



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: 27 September 2022

Appeal Ref: APP/X1545/W/21/3283737

55 St Stephens Road, Cold Norton CM3 6NP

- 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 Peter Read against the decision of Maldon District Council.
 - The application Ref 21/00385/FUL, dated 8 April 2021, was refused by notice dated 25 August 2021.
 - The development proposed is described on the planning application form as: 'Proposed erection of a new 3 x bedroom dwelling to the side land of 55 St.Stephens Road'
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the site is a suitable location for the proposed development with regard to the Council's strategy for the location of new residential development and in particular, access to services and facilities.
 - The effect of the proposed development on the character and appearance of the surrounding area.
 - The effect of the proposed development on European Sites.
 - The effect of the proposed development on ecology (including protected species).

Reasons

Location of Development

3. The appeal site is located outside of any defined settlement boundary, in the countryside. Local Plan¹ Policy S8 outlines that planning permission will only be granted for development which does not adversely affect the intrinsic character and beauty of the countryside (which is addressed later in this decision). Within the countryside, Policy S8 states that only certain types of development will be permitted, including development supported by other Local Plan policies.
4. One such policy is H4, which relates to the effective use of land. The Council has considered compliance with criteria relating to 'Backland and Infill Development'. However, Policy H4 initially requires consideration of

¹ Maldon District Approved Local Development Plan 2014-2029

'Accessibility to local services and facilities' and 'Proximity to public transport' amongst other things.

5. In any case, the existing site is a garden which appears to be commensurate with the size of the existing dwelling. It is not therefore underutilised and does not comply with the first requirement applicable to backland and infill development as set out under Policy H4.
6. Taken together these policies clearly seek to focus new development in locations which have good access to services and facilities and primarily within existing settlements. The nearest settlement to the appeal site is Cold Norton, the edge of which is approximately 600 metres to the west. Cold Norton is categorised as a 'smaller village' under Local Plan Policy S8, which the Local Plan defines as containing 'few or no services and facilities'.
7. Indeed, there are a limited range of services and facilities in Cold Norton, which include (but are not limited to) a primary school, local shop, public house, village hall and a golf club. The majority of these services and facilities are located approximately 1km by road from the appeal site.
8. The route between the appeal site and Cold Norton does not include a footway or street lighting for a significant length along St Stephens Road. It is also relatively narrow and undulating. Given these prevailing characteristics combined with the length of the route, it is very unlikely that future occupiers of the proposed development would travel on foot to reach the limited services and facilities in Cold Norton. Indeed, they would likely need to travel even further afield to access services and facilities to meet their everyday needs. There is no substantive evidence to indicate that there are any bus stops which are easily accessible on foot from the appeal site. As such, there would be an overreliance on the private motor vehicle to access services and facilities.
9. For these reasons, the proposed development would not be a suitable location for the proposed development. It would therefore conflict with Local Plan Policies S1, S2, S8, H4, T2, D1 which collectively (amongst other things) aim to direct development to locations with good access to services and facilities.
10. There would also be a conflict with Framework Paragraph 105 which states that significant development should be focused on locations which are, or can be made, sustainable, through limiting the need to travel and offering a genuine choice of transport modes.

Character and Appearance

11. The appeal site comprises 55 St Stephen's Road (No55) and the garden to the side of the property. No 55 is a two-storey semi-detached property with a traditional appearance. No.55 and the attached property, No 57, have a predominantly symmetrical appearance. Both properties have a similar sized gap to the side boundary. This affirms the rural character of the area, with views attainable from the highway to the countryside beyond these properties. Indeed, other nearby residential properties are set within similarly spacious plots and whilst some have been extended to the side, these extensions are typically single storey and retain the rural character of the area.
12. The proposed dwelling would be located in the gap between No 55 and the boundary with No 53 to the west. Whilst it would have a similar design, scale and appearance to the existing semi-detached dwellings, it would appear

cramped and awkward given the relatively small size of the gap. As a result, the proposed development would be harmful to the spacious and rural character of the existing residential development on this part of St Stephen's Road. This visual harm would be apparent from the highway given the lack of visual screening to the front of the property.

