



Appeal Decision

Hearing Held on 7 February 2023

Site visits made on 6 and 8 February 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/X1545/W/22/3309927

Former Hasler's Mill, Station Road, Maldon CM9 4LQ

- 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 A Wiseman against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00483, dated 20 April 2020, was refused by notice dated 18 May 2022.
 - The development proposed is the demolition of former mill, erection of two blocks each accommodating four Class E units, conversion of former Granary into four Class E units and the erection of a block of nine apartments and two retail units.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Maldon District Council against Mr A Wiseman and a further application by Mr A Wiseman against Maldon District Council. These applications are the subject of separate Decisions.

Main Issues

3. The main issues are:
 - whether the proposal would constitute a desirable regeneration of the area having regard to the effect on employment and housing provision, its position within the Maldon Conservation Area (CA) and the setting of the Grade II listed Fullbridge Mill, Fullbridge House & Bakehouse.
 - whether the proposal is acceptable in relation to flood risk;
 - whether the living conditions of future occupiers would be acceptable in relation to the quantity and quality of external amenity space;
 - the effect of the proposal on the locally listed Granary;
 - whether the proposal should provide affordable housing;
 - whether the proposal should provide a financial contribution towards the North Quay Regeneration Strategy; and
 - whether the proposal would provide adequate car and cycle parking.
4. Two further reasons for refusal were resolved prior to the hearing. Following receipt of an updated Ecological Appraisal it is agreed that the biodiversity

implications of the proposal would be acceptable subject to conditions and following receipt of a Unilateral Undertaking from the appellant it is agreed that the necessary financial contribution would be made to the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, thus avoiding any adverse impact on European designated conservation sites.

Reasons

5. The proposal is for the redevelopment of an underused 0.36 ha site on the North Quay of the River Chelmer with 2 no. two storey-blocks of Class E units, a 4/5 storey block of nine residential apartments with two retail units, and the conversion of a former granary building into further Class E units. The existing tall, unattractive mill building on the site would be demolished.
6. The site lies on the river frontage between Fullbridge Mill, a Grade II listed building converted to offices on one side and Carrs Flour Mill, an active industrial complex on the other. Whilst the site is prominent on the North Quay and highly visible from the quayside on the other side of the river, it has no road frontage, occupying a backland position behind a Lidl supermarket which fronts onto Station Road and shares the same access. The North Quay forms part of the designated Maldon CA.
7. The 4/5 storey residential block would occupy a river frontage position in the south-west part of the site adjacent to Fullbridge Mill whilst the new two-storey blocks would be positioned along the eastern and northern boundaries of the site in order to screen the Carrs Flour Mill and Lidl buildings respectively. The river frontage would be paved as part of a future waterfront walkway which at a later date could extend along the North Quay in both directions.

Regeneration

8. The primary argument of the appellant is that the proposal would constitute a desirable regeneration of this section of the North Quay, delivering a mixed-use scheme providing much needed employment and housing together with reuse of the former granary building. There would be a substantial improvement to the character and appearance of the river frontage, the CA and the setting of adjacent listed buildings, and the beginning of a riverside walkway¹.
9. The site lies in the Causeway Regeneration Area within the wider Maldon and Heybridge Central Area as designated by the Maldon Local Development Plan 2017 (the MLDP). Policy S5 sets the overall objective for this area, its renewal to improve the supply of high quality commercial and industrial floorspace, and increased employment, including 'mixed-use developments which enable significant numbers of jobs to be created'. Other objectives for the central area as a whole include increasing public access to and enhancing the setting of the riverside to create a vibrant environment incorporating a range of uses and preserving and enhancing its historic character.
10. Policy E1(I) reserves extensive parts of The Causeway, 43.6 ha in all, including the appeal site, for B1, B2 and B8 employment development 'unless it can be demonstrated that there is no reasonable prospect for the site to be used for these purposes'. Proposals which cause the loss of employment land will only be considered in three circumstances, one being if the site 'would have a greater benefit to the local community if an alternative use were permitted'. Mixed-use

¹ A unilateral undertaking would ensure public access to the walkway for the lifetime of the development.

development on such land 'will only be considered appropriate where it includes a substantive Class B employment element'.

11. Following adoption of the MLDP, the 2017 Maldon and Heybridge Central Area Masterplan SPD set out a spatial framework for the area and identified a series of key projects. These include the regeneration of the North Quay with an indicative plan showing a mixed-use scheme on the appeal site and pedestrian walkway along the river frontage. The more detailed North Quay Regeneration Development Brief SPD 2020 identifies the appeal site as redundant land, notes the interest of Carrs Flour Mill to use the site and identifies the opportunity for mixed-use development including a food and drink offer and visitor attractions, noting the footfall anticipated on the riverside route, part of the England Coast Path. Importantly however residential uses are not supported on the site.
12. There is no dispute that the non-housing elements of the proposal would meet the employment generating objectives of Policies S5 and E1, and that the various commercial spaces, whether used for offices, workshops, retail outlets or café/restaurant uses would provide a suitable mix of uses on the site. At least 40 new jobs are envisaged. The overall scheme, including the 4/5 storey residential element, would also comprise attractive, well-designed buildings, greatly enhancing the river frontage, the CA and the setting of nearby listed buildings in comparison with the current run-down appearance of the site. A section of waterfront walkway would also be delivered, an important benefit if linked through the adjacent site to Fullbridge even without a route further east. This would improve the connectivity of the site and provide an alternative to the walk along the narrow roadside footway and the frontage of Lidl.
13. The nine additional dwellings would also be a significant benefit, making a useful contribution to local housing needs with social and economic benefits for the town, particularly as the Council can currently only demonstrate 3.66 years housing land supply, a position which has significantly worsened over recent years. However, due to the conflict with National Planning Policy Framework (NPPF) policy with regard to flood risk (see below), the presumption in favour of sustainable development does not apply in this case².
14. In any event, there is no doubt that the policy framework for the site promotes employment development with a strong presumption against residential uses. Whilst mixed-use development is envisaged, there is no policy encouragement for housing as part of the mix. Critically, the appellant makes no case that the large-scale residential element of the proposal is essential to the viability of the scheme as a whole, without which its employment benefits would not be delivered. There is consequently no evidence that a more policy compliant scheme, with less housing but more employment, would not be possible on the site. This unsatisfactory situation means it is impossible to conclude that the most relevant Policy E1 test is met - that there is no reasonable prospect for the whole site to be used for B1/B2/B8 purposes. Indeed, the evidence of Carrs Flour Mill to the hearing is that they are actively interested in purchasing the site to expand their manufacturing operation³.
15. For these reasons it has not been demonstrated that the proposal would constitute a desirable regeneration of the area having regard to the effect on employment and housing provision, its position within the Maldon CA and the

² The presumption in NPPF paragraph 11 d) ii arising from footnote 8 is disapplied by footnote 7.

³ Carrs also drew attention to an unsuccessful offer for the site made via Knight Frank in July 2020.

setting of the Grade II listed Fullbridge Mill, House & Bakehouse. The proposal would therefore conflict with MLDP Policy E1 and relevant supporting SPD policies which seek to reserve the site for employment uses.

Flood risk

16. The site lies adjacent to the tidal River Chelmer within Flood Zone 3a where there is a high probability of flooding, defined as a greater than 0.5% annual probability of inundation by the sea. As such the sequential, and if passed the exception, tests apply. The purpose of the sequential test is to steer new development to areas with the lowest risk of flooding because this places least reliance on flood defences, flood warnings and property resilience features. In this case there are lower risk areas around the town of Maldon where housing, classified by the NPPF as 'more vulnerable' to flooding, could be located.
17. The appellant argues that MLDP Policy E1 allows mixed-use development on the site and the sequential test was applied at plan making stage. However, with the housing element not argued to be essential to the delivery of the scheme it is necessary for housing to pass the sequential test in its own right. In addition, there is no evidence that housing was considered an essential component of mixed-use development at plan making stage and thus taken into account by the MLDP Strategic Flood Risk Assessment.
18. Whilst the appellant has prepared a Site-Specific Flood Risk Assessment to address the exception test, and this is acceptable to the Environment Agency on a technical basis, the NPPF makes clear that the sequential test is decisive. The measures proposed to mitigate the risks do not outweigh the finding that housing may not be essential to regeneration in this location. These include avoiding habitable accommodation on the ground floor of the residential block with the first floor providing safe refuge, and for all buildings a water entry strategy, resilient construction and a flood warning system. The assessment finds that the flood level of the 0.5% annual probability event including climate change would be about 5.8m AOD, overtopping the riverside defences by about 1m, flooding the ground floor of the buildings to a depth of about 1.6m and leaving the scheme inaccessible until the waters subside.
19. The housing element of the scheme is therefore unacceptable in relation to flood risk and would conflict with MLDP Policies S1, S5 and D5. These seek to ensure new development is located away from high flood risk areas, minimises flood risk and satisfies the sequential test. The housing element would also conflict with paragraph 162 of the NPPF which requires development proposals to pass the sequential test.

Living conditions

20. Seven of the nine flats would have private balconies, three of which would be about 18 sq m in size and four about 4 sq m. Two flats, those on the first floor facing north towards Lidl, would have no balconies. MLDP Policy D1 requires the provision of 'sufficient and usable' private amenity spaces and the Maldon District Design Guide SPD 2017 seeks 25 sq m per flat. The Council accepts that 18 sq m would be sufficient in this case but 4 sq m would not. However, it is common for flat developments in more urban and riverside settings to have small balconies for sitting out, and 4 sq m balconies would be a reasonable level of provision in this case. The appellant accepts that 4 sq m balconies could be

provided for the north facing flats outside their 'Juliette' windows and, notwithstanding the submitted plans, this could be secured by condition.

21. However, the site is subject to traffic noise from Fullbridge and industrial noise from Carrs Flour Mill. As described in the Environmental Noise Assessment for an earlier scheme the traffic noise is generally regular, reasonably muted and reduces overnight but that from the continuous 24/7 flour mill operation comprises a constant muted hum together with more intrusive disturbance from lorry deliveries and collections. These average about two an hour with deliveries from 05:00 to late evening taking place immediately adjacent to the site. Deliveries involve 'an elevation in noise' with unloading onto conveyor belts, lorry and fork-lift truck movements and intrusive reverse alarms.
22. Taking into account the sound shielding effect of the two-storey block adjacent to the flour mill, the assessment concludes that the outside balconies are likely to exceed the World Health Organisation (WHO) daytime noise guideline of 55dB LAeq by 2-3dB. Whilst the appellant does not consider this significant, the difference being unlikely to be perceived and considering the urban context of the site, this relates to the *average* noise level. In this case, the regular deliveries with lorry and fork-lift truck movements, including piercing reverse alarm sounds, as heard during the site visits, are unduly intrusive and would result in a poor standard of amenity for balcony users. Illustrating this, the assessment recorded daytime readings of 62.9dB LA10 and 82.7dB LAmax.
23. For these reasons, whilst the quantity of external amenity space for the flats would be adequate, the noise and disturbance on the balconies as a result of the close proximity of Carrs Flour Mill would not provide acceptable living conditions for future occupiers. This would conflict with MLDP Policies D1 and D2 which require usable private amenity spaces and the avoidance of detrimental impacts from noise.
24. In relation to internal living spaces, whilst not pursued by the Council as a reason for refusal, several bedrooms would directly face the flour mill and to meet WHO noise guidelines these would require mechanical ventilation with the only windows kept closed at night. This was apparently accepted on the basis of an appeal decision elsewhere⁴ but the scheme layout and noise profile would be different in this case and the situation would be most unsatisfactory.

The Granary

25. The old granary building in the centre of the site is clearly shown on an 1839 tithe map adjacent to a narrow dock and is justifiably locally listed, retaining both historic and architectural significance. The building is a surviving example of a late-Georgian waterside granary reflecting the town's maritime related prosperity at that time, and retains a robust timber frame, louvred windows, external loading door and evidence of grain bins. Whilst the building is due to be converted as part of the proposal, this would involve the insertion of a wide full height window on the important south elevation, not reflecting the original openings and requiring the removal of some framing. As such, the proposal would cause moderate harm to the significance of the building which would be unnecessary and should not be permitted.

⁴ APP/X1545/W/20/3259936 & 3262841

26. To minimise harm to the heritage asset in compliance with MLDP Policies D1, D3 and H4 and paragraph 195 of the NPPF, the appellant accepts that minor amendments could be made to the window openings in the south elevation as previously proposed⁵ and, notwithstanding the submitted plans, this could be secured by condition. A sympathetic developer would also wish to minimise alterations to retain as much internal fabric as possible.

Affordable housing

27. Whilst less than ten dwellings, the residential element of the proposal exceeds the alternative threshold of 1,000 sq m floorspace when the provision of affordable housing is required under MLDP Policy H1. Although in accordance with national policy at the date of adoption, as set out in the Ministerial Written Statement of 28 November 2014, the revised NPPF issued on 24 July 2018 and later versions set the alternative threshold as sites of 0.5 ha or more. The MLDP is therefore out of date in this respect and no contribution to affordable housing is required in this case.

Contribution towards North Quay Regeneration Strategy

28. In addition to public access along the section of riverside walkway, the Council is seeking a financial contribution towards the implementation of the North Quay Regeneration Strategy, in particular flood resilience works, public realm enhancements and highway improvements for walking and cycling. However, despite prompting, in the absence of further details, overall costings and a fair formula for apportionment between developers, it is not possible to determine whether the contributions sought by the Council meet the three tests set out in paragraph 57 of the NPPF.

Car and cycle parking

29. The nine flats would be provided with eight undercroft car parking spaces and three outside spaces compared to the Council's normal standard of eighteen spaces plus three visitor spaces. The commercial uses would be provided with two garages and fifteen outside spaces compared with the Council's standard of 55-74 spaces depending on the calculation. There would also be a shortfall in cycle parking spaces. Whilst significant shortfalls, as a mixed-use scheme there could be flexibility in the use of the spaces throughout the day and the site occupies a relatively accessible town centre location. Whilst the Council's concerns have some validity, this issue would not be determinative should there be no other objections to the scheme.

Conclusion

30. The proposal would comprise an attractive group of buildings, enhancing the river frontage, CA and the setting of nearby listed buildings, provide at least 40 jobs, 9 dwellings, a section of public walkway and the reuse of the locally listed granary. However, the site is reserved for employment development, the large-scale housing element may not be essential to the regeneration of the area, is unacceptable in relation to flood risk and, with Carrs Flour Mill adjacent, would not provide acceptable living conditions for future occupiers. Overall, the scheme conflicts with the provisions of the development plan taken as a whole, and the objections to the scheme significantly outweigh its benefits.

⁵ In application reference FUL/MAL/19/00080

31. Having regard to the above the appeal should be dismissed.

David Reed

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Martin Robeson BA FRTPI FRICS	MRPP
Craig Stewart BA MSc	MRPP
Allan Wiseman	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Kathryn Mathews MRTPI	Development Management, Maldon DC
Jackie Longman CertArch MSc DipUD	Place Strategist, Maldon DC
Jack Ellum	Prosperity Strategy, Maldon DC
Tim Howson IHBC	Conservation, Maldon DC

INTERESTED PARTIES

Noel Probyn	Maldon & Heybridge Heritage Harbour Association
Janet Hall	Maldon & Heybridge Heritage Harbour Association
David Syme	Maldon Society
Robert Preece	General Manager, Carrs Flour Mill

DOCUMENTS SUBMITTED AT THE HEARING

Unilateral undertakings from the appellant

Agreed extra condition re phasing of scheme

Maldon DC - Five-year housing land supply position: note from appellant

Appeal decisions APP/X1545/W/20/3259936 & 3262841

Costs decision APP/X1545/W/21/3283478