



Appeal Decision

Site visit made on 21 November 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2023

Appeal Ref: APP/X1545/W/23/3325960

Land Adjacent to 56 Top Road, Tolleshunt Knights, Essex CM9 8EU

- 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 Kelly against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/01252, dated 19 December 2022, was refused by notice dated 10 March 2023.
 - The development proposed is three new dwellings and landscaped proposals.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council highlight a significant change in circumstances since the Council's decision in that their five-year housing land supply position has been updated. The Council advise that following a review of the housing land supply methodology they are able to demonstrate a deliverable five-year housing land supply of 6.35 years which I will consider as part of my decision.
3. The appellant has submitted a signed Unilateral Undertaking (UU) securing a financial contribution towards mitigating the impact of the development upon habitat sites and providing a habitat area on site for use by the local community. I have addressed this in my reasoning below.

Main Issues

4. The main issues are:
 - Whether the appeal site is an appropriate location for new housing having regard to development plan and relevant national planning policies and the accessibility to services and facilities;
 - The effect of the proposed development upon the character and appearance of the area; and
 - The effect of the proposal upon the Blackwater Estuary Ramsar and Special Protection Area (SPA).

Reasons

Appropriate location

5. Policy S8 of the Maldon District Local Development Plan (2017) (LDP) outlines the settlement hierarchy and spatial strategy for the district. The policy identifies Tolleshunt Knights as a small village reflecting its limited services and

facilities and public transport options. The policy supports sustainable developments within its defined settlement boundary.

6. The policy sets out that permission for development in the countryside, outside defined settlement boundaries will only be granted where specifically permitted by other LDP policies in addition to proposals not adversely affecting the intrinsic character and beauty of the countryside. Notwithstanding the inclusion of a community habitat area the development proposed would be housing led. The policy does not support the provision of market housing in countryside locations.
7. The appeal site is not located within a defined settlement boundary and sits within open countryside. The nearest accessible settlement containing day-to-day services and facilities is Tiptree located a short distance from the site. There is a bus stop located close to the junction with Rectory Road with services into Tiptree and Witham but walking to the bus stop involves walking along a country lane for a short distance with no footpath or lighting making accessing the bus stop undesirable and impractical. This would be especially difficult for the young, the elderly and those with mobility issues and particularly so during the hours of darkness and inclement weather. Whilst there are Public Rights of Way over the surrounding countryside these are recreational routes rather than the means to access shops and services.
8. It is recognised in the National Planning Policy Framework (the Framework), at paragraph 105, that transport solutions will vary between urban and rural areas. As such, there will be a tension and a balance to be struck between the desirability of supporting sustainable rural development and maximising sustainable transport opportunities.
9. However, given the limited frequency of the bus service and the constraints in accessing services and facilities by foot it is likely that future occupants would be heavily reliant on private car to travel. Consequently, the accessibility to services and facilities would be poor. This combination of factors demonstrates that the appeal site is not in a location where new dwellings would be considered acceptable. Whilst this may well be the situation for existing residents this is not justification to allow unacceptable development.
10. Whilst electric vehicles are becoming more popular there is no certainty that future occupiers would own or have access to them. Therefore, I give limited weight to this aspect of the appellant's argument. Based on the evidence before me including my observations I am not satisfied that my concerns would be overcome by the implementation of a Residential Travel Plan.
11. Consequently, I conclude that the appeal site is not a suitable location for new residential development due to the lack of access to services and facilities and would conflict with the housing strategy for the area. The proposal would, therefore, be contrary to LDP Policies S1, S2, S8, D2, H4, T1, and T2 which, amongst other things, seek to direct new development to the most suitable and accessible locations; reduce the need to travel, particularly by private vehicle and prioritise sustainable modes of transport over private vehicles.

Character and appearance

12. The appeal site forms part of an open field that sits between 42 and 56 Top Road creating a notable and punctuated gap between these properties. These

properties are not contiguous with, and are separated from, denser linear development extending along Barnhall Road and Rectory Road. Housing in this location is more sporadic and there is a clear change in development pattern from the denser built-up envelope of Tolleshunt Knights. The open nature of the site and the sporadic nature of the existing housing along Top Road contribute to the verdant and rural character of the immediate area.

13. Dwellings in the area are predominantly individual and vary in terms of design, scale, height, distance from the road and plot size and shape. Very few properties have the appearance of a traditional rural dwelling, and many have been extended and altered. This includes the dwellings neighbouring the site which display prominent roof forms with dormer windows and extensive glazing visible from the street. As such, there is considerable variation in the configuration of the built form which has evidently evolved in a more ad hoc manner.
14. With this in mind, I do not find that the disparate form and appearance of the dwellings would be unacceptable given the lack of uniformity and the subtle influence of rurality upon local architecture.
15. Despite the above, the introduction of the built form through three large dwellings, the urbanisation of the site formed of the access road, driveways and gardens and associated residential paraphernalia spread over a considerable area of the site would erode its open and rural character.
16. The appellant submits that just 10% of the site would comprise built form. Whilst I do not dispute this figure the number of dwellings, their position and the cumulative impact of the built form and associated infrastructure would still give rise to the perception of an intensively developed and urban form of development. This would be at odds with the prevailing rural character.
17. The proposed development would result in an uncharacteristic concentration of built form in contrast to the more sporadic nature of housing failing to integrate with the pattern of development in the surrounding area. Nor, in my view, would the layout of the buildings and the separation between them reflect that of traditional farmsteads which tend to be compact courtyard type developments.
18. Despite the setback of development, it would nonetheless be very intrusive closing the gap between No 42 and 56 and appearing as an incongruous form of development that would change the appearance of the site into something more urban. Whilst relatively localised, it would significantly erode its rural appearance adversely affecting the character and appearance of the area.
19. Despite the contention that the site is disused land it still forms an open parcel of land and development should not be at the expense of a parcel of land that makes a positive contribution to the surrounding rural landscape.
20. Whilst the appellant indicates that they are willing to introduce planting along the boundary and within the site, I am not persuaded that it would successfully assimilate the development into the area or that local character is best served through the screening of sites. Moreover, it would take a number of years before the landscaping reached a sufficient size and spread to be an effective screen. Therefore, the harm that I have identified would not, in my view, be overcome through the introduction of new landscaping.

21. Reference has been made in respect of the Council's assessment of planning applications relating to the dwellings either side of the site. Based on the information before me the proposals were for the rebuilding and remodelling of established dwellings and are not comparable to the appeal scheme before me.
22. I conclude that the proposed development would adversely affect the character and appearance of the area contrary to LDP Policies S1, S8, D1, H4 and N1 and the Maldon District Design Guide (2017) which, amongst other things, seek high quality design that respects and enhances character and local context; proposals to contribute to and enhance local distinctiveness and the rural character of the district and protection of the intrinsic character and beauty of the countryside.

Impact on the SPA and Ramsar

23. The site is located within the zone of influence for the Blackwater Estuary SPA and Ramsar. The Essex coast is home to a number of internationally important breeding and non-breeding birds and their habitats.
24. The Essex Coast recreational disturbance avoidance mitigation strategy (RAMS) aims to strike a balance between new residential development and mitigating additional recreational pressures on habitat sites associated with this growth.
25. Adopting a precautionary principle and without mitigation new residential development is likely to have a significant effect on the sensitive interest features of the habitat sites, through increased recreational effects 'in combination' with other plans and projects causing harm to nature conservation. It is necessary for me, as the competent authority for the purposes of the Habitat Regulations¹, to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the SPA and Ramsar.
26. The RAMS sets out that provided mitigation can be secured, in the form of a developer contribution, it can be concluded proposals would not have an adverse effect on the integrity of the Habitat sites from recreational disturbance, when considered 'in combination' with other developments.
27. The appellant has submitted a signed UU which commits them to a financial contribution towards measures outlined in the RAMS. I am satisfied that the contribution would sufficiently mitigate the development's impact. As such, whilst the development would have a likely significant effect on the integrity of the SPA and Ramsar it would be adequately mitigated through monies in the UU.
28. As such the proposal would accord with LDP Policies S1, D1, N1 and N2 which, amongst other things, require development proposals to conserve and enhance the natural environment and to improve the condition of existing international, national and local designated sites.

Planning Balance

29. The appellant submits that the Council's deliverable five-year supply of housing land position should be treated with caution. From the evidence before me, particularly the 5 Year Housing Land Supply Statement (April 2023) and

¹ Conservation of Species and Habitats Regulations 2017 (as amended)

without any credible evidence to refute the Council's position there is a strong indication that a deliverable five-year supply of housing land exists in the area.

30. The construction of 3 dwellings would make a small contribution towards the district's housing supply. The proposal would provide a limited amount of short-term employment during construction of the houses, and future occupiers would help to maintain rural services and facilities. These are benefits of the scheme, but they would be modest.
31. I acknowledge that the housing land supply figure is not a ceiling and that the LDP and Framework support windfall development. However, because the Council complies with national policy in respect of housing delivery, I afford these matters limited weight.
32. The proposed development would provide wildlife enhancements including native hedgerow, a pond, wildflower meadow and woodland, which would be a benefit, but this would be moderate in the overall balance.
33. I acknowledge that the local school Tolleshunt Knights Pre School would have use of the proposed habitat area. The submitted UU is the mechanism by which to secure use of this area as a Forest School. This would be a great social benefit of the scheme. However, this benefit would be somewhat tempered as it is unlikely to be realised for a number of years whilst the habitat and woodland become established.
34. On the other hand, I have found that the appeal site is not a suitable location for new dwellings due to the lack of access to services and facilities and in respect of the Council's housing strategy. The proposal would also adversely affect the character and appearance of the area resulting in conflict with the LDP. This conflict carries significant weight in my decision.
35. Matters such as the support of local residents and the incorporation of green technologies are largely matters of neutral consequence in the planning balance.
36. I have no reason to make a decision other than in accordance with the development plan. I conclude that the proposed development conflicts with the development plan, when read as a whole. There are no other considerations that outweigh that conflict.
37. Therefore, even if the Council was unable to demonstrate a deliverable five-year supply of housing land, the adverse effects of the proposal would significantly and demonstrably outweigh the benefits.

Conclusion

38. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR