



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: 1 November 2022

Appeal Ref: APP/X1545/W/21/3282659

Thornfields, Purleigh Grove, Cold Norton, Chelmsford CM3 6HN

- 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 & Mrs Ian and Carole Kirk against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/00397, dated 30 March 2021, was refused by notice dated 10 June 2021.
 - The development proposed is - Two new detached dwellings and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for Two new detached dwellings and associated works at Thornfields, Purleigh Grove, Cold Norton, Chelmsford, CM3 6HN in accordance with the terms of the application, Ref FUL/MAL/21/00397, dated 30 March 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The third reason for refusal listed on the Council's decision notice includes reference to the effect of the proposed development on European Sites. The Council has confirmed that it no longer seeks to defend this reason for refusal given that the appellants have submitted a unilateral undertaking (UU) which makes provision for a payment to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). I have taken the UU into account as addressed later in this decision. Whilst I note the Council's position, it is incumbent upon me to undertake an appropriate assessment as the competent authority in determining this appeal.
3. A revised version of the National Planning Policy Framework was published in July 2021. The appeal process has afforded the main parties sufficient opportunity to comment on the Framework and I have had regard to it in considering this appeal.

Main Issues

4. The main issues are:
 - Whether the appeal site is a suitable location for the development with regard to the Council's strategy for the location of residential development and the effect of the proposed development on the character and appearance of the area.

- The effect of the proposed development on the living conditions of the occupiers of Imps Camp and Thornfields, with particular regard to noise and disturbance.
- The effect of the proposed development on the integrity of European Sites.

Reasons

Location of Development (including Character and Appearance)

5. The application site includes the existing dwellings at Ings Camp and Thornfields. I note that there is a relatively extensive planning history in relation to Thornfields but I have not been provided with copies of any of the planning decisions pertaining to this dwelling. Indeed, I have considered this appeal based on the evidence before me and the observations made during my site visit. The site of the proposed dwellings comprises an area of mown grassland to the east of Thornfields.
6. Thornfields is accessed along a private drive known as Purleigh Grove which links with Latchingdon Road. There are several large dwellings which are set back from Latchingdon Road, accessed off Purleigh Grove and another private drive known as Burnham Avenue. As such, there is variation in the orientation and layout of development in the area, despite the prevailing linear character of development on Latchingdon Road.
7. The proposed development includes two relatively large single storey dwellings, which would have a similar appearance, scale and footprint to the existing dwellings accessed via the private drives to the west.
8. Visibility from the appeal site towards the countryside (and vice versa) is relatively contained because the surrounding land rises to the south, truncating views of the wider countryside beyond. This diminishes the role of the appeal site in contributing to the rural setting of the surrounding residential development.
9. Notwithstanding this, there would clearly be a change in character as a result of the proposed dwellings, detached garages and new driveway. Whilst the layout, scale and general design of the dwellings is relatively consistent with the existing development to the west, there would be some visual harm given that the appeal site extends a fairly long way to the east, behind the linear development which faces towards Latchingdon Road. Nonetheless, this harm would be minimal, given that the layout of surrounding development is not completely uniform and that the site only plays a limited role in providing a rural setting for the surrounding residential development. This harm would be further mitigated by the single storey scale of the development and the relatively traditional and rural design of the proposed dwellings.
10. Local Plan¹ Policy S8 outlines that, within the countryside, planning permission will only be granted for development which does not adversely affect the intrinsic character and beauty of the countryside and where it comprises a certain type of development as specified within the policy, or where it is supported by other Local Plan policies (criterion m). One such policy is Local Plan Policy H4, which relates to the effective use of land. This policy allows backland and infill development subject to certain criteria. The first criterion

¹ Maldon District Approved Local Development Plan 2014-2029

requires that there is a significant under-use of land and that development would make a more effective use of it.

11. The evidence before me suggests there is some contention over whether the site forms part of the garden of Thornfields. Nonetheless, it had the appearance of a large garden at the time of my site visit. Despite this uncertainty, even if the site were considered to comprise the residential garden of Thornfields, the fact that it is large is not in itself sufficient reason to consider it a 'significant under-use of land'. Indeed, whilst the area of land in question is large, so is the adjacent dwelling at Thornfields. As such, the site is not significantly under-utilised and the proposed development is therefore not supported by Policy H4.
12. In summary, there would be a conflict with Local Plan Policies S1, S2, S8, D1 and H4 insofar as they collectively seek to ensure that development is in keeping with local character including countryside character. There would also be a conflict with Local Plan Policy S8, given that the site is outside of any defined settlement boundary and not supported by any particular Local Plan Policies. Albeit it is noted that the Council do not allege any conflict in relation to the accessibility of the site to services and facilities, which is one of the purposes of Policy S8. As such, I have not identified any conflict with Local Plan Policy T2 in this regard.
13. Local Plan Policies T1, E5 and N2 are not relevant to this main issue.
14. Given the limited harm which would be caused, the proposed development would also conflict with Framework Paragraph 130, insofar as it requires that development is sympathetic to local character.

Living Conditions

15. The proposed development would be accessed via the existing private drive at Purleigh Grove. A new access would be created which would utilise a small area of land to the west of Imps Camp. Whilst the proposed access would pass in reasonably close proximity to the dwellings at Thornfield and Ings Camp, this is not an unusual arrangement for a residential area. Indeed, there are other examples nearby where dwellings are located in close proximity to neighbouring driveways, including to the west of the appeal site.
16. Furthermore, only a small quantum of development is proposed. As a result, the likely comings and goings associated with the proposed development would not result in significant disturbance to the occupiers of the aforementioned properties. Any noise emanating from vehicles would be typically characteristic of a residential area, even taking into account the countryside location.
17. The neighbouring dwellings to the north of the proposed dwellings would be located even further from the access track. Some residential gardens, as well as the rear outdoor area of the local shop, abut the northern boundary of the appeal site. However, given the small number of vehicular movements likely to occur, I do not consider that there would be any adverse impact on the living conditions of the occupiers of these properties.
18. For these reasons the proposed development would not result in an unacceptable impact on the living conditions of occupiers of nearby properties. As such, the proposal would comply with Local Plan Policy D1 insofar as it

requires that development protects the amenity of surrounding areas. Local Plan Policy D2 is not relevant as it does not relate to living conditions.

19. The Council's reason for refusal refers to the Maldon District Vehicle Parking Standards SPD and the Maldon District Design Guide (2017). However, the Council has not identified how exactly the proposed development would conflict with this guidance and I have not identified any conflict with it.
20. The development would also comply with the provisions of the framework, including Paragraph 130 insofar as it aims to protect living conditions.

European Sites

21. The appeal site is located within the zone of influence (ZoI) of The Crouch and Roach Estuaries Special Protection Area (SPA) and Ramsar, Blackwater Estuary SPA and Ramsar, Foulness Estuary SPA and Ramsar and Dengie SPA and Ramsar. These are European Sites which are protected under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
22. These sites support breeding birds and wintering birds. The conservation objectives of these sites generally seek to maintain and restore the distribution and function of the habitats upon which the qualifying features rely, thereby conserving and increasing their populations and distributions.
23. Given its small scale, when considered alone, the development would not likely result in significant effects on the integrity of these sites. However, there would be likely significant effects on these sites as a result of the proposed development in combination with other planned residential development within the ZoI. Indeed, the evidence² before me indicates that housing and consequent population growth on sites within reach (ZoI) of these protected areas is likely to increase the number of visitors, creating the potential for impacts from increased recreational disturbance of the birds and their habitats.
24. The appellant's UU includes a financial contribution aimed at mitigating these effects. As a result, the Council is not defending this reason for refusal. Nonetheless, I am the competent authority as the decision-maker and as such, it is necessary to undertake an appropriate assessment.
25. The Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) 2018-2038 provides details of strategic mitigation for the effects of increased residential development (and as such, populations) upon designated European Sites on the Essex coast.
26. Strategic mitigation measures set out within the RAMS include provision of information and awareness raising, fencing/waymarking/screening, pedestrian and vehicular access restrictions, habitat creation and partnership working with other organisations. The measures are fully costed. For development in Maldon District the RAMS sets out a contribution of £122.30 per residential unit. This figure increases in line with the retail price index and as such the evidence demonstrates that the latest index-linked figure is £137.71.
27. The appellant's UU includes provision for this sum to be paid prior to commencement of development. I am satisfied that this obligation will ensure that the proposed development would make the required contribution to the

² Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) 2018-2038

mitigation measures outlined within the RAMS. The appellants have also indicated that they have made this payment already. Despite this, these contributions must be secured through a planning obligation to provide certainty that the moneys will be spent appropriately.

28. The UU was revised by the appellants during the course of the appeal. However, the revisions are minor and I conclude that the contributions would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. They therefore meet the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).
29. I conclude that the required mitigation would be properly secured and that the proposals would not have an adverse effect on the integrity of European Sites either alone or in combination with other projects. The proposed development would therefore comply with Local Plan Policies N2 and S1 which require that any adverse effect on protected sites should be mitigated and development conserves and enhances the natural environment, respectively.
30. The proposal would also comply with relevant provisions of the Framework in relation to protected sites.
31. I have not been provided with a copy of Local Plan Policy I1 and have therefore not identified any conflict with it.

Other Matters

32. Various objections have been made by interested parties, some of which are addressed within the main issues. Some interested parties have raised the issue of foul and surface water drainage and flood risk. However, I note that the Lead Local Flood Authority and the Council's Environmental Health Officer did not object to the planning application, subject to conditions to control and implement measures in respect of foul and surface water drainage. I concur with this approach and whilst I note the evidence of flooding in the area provided by interested parties, given the small scale of the proposed development I see no reason why this matter could not be addressed by suitably worded planning conditions.
33. Interested parties have also raised concerns that this application would set a precedent for future development in the local area. However, every application should be treated on its own merits and as such, this is not a consideration to which I afford any significant weight.
34. The Council's ecological consultant has suggested that the site is located within 250 metres of two 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 that a survey is necessary to establish the presence or otherwise of other protected species, including bats, badgers, nesting birds, hedgehogs and other amphibians.
35. 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 dwellings would only comprise an area of mown grassland in close proximity to other residential buildings.

36. 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.
37. However, in this case, the evidence does not suggest a reasonable likelihood of protected species being present, particularly given that the site comprises an area of mown grassland. 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 of the Framework in relation to ecology and protected species.

Planning Balance

38. At the time that the Council refused planning permission it could not demonstrate a Housing Land Supply (HLS). Indeed, the appellants have provided the Council's Five Year Housing Land Supply Statement 2020/21 (published in April 2021), which indicates a HLS of 3.26 years at that time. The Council has not provided any substantive evidence to indicate that this position has changed and I must consider this appeal on the evidence before me.
39. As a result of the shortfall, Framework Paragraph 11d applies. As such, given that there are no restrictive policies (directing refusal) of the type referred to under Framework Paragraph 11di, Framework Paragraph 11dii applies. Therefore, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development, when assessed against the policies in the Framework taken as a whole.
40. In terms of adverse effects, there would be a low level of visual harm to the character and appearance of the area. This harm is however limited by the minimal role that the appeal site plays in providing a rural setting surrounding development. As a result, there would be a conflict with Framework Paragraph 130 which seeks to ensure that development is sympathetic to local character. However, given the low level of harm which would arise, I afford it only moderate weight.
41. There would also be a conflict with the Council's strategy for the location of development. Indeed, the Framework emphasises the role of the plan led system. However, given the absence of harm in relation to access to services and facilities, the substantive harm only extends to that which I have already identified in relation to character and appearance. As such, I also afford this harm moderate weight.
42. To weigh against this harm, there would be social and economic benefits associated with the provision of two new dwellings, through the resultant increase in the housing stock. Whilst only two dwellings are proposed, the HLS shortfall increases the weight to be afforded to these benefits and they can be afforded significant weight. Indeed, Framework Paragraph 60 emphasises the importance of boosting housing supply.