13. The Council has indicated that insufficient evidence has been provided to establish the effect of the proposed development on trees. However, there is only one tree within reasonably close proximity to the proposed dwelling and even if this were to be removed it would not have a significant impact on the character of the area. There is no substantive evidence before me to indicate that the tree is subject to a Tree Preservation Order. However, the absence of harm in this regard would not overcome the overall harm that the development would cause to the character and appearance of the area.
14. For these reasons, the proposed development would have a harmful impact on the character and appearance of the area. It would therefore be contrary to Local Plan Policies S1, S8, D1 and H4 which together (amongst other things) require development to have regard to local character and in particular the rural character and appearance of the countryside.
15. There would also be a conflict with Framework Paragraph 130, which requires development to be sympathetic to local character.

European Sites

16. 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.
17. 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.
18. 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.
19. 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.
20. 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. There would also be a conflict with Local

Plan Policy S1, which seeks in part to conserve and enhance the natural environment.

21. 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).

Ecology and protected species

22. The Council's ecological consultant has suggested that the site is located within 250 metres of three ponds and that for this reason the presence or otherwise of Great Crested Newts (a European Protected Species) should be established through an ecological survey. Furthermore, the Consultant highlighted concerns pertaining to the removal of trees and vegetation within the site in the absence of an ecological survey.
23. However, I have not been provided with any details of the precise location of the ponds, nor the extent to which there are physical barriers between them and the appeal site. Nor has the likely presence of other protected species (for example bats) been demonstrated. Indeed, whilst the appeal site is in a rural area, the site of the proposed dwelling would only comprise a small area of mown grassland to the side of the existing dwelling.
24. The Circular 06/2005 advises that, where there is a reasonable likelihood of protected species being present, it is essential that the presence of protected species, and the extent to which they would be affected by the development, is established prior to planning permission being granted.
25. However, in this case, there is insufficient information before me to confirm that there is a reasonable likelihood of protected species being present. For this reason, the proposed development would not conflict with Local Plan Policy N2, which in part aims to ensure that protected species are not adversely affected by development. In addition, the proposed development would not conflict with the relevant provisions in the Framework in relation to ecology and protected species.

Other Matters

26. The extent to which the Council provided advice at pre-application stage (which may or may not have differed from the decision ultimately made) is a procedural matter. As such, it is not a consideration which has a bearing on the main issues relevant to this appeal.

Planning Balance

27. The Council has provided evidence² to indicate that the current Housing Land Supply (HLS) position is 3.66 years. Given this shortfall, Framework Paragraph 11d applies.
28. 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. In this regard, I have identified conflict with Framework

² Maldon District Council Five Year Housing Land Supply Statement 2021/22 Up to 31st March 2022

Paragraphs 174a which provides a clear reason for refusing the planning permission. As a result, the presumption in favour of granting permission at paragraph 11d does not apply.

29. In addition to the harm to European sites, the proposed development would also be located in a location with poor access to services and facilities. However, given the extent of the HLS shortfall, the weight to be afforded to the conflict with these development plan policies³, insofar as they seek to direct development to sustainable locations, is somewhat reduced.
30. There would also be some harm caused to the character and appearance of the area. The relevant development plan policies in this regard are not reduced in weight, given that they need not necessarily have a restraining impact on HLS.
31. There would be some social and economic benefits associated with the development. These would derive from the increase in the housing stock and the temporary benefits associated with support for construction jobs. However, even in the context of a HLS shortfall, given the small scale of the development, these benefits, whilst valuable, would not outweigh the harm caused.

Conclusion

32. 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

³ Local Plan Policies S1, S2, S8, H4, T2, D1