



Appeal Decision

Site visit made on 16 January 2023

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Appeal Ref: APP/X1545/W/22/3303806

Land to the Rear of Hill Barn, Rectory Lane, Woodham Mortimer CM9 6SW

- 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 M Clarke against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00443, dated 17 March 2022, was refused by notice dated 16 June 2022.
 - The development proposed is conversion of existing equestrian/storage buildings to form 1 no. new dwelling and associated development.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of existing equestrian/storage buildings to form 1 no. new dwelling and associated development at Land to the Rear of Hill Barn, Rectory Lane, Woodham Mortimer CM9 6SW in accordance with the terms of the application, Ref FUL/MAL/22/00443, dated 17 March 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Council's third reason for refusing the application relates to concerns that in the absence of mitigation the development would harm the integrity of 'habitats sites', as defined in the glossary to the National Planning Policy Framework (Framework). The appellant submitted a unilateral undertaking (UU) dated 8 June 2022 with the appeal documents to address that refusal reason. Both main parties were given an opportunity to comment on various issues with that UU. In response, a further UU dated 12 January 2023 has been provided. The Council has confirmed that the UUs are satisfactory and no longer seeks to defend the third refusal reason. Nevertheless, I must be satisfied that there would be no adverse effect on the integrity of habitats sites and consultation with Natural England has been undertaken accordingly.

Main Issues

3. The main issues are:
 - whether the site is a suitable location for housing, with particular regard to the Council's spatial strategy and access to services, facilities and sustainable transport options;
 - the effect of the proposal on the character and appearance of the site and the surrounding area;
 - the effect of the proposal on the integrity of habitats sites; and

- whether there are other considerations that may indicate in favour of the development.

Reasons

Location for housing

4. The site is located off Rectory Lane. It is outside the settlement boundaries identified by the Maldon District Approved Local Development Plan 2014–2029 (LP) and is therefore in the countryside.
5. LP Policy S8 states that planning permission for development in the countryside will only be granted in specific circumstances and where its intrinsic character and beauty is not adversely impacted. It has not been expressly advanced that any of the potentially permissible circumstances within LP Policy S8 apply and thus the proposal conflicts with it. Otherwise, LP Policies S1, S2, D1 and T2 seek that housing is delivered in the most sustainable locations, connectivity is maximised, the need to travel is minimised, and safe and direct walking and cycling routes are provided.
6. The nearest defined settlement is Woodham Mortimer, which is a short distance away but features limited amenities. The towns of Danbury and Maldon have services and facilities for meeting most daily needs; however, these are approximately 2.8km and 3.8km from the site respectively. There are bus stops in Woodham Mortimer and near a junction between Rectory Lane and Maldon Road that benefit from services to the towns and notably also to Chelmsford. Bus timetables indicate that services run fairly frequently from Monday to Saturday from early morning to late evening, with reduced services on Sundays. The services thus provide for opportunities for daily commuting and weekend trips in principle. Furthermore, there is uncontested evidence that a daily school bus service operates in the vicinity.
7. However, Rectory Lane features a single track, no footpath and is unlit. Additionally, although a public right of way connects Rectory Lane to Woodham Mortimer, traversal through unlit fields is required. Consequently, whilst traffic along the lane is likely to be infrequent as it serves few properties and has limited strategic use, the prospect of the future occupiers of the development walking or cycling to Woodham Mortimer or the bus stops is likely to be limited mainly to trips in daylight hours and fair weather. Furthermore, Maldon Road features a footway on one side, but it is on the opposite side of the junction and the road is subject to the national speed limit. As such, some may be deterred from crossing the carriageway to travel to services and facilities further afield. Many would also likely be disincentivised from cycling to the towns by the speed limits and lack of lighting of the roads en route. Therefore, while there is some prospect for journeys to be made by walking, cycling and buses, most journeys would likely be made using private motor vehicles.
8. Therefore, the site is not a suitable location for housing, with particular regard to the Council's spatial strategy and access to services, facilities and sustainable transport options. In these respects, the proposal conflicts with LP Policy S1, S2, S8, D1 and T2. The Council contends that the proposal also conflicts with LP Policy H4 in respect of this matter. However, it sets out criteria for optimising the use of land and for specific forms of housing development such as infilling and replacement dwellings, and hence is not directly relevant.

Character and appearance

9. The site principally includes a large barn, a smaller building and hard surfaced and grassed areas that are accessed via a driveway from Rectory Lane. Although there are residential properties nearby, the area mostly consists of open fields with boundary vegetation and has a rural character overall. The site has an agricultural appearance and thus contributes to the area's character.
10. The proposed changes to the barn to create a 4-bedroom home would principally entail alterations to its openings and the insertion of new doors and windows. Furthermore, the two largest openings would be replaced by large areas of glazing that would be reflective of barn door sized openings and existing shutters would be retained. No significant alterations to the building's footprint, height or roof profile would be made. In addition, its horizontal black weatherboarding and pantile roof finishes would accord with the rural vernacular.
11. The works to the smaller building would be limited to the opening of part of its front elevation to provide a cycle store, which would have a similar appearance to stables. While a large grasscrete area would be provided, it would have limited prominence, replace existing hard surfacing and be offset by part of the driveway to the smaller building being replaced by soft landscaping.
12. Notwithstanding the access and the driveway, views of the site are limited from Rectory Lane due to its position behind development at Hill Barn. Whilst a public right of way is nearby to the north of the site, from there the limited changes to the buildings would not be readily apparent. Furthermore, some screening of the buildings is provided by intervening trees and vegetation and there is sufficient space for this to be supplemented by further landscaping. In longer distance views the changes to the site would not be perceptible.
13. Whilst there would be some domestication of the site, it would retain an overall agricultural appearance in public views and the works would be respectful of the rural character of the area. Therefore, the proposal would not harm the character and appearance of the site or the surrounding area. In this respect it accords with LP Policies S1, S8, D1 and H4 which seek to maintain the rural character of the district and set out design criteria for development. Conflict with LP Policy S2 has also been identified, but it does not refer directly to character and appearance matters and thus is irrelevant.

Habitats sites

14. Natural England has confirmed that the site is within the zones of influence of the Blackwater Estuary Special Protection Area and Ramsar, the Dengie Special Protection Area and Ramsar, and the Essex Estuaries Special Area of Conservation, which provide coastal and estuarine habitats and support fauna and flora including breeding and non-breeding birds, invertebrates, and scarce plant species. Without mitigation, the development would impact on the integrity of the habitats sites by means of increased visitors and thus recreational activity in combination with other plans and projects.
15. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (RAMS) sets out a programme of strategic measures that are intended to mitigate the effects of residential development across Essex.

16. Natural England advises that, provided a proportionate financial contribution of £137.71 is secured to provide mitigation in line with the RAMS, it can be concluded that the proposal would not adversely affect the integrity of the habitats sites. Having reviewed the evidence I concur. The latest UU secures a payment to the Council in those regards effectively in addition to monitoring and administrative fees. There are no compelling reasons to doubt that the Council would use the contribution in accordance with the programme of mitigation measures set out in the RAMS.
17. Accordingly, the proposal would not harm the integrity of habitats sites. It complies with LP Policies S1, D1, N1, N2 and I1 which seek to conserve and enhance the natural environment and acknowledge that mitigation may be secured through legal agreements.

Other considerations

18. It is common ground that the Council cannot demonstrate a five year supply of deliverable housing sites, with its own data indicating that it had around 3.66 years of supply at the time the appeal was made. Consequently, the presumption in favour of sustainable development is applicable as set out by paragraph 11(d) of the Framework and the most important policies for determining the appeal are deemed out of date. I consider these matters and the consistency of the abovementioned policies with the Framework in the final part of this letter.
19. The appellant suggests that the site benefits from support from paragraph 80(c) of the Framework, which relates to isolated housing in the countryside. Due to the site's proximity to residential properties, it is not isolated and thus this part of the Framework is not relevant.
20. The access road into the site runs alongside Hill Place, which features a grade II listed building. The access arrangement would be materially unaltered as a result of the proposal and the main part of the site and the development would be set back from the listed building with boundary vegetation between them. Neither main party contends that the proposal would harm the setting of the listed building and, for the reasons identified, the setting would be preserved.
21. I have been referred to several planning applications and appeals, including a case dismissed relatively recently for a conversion of the barn into a dwelling¹. However, based on the evidence before me its design differs from the proposal I am considering and factors such as the Council's housing supply position have changed since that decision. Neither the circumstances of that case or any of the others referred to are directly comparable to the considerations relevant to this appeal and thus have limited bearing on my decision.
22. It has been put forward that permitting the development would set an undesirable precedent for similar schemes elsewhere. However, no directly comparable sites to which this might apply have been advanced and a generalised concern of this sort does not warrant denying permission in itself.

Conditions

23. I have considered whether the planning conditions recommended by the Council and other parties satisfy the tests for conditions identified at paragraph

¹ Appeal reference: APP/X1545/W/19/3236645

56 of the Framework. In order to satisfy those tests, minor editing of some of the conditions would be necessary.

24. The standard time limit and approved plans conditions would be required for certainty. Additionally, to ensure that the proposal integrates successfully into its surroundings, conditions would be needed to require the approval of details relating to landscaping and the buildings' surfacing materials. Samples would be unnecessary. The former condition would enable no unbound materials to be used near the access in the interests of highway safety. As the proposal is for a conversion, the latter one would need to trigger before commencement.
25. In order to mitigate flood risk and ensure adequate provision is made, pre-commencement conditions relating to the provision of appropriate foul and surface water drainage schemes would be necessary. The evidence indicates that the potential for extensive or severe contamination issues is low. Accordingly, only a condition to require that any contamination is addressed if encountered would be needed in that respect.
26. No mitigation for bats is identified as necessary in the appellant's associated survey. However, foraging and commuting bats may be present nearby and so a condition to control lighting would be needed. Furthermore, the survey sets out wildlife enhancements that should be provided in the interests of biodiversity net gain. Suitable locations for the enhancements would likely be influenced by the landscape works and therefore need to be provided to the same timescale. A condition to require the production of further enhancement strategies beyond those in the bat survey would be unnecessary.
27. In the interests of highway safety and to protect the living conditions of the occupiers of neighbouring properties a further pre-commencement condition would be needed to require the construction process to be carried out in accordance with a method statement. It could be used to address the storage and manoeuvring of building materials and the parking of construction vehicles, and matters such as construction hours. A condition to require the parking area and cycle store to be provided in accordance with the drawings prior to the occupation of the dwelling would be needed to discourage parking on Rectory Lane and encourage the use of cycles.
28. The Council has recommended that the insertion of additional openings, extensions or the construction of outbuildings by means of permitted development rights are prevented. There would be clear justification to do so in this case as there is a realistic prospect that such work could have a harmful effect on the rural character of the site and its surroundings.
29. A condition relating to any works involving asbestos removal and disposal has also been recommended, but there is no reason to conclude that any asbestos would be dealt with inappropriately, or that existing legislation relating to it would be contravened. Accordingly, such a condition would be unnecessary.

Planning Balance and Conclusion

30. The application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the proposal.
31. LP Policies S1, S2, S8, D1 and T2 are consistent with the Framework insofar as they direct development to accessible locations, recognise the intrinsic character and beauty of the countryside, or do both. However, there are no

issues with the proposal in respect of character and appearance impacts on the countryside. Additionally, paragraph 105 of the Framework states that it should be recognised that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Given that some journeys to Woodham Mortimer and beyond are likely to be made using sustainable travel modes, the harm arising from the future occupiers' likely reliance on private motor vehicles for most journeys and the related policy conflicts attract only modest weight.

32. Paragraph 79 of the Framework adopts a balanced approach to housing in rural areas by stating that it should be located where it will enhance or maintain the vitality of rural communities. Whilst the policies specified in the above paragraph taken together provide the means to achieve housing in such locations to some extent, LP Policy S8 is prohibitive in its support for only specific forms of development outside settlement boundaries when compared to the Framework. The proposal's future occupiers would likely contribute to the vitality of the services, facilities and public transport in Woodham Mortimer even with private motor vehicles relied on mostly. Moreover and critically, a rigorous application of the spatial strategy would only further frustrate housing supply. Consequently, the conflict with the spatial strategy attracts limited weight.
33. Conversely, having regard to the small amount of development proposed, there would be a modest contribution to the supply of housing in the district. This would be the case even though the Council's evidence suggests that 3-bedroom homes are needed most. This matter attracts modest weight in favour of the scheme. Furthermore, there would be limited economic benefits from the construction of the development.
34. Overall, both the adverse impacts and the benefits of the proposal are modest. Therefore, the adverse impacts do not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development.
35. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any determination must be taken in accordance with the development plan unless material considerations indicate otherwise. Although the proposal conflicts with the development plan as a result of my findings in respect of the first main issue, the presumption in favour of sustainable development is a material consideration which outweighs that conflict. Material considerations therefore indicate that a decision should be taken which is not in accordance with the development plan.
36. For the reasons given above, the appeal is allowed.

Mark Philpott

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: 01A; 02; 03A; 04A; 05A; 06.1; 07.1A; 08.1A; 09.1A; 10; 11.
- 3) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The statement shall be adhered to throughout the construction period for the development.
- 4) Notwithstanding the approved plans, no development shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted including for fenestration 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.
- 5) No development shall take place until details of a scheme for surface water drainage to serve the development have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwelling hereby permitted.
- 6) No development shall take place until details of a scheme for foul drainage to serve the development have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwelling hereby permitted.
- 7) Notwithstanding the approved plans, prior to the first occupation of the dwelling hereby permitted, details of both hard and soft landscape works including means of enclosure and hard surfacing materials shall be submitted to and approved in writing by the local planning authority. The landscape works shall be carried out in accordance with the approved details in the first available planting season (October to March inclusive) following first occupation of the dwelling. If, within a period of 5 years from the date of planting, any tree or plant (or any tree or plant planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same size and species as that originally planted shall be planted in the same place within the first planting season following the removal, uprooting, destruction or death of the original tree or plant.
- 8) The parking area and cycle store shall be provided in accordance with the approved plans prior to the first occupation of the dwelling hereby permitted and retained thereafter.
- 9) The biodiversity enhancements set out in section 8 of the Bat Survey by Essex Mammal Surveys dated February 2022 shall be provided in the first available planting season (October to March inclusive) following first occupation of the dwelling hereby permitted.

- 10) Prior to the installation of any external lighting equipment within the site, details of that equipment shall be submitted to and approved in writing by the local planning authority. The equipment shall be installed in accordance with the approved details and maintained in that form thereafter.
- 11) Any contamination that is found during the course of the construction work 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. Where unacceptable risks are found a remediation scheme, and a verification report demonstrating the effectiveness of the remediation, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out before the development is resumed or continued.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no additional openings, extensions or outbuildings shall be made to the buildings or erected within the site other than where expressly authorised by this permission.