



Appeal Decision

Site visit made on 10 July 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/X1545/W/23/3315464

Land east of Guisnes Lodge, Chapel Road, Tolleshunt d'Arcy CM9 8TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Messrs Jack & Joseph Ramsey against the decision of Maldon District Council.
 - The application Ref OUT/MAL/22/00237, dated 2 July 2022, was refused by notice dated 15 September 2022.
 - The development proposed is residential development of up to 4 no. dwellings and associated works (all matters reserved).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application is in outline with all matters reserved. An access arrangement is identified on submitted drawing no. 1990/22/01. However, given access is reserved for later consideration, this is treated as indicative only.
3. When this appeal was submitted, the Council was unable to identify a five year housing land supply. However, the Council has recently completed a Monitoring Report confirming its view that it can now demonstrate a 6.35 year housing land supply (18 May 2023). The appellant has been given the opportunity to comment and I have determined the appeal accordingly.

Main Issues

4. The main issues are:
 - whether the site represents a suitable location for the proposed development, having regard to access to services and facilities and private car ownership;
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on protected species and priority habitat sites.

Reasons

Location

5. The appeal site comprises an area of grass land located between two detached dwellings with frontage onto Chapel Road. There are other sporadic elements of

built form to the east, but the overall group of built form is detached from the nearest settlement of Tolleshunt d'Arcy and is therefore located in open countryside. Policy S1 of the Maldon District Approved Local Development Plan 2014 – 2029 July 2017 (LDP) seeks to deliver housing growth in the most sustainable locations, minimising the need to travel and where travel is necessary, prioritising sustainable modes of transport.

6. Policy S1 also states that where relevant policies are out of date at the time of making a decision, the Council will grant permission unless material considerations indicate otherwise and that account will be taken if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the National Planning Policy Framework (the Framework) taken as a whole; or specific policies in the Framework indicate that development should be restricted.
7. Policy S8 of the LDP sets out the locational strategy and seeks to ensure that the majority of new development is located within defined settlement boundaries, the Garden Suburbs and the Strategic Allocations. Policy S8 does set out a range of exceptions where planning permission would be granted for development outside of the settlements, where the intrinsic beauty of the countryside is not adversely impacted upon. None of these exceptions listed under Policy S8 directly apply to the appeal proposal for market housing.
8. Exception m) set out under Policy S8 states that planning permission will be granted for 'other development proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance' where the intrinsic character and beauty of the countryside is not adversely impacted upon. The appellant asserts that exception m) means that the section of Policy S1 that refers to the grant of permission unless material considerations indicate otherwise where policies are out of date is engaged. I will return to this matter later in my decision.
9. I am also referred to Policy H4 of the LDP which amongst other things, supports backland and infill development, on a site by site basis taking into account local circumstances, context and the overall merit of a proposal. However, Policy H4 does not set out or guide the acceptability of locations for development but seeks to ensure the efficient and effective use of land and advocates a design led approach to developments. This policy does not in my view override the locational strategy set out under Policy S8 of the LDP.
10. The appellant asserts that the proposal would make use of land currently under-used and landlocked. I note that the site is not currently developed, however, that in itself does not mean that it is under-used. A more effective use of land should also safeguard and improve the environment in line with the requirements of paragraph 119 of the Framework. I am not convinced that the site is landlocked, given the appeal site benefits from frontage onto Chapel Road along the northern boundary.
11. Paragraphs 78 and 79 of the Framework recognise the need for planning decisions to be responsive to local circumstances in relation to rural housing and that where there are groups of smaller settlements, development in one village may support services in a village nearby. However, whilst the appeal site is located adjacent to other dwellings, it is situated in a countryside location and not within a village.

12. The appellant states that paragraph 80 of the Framework, dealing with isolated homes in the countryside, does not apply to the appeal proposal given the proximity of the site to other built form. Having regard to the Braintree case cited by the appellant I am inclined to agree. However, that does not offer positive support for the appeal proposal.
13. Policy T2 of the LDP states that development proposals should, where relevant to the development involved, provide safe and direct walking and cycling routes to nearby services, facilities and public transport where appropriate.
14. I acknowledge that paragraph 105 of the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. It may be the case that some future occupants would choose to work from home for some or all of their working week, and suitably fast and reliable broadband connections may make this possible. I accept that this could help to reduce the number of car journeys made by future occupants, although, this working arrangement cannot be controlled.
15. There would also still be a need for future occupants to access day to day services and facilities, such as schools, doctors, dentists, shops, leisure and sports. The appeal site is removed from the nearest settlements and I have not been made aware of any public transport options in close proximity to the appeal site.
16. The closest settlement to the appeal site is Tolleshunt d’Arcy, less than 1km away. This settlement is identified under Policy S8 as a smaller village which contains few or no services and facilities, with limited or no access to public transport and very limited or no employment opportunities. The appellant states that there is a primary school located in Tolleshunt d’Arcy and that a daily bus service is available but that the timings of the provision are fairly infrequent.
17. Tollesbury is the next closest settlement to the appeal site and is identified as a larger village with a limited range of services and opportunities for employment, retail and education which serves a limited local catchment and contains a lower level of access to public transport. The appellant asserts that facilities within the main village are less than 1.6km away from the appeal site, that there is good visibility along the road, sufficient width and that the road is generally lightly trafficked given its rural nature. The appellant also states that the Potters Five Lakes resort is a major local employer and is around 2km from the appeal site.
18. The appellant suggests that whilst an 800m distance to facilities is identified in Manual for Streets as being a walkable neighbourhood, other guidance¹, including some more recently published, indicates that a walking distance of up to 1.6km - 2km to some facilities would be acceptable. However, these distances are also dependent on the useability of such pedestrian routes. Those distances identified in urban areas where there are separate footpaths within built up areas would provide much more convenient walking opportunities than those in rural areas, such as the appeal site.

¹ Department for Transport Local Cycling and Walking Infrastructure Plans (2017); Institute of Highways and Transportation’s Guidelines for Providing for Journeys on Foot (2000) (now CIHT); CIHT’s Planning for Walking (2015)

19. However, regardless of the overall distance to these nearest settlements that would provide some limited services, facilities and public transport options, Chapel Road is a relatively narrow lane and Back Road is also narrow in places. Both routes are subject to the national speed limit until reaching the built up area of the respective villages. Neither have separate footpaths, nor are they lit.
20. I note that there is a Public Right of Way in close proximity to the western edge of the appeal site. However, this would mean users travelling across a number of agricultural fields to reach other roads with no separate footpath or streetlighting to enter the villages. Cycling would be a potential option to future occupants, but this is not attractive for everyone. Occupants of the proposed development, particularly the elderly and families with children, would therefore be heavily reliant upon the private car for access to basic services and facilities. Therefore, given the distances involved combined with the character and nature of the pedestrian routes, walking to services and facilities would not be a realistic option for future occupants of the proposal.
21. I note that there are other dwellings in close proximity to the appeal site, that already have the same level of accessibility to services and facilities as the proposal would. However, I do not have the full details before me as to when these other dwellings were granted planning permission and under what policy context. The agricultural buildings being converted under permitted development rights are not required under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) to demonstrate compliance with the development plan policies. In any case, I must consider this appeal on its individual merits.
22. The appeal site would not represent a suitable location for the proposed development, having regard to access to services and facilities and would require the reliance on private car ownership. The proposal would conflict with policies S1, S8 and T2 of the LDP. These policies seek, amongst other things, to deliver housing growth in the most sustainable locations, minimising the need to travel and where travel is necessary, prioritising sustainable modes of transport. The proposal would also conflict with the relevant paragraphs of the Framework in this regard.
23. Policy T1 of the LDP relates to delivering a more sustainable transport network for the District, rather than looking at the location of new developments and accessibility to services and facilities. It is therefore not directly relevant to this matter.

Character and appearance

24. The appeal site lies to the south of Chapel Road and appears as a triangular shaped grass field. Mature and well established hedgerows bound the site to the north and south. There are a number of trees along the northern boundary, within the site and located towards the western corner. The field has a verdant and unspoilt character and contributes positively to the rural landscape.
25. Adjacent to the west is Guisnes Lodge, a detached bungalow and adjacent to the east is another detached bungalow. To the south and north is open agricultural land. Also to the south are agricultural buildings which the appellant advises are being converted to three dwellings under permitted development rights. Beyond the immediate surroundings to the east there is

further built form in a more sporadic arrangement including both agricultural buildings and dwellinghouses.

26. The proposal is in outline form for up to 4 dwellings. No illustrative drawings are provided to identify how the appeal site would be sub-divided to provide 4 plots. The appellant asserts that it would appear as an infill development between the two existing detached bungalows which are located to either side. It also states that the existing vegetative screening along Chapel Road could be retained, other than punctuating it to create the new access point and that there is space to provide additional planting in order to compensate for that lost.
27. However, the provision of 4 dwellings would create a significant amount of built form that would replace the existing open grass field. Along with any dwellings provided, there is likely to be ancillary outbuildings, hard surfacing, garden landscaping and associated domestic paraphernalia. Taken as a whole the development would urbanise the site and erode the rural character significantly. The more spacious and sporadic nature of development in the immediate surroundings would be lost along this section of Chapel Road.
28. I consider that the existing boundary vegetation would, if maintained, screen the site to a certain extent. However, it is likely that filtered views of the site from Chapel Road would be possible above and between the existing vegetation, as well as through the newly created access point.
29. I am referred to the fact that the agricultural buildings to the south are being converted into three dwellings under permitted development rights and that this provides a built form context for the appeal site in terms of its character and appearance. Be that as it may, these new residential units are a conversion scheme and make use of agricultural buildings which are an existing built form feature within the rural landscape. The conversion schemes are also set back a significant distance from Chapel Road and I could only gain a glimpsed view of them during my site visit, through a small gap in the hedgerow along the northern boundary of the appeal site. They are therefore in a significantly less prominent location than the appeal site which adjoins Chapel Road along the northern boundary.
30. I therefore find that the proposal would be harmful to the character and appearance of the area. It would conflict with policies S1, S8, D1 and H4 of the LDP. These policies seek, amongst other things, to maintain the rural character of the district, to ensure the intrinsic character and beauty of the countryside is not adversely impacted upon and to ensure that developments contribute to and enhance local distinctiveness. The proposal would also conflict with the relevant paragraphs of the Framework in this regard.

