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# Appeal Decision

Site visit made on 23 May 2023

**by C Harding BA(Hons) PGDipTRP PGCert MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 January 2024**

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**Appeal Ref: APP/X1545/W/22/3302136**

**Land adjacent 5 Grange Road, Wickham Bishops CM8 3LT**

- 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 Mr M Gunton against the decision of Maldon District Council.
  - The application Ref OUT/MAL/21/01096, dated 7 October 2021, was refused by notice dated 5 January 2022.
  - The development proposed is one self-build custom designed dwelling.
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## Decision

1. The appeal is allowed and outline planning permission is granted for one self-build custom designed dwelling at land adjacent 5 Grange Road, Wickham Bishops CM8 3LT in accordance with the terms of the application, Ref OUT/MAL/21/01096, dated 7 October 2021, and the plans submitted with it, subject to the conditions set out at Schedule A.

## Preliminary Matters

2. The proposal is put forward as a self-build dwelling. However, in the absence of a mechanism to secure it as such, I have assessed the scheme on the same basis as the Council; that it would comprise an open market dwelling.
3. The appeal seeks outline planning permission with all matters reserved for future consideration. Indicative plans in relation to the scale, design and siting of the proposal have been provided, and I have had regard to these.
4. The appellant has provided a unilateral undertaking ('UU') in relation to the mitigation of any harm to certain European Protected Sites. The Council have been afforded opportunity to comment on the UU, but have declined to do so. I will return to the UU later in my decision.
5. During the course of the appeal the revised National Planning Policy Framework ('the Framework') was published. The main parties were provided with an opportunity to comment, and I have taken the comments received into account. I have had regard to the December 2023 version of the Framework in my decision.

## Main Issues

6. The main issues are:
  - whether the appeal site is an appropriate location for the proposed development having regard to the spatial strategy of the development plan,

- whether future occupiers of the proposal would be able to access services and facilities by means of sustainable travel;
- the effect of the development upon the character and appearance of the area, and;
- the effect of the proposal upon European Protected Sites.

## **Reasons**

### *Appropriate location*

7. The Maldon District Local Plan ('MDLP') establishes a settlement hierarchy which sets out those settlements which are the most suitable to meet the development needs of the area. Such settlements include Wickham Bishops, which is located towards the top of this hierarchy, and is identified as a 'larger village'. However, the appeal site is located beyond the settlement boundary of Wickham Bishops.
8. MDLP Policy S8 supports sustainable development within settlement boundaries. It also restricts development within the countryside except where it is for a specific purpose set out within the closed list contained within the policy, and does not adversely affect the intrinsic character and beauty of the countryside. This list includes, amongst other things, agricultural workers' accommodation and affordable housing, but not open market housing. The proposed dwelling would not therefore meet any of the identified needs set out in MDLP Policy S8.
9. Therefore, the appeal site is not an appropriate location for the proposed development having regard to the spatial strategy of the development plan. It would therefore conflict with MDLP Policy S8, the content of which I have set out above.

### *Access to services and facilities*

10. The evidence indicates that Wickham Bishops is a well-served village with a range of facilities. It is also served by a number of bus services providing connections to a variety of other destinations.
11. The appeal site lies outside of Wickham Bishops, however the distance to services, including bus stops, within the settlement would not generally be substantial. Grange Road is narrow, unlit and for much of its length, does not incorporate a footway. However, I also saw on my site visit that several roads within Wickham Bishops also lack footways and streetlighting, including in the core of the village. This is a characteristic of the settlement, and I saw several examples of dwellings located a similar distance from the centre of the settlement where pedestrian access to facilities and services would require pedestrians to use unlit roads without footways.
12. Although only a snapshot in time, I saw that the roads around the village, and in particular those on the rural fringe were not busy, and their narrow nature meant that vehicle speeds were generally low. Some interested parties have indicated that Grange Road is currently enjoyed as a walking route, particularly as it links to the local network of public footpaths. There is no evidence before me that indicates that the current environs of Wickham Bishops are unsafe for pedestrians.

13. Having regard to the above, pedestrian travel to services and facilities would be a reasonable option for future occupiers. Travel by bicycle could be another attractive and feasible option for some future occupiers.
14. Additionally, I am aware that previous Inspectors and the Council have both considered proposed dwellings located in comparable circumstances, and in some cases further away from the core of the settlement, to have acceptable access to facilities and services within Wickham Bishops.
15. I therefore conclude that future residents would be able to access services and facilities by means of sustainable travel. The proposal would therefore be in accordance with MDLP Policies S1, H4 and T2 which amongst other factors, state that development should have accessibility to local services and facilities, minimise the need to travel and prioritise sustainable modes of transport, as well as provide safe and direct walking and cycling routes to nearby services, facilities and public transport.

#### *Character and appearance*

16. The site is part of a larger paddock which rises to the north. Buildings which form the southern edge of the village are visible on the skyline to the north. This means that visually, the proximity of the appeal site to the settlement is evident and the area has a rural-fringe character as opposed to appearing entirely separate from the village. Open countryside is found on the other side of Grange Road.
17. Although all matters are reserved for future consideration, the submitted indicative drawings show that the addition of a new dwelling would partially fill the existing gap between two groups of existing residential properties. The proposal would reflect the general grain of the sporadic residential development that characterises Grange Road, and would be well-related to those residential properties that can be found close to the appeal site.
18. By definition, the scheme would be a more urban feature than the existing paddock. However, any urbanising effect would be of a minor extent given the scale of the proposal, neighbouring residential development and the rural-fringe character of Grange Road. The proposal would not harm the character or appearance of the more clearly defined open countryside that can be found to the south.
19. The Council has raised concern with regard to the scale and design detailing of the dwelling shown on the provided drawings. However, these drawings are indicative, and such matters are reserved for future consideration. On the basis of the evidence before me, I am satisfied that a dwelling of appropriate scale and design could be achieved within the appeal site, and that the detailed design of any dwelling would be considered at a later stage.
20. Wickham Bishops Parish Council has raised concern that the proposal would erode uninterrupted views across the estuary from Footpath 12. Policy WBen03 of the Wickham Bishops Neighbourhood Plan ('WBNP') seeks to protect and where practicable, enhance identified special views and vistas.
21. However, no view from Footpath 12 is specifically identified as a special view or vista. "View D" which is identified within the policy relates to Grange Road and Footpaths 16 and 17, however this is indicated on the plan as being at a point to the southwest of the appeal site. With no further substantive evidence before

me in relation to this specific matter, I conclude that the proposal would not harm the special views and vistas identified within this policy.

22. The proposal would not harm the character and appearance of the area. It would therefore be in accordance with LDP Policies D1, H4 and S8 (insofar as it relates to this main issue), as well as WBNP Policy WBen03. Together, and amongst other factors, these policies seek to ensure that new development respects and enhances the character and local context, including optimising the use of land having regard to the setting of the site, and the existing character of the area, and that identified special views and vistas are protected.

#### *European Protected Sites*

23. The appeal site lies within proximity the Dengie Special Protection Area ('SPA') and Ramsar, and the Blackwater Estuary SPA and Ramsar ('the protected sites'). The Conservation of Species and Habitats Regulations 2017 ('the Habitat Regulations') require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of the protected sites, either alone, or in combination with other plans and projects. In the context of this appeal, this responsibility falls to me.
24. The evidence indicates that the protected sites provide coastal habitat for internationally important number of breeding and non-breeding birds, and that recreational pressure in areas of high levels of public access has the potential to adversely affect the protected sites. In these circumstances the Habitat Regulations require that an appropriate assessment is carried out. I have sought further evidence on this matter, as well as the views of Natural England.
25. Given the proximity of the appeal site to the protected sites, there is a likelihood that they would be subject to additional pressures from recreational visits from future occupiers of the proposal. Although the individual effects would be limited, the cumulative effect would be significant when considered in combination with other residential development in proximity to these sites.
26. The Habitat Regulations require that permission may only be granted after having ascertained that doing so would not affect the integrity of the Protected Sites. I may consider measures to secure mitigation with a view to ensuring that the proposal would not affect such integrity.
27. Due to the scale of the proposal, there is no scope for providing on-site mitigation. There is, however, a strategic mitigation approach contained within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy ('RAMS'), endorsed by Natural England. It includes measures to secure payments from new residential development in order to deliver mitigation through a variety of means, including the provision of Rangers, and habitat interventions.
28. The RAMS identifies that a tariff of £122.30 per dwelling should be paid in order to contribute towards mitigation measures, and that this figure shall be index linked and regularly reviewed. Natural England has advised that the most up-to-date figure is £156.76.
29. The appellant has provided a signed and dated UU to provide the RAMS tariff. Although the sum with the UU is less than the current RAMS tariff of £156.76, the payment would be index linked at the time of the commencement of the

development. I am therefore satisfied that the required payment would be secured.

30. Paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Levy ('CIL') Regulations sets out three tests that planning obligations must meet. Firstly, they must be necessary to make the development acceptable in planning terms, secondly, they must be directly related to the development, and thirdly, they must be fairly and reasonably related to the proposal in scale and kind.
31. I am satisfied that the financial contribution is necessary in order to make the proposal acceptable in planning terms. The obligation would enable the provision of mitigation measures and given the location of the site within the zones of influence of the protected sites, the contribution would be directly related to the appeal scheme. Furthermore, as it relates to a standard figure based on the scale of residential development proposed, it would be fairly and reasonably related to the proposal in scale and kind. On this basis, I am satisfied that the planning obligation would meet the requirements of the Framework and CIL Regulations.
32. Having regard to the above, I am satisfied that with the mitigation measures being delivered, the development would not have an adverse effect on the protected sites. The development would therefore be in accordance with the Habitat Regulations. It would also accord with MDLP Policies S1, D1, I1, N1 and N2 which together, and amongst other factors, aim to protect and enhance the natural environment and green infrastructure, including areas designated as of international, national and local importance, as well as secure contributions towards infrastructure where appropriate.

### **Other Matters**

33. Interested parties have indicated a concern with regard to an increase in traffic that could result from the proposed development. However, the level of traffic likely to be generated by a single dwelling is likely to be low, and there is no evidence before me that would indicate that the local road network could not continue to operate safely as a result of the proposal. This matter is therefore not determinative in my decision.

### **Planning Balance**

34. The proposal would conflict with the spatial strategy of the development plan and would be contrary to the development plan as a whole.
35. Since the evidence before me in this appeal indicates that the Council is unable to demonstrate a five-year supply of deliverable housing sites, paragraph 11 d) ii) of the Framework applies. Moreover, this leads me to afford the conflict with the Council's spatial strategy limited weight in this case.
36. The proposal would make a positive, albeit modest contribution to the supply of housing in a sustainable location. Although the Local Housing Needs Assessment identifies a need for smaller dwellings, despite the provided indicative plans showing a four-bedroomed property, the scale and design of the proposed dwelling are matters reserved for future consideration. Accordingly, the boost to the housing supply is a benefit of the scheme to which I afford moderate weight.

37. Additionally, the proposal would lead to temporary economic benefits through the construction period, and through local expenditure by future residents. The Framework highlights the need to support economic growth and productivity and having regard to the modest scale of the proposal, I afford these benefits modest weight.
38. Taking these factors together, the harm from the degree of conflict with the Council's spatial strategy would not significantly or demonstrably outweigh the benefits of the proposal in this case. Therefore, the presumption in favour of sustainable development contained within the Framework is engaged, and this a material consideration which indicates that a decision should be taken other than in accordance with the development plan.

### **Conditions**

39. I have had regard to the various planning conditions that have been suggested by the Council. Where necessary, I have amended the conditions in order to ensure that they meet the relevant tests as set out at Paragraph 56 of the Framework and within Planning Practice Guidance. Where necessary, I have received agreement from the appellant with regard to pre-commencement conditions in accordance with Section 100ZA(5) of the Town and Country Planning Act 1990.
40. Given the outline nature of the proposal, it is necessary to impose conditions relating to the submission of reserved matters and relevant timescales for commencement of the development. It is necessary to specify the approved plan in order to define the extent of the site.
41. I have attached conditions relating to surface water and foul drainage in the interests of avoiding flood risk and pollution. I have also attached a condition in relation to the submission of a construction management plan. This is required in order to preserve the living conditions of occupiers of nearby properties during the period of construction. This is required to be agreed prior to the development commencing so that these living conditions are protected from the outset.
42. I have not attached the Council's suggested conditions in relation to the materials to be used, hard and soft landscaping, boundary treatments, the provision of car and cycle parking, vehicular access points, visibility splays, the use of bound surface materials and the location of boundary planting as these are all matters that would fall within the scope of the matters reserved for future consideration. Accordingly, they are not necessary at this stage.
43. Additionally, I have not attached a condition restricting the proposed dwelling to three bedrooms as this would be unreasonable. Although the Council consider that there is a local need for three-bedroomed properties, it has not been shown that such a condition would be necessary in order to make the proposal acceptable.
44. The Council has also suggested conditions removing permitted development rights in relation to garages, extensions or separate buildings, as well as dormer windows and other additional openings. As appearance and layout are matters reserved for future consideration, such conditions would be unreasonable and there is no evidence before me to demonstrate that they would be necessary in order to make the development acceptable. Furthermore, Paragraph 54 of the

Framework advises that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

## **Conclusion**

45. For the reasons given above, I conclude that the appeal should be allowed.

*C Harding*

INSPECTOR

### **\*\*SCHEDULE A – CONDITIONS\*\***

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan:
  - Site location plan
- 5) No development works above ground level shall occur until details of the surface water drainage scheme to serve the development have been submitted to and agreed in writing by the local planning authority. Thereafter, the agreed scheme shall be implemented prior to the first occupation of the development.
- 6) The dwelling hereby permitted shall not be occupied until works for the disposal of sewage have been provided on the site to serve the development, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - viii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

**\*\*END OF SCHEDULE A\*\***