
Appeal Decision

Site visit made on 14 September 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2023

Appeal Ref: APP/X1545/W/22/3313237

Land Adjacent Ivydene, Scalby Road, Southminster, Essex CM0 7BP

- 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 & Mrs Jamie Kowalczyk against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00579, dated 1 May 2022, was refused by notice dated 16 August 2022.
 - The development proposed is described as 'construction of new detached single storey 4 bedroom bungalow with detached 2 bay garage with access driveway and parking/turning space together with new boundary fencing, external works and landscaping for private residential use'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Ecological evidence was submitted with the appeal in the form of an Ecological Walkover Report by James Blake Associates, dated October 2022. A Unilateral Undertaking (UU) dated 8 August 2023 has been provided in relation to mitigation of likely significant effects on Habitats Sites.
3. The Council has had the opportunity to comment on this additional evidence and I am satisfied that there would be no prejudice to any interested parties as a result of its consideration during the appeal process. I have therefore had regard to both the UU and the Ecological Walkover Report when considering the appeal.

Main Issues

4. The Council has confirmed that the Ecological Walkover Report satisfactorily addresses the second reason for refusal, subject to the imposition of conditions. The Council has further confirmed its view that the UU submitted in response to the third reason for refusal is satisfactory.
5. Against that background, the main issues are:
 - whether the proposed development would provide a suitable location for housing, having regard to the Council's spatial strategy and accessibility to services and facilities, and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Suitability of Location

6. The appeal site is located outside any defined settlement boundary, in an area which is treated as countryside for purposes of the development plan. Policy S8 of the Maldon Local Plan¹ (MLP) lists types of development which may be permitted outside settlement boundaries, provided the intrinsic character and beauty of the countryside is not adversely affected. This includes some specific types of residential development, including re-use of an existing building in some circumstances. However, the proposed development is a new dwelling and does not involve conversion of the existing stable block. It would also not fall within any of the other categories of development listed in Policy S8, based on the evidence before me.
7. Policy S1 of the MLP sets out key principles for decision making, including minimising the need to travel and prioritising sustainable modes of transport where travel is necessary. Policy T2 similarly requires that development proposals should provide safe and direct walking and cycling routes to nearby services, facilities and public transport.
8. The National Planning Policy Framework (the Framework) directs significant development towards locations where the need to travel can be limited, while recognising that opportunities to maximise sustainable travel solutions will vary between urban and rural areas. However, it allows in principle for some housing in rural areas where it would enhance or maintain the vitality of rural communities.
9. Scalby Road is one of several parallel narrow lanes off Old Heath Road. Land along each lane is laid out in plots, some of which contain permanent built dwellings or mobile homes, although these are heavily interspersed with parcels of open land and woodland. The existing dwellings are more concentrated than elsewhere in the surrounding countryside and form an identifiable, but small and very loose knit rural community. However, there are no apparent local services or other clear focal point at Old Heath Road. As such, although the proposed dwelling would not be isolated when considered in relation to this small rural community, there is little evidence that it would have any meaningful role in enhancing or maintaining its vitality, beyond the small increase in number of residents.
10. The closest settlement of Southminster is defined in the MLP as a larger village, indicating that its limited range of services serve a local catchment with lower level of access to public transport. The site is also a relatively short travel distance by road from Burnham-on-Crouch; a main settlement which provides a wider range of services. Given its location, the occupiers of the proposed dwelling would be likely to make use of services in both these nearby settlements. However, since only a single dwelling is proposed, any associated contribution to their overall vitality would be very limited.
11. Both Southminster and Burnham-on-Crouch provide access to rail services and can be reached by bus, using the bus stop near the end of Old Heath Road. While this is within a manageable walking distance of the site, the intervening lanes lack pavements or street lighting. Onward travel into Southminster and

¹ Maldon District Approved Local Development Plan 2014-2029, adopted July 2017

Burnham-on-Crouch is along a classified road. There are some stretches of pavement, but these are narrow and overgrown in places. As such, there are a number of deterrents to travel on foot, either to the bus stop or beyond that point. The lack of dedicated cycle facilities along the classified road is likely to deter all but the most confident cyclist.

