



Appeal Decision

Site visit made on 6 February 2024

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2024

Appeal Ref: APP/X1545/W/23/3327933

Land at Howells Lake, Heybridge, Maldon, CM9 4SY

- 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 M. Simson & Ms D. Conley against the decision of Maldon District Council.
 - The application Ref FUL/MAL/23/00213, dated 27 February 2023, was refused by notice dated 5 July 2023.
 - The development proposed is temporary rural workers dwelling and erection of agricultural building and yard.
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Decision

1. The appeal is allowed and planning permission is granted for temporary rural workers dwelling and erection of agricultural building and yard at Land at Howells Lake, Heybridge, Maldon, CM9 4SY in accordance with the terms of the application, Ref 23/00213/FUL, dated 27 February 2023, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr M. Simson & Ms D. Conley against Maldon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I observed the development that has taken place on the appeal site. A mobile home has been introduced and the appellants have moved onto the site. However, the mobile home is not the same as the proposed temporary dwelling and I have considered the proposals based on the drawings and not what has occurred to date. Therefore, I have referred to the effect the proposals would have rather than those the existing development on site is having.

Background

4. Policy H7 of the Maldon District Approved Local Plan 2014-2019 (LP) deals with agricultural and essential workers accommodation and sets out a number of criteria which need to be met in order for permission to be granted. These include, whether there is a functional need for a worker in that location; no suitable alternative dwellings are available; the business is viable with secure future prospects and that the development is not intrusive.
5. The Council agree with the appellant's case that there are no suitable alternative dwellings which could meet the identified functional need for a worker to be located on the site and that a temporary permission for three years would enable the viability of the business to be tested at the end of that

period. Therefore, I have focused my consideration to the other aspects of Policy H7 of the LP, in relation to character and appearance.

Main Issue

6. The effect of the proposed development on the character and appearance of the area.

Reasons

7. The appeal site comprises an open agricultural field, accessed via a long farm track which serves the nearby fishing lakes and the appeal site. A public right of way (PROW247_19) also crosses the site. Visible from the site, and currently under construction, is a housing development which forms part of a Strategic Growth Area.
8. The area has appreciable qualities in terms of its rural character with the broader site contributing to the coherence of the rural landscape, with the existing fields influencing the wider pastoral character. These are important contributing factors to the character of the area.
9. The appeal site is well contained within its existing landscaped boundaries which is maturing and will become more established over time. The layout of the site has been carefully considered with the proposed dwelling and barn reflective of agricultural buildings and the design and materials would be in keeping with the character and appearance of the area, to ensure that any visual impact is limited and localised. The Council have also set out that the proposed buildings would not be a prominent feature on the landscape.
10. A tree protection method statement is required to identify how the trees on the boundary of the site will be protected from the impact of the proposed development. Mitigation of these impacts are likely to include a no-dig method for the parking area adjacent to the tree line and details of the foundations of the proposed barn.
11. This information would be required prior to commencement of development on site to ensure adequate protection of the trees before any works take place. I am satisfied that whilst a mobile home has been placed on the site I have nothing before me to indicate that any harm has been caused to the existing trees and therefore am content that this level of information can be secured by condition.
12. The appellant has submitted with the appeal a landscape and management proposal including a plan which sets out how the site can be enhanced through additional planting. However, as this was not before the Council prior to the appeal submission, I consider that this information should be submitted as part of a pre-commencement condition, in order that the Council have sufficient opportunity to consider these details and agree a scheme which is appropriate to the locality.
13. It has been put to me that insufficient information has been provided to show the size and exact location of the proposed parking bays. The parking standards for a 4 bedroom dwelling require the provision of 3 no. spaces, however noting the overall size and scale of the site, I am satisfied that there is sufficient space to provide these and the precise details can be agreed by condition.

14. The appeal site is accessed off Maypole Road and then via a predominately unmade track which leads through a small complex of commercial buildings and then on for some distance around fishing lakes. At the time of my visit the road was heavily rutted and would need to be upgraded to provide access for the majority of domestic vehicles. As such it is likely that a scheme for the access road to be improved would be required in order for the site to be able to operate a business as outlined within the evidence. However, I am satisfied that this information can be provided by condition as there are no wider highway safety concerns at the junction of the access road onto the highway network.
15. In conclusion, subject to imposition of conditions requiring the submission of further details of landscaping, parking and access, the proposal complies with policies H7, N2, T2 and D1 of the LP, which together require development to be designed to minimise the adverse impact on and have regard to the character and appearance of the area, provide sufficient parking and deliver net biodiversity gain where possible. In complying with policy H7 of the LP, the proposal would not conflict with the spatial strategy set out within policies S1 and S8 of the LP.

Planning Obligations

16. The appellant has provided a unilateral undertaking under section 106 of the Town and Country Planning Act 1990, which includes an obligation which would come into effect if planning permission were to be granted. I have considered the obligations in light of the Framework, Planning Practice Guidance (PPG) and the Community Infrastructure Levy Regulations (the CIL Regulations).

Blackwater Estuary and Special Protection Area (SPA)

17. The appeal scheme proposes dwellings on a site that lies within the Zone of Influence of the SPA. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
18. Since the development is for only one dwelling, the number of additional recreational visitors would be limited and the likely effects on the SPA from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site.
19. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.

20. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
21. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA
22. The appellants have submitted a Unilateral Undertaking for the per dwelling contribution to fund the Essex Coast RAMS. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
23. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

Conditions

24. The Council has suggested conditions which I have considered against the advice in the Framework and Planning Practice Guidance.
25. In accordance with policy H7 of the LP, conditions are necessary to restrict occupation of the temporary rural workers dwelling to a person employed in agriculture and to secure its removal after a period of three years from the date of this decision to enable the viability of the enterprise to be properly assessed. It is also necessary, for the avoidance of doubt, to define the plans with which the scheme should accord.
26. I have also found it necessary to impose a condition requiring the ecological enhancement and mitigation set out within the Preliminary Ecological Appraisal to be implemented and retained.
27. To limit the visual impact of the development and to adequately protect foraging bats from the impacts of any external lighting, details of landscaping, protection of existing trees, parking areas and external lighting are also required to be submitted, agreed and implemented. In order to ensure appropriate foul and surface water drainage is provided on the site details are also required.
28. I have not imposed a condition removing permitted development rights as conditions restricting the future use of permitted development rights should only be used in exceptional circumstances. I have not been provided with adequate justification to suggest that there are exceptional circumstances for such a restriction and therefore do not consider it is necessary in this instance.

29. I have also not found it necessary to impose a condition requiring the PROW to be kept free of obstruction as this is adequately covered by the Highways Act.

Conclusion

30. For the reasons given I conclude that the appeal should succeed.

G Pannell

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: MS-JH-01; MS-JH-02; MS-JH-03; MS-JH-04; MS-JH-05.
- 3) The temporary rural workers dwelling permitted shall be for a limited period being the period of 3 years from the date of this decision. The temporary rural workers dwelling hereby permitted shall be removed and the land restored to its former condition on or before 3 years from the date of this decision in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
- 4) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
- 5) No development shall commence until details of hard landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) means of enclosure;
 - ii) vehicle parking layouts and access road;
 - iii) hard surfacing materials;
 - iv) any lighting, floodlighting and CCTV;
 - v) position of 2 no. bat boxes and 2 no. bird boxes;
 - vi) an implementation programme,

The works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.
- 6) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping and biodiversity enhancement. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

- 7) All planting, seeding, turfing and biodiversity enhancement comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 9) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 3 years from the date of this decision, other than in accordance with the approved plans and details, without the prior written approval of the local planning authority.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 10) The materials to be used in the construction of the development will be: Temporary Rural Workers Dwelling – stained timber Sikkens Wood Stain, (Colour Dark Oak 009). Agricultural Building – Concrete Blocks (Grey fair-faced), profiled steel sheet (Olive Green BS 381C 220). The development shall be carried out using the materials and details as approved.
- 11) The dwelling hereby permitted shall not be occupied until works for the disposal of sewage and surface water drainage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 12) The mitigation and enhancement measures outlined at section 4 of the Arbtech Preliminary Ecological Appraisal and shall include, but not be limited to the installation of 2 bird and 2 bat boxes, shall have been fully implemented within 3 months of the occupation of the site. These measures shall thereafter be retained.

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