



Appeal Decision

Site visit made on 14 February 2023

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2023

Appeal Ref: APP/X1545/W/22/3298485

Chestnuts, Seamar Road, Southminster, Essex CM0 7BX

- 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 Mrs Joanne Gowan against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/01141, dated 28 October 2021, was refused by notice dated 10 February 2022.
 - The development proposed is described as 'proposed new live/work unit. Change of use from recreational to residential'.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a new dwelling unit and change of use from recreational to residential at Chestnuts, Seamar Road, Southminster, Essex CM0 7BX, in accordance with the terms of the application, Ref: FUL/MAL/21/01141, dated 28 October 2021, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. A conventional live/work unit would usually have a broadly equal amount of residential and commercial floorspace and is therefore a mixed use. However, the appeal scheme proposes only a small jewellery workshop in the proposed outbuilding. Moreover, the description of development refers to a change of use of the site from recreational to residential as opposed to a mixed commercial/residential use. Thus, the proposal is more accurately expressed as the erection of a new dwelling rather than a live/work unit. The jewellery workshop is proposed to be used by the appellant and seems intended to function in an ancillary capacity to the main dwelling because, for example, customers would not visit the site and no staff would be employed.

Main Issues

3. The main issues in this appeal are:
 - Whether the proposed development would be in a suitable location, with reference to the spatial strategy in the development plan and the accessibility of services and facilities; and
 - The effect of the proposed development on the character and appearance of the area, the tourism economy, and the integrity of European sites.

Reasons

Spatial Strategy

4. Policy S1 of the Local Development Plan¹ (LDP) seeks to deliver new homes in the most sustainable locations. To this end Policy S8 of the LDP directs most new housing developments to sites within defined settlements and allocations. Outside these areas, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon, and the proposal would be for a certain type of development identified in a closed list. There is a negative corollary that development is not supported by Policy S8 if at odds with these criteria.
5. No direct exception is made within Policy S8 for infill development outside of defined settlement boundaries. As such, when the LDP is read as a whole, the section of Policy H4 of the LDP, which permits infilling and backland development subject to criteria, should be taken as relating to the effective use of land within defined settlement boundaries. Accordingly, the infilling section of Policy H4 is of little relevance to an assessment of the appeal scheme.
6. The appeal site is a parcel of land located in Old Heath, which is a discernible cluster of houses. That said, Old Heath is not listed as a settlement in Policy S8. As such, the appeal scheme would be outside a defined settlement and would not be any of the types of development listed in Policy S8. It would therefore be at odds with this policy regardless of whether it would have an adverse impact on the intrinsic character and beauty of the countryside.
7. Accordingly, the proposal would be at odds with Policies S1 and S8 of the LDP. Consequently, it would not be a suitable location for the appeal scheme when applying the spatial strategy in the development plan, which is a carefully drafted and considered statement of policy. Instead, the proposal would undermine the objectives of the strategy. This would be harmful given the public interest in having a genuinely plan led system that provides consistency and direction.

Access to services and facilities

8. Save for a bus stop there are no facilities within an 800m² walk of the appeal site. Within a 15-minute walk there is the Rose Inn Public House. This can be accessed by walking along Old Heath Road, an apparently quiet country lane, and then the pavement along the B1021. The pavement continues into Southminster, but many of the services and facilities are found towards the centre of this settlement and therefore beyond a comfortable walking distance. The pavement is also narrow and along a seemingly busy road, which suppresses the attractiveness of this route. As a result, walking to services and facilities is not a realistic option for future occupants of the proposal.
9. Both Southminster and Burnham on Crouch are within cycling distance of Old Heath. However, there is no dedicated cycle infrastructure linking the appeal site and these settlements. Moreover, the B1021 carries traffic at the national speed limit. These factors would suppress the attractiveness of cycling. There is also the inherent limitation that residents may not have the fitness,

¹ Maldon District Approved Local Development Plan 2014-2029

² The National Design Guide defines walkable developments as locations where local facilities are within walking distance, generally considered to be no more than a ten-minute walk (800m radius)

confidence or proficiency to cycle regularly if at all. As such, cycling is unlikely to be a realistic option for future residents either.

10. There is a bus stop around 600m away from the appeal site. This provides a reasonable service albeit with some notable gaps. There is also a reasonably regular rail service at Southminster and Burnham on Crouch. However, Paragraph 112 of the National Planning Policy Framework (the Framework) places pedestrian and cycle trips at the top of the movement hierarchy with the facilitation of public transport as a secondary matter to be pursued as far as possible. This is entirely logical as independent active travel provides both resilience and health benefits. As a result, reliance should not be placed solely on bus and rail travel as a means of demonstrating reasonable access to services and facilities by sustainable transport modes.
11. That said, the ability to access buses and rail services weighs in favour of the proposal. A short car journey would be required to access the latter, but this would facilitate longer journeys by sustainable transport. In respect of travel by private motorised transport, there is a wide array of services and facilities in Southminster and Burnham on Crouch which would only require a short journey in this respect. The trips would soon add up over the life of the development, with the associated carbon emissions. But this is offset to a modest degree because the appellant may already drive to the site when infrequently visiting for recreational purposes.
12. Overall, the appeal scheme would not be well placed for residents to access services and facilities by sustainable transport. However, the ability to use bus and rail services, and the close proximity of Southminster and Burnham on Crouch, provide some mitigation, as would the ability to work from home and the current use of the site. In addition, only a single home is proposed. These factors suggest the harmful impacts, such as increased carbon emissions and the failure to promote the health benefits of active travel, would be limited. Nevertheless, a conflict with Policies S1, T1 and T2 of the LDP would still occur.

Character and appearance

13. Old Heath is broadly characterised by detached houses in large and verdant plots intermingled with areas of attractive and often mature landscaping. Properties tend to face the private no through roads, which are straight and narrow. The conclave of houses has its origins in the plotland development that took place in the mid-20th Century when the land was divided into plots and sold to city dwellers for recreational purposes. Over time, the plots became occupied and developed. The appeal site is typical of Old Heath in that it is a long-standing leisure plot that encompasses a central building, a store and timber caravan. It is enclosed by fencing and positioned between houses. Accordingly, the site and its immediate environs have already been subject to domestication and residential development.
14. The proposed dwelling would intensify the extent of development at the appeal site by some way, as the new dwelling would be much taller and wider than the existing buildings. It would therefore result in a greater urbanisation and domestication of the appeal site. However, the proposal would be viewed as part of the conclave of housing that comprises Old Heath. In this respect it would not be an intrusion into open countryside.

15. The new dwelling would also be of a similar scale to the houses nearby, and the plot size would be in keeping as well. When seen, the new dwelling would appear as an infilling. In this respect, the appeal scheme would not appear as a strident or incongruous urbanisation or domestication. Indeed, the retention of existing trees would ensure the rural character and maturity of the plot would endure and the presence of the new dwelling softened.
16. The garage would have an uncomfortable asymmetrical form, but the straight orientation of Seamer Road means it would be difficult to discern when looking along the track. The proposed house would be well balanced and would include detailing such as a chimney. It would therefore have an acceptable appearance if finished in appropriate materials. Overall, the proposal would assimilate into the conclave of houses that comprises Old Heath.
17. In conclusion, the proposal would preserve the character and appearance of the area. It therefore follows that a conflict with Policy D1 of the LDP, supported by the Maldon District Design Guide, would not occur. Similarly, there would be no conflict with Policy S8 of the LDP, which seeks to preserve the intrinsic character and beauty of the countryside.

The effect on the tourism economy

18. The appeal site is currently used as a private leisure plot by the appellant and her family and has been for a long time. There is no evidence before me to demonstrate it has ever been used on a commercial basis and rented to others for holiday purposes. It is possible for this to occur, but it is a theoretical proposition that carries little weight. Given the rudimentary nature of the buildings on site, and the distance from the appellant's current home, it is unlikely that the leisure plot is intensively used.
19. Due to the apparently low-key nature of the existing use, the contribution to the local tourism economy would likely be modest and limited to occasional incidental spending from the appellant and her family. Thus, the loss of the leisure plot, if considered a tourism facility, would not be significant by virtue of the very small contribution it makes to the tourism economy. As a result, there would not be a conflict with Policy E5a) of the LDP. Moreover, as there is no business operated from the site the appeal scheme would not result in a conflict with Policy E5b), which seeks to protect existing viable businesses.
20. The Council submit that the appeal site should be marketed to demonstrate there is no demand for existing or alternative tourism use. It is unclear whether the Council would usually require a private leisure plot to be marketed in this way. I have not been directed to any definition of what a tourism use is for the purposes of Policy E5 and whether it can reasonably include a private leisure plot used for personal holidays. On the assumption that it is a tourism use, the absence of marketing results in a conflict with Policy E5c).
21. Nevertheless, the economic activity that would follow from the more intensive and permanent occupation of the site after the construction of a dwelling would, in this instance, outweigh the loss of the site for tourism use. This is because local services would be more regularly used by a resident(s) permanently based at the appeal site. In addition, the appellant intends to work at the appeal site and support local jewellery businesses. There may be some indirect costs to public infrastructure from a more permanent occupation, but a contribution would be made by future occupants through Council tax.

22. The appellant has also investigated a glamping business at the site but submits that the costs of setting up and running this would outweigh the income. I have no reason to dispute this and consequently there would seem little point in marketing the site for alternative uses to a private leisure plot. Therefore, even if I concluded that there would be a conflict with Policy E5 taken as a whole, which seeks to protect existing tourism provision, this would be outweighed in this instance by the economic gains that would flow from the construction and occupation of the appeal scheme.

Appropriate assessment

23. The appeal site is located within a zone of influence placed around relevant European sites³ as established in the Essex Recreational Disturbance Avoidance and Mitigation Strategy (Essex RAMS). There is no dispute that the population growth resulting from new housing within this zone would likely result in an increase in harmful recreational disturbance at the European sites. Accordingly, the proposal in combination with other plans and projects would be likely to have a significant adverse effect on the relevant European sites when following a precautionary approach. As such, an appropriate assessment, in accordance with the Habitat Regulations⁴, is required to consider the implications of the proposal on the European sites in view of their conservation objectives.
24. The sites have been designated because they include habitats that support rare bird species. The overarching conservation objectives for the relevant European sites can be summarised as avoiding a deterioration of habitats and minimising disturbance, thereby ensuring site integrity is maintained.
25. The appellant has confirmed a willingness to provide a financial contribution in line with the methodology in the Essex RAMS, which is a document and approach supported by Natural England as the Statutory Nature Conservation Body. The contribution of £137.71 would be pooled with others and used in a strategic way for access management at the European sites in line with that set out in the Essex RAMS. A further £50 monitoring fee would also be payable.
26. The contributions would be secured through the submitted planning obligation and would be directly related to the impacts of the proposal on the European sites. They are necessary to make the development acceptable and the contribution would be fairly and reasonably related in scale and kind to the development because it follows the methodology in the Essex RAMS.
27. The Council have been afforded an opportunity to review the obligation and have not raised any concerns with the document. That said, the Council have indicated that the checking and monitoring fees should have been paid. The monitoring fee would become due four weeks prior to the expected date of the commencement of development and therefore this could be secured in good time. The checking fee, which is not defined in the obligation, is required to be paid to the Council upon the submission of the deed. I understand that this has not happened. If that is the case, then the Council is entitled to enforce the provisions of the deed under 2.1(b) of the obligation in order to recoup any costs incurred in checking the document.

³ Essex Coast sites - Essex Estuaries Special Area of Conservation, the Blackwater Estuary Special Protection Area and Ramsar site, the Dengie Special Protection Area and Ramsar site and the Crouch and Roach Estuaries Special Protection Area and Ramsar site

⁴ See Regulation 63 Conservation of Habitats and Species Regulations 2017 (as amended).

28. The appellant has not produced evidence of title but has applied to the Land Registry for this. The appeal is supported by form ST1, which is a signed statement of truth setting out the appellant's sole interest in the land. The appellant submits that this approach has been accepted by the Council elsewhere and on appeal⁵ as adequate evidence of land ownership. The Council has not disputed this or objected. As such, I have no reason to take a different view. The planning obligation does not include any requirement that the Council spend the contributions in the way envisaged. However, there is no reason to doubt that the Council, as a responsible public body, would spend the money in the way it is intended. There are also published mechanisms (Essex RAMS) in place to ensure the money is diverted to strategic mitigation.
29. Thus, the contributions are obligations that can be taken into account. As a result, the proposal would not adversely affect the integrity of the European sites, the conditions of which need not deteriorate as a result of the proposal. Accordingly, there would be no conflict with Policy I1 of the LDP.

Other Matters

30. Concerns have been raised that allowing the appeal would set an undesirable precedent. However, there is nothing before me to suggest there is another proposal(s) in the pipeline at Old Heath. Moreover, the circumstances are specific to the merits of the proposal and case made.
31. The appeal site encompasses several mature trees, but the Council has not raised any concerns that placing a house close to them would damage the trees or harm the living conditions of future occupants, thereby placing the trees at risk in the future. I share the view of the Council, for the reasons set out in the Officer's report, that there would be no harm to the living conditions of neighbours or highway safety.
32. The Council has referred to an appeal decision⁶ where a proposal for a new house in Scalby Road was dismissed. Nevertheless, this decision is now a little dated. In particular, the Inspector concluded that the site was isolated due to its distance from services and facilities. This is not the correct interpretation of the Framework, as isolation should be considered with reference to settlements and not services and facilities. The Inspector also found harm to the character and appearance of the area, but for the reasons given, including the site having houses on three sides, I have not identified harm in this respect. As a result, the previous appeal decision does not dissuade me from my findings.
33. The maintenance of Semear Road is a matter for the owners as this is a private route. I understand that fireworks have been set off at the site, but this is not inherent to the land use and therefore a condition is unnecessary to control such activity. During my site visit I noted that the existing tree house is in a dilapidated state and could not be used safely. The removal of its remnants is not necessary to make the proposal acceptable.

Other Considerations

34. For the reasons given, the proposal would be at odds with the development plan taken as a whole. A proposal should be determined in accordance with the development plan unless material considerations indicate otherwise.

⁵ APP/X1545/W/20/3257325

⁶ APP/X1545/A/13/2210832

35. The Council are currently unable to demonstrate a five-year housing land supply and therefore the most important policies for determining the application should be deemed out of date. However, they should not be disregarded. Instead, in this instance Paragraph 11 of the Framework states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.
36. The Framework sets out the objective of significantly boosting the supply of housing by local planning authorities providing a minimum five-year housing land supply. The housing land supply in the district currently stands at 3.66 years, which is a significant shortfall. It is unclear how the Council intend to remedy this and by when. In this context, limited weight is afforded to the conflict with Policies S1 and S8 because rigorously directing housing to sites within defined settlement boundaries would likely frustrate attempts to remedy the housing deficit. That said, the provision of a single dwelling would be a limited benefit to housing land supply.
37. Old Heath encompasses a conclave of housing focussed on five residential streets. The housing is more than ad hoc and encompasses a small low-density settlement that is distinct from the surrounding open countryside. As a result, Old Heath can be considered a rural community that the appeal scheme would not be isolated from. Accordingly, the proposal gains support from Paragraph 79 of the Framework, which states that housing should be located where it will enhance or maintain rural communities. A rural community in this context is a rural settlement. That said, this is a matter of limited positive weight given the modest size of the proposal and the community of Old Heath.
38. The Framework seeks to promote sustainable transport. That said, there is a qualification that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that significant development should be located to offer a genuine choice of transport modes. This chimes with Paragraph 79 of the Framework, which states that development in one village may support services in a nearby village. Therefore, the Framework seems to support modest (not significant) levels of housing in small discernible settlements even if there are no services and facilities available. I therefore afford limited weight to the limited harm that would occur in terms of sustainable transport.
39. Overall, the benefits of the scheme would not be of a high order and would be quite modest. However, the adverse impacts of the proposal also attract limited weight in this instance. Accordingly, the cumulative adverse impacts of the proposal would not significantly and demonstrably outweigh the cumulative benefits. This is a material consideration of force that indicates the proposal should be determined otherwise than in accordance with the development plan.

Conditions

40. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council. It is necessary in the interests of certainty, and the character and appearance of the area, to impose conditions requiring the proposal to be carried out in accordance with the submitted drawings and for tree protection measures, and for details of external materials, levels and hard and soft landscaping (including boundary treatment) to be approved. In the interests of living conditions, drainage and/or highway

safety it is necessary for on site parking to be provided and for foul and surface water details to be approved. To protect and enhance biodiversity it is necessary to secure mitigation and enhancement measures, including a lighting strategy. Given the extent of tree coverage, it is necessary to exceptionally remove permitted development rights for some further outbuildings.

41. Given the modest size of the proposal and its likely short duration, it is unnecessary to impose a condition relating to construction management. Similarly, due to recent changes to the building regulations a condition relating to electric vehicle charging would be duplication and thus unnecessary.

Conclusion

42. The proposal would be at odds with the development plan. However, in this instance material considerations, mainly the Framework, indicate that the appeal should be determined otherwise than in accordance with the development plan and allowed.

Graham Chamberlain
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 hereby permitted shall be carried out in accordance with the following drawings and the recommendations and mitigation measures in the following documents:
 - Location Plan 1206/01
 - Proposed Site Plan 1206/02
 - Ground Floor Plan GF rev. • Plans & Elevations (house) 01 rev.C
 - Plans & Elevations (workshop) 01 rev.C
 - Arboricultural Impact Assessment (including Tree Report, Arboricultural Methods Statements and Tree Protection Measures) OS 2282-21-Doc1 (November 20210)
 - Tree Protection Plan Construction Phase OS 2282-21.2
 - Tree Protection Plan Demolition of Outbuildings Phase OS 2282-21.1
3. No development above slab level shall take place until written details or samples of all materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the materials and details as approved.
4. Notwithstanding the submitted details, Prior to their installation, details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers shall be submitted to and approved in writing by the local planning authority. The boundary treatments shall be constructed as approved prior to the first occupation of the development and be retained as such thereafter.
5. Notwithstanding the submitted details, prior to the occupation of the dwelling hereby permitted, full details of both existing and proposed hard and soft landscaping works shall be submitted to and approved in writing by the local planning authority.

The landscaping details shall include the layout of the hard landscaped areas with the materials and finishes to be used together with details of the means of enclosure, car parking layout and vehicle and pedestrian accesses.

All of the existing trees, hedgerows and vegetation shown for retention shall be retained and maintained at all times in accordance with the approved details.

The details of the soft landscape works shall include 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 beneficial 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 commencement 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, 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. The parking spaces and means of access proposed shall be constructed, surfaced, laid out and made available for use in accordance with the approved scheme prior to the occupation of the dwelling and shall be retained as such thereafter.
7. All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal Incorporating Bat Survey Inspection (Open Spaces, January 2022) prior to occupation, unless the Local Planning Authority gives its written consent to any variation.
8. No development above slab level shall take place until a Biodiversity Enhancement Strategy has been submitted to and approved in writing by the local planning authority following the recommendations made within the Preliminary Ecological Appraisal Incorporating Bat Survey Inspection (Open Spaces, January 2022). The content of the Biodiversity Enhancement Strategy shall include the following: a) Purpose and conservation objectives for the proposed enhancement measures; b) detailed designs to achieve stated objectives; c) locations of proposed enhancement measures by appropriate maps and plans; d) persons responsible for implementing the enhancement measures; e) details of initial aftercare and long-term maintenance. The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.
9. The dwelling hereby permitted shall not be occupied until a lighting design scheme for biodiversity has been submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the approved scheme and maintained thereafter in accordance with the scheme. No other external lighting shall be installed without prior consent from the local planning authority.
10. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or reenacting that Order) no garages, extensions or separate buildings (other than incidental outbuildings not exceeding 10 cubic metres in volume) shall be erected within the site without planning permission having been obtained from the local planning authority.

11. The dwelling shall not be occupied until foul and surface water drainage schemes for the site have been completed in accordance with the details which shall have been submitted to and approved in writing by the local planning authority. The drainage schemes shall be implemented, managed and maintained as approved thereafter.
12. There shall be no raising of ground levels within the site and no development works above ground level shall occur before details of the ground floor slab level have been submitted to and approved by the local planning authority and the scheme shall be implemented in accordance with the details so approved.