12. The public footpath at the end of Scalby Road provides a pedestrian route to the edge of Southminster, on an unsurfaced path across open fields. While I accept that this may be a viable walking route for some residents, it is unlikely to be an attractive option in the winter months or in the dark. It would not provide a good standard of accessibility for all potential residents such as those with low mobility, accompanying small children or carrying shopping. On that basis, I have given the existence of this potential walking route limited weight.
13. Given the above, future occupiers of the proposed dwelling are likely to travel mostly by car. The existing equestrian use could also generate some car journeys to and from the site, however the number of trips associated with the modest three bay stable is unlikely to be comparable with those generated by a four bedroom family dwelling. Furthermore, the stable is currently shuttered and not in use. I have accordingly given this factor limited weight.
14. I accept that paragraph 105 of the Framework states, amongst other things, that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Arguably, the lack of options available to the appeal site in terms of access to means of transport other than the private car is reflective of its rural location. However, although the Framework recognises the challenges rural areas face, it should not be used as a justification for the siting of development in locations that are not well served by sustainable transport options.
15. For the above reasons, I conclude that the proposed development would not provide a suitable location for housing, having regard to the Council's spatial strategy and accessibility to services and facilities. For that reason, it would conflict with Policies S1, S8 and T2 of the MLP which, amongst other things, direct development towards locations within settlement boundaries for reasons including minimising the need to travel and facilitating travel to local services by walking and cycling.
16. The proposal would also be inconsistent with provisions of the Framework which direct development towards locations which limit the need to travel and housing in rural areas towards locations which enhance or maintain the vitality of rural communities.

Character and Appearance

17. As well as those containing dwellings, the plots along Scalby Road and the parallel lanes include small scale agricultural or equestrian buildings, paddocks, parcels of woodland and other areas of open land. To that extent, this former plotland area is consistent with the characteristics of the surrounding countryside, in which scattered roadside dwellings are interspersed with open fields and woodland. While there is a higher concentration of residential dwellings at Old Heath Road, the area around the appeal site nevertheless retains a distinctively rural character.

18. The appeal site is adjacent to an existing bungalow on one side, with a small parcel of woodland to the other side and an apparently vacant and overgrown plot opposite. Apart from the small existing stable building, the rest of the land is open, containing areas of grass and loose hardstanding. There are other dwellings nearby, including at the rear, but the site is not surrounded by buildings. In its current use it is consistent with the existing pattern of sporadic built development interspersed with open land and modest rural buildings.
19. Compared to the scale of the existing stable building, the proposed four bedroom dwelling and garage would significantly increase the amount of built development. The site would have a more urbanised appearance as a result of the increased built development, together with more formal garden landscaping and any associated domestic paraphernalia. Notwithstanding the presence of other dwellings along Scalby Road, this would materially undermine the area's rural character.
20. The proposed design is reasonably consistent with the varied, mostly single storey, dwellings in the vicinity. However, this would not, in itself, adequately mitigate the harm to the rural character of the area as a result of further creeping urbanisation.
21. For the above reasons, I conclude that the proposal would have a harmful effect on the character and appearance of the area. It would conflict with relevant requirements in Policies D1, H4, S1 and S8 of the MLP. These policies, amongst other things, require that development making more intensive use of land respects the existing character of the surrounding area, that the rural character of the District is maintained and the intrinsic character of the countryside is protected.
22. In the context of the development plan's focus on protecting the rural character of the District, the proposal would also be inconsistent with provisions of the Framework, notably paragraph 124 which states that, where more intensive use of land is proposed, account should be taken of the desirability of maintaining an area's prevailing character and setting and paragraph 130 which states that development should be sympathetic to local character including the surrounding built environment and landscape setting.

Other Matters

23. There are several scattered dwellings in the Old Heath Road area and it is evident from the details provided that their planning histories vary. Some appear to pre-date current planning records. Several others are replacement or extended dwellings which did not involve the introduction of a new residential use. This includes the recent approval of a replacement dwelling at Mayhaven.
24. A previous appeal decision² relating to proposed erection of two dwellings at the appeal site is of some age, pre-dating both the erection of the existing stable building and the current development plan and Framework. On that basis, this earlier appeal decision is now of very limited relevance.
25. My attention has been drawn to a 2019 appeal decision relating to stationing of caravans for residential occupation on a nearby site now known as Hawthorns³. While the Inspector in that case concluded that the location provided an

² Appeal ref APP/X1545/A/04/1164134

³ Appeal ref APP/X1545/W/18/3215950

acceptable standard of accessibility, the Council has highlighted that those conclusions were based on criteria specifically applicable to the selection of sites for gypsy and traveller accommodation and not to other forms of residential development. On that basis, the Inspector's conclusions are not directly applicable to the current proposal.

