



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: 27th March 2023

Appeal Ref: App/X1545/W/22/3305970

Land adjacent to Oaklands, Kelvedon Road, Great Totham, CM8 3LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr S Harding against Maldon District Council.
 - The application Ref 22/00646/FUL, is dated 18 May 2022.
 - The development proposed is the erection of four dwelling houses and associated garages and alterations and extension of the existing access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of four dwelling houses and associated garages and alterations and extension of the existing access on land adjacent to Oaklands, Kelvedon Road, Great Totham, CM8 3LZ, in accordance with the terms of the application, Ref 22/00646/FUL, dated 18 May 2022, subject to the conditions set out in the schedule at the end of this decision.

Preliminary matters

2. Since this is an appeal against the failure of the council to give notice within the prescribed period of a decision on an application for planning permission, there is no decision notice. However, I and the appellant have been supplied with a copy of the planning officer's report that would have led to a decision. This report recommended refusal of the application, and I take this as the basis of the council's opposition to the development.

Main Issue

3. The single main issue in this case is the suitability of the site for residential development in terms of the effect on the rural character and appearance of the area.

Reasons

4. Whilst the proposed site is within the parish of Great Totham, it is within approximately 10 metres of the Wickham Bishops settlement boundary. In accordance with Maldon District Local Plan 2014-2029, adopted in July 2017 (LDP), Policy S8, development is only permitted outside settlement boundaries where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it is for one of the exceptions listed in the policy. The proposed development does not come within any of the listed exceptions.

5. The appeal site is set behind Oaklands, a large, detached house. Oaklands is set further back than the majority of dwellings to the north along Kelvedon Road. However, it is in line with the dwellings to the south, which are generally set in larger plots and does not appear out of character, aiding the transition from closer built form to lower density development. The character of the area is rural to the rear of the existing dwelling. To the north of the site is open grassland and to the east is open grassland and outbuildings associated with Chasefield Farm, whilst to the south is a menage and equestrian land also associated with Chasefield Farm. A public footpath runs along the north-western boundary of the site.
6. Oaklands received planning permission on appeal in September 2014, (reference APP/X1545/A/14/2219199). It was one of four dwellings granted planning permission. At that time the council could not demonstrate a 5-year housing land supply, and that remains the case today. Since that appeal decision a subsequent grant of planning permission for the 4 dwellings was given in 2015.
7. The Inspector in the appeal referred to above noted: *"The Council acknowledges social and economic benefits which are: a social benefit in terms of a contribution towards housing supply in a sustainable location in terms of access to services and facilities and economic benefit associated with construction activity. Those benefits weigh heavily in favour of the scheme, not least due to the lack of a deliverable 5 year housing land supply and need to boost housing."* The Inspector concluded that *"These factors outweigh the small amount of harm to character and appearance and the associated conflicts with local policy and the scheme would amount to sustainable development for which there is a presumption in favour."*
8. The recommendation for refusal in the officer's report made reference to 2 policies in the LDP. These were policies D1 and H4.
9. Policy D1 seeks to ensure that all development will respect and enhance the character and local context and make a positive contribution in terms of:
 - a) Architectural style, use of materials, detailed design features and construction methods. Innovative design and construction solutions will be considered where appropriate;
 - b) Height, size, scale, form, massing and proportion;
 - c) Landscape setting, townscape setting and skylines;
 - d) Layout, orientation, and density;
 - e) Historic environment particularly in relation to designated and non-designated heritage assets;
 - f) Natural environment particularly in relation to designated and non-designated sites of biodiversity / geodiversity value; and
 - g) Energy and resource efficiency.
10. Policy H4 requires all development to be design-led and to seek to optimise the use of land having regard to, among others, the location and the setting of the site, and the existing character and density of the surrounding area.
11. In considering these 2 policies, the officer stated *"Plots 1 and 2 of the development would be mirror images of each other with two forward facing two-storey gable projections and one rear gable with a rear single storey flat roof projection with roof light and a small single-storey projection with a lean-to roof. Plots 3 and 4 echo the design of plots 1 and 2. The semi-detached*

properties would each have a forward facing two-storey gable projection with a smaller rear facing two-storey gable protection. It is proposed that the properties would be of a similar height to the existing properties. The proposed properties would, in terms of scale, appearance and design, be appropriate in this location, given that gable roof forms and features are among the roof forms of the dwellings within the wider area. The proposal would not therefore appear out of keeping with the existing character of the area and would have appropriate height, scale, massing for the local context in accordance with Policy D1".

12. The officer went on to note that the site was proposed to be *"developed in a linear pattern perpendicular to Kelvedon Road against the grain of existing development, into open grassland to the rear of this section of the road" ... "out of keeping with the existing pattern and grain of surrounding development and would result in a loss of open and undeveloped countryside"*
13. In the conclusion of the officer's report it is stated *"The principle of four dwellings in this location is considered acceptable and due to the proposed layout and internal relationship with existing and proposed properties, the proposed development is not considered to result in any undue harm by way of overlooking or loss of amenity. However, although the addition of two four and two three-bedroom dwellings would assist in a minor way to making up the shortfall in the Council's Five Year Housing Land Supply, this would not outweigh the material harm the development would result in. The development would appear out of keeping with the existing pattern of development and would extend the built form out into the open countryside resulting in harm to the rural character and appearance of the area, particularly when viewed from the public right of way"*.
14. Since the 2014 appeal decision and the subsequent grant of planning permission for the 4 dwellings in 2015 nothing has changed, particularly in relation to the lack of a 5-year housing land supply, or in relation to access to services and facilities. Thus the 'tilted balance' of paragraph 11 d) ii of the National Planning Policy Framework (the Framework) is a matter of considerable weight. I agree that the appeal site intrudes into the countryside, but because of its location and the existing landscaping, this is not really apparent other than from the public footpath, and its present character is that of a domestic garden.
15. In addition to the above matters, there was a submission of this site to the 'Call for Sites' made by the council. This was followed by the Maldon Housing and Economic Land Availability Assessment and the Maldon Council Site Information and Assessment, both of January 2022. The latter commented, for the appeal site, *"the site would help strengthen the local economy because any potential residents would be able to walk to local services and facilities or easily access local businesses..."*. Further, *"development of the site would not have a detrimental impact on the wider landscape the site has mature boundary hedgerow and trees which would shield the site from any impact on either the landscape and townscape"*, _and finally, *"development of the site would be suitable. It is located off Kelvedon road and can be accessed safely. There is a pavement and a commuter bus service within walking distance so that jobs can be accessed if necessary. Potential residents can also access other services and facilities in Wickham Bishops and Great Totton by foot. There may be some harm to heritage assets to the rear of the site, but this could be mitigated*

against through design and buffer planting. Providing the boundary treatments are retained on the site there should be minimal impact on the biodiversity”.

Other matters

16. The application site falls within the 'Zone of Influence' for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This means that the development could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure. To accord with Natural England's requirements, an Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Habitat Regulation Assessment (HRA) Record was completed by the council to assess if the development would constitute a 'Likely Significant Effect' (LSE) to a European site in terms of increased recreational disturbance.
17. The conclusion of that assessment was that the project would, without mitigation, have a LSE on the sensitive interest features of the European designated sites due to the scale and location of the development proposed. Based on this and taking into account Natural England's advice, the council considered that mitigation, in the form of a financial contribution would be necessary.
18. As the now competent authority, I have concluded that the project will, without mitigation, have a LSE on the sensitive interest features of the European designated sites due to the scale and location of the development proposed. Based on this and taking into account Natural England's advice, I consider that mitigation, in the form of a financial contribution of £137.71 per dwelling is necessary. Upon request, I have been supplied with a copy of the receipt that shows that £550.84 has been paid by the applicant to the council, in accordance with RAMS. I have therefore been able to conclude, in view of the mitigation provided, that the development proposed would not have an adverse effect on the integrity of the European sites from recreational disturbance.

Conclusions

19. The one consideration that led to the conclusion in the officer's report that permission should be refused was that *"The four residential plots, with the likelihood of additional residential paraphernalia, would be developed in a linear pattern perpendicular to Kelvedon Road against the grain of existing development, into open grassland to the rear of this section of the road. This would appear out of keeping with the existing pattern and grain of surrounding development and would result in a loss of open and undeveloped countryside"*.
20. In my opinion this goes against the assessments made by the Inspector in the 2014 appeal, and that given in the response to the site being put forward in the "Call for Sites" exercise by the council. It also does not amount to an adequate balancing of the lack of a 5-year housing land supply, and the 'tilted balance' that follows, when the only such balancing exercise appears to have been made on the basis that *"although the addition of two four and two three-bedroom dwellings would assist in a minor way to making up the shortfall in the Council's Five-Year Housing Land Supply, this would not outweigh the material harm the development would result in."*: this in spite of the conclusions in the Maldon Council Site Information and Assessment (see paragraph 15 above).

21. Whilst the development at right-angles to Kelvedon Road is not characteristic of the area, this would primarily be evident from the footpath. I share the opinion of the Inspector in 2014, that the small amount of harm to character and appearance, and the associated conflicts with local policy do not outweigh the benefits of the scheme, with no other harm than the right-angled relationship with Kelvedon Road being identified. The appeal proposal is clearly 'sustainable development', which carries a presumption in its favour. Its sustainable credentials can be seen from the quoted comments from the Maldon Council Site Information and Assessment of January 2022. It should be noted that the possible harm to heritage assets mentioned in that assessment were later found to have no factual basis by the council's specialist officer.
22. From my consideration of the matters that I have set out above, I have concluded that the small amount of harm to the rural character and appearance of the area is outweighed by the sustainable credentials of the proposal and that the site is suitable for residential development. I have taken account of all other matters, including the representation that refers to a grazing licence, which is not a planning matter, and none of these matters lead me to a different conclusion. I will allow the appeal.

Conditions

23. 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. I have sought the views of the appellant on the suggested conditions, who made a number of comments. The following comments are made in relation to the council's proposed conditions, rather than those in the schedule of conditions at the end of this decision.
24. In relation to condition 2, a minor change is suggested and that the following additional plans are included "Drawing WBJ003 Rev PL1 Proposed Street Scene Drawing Highway Access Plan REDW-3391-115 Drawing Tree Protection Plan HWA10753 TPP "; that condition 3 is not necessary given the submitted Arboricultural Impact Assessment; in respect of condition 4, the materials are indicated on the drawings; condition 5, given that hard surfacing and means of enclosure are detailed on the drawings, only soft landscaping need be specified; in condition 8, widths of the access are already shown; and condition 15, details of a bin store for each dwelling are shown on the drawings.
25. I set out in full the appellant's comments on condition 12: "The relocation of the Public Footpath will require a Footpath Diversion Order under S247 of TCPA. This will take about 6 months and would be processed by the Council with their costs paid by the Appellant. We do not see the need for the footpath to be diverted before development commences, as the diverted route for the footpath will require the provision of a new 2m kerbed footway adjacent to the new access road, indeed in order to divert the footpath the Appellants need to commence the development and actually build the kerbed footway. It would be more sensible that the footpath is fully diverted before occupation of the Development".
26. I have considered the council's suggested conditions and the appellant's comments in the light of Planning Practice Guidance (PPG), and amended or deleted conditions as necessary. The conditions in the Schedule should be imposed for the following reasons: condition 2 is required for certainty and

avoidance of doubt as to the development permitted; condition 3 is to ensure an appropriate landscaping scheme for this site, to protect the character and appearance of the rural area and in the interests of nature conservation; condition 4 is to ensure that appropriate parking and means of access is provided and to ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety; condition 5 is to ensure the satisfactory surface water and foul drainage from the site; condition 6 is to ensure highway safety; conditions 7 and 8 are to provide adequate inter-visibility between vehicles using the road junction/access and those on the existing public highway in the interest of highway safety; condition 9 is to avoid displacement of loose material onto the highway in the interests of highway safety; Condition 10 is to ensure the continued safe passage of pedestrians on the public right of way and accessibility; Condition 11 is in the interests of reducing the need to travel by car and promoting sustainable development and transport; Condition 12 is in the interests of highway safety and the amenity of existing residents; Condition 13 is in order to ensure that adequate provision for refuse storage is made; condition 14 is in the interests of nature conservation and to minimise the impact of the development on commuting and foraging bats; and condition 15 is in order to provide suitable ecological enhancements to the overall development.

