



Appeal Decision

Site visit made on 19 February 2024

by D R McCreery MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th March 2024

Appeal Ref: APP/X1545/W/23/3324945

Land south of Darracott, Summerhill, Althorne, Chelmsford, CM3 6BY

- 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 Ms P Dorrington against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00329, dated 22 October 2022, was refused by notice dated 28 April 2023.
 - The development proposed is a new two bedroom dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Applications for planning permission are to be determined in accordance with the development plan for the area unless material considerations indicate otherwise. Policies in the development plan of central relevance are within the Maldon District Local Plan (Local Plan). The National Planning Policy Framework (the Framework) is a material consideration. The Framework was updated in December 2023. Paying regard to the respective cases and any specific references to national policy drawn to my attention, the update to the Framework does not change my conclusions.
3. The Appellant's Unilateral Undertaking (S106) makes obligations aimed at addressing the Council's reason for refusal number four. The financial contribution included is necessary to manage adverse impacts on protected sites. The S106 meets the tests at Paragraph 57 (Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. I have taken it into account. The Council has confirmed that they no longer wish to defend reason for refusal number four and there is no other reason for impacts on protected sites to be a main issue.

Main Issues

4. The main issues are the effects, paying regard to:
 - The location, in light of policy that directs land uses.
 - Character and appearance.
 - Accessibility and promotion of sustainable travel.
 - Biodiversity.

Reasons

Character and appearance

5. The site is a village location. In the area around it, dwellings vary in terms of plot size, gaps between houses, scale and appearance. Although the site cannot be physically regarded as open countryside, the variety and absence of formality in built form contributes to a more countryside/rural character in this part of the village, in contrast to the areas closer to the B1010. The more vegetated surroundings that make up the setting for dwellings also contributes positively to character and local distinctiveness in this part of the village.
6. The undeveloped gap between Catherine Cottage and Darracott contributes to the spaciousness between dwellings and allows roadside greenery on both sides of the road to take precedence over built form. Even at a single storey, the proposed dwelling would reduce the physical size of the gap with a consequent negative impact on character. The appearance of the dwelling, with associated hardstanding would further reduce the perception of increased rurality in this location compared to other parts of the village.
7. The visual effects would be most apparent as experienced from the adjacent road, where the topography and course of the road creates short to medium distance public views. Some enclosure would be experienced to the footpath at the side and rear of the site, although filtered through vegetation and within a localised viewing distance.
8. Planting towards the front of the site has the potential to mitigate the effects described above by providing screening, which would be in addition to existing planting. Even at only a single storey dwelling and with mitigation factored in, the change in the character and appearance of the land would be noticeable, permanent, and detracting. The existing dwellings would provide visual context and avoid a development that would be alien to its surroundings. This offers some further mitigation, although would do nothing to manage the impact of introducing built development to what is currently open space. It would not strengthen the identity of the village or the sense of local distinctiveness in this part of it.
9. As no specific parts of the Maldon District Design Guide have been referenced, I am unable to attribute material weight to whether the proposal accords with it or not.
10. The proposal would have a harmful effect on character and appearance. There is conflict with the development plan, specifically Policies S1 and D1 (Local Plan) which seek to maintain the rural character of the borough and ensure that development makes a positive contribution in terms of landscape/townscape setting and contributes to and enhances local distinctiveness.
11. The direct relevance of Policies N1 and N2 (Local Plan) to this main issue is not demonstrated.

Location

12. The site is outside of a defined settlement boundary. Policy S8 (m) makes provision for development proposals that are in compliance with policies within the Local Plan, neighbourhood plans and other local planning guidance as policy exceptions.

13. For any exception to apply there should be no adverse impact on the intrinsic character and beauty of the countryside. Adverse impacts would result in this case for the reasons set out in my conclusions on character and appearance. As such, the exceptions at Policy S8 do not apply.
14. Were the exceptions capable of applying, I do not have evidence of significant under use of land that development would make more effective use of. The land performs a local function as part of a gap that contributes towards character and appearance. A lack of built development on it does not naturally lead to a conclusion of inefficiency. Policy H4 (Local Plan) does not therefore apply.
15. The location of the proposal does not accord with the development plan, in light of policy that directs land uses. There is conflict with the development plan, specifically Policy S8 (Local Plan), which directs the location of housing development by reference to defined settlement boundaries.

Biodiversity

16. It is common ground that the site lies within an amber risk zone, indicating that a need for some assessment by a suitably qualified person is justified. In the absence of such, and noting the appellant's points about the extent of the zones (green and amber) and the location of a significant body of water, I have no suitable evidence to dispute the view of the Council's ecologist.
17. Taking a precautionary approach to this issue considering statutory duties, and of my finding of harm on other main issues, the proposal has harmful effects when regard is paid to biodiversity. There is conflict with the development plan, specifically Policies S1 and N2 (Local Plan) in relation to natural environment and biodiversity.
18. The Council's concerns about an absence of biodiversity enhancement are generic and does not pay sufficient regard to the proposed landscaping. I do not make a finding of harm in this area, although it does not compensate for the absence of ecological assessment. Conflict with Policy N1 (Local Plan) is not demonstrated.
19. The direct relevance of Policy S8 (Local Plan) to this main issue is not demonstrated.

Accessibility and promotion of sustainable travel

20. The site is a village location with an established community and some day to day facilities within walking distance (including the nearby recreation ground). The proposal would support the retention of local facilities through population growth, albeit a modest contribution. A well established pavement provides safe and convenient walking options in both directions. The unlit nature of the footway is unlikely to be a significant disincentive to use for many occupants, paying regard to the width and consistency of the footway, the likely travelling speed of vehicles, and the village location. I have no reason to consider the road as unsuitable for a reasonably confident cyclist. Wider facilities are accessible using the train station and buses. Proportionate sustainable transport measures (including cycle parking) could be required by condition.

21. I acknowledge that my findings on this main issue may be different to the Inspectors who considered Redbrick Cottage and Redbraes. Such judgements turn on their own circumstances and evidence. Whilst it is desirable to decide like cases in a similar way, my conclusions are based on the evidence in front of me.
22. Overall, the proposal is acceptable when regard is paid to accessibility and promotion of sustainable travel. There is no conflict with the development plan, specifically Policies D2, S1, T1, and T2 (Local Plan) relating to minimising the need to travel and providing safe and direct walking and cycling routes.

Conclusion

23. The proposal would have a harmful effect when regard is paid to the location, in light of policy that directs land uses, character and appearance, and biodiversity. There is conflict with the development plan for the area as a whole.
24. The Council can demonstrate 6.35 years of housing land supply, an improvement on the position since the planning application was decided. Even allowing an undefined slippage rate, I have no evidence on which to base a conclusion that 5 years would not be demonstrated. While the Local Plan is more than 5 years old, and not therefore up to date, the evidence does not lead me to conclude that individual policies are out of date as a consequence. Paragraph 11 (d) is not a material consideration in this instance.
25. Weighing the proposal up, there are no material considerations to indicate that a decision should be taken other than in accordance with the development plan.
26. The appeal is dismissed.

D.R. McCreery

INSPECTOR