



Appeal Decision

Site visit made on 8 November 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2022

Appeal Ref: APP/X1545/W/21/3284046

Land at Bates Road, Quayside Industrial Estate, Maldon, CM9 5FA

- 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 R Smith against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/01315, dated 17 December 2020, was refused by notice dated 1 April 2021.
 - The development proposed is construction of open sided storage barn (resubmission of 20/00388/FUL).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Officer Report refers to the Maldon District Design Guide¹ (MDDG) and its technical document 'Planning and Noise'. I have neither been provided with a copy of the latter nor referred to any conflict with it. Therefore, in considering the effects of noise potentially generated by the proposed development, as identified in the Council's third reason for refusal, I have determined the appeal only in relation to the policies listed in connection with that reason.
3. The Planning Practice Guidance (PPG) in respect of Flood Risk and Coastal Change was updated on 25 August 2022, following Final Comments. In the interests of fairness, the main parties were invited to comment as to whether this would have any implications for the appeal scheme including consideration of the Sequential Test and drainage. In particular, the identification of the site in Flood Zone 3b and any implications of Table 2 of the PPG. I have had regard to the responses received in my determination of the appeal.
4. The National Planning Policy Framework was revised on 20 July 2021 (the Framework). I have had regard to the Framework in my decision and I am satisfied that this has not prejudiced any party, particularly as the revisions do not alter the policies upon which this appeal turns.

Main Issues

5. The main issues are:
 - whether the proposal would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding;

¹ Supplementary Planning Document, December 2017.

- whether surface water drainage for the proposed development could be made available without increasing the risk of surface water flooding within the site or elsewhere; and
- the effect of the proposed development on the living conditions of nearby residents, with regard to noise and disturbance.

Reasons

Sequential Flood Risk

6. The appeal site is situated within the functional floodplain of the River Blackwater (Zone 3b). Policy D5 of the Maldon District Approved Local Development Plan 2014-2029² (MDLDP) states, to minimise the risk of flooding, all development must be located in areas where the use is compatible with national planning policy; and demonstrate that the Sequential Test and, where necessary, Exception Test has been satisfactorily undertaken in accordance with national planning policy. I have taken this to mean the Framework and the PPG.
7. The appeal scheme is for a building intended to be used for the storage of domestic wheeled bins, in connection with the appellant's business. This is located a short distance to the southwest, within the adjacent employment zone. The approach to the consideration of available allocated land and existing buildings in Maldon and Heybridge, as outlined in the appellant's Sequential Test was therefore reasonable and proportionate to the nature of the development and the circumstances of the case. This would reduce the need for journeys between the existing business and other locations further away in the district. Nevertheless, it is dated December 2020 and has not been updated for the appeal. Given the timeframe since the determination of the application, it is distinctly possible that other land and buildings could be suitable for the proposed development. I therefore cannot be satisfied that other allocated land or buildings would be available to serve the proposed development in order to pass the Sequential Test.
8. In any event, *Table 2: Flood risk vulnerability and flood zone 'incompatibility'* in the PPG³ confirms the types of uses appropriate within the flood zones. The use of the proposed building for storage is classified by Annex 3 of the Framework as a less vulnerable use. While the table does not show the application of the Sequential Test, it confirms that such uses should not be permitted in Zone 3b. Therefore, the Exception Test is not required and, in the context of Table 2 and the flood vulnerability of the development, Diagram 3⁴ clarifies that development is not appropriate and should not be considered in Zone 3b.
9. For these reasons, I conclude that the proposal would not comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding. Hence, it would conflict with the aims of MDLDP Policies D5 and S1, the Framework and the PPG.

² Adopted July 2017.

³ Paragraph: 079 Reference ID: 7-079-20220825, Revision date: 25 08 2022.

⁴ Paragraph: 033 Reference ID: 7-033-20220825, Revision date: 25 08 2022.

Surface Water Drainage

10. The proposal is for a large part of the site to be covered by the proposed building and areas of hard surfacing. Drainage from both would be held in underground storage and released, via a swale, at a controlled rate into the existing surface water sewer north of the site. The evidence before me demonstrates, with sufficient assurance, that this could be achieved at a rate acceptable to ensure that the proposed use of the site would not increase the risk of flooding to people or property elsewhere. The agreement of the final design for the drainage strategy for the site could therefore be secured by a suitably worded pre-commencement planning condition.
11. In light of the above, I conclude that surface water drainage for the proposed development could be made available without increasing the risk of surface water flooding within the site or elsewhere. Hence, it would accord with the aims regarding drainage expressed in MDLDP Policy D5 and paragraph 167 of the Framework.

