



Appeal Decision

Site visit made on 7 February 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Appeal Ref: APP/X1545/W/22/3293818

Land to west of Primrose House, Burnham Road, Latchingdon, CM3 6HB

- 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 P Wells against the decision of Maldon District Council.
 - The application Ref 21/00989/FUL, dated 17 September 2021, was refused by notice dated 30 November 2021.
 - The development proposed is the erection of 5 detached three-bedroom bungalows with associated access, parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 5 detached three-bedroom bungalows with associated access, parking and landscaping on land west of Primrose House, Burnham Road, Latchingdon, CM3 6HB in accordance with the terms of the application, Ref 21/00989/FUL, dated 17 September 2021 subject to the conditions set out in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Mr P Wells against Maldon District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are: i) the effect of the proposed development on the character of the countryside; and ii) the effect on the living conditions of the occupiers of the adjacent dwellings, including the development permitted to the north.

Reasons

4. The application site is an open field located to the south of Burnham Road and to the west of Rectory Lane. It is situated to the rear of the dwelling Springwood which fronts onto Rectory Lane and to the rear of Primrose House and 4 newly built detached bungalows that front onto Burnham Road. The site would utilise the access onto Burnham Road, which has been approved as part of the recent development just referred to. To the east of the site, between it and Rectory Lane, are 2 large recently constructed dwellings, Primrose House and Rectory Corner. To the north of the site, on the opposite side of Burnham Road, is a recently constructed residential estate that runs behind and to the side of Mulberry House. Mulberry House is a large residential property on a

very substantial plot. South of the site are agricultural fields, whilst to the west is the Jacks Centre Bowls Complex contained within a large building, and its adjacent car park. On the village side of Jacks Centre is land that has a recent planning permission for residential development. On the eastern side of Burnham Road there is residential development in depth as far as the settlement boundary.

5. The site is located outside the defined settlement boundary of Latchingdon, which is approximately 300m to the north, and is therefore, in policy terms, in the countryside. However, as described above, the built-up area of Latchingdon effectively runs to Rectory Lane on the appeal site side of the main road, and to a point opposite the site entrance. Furthermore the council accepts that the proposal is for sustainable development, bearing in mind the proximity of Latchingdon and the amount of recent development in the vicinity.

The effect of the proposed development on the character of the countryside

6. The starting point is the policies of the Maldon Local Development Plan 2014-2029, adopted in July 2017 (MDLDP). A number of policies are referred to in the refusal reason, but I consider that Policy S8 is the principal policy against which to consider this issue. Policy S8 seeks to support sustainable development within the defined settlement boundaries. The policy states that outside of the defined settlement boundaries, Garden Suburbs and Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and when it is for a purpose that falls within a defined list of acceptable development. The appeal proposal is not within that defined list.
7. The council's view is that the proposed development would represent a sprawl of urban development into the open, undeveloped countryside. Whilst in principle housing in this area is considered to be acceptable, the council has paid particular regard to the layout of the properties, which it considers to be backland development, that would appear out of keeping with the streetscene and pattern of development within the wider area.
8. Encroachment into the rural landscape requires careful assessment, bearing in mind the policy objection which makes it harmful in itself. However, in my judgement the proposed development would hardly amount to urban sprawl, but would appear as a small development off a private drive, little different from a short cul-de-sac. It would not be greatly noticeable from Burnham Road, being a good deal masked by the recently built bungalows. From the wider perspective, the site is well defined, with hedging on its boundaries (which could be supplemented), and would be particularly well screened from the public footpath to the west. From the south, along Rectory Lane, the roadside planting effectively hides the site from view, except at minor gaps where the proposed bungalows would intrude little more than the existing bungalows against which they would be seen.
9. Given the small incursion into the rural landscape, and the degree of recent development in the immediate vicinity, as described in paragraphs 4 and 5 above, the fact that the site is outside the settlement boundary does not have the imperative importance that it normally would. An additional factor is the assessment made under the council's 'Call for Sites' process. That assessment seems to have clearly concluded that "*in principle is would be acceptable for development*". Of course that does not take account of the individual features

of any particular design or layout, a judgement that this appeal facilitates, (which is also considered under the second issue in this case), but it does clearly suggest that the effect of development on the site (a slightly larger area then being considered) would not affect the character of the countryside to an unacceptable extent.

10. The force of the policy objection is further eroded by the fact that it is accepted that the council cannot demonstrate a 5-year housing land supply. Thus paragraph 11 of the National Planning Policy Framework (the Framework) is relevant which states that "*Plans and decisions should apply a presumption in favour of sustainable development*". For decision-taking this means (as applies here): "*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, (footnote 8 refers to, among other matters, where a 5-year housing land supply cannot be demonstrated) granting permission unless:*
i. (not relevant); or ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*".
11. On the basis of this, it is necessary to consider the extent to which the proposed development can be regarded as 'sustainable'. Paragraph 8 of the Framework sets out the 3 overarching objectives of the planning system: a) economic, b) social and c) environmental. In respect of the appeal scheme I consider that it will a) bring short term additional employment and support local enterprises (as guidance in paragraph 79 of the Framework suggests); b) help ensure that sufficient land of the right types is available by making a modest contribution to the housing land supply, providing dwellings that meet the greatest need in the district (3-bed units and bungalows) on a small site (see Framework paragraph 69), and supporting the social fabric of Latchingdon; and c) achieving the above whilst minimising harm to countryside locations.
12. In addition, the site is within reasonable walking distance of facilities in Latchingdon and bus stops that provide access to larger settlements. As mentioned in paragraph 5 above, the site is in a sustainable location. I consider that the appeal proposal is sustainable development, which has a minimal harmful effect on the character of the countryside

The effect on the living conditions of the neighbouring occupiers of the adjacent houses and the development permitted to the north.

13. Policy D1 of the MDLDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. The concern in this case is that the layout would have a detrimental impact upon the residential amenities of the occupiers of the bungalows to the north and the adjacent houses through noise and disturbance by reason of increased vehicular and pedestrian activity.
14. The main concern appears to be with regard to the effect on the rear and side gardens of the frontage bungalows. I cannot see any cause for concern over the side of Primrose house or the bungalow on the other side of the access, since a similar relationship often occurs with houses on the corner of public streets. It is true that the frontage bungalows have fairly shallow rear gardens, although apparently all above 100m² in area. I cannot see that pedestrian

activity would cause any adverse effect on these gardens or the dwellings themselves. Nor would the number of cars be such, in my judgement, that their comings and goings would be sufficiently disturbing as to warrant refusal of permission. In fact, examples within the recently approved housing scheme north of The Jacks Centre referenced by the appellant, and in the development at Willow Close, in the layout north of Mulberry House, are similar and have been found acceptable.

15. I can understand that if the access to the proposed development had a noisy surface, such as a gravel drive provides, it could be a minor nuisance, but this could be avoided by requiring suitable surfacing under a condition whereby hard and soft landscaping elements and their materials and finishes have to be submitted to and approved by the council.

Conclusions

16. I have taken account of all other matters raised, including previous appeal decisions, but they do not cause me to deviate from the conclusion that I have drawn. The appeal proposal would not amount to urban sprawl and would not impinge to any extent in the view from Burnham Road. It has good screening that could be supplemented where necessary. It would barely be noticeable from Rectory Lane. The small encroachment into the rural scene and the degree of recent development in the immediate area reduces the importance of the location outside the settlement boundary. The assessment of the submission in the 'Call for Sites' appears to come to a similar conclusion. Whilst that did not consider any detail of the form of development, I have found nothing that I consider should lead to a refusal of permission, and reinforces my conclusion the proposed development would not be harmful to the character of the area.
17. Furthermore, I am not persuaded that the development would have any significant effect on the living conditions of the adjacent occupiers, so long as the surfacing of the private drive was adequately controlled. A condition could deal with this matter. The appeal will therefore be allowed.

Conditions

18. The statutory condition that provides a time limit on the start of development must be imposed. In addition, the council has suggested a number of conditions in the event that the appeal is upheld. The appellant is content with the suggested conditions, but that notwithstanding, considers that their precise drafting leaves something to be desired. The use of model conditions from Appendix A of Circular 11/95 is suggested. I have taken the comments into account, and have also considered these in the light of Planning Practice Guidance (PPG). I have amended some of the text accordingly.
19. I consider that conditions should be imposed for the following reasons: condition 2 is required for certainty and avoidance of doubt as to the development permitted; conditions 3, 4 and 5 are to ensure that the appearance of the development permitted integrates with the existing in a visually satisfactory manner and is fully implemented; conditions 6 to 11 are in the interests of the safety and convenience of users of the highway; condition 12 is to ensure cycle parking provision is provided in the interest of highway safety and to encourage sustainable modes of travel; condition 13 is to protect the residential amenities of nearby occupiers and the visual amenity of the

surrounding area; condition 14 is to protect the privacy of adjoining residential occupiers; conditions 15 and 16 are to avoid the risk of flooding and pollution; conditions 17 and 18 are to protect any archaeological interest which may be on the site.

20. Condition 16 to 18 are pre-commencement conditions. These need to be in this form because the matter they deal with could be compromised by any works that take place as part of the development. Condition 16 deals with sustainable drainage, the form of which is not known in advance. Its form should not be compromised by groundwork done in advance. Conditions 17 and 18 are necessary because archaeological remains have been found to the land north of the site. Clearly archaeological remains could be damaged if other work was carried out in the absence of information in advance. The council wrote the condition that is now No.15, dealing with foul drainage, as a pre-condition but no explanation of why this should be in that form was given. Since the foul drainage is to be connected to main sewers, the groundworks required should be accommodated in the normal way of construction, and I see no reason for the condition to be in that pre-commencement form.
21. In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, if the decision maker is minded to grant planning permission subject to pre-commencement condition(s) he/she may only do so with the written agreement of the appellant to the terms of the condition(s). In this case the appellant's agent has clearly stated on the appellant's behalf that these conditions are acceptable.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers 20.7155/M001 Location Map; 20.7155/M008 Location Plan; 21/2708/02 Site Plan; 21/2708/03B Site Plan; 21-2708-04A Floor & Roof Plan Plots 1, 2 & 3; 21/2708/05 Elevations Plots 1, 2 & 3; 21/2708/06 Floor plan & elevations Garage Plot 1; 21/2708/07 Floor & Roof Plan Plots 4 & 5; and 21/2708/08 Elevations Plots 3 & 4.
- 3) Prior to their use in the development hereby approved, 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) Before development progresses beyond the ground floor slab of any of the dwellings hereby approved, details of both hard and soft landscape works to be carried out shall have been submitted to and approved in writing by the local planning authority. These details shall include the layout of any hard-landscaped areas, including the access and drive, 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 hereby approved unless otherwise first agreed in writing by the local planning authority.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) In conjunction with condition 4. no unbound material shall be used in the surface treatment of the private drive hereby approved from the vehicular access with the highway boundary to the head of the drive between Plots 4 and 5.
- 7) All loading / unloading / reception and storage of building materials and the manoeuvring of all vehicles, including construction traffic shall be undertaken within the application site, clear of the public highway.
- 8) The proposed vehicular access as shown on drawing no. 21/2708/03B shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall be no less than 6 metres and shall be provided with an appropriate dropped kerb vehicular crossing of the highway verge and carriageway.

- 9) Prior to occupation of the development, the site access at its centre line shall be provided with visibility splays with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such visibility splays shall be provided before the access road is first used by vehicular traffic and retained free of any obstruction at all times.
- 10) No dwelling shall be occupied until the car parking spaces shown on drawing no. 21/2708/03B have been laid out and made available for use. These spaces shall thereafter be kept available at all times for the parking of vehicles.
- 11) The garages shown on the approved plans shall be kept available for the parking of motor vehicles at all times. The garages shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and permanently retained as such thereafter.
- 12) The development shall not be occupied until facilities for the secure storage of cycles have been provided in accordance with details to be submitted to and approved in writing by the local planning authority and they shall be retained in perpetuity.
- 13) Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting 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.
- 14) Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no dormer window or other form of addition or opening shall be constructed in the roof of the building(s) hereby permitted without planning permission having been obtained from the local planning authority.
- 15) None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.
- 16) Prior to commencement of the development a detailed Sustainable urban Drainage Scheme as specified in the Essex Sustainable Drainage Systems Design Guide shall be submitted to and approved in writing by the local planning authority. This must be conducted by a competent person and include written explanation of any data provided. The scheme shall include, but not be limited to: Discharge rates/location; Storage volume; Treatment requirement; Detailed drainage plan. Where the surface water drainage strategy proposes the use of soakaways the Scheme shall include details of the design and the results of a series of percolation tests carried out upon the subsoil in accordance with DG 365 2016, and shall include details of the area to be drained, infiltration rate (as determined by BRE Digest 365), proposed length, width and depth of soakaway, groundwater level and whether it will be rubble filled.

Where discharging to a watercourse the proposed scheme shall include details of the destination and discharge rates equivalent to "greenfield runoff" up to and including a 1 in 100 year rainfall event inclusive of climate change. The discharge rate should be restricted with long term storage (minimum rate 1l/s).

It must be demonstrated that the system is an appropriate point of discharge for the site. The discharge hierarchy should be used to determine discharge location.

Where discharge to an adopted sewer network is proposed, it will be necessary to provide written confirmation from the statutory undertaker that the discharge will be accepted.

The scheme shall include a maintenance plan detailing the maintenance arrangements including responsibility for different elements of the surface water drainage system and the maintenance activities/frequencies.

The scheme shall be implemented prior to occupation of the development

- 17) No development including site clearance or groundworks shall take place within the site until an archaeological assessment, by an accredited archaeological consultant, has been submitted to and approved in writing by the local planning authority to establish the archaeological significance of the site. Such archaeological assessment will inform the implementation of a programme of archaeological work.
- 18) The implementation of the programme of archaeological work, prior to any other development work taking place, shall be carried out by an accredited archaeological contractor in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. Where required by the local planning authority, the archaeological work will comprise archaeological trial-trenching of the development area, followed by full excavation if archaeological features are identified.

End of Schedule