



Appeal Decision

Site visit made on 25 January 2023

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal Ref: APP/X1545/W/22/3294394

Land West of Cemetery Chapel, Southminster Road, Burnham on Crouch, Essex CM0 8PR

- 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 Paritosh Job of Matthew Homes against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/00935, dated 6 September 2021, was refused by notice dated 3 November 2021.
 - The development proposed is erection of two dwellings with associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two dwellings with associated works at Land West of Cemetery Chapel, Southminster Road, Burnham on Crouch, Essex CM0 8PR in accordance with the terms of the application, Ref FUL/MAL/21/00935, dated 6 September 2021, subject to the 20 conditions set out in the attached schedule.

Preliminary Matters

2. The fourth and fifth reasons for refusal refer to the lack of a completed Section 106 (S106) legal agreement to address the delivery of affordable housing and the mitigation of impacts on protected European habitat sites along the Essex coast. A signed and dated S106 agreement was provided by the appellant following the submission of the appeal. The Council considers that the fourth and fifth reasons for refusal are likely to be resolved by this agreement. I have assessed these matters further below.
3. The appellant provided amended plans at the appeal stage to address the Council's concerns in relation to the second reason for refusal. These plans show changes to the first floor windows and garage for one of the proposed dwellings. I consider that they are minor amendments that would not prejudice any interested party including occupants of nearby properties. Therefore, I have taken these amended plans into account as part of my decision.

Main Issues

4. The main issues are the effect of the proposed development on:
 - (a) the provision of commercial and community facilities;
 - (b) the character and appearance of the area; and
 - (c) the living conditions of future occupants of the development with regard to private external space.

Reasons

Commercial and community facilities

5. Policy E1 of the Maldon District Local Development Plan 2017 (LDP) seeks to encourage employment generating developments. The loss of existing employment uses, whether the sites are designated or undesignated, will only be considered if one or more criteria apply. LDP Policy E3 seeks to retain and enhance the provision of community services and facilities within the district, with two criteria that need to be demonstrated where a proposal would result in the loss of such provision.
6. The appeal site is located at the eastern end of a new housing development currently under construction on the northern edge of Burnham on Crouch. The site is a vacant plot of land surrounded by hoardings, with new housing to the north and west.
7. Outline planning permission was granted for the housing development by the Secretary of State at appeal¹ on 20 April 2017. The development was described as "up to 80 dwellings with associated site access, highways, open space, landscaping, land reserved for provision of local shop and associated works". All matters were reserved apart from access. Condition 2 required applications for the approval of the reserved matters to be submitted within two years of the date of permission. Condition 4 referred to two approved drawings in terms of a location plan and a proposed access arrangement plan. Condition 1 stipulated that no development should take place before the reserved matters are approved.
8. Condition 18 referred to the provision of a local shop and is worded as follows:
"The land which is reserved for the potential development of a new local shop shall be retained for that purpose for a period of two years after the approval of the final reserved matter. If after that time development of the shop has not commenced, the land shall be made available for an alternative land use to be agreed in writing by the Local Planning Authority."
9. Paragraph 262 of the Inspector's report that went to the Secretary of State explains that to ensure the development is appropriately served by a new local shop if required, Condition 18 safeguards allocation of land for that potential purpose as proposed for a period of two years after the approval of the final reserved matter. While the appellant questions the validity of the condition, I have taken it at face value for the purposes of this appeal.
10. A reserved matters application² for the approval of appearance, landscaping, layout and scale was submitted and subsequently approved on 1 March 2019. The site layout plan submitted with this application refers to the site as "land for local facility". The appellant has not sought to identify any other location as part of its appeal submission.
11. The Council contends that as the above application did not include details relating to the shop, the final reserved matters have not yet been approved. The appellant argues that the wording of Condition 18 is vague as to what is meant by the final reserved matters application. They also contend that there

¹ APP/X1545/W/15/3009772

² 18/01077/RES

was no requirement to include details of a shop within any reserved matters application.

12. In any case, both parties acknowledge that the time to submit another reserved matter application has lapsed. The Council considers that planning permission should be sought to change the use of the appeal site to residential, whereas the appellant believes that the proposal should be considered on its own merits irrespective of an assumed land use.
13. The housing development is under construction and already part occupied. In my view, all of the reserved matters have been deemed to be approved. There is no evidence that the Council is seeking to take any enforcement action against the housing development on the basis that there are outstanding reserved matters. As a consequence, the land within the appeal site was only reserved by Condition 18 for the potential development of a shop until 1 March 2021. The condition now seeks an alternative land use to be agreed in writing by the Council.
14. It follows that the land cannot be regarded as having a commercial or community use. There would be no loss of an existing or reserved employment use or community facility. Therefore, LDP Policies E1 and E3 and their requirements regarding marketing and other matters are not applicable.
15. In conclusion, the proposed development would have a neutral effect on the provision of commercial and community facilities. As a consequence, it would not conflict with LDP Policies E1 or E3. There would also be no conflict with LDP Policy S1 insofar as it seeks to ensure a healthy and competitive local economy, or with the National Planning Policy Framework (NPPF) which seeks to support economic growth and promote community facilities.

Character and appearance

16. The overall design of the proposed two dwellings would be consistent with the approved housing development in terms of scale and appearance. Properties have casement windows with glazing bars, while elevations have overall symmetry. The development also has a clear building line along most frontages including the two properties to the north of the site.
17. The proposed false first floor window on the front elevation of the eastern dwelling would appear odd and unfinished within the context of the wider development. The first floor window above the ground floor bay window on this dwelling would also be off-centre resulting in an asymmetrical elevation. Moreover, the garage proposed to the side and rear of this dwelling would break the building line with the properties to the north and detract from the clear layout of buildings.
18. However, the amended plans would ensure that the false window would be substituted for a casement window, the first floor window would sit centrally above the bay window, while the garage would be omitted. As consequence, the proposed development would be in keeping with the wider development.
19. Concluding on this main issue, the proposed development based on the amended plans would have an acceptable effect on the character and appearance of the surrounding area. Therefore, it would accord with LDP Policies H4 and D1 which, amongst other things, require development to be

design-led and to respect and enhance the character and local context in terms of matters such as architectural style and layout.

20. The development would also accord with Policies HC.2, HO.2 and HO.8 of the Burnham on Crouch Neighbourhood Plan 2017 which require proposals for new housing to produce high quality schemes that reflect the character and appearance of their immediate surroundings and deliver a range of new homes. It would follow the approach of the Maldon District Design Guide 2017 (MDDG) which seeks high quality design and appropriate layout and detailing within new development, as well as the NPPF which seeks well-designed places.

Living conditions

21. LDP Policy D1 requires all development to provide sufficient and usable private and public amenity spaces amongst other things. The MDDG seeks 50sqm of private amenity space for one/two bedroom dwellings and 100sqm for dwellings of three bedrooms or more. The proposed gardens would measure around 72.5sqm for the western dwelling and 74.5sqm for the eastern dwelling. The western dwelling is shown as two bedrooms plus study, while the eastern dwelling is shown as three bedrooms.
22. While I note that there is an increasing trend towards home working, it is possible that the study could be used as a small single bedroom making the western dwelling three bedrooms. This would mean that both dwellings would have gardens noticeably smaller than the MDDG seeks. Even if the western dwelling was regarded as only having two bedrooms, there would still be a shortfall in provision for the eastern dwelling.
23. However, I note that there are some dwellings within the wider development that fall short of the MDDG requirements by a similar shortfall. Moreover, the officer's report for the reserved matters application noted that given the limited number of units affected and the more than sufficient public open space to be provided on site, the harm to living conditions was insufficient to warrant refusal. At my site visit, I noted that the public open space shown on the plans has yet to be implemented, but there is no reason to suggest that it would not become available before the overall development is complete. The space would be a short distance from the site and I consider it would compensate for the above shortfall.
24. Concluding on this main issue, despite the shortfall against the MDDG, I consider that the proposed development would have an acceptable effect on the living conditions of future occupants with regard to private outdoor space. Therefore, it would accord with LDP Policies S1, H4 and D1 which, amongst other things, seek design-led development and high quality homes with sufficient and usable private and public amenity spaces. The development would also comply with NPPF paragraph 130(f) which seeks a high standard of amenity for existing and future users of places.

Other Matters

25. The construction of two new dwellings would not normally require any affordable housing provision. However, the dwellings would form part of an approved housing development and take the total number to 82. The appellant has agreed to provide a financial contribution via the S106 agreement towards the delivery of affordable housing within the district which the Council is

satisfied with. This would accord with LDP Policies S1, H1 and I1 which seek the provision of affordable housing and infrastructure to meet local needs. Therefore, the Affordable Housing Contribution obligation would meet the three tests set out in NPPF paragraph 57 and regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), as it would be necessary to make the development acceptable in planning terms and would be directly related to the development and fairly and reasonably related in scale and kind. I can therefore take it into account as part of my decision.

26. The site is within the zone of influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS). There are several protected European habitats sites along the Essex coast which are designed to safeguard breeding and non-breeding birds as well as coastal habitats³. Potential adverse effects on these protected sites can be caused by recreational disturbance arising from visitors to the coast. The proposed two additional houses could result in likely significant effects on the integrity of these protected sites in combination with other plans and projects. As such, it is necessary to carry out an appropriate assessment (AA) as part of my decision.
27. As part of the AA, it is necessary to consider whether any potential effects could be addressed through specific measures. The RAMS seeks financial contributions from applicable development schemes towards a package of mitigation measures intended to alleviate recreational pressures on protected sites. Natural England is supportive of this strategy.
28. The S106 agreement commits to the required financial contribution per dwelling. It would accord with LDP Policies S1 and I1 which seek to conserve and enhance the natural environment and provide necessary infrastructure to address the effects of development. Therefore, the Essex Coast RAMS Contribution would meet the three tests set out in NPPF paragraph 57 and regulation 122 of the CIL Regulations 2010. I can therefore take it into account as part of my decision. As a consequence, the proposed development would not result in a significant effect on protected European habitat sites.

Conditions

29. Conditions 1 and 2 setting a time limit for the commencement of the development and specifying the approved plans are necessary for clarity and compliance. Conditions 3 to 5 are necessary to safeguard the character and appearance of the area. Conditions 6 to 11 are necessary in the interests of highway safety and parking, while Condition 12 is necessary to encourage sustainable modes of travel. Conditions 13 and 14 are necessary in the interests of drainage and flood risk. I have removed suggested wording from Condition 13 that seems excessive for a two house proposal within a new housing development that had a surface water drainage condition attached to the outline permission.
30. Condition 15 is necessary to ensure adequate refuse facilities, while Conditions 16 and 17 are necessary in the interests of ecology and archaeology. Condition 18 is necessary to protect future occupants of the development from noise generated by events at Mangapp Manor and road traffic. Condition 19 is

³ In the district of Maldon, the specific protected sites are Essex Estuaries Special Area of Conservation, Blackwater Estuary Special Protection Area (SPA) and Ramsar site, Dengie SPA and Ramsar site, and Crouch and Roach Estuaries SPA and Ramsar site.

necessary to protect existing trees and vegetation, while Condition 20 is necessary to ensure that the construction of the development has an acceptable effect on the occupiers of neighbouring properties and the local road network.

31. NPPF paragraph 54 states that permitted development rights should not be removed by condition unless there is clear justification to do so. There is insufficient information that removal of such rights here is necessary in the interests of character and appearance or the living conditions of occupiers of neighbouring properties. Therefore, I have not imposed the Council's suggested condition removing permitted development rights.

Conclusion

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

Tom Gilbert-Wooldridge

INSPECTOR

Schedule of Conditions (20)

- 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: MATT171102 LP-RS01 Rev P1, MATT171102 SL-RS.01 Rev P2, MATT171102 RSp.01 Rev P2, MATT171102 RSe.01 P1 Rev P2, MATT171102 ST.01pe Rev P1
- 3) Prior to their use in the development hereby approved, details or samples of the materials to be used in the construction of the external surfaces, including windows and doors, shall 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.
- 4) Prior to the first occupation of the development, details of the boundary treatment of the site shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be provided prior to the first occupation of the development in accordance with the approved details and be retained thereafter.
- 5) Prior to the first occupation of the development, details of both hard and soft landscape works to be carried out shall be submitted to and approved in writing by the local planning authority. These details shall include the layout of the hard landscaped areas with the materials and finishes to be used and details of the soft landscape works including schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers/densities and details of the planting scheme's implementation, aftercare and maintenance programme. The hard landscape works shall be carried out as approved prior to the first

occupation of the development unless otherwise first agreed in writing by the local planning authority. The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the first occupation of the development, unless otherwise first agreed in writing by the local planning authority. If within a period of five years from the date of the planting of 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, unless the local planning authority gives its written consent to any variation.

- 6) Prior to the first occupation of the development, each vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway as shown in principle in drawing no. SL-RS.01 Rev P2. The width of the access at its junction with the highway shall not be more than 3.6 metres and shall be provided with an appropriate vehicular crossing of the footway.
- 7) There shall be no discharge of surface water from the development onto the highway.
- 8) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 9) The proposed single garage shall have a minimum internal measurement of 3 metres by 7 metres.
- 10) The vehicle parking areas hereby approved shall be constructed in accordance with the approved plans and be retained in perpetuity. The vehicle parking areas and garage shall not be used for any purposes other than the parking of vehicles that are related to the use of the development.
- 11) Details of cycle parking shall be submitted to and approved in writing by the local planning authority. The parking shall be provided prior to the first occupation of the development in accordance with Maldon District Council's adopted standards. The approved facility shall be secure, convenient, covered and retained at all times.
- 12) Prior to the first occupation of the development, the Developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to each dwelling free of charge.
- 13) No development above ground level shall occur until a detailed Sustainable Urban Drainage Scheme as specified in the Essex Sustainable Drainage Systems Design Guide has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented prior to first occupation of the development and should include and not be limited to:
 - Discharge rates/location

- Storage volumes
- Treatment requirement
- Detailed drainage plan
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy

Prior to first occupation of the development, a plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, shall be submitted to and agreed in writing by the local planning authority.

- 14) No development above ground level shall occur until details of the 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 prior to the first occupation of the development.
- 15) Details of refuse storage shall be submitted to and approved in writing by the local planning authority and provided prior to the first occupation of the development and shall be in accordance with Maldon District Design Guide standards.
- 16) The development shall be implemented in accordance with the Ecological Mitigation Strategy (ACD Environmental Ltd, January 2020) details approved under the terms of application 19/05184/DET.
- 17) The development shall be implemented in accordance with the Archaeological Mitigation details approved under the terms of application 20/05047/DET.
- 18) Prior to first occupation of the development, a fully detailed scheme of mitigation for protecting the living conditions of future occupiers of the proposed dwellings from noise arising in connection with events at Mangapp Manor and from local road noise shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to first occupation of the development.
- 19) The development shall be implemented in accordance with the MAT21949-03B – Tree Protection Plan and MAT21949amsB – Arboricultural Method Statement and Tree Survey details approved under the terms of application 21/05073/DET.
- 20) The development shall be implemented in accordance with the Construction Method Statement 2019 details approved under the terms of application 19/05188/DET.