Living Conditions

12. The appeal site is situated a short distance from residential properties to the north. The proposed building would be open on all sides below eaves level.
13. The specialist advice provided by the Council's Environmental Health officer (EHO) included on the Member's Update to the Central Planning Committee confirmed concerns in respect of noise, but it did not amount to an objection. Conditions were recommended covering several matters if permission were to be granted and no specific reference was made to the content of the appellant's Environmental Noise Assessment (ENA).
14. I find the ENA to be a reasonable and proportionate assessment of potential impacts of noise associated with the proposal that would be audible at nearby receptors. Although the height of the acoustic fence outlined in the ENA is not specified, it is clear it would be effective in providing mitigation for noise anticipated in a worst-case scenario. It also allows floodwater to penetrate, where required. Moreover, discussion in the ENA indicates that noise is likely to have been overstated due to some of the assumptions used in the survey methodology. The building was also subsequently reduced in size after it was produced, which is likely to reduce activity within the site.
15. The use of planning conditions to control the matters referred to by the EHO would therefore be appropriate in this instance. In particular, the proximity of the site to residential occupiers means the use of quieter LPG or electric forklift trucks and restricted hours for operation and deliveries would be reasonable and relevant to planning and the proposed development. The use of conditions to secure construction management and details of any plant and machinery required for the building would also ensure suitable measures would be in place to address noise associated with such aspects. None of these conditions would be burdensome for the appellant, or other operators, and they would protect against harm to the living conditions of nearby residential occupiers.
16. Other than the proximity of the development to the nearest residential property, there is no substantive evidence before me to explain why the proposal, with the mitigation secured by conditions suggested by the EHO, would inevitably cause material harm to living conditions.

17. In light of the above, I conclude that the proposed development would not have a harmful effect on the living conditions of nearby residents, with regard to noise and disturbance. Hence, it would accord with aims in respect of living conditions and noise expressed in MDLDP Policies D1 and D2, Framework paragraphs 130, 174 and 185, and the MDDG.

Other Considerations

The 1996 Planning Permission as a Fallback

18. There is an extant planning permission at the site from 1996⁵ for its use as a surfaced car park in connection with the extension of an industrial unit nearby. There is no substantive evidence before me to suggest this could not be implemented and used as permitted. The appellant has indicated it would be, in the event this appeal fails.
19. An area of hardstanding has already been constructed and the appellant has a Flood Risk Activity Permit from the Environment Agency for the remainder of the site to be surfaced with compacted hardcore and gravel. There are no details before me of the layout of the extant car park, but it is clear that a condition of the planning permission sought surfacing to the satisfaction of the Council, for highway safety reasons, and drainage should pass through an interceptor to avoid water pollution off-site. It is unclear whether these matters have been addressed through the permit and discharge of the relevant planning conditions, but agreement of the permit shows the appellant's intent, particularly as the site was recently acquired. The timeframe since permission was granted is, therefore, of limited relevance.
20. Turning to whether the 1996 permission has any bearing on this appeal, storage and car parking are categorised by the Framework as less vulnerable uses. However, the two uses of this site would not be comparable in terms of their nature or scale, as the proposal is for construction of a storage building and parking, whereas a sole use for parking means the site could retain a greater extent of openness within the floodplain, particularly when not in use.
21. The appellant's Flood Risk Assessment⁶ (FRA) indicates that storage within the appeal building could be elevated above the peak floodwater level to maintain capacity in the floodplain. However, this level could amount to two metres for a 1:200-year (plus climate change) extreme event. I therefore find this notion exceptionally impractical, as it would limit the functionality and storage potential of the building to an unacceptable extent. A planning condition to control such an approach would therefore be unreasonable.
22. Surface water drainage of the site would be significantly improved upon with the appeal proposal, including with perimeter landscaping and biodiversity enhancements associated with it. A flood warning and evacuation plan would also be produced for the site. In terms of noise, the 1996 permission did not include any means of attenuation for neighbouring occupiers, so the proposal would provide some betterment in this respect. Nevertheless, given the above, these would be of limited consequence.
23. Accordingly, I afford limited weight to the 1996 permission, as a fallback position in support of the appeal scheme, as the proposal would be for built

⁵ Planning Reference: 96/00615/FUL.

⁶ Report Ref: 2000960-01 Revision B, Revision Date: September 2021.

development which would be likely to have a different effect on the functional floodplain in this location.

The 2011 Planning Permission

24. In 2011, the Council approved a similar scheme for the site⁷, but this was not implemented and permission has expired. It is also not material to the appeal, as there have been significant changes in policy and circumstances. Moreover, the Framework was first introduced in 2012, the MDLDP has since been adopted and, although it unclear whether the land previously fell within Flood Zone 3b, this is now the case. The Framework is clear regarding the approach to development in such locations.

Nature Conservation

25. The site is situated within relatively close proximity of the Essex Estuaries Special Area of Conservation (SAC) and the Blackwater Estuary (Mid-Essex Coast Phase 4) Special Protection Area (SPA) and Ramsar site. I am conscious of the requirement to undertake an 'Appropriate Assessment' (AA) of the effects of the development on these designated sites. However, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates that the requirement for an AA is only necessary if the competent authority is minded to give consent for the proposed development.
26. I also have a duty under Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC) to conserve biodiversity and Natural England has identified that foul water drainage from the site could potentially affect the integrity of the Blackwater Estuary Site of Special Scientific Interest.
27. Nevertheless, given that I have found harm in relation to the first main issue, it is not necessary for me to consider these matters in any further detail.

Heritage

28. The appeal site is near to the Heybridge Inn and 'Warehouse, Premises of ICS'⁸, both of which are designated as Grade II listed buildings, so I have had regard to the statutory duty referred to in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).
29. The Heybridge Inn⁹ is a mid-19th Century public house situated across the River Blackwater. It is a part two- and three-storey building, constructed of rendered brick, with sash windows, slate roofs, and a carriage arch in the latter. As far as it is relevant to the appeal before me, its significance is to be found in its architectural and historic interest as a well-preserved mid-19th Century public house, which makes a positive contribution to the street scene, as part of a row of Victorian buildings fronting the southern side of The Street.
30. The listing description for the Warehouse suggests it was built in 1863 beside the Chelmer and Blackwater Navigation for EM Bentall and Company and is now in office use. It is a 4-storey building of buff brick construction, under a low-pitched gabled slate roof, and towers above the buildings in its foreground. Its length and regular arrangement of windows and full-height pilasters are equally dramatic, but it is also finely detailed with brick in string coursing and

⁷ Planning Reference: 10/01100/FUL.

⁸ The property was formerly listed as Heybridge Bentall's Warehouse.

⁹ Originally known as The Queen's Head.

window heads and verges project forward of the gable ends in the form of broken pediments. The Council suggest it can be seen from miles around. Its significance therefore lies in its architectural and historic interest as a notable surviving tribute to the industrial heritage of Heybridge.

31. Both buildings also draw significance from their settings and are experienced from the footpath along the sea wall to the south of the appeal site. While the proposal would alter how the listed buildings are experienced from the sea wall, they would remain visible and prominent from many other locations. The effect on the setting of the listed buildings would therefore be negligible and would not conflict with the requirements of the PLBCAA.

Planning Balance

32. The development plan for the area includes the MDLDP. While this predates the current Framework, it is clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to policies according to their consistency with the Framework.
33. Policies D5 and S1 are generally consistent with the Framework in terms of its aims in respect of flooding and sustainable development. In particular, the former links directly to the requirements of national policy. I therefore afford considerable weight to the conflict of the proposal with these policies, which means the conventional planning balance applies to the proposed development.
34. There is an onus in the Framework for planning decisions to help create the conditions in which businesses can invest, expand, and adapt. I therefore afford the economic growth that could result from the proposal, including the jobs that would be created, significant weight. There would also be short-term benefits to the local and wider economy from employment associated with construction works but, given the magnitude of the proposed development, these would be of moderate weight.
35. The introduction of habitat specifically for reptiles, along the northern edge of the site, and landscaping within the site would be biodiversity enhancements, but only environmental benefits of moderate weight given the scale of what is proposed. The use of energy efficient lighting to reduce consumption would also be a limited environmental benefit.
36. The proposal would accord with development plan policies in respect of surface water drainage and noise and disturbance to nearby residents. There would also be an absence of other harm associated with the proposed development including, but not limited to, design and heritage; and access, parking and highway safety. These matters would therefore neither weigh in favour nor against the appeal scheme.
37. In terms of harm, the proposal would not comply with the development plan in respect of the Sequential Test, which seeks to steer new development away from areas at the highest risk of flooding. There would also be conflict with the Framework in this regard.
38. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, when considered as a whole, and I find that the adverse impact of the proposal associated with its location in Flood Zone 3b is

a matter of considerable weight against the grant of planning permission that outweighs the stated benefits.

Conclusion

39. The proposed development would be contrary to the development plan and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR