



Appeal Decision

Site visit made on 13 December 2022

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Appeal Ref: APP/X1545/W/22/3293560

**Land between Koombora and Mansfield, Victoria Road,
Cold Norton CM3 6JD**

- 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 W Hagan against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/00484, dated 30 April 2021, was refused by notice dated 27 August 2021.
 - The development proposed is erection of a self build detached dwelling complete with parking, landscaping and related infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a self build detached dwelling complete with parking, landscaping and related infrastructure at land between Koombora and Mansfield, Victoria Road, Cold Norton CM3 6JD in accordance with the terms of the application, Ref FUL/MAL/21/00484, dated 30 April 2021, subject to the conditions set out in the schedule below.

Application for Costs

2. An application for costs was made by Mr W Hagan against Maldon District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant has submitted a Unilateral Undertaking with the appeal, dated 25 February 2022 (the UU). I have taken this into account in the determination of the appeal.
4. An additional drawing has been provided with the appeal, showing the proposed streetscape including Cranswick Lodge to the south. As this drawing does not amend the proposals, and provides only a wider context, I have had regard to this drawing in my assessment.

Main Issue

5. The main issue is the effect of the development proposed on the character and appearance of the area.

Reasons

6. The appeal site lies to the north of the village of Cold Norton. The northern end of Victoria Road has a rural character and appearance created by its open and verdant character. The houses at the northern end of Victoria Road are

generally set back from the edge of the road and within spacious plots. This is in contrast to the character of the southern part of Victoria Road, where it passes through a denser development of two storey houses.

7. The site itself comprises an area of open, mown grassland, bound by close boarded timber fencing. It lies between the residential properties of Koombora to the south, which is a chalet style bungalow including outbuildings, and Mansfield to the north, a modest bungalow set back from the road. The extent of the appeal site includes areas of hard surfacing to the front of the site. The appeal site at present, appears in stark contrast to the neighbouring plots due to the absence of trees and landscaping.
8. The proposed new house would be set back on the plot, to a level comparable to the set back of Mansfield to the north. Its scale, comprising a low eaves level and rooms within the roofspace, would also be comparable to the scale and form of the neighbouring buildings. The footprint of the proposed house, and its position on the site, would also retain an open and spacious character to the plot, and respect the character of the loose knit development at this part of Victoria Road.
9. The proposed parking areas would be set back from the front of the site, and accessed via a modest width driveway, reducing the visibility of the parking and turning areas in views from the road. In addition, the proposals would see the introduction of a number of trees and soft landscaping features across the site, particularly to the front boundary. These would provide some screening to the property, but would also reinstate a verdant character to the site, more akin to the character of the immediate area. The green front boundary treatments, where they would replace the existing area of hard surfacing, would also improve the appreciation of the rural character in local views along Victoria Road.
10. The proposal would result in the spread of domestic character in the northern part of Victoria Road. This would include residential paraphernalia across the site as required by future occupants. However, given the adjacent residential uses and the paraphernalia and parking areas on those sites, this would not be out of character. Furthermore, given the proposed degree of screening, these features would not appear visually prominent or intrusive in the landscape.
11. The Council state that the site could be replanted and reinstated to its former condition. However, I do not have details of the likelihood of these works otherwise occurring.
12. For the reasons given, the proposal would comply with policies S1, S2 and D1 of the Maldon District Local Development Plan 2017 (the LDP) insofar as they seek to protect the District's natural environment, maintain the rural character of the district and respect and enhance local context.
13. While the proposal would not conform to the majority of the criteria set out in Policy S8, criteria m) allows for other development proposals that are in compliance with policies in the LDP. As the proposal complies with other policies above, and would not adversely impact upon the intrinsic character and beauty of the countryside, I do not find conflict with Policy S8 overall.
14. As the proposed density would be compatible with the local context, this would contribute to the efficient use of land, compliant with the aims of Policy H4 of

the LDP. I do not find that the proposals fall to be considered under any of the other criteria in that policy, given the site specific circumstances here.

15. The proposal would comply with the objectives of the National Planning Policy Framework (the Framework) relating to design, and would comply with paragraph 130 insofar as it requires developments to be sympathetic to local character including the surrounding built environment and landscape setting.

Planning Obligations

16. The site lies within the 'zone of influence' for one or more of the European designated sites on the Essex coast, much of which is designated under the UK Conservation of Habitats and Species Regulations 2017. A key purpose of these designations is to protect internationally important numbers of breeding and non-breeding birds and their coastal habitats. Taking a precautionary approach, the proposed development, through increasing the local population, would have likely significant effects on the features of interest of those designated sites through increased recreational pressure.
17. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) provides a strategic approach to deliver mitigation necessary to avoid significant adverse effects from residential development, to protect the habitats of the European sites on the Essex coast. The RAMS includes details of a tariff per dwelling and details of how such contributions will be spent.
18. The UU submitted with the appeal would secure a contribution towards the costs of mitigation. Based on the RAMS I am satisfied that this contribution, together with the measures contained in the RAMS, would make appropriate mitigation for the harm identified. As such the proposal would not adversely affect the integrity of the protected sites.
19. The contribution towards mitigation would meet the tests for a planning obligation, as set out in the Community Infrastructure Levy Regulations 2010, and paragraph 57 of the Framework.
20. The UU also secures a fee to be paid for monitoring by the Council. The agreement does not specifically detail what this relates to the monitoring of, and I do not have evidence to suggest that the amount is fairly and reasonably related in scale and kind to the development. As such, based on the evidence, the monitoring fee does not meet the relevant tests for an obligation and it would not be lawful to take it into account as a reason for granting planning permission.

Other Matters

21. I note that planning permission was sought for the erection of a house on the appeal site in 2013, which was refused by the Council and subsequently dismissed at appeal¹. One of the main issues was the effect on character and appearance. I have little detail of that proposal before me, however it is evident that the circumstances of the site have changed since that time, as have the relevant development plan policies under which the scheme was considered. It does not, therefore, provide reason to alter my judgement.

¹ APP/X1545/A/14/2220881

22. The Council accept that it does not have a five year land supply for housing. As such the provisions of paragraph 11d) of the Framework are also relevant to the appeal and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I have found that the proposal would not cause adverse impacts, and as such, the proposal benefits from the presumption in favour of sustainable development.
23. While the site is outside the settlement boundary, given the proximity to the village, and in light of other appeal decisions, the Council have not raised objection to the suitability of this location for housing. Based on the evidence and findings of my site visit, I concur with this view.
24. I do not have substantive evidence to suggest that this part of Victoria Road is too narrow to accommodate the proposed development, or that harm would arise to highway safety. Given the scale and design of the proposed house, the nature of the boundary treatments and distances from the neighbouring properties, the living conditions of those neighbouring occupants would be preserved.
25. The proposal would entail soft landscaping across much of the site, which could improve the permeability of the site. As the site is within designated Flood Zone 1, and in the absence of evidence to the contrary, the proposal would not cause harm in terms of flood risk.
26. I have no strong reason to believe that a satisfactory sewer connection, or alternative solution, could not be achieved. Concerns relating to the boundary lines and the previous actions of the land owner fall outside the scope of this appeal.

Conditions

27. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). In addition to the standard time limit condition, for clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
28. To ensure the surrounding trees and their root protection areas are protected throughout the course of the development, a pre commencement condition is required to ensure the submitted protection measures are installed.
29. To protect the character of the area, conditions are necessary to secure details of hard and soft landscaping, as well as a mechanism to ensure the replacement of any planting which dies. To ensure appropriate natural drainage on the site, conditions are imposed relating to surface water drainage and foul drainage. As these are separate matters, I have kept the conditions separate. To safeguard the safety of Victoria Road, conditions are imposed to ensure a bound surface and to keep construction vehicles within the site.
30. Areas for cycle parking and biodiversity enhancements are shown on the plans and a condition is imposed to secure their delivery. Details of external lighting are also secured given the likelihood of routes used by bats across the site.

31. Given the relationship of the site to the neighbouring properties and the size of the appeal site, I have not imposed a condition relating to a construction management plan. This is particularly the case as the Council's wording suggests that the working hours stated can be exceeded subject to notification of the environmental health department. In reaching this decision I am mindful of other legislation outside the planning system which could assist should disturbance occur.
32. As the supporting plans adequately describe the external materials of the development, it is not necessary to condition further details. As the site already has boundary treatments in situ and these are shown on the plans to be retained, further details are not necessary.
33. The PPG advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. In light of this, and in the absence of evidence as to why it would be necessary, I have not imposed conditions restricting outbuildings or new openings in the new dwelling.
34. As the appellant's preliminary ecological assessment identifies there is not a reasonable likelihood of effects on protected species, and finds the site to be of low ecological value, additional mitigation measures are not necessary.

Conclusion

35. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is allowed.

C Shearing

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: OS Site Map, 1322/CP, 1322/01C, 1322/02A, 1322/03A, 1322/04B, 1322/05.
- 3) Prior to the commencement of development, the tree protection measures detailed in Appendix 5 of the report titled 'Arboricultural Impact Assessment' by Aborterra Ltd, dated 29th April 2021, shall be installed in full. Those tree protection measures shall remain in full accordance with those details until such a time as the development on the site is completed.
- 4) All loading, unloading, reception and storage of building materials and the manoeuvring of all vehicles, including construction traffic, shall be undertaken within the site.
- 5) Development shall not take place above the damp proof course of the new dwelling until details of a surface water drainage scheme to serve the development have been submitted to, and approved in writing by, the local planning authority. The scheme shall ensure that, as a minimum:
 1. The development should be able to manage water on the site for 1 in 100 year events plus 40% climate change allowance;
 2. 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 on brownfield sites, provided this does not result in a runoff rate less than greenfield, or 50% betterment of existing runoff rates on brownfield sites (provided this does not result in a runoff rate less than greenfield).

The submitted details shall include details of the area to be drained, infiltration rate, proposed length, width and depth of soakaway, groundwater level and whether it will be rubble filled. If discharge to an adopted sewer network is proposed, written confirmation from the statutory undertaker that the discharge will be accepted should be provided. The development shall be carried out in accordance with the approved details prior to the first occupation of the dwelling.
- 6) Development shall not take place above the damp proof course of the new dwelling until details of a foul drainage scheme have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the first occupation of the dwelling.
- 7) Prior to the first occupation of the new dwelling, details of a scheme of hard landscaping for the site shall be submitted to and approved in writing by the local planning authority. These shall include details of hard surfacing materials, including the use of a bound surface in the first 6 metres of the driveway from the edge of Victoria Road. The development shall be carried out in accordance with the approved details.

- 8) Prior to the first occupation of the new dwelling, details of a scheme of soft landscaping shall be submitted to, and approved in writing by, the local planning authority. This shall include schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers and details of a timetable for implementation and aftercare. The development shall be carried out in accordance with the approved details and the timescales set out in the approved timetable for implementation.
- 9) If within a period of five years from the date of the planting of any tree or plant, any tree or plant planted or its replacement, is removed, uprooted, destroyed, dies or becomes 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.
- 10) Within 6 months of the planting of the soft landscaping scheme, the biodiversity enhancements shown on plan 1322/01C shall be installed in full. They shall be maintained at all times.
- 11) Prior to the first occupation of the new dwelling, the cycle parking area shall be installed in accordance with the details shown on drawing 1322/01C. This shall be maintained at all times.
- 12) No external lighting shall be installed unless details have first been submitted to and approved in writing by the local planning authority. Those details shall include consideration of bat movements. External lighting shall be installed only in accordance with the approved details.

End of Schedule