



Appeal Decision

Site visit made on 6 December 2022

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal Ref: APP/B1550/W/21/3289797

Land Between Windermere Avenue and Lower Road, Malyons Lane, Hullbridge

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by BDW Eastern Counties against Rochford District Council.
 - The application Ref 21/00423/FUL, is dated 9 April 2021.
 - The development proposed is demolition of existing dwelling and reinstatement as public open space. Full application for 1 no. replacement dwelling in alternative location.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and reinstatement as public open space. Full application for 1 no. replacement dwelling in alternative location at Land Between Windermere Avenue And Lower Road, Malyons Lane, Hullbridge, in accordance with the terms of the application, Ref 21/00423/FUL, dated 9 April 2021, subject to the conditions set out in the schedule at the end of this decision.

Main Issue

2. The Council has not provided a statement of case or other evidence to indicate whether or not this application should be refused. As such, considering the issues raised by interested parties including internal consultees, the main issue is as follows:
 - The effect on the character and appearance of the area with particular regard to the locally listed building at Malyons Farmhouse

Reasons

3. Malyons Farmhouse is included in the Local List Supplementary Planning Document 2013 and is a non-designated heritage asset. The National Planning Policy Framework (2021) (the Framework) requires that in weighing applications that affect non-designated heritage assets a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
4. Malyons Farmhouse's features of significance included its historical value as a farmhouse. This was evidenced, importantly, by its setting within the wider agrarian context. Also, the building dates from before 1840 and it is in a traditional local vernacular style with a red tiled gabled roof, painted façade and chimney stack and central front door with open pitched roof, however these features are not specific to its farmhouse significance.

5. The adjoining farmland is currently under development for 500 homes. Malyons Farmhouse is now surrounded by residential housing development at various stages of occupation and construction. As such its original farmland setting has been wholly undermined.
6. The property has been extended over time. It has also been vandalised and is in a poor state of repair. Nevertheless, the extensions are subservient and its traditional materials and appearance remain. As such, its local vernacular style is evident, albeit that for the reasons set out above this makes a negligible contribution to the significance of the heritage asset.
7. The appeal scheme would demolish this building and therefore the scale of any harm is high. However, without the farmland setting, the evidential and historic connection of the farmhouse and the visual link with the site's past agricultural use, has been lost. Therefore, the degree of heritage significance is very low.
8. I have taken into account that the proposed development would result in the complete loss of Malyons Farmhouse. However, I have balanced this against the very low heritage significance of the building. I come to the conclusion that the harm to heritage significance would be negligible. A condition is recommended to secure historic building recording and this would be an appropriate method to record this non designated heritage asset.
9. Consequently, there would not be a harmful effect on the character and appearance of the area with particular regard to the locally listed building at Malyons Farmhouse. As such the proposed development would be in accordance with paragraph 203 of the Framework.
10. Paragraph 199 of the Framework applies to designated heritage assets, as such the above paragraph is more relevant in the determination of this case.

Other Matters

11. The wider site has planning permission for 500 homes and the replacement dwelling would be located in an area that was allocated as open space¹. This would become private residential land. However, the site of the Farmhouse would be replaced with public open space. The appellant has suggested that the site could be used as a garden of remembrance which accords with the wishes of the Parish Council. As such there would be no loss of public open space as a result of this development.
12. The proposed development would not result in an increased number of houses. Therefore, there would be no significant change to the demand on infrastructure. Nor am I provided with any detailed evidence as to why the proposed development should not be in residential use.
13. A condition would be required to ensure that the Farmhouse was demolished and the public space on that site implemented prior to the erection of the replacement dwelling. This would be necessary to secure an appropriate level of open space and infrastructure as set out above.

Conditions

14. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the

¹ 18/00135/REM

advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, including ensuring that conditions would not unnecessarily delay the delivery of development.

15. I am attaching the standard implementation condition and in the interests of certainty a condition to define the plans with which the scheme should accord. In the interests of brevity, I have combined the suggested separate requirements for implementation into the main conditions. A scheme of historic building recording is also required for the reasons set out above. This work is required to be pre commencement to ensure recording takes place before any existing features of significance are removed or altered.
16. Details of the proposed materials and lighting and implementation of the soft landscaping are required in the interests of the character and appearance of the area. Along with a condition which required development to be carried out in accordance with the arboricultural report, which is required for the same reason. A condition requiring demolition and replacement public space to be implemented prior to the construction of the replacement dwelling is required for the reasons set out above.
17. The submitted Supplementary Geo-environmental Site Assessment includes evidence that there may be contaminated land on the wider development site and recommends further investigation and this would be secured by condition. This is required to be pre commencement as any remedial and mitigation measures would need to take place before above ground works commenced. Given this background a condition including actions to take if unidentified contaminated land is found would also be reasonable. As such this is necessary in the interest that risks to humans and ecology are minimised.
18. A construction management plan is required in the interests of highway safety. However, positively worded conditions requiring payment of money should not be used. As such, although I have retained the need for before and after construction condition surveys of the highway, I have removed the wording for commitment to fund the repair of any damage. The construction management plan is pre commencement as the measures are required for the full duration of the works. A travel pack and the provision of an electric car charging point are required in order to encourage sustainable transport modes.
19. A condition to limit the hours of construction is recommended in the interests of the living conditions of nearby occupiers. And a condition requiring compliance with the ecology report is necessary in the interests of biodiversity.
20. I am not provided with any detailed evidence as to why it would be necessary to limit small scale domestic extensions at the proposed dwelling. As such this condition would not pass the test of reasonableness or necessity and so it is not included here.

Conclusion

21. For the reasons given above I conclude that the appeal should be allowed.

H Miles

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development shall be undertaken in strict accordance with the details of the approved plans referenced: 2051 A3 01 (Detailed Planting Proposals), BLDG2S6 -EL (Garage Elevations), BLDG2S6 – FP (Garage Floor Plans), H588-ELR (Henley Elevations (Render)), H588-FP (Henley Floor Plans), H7485_2B_SP_500 (Proposed Access Plan), H7485_PA_LP_001 (Location Plan), H7485_PA_SP_003 Rev B (Indicative Master Plan), H7485_PA_SP_004 Rev A (Detailed Plan 01), H7485_PA_SP_005 Rev A (Detailed Plan 02), H7485_PA_SP_006 Rev A (Detailed Plan 03), H7485_PA_SS_001 Rev B (Indicative Street Scene A & B), 2051 A3 02 (Landscape Masterplan), H7485_PA_CP_002 Rev A (Context Plan)
- 3) No development shall take place until a written scheme of investigation for a programme of historic building recording has been submitted to and approved in writing by the local planning authority. The scheme should comprise level 2 historic building recording. A professional historic building recording team should undertake the work. The approved programme of historic building recording shall be completed prior to any development taking place.
- 4) No development shall take place until further analysis and assessment has been undertaken in accordance with the recommendations set out within section 7.1.2 of the submitted Supplementary Geo-environmental Site Assessment 28840 R02 (00). Further remedial works and mitigation options identified shall be submitted to and approved in writing by the Local Planning Authority in the form of a detailed report prior to the commencement of the development. The development shall be carried out in accordance with the approved details.
- 5) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - i) vehicle routing,
 - ii) the parking of vehicles of site operatives and visitors,
 - iii) loading and unloading of plant and materials,
 - iv) storage of plant and materials used in constructing the development,
 - v) wheel and underbody washing facilities.
 - vi) Before and after condition survey to identify defects to highway in the vicinity of the access to the site.
- 6) Prior to the commencement of above ground works, details of the specification and finish of all external materials to be incorporated into the development shall be submitted to and approved in writing by the Local Planning Authority. These details shall include details of all wall elevation treatment and finishes including brickwork, render, external cladding (including its colour, finish, and texture), details of all roofing materials, details of all windows and frame casing, doors, fascias, bargeboards, soffits, and all rainwater goods and means of all site

enclosure including all fencing and walls. The development shall be implemented in accordance with the details approved.

- 7) No development of the replacement dwelling shall take place until Malyons Farmhouse is demolished and the soft landscaping provision as shown by plan reference 2051 A301 (Detailed Planting Proposals) is implemented.

Any tree, shrub, or hedge plant (including replacement plants) removed, uprooted, destroyed, or be caused to die, or become seriously damaged or defective, within five years of planting, shall be replaced by the developer(s) or their successors in title, with species of the same type, size and in an agreed location, in the first available planting season following removal.
- 8) Prior to their installation, details of all external lighting shall be submitted to and approved in writing by the Local Planning Authority. These details shall include details of all external lighting and illumination within the development site, including details of the height and position of all lighting columns, together with details of luminosity. The development shall be implemented in accordance with the details approved.
- 9) Prior to first occupation of the proposed development, the developer shall provide the replacement dwelling with a Residential Travel Information Pack for sustainable transport, in accordance with the details set out in the Supplementary Transport Note and Transport Assessment dated October 2014 and to include six one day travel vouchers for use with the relevant local public transport operator.
- 10) Notwithstanding the details of the approved site layout plans prior to the first occupation of the development hereby permitted at least 1 (in number) 3-7kW charging point shall have been installed and be fully operational. This charging point as installed and as may be subject of upgrade in future to an equivalent kW output shall be retained over the lifetime of the residential use.
- 11) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. The risk assessment shall include: a survey of the extent, scale, and nature of contamination; an assessment of the potential risks to: - human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites, and ancient monuments; An appraisal of remedial options, and proposal of the preferred option(s). This shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Where remediation is necessary a detailed remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. The remediation scheme shall: bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings

and other property and the natural and historical environment; include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works (including two weeks written notification of commencement of the remediation scheme works to the Local Planning Authority) and site management procedures ;ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is resumed or continued.

- 12) No works during any part of the construction phase of the development, including all associated ground works, building operations deliveries and / or collections shall take place between the hours of 6pm and 7 am (Monday to Friday) and between the hours of 1 pm and 7am on Saturdays. No construction works, deliveries or collections shall take place on a Sunday or on any bank holidays.
- 13) The works shall be undertaken in accordance with the recommendations set out within the submitted Arboricultural Impact Assessment (dated 12.10.2020) at points 5.1-5.4 (inclusive) and at 6.1 – 6.2 (inclusive).
- 14) The development shall be undertaken in accordance with the mitigation and enhancement measures set out at paragraphs 5.1 – 5.2 of the Ecological Appraisal & Bat Survey Report (August 2021)