



Appeal Decision

Site visit made on 2 May 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2023

Appeal Ref: APP/X1545/W/22/3294829

Land to East of Manor Road, Dengie, Tillingham, Essex

- 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 Levy against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/00045, dated 13 January 2021, was refused by notice dated 16 September 2021.
 - The development proposed is described as “full planning application for full planning permission to erect five bungalows, layout parking, turning and amenity areas, form biodiversity pond and plant orchards trees and a new hedgerow”.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed development is in a suitable location for housing development, with particular regard to the reliance on the private car; and
 - the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

Suitable Location – Reliance on the Private Car

3. Policy S8 of the Maldon District Approved Local Development Plan 2014-2029, adopted 2017 (LDP) sets the locational strategy for new development and seeks to ensure that the majority of new development is within the defined settlement boundaries, the garden suburbs and the strategic allocations. Outside of these areas, development is restricted to those listed within LDP Policy S8, providing the intrinsic character and beauty of the countryside is not adversely impacted upon. The appeal proposal seeks to erect five open market dwellings within Dengie, an ‘other village’ with no defined settlement boundary. It is common ground between the main parties that the proposal would not meet any of the exceptions listed at (a) to (m) of LDP Policy S8.
4. The appeal site is located within Dengie, a very small village that comprises a village hall, a church and a small number of dwellings. The limited services and facilities within the village would not meet the day-to-day needs of future occupants. To the northeast of the appeal site is Tillingham, a ‘smaller village’ and to the southwest is Southminster, a ‘larger village’. Both villages have a

greater range of services and facilities than Dengie, while Southminster provides access to public transport including a train station. I have also been directed to businesses and facilities within the surrounding area that could provide employment opportunities for future occupiers.

5. Tillingham and Southminster are located a substantial distance from the appeal site and the routes between the appeal site and these villages have no pavements or streetlighting for a significant distance. Similarly, Public Rights of Way (PRoW) between Keelings Road and Tillingham traverse across fields. There is a speed limit of 60mph between the appeal site and these villages. A speed survey demonstrates that vehicles tend to travel at speeds lower than 60mph on Manor Road, however, no speed survey was undertaken along the full routes to both villages, including the B1021 (Tillingham Road) to Tillingham, and Hall Road and the B1021 (Southminster Road) to Southminster, where vehicle speeds are likely to be higher than Manor Road. Therefore, the general condition of local infrastructure together with the distance, is such that travelling to these villages from the appeal site by means such as walking and cycling would be highly unlikely, particularly for occupants with young children or mobility issues, especially in the dark or during inclement weather.
6. The bus stops at the junction of Manor Road and Tillingham Road are for school buses only. I have been directed to information regarding a recently redirected bus service (D4), which operates between Burnham-on-Crouch and Bradwell-on-Sea and stops a short distance from the appeal site. However, I note that this is a two hourly service operated between limited times, with the first and last buses of the day Monday to Friday needing to be pre-booked. Furthermore, no service is operated on a Sunday. There is also a demand responsive bus service (DaRT 99) which operates between Dengie and Maldon. The service is required to be pre-booked and operates to a timetable consisting largely of a two-hourly service between limited times.
7. The General Group Manager of Essex and Suffolk DaRT has stated that DaRT 99 has been pivotal in persuading people away from their use of the private car. However, limited evidence has been submitted to support this matter. While these bus services could offer an alternative to the private car for future occupants, their limited operational times would restrict future occupiers' ability to rely on them for their day-to-day needs or for commuting to and from work. Consequently, from the information before me, I am not persuaded that there is a reliable bus service serving the appeal site.
8. As such, future occupiers are likely to rely on the private car to make journeys to meet their day-to-day needs.
9. I acknowledge that the proposed dwellings could be fitted with electrical vehicle charging points. However, there is no mechanism before me to enforce future occupants to solely own and travel in electric vehicles.
10. I have been directed to appeal decisions in the nearby settlement of Asheldham to support the appellant's view that the appeal site would be in a suitable location for housing development and would not result in reliance on the private car. However, limited information has been provided regarding these developments and therefore I am unable to determine whether they are directly comparable to the appeal proposal. I have also been directed to an appeal decision for a site at Southminster Road, Tillingham whereby the

Inspector concluded that the site's location is "passably located for sustainable travel". However, the site was located significantly closer to Tillingham and therefore is not directly comparable to the appeal proposal. In any event, each case must be determined on its own merits.

11. The appellant has directed me to a planning approval for a detached dwelling on land adjacent to Pitt Cottages. Limited information has been provided in respect of this planning application, including its location, for a comparison to be made with the appeal proposal. However, I note that the site was much closer to Southminster than the appeal proposal.
12. Paragraph 105 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in decision-making. However, in this case, the overall level of reliance on the private car would be high and therefore the appeal site is not in a suitable location for housing development.
13. Consequently, the proposal would be contrary to Policies S1, S8, T1 and T2 of the LDP which, amongst other things, seek to minimise the need to travel and where travel is necessary, prioritise sustainable modes of transport and improve access for all in the community; and development proposals should provide safe and direct walking and cycling routes to nearby services, facilities, and public transport where appropriate. It would also conflict with paragraph 105 of the National Planning Policy Framework ('the Framework') that requires the planning system to actively manage patterns of growth to support opportunities to promote walking, cycling and public transport use.
14. While the first reason for refusal within the Council's decision notice also considers the proposal to conflict with LDP Policy T1, I note that this policy seeks to deliver a more sustainable transport network for the district and is therefore not of direct relevance to the proposed development.

Character and Appearance

15. Dengie encompasses a small section of Manor Road and Keelings Road. The built form of the village is small and sporadic, interspersed with fields and large gardens, with some buildings (particularly along the eastern side of Manor Road) highly screened by vegetation and mature trees. A cluster of buildings surround St James Church to the north of Keelings Road and to the east of Manor Road, including dwellings set within large plots, and their associated outbuildings including those of an agricultural/equestrian appearance. This cluster of buildings is highly screened and is separated from the single storey village hall and a highly screened dwelling to the north by the appeal site.
16. Along the western side of Manor Road are a pair of two-storey semi-detached dwellings and two bungalows that are set back from the road by front gardens and directly face towards the road. This group of four dwellings forms a small ribbon of development along this side of Manor Road that are flanked at either end by fields and span a similar distance as the appeal site along the opposite side of the road. The built form of the village is such that dwellings along one side of Manor Road directly face open fields on the opposite side of the road. There is no example whereby dwellings directly face one another.
17. The appeal site comprises a rectangular-shaped plot that forms the westernmost part of a relatively flat open field that bounds Manor Road to the

west with a boundary hedge. It is proposed to construct five dwellings comprising three detached bungalows and a pair of semi-detached bungalows. The dwellings would be set behind the existing hedge fronting Manor Road and would be positioned in a linear form that would utilise the existing access onto Manor Road. Three of the proposed dwellings would directly face towards Manor Road, while the dwellings on either end of the row would face inwards towards the centre of the site. The northernmost portion of the appeal site would remain open and would include an access road that would be segregated from the remainder of the site by a post and rail fence and gate.

18. The layout of the proposed development would result in a significant amount of hardstanding to the front to create the access, parking and turning areas. It would comprise a cul-de-sac which is not characteristic of the village. While the dwellings would be in a linear form and set a similar distance from Manor Road as the existing dwellings opposite the appeal site, two of the dwellings would not front towards Manor Road. Furthermore, the proposal would be sited directly opposite the four dwellings on the western side of the road. The siting and layout of the proposed dwellings would therefore not follow the existing pattern of development within the village, which would adversely affect its character and appearance.
19. The proposed dwellings would be located on an existing undeveloped field and would extend the built development along Manor Road, infilling an existing gap and creating a long continuous form of development that is not characteristic of the sporadic character of the village. The extension of built development into this gap and the introduction of domestic paraphernalia, would result in an urbanising effect that would erode the open and spacious qualities of the gap and be detrimental to the character and appearance of the surrounding area.
20. I recognise that the existing hedge would be retained along the boundary with Manor Road and that the proposed dwellings would be single storey in height. However, the viewpoints contained within the Landscape and Visual Appraisal, November 2020¹ (LVA) together with my own observations during my site visit, indicate that the proposal would be visible above the height of the existing hedge, through gaps in the hedge, and particularly through the access when travelling in a southerly direction along Manor Road (Viewpoints 1 and 2). A PRoW traverses the land to the rear of the appeal site and due to limited vegetation and the relatively flat nature of the intervening land, the proposed development would be highly visible from the PRoW (Viewpoints 11-13). Furthermore, there would be glimpses of the proposed development when travelling along Keelings Road.
21. The proposal would be seen against a backdrop of the existing dwellings on the opposite side of Manor Road when viewed from the PRoW and Keelings Road. However, it would be highly prominent when viewed from Manor Road, where it would enclose the character of the road by introducing development along both sides and would be visually intrusive. The appellant considers that the proposal could be screened by a comprehensive landscaping scheme. However, such planting would take a significant time to mature to a size and density to achieve this objective and notwithstanding this, screening should not be used to hide an otherwise unacceptable form of development.

¹ Landscape and Visual Appraisal, Land East of Manor Road, Dengie, Southminster, Guarda Landscape, November 2020, Ref: 20-65-GUA-DOC-L-001

22. I have considered the appellant's LVA. However, it contains limited information regarding the impact of the proposed development on the surrounding area without the proposed landscaping scheme in place and for the reasons detailed above, I disagree with its findings.
23. In reference to the second main issue, the proposed development would adversely affect the character and appearance of the surrounding area. It would therefore conflict with Policies S8, H4 and D1 of the LDP which, amongst other things seek to, respect and enhance the character and local context and make a positive contribution in terms of landscape setting, and grant planning permission for development outside of defined settlement boundaries where the intrinsic character and beauty of the countryside is not adversely impacted upon. It would also conflict with the Framework which seeks to achieve well designed places that are sympathetic to local character, including the surrounding built environment and landscape setting.

Other Matters and Planning Balance

24. The Council has stated that it is unable to demonstrate a five-year housing land supply of deliverable housing sites. Therefore, the relevant policies for the supply of housing cannot be considered up to date and paragraph 11(d) of the Framework is engaged which states, "where the policies which are the most important for determining the application are out-of-date, granting planning permission unless (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework as a whole".
25. The provision of five additional dwellings weighs in favour of the proposal and would make a contribution, albeit small, to the Government's objective of significantly boosting the supply of new homes. It is also recognised that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out quickly. There would be some benefit from providing three 2-bedroom dwellings and two three-bedroom dwellings, as the Council has indicated they would meet a specific local need. There would also be economic benefits during the construction phase through employment and the purchasing of materials, however, these would be short-term and there is no mechanism to ensure that they would be locally sourced. Future occupants could provide custom for existing bus services, and other services and facilities in the surrounding area, and could create additional Council Tax and New Homes Bonus Payments for the Council, which would provide some economic benefits. I accept the provision of five dwellings would provide some support for the vitality of the rural community, however, this would be reduced due to the limited services and facilities in the village and the access constraints of the site in relation to Tillingham, Southminster and employment opportunities. These benefits carry moderate weight in favour of the scheme.
26. The landscape features and ecological enhancements are proposed to screen the proposal from views and to achieve biodiversity net gain. Meeting the latest adopted standards for water and energy efficiency and accessibility is a requirement for all new housing. These matters would therefore be neutral factors, as well as the lack of objection from statutory consultees.
27. I have no mechanism before to ensure that future occupiers would be from elsewhere in the district, or that the occupation of the proposed dwellings

would release existing family housing to new occupiers. It is unclear from the information before me how the proposal would maintain and improve the health and wellbeing of residents. While reference is made to the creation of public open space to the north of the appeal site, this area would be traversed by an access into the remainder of the field beyond and would be segregated from the remainder of the site by a post and rail fence and gated access. Also, I have no method before me to ensure that the land would be publicly available. The re-routing of two bus services has already taken place and therefore was not dependent on the proposed development. I therefore attach limited weight to these matters.

28. Against the benefits is the harm that would be caused to the character and appearance of the surrounding area and the appeal site not being in a suitable location for housing development, with particular regard to the reliance on the private car. This would be contrary to the design, local distinctiveness and sustainable transport sections of the Framework, matters which I give substantial weight.
29. Consequently, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole. The proposal would therefore not represent a sustainable form of development.
30. The appeal site is located within the Zone of Influence of one or more of the European designated sites (EDSs) scoped into the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The Council's third reason for refusal contained within their decision notice was in respect of an absence of a legal agreement to secure the necessary financial contribution towards the RAMS. During the appeal process, the appellant has subsequently submitted a signed unilateral undertaking in respect of this matter. While the proposal would result in a net increase of five dwellings, as I am dismissing the appeal, I do not need to consider this matter further as no significant likely effects on the EDSs would arise from my decision.
31. The Council's Local Plan Review Issues and Options Consultation Document, January 2022 (IOCD) recognises the limitations of settlement boundaries and acknowledges that this policy approach has restricted development from coming forward, resulting in a lack of available land for housing. However, Dengie has no defined settlement boundary and therefore the limitations identified by the IOCD are not of relevance to the appeal proposal.
32. The potential omission of LDP policies within the Council's decision notice has not prevented me from forming a view on the main issues.

Conclusion

33. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR