPECTOR