

Appeal Decision

Site visit made on 10 January 2023

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Appeal Ref: APP/X1545/W/21/3283976

Land adjacent The Willows, Bryants Lane, Woodham Mortimer CM9 6TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by M & D Green against the decision of Maldon District Council.
 - The application Ref OUT/MAL/21/00138, dated 8 January 2021, was refused by notice dated 8 April 2021.
 - The development proposed is 1 No. dwelling with carport.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Maldon District Council against M & D Green. This application is the subject of a separate Decision.

Procedural Matters

3. The name of the appellants in the banner above is taken from the planning application form rather than 'Mr & Mrs Green' as per the appeal form. In coming to this view, I have taken into account that the 2015 appeal on the site was made by Messrs M & D Green.
4. The appellant's appeal statement says that the proposal is in outline with all matters reserved except for access. The application form used, however, was for outline planning permission with all matters reserved for future determination. The Local Planning Authority (LPA) has determined the proposal on this basis and so shall I. The planning application was accompanied by plans of 'proposed elevations', a proposed block plan and a design and access statement describing a single storey dwelling with a living roof system. Given matters of layout, scale and appearance would be reserved for detailed consideration at future stage, I have considered these plans on an 'indicative' basis only in the determination of the appeal.

Main Issues

5. The main issues for the appeal are as follows:
 - i) Whether the proposal would provide a sustainable location for housing;
 - ii) The effect of the proposed dwelling on the character and appearance of the surrounding rural area; and
 - iii) The effect of the proposal on biodiversity.

Reasons

Sustainable location

6. The appeal site is in the countryside for the purposes of the development plan. The nearest settlement boundary is at Woodham Mortimer, approximately 200 metres to the south where the settlement is identified in Policy S8 of the Maldon Local Development Plan 2017 (the MLDP) as a 'smaller village'. In terms of the settlement hierarchy this is defined as a settlement containing few or no services and facilities, with limited or no access to public transport and very limited or no employment opportunities. In this context Woodham Mortimer is not identified as one of the more sustainable locations to deliver housing to meet local needs.
7. I observed that there is a public house, village hall and playing field in the village but these are some distance from the appeal site and would involve crossing the A414 which is a busy road with fast flowing traffic. There are also bus stops on the A414 to the south of the appeal site. I noted there is no shelter for westbound buses which would limit the attractiveness of using buses in this direction. Moreover, there is no safe, lit pedestrian footway along Bryants Lane to reach these bus stops, no lighting on the A414 and no continuous safe footway via Conduit Lane into the main village area of Woodham Mortimer. Given the limited services in Woodham Mortimer and the lack of footways and nature of bus infrastructure I find that future occupancy of the proposed dwelling would be highly reliant on use of the motor car. This would be contrary to securing a sustainable pattern of development in the district and the need to transition to a low carbon future.
8. I therefore conclude that the appeal proposal would not be sustainably located. It would be situated in the countryside and would not comprise a type of development that specifically warrants a countryside location. Accordingly, the proposal would be contrary to the spatial strategy and settlement hierarchy in Policy S8 of the MDLP. It would also be contrary to national planning policy on rural housing at paragraph 79 of the National Planning Policy Framework (NPPF).

Character and appearance

9. Bryants Lane is a narrow, rural byway which passes through a smattering of houses and agricultural buildings in a wider context of fields, woodland and equestrian facilities to the north of A414. This main road provides a clear delineation between the nucleus of settlement at Woodham Mortimer to the south and the countryside to the north. Accordingly, and notwithstanding the sporadic pattern of houses along Bryants Lane, the character of the appeal location is strongly rural, including the woodland directly opposite the site.
10. The appeal site is currently an area of undeveloped land nestled between a large, detached dwelling in verdant grounds to the south at 'The Willows' and generally open horse fields immediately to the north. The site is bounded by tall, large coniferous planting along its northern boundary and gappy laurel hedging to the front boundary on Bryants Lane. The appeal site provides a pleasant pocket of undeveloped land, which can be appreciated when passing it from within Bryants Lane.

11. Whilst matters of access and landscaping would be reserved for future consideration, vehicular access into the site would need to be formalised recognising that an informal arrangement currently exists with Heras security fencing in the north-east corner of the site and a rickety set of small low wooden gates is embedded into vegetation at the point indicated for access on the submitted plans. Irrespective of these existing conditions a new formal driveway entrance would alter the rural character of this part of Bryants Lane, announcing the presence of a new dwelling in the countryside. Additionally, whether the proposed dwelling is single storey and has a green roof, the physical presence of any new dwelling would be readily perceptible from within Bryants Lane, including via a new formalised access, resulting in a tangible loss of openness at the appeal site. The change in character on this rural part of Bryants Lane resulting from the encroachment of a new dwelling and associated domestic paraphernalia (bins, washing lines etc), including a new car port (as listed in the description of development applied for) would result in a harmful creeping urbanisation into what is a pleasantly rural area.
12. I observed the character of the adjacent dwelling at The Willows, which the appellant submits has been enlarged since the previous appeal decision¹ and asserts that it provides an overt residential context for the appeal proposal. Whilst The Willows is visible, in combination with the adjoining chalet bungalow dwelling at The Maples to the south, within Bryants Lane this is confined to a limited length which is characterised by a small block of development closer to the corner with the main A414 road including the entrance to the garden centre. As such I find the enlarged established dwelling at 'The Willows' provides a clear delineation to development on this part of Bryants Lane and so does not provide a basis for setting a future pattern development further north into what is a more rural part of Bryants Lane away from the influence of the A414 and main settlement at Woodham Mortimer, including at the appeal site.
13. I also observed the various buildings, fencing and lighting columns at the adjacent equestrian site immediately to the north of the appeal site. These are set behind an established native hedge and generally the openness of the site prevails such that it still functions as a notable rural gap on this part of Bryants Lane. The scale and appearance of the equestrian buildings and infrastructure on this site is not out of character in a rural location. There remains a significant open area of paddock between the appeal site and the nearest equestrian building. As such the equestrian nature of the land to the north of the appeal site does not support the introduction of a new residential building at this rural location.
14. I therefore conclude that the proposed dwelling would have a significantly harmful effect on the character and appearance of the surrounding rural area. It would be contrary to Policies S1, S8, D1 and H4 of the MDLP which collectively seek to maintain the rural character of the District, protect the intrinsic character and beauty of the countryside as a natural resource and ensure that new development respects and enhances the character and local context. Whilst detailed matters of appearance are not before me, it is reasonable to conclude that the change in the character of the site arising from the principle of a new dwelling, would not accord with NPPF paragraph 130 in terms of being a sympathetic response to local context and maintaining a

¹ APP/X1545/W/15/3004090

strong sense of place, which at this location is predominantly the rural character described above.

Biodiversity

15. The appeal site is situated a short distance from various sites of biodiversity value² and proximate to a site granted a European Protected Species licence for bats. The appeal site is also within zone of influence where net new residential accommodation would give rise to visitor pressure and recreational disturbance that would have a likely significant adverse effect on sensitive interest features of internationally designated sites³ and thus require mitigation. In response to this an Essex Coast Recreational Disturbance and Mitigation Strategy (RAMS) has identified mechanisms for mitigation, principally through a financial contribution for visitor management measures in the form an established per dwelling tariff.
16. At the time the LPA made its decision, given the proximity of local sites of biodiversity value, the lack of a preliminary ecological appraisal (PEA) formed part of the reasons for refusal. During the appeal process the appellant has submitted a PEA dated 31 August 2021 which utilises survey work carried out on 27 August 2021. The PEA reaffirms at paragraphs 1.3 and 5.5 that a RAMS contribution would be necessary in respect of mitigating an adverse impact on internationally protected sites. The PEA also recommends a lighting strategy, which could be secured by condition, should be considered in relation to the potential at the appeal site for bat commuting habitat.
17. In terms of understanding the value of the appeal site for local biodiversity I share the LPAs concerns that the timing of survey work at the end of August for reptiles and nesting birds is sub-optimal. I also share the LPAs concern regarding a lack of coordination between the PEA evidence and any assessment of the removal of trees on site. Overall, I am concerned that potential impacts on the local ecology are either understated or not yet established and therefore difficult to establish whether other forms of mitigation might be required. I therefore cannot conclude on the information before me that the appeal proposal would have an acceptable impact on local biodiversity.
18. As set out above, due to the proximity of sensitive protected habitats on the Essex coast, the appeal proposal would give rise to a likely significant effect on the qualifying features of these habitats, due to contributing to increased recreational pressure. As such I am required as part of a Habitats Regulations Assessment (HRA) to assess whether the adverse effects could be suitably mitigated. At the time of making this decision, there is no mechanism for a RAMS payment via a planning obligation before me or any alternative suggested strategy to secure effective mitigation. I have, however, considered whether the matter could be resolved by imposing a negatively worded condition to a planning permission requiring a RAMS payment prior to commencement as suggested by the appellant. The potential wording of such a condition has not been provided by the appellant or suggested by the LPA including how the process of paying any RAMS tariff via this approach would be checked and monitored. Accordingly, in the absence of any detailed or precise wording, I cannot be certain that such a condition would pass the necessary

² Summarised at paragraph 5.8.2 of the LPA officer report and shown in Appendices 1-4 of the appellants PEA

³ Essex Estuaries Special Area of Conservation (SAC), Blackwater Estuary Special Protection Area (SPA) and Ramsar site.

tests at paragraph 56 of the NPPF. In carrying out the HRA for the appeal proposal I am required to apply a precautionary approach such that given the uncertainty around the RAMS payment in the absence of a planning obligation I find that likely adverse impacts on protected habitat sites have not been demonstrated to be suitably mitigated. I am therefore unable to reach a positive HRA conclusion in this case.

19. I therefore conclude the proposal would have a harmful effect in relation to biodiversity arising from the absence of any certainty of securing necessary mitigation in relation to adverse effects on protected habitat sites on the Essex coast. There would be additional biodiversity harm arising from a lack of robust baseline evidence on local impacts given the proximity of nearby sites and species. The proposal would therefore be contrary to MDLP Policy S1 (parts 4 and 9). Furthermore, the absence of a RAMS mitigation payment would be contrary to MDLP Policy I1. On this main issue the proposal would also fail to accord with NPPF paragraph 180 which states that if significant harm to biodiversity resulting from development cannot be mitigated then planning permission should be refused. In terms of biodiversity impacts more generally, and the identified issues with the PEA, I also find the proposal would not accord with MDLP Policy S1 and NPPF paragraph 174(b) which identifies the benefits of the countryside as part of the wider natural capital.

Balance and Conclusions

20. The LPA accepts that it currently cannot demonstrate a five year supply of deliverable housing land, with the position being approximately three years⁴. Consequently, having regard to NPPF paragraph 11d), Policies S1 and S8 as most relevant policies for determining the proposal are out-of-date because the spatial strategy is not delivering the required housing need. In such circumstances there is a presumption to grant planning permission subject to the approach at NPPF paragraphs 11d i) and ii).
21. The site is within an identified zone of influence for the type of habitat sites listed at paragraph 181 of the NPPF and so footnote 7 to paragraph 11(d) i) of the NPPF is engaged. As set out above, having undertaken an HRA for this appeal proposal, in the absence of a precise and enforceable mechanism to secure mitigation it cannot be concluded, on a required precautionary basis, that the appeal proposal would avoid unacceptable harm to the qualifying features of the protected sites. In accordance with NPPF paragraph 180 this provides a clear reason for refusing the development proposal and so it would not comprise sustainable development. Accordingly, there is no requirement for a decision-taker to proceed to consider the tilted presumption in favour of sustainable development at paragraph 11 d) ii).
22. However, given the other main issues in this appeal, I have considered more widely whether the other adverse impacts identified would significantly and demonstrably outweigh the benefits. At one dwelling, the appeal proposal would only provide modest social benefits in assisting to meet the district's housing needs. Any economic benefits would be very limited in terms of both the construction phase and the scale of additional expenditure in local facilities.
23. Whilst I have found that Policies S1 and S8 are out-of-date that does not mean they are of no weight. The need to carefully manage and limit the number of

⁴ LPA reference to appeal decision APP/X1545/W/21/3283478 dated 21 March 2022

new homes in locations with relatively few sustainability credentials remains valid in the context of the environmental objectives of national and local planning policy and so I afford the harm arising from the conflict with Policies S1 and S8 significant weight. Policies D1 and H4 on protecting and enhancing local character are consistent with the NPPF and I give the harm arising from the conflict with these policies substantial weight. The identified uncertainty around local biodiversity and the conflict with Policy S1 is a moderate harm weighing against the appeal proposal. Accordingly, the various other adverse impacts identified, in addition to the harm to protected habitats, still provide a clear basis for refusing a development proposal that would be contrary to the development plan.

24. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Spencer

Inspector.