



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: 16 October 2023

Appeal Ref: APP/X1545/W/22/3309631

Oaklands, Scalby Road, Southminster

OS Grid Reference 594469: 199161

- 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 Luke Stone against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00428, dated 15 March 2022, was refused by notice dated 12 July 2022.
 - The development proposed is described as 'demolition of existing buildings and erection of a single residential dwelling'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have used the site address and Ordnance Survey grid reference as given on the application form. The site is also described in the application as 'Land south of Mayhaven, Scalby Road'.

Main Issues

3. A Unilateral Undertaking (UU) dated 1 May 2023 has been provided as part of the appeal process, in response to the second reason for refusal relating to the effect of the proposed development on Habitats Sites. Following resolution of some initial queries, the Council has confirmed the contents of the UU are satisfactory.
4. 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

5. 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

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

beauty of the countryside is not adversely affected. This includes certain specific types of residential development, however the proposed development would not fall within any of the categories listed in Policy S8, based on the evidence before me.

6. Policy S1 of the MLP sets out key principles for decision making, which include 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.
7. 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.
8. 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.
9. 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.
10. 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 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.
11. 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. I accept that this may be a viable walking route for some residents and I have noted that the appellant reports making use of it. However, 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.
12. Given the above, future occupiers of the proposed dwelling are likely to travel mostly by car. The provision of electric vehicle charging points and cycle storage on site would help to mitigate the effect on carbon emissions. However, there is no mechanism by which future occupiers could be obliged to make use of those options and they would not overcome the inherent locational constraints as outlined above.
 13. 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 limited 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.
 14. 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.
 15. 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 local communities.

Character and Appearance

16. 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 dwellings at Old Heath Road, the area around the appeal site nevertheless retains a distinctively rural character. The lanes are narrow, with informal grass verges and lack the consistently built up character which would be typical of a more urbanised or suburban environment.
17. The appeal site is a paddock with a small stable building at the rear. There is an existing dwelling to one side and others opposite. However, there are also adjacent parcels of open land to the south and to the rear, variously laid to pasture or containing pockets of woodland.
18. By virtue of the existing stable building, at least part of the site is previously developed land, as defined in Annex 2 of the Framework. However, the stable is fenced off from the grass paddock which occupies the majority of the site and has an open and undeveloped character. Even if the whole site was regarded as falling within the curtilage of the stable building, the Framework

makes clear that it should not be assumed that the whole of the curtilage of an existing building should be developed.

19. Given its relationship with adjacent parcels of open land, the site does not present itself as a gap in a built-up frontage or otherwise surrounded by dwellings. On that basis, the proposed development would not be infill, but instead would introduce new residential use into an area of land which is currently substantially open. To that extent, it is materially different from the proposal recently allowed at Chestnuts², which the Inspector described as already having a somewhat domesticated character as a result of its previous use as a leisure plot and the degree of enclosure by existing dwellings.
20. The proposed two storey dwelling would provide very generous four bedroom accommodation, including a self-contained one bedroom annexe. Compared to the modest scale of the existing stable building, it would very significantly increase the scale 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.
21. While the design and scale of nearby dwellings varies, there is no existing pattern of two storey, flat roofed buildings along Scalby Road or nearby. Chalet bungalows are prevalent, including some opposite the site, and there are some two storey dwellings. However, more traditionally proportioned pitched roofs are the norm. The sloping roofs inherently limit the overall scale and massing of most of the existing dwellings.
22. In contrast, the proposed dwelling would have imposing proportions. It would extend across almost the full width of the site and would have a foursquare appearance, with limited fenestration on the public elevations and few other alleviating details. Although the appellant suggests that the design would provide a high standard of architecture, no clear rationale has been provided for the design approach adopted or the departure from the pitched roof forms which are more typical of the area. The introduction of soft landscaping would have some beneficial effect, but would not adequately mitigate the overall intrusion of built development.
23. Although I have noted that other large family dwellings have been permitted by the Council, as replacements for smaller properties, this does not in itself justify the proposed design approach. In the absence of a convincing rationale for the introduction of such a prominent and visually contrasting building, the proposal would not deliver a development of the exceptional quality envisaged in paragraph 80 of the Framework. On the contrary, the significant scale and incongruous appearance of the dwelling would compound the harm associated with the erosion of open land and more urbanised appearance of the site.
24. 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

² Appeal Ref: APP/X1545/W/22/3298485

countryside protected, and that the design of new development respects and enhances existing character and local context.