43. As such, the moderate harm caused by the proposed development would be significantly demonstrably outweighed by the significant benefits, when assessed against the Framework as a whole. Incidentally, even if there had been a marginal improvement in the HLS position since 2021, the harm caused by the development would be so minimal that the social and economic benefits would still outweigh it.

Conditions

44. I have considered the Council's suggested conditions in light of advice contained in the Planning Practice Guidance and the tests within the Framework. As a result, I have amended some of the conditions so that they are enforceable, precise, relevant, necessary and reasonable in all other respects. With regard to Section 100ZA of the Town and Country Planning Act 1990 (as amended), the appellants have given their written agreement to the pre-commencement conditions suggested by the Council and where I have modified these it has had no material bearing on their function.
45. Conditions relating to timeliness [1] and the identification of plans [2] are necessary to provide certainty. A construction traffic management plan [3] is necessary in the interests of highway safety. Conditions requiring details of ground and finished floor levels [4], hard and soft landscaping [7] and use of certain materials [10] are all necessary in the interest of character and appearance.
46. Details of surface [5] and foul [6] water drainage are necessary in the interest of drainage and flood risk. The appellants have indicated that drainage details have already been provided but given that the hard landscaping details are to be submitted by condition the scheme may need to be updated to reflect this.
47. Finally, the removal of certain permitted development rights is necessary in the interests of the living conditions of neighbouring occupiers [7 and 8].

Conclusion

48. The proposed development would result in a moderate level of harm to the character and appearance of the area. There would also be a conflict with the Council's strategy for the location of residential development. As such, the proposed development would conflict with the development plan taken as a whole.
49. However, given the Council's HLS position, the social and economic benefits of providing two new dwellings outweigh this harm. As such, material considerations demonstrate that a decision should be made other than in accordance with the development plan. The appeal is therefore allowed, and planning permission is granted subject to conditions.

Luke Simpson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: IMCM36HN_PL3.0, IMCM36HN_SP3.0, IMCM36HN_BP3.0, IMCM36HN_GA3.0 and IMCM36HN_DR3.0.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include details of:
 - A. The parking of vehicles of site operatives and visitors
 - B. Loading and unloading of plant and materials
 - C. Storage of plant and materials used in constructing the development
 - D. The erection and maintenance of security
 - E. Wheel washing facilities
 - F. Measures to control the emission of dust and dirt during construction
- 4) No development shall take place until details of the existing and proposed ground levels and finished floor levels have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried-out and retained in accordance with the approved details.
- 5) No development above ground level shall take place until details of the surface water drainage scheme to serve the development, including a timetable for its implementation and maintenance and management details, have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented in accordance with the approved timetable and thereafter retained in accordance with the approved details.

As a minimum, the scheme shall ensure that:

- a) The development manages water on site for 1 in 100 year events plus 40% climate change allowance.
- b) Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1 year event) inclusive of climate change should be no higher than 10/l/s and no lower than 1/l/s. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield)
- 6) No development above ground level shall take until details of a foul drainage scheme to serve the development have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented in accordance with the approved details prior to the first

occupation of the development. The scheme shall thereafter be retained in accordance with the approved details.

- 7) Prior to the occupation of any dwelling hereby approved, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include:
- i. Proposed finished levels contours
 - ii. Hard surfacing materials
 - iii. Planting details.

The soft landscape works shall be carried out as approved no later than the first available planting season (October to March inclusive) following the occupation of the development and shall be retained thereafter in accordance with the approved details. If within a period of five years (from the date of the planting) any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place within a period of 21 days and will be retained thereafter.

Prior to the occupation of the development hereby approved the hard landscape works shall be carried out and thereafter retained in accordance with the approved details and retained as such thereafter.

- 8) Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order with or without modification) no garages, extensions or separate buildings (other than incidental outbuildings not exceeding 10 cubic metres in volume) shall be erected within the site without planning permission having been obtained from the local planning authority.
- 9) Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order with or without modification) no further dormer windows or other form of addition or opening shall be constructed in the roof of the dwelling hereby permitted without planning permission having been obtained from the local planning authority.
- 10) The external surfaces of the development hereby permitted shall be constructed with the materials shown on plans hereby approved and specified in the submitted planning application form.

End of Conditions