



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/22/3301991

Land adjacent Caxton Pride, Hackmans Lane, Cock Clarks CM3 6RE

- 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 planning permission
 - The appeal is made by Millen Land Group against Maldon District Council.
 - The application Ref 22/00574/FUL, is dated 27 April 2022.
 - The development proposed is installation of electric car club and 5 zero carbon dwellings.
-

Decision

1. The appeal is dismissed and planning permission for the installation of an electric car club and 5 zero carbon dwellings is refused.

Preliminary Matters

2. The address in the banner heading is usually taken from the application form, but that refers to the site being in Purleigh when it is in Cock Clarks. The address above has been amended accordingly. Additionally, it has been confirmed that the name of the appellant is Millen Land Group as stated on the application form and not Millen Homes Ltd as stated on the appeal form.
3. The application was submitted on 27 April 2022, but the Council declined to determine it as they considered it was too similar to the previous application for 5 dwellings (ref 20/01005/OUT) which was refused and dismissed at appeal on 19 January 2022 (ref APP/X1545/W/21/3269705). Consequently, the Council did not validate the application or carry out any public consultation. The decision to decline to determine was issued on 28 June 2022.
4. The appellant lodged an appeal against non-determination on 28 June 2022. The appeal was validated and interested parties have been given the opportunity to provide comments at the appeal stage which I have taken into account. While the Council maintains that the application is too similar to the previous application, there is a valid appeal that I need to determine based on the evidence before me.
5. The Council's appeal statement dated November 2022 sets out two putative reasons for refusal relating to the site's accessibility and the absence of a completed Section 106 (S106) agreement to address potential effects on European designated nature conservation sites.
6. Two completed S106 agreements as unilateral undertakings dated 1 November 2022 and 1 December 2022 have been submitted by the appellant. I have had regard to these agreements in my decision.

Main Issue

7. The main issue is whether the site represents a suitable location for the proposed development, having regard to access to services and facilities.

Reasons

8. Policy S1 of the Maldon Local Development Plan 2017 (LDP) set outs several key principles including the delivery of a sustainable level of housing growth and a wide choice of homes in the most sustainable locations. It also seeks to minimise the need to travel and where travel is necessary, prioritise sustainable modes of transport and improve access for all in the community.
9. LDP Policies T1 and T2 amongst other things seek to give priority to pedestrians, wheelchairs, cyclists and public transport over private vehicles and provide safe and direct walking and cycling routes to nearby services, facilities and public transport where appropriate. Paragraphs 104, 105 and 100 of the National Planning Policy Framework (NPPF) seek to promote sustainable modes of transport.
10. Cock Clarks is identified as a smaller village in the settlement hierarchy contained in LDP Policy S8. The appeal site is located on the east side of Hackmans Lane outside the village settlement boundary and within the countryside in policy terms. LDP Policy S8 states that planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and it meets one of several exceptions. The proposed development does not meet any of the exceptions and so there is conflict with LDP Policy S8.
11. There may be only 7 or 8 settlements higher up in the settlement hierarchy. However, the village contains very little in terms of services and facilities other than a public house and no apparent public transport provision. Other villages nearby like Purleigh and Cold Norton have some additional services and facilities, but they would require walking or cycling along unlit roads with no pavements which would not be attractive for day-to-day purposes. The town of Maldon is located to the north but there are similar issues in terms of realistic walking, cycling or public transport options.
12. The design of the proposed dwellings is intended to facilitate home working while remote access cold stores would allow for delivery of perishable items to potentially reduce the need to travel for shopping. However, future occupiers of the proposed development are still likely to be reliant on the private car to access a range of day-to-day services and facilities as there is a limit in terms of how much can be done remotely.
13. The previous Inspector reached a similar finding in January 2022 and noted the moderate environmental and social harm arising in terms of the use of natural resources and the accessibility of local services. I am not aware of any material changes relating to the accessibility of local services in terms of their location or availability. However, the appellant has sought to address the use of natural resources by proposing that the development would provide electric vehicle charging points for each property and a dedicated space for an electric community car club. The dwellings are also proposed to be zero carbon.
14. The completed S106 agreement dated 1 December 2022 contains restrictive covenants in section 4.3 that precludes any petrol or diesel vehicles from the

dwelling) (apart from delivery vehicles or vehicles temporarily visiting the dwelling). It is not clear from the wording whether the obligation runs with the land, as it appears to be a personal undertaking by the owner or occupier. However, in terms of the enforceability of the obligation, it would be difficult for the Council to monitor the different vehicle types on site, including those which are temporary. While the owners of the dwellings could report any alleged breaches, this is not a reliable form of enforcement and would not encourage positive neighbourly relationships. Therefore, I have doubts regarding the enforceability of the obligation and the effectiveness of the S106 agreement.

15. Nevertheless, even if the obligation is enforceable, or future occupiers choose to use electric vehicles regardless of any legal requirement, there would remain a reliance on the private car to access services and facilities. While electric vehicles would help with the use of natural resources, mindful of government plans to phase out combustion engine vehicles, there would still be moderate adverse social and environmental effects from the requirement to travel by car to meet day-to-day needs. This carries significant weight.
16. The proposed community car club space could be secured by condition although no wording has been proposed by the parties. A footpath extension along the front of the site would allow more village residents to walk to and from the site, although I note that there is no footpath north-west of the public house or along Birchwood Road. The appellant notes that up to 20 cars can be removed from the road for every single car club space.
17. However, Cock Clarks is a small village and the likelihood of there being sufficient demand for a car club seems low even with advertising via a phone app or on the village notice board. Car club spaces can be very effective in urban areas, but I have little evidence that enough people in the village would be willing to use the proposed provision. Anyone from beyond the village wanting to use the car club would likely need to travel by car first, which would negate any benefits. Therefore, I consider little weight can be afforded to the benefit of the car club space.
18. In terms of other benefits, there is no five-year housing land supply within the district. The appellant notes this has dropped to below three years' worth since the previous appeal decision. The proposed housing would help to enhance and maintain the vitality of rural communities, but given the scale of the development, the delivery of five dwellings would represent only a modest benefit. The development would also provide modest economic benefits from the construction and occupation phase of the development.
19. The dwellings would be energy efficient and contain various sustainability measures to meet zero carbon standards. All these measures are laudable and would help to address the use of natural resources. There would be biodiversity enhancements through an increase range of planting and habitat creation. Based on the scale of the development, these environmental benefits can be afforded modest weight.
20. While the site might be physically and functionally part of the village, it has not been demonstrated that the land is vacant other than being a field. Therefore, I give modest weight to its efficient use for housing. The proposed footpath improvement along the front of the site would only benefit a limited number of residents given the size of the village and so represents a benefit of modest weight.

21. The lack of a five-year housing land supply means that NPPF paragraph 11 is engaged. This states that planning 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 NPPF taken as a whole.
22. While there are various benefits, they carry no more than modest weight either individually or collectively. The moderate adverse environmental and social effects of the proposed development with regard to the accessibility of services and facilities would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. This indicates that planning permission should not be granted in this instance.
23. In conclusion, the site would not provide a suitable location for the proposed development having regard to the accessibility of services and facilities. Therefore, the proposed development would not accord with LDP Policies S1, S8, T1 and T2 or NPPF paragraphs 104, 105 and 110 as set out above.

Other Matters

24. The site is within the zone of influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy. There are several protected European habitats sites along the Essex coast which are designed to safeguard breeding and non-breeding birds as well as coastal habitats. Potential adverse effects on these protected sites can be caused by recreational disturbance arising from visitors to the coast. The proposed additional residential dwellings could result in likely significant effects on the integrity of these protected sites in combination with other plans and projects.
25. On this basis, it would be necessary to carry out an appropriate assessment (AA) as part of my decision were I minded to allow the appeal. However, given my findings on the main issue, there is no need for me to carry out an AA as there is no prospect of planning permission being granted. Therefore, it is not necessary for me to consider this matter any further.
26. Interested parties have raised concerns regarding several other matters, but it has not been necessary to consider them in any detail due to my overall conclusion.

Conclusion

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

Tom Gilbert-Wooldridge

INSPECTOR