



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: 27 February 2023

Appeal Ref: APP/X1545/W/22/3301172

Limes View, Burnham Road, Althorne, Essex CM3 6BT

- 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 T Harvey against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/01294, dated 13 December 2021, was refused by notice dated 9 May 2022.
 - The development proposed is described as the 'conversion of existing outbuilding to holiday accommodation'.
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Decision

1. The appeal is allowed, and planning permission is granted for the conversion of the existing outbuilding to holiday accommodation at Limes View, Burnham Road, Althorne, Essex CM3 6BT, in accordance with the terms of the application, Ref: FUL/MAL/21/01294, dated 13 December 2021, subject to the conditions set out in the attached schedule.

Preliminary Matter

2. As will become apparent, the appeal scheme has been permitted without a condition limiting occupation to holiday makers. However, as the operative part of the description of development is implicitly the residential conversion of the outbuilding, there is no need to remove the reference to holiday accommodation from the description of development in my formal decision.

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 effect of the proposed development on the character and appearance of the countryside, the living conditions of neighbours (with particular reference to noise and disturbance) and the integrity of European sites.

Reasons

Spatial Strategy

4. Policy S1 of the Maldon District Approved Local Development Plan 2014-2029 (LDP) seeks to deliver new homes in the most sustainable locations. To this end Policy S8 of the LDP directs most new housing development 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, and it would be one of the types of development listed. There is a negative corollary that development is not supported by Policy S8 if it would be at odds with these two criteria.

5. The appeal building is located on a parcel of land outside the settlement boundary of Althorne and therefore Policy S8 applies. As the existing building is neither redundant nor disused, criteria e) of Policy S8 does not apply. As such, the use of the building for an unrestricted residential use would be at odds with Policy S8. On the other hand, holiday accommodation can be permitted under criteria f) of Policy S8 subject to Policies E4 and E5 of the LDP.
6. Policy E4 relates to agricultural and rural diversification and is therefore not relevant. Instead, Policy E5 permits new tourism accommodation subject to four criteria. For reasons I go into the proposed conversion would not have a significant adverse impact on the character and appearance of the area or the quality of life of local people. Thus, there would be no conflict with the third criteria of Policy E5. Similarly, the appeal site is located on the edge of a reasonably large village and within walking distance of several facilities including a park, public house, village hall, church and bus stop. Southminster and Burnham on Crouch are only a short drive away, as is a rail station. Therefore, the appeal building has reasonable access to services and facilities if it is to be used for holiday accommodation.
7. The first criteria in Policy E5 requires an identified need to be demonstrated. To this end the appellant has submitted a report by Destination Research. Within the report 'need' is interpreted as the ability of current supply to meet demand. I have applied this approach in the absence of any other definition.
8. The report estimates that self-catering establishments achieved an average occupancy rate of 55% in 2019. It is unclear where this figure was derived from or why only the results of 2019 are used. Nevertheless, the three-year unit occupancy average in Essex reached above 70% in the peak summer months, so is higher than the average at certain times of the year. The authors of the report therefore conclude that this indicates that the proposal represents an important addition to the local supply.
9. However, this analysis is for Essex and not Maldon District or the Dengie Peninsula, so its relevance is unclear. In any event, 70% occupancy would suggest there is capacity to accommodate more tourists without further holiday homes being delivered. The report does not demonstrate that there is a shortage of any accommodation types¹ that the appeal scheme could help address. Similarly, the report does not demonstrate that the proposal is needed to help address a shortage in the supply of holiday accommodation linked to any niche markets such as boating, bird watching, golf or shooting. There is an indication that the proposed holiday accommodation would be aimed at families and couples, but the report does not demonstrate a shortage in this type of accommodation and thus a need for more.
10. The report considers the supply of holiday accommodation within a 15km radius of the appeal site. The search area was therefore focussed on the Dengie Peninsula. This is reasonable given that the Peninsula can be considered a discrete visitor destination separate from the north of the district.

¹ For example, smaller accommodation, self-catering premises or holiday homes that are disability friendly

11. The study identified a supply of 1,566 bedspaces in the 15km study area. Of these, 66 were categorised as self-catering. The report suggests this is a low level of supply. However, the supply in the study area is not compared to demand. Nor are any comparisons referred to or an analysis of local occupation levels. As a result, the finding lacks robustness and credibility. The report also relies on 2019 data so the comments relating to the impacts of Covid 19 are speculation. Overall, the appellant's submissions fail to demonstrate a need for the proposed holiday accommodation.
12. In conclusion, an unrestricted residential use would be at odds with Policy S8 of the LDP. Moreover, the use of the appeal building for holiday accommodation would be contrary to Policy E5 of the LDP and by extension Policy S8 as well. The appeal site is therefore an unsuitable location for the proposal and would be at odds with, and undermine, the spatial strategy in the development plan. This would be harmful given the public interest in having a genuinely plan led system that provides consistency and direction.

The effect on the character and appearance of the area

13. The appeal building is a small, shed type structure located in a parcel of land that is well manicured with ornamental planting. As such, it has the appearance of a domestic garden. In this respect, it does not have a rural character in the same way the fields to the immediate north and east do. Hedging divides the appeal site from these fields, with that along the northern boundary being especially thick. These boundaries mark the edge of the village when this is considered on the ground. There are houses adjoining the southern boundary of the appeal site and a domestic garden to the west. These features provide a residential context to the appeal site as does the access into the appeal site, which also serves another dwelling as well as being a public footpath.
14. As a result, the character and appearance of the appeal site has more affinity with the village than the surrounding countryside. That said, its openness provides a point of transition as walkers move along the footpath before leaving the village upon entering the field north of the appeal site.
15. The proposed conversion would be confined to what is a modest existing building and therefore the openness of the appeal site would be generally safeguarded. Moreover, the residential conversion would not appear strident or out of place given the appeal site's existing affinity with the village and extant domestic character and appearance. In this respect, the proposal would not appear as an incongruous intrusion into the countryside.
16. The appellant proposes to use UPVc windows and doors, but this would not be a sensitive intervention given the timber finish of the building and edge of village location. However, the Council have suggested that a condition be imposed to secure the use of timber windows instead. Similarly, a landscaping condition could be imposed to require additional planting as a means of softening the presence of the converted building, parking area and extended access drive when viewed from the public footpath. The condition could also require details of the driveway to be approved so an appropriate rural finish is laid. As a result, the proposal would preserve the transition into the countryside currently evident at the appeal site.

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 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 living conditions

18. 2 Limes Cottages (No 2) is inset from the access track and behind boundary treatment. As already explained, the access is currently in use and therefore vehicle movements already occur along it. The appeal scheme would intensify this, but not significantly because only a modest two-bedroom home is proposed. Vehicle movements are therefore likely to be infrequent and at times of the day when they would assimilate with other activity. Consequently, the vehicle movements would not result in harmful noise and disturbance to the occupants of No 2 or the homes recently constructed in the car park of the former Black Lion Public House.

19. The proposed dwelling would be located sufficiently far away from nearby residential properties to ensure there would be no overlooking from within the building. There is no evidence before me that the use of the residential gardens serving the properties that adjoin the appeal site results in any reciprocal harm to living conditions. Therefore, it's unclear why the Council considers the use of the appeal site as a garden would. Indeed, the proposed garden would be a large space and therefore the areas nearest to neighbours would not be intensively used. Most activity, including parking, would be focused on the land immediately around the converted building. This is sufficiently far away from neighbouring properties to ensure an adverse impact would not occur.

20. In conclusion, the appeal scheme would preserve the living conditions of the occupants of neighbouring and nearby properties and therefore a conflict with Policies D1 and D2 would not arise.

Appropriate assessment

21. The appeal site is located within a zone of influence placed around relevant European sites² 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 Regulations³, is required to consider the implications of the proposal on the European sites in view of their conservation objectives.

22. The sites have been designated because they include habitats that support rare bird species. The overarching conservation objectives can be summarised as avoiding a deterioration of habitats and minimise disturbance, thereby ensuring the integrity of the sites is maintained.

² 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

³ See Regulation 63 Conservation of Habitats and Species Regulations 2017 (as amended).

23. 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 and £75 checking fee would also be payable to ensure the smooth implementation of the mitigation.
24. 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.
25. The Council have been afforded an opportunity to review the obligation and have not raised any concerns with the document. The planning obligation does not include any requirement that the Council spend the contribution 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.
26. Thus, the contribution is an obligation 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.

Other Matters

27. The Local Highway Authority has not objected on safety grounds to the proposal, and I have no reason to depart from this independent expert view, especially as the access is already in use. There is nothing of substance before me to demonstrate emergency vehicles could not access the site if they needed to. The appeal building is of modern construction and set in a parcel of land mainly given over to lawn. I therefore share the view of the Council that the site is likely to be of limited biodiversity value. Thus, a biodiversity survey would be unnecessary.
28. The site used to contain other buildings but given the minimal ground disturbance proposed, conditions relating to land contamination would be unnecessary. The Environmental Health Officer indicated that the appeal building may be suitable as holiday accommodation but not for permanent residential use. They do not expand on this proposition or explain why the distinction should be significant in this instance. The comments therefore carry limited weight.

Other Considerations

29. The appeal scheme is submitted as a proposal for a holiday home. However, before deciding whether it is necessary to secure the occupation as such, I must ascertain whether an unrestricted dwelling would be unacceptable. For the reasons given above, neither an unrestricted dwelling nor holiday home would adhere to the spatial strategy and as a result, there would be a conflict with the development plan as a whole. This is because the absence of harm in respect of the other main issues is a neutral matter. A proposal should be

determined in accordance with the development plan unless material considerations indicate otherwise.

30. 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.
31. The Framework sets an objective of significantly boosting the supply of housing and to achieve this local planning authorities must provide 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. The Council has provided evidence of housing schemes it has approved outside settlement boundaries. This suggests a proactive approach. The Council also suggest that a positive supply could be demonstrated as soon as April 2023, but the evidence underpinning this is not before me and it would be quite a leap from a current published supply of 3.66 years. Thus, I afford limited weight to the conflict with Policies S1 and S8 as rigorously applying settlement boundaries would frustrate attempts to remedy the housing supply deficit. That said, the provision of a single dwelling would be only a limited benefit to housing land supply and choice. There would similarly be only modest benefits to the construction industry and local economy through occupation.
32. Althorne is a discernible village, which the appeal site has a physical affinity with. As a result, the proposed dwelling would not be isolated from a settlement. Accordingly, it gains support from Paragraph 79 of the Framework, which states that housing should be located where it will enhance or maintain rural communities. Rural communities in this context are settlements. That said, this is a matter of limited positive weight given the modest size of the proposed dwelling and the corresponding low level of support future residents would likely offer through their spending, or by getting involved in village life.
33. The Framework seeks to promote sustainable transport. The conversion of the appeal building to a dwelling would not support this aim given the limited number of facilities nearby. However, there is a qualification in the Framework that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nevertheless, even when accounting for the rural area, the appeal site is remote from most everyday services and facilities.
34. Nevertheless, Paragraph 79 of the Framework states that development in one village may support services in a village nearby. Therefore, to support the provision of rural homes the Framework seems to support modest levels of housing in discernible settlements even if there are only immediate services and facilities available. The appeal site, although outside the defined settlement boundary of Althorne is nevertheless part of this settlement when this is considered on the ground. The conversion of the appeal building to a dwelling would therefore be consistent with this aspect of the Framework.
35. I have already concluded that a conversion to a holiday home would not harm the character and appearance of the area or living conditions. There may be more regular activity and paraphernalia with permanent occupation but given

the large plot and modest size of the dwelling this would not be harmful. Accordingly, permanent occupation would not alter my findings on these points.

36. Overall, the benefits of an unrestricted dwelling at the appeal site would not be of a high order and would be quite modest. However, the adverse impacts also attract limited weight in this instance. Accordingly, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits. This is a material consideration of force that indicates the appeal should be determined otherwise than in accordance with the development plan. It also confirms that a condition limiting the occupation of the proposed dwelling to a holiday home would be unnecessary.
37. In coming to this conclusion, I have carefully considered the appeal decision⁴ referred to by the Council. However, in that instance the housing land supply shortfall was very modest, at around 4.9 years. Therefore, the Inspector afforded significant weight to the conflict with the spatial strategy. In this instance, the housing supply shortfall is much more significant and therefore I have afforded only limited weight to the conflict with the spatial strategy, because it seems to be failing to provide enough housing. Moreover, the proposal before me involves the conversion of an existing building.

Conditions

38. 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, for the external materials and lighting to be controlled and details of hard and soft landscaping (including boundary treatment) to be approved.
39. In the interests of living conditions, drainage and highway safety it is necessary for onsite parking to be provided and for foul and surface water details to be approved. In respect of the latter, I have removed the advice set out in the last two sentences of the suggested condition as it read as an informative.
40. As permanent residential occupation would be acceptable it is unnecessary to restrict occupancy to holiday makers, although it could be used for this purpose. The Council have not demonstrated why it is necessary to impose a condition to maintain the public right of way free and unobstructed, as this is covered by other legislation. Similarly, removing the stile is not necessary to make the development acceptable. Given the size of the site, it is unnecessary to secure details of refuse storage.

Conclusion

41. 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

⁴ APP/X1545/W/20/3264169

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 approved plans and documents: 21.7597/M003, 21.7597/E101, 21.7597/M001, 21.7597/P201, 21.7597/M002, 21.7597/E102, 21.7597/P202.
3. The materials to be used in the external surfaces of the conversion of the building shall be as set out in the Application Form, with the exception of the windows which shall be of timber only.
4. Full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority prior to any works occurring above ground level at the application site. These details shall include, for example:
 - Proposes finished levels contours;
 - Means of enclosure;
 - Car parking layouts;
 - Other vehicle and pedestrian access and circulation areas;
 - Hard surfacing materials;
 - Minor artefacts and structures (e.g furniture, play equipment, refuse or other storage units, signs, lighting);
 - Proposed and existing functional services above and below ground (e.g drainage power, communications cables, pipelines etc, indicating lines, manholes, supports); and

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of any part of the development hereby approved unless otherwise 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.

The hard landscape works shall be carried out as approved prior to the first use / occupation of the development hereby approved and retained and maintained as such thereafter.

5. No floodlighting or other external form of illumination of the site shall be undertaken without the express consent of the local planning authority.

6. No works above ground level shall take place until details of the surface water drainage scheme and foul drainage scheme to serve the development has 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. The surface water drainage scheme shall ensure that for a minimum:
 - 1) The development should be able to manage water on 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 with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rate on brownfield sites (provided this does not result in a runoff rate less than greenfield).
7. The holiday let hereby approved shall not be occupied until space has been laid out within the site in accordance with drawing 21.7597/P201 for two cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available for such purposes in perpetuity.