



Appeal Decision

Site visit made on 20 June 2023

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 July 2023

Appeal Ref: APP/X1545/W/22/3303355

14 Southminster Road, Tillingham, Essex CM0 7UF

- 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 outline planning permission
 - The appeal is made by Millen against Maldon District Council.
 - The application Ref 22/00514/OUT, is dated 4 April 2022.
 - The development proposed is described on the application form as 'outline planning application for the erection of 7 dwellings with the retention of the existing dwelling, all matters reserved other than access'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 7 dwellings with the retention of the existing dwelling at 14 Southminster Road, Tillingham, Essex CM0 7UF in accordance with the terms of the application, Ref 22/00514/OUT, dated 4 April 2022, subject to the 15 conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Millen against Maldon District Council. This application is the subject of a separate decision.

Preliminary Matters

3. It has been confirmed that the name of the appellant is Millen as stated on the application form and not Millen Homes Ltd as stated on the appeal form.
4. The original planning application was made in outline. The description of development on the application form refers to all matters reserved other than access. However, the form also indicates that approval is sought for all matters other than landscaping. From the rest of the appeal documentation before me, including the officer's report and the appeal form, it is evident that only matters of landscaping are reserved. I have proceeded on that basis.
5. The appeal was made based on the Council's failure to determine the application within the prescribed period. The officer's report dated 18 July 2022 sets out three putative reasons for refusal, although no decision notice was issued as the appellant lodged the appeal on the same day.
6. The second reason for refusal relates to highway safety. At the application stage, the local highway authority (LHA) objected to the lack of sufficient information and adequate visibility splays. However, this was based on the assumption that the speed limit along this stretch of Southminster Road was 60mph. It has since been confirmed that the speed limit is 40mph and that the

LHA has found the proposed visibility splays to be acceptable. Consequently, the Council considers that the second reason for refusal falls away.

7. The third reason for refusal relates to the absence of a completed Section 106 (S106) agreement to address potential effects on European designated nature conservation sites. A completed S106 agreement in the form of a unilateral undertaking dated 1 November 2022 has been submitted by the appellant. The Council has confirmed that the S106 agreement is acceptable and has indicated that it no longer objects to this matter. I have had regard to the S106 agreement in my decision.

Main Issues

8. The main issues are the effects of the proposed development on the character and appearance of the area and European designated nature conservation sites.

Reasons

Character and appearance

9. The appeal site is located on the north side of Southminster Road on the edge of Tillingham. It comprises a detached bungalow and outbuildings with a large rear garden. To the north and east is a modern housing development known as Southfields while to the west are a pair of semi-detached properties. There is open countryside further to west/north-west and also to the south.
10. The rear garden has many trees and shrubs both within and along the boundaries which greatly screen the adjoining countryside. In addition, the houses at Southfields are visible from the garden above boundary fencing. Therefore, the character and appearance of the site is more domestic than rural and has an edge of settlement feel.
11. While the bungalow and many other existing properties have gable end roofs, there are examples of hipped roofs within Southfields as well as front gable features. Moreover, some of the Southfields properties have larger windows on the first floor than ground floor on the front elevation while there is variation in porch designs. There is a mixture of materials in the adjoining area from red brick, render and different colours of weatherboarding for external walls to slate, clay and concrete tiles for roofs.
12. The proposed development would provide five dwellings with gable end roofs (including the retained bungalow) and three with hipped roofs. This would be consistent with the mix of roof forms in the adjoining area. All the dwellings apart from the bungalow would have larger first floor windows than ground floor windows on the front elevation, but this again accord with houses at Southfields.
13. The dwelling on plot 8 would have blue painted weatherboarding rather than the cream colour proposed for the other new dwellings. The front gable feature and porch design would be different to the other dwellings. However, the dwelling would be positioned at the top of the access drive to provide a distinctive end point when turning off the main road. The dwelling would reflect the variation in architectural design in the adjoining area and provide visual interest. It would also be possible to control details of materials via condition.

14. The proposed development would have broad architectural consistency with sufficient variation of design to ensure an attractive character and appearance. The development would be largely screened from the road by existing vegetation and buildings. It would result in the loss of the domestic rear garden character but would reflect the edge of settlement feel in a similar fashion to the adjoining housing at Southfields. It would have a similar density to the housing at Southfields and can incorporate sufficient landscaping to avoid an overly urban form of development.
15. Concluding on this main issue, the proposed development would have an acceptable effect on the character and appearance of the area. Therefore, it would accord with Policies S1, S8, D1 and H4 of the Maldon District Local Development Plan 2017 (LDP). Amongst other things, these policies seek high quality design and development that respects and enhances character and local context in terms of architectural styles, materials and detailed features while protecting the character of the countryside. The development would also accord with section 12 of the National Planning Policy Framework (NPPF) which seeks to achieve well-designed places.

Designated European nature conservation sites

16. The site is within the zone of influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS). There are several protected European habitats sites along the Essex coast. Potential adverse effects on these protected sites can be caused by recreational disturbance arising from visitors to the coast. The proposed dwellings could result in likely significant effects on the integrity of these protected sites in combination with other plans and projects. As such, it is necessary to carry out an appropriate assessment (AA) as part of my decision.
17. As part of the AA, it is necessary to consider whether any potential effects could be addressed through specific measures. The RAMS seeks financial contributions from applicable development schemes towards a package of mitigation measures intended to alleviate recreational pressures on protected sites. Natural England is supportive of this strategy and has been consulted on this proposal.
18. The completed S106 agreement dated 1 November 2022 would contribute £137.71 per dwelling towards the cost of the RAMS. This agreement would accord with LDP Policies S1, D1, N1 and N2 which, amongst other things, require development to conserve and enhance the natural environment, protect areas of significant biodiversity interest, and improve the condition of international designations. The contribution would meet the three tests for obligations set out in NPPF paragraph 57 and regulation 122 of the CIL Regulations 2010. Therefore, I can take the agreement into account as part of my decision and as a result, the proposed development would not result in a significant effect on designated European nature conservation sites.

Other Matters

19. The proposed development would alter views from some of the properties along the western side of Southfields as well as from 16 Southminster Road. However, the new dwellings would be sited at a reasonable distance from any existing boundary or window to avoid unacceptable effects on the living conditions of neighbouring occupiers in terms of privacy, outlook, and light.

There would be some increase in noise and disturbance from the occupation of the new dwellings, but this is typical of any residential development and excessive levels can be controlled through other regulations.

20. I have limited information on the extent of wildlife within the site, although it is proposed to retain several trees and hedgerows which would help to maintain habitats. Effects on the Dengie nature reserve would be addressed by the S106 agreement. The village conservation area is located further into Tillingham and the proposal would have no adverse effect on this heritage asset nor detract from the tourism potential of the area.
21. Adequate visibility splays can be achieved to ensure a safe and suitable access onto Southminster Road. I have little information on traffic levels, but seven additional dwellings are unlikely to greatly affect congestion levels locally. Concerns regarding flood risk can be addressed by a condition requiring suitable drainage measures that help to reduce the run-off of surface water.
22. Tillingham has a range of services and facilities including a shop, post office, primary school and medical centre that makes it a more sustainable location than some rural settlements. The demand response transport service (DaRT) provides a reasonable alternative option to the private car. While it may be the case that there is limited capacity in terms of education, health and sewage/water infrastructure, the effect of seven additional dwellings is unlikely to be significant.
23. Even if there are unoccupied properties locally and plans to build more houses elsewhere, the Council accepts that it cannot demonstrate a five-year supply of deliverable housing. Therefore, the net addition of seven dwellings represents a benefit rather than an overprovision of housing. There is no evidence that the bungalow would be demolished for a new dwelling, but that would require separate planning permission and would need to be assessed on its own merits. Effects on property values are not a planning matter.

Conditions

24. Conditions 1 to 3 are necessary to clarify the reserved matters still to be approved as well as set out the timeframe for applications to be submitted and the development implemented. Condition 1 contains detailed requirements on soft landscaping to ensure a satisfactory appearance. It is necessary to specify the approved plans and reports in Conditions 4 and 5 for clarity and compliance.
25. Conditions 6 and 7 are necessary to safeguard the archaeological interest of the site. Condition 8 is necessary to ensure the construction phase has an acceptable effect on living conditions and environmental matters. Conditions 6 to 8 are pre-commencement conditions as they concern matters that need to be agreed and/or provided before works begin on site.
26. Conditions 9 and 10 are necessary to ensure adequate surface and foul water drainage of the site. Conditions 11 and 12 are necessary in the interests of highway safety, while Condition 13 is necessary to encourage sustainable modes of travel. Conditions 14 and 15 are necessary to ensure that adequate cycle and vehicle parking areas are provided.
27. The Council has suggested various informatives relating to refuse and recycling, land contamination, small sewage treatment plants, alterations to an

ordinary watercourse, and the timing of the submission of details. Appeal decisions do not impose informatives, but the appellant can nevertheless note the details set out by the Council.

Conclusion

28. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

Schedule of Conditions (15)

- 1) Details of the landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved. The soft landscaping details shall include:
 - (a) Details of proposed schedules of species of trees and shrubs to be planted, planting layouts with stock sizes and planting numbers/densities;
 - (b) Details of the planting scheme implementation programme, including ground protection and preparation, weed clearance, stock sizes, seeding rates, planting methods, mulching, plant protection, staking and/or other support;
 - (c) Details of the aftercare and maintenance programme

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 unless otherwise agreed in writing by the local planning authority. 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, unless the local planning authority gives its written consent to any variation.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: TR001, TR002, TR003, TR004, TR005, TR006, TR007, TR008.