27. Condition 12 is a pre-commencement condition, required because clearly the construction method statement has to be agreed before any construction can start, and I consider that it is necessary in this case to protect the amenities of nearby residents and the safety and convenience of highway users. 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 the condition is 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 complete accordance with the approved drawings and documents as follows: WB_001 rev.PL1 Proposed site layout; WB_001 rev.PL1 Existing site plan and location plan, block plan; WB_002 rev.PL1; WB_004 rev.PL1; WB_101 rev.PL1; WB_102 rev.PL1; WB_103 rev PL1; WB_104 rev PL1; Preliminary Ecology Appraisal January 2022; WBJ003 Rev PL1 Proposed Street Scene; Highway Access Plan REDW-3391-115; Tree Protection Plan HWA10753 TPP (the Highway Access Plan and the Tree Protection plan are contained within the submitted Transport Statement reference PMcL/3391dl/May 2022 and the Arboricultural Impact Assessment reference HWA10753_TPP).
- 3) No development above slab level shall take place until written details of the soft landscaping 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. 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. 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.
- 4) The parking spaces, means of access and vehicle turning area hereby approved shall be constructed, surfaced, laid out and made available for use in accordance with the approved scheme along with the provision of an electric vehicle charging point for each dwelling prior to the occupation of the dwellings and shall be retained as such thereafter.
- 5) No dwelling shall be occupied until the foul and surface water drainage schemes for the site have been completed in accordance with details which shall have been submitted to and approved in writing by the local planning authority. The drainage schemes shall be managed and maintained as approved, thereafter.
- 6) Prior to occupation of the development the vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway in accordance with Block Plan Layout Drawing No. REDW-3391-115.
- 7) Prior to first occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 70 meters along to the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction/access is first used by vehicular traffic and retained free of any obstruction at all times.

- 8) Notwithstanding the details on drawing No. REDW-3391-115, prior to the occupation of the development, the wooden fence which has been constructed within the highway, shall be removed from the highway and set back from the highway boundary in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority.
- 9) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 10) The public's rights and ease of passage over public footpath No. 4 (Great Totham) shall be maintained free and unobstructed at all times. No occupation of any of the dwellings hereby approved shall take place until such time as a Diversion Order has been secured for the diversion of the existing definitive right of way through the application site and the new route constructed.
- 11) Prior to first occupation of the development, each dwelling shall be provided, free of charge, with a Residential Travel Information Pack for sustainable transport to include six one day travel vouchers for use with the relevant local public transport operator, in accordance with details which shall have been submitted to and approved in writing by the local planning authority.
- 12) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) No dwelling shall be occupied until the provision for allocated on-plot storage for refuse has been provide in accordance with the details shown on the site layout drawing WB001 Rev PL1, which shall be retained in accordance with the details.
- 14) No development shall take place above slab level until details of all external lighting have been submitted to and approved in writing by the local planning authority. No other external lighting shall be installed other than with the approval of the local planning authority. The development shall be completed and retained in accordance with the approved details.
- 15) Notwithstanding the details shown on plan WB001 Rev PL1, the development shall include a minimum of one built-in invertebrate box per dwelling and per garage building, one bat or bird box per garage building in addition to those proposed, a built-in winter bat roost per dwelling and 'Hedgehog highways' with at least one gap installed between each neighbouring plot plus two per plot to external site boundary fences with signage for new residents/owners to understand purpose of such.

End of Schedule