



Appeal Decision

Site visit made on 21 August 2023

by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/X1545/W/23/3316449

Fairview, 8 Kings Road, Southminster, Essex CM0 7EJ

- 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 John and Catherine Newcombe against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00727 dated 16 June 2022, was refused by notice dated 31 August 2022.
 - The development proposed is described as a single storey home.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey home at Fairview, 8 Kings Road, Southminster, Essex CM0 7EJ in accordance with the terms of the application, Ref FUL/MAL/22/00727 dated 16 June 2022, and the plans submitted with it and subject to the conditions set out in the attached schedule.

Procedural Matters

2. Since the submission of the appeal the National Planning Policy Framework has been superseded by the National Planning Policy Framework (2023) (the Framework). However, in relation to this appeal the aims of both sets of policies are similar. No party would be prejudiced or caused any injustice by me proceeding with the appeal in light of this change in policy.

Application for costs

3. An application for costs was made by Mr and Mrs John and Catherine Newcombe against the decision of Maldon District Council. This application is the subject of a separate decision.

Main Issue

4. Since the date of the refusal, a completed legal agreement, dated 6th February 2023, has been submitted which would secure a financial contribution to overcome the effect of the development on European designated nature conservation sites. Accordingly, the Council have withdrawn the third reason for refusal set out in the decision notice.
5. Therefore, the main issues in this appeal are (i) the effect of the development on the character and appearance of the area; and (ii) the provision of satisfactory car parking provision.

Reasons

Character and Appearance

6. The appeal site is within a predominantly residential area within the settlement of Southminster. The site is surrounded by residential properties. The host property is a chalet style property fronting Kings Road. There is an existing large outbuilding to the rear of the site, which is proposed to be demolished.
7. Kings Place adjacent the appeal site comprises a small number of detached properties located to the rear of properties facing Kings Road. Other examples of this pattern of development exists to the rear of No. 11 and 15 Kings Road.
8. The proposed development would increase the built form to the rear of the host property. Notwithstanding this the relatively low level of the proposed development would not be prominent nor incongruous to the surrounding area.
9. The proposed development does not extend the full width of the plot and whilst large would not be disproportionate in terms of plot coverage. The irregular pattern of development, varying property designs, scale and plot size contribute to the character of the area.
10. Policy H4 of the Maldon District Approved Local Development Plan 2014-2029 (2017) (the Local Plan) sets criteria relating to backland and infill development, the Council confirm that there would be no harm to the living conditions of nearby properties, the land is not of social, economic, historic or environmental significance. The proposal will not involve the loss of any important landscape, heritage features or ecological interests.
11. The proposed development would also make more effective use of the land, it is a large site, the provision of a new property would add to the overall housing supply whilst still providing adequate amenity space for the host property. I understand that since the refusal was issued the Council can now demonstrate a five year housing land supply. Notwithstanding this the confirmation of this housing land supply does not preclude development and is not to be used as a maximum allowance.
12. The Council have drawn my attention to the previous dismissed appeal¹ on the site. I note the appeal decision however I understand that appeal related to two storey dwellings in a terraced layout as opposed to the single storey development before me. Notwithstanding this each development must be considered on its individual merits, and I have reached my conclusion based on the individual merit of the appeal proposal.
13. I conclude that the proposed development would not harm the character and appearance of the area. There is no conflict with Policies D1 and H4 of the Local Plan which amongst other things seek to ensure developments respect and enhance the character and local context.
14. I also find no conflict with the Framework, which seeks to ensure good design of developments.

Car Parking

¹ APP/X1545/W/18/3216135

15. The proposal seeks to utilise the access into Kings Place to serve the proposed development. The Council do not object to this access.
16. The Maldon District Local Development Plan, Supplementary Planning Document, Vehicle Parking Standards (2018) (the SPD) confirms the minimum parking standards required for developments.
17. For a four bedroom property the SPD highlights that the minimum amount of onsite car parking provision would be three space. The proposed development would provide 2 parking spaces within the double garage and 1 external parking space within the site. The proposal complies with the requirements of the SPD.
18. I conclude that the proposed development would offer satisfactory car parking provision. There is no conflict with Policies D1 and T2 of the Local Plan which amongst other thing seeks to ensure adequate vehicle parking facilities are provided to serve the needs of the proposed development.

Other Matters

19. Concern has been raised by third parties which include the use of the access from Kings Road to Kings Place, and ownership/maintenance of the road. I note that the Highways Authority raised no objection in relation to the access of the proposed development or in terms of highways safety. I do not disagree with the Council.
20. In terms of ownership, I note that the relevant notice has been served on the owner of part of the site. Planning is concerned with land use in the public interest, the protection of purely private interests such as development on or over land outside the ownership of the appellant can be dealt with under legislation dealing with private legal rights regarding land ownership.

Conclusion and Conditions

21. For the above reasons I conclude that this appeal should be allowed.
22. I have undertaken some minor editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity. I have attached the standard time limit condition and a plans condition as this provides certainty.
23. In the interest of the living conditions of future and neighbouring occupiers conditions relating to a Construction Management Plan is considered reasonable. A condition requiring the retention of the car parking spaces in the interest of highway safety has been imposed.
24. I have also imposed conditions relating to foul and surface water drainage to ensure satisfactory drainage of the site and to minimise flood and pollution risk and contamination in the interest of the health and amenity of future occupiers of the site.
25. A condition relating to securing biodiversity net gain on the site has been attached in the interest of biodiversity.
26. The Council have suggested a condition relating to provision of a Preliminary Ecological Appraisal including bat survey prior to the demolition of the outbuilding. No substantive evidence to indicate that bats may be present in

the outbuilding has been provided. I note that the redevelopment of the appeal site would rely on the demolition of the outbuilding, which could be carried out without planning permission. Therefore, in this exceptional circumstance where the Council support a condition, there is no evidence to suggest the presence of bats, where the demolition of the outbuilding is unavoidable in terms of developing the site and where the outbuilding could be demolished without permission, I consider it reasonable to impose a planning condition requiring relevant assessments including any mitigation required to ensure that ecology on the site is maintained is imposed. However, if during the course of development bats are discovered, the protections of the Wildlife and Countryside Act would still apply notwithstanding a grant of planning permission.

C Pipe

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1222/01 Location Plan, 1222/02 Proposed Site Plan Layout Sheet 1, 1222/03 Proposed Site Plan Roof Layout Sheet 2, 1222/04 Floor Plan, 1222/05 Elevations (sheet 1), 1222/06 Elevations (sheet 2), and Design and Access Statement.
- 3) Prior to commencement of the development hereby permitted, prior to demolition of the building on the site, a Preliminary Ecological Appraisal including Bat survey of the existing structure pre-demolition along with any mitigation measures if required, shall be submitted in writing to and approved in writing by the local planning authority thereafter the development shall be carried out in accordance with the approved scheme.
- 4) Prior to construction above damp-proof course a scheme for biodiversity net gain of the site shall be submitted to and approved in writing by the local planning authority, thereafter the development shall be carried out in accordance with the approved scheme.
- 5) Notwithstanding the details submitted with this application, no development shall commence, other than that required to carry out additional necessary investigation which in this case includes demolition, site clearance, removal of underground tanks and old structures, and any construction until an investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The risk assessment shall assess the nature and extent of any contamination on the site whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include:
 - (i) a survey of extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to:
 - Human health,
 - Properly (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - Adjoining land,
 - Groundwaters and surface waters,
 - Ecological systems, and
 - Archaeological sites and ancient monuments;

- (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.
- 6) No development shall commence, other than where necessary to carry out additional investigation, until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The development hereby permitted shall not commence until the measures set out in the approved scheme have been implemented, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority may give approval for the commencement of development prior to the completion of the remedial measures when it is deemed necessary to do so in order to complete the agreed remediation scheme. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

- 7) The remediation works shall be carried out prior to commencement of the development unless where commencement is required to carry out remediation. The approved remediation scheme must be carried out in accordance with the details approved unless otherwise agreed in writing by the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced. This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

- 8) Should the existence of any contaminated ground or groundwater and/or hazardous soil gases be found that were not previously identified or not considered in a scheme agreed in writing with the Local Planning Authority, it must be reported in writing immediately and a risk assessment of the site shall be undertaken and a scheme to bring the site to a suitable condition shall be submitted to and agreed in writing with the Local Planning Authority. A "suitable condition" means one in that represents an acceptable risk to human health, the water environment, property and ecosystems and scheduled ancient monuments and cannot be determined as contaminated land under Part 2A of the Environmental Protection Act 1990 now or in the future. The work will be undertaken by a competent person in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination (CLR 11), the Essex Contaminated Land Consortium's Land Contamination Technical Guidance For Applicants and Developers and current UK best-practice guidance and policy.
- 9) Prior to the commencement of the development the applicant shall submit in writing a construction management plan to the local planning authority for approval. Within the construction management plan it must consider the following requirements:

The applicant should ensure 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.

- 10) No development works above ground level shall occur until details of the surface water drainage scheme to serve the development shall be 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.

The scheme shall ensure that for a minimum:

- 1) The development should be able to manage water on site for 1 in 100 year events plus 40% climate change allowance.
 - 2) Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1 year event) inclusive of climate change should be no higher than 10/l/s and no lower than 1/l/s. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield).
- 11) The garage and car parking space hereby approved shall be retained for use by private motor vehicles and shall not thereafter be used for any purpose other than the parking of vehicles for the development hereby approved.
- 12) No development works above ground level shall occur until details of the foul drainage scheme to serve the development shall be 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.