26. With regard to the recent appeal decision at Chestnuts⁴, the Inspector in that case also found that there would be harm arising from the site's location in relation to local services. He also described that site as having a somewhat domesticated character as a result of its previous use as a leisure plot and the degree of enclosure by existing dwellings. The proposal before me lacks a similar degree of existing domestication or enclosure and therefore the factors which led to the Inspector's decision to allow that appeal were materially different.
27. I have noted examples given of other rural sites where the Council has permitted or refused the erection of new dwellings. However, there is limited evidence before me as to the details of these proposals or their relationship with nearby settlements or transport options. The circumstances surrounding individual development proposals are rarely identical and it is a well-founded principle of the planning system that each proposal should be considered on its own merits. On that basis, while I have had regard to the details provided about other developments along Old Heath Road and elsewhere, none of those cases outweighs my conclusions on the main issues as set out above.
28. The first reason for refusal acknowledged that that, at the time of determining the application, the Council lacked a five year supply of housing. The Council's statement indicates that this is no longer the case, although there is limited evidence before me of the extent to which this updated position has been scrutinised through the appeal process or otherwise. Although the appellant has had the opportunity to comment on the Council's updated housing land supply position, no further evidence has been provided.
29. The proposal would contribute one additional dwelling to the general supply of housing. However, that dwelling would be of a size which the Council indicates is a poor fit with recent evidence on objectively assessed needs for housing. Given the small scale of the proposal, any contribution to the local economy would be limited in extent. The Framework's support in paragraph 69 for development of small sites clearly refers to the benefits of using 'suitable' sites, indicating that issues of location and character remain relevant. Taking all these factors into account, I have given the collective benefits associated with providing one additional dwelling modest weight.
30. The application indicates that the proposed development would be a self-build project to meet the needs of the appellant's growing family, and is not motivated by profit. However, no legal mechanism has been presented to secure the provision of self-build housing on the site. As such, while I have noted the potential contribution to demand for self-build plots, I cannot be certain that this would be delivered in practice and have therefore given the potential provision of self-build housing very limited weight. Furthermore, the obligations set out in the Self-Build and Custom Housebuilding Act 2015 do not alter the status of the Development Plan or diminish other aspects of the MLP

⁴ Appeal ref APP/X1545/W/22/3298485

and the Framework, such as seeking to deliver homes that realise genuine opportunities to promote walking, cycling and use of public transport.

31. Based on evidence in the Ecological Walkover Report, the proposal would be unlikely to harm or disturb protected or priority species. Some limited ecological enhancements are recommended, but the evidence does not demonstrate that there would be a quantifiable net gain in biodiversity, when other effects of the proposed development are taken into account. Therefore, although the additional ecological evidence has addressed the issues raised in the second reason for refusal, I have given any potential ecological benefits very limited weight.
32. Absence of identified harm in relation to flooding or highways considerations are neutral considerations which weigh neither for nor against the proposal.
33. Taking all the above considerations into account, the benefits provided by the proposal are modest and even if considered collectively they carry modest weight. Set against those benefits are the harm associated with the site's poor access to services and facilities by walking, cycling or public transport, the harm to the character and appearance of the area and the conflict with the spatial strategy set out in the development plan, to which I have collectively given significant weight.
34. On that basis, 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. Therefore, even if the Council's housing land supply position had not improved, the proposal would not benefit from the presumption in favour of sustainable development, as articulated in Paragraph 11 of the Framework.
35. Had I been minded to allow the appeal, it would have been necessary for me to complete an appropriate assessment in relation to likely significant effects on Habitats Sites, having regard to the proposed mitigation measures set out in the UU. However, since I am dismissing the appeal for other reasons, it is not necessary for me to address the effect on Habitats Sites in any further detail.

Conclusion

36. For the reasons given above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR