

Appeal Decision

Site visit made on 15 March 2023

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/X1545/W/22/3308502

Montrose, Birchwood Road, Purleigh CM3 6RF

- 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 Shaun McSpadden against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00695, dated 1 June 2022, was refused by notice dated 22 August 2022.
 - The development proposed is lake on former equestrian site.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the appeal site and the surrounding area.

Reasons

3. Montrose is a detached dwelling in a rural location with other residential development to the west along Birchwood Road. The appeal site is a large open area of grassland immediately behind the appeal property's rear garden. Beyond this to the south and east is open undeveloped land. The site's lawful use is for equestrian purposes, although it is currently unused as such.
4. My attention is drawn to a recent appeal decision involving a similar proposal at the appeal site¹. Given the relevance of that decision to the current appeal I have had regard to it and refer to it where appropriate.
5. Policies D1 and S1 of the Maldon District Approved Local Development Plan 2014-2029 (2017) (the LDP) require development to respect and enhance the character and local context, including landscape setting and the natural environment. The appeal site is outside defined development boundaries and, therefore, is in the countryside for policy purposes. In such locations, Policy S8 of the LDP states that permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon.

¹ APP/X1545/W/21/3273450 dated 11 January 2022.

6. Similar parcels of open land as the appeal site exist to the west behind the neighbouring residential properties with largely open land beyond this to the south. As such, the appeal site and neighbouring land mark a transition from the domestic gardens to the open countryside beyond. Despite the boundary planting, these open undeveloped areas of land share much of the character of the surrounding countryside. In this regard, I agree with the Inspector's finding in the previous appeal that *'this openness and the generally flat landscape are strongly positive characteristics of the locality'*.
7. In the previous appeal the Inspector's principal concern about the effects of the proposed lake related to the bunds that would surround it, particularly the height of the southern bund. As no calculations were provided of the volume of material that would need to be excavated, it was likely that the bunds could be larger than shown on the submitted plans. Consequently, these would appear as *'alien engineered features in the otherwise open and natural landscape'*.
8. The Inspector did, however, find that while the lake would be an uncommon land use in the area, waterbodies are natural features and, therefore, no concerns were raised about the principle of the lake in this location. I note that the Council accepts this position and based on the previous appeal and my own inspection, I have no reason to take a different view.
9. The current proposal seeks to respond to the previous appeal decision by reducing the overall size and depth of the lake, and spreading the excavated spoil on the site so that there are no longer bunds that contain the total of the excavated material. Furthermore, calculations are provided to show the cut and fill volume of material to be excavated and spread across the site. The Council's concern is that there is no understanding of how the figures have been calculated or what they represent and that, overall, there is insufficient information to determine the overall scale of the raised land surrounding the lake.
10. I acknowledge that the calculations and figures provided are not as clear or fully explained as perhaps they might be and that there may be some scope for limited differences between the calculations and the outcomes on the ground. Nonetheless, in my view the submitted plans do provide a sufficiently clear basis to assess the likely effects of the proposal in the context of the main issue.
11. While the size of the lake has been reduced from the previous proposal, the plans show that the raised land surrounding it would cover a substantive area across the whole site. In the earlier scheme the bunds ranged from 1.5 metres to 3 metres in height. The appellant explains that the raised land would have a shallow gradient, with a highest point above the existing ground level of 1.5 metres. I accept that this approach would not result in an abrupt uplift in the same way as a narrower raised bund would. Nonetheless, the extent of the change in the land form of the appeal site across a relatively large area would materially alter the character of the site.
12. This change must be viewed in the context of the above finding that the openness and the generally flat landscape are strongly positive characteristics of the locality. In this regard, the extensive re-contoured and raised land form would stand out as an incongruous and uncharacteristic man-made feature in

the otherwise open and natural landscape. The planted boundaries would have limited effect in masking such an extensive change. As such, the proposal would result in material harm to the character of the rural setting.

13. The appellant contends that bunds and raised land are common features in the countryside. However, this general observation does not overcome the harm that has been found with regard to the particular effects of the proposal in this specific location. I acknowledge that the proposed lake and related planting would have some ecological benefits, but this is insufficient basis to outweigh the harmful effects. Similarly, the fact that the lake would not be for commercial use and only used by the appellant is not a sufficient reason to set aside findings of material harm and conflict with development plan policies. The above findings could not be overcome by the use of conditions nor would it be appropriate for me to consider alternatives to the proposed scheme, which I must determine on its merits as submitted.
14. Accordingly, for these reasons, I conclude that the proposal would have an unacceptably harmful effect on the character and appearance of the appeal site and the surrounding area. Consequently, it is contrary to Policies D1, S1 and S8 of the LDP, as described above.

Other Matters

15. I have had regard to the representations made by interested parties. With regard to the effect on neighbouring properties, I note that in the earlier appeal the Inspector found no harm would result in this regard from a larger body of water and related operations. I have no evidence that leads me to diverge from this view. Moreover, many of the concerns raised could be addressed by appropriate conditions.
16. The appellant contends that the Council did not seek clarification of the submitted material to enable it to better understand the proposal. However, this procedural matter is outside the scope of the appeal, which I am required to determine on its planning merits.

Conclusion

17. For the reasons given it is concluded that the appeal should be dismissed.

J Bell-Williamson
INSPECTOR