25. 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 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 visually attractive as a result of good architecture and sympathetic to local character including the surrounding built environment and landscape setting.

Other Matters

26. My attention has been drawn to a 2019 appeal decision relating to stationing of caravans for residential occupation on a nearby site known at that time as Land adjacent to Tanglewood³. While the Inspector in that case concluded that the location provided an acceptable standard of accessibility, the decision letter makes clear that those conclusions were based on criteria specifically applicable to the selection of sites for gypsy and traveller accommodation, which were more relaxed than those applying to other forms of residential development. On that basis, the Inspector's conclusions are not applicable to the current proposal.
27. I have also noted evidence provided about other developments in the District where similar locational issues are stated to arise. It is clear from the limited information provided that the Maldon Road development was of a considerably different scale and as such the balance between the benefits of the development and any harm arising from the need to travel would have been materially different. In the Meadow Nursery case⁴, the Inspector placed some weight on the presence of an existing, occupied dwelling on the site. As such, while the distance to bus services and nearby settlements is described as being similar, there are material differences between that development and the proposal currently before me.
28. It is clear from the Highways Authority's response on the application that the site's location on a private road was a significant factor in their consideration of the proposal. As such, no clear conclusions can be drawn from their absence of objection to the accessibility of the development, notwithstanding that this point has been raised by them elsewhere.
29. 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.
30. The first reason for refusal acknowledged that that, at the time of determining the application, the Council lacked a five year supply of housing. I have been provided with no updated evidence to the contrary in connection with this appeal.

³ Appeal Ref: APP/X1545/W/18/3215950

⁴ Appeal Ref: APP/X1545/W/21/3280861

31. In those circumstances, the development plan policies which are most important for determining the application are deemed to be out of date⁵. However, as I have outlined above, in this case the relevant policies are broadly consistent with the provisions of the Framework, in terms of directing development towards locations which minimise the need to travel and achieving well-designed places. Since I have concluded that the proposal would make at best a very limited contribution to the vitality of any existing rural communities, the development plan's restriction on housing outside settlements is also not at odds with the Framework's general approach to rural housing, in this particular case.
32. That being the case, I have given significant weight to the harm to the character and appearance of the area, the site's poor access to services and facilities by walking, cycling or public transport and the conflict with the spatial strategy set out in the development plan.
33. The proposal would contribute one additional dwelling to the supply of housing, meeting the needs of the appellant's extended family. 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. 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. Given the small scale of the proposal, any contribution to the local economy would be limited in extent. Taking all these factors into account, I have given the collective benefits associated with providing one additional dwelling modest weight.
34. I have noted that the development would provide facilities to support care of an elderly relative and have had due regard to these personal circumstances, as well as to the aims encompassed by the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010. However, there is no substantive evidence that such care can only be provided in this particular location or form, or that refusal of planning permission would result in a failure to advance equality of opportunity or otherwise conflict with the aims of the PSED. I have also not been presented with any objective evidence of wider need for older person's housing in the form of residential annexes. Therefore, while I have had appropriate regard to the family situation, it carries only modest weight.
35. The application indicates that the proposed development would be a self-build dwelling to meet the appellant's family requirements. 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 and the Framework, such as seeking to deliver homes that realise genuine opportunities to promote walking, cycling and use of public transport.
36. Some limited ecological enhancements are proposed, to introduce new planting, maintain access for hedgehogs and provide nesting boxes and bee hives. However, similar ecological enhancements could readily be introduced to

⁵ NPPF paragraph 11(d), footnote 8.

the site in the absence of a new dwelling and the evidence does not clearly demonstrate that there would be a quantifiable net gain in biodiversity, when other effects of the proposed development are taken into account. I have therefore given these potential benefits very limited weight.

37. Absence of identified harm in relation to flooding or sites designated for their ecological, landscape or heritage value is a neutral consideration which weighs neither for nor against the proposal. Likewise, the fact that the site is outside the Green Belt is a neutral factor.
38. 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 to the character and appearance of the area and the harm associated with the site's poor access to services and facilities by walking, cycling or public transport, to which I have collectively given significant weight, along with the associated conflict with the development plan.
39. 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, the proposal does not benefit from the presumption in favour of sustainable development, as articulated in Paragraph 11 of the Framework.
40. 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

41. 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 it is proportionate and necessary to dismiss the appeal.

Jane Smith

INSPECTOR