Protected species and priority habitat sites

31. Policy N2 of the LDP states that if any protected species and/or priority habitats/species or significant local wildlife are found on site, or their habitat may be affected by the proposed development, the proposal must make provision to mitigate any negative biodiversity impacts it may create. The appellant identifies that there is likely to be a net gain to biodiversity as a result of the development through improved planting and other construction measures. I recognise that the landscaping details required as part of the reserved matters could provide a benefit in terms of habitat.

32. The appellant submitted a Preliminary Ecological Appraisal (PEA), a Reptile Survey Report and a provisional Great Crested Newt District Level Licensing Impact Assessment and Conservation Payment Certificate with the planning application. A range of necessary mitigation and enhancement measures were identified through these reports. In addition, the PEA found that if proposed works incorporate trees with moderate bat roosting potential on site, then further bat surveys would be required prior to work commencing, to assess the potential use by bats. The appellant has confirmed that the trees would be retained on site and therefore there is no longer a requirement for additional bat surveys to be carried out.
33. However, Circular 06/2005² states that the presence of protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
34. I acknowledge that the application is outline and therefore a tree survey identifying the location of the trees has not been submitted and that further details relating to landscaping and layout would be dealt with at the reserved matters stage. At least some of the trees identified in Figure 3 of the PEA are close to the proposed indicative access point. Without more detailed information clearly identifying the trees that would be retained I cannot be certain that a condition would be enforceable in this regard.
35. Policy N2 also states that developers will be required to provide 'like for like' replacement, relocation and/or compensation for the loss of habitats and be able to demonstrate that such measures are at least of an equal value to the loss on a site by site basis. The PEA identifies that the appeal site comprises Traditional Orchard Priority Habitat and the Council also confirm any hedgerow lost through the creation of the proposed access would also require compensatory replacement planting.
36. The appellant has identified that the compensatory habitat would be provided in an off site location and has drawn my attention to drawing no. DWG 002 which identifies the appeal site with a red line boundary and other land adjacent under the control of the appellant in blue. The appellant states that the area of land identified by the blue boundary does not form part of any priority habitat. This area of neighbouring land is a substantial area which could accommodate the amount of compensatory habitat that is required by Policy N2. I therefore consider that subject to a condition requiring a scheme to be provided, this element could be appropriately dealt with should the appeal be allowed.
37. Whilst I find that the compensatory habitat could be adequately resolved by planning condition, the potential harm to protected species cannot be left as a matter to deal with at reserved matters stage or by condition. I find that there is insufficient evidence to demonstrate that the proposal would not be harmful to protected species. It would conflict with policies S1, S8, D1 and N2 of the

² Circular 06/2005: Biodiversity and Geological conservation - Statutory obligations and their impact within the planning system

LDP. These policies seek, amongst other things, to protect and increase local biodiversity and ecological value and to make sure all development seeks to deliver net biodiversity and geodiversity gain where possible. The proposal would also conflict with the relevant paragraphs of the Framework in this regard.

Other Matters

38. The appellant states that there would be no effect on the living conditions of occupiers of neighbouring properties and that it is envisaged that the proposed dwellings would meet the Nationally Described Space Standards. It also states that the site is unlikely to be contaminated, is at low risk of flooding, that it is not within or near to heritage asset, landscape or environmental designations, it is not subject to any land use constraints and that it is not within an Air Quality Management Area. Even if I were to agree, a lack of harm in these respects would be a neutral consideration.

Planning Balance

39. At the time the planning application was determined the Council was unable to demonstrate a 5 year supply of deliverable housing land. The Council stated that it had a 3.66 year land supply at that time, whereas the appellant refers to 3.26 years in their Planning Statement and 3.66 years in its Statement of Case.
40. I am referred by the appellant to a previous appeal decision³ within the district which considered that there was a shortfall in housing land supply and that the position was deteriorating at that time in March 2022. That case was materially different to the appeal proposal before me given it was a proposal for 232 dwellings and a multi-use community building along with associated works and the Inspector noted that the appeal site had an urban edge character. I am also directed by the appellant to the case of *Hallam Land v SSCLG* [2018] EWCA Civ 1808 which identified that the extent of a shortfall in housing land supply can be a material consideration and that it is a matter of planning judgement.
41. As stated above however, since the appeal was submitted, the Council now states that it has a 6.35 year housing land supply. The appellant disputes this change in the Council's housing land supply position and identifies that the level of evidence required to demonstrate a housing land supply position as set out in a previous appeal decision⁴ elsewhere has not been provided by the Council.
42. A Monitoring Report has been provided by the Council which demonstrates how the housing land supply calculation has been arrived at. However, Appendix A that should accompany the report which details all of the sites assessed by the Council is not provided. There is therefore insufficient evidence before me for me to take a firm view on whether there is or is not a 6.35 year housing land supply currently. On that basis, I must make an assessment on the worst case scenario, which would be that the Council does not have a 5 year housing land supply.
43. Paragraph 11 (d) of the Framework indicates that in such circumstances, permission should be granted unless any adverse impacts of doing so would

³ APP/X1545/W/21/3283478

⁴ APP/Q3115/W/20/3265861

significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I acknowledge the reference to court cases⁵ provided by the appellant regarding the application of this 'tilted balance' assessment.

44. If there is not a 5 year housing land supply in place, this means that the development plan policies which are most important for determining the application would be deemed to be out of date. Policy S8 does limit the delivery of housing, by focussing most development within defined settlement boundaries, the Garden Suburbs and the Strategic Allocations. However, it does not preclude all forms of development outside these boundaries. The focus on not adversely impacting the intrinsic character and beauty of the countryside relates to the similar requirement of paragraph 174 b) of the Framework. Therefore, I give the conflict with Policy S8 moderate weight.
45. The relevant development plan policies in relation to protecting the character and appearance of the area and avoiding harm to protected species, are consistent with the similar requirements set out in the Framework. I therefore attribute significant weight to the harm to the character and appearance of the area as well as the lack of information that would ensure that protected species would be adequately safeguarded. The proposal would therefore not accord with the development plan when considered as a whole.
46. The proposal would increase the supply of housing on a small site which could be built out relatively quickly. This is a material consideration of significant weight. However, the benefits of delivering four dwellings would be modest and they would be lessened by the site's relatively poor access to services and facilities. The proposal would provide a limited amount of short term employment through the construction of the development and some further modest benefits would be provided through future occupants spending in the local area. Future occupants may also benefit the nearby local communities from a social perspective also. Given the scale of the proposal I give this more limited weight. I have also taken into account that landscaping could result in benefits to biodiversity which I give moderate weight.
47. However, the proposal would result in significant harm to the rural character and appearance of the area and would result in the likelihood of a dependency on the use of the private car for access to services and facilities. Insufficient evidence is also provided to ensure that protected species would be adequately safeguarded. As such the proposal would be contrary to the aims of the Framework to recognise the intrinsic character and beauty of the countryside, to minimise the need to travel, support the transition to a low carbon future and protect and enhance biodiversity.
48. Given the significant harm that I have identified, I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a result, the proposed development does not benefit from the presumption in favour of sustainable development, as articulated in paragraph 11 d) of the Framework. It would also therefore not accord with the

⁵ *Cheshire East vs SSCLG* [2016] EWHC 571 (Admin); *East Staffordshire BC v SSCLG* [2017] EWCA Civ 893; *Suffolk Coastal DC v Hopkin Homes & SSCLG and Richborough Estates v Cheshire East BC & SSCLG* [2016] EWCA Civ 168

requirements of Policy S1 of the LDP which requires a similar balancing exercise to take place where relevant policies are considered to be out of date.

Blackwater Estuary Ramsar and SPA

49. The appeal site is located within the Zone of Influence of the Blackwater Estuary Ramsar and Special Protection Area European Sites. European Sites are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). Natural England was consulted on the planning application and confirmed that without mitigation, new residential development in this area and of this scale is likely to have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure when considered in combination with other plans and projects.
50. The appellant and Council have both referred to a s106 obligation/undertaking submitted with the planning application in relation to a mitigation payment required by the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). I have not been provided with a copy of this document.
51. If I had been minded to allow the appeal, it would have been necessary for me to complete an appropriate assessment under the requirements of the Habitat Regulations. I would have had to request further information on this matter from both parties. However, I have already identified harm in relation to the main issues set out above and an appropriate assessment would not alter the outcome of the appeal. On that basis, there is no need to examine this matter further for the purposes of making my decision.

Conclusion

52. For the above reasons, having had regard to the development plan as a whole, along with all other material considerations, including the provisions of the Framework, I conclude that the appeal should be dismissed.

G Dring

INSPECTOR