- 5) The development hereby permitted shall be carried out in accordance with the Tree Survey, Arboricultural Impact Assessment and Arboricultural Method Statement by ROAVR Environmental (report no 22_5837_03_26). Supervision logs must be submitted in writing to the local planning authority to demonstrate compliance.
- 6) No development including any site clearance or groundworks of any kind shall take place within the site until an archaeological assessment by an accredited archaeological consultant to establish the archaeological significance of the site has been submitted to and approved in writing by the local planning authority. The assessment will inform the implementation of a programme of archaeological work.
- 7) No development including any site clearance or groundworks of any kind shall take place within the site until the implementation of a programme of archaeological work from an accredited archaeological contractor in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in a manner that accommodates the approved programme of archaeological work.
- 8) Prior to the commencement of the development, a construction management plan shall be submitted to and approved in writing by the local planning authority. The construction management plan must consider the following requirements:

The control of nuisances during construction works to preserve the amenity of the area and avoid nuisances to neighbours and to this effect:

- (a) no waste materials should be burnt on the site, instead being removed by licensed waste contractors;
- (b) no dust emissions should leave the boundary of the site;
- (c) consideration should be taken to restricting the duration of noisy activities and in locating them away from the periphery of the site;
- (d) hours of works: works should only be undertaken between 0730 hours and 1800 hours on weekdays; between 0800 hours and 1300 hours on Saturdays and not at any time on Sundays and Public Holidays.

If it is known or there is the likelihood that there will be the requirement to work outside of these hours or there will be periods where there will be excessive noise that will significantly impact on sensitive receptors Environmental Health at Maldon District Council must be notified prior to the works as soon as is reasonably practicable. The developer is advised to consult nearby sensitive noise premises and may be advised to apply for a Prior Consent under Section 61 of the Control of Pollution Act 1974.

Care must be taken to prevent the pollution of ground and surface waters. This will include during works and the location of any hazardous materials including fuel from vehicles and equipment.

Where any soils that are known to be contaminated are being excavated or exposed a site waste plan must be prepared in order to store, treat and dispose of the materials in accordance with the waste duty of care. It is recommended that advice is sought from the Environment Agency on this matter.

Where there is requirement for dewatering the site, the relevant consent must be sought from the Environment Agency.

Where there is a requirement to obstruct or alter watercourses a consent under section 23 of the Land Drainage Act must be obtained from Essex County Council.

- 9) No development work above ground level shall occur until a detailed Sustainable Urban Drainage Scheme as specified in the Essex Sustainable Drainage Systems Design Guide has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented prior to occupation of the development and should include and not be limited to:
- Discharge rates/location
 - Storage volumes
 - Treatment requirement
 - Detailed drainage plan
 - A written report summarising the final strategy and highlighting any minor changes to the approved strategy

Where the surface water drainage strategy proposes the use of soakaways the details of the design and the results of a series of percolation tests carried out upon the subsoil in accordance with DG 365 2016 will be required. In order to satisfy the soakaway condition the following details will be required:

Details of the area to be drained, infiltration rate (as determined by BRE Digest 365), proposed length, width and depth of soakaway, groundwater level and whether it will be rubble filled.

Where discharging to a watercourse the proposed scheme shall include details of the destination and discharge rates equivalent to "greenfield runoff" up to and including a 1 in 100 year rainfall event inclusive of climate change. This is typically achieved by installing some form of attenuation on site e.g. temporary storage. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s). If the land is designated as a brownfield site it should aim to limit run-off for a storm event that has a 100% chance of occurring each year (1 in 1 year event) OR demonstrate 50% betterment of the current rates.

It must be demonstrated that the system is an appropriate point of discharge for the site. The discharge hierarchy should be used to determine discharge location. This is particularly important when considering greenfield development which may currently discharge to a sewer but may have the capacity to discharge to a watercourse or to the ground. If not, then further information/assessment will be required to determine the suitability of the system to convey the proposed flows and volumes of water. Evidence will be required that the development will not increase risk to others. If the proposed discharge point is outside the development site then it will need to be demonstrated that the necessary permissions and or agreements to achieve connection are possible. There shall be no discharge of surface water from the development onto the highway.

Where the local planning authority accepts discharge to an adopted sewer network written confirmation will be required from the statutory undertaker that the discharge will be accepted.

Prior to first occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities / frequencies, shall be submitted to and agreed in writing by the local planning authority.

- 10) No development work above ground level shall occur until details of the foul drainage scheme to serve the development have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.
- 11) The proposed shared drive to all plots shall be constructed to a width of 5 metres for at least the first 6 metres from the back edge of highway boundary and provided with an appropriate dropped kerb crossing of the verge.
- 12) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 13) Prior to first occupation of the proposed development, the developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, approved in writing by the local planning authority in consultation with Essex County Council, to include seven one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the developer to each dwelling free of charge.
- 14) No development work above ground level shall occur until details of the number, location and design of bicycle parking facilities/powered two wheelers have been submitted to and agreed in writing by the local planning authority. The facilities shall be provided in accordance with the approved scheme before any part of the development hereby approved is occupied and retained as such thereafter.
- 15) The development hereby permitted shall not be first occupied until such time as the vehicle parking area indicated on the approved plans, including any parking spaces for the mobility impaired, has been hard surfaced, sealed and marked out in parking bays. The vehicle parking area(s) shall be retained in this form at all times. The vehicle parking area(s) shall not be used for any purpose other than the parking of vehicles that are related to the use of the approved development.