
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/22/3309823

Site between Clover Cottage and Armstrong Road, Stephenson Road, North Fambridge CM3 6ND

- 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 and Mrs B Thomas against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00435, dated 17 March 2022, was refused by notice dated 2 September 2022.
 - The development proposed is erection of single storey dwelling with associated access and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note that the appellants submitted a legal agreement at application stage to address the required mitigation by the Council of the effect of the proposal on protected European sites.

Main Issue

3. The main issue is the effect of the proposed dwelling on the character and appearance of the appeal site and the surrounding area.

Reasons

4. Clover Cottage is a bungalow in a private road of similar properties. The appeal site comprises the rear half of the property's back garden. To the immediate south is Armstrong Road, which provides access to the appeal site and leads to open land to the west. To the east is a parcel of open land which abuts the rear gardens of dwellings with frontages on Fambridge Road. The appeal site is outside the development boundary for North Fambridge, which is adjacent to the northern boundary.

5. My attention is drawn to three appeal decisions involving proposals for a dwelling at the appeal site¹. Given the relevance of those decisions to the current appeal I have had regard to them and refer to them where appropriate.
6. The dwellings with frontages on Stephenson Road and Fambridge Road have regular plot sizes and consistent rear garden boundaries adjoining the open land outside the settlement boundary. The one exception to this is Clover Cottage where the garden is extended into the otherwise open land. The site includes a pond, wildfowl, trees and some related structures that are incidental to the residential use of Clover Cottage. However, despite this, due to its largely open, undeveloped character and appearance the appeal site has more in common with the surrounding open land. As such, it contributes positively to the semi-rural, open character of the land immediately outside the settlement boundary.
7. While the new dwelling would be single storey and of modest size, its position behind the established building lines, together with parked vehicles in this otherwise open setting, would be incongruous and uncharacteristic. Further intensification of the garden use would not be comparable to the effects of a new dwelling on the site. I note that these findings are consistent with those of the Inspectors in the three earlier appeals, where the use of the appeal site and its immediate surrounds appear to be largely unchanged from the current situation with regard to this appeal. I agree in particular with the findings of the Inspector in the most recent appeal that the new dwelling, together with the associated domestic paraphernalia, would lead to the urbanisation of an open area, which currently contributes positively to the setting of this part of North Fambridge.
8. I acknowledge, however, that there are some differences from the context for determination of the earlier appeals, notably with regard to more recent national and local policies, and the completion of residential development to the south. Policy H4 of the Maldon District Approved Local Development Plan 2014-2029 (2017) (the LDP) concerns the effective use of land and includes criteria against which backland development should be assessed. I have had regard to the appellants' contention that the proposal should not be considered as backland development, particularly due to the separate access from Armstrong Road, and that in any case the proposed dwelling would make more effective use of the site.
9. The proposal involves development in a residential garden behind established building lines. As such, it is reasonable to conclude that it amounts to a form of backland development. Moreover, there is no significant under-use of land in this location outside the settlement boundary and, therefore, no basis to find that the proposal would result in more effective use of it. Even if I were to find that there is no conflict with Policy H4, the proposal conflicts with LDP Policy D1, which more generally requires development to respect local character and context. Furthermore, while the National Planning Policy Framework (the Framework) promotes the effective use of land, including small and medium-sized sites, it also expects development to be sympathetic to local character².

¹ APP/X1545/A/08/2085870 dated 28 April 2009, APP/X1545/A/12/2172887 dated 24 August 2012 and APP/X1545/W/14/3001714 dated 11 June 2015.

² Paragraph 130c).

10. The development of 75 dwellings to the south of the appeal site has now been completed³ and, as the appellants contend, its effects can be appreciated, which was not the case in the earlier appeals. However, the Inspector in the most recent appeal acknowledged the permission for this scheme and found that *'a significant open and undeveloped area separates the two sites and that area would continue to contribute to the setting of the settlement'*. Based on the site inspection, I agree fully with this finding. The undeveloped land, which includes the appeal site, between the newly-implemented residential development and established settlement to the north, is important in providing an open aspect to the settlement setting.
11. Reference is made to the apparently positive assessment of the appeal site's development potential in the Council's 'call for sites' exercise as part of a review of the LDP. However, with regard to determination of this appeal, I am mindful of the Framework's provisions with regard to emerging plans. This states that the more advanced the plan's preparation, the greater the weight may be given to emerging policies⁴. Consequently, as the plan review is at a very early stage, only limited weight can be given to the 'call for sites' assessment as this could be subject to change. As such, this matter does not outweigh the above findings and the conflict with adopted development plan policies.
12. The appellants draw attention to a recent permission for two dwellings immediately to the west of development at the end of Stephenson Road⁵. While this site is also outside the settlement boundary it does nonetheless continue the linear development with a site frontage on the established road, rather than promote development behind established building lines. As such, this existing permission is not directly comparable to and does not provide a precedent for, the appeal proposal.
13. Accordingly, for the above reasons, I conclude that the proposed dwelling would have a materially harmful effect on the character and appearance of the appeal site and the surrounding area. Therefore, as well as it being contrary to Policies H4 and D1 of the LDP and to the Framework as described above, it is also contrary to Policy S1 concerning sustainable development and to Policy S8, which states that permission for development will only be granted where the intrinsic character of the countryside is not adversely impacted upon.

Other Matters

14. The appellants contend that there were no objections to the proposal and refer to a supportive response from an interested party. However, I have been provided with an objection by North Farnbridge Parish Council and have had regard to this as well as to the representation in support of the proposal. However, neither representation raises additional matters to those considered under the main issue.
15. The Framework is a material consideration in planning decisions⁶ and it requires that plans and decisions should apply a presumption in favour of

³ Ref 14/001016/OUT, together with a further 12 dwellings approved under Ref 21/00104/FULM.

⁴ Paragraph 48.

⁵ Ref 22/00734/OUT.

⁶ Paragraph 2.

sustainable development⁷. It is common ground between the main parties that the Council cannot identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, as required by the Framework⁸. Consequently, the policies which are most important for determining the application are out-of-date⁹ and permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole¹⁰.

16. The appellants indicate that the Council can currently demonstrate 3.78 years of housing land supply. This shortfall is not insignificant and a single dwelling would make a contribution to rectifying it, albeit a modest one. Both this benefit and the appellants' intention to live in the proposed dwelling and so provide the larger Clover Cottage for occupation, can be attributed moderate weight given the limited overall effects with regard to housing supply. I give less weight to any economic benefits associated with the construction of a single small dwelling, given their limited extent and short-term nature. Environmental benefits from landscaping and ecological enhancements would also be limited from a single dwelling on existing garden land.
17. Conversely, the proposal would conflict with relevant development plan policies, which are consistent with the Framework. Moreover, as the proposal would have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area, it is contrary to the Framework's requirement that development is sympathetic to local character through good design. I give this conflict substantive weight.
18. The benefits set out by the appellants are not of sufficient weight, either individually or as a whole, to overcome the extent of the conflict with the Framework's objective to promote good design that respects local character. Therefore, I conclude that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits and so the presumption in favour of sustainable development does not apply.

Conclusion

19. The proposal is contrary to development plan policies and to the Framework as it would cause unacceptable harm. Despite the shortfall in housing provision, the presumption in favour of sustainable development does not apply and there are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson
INSPECTOR

⁷ Paragraph 11.

⁸ Paragraph 74.

⁹ Footnote 8 to paragraph 11d)

¹⁰ Paragraph 11d)ii.