
Appeal Decision

Site visit made on 21 February 2024

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th March 2024

Appeal Ref: APP/X1545/W/23/3321070
42 The Causeway, Essex, Maldon, CM9 4LJ

- 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 Plummer & Core Construction Solution against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00919, dated 11 August 2022, was refused by notice dated 10 November 2022.
 - The development proposed is two storey building to provide office (Use Class E(g)(i)) at ground floor and one bedroomed flat at first floor level with associated parking and garden area.
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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 unless material considerations indicate otherwise. Policies 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, the update does not change my conclusions.
3. The obligations in the Appellant's Unilateral Undertaking (S106) seek to address reason for refusal number five, specifically by contributing towards the Essex Coast RAMs. I adopt the rationale for the obligation at section 5.9 of the Council's officer report.
4. Paying regard to the guidance in the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD, I am satisfied that the obligations meet the tests at Paragraph 57 (Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. I have taken them into account and note the Council's confirmation that they no longer wish to defend their reason for refusal number five.

Main Issues

5. The main issues are the effect of the proposal when regard is paid to:

- Character and appearance.
- Flood risk.
- Town centre impact.
- Highways, specifically parking provision.

Reasons

Character and appearance

6. The character of the area is informed by its mixture of residential and commercial uses, as well as vehicular and other activity associated with The Causeway and its function as a thoroughfare. Dwellings fronting The Causeway are typically two storeys, semi-detached or arranged in small terraces, and have front areas providing parking/garden space.
7. There is a high degree of variation in fenestration details along The Causeway. Consistency and formality of detail is not a significant contributor to character and appearance. In the absence of more specific evidence of the Council's concerns, the detail of the doors and windows would not be harmful in character and appearance terms when seen in the context of this variation.
8. The use of dwelling frontages for the parking of vehicles would leave limited space for landscaping. The parking area would be a dominant feature in views from the road, obscuring the dwelling and reinforcing a pattern of development evident in the surroundings that would not enhance the character of the area. Overall, this is a detracting feature of the scheme that generates harm to character and appearance, albeit one that is seen elsewhere within the street scene and is partly driven by the Appellant seeking to meet the Council's parking standards. As this is a function of the available space, conditions aimed at securing an acceptable standard of landscaping would not satisfactorily address the issue.
9. The existing condition of the site is a consideration of limited weight, as the planning system should take the opportunity to improve the surroundings, an approach that is reflected in Policy D1 (Local Plan). I note the conclusions of the Inspector in the previous appeal decisions¹ at the site. Although my observations are similar, they are based on the proposal I have in front of me.

¹ 3200797 and 3200797

10. The proposal would have a harmful effect when regard is paid to character and appearance. There is conflict with the development plan, specifically Policies H4 and D1 (Local Plan) relating to standards of design, including the need to respect and enhance the character and local context and make a positive contribution in terms of matters of detailed design.
11. Conflict with Policy S5 (Local Plan) is not demonstrated by the Council's evidence, including any relationship with the quality of the historic character.

Flood risk

12. The site is within Flood Zone 3 (high probability of flooding) and a site-specific flood risk assessment (FRA)² has been submitted in accordance with Paragraph 173, Footnote 58 (Framework). I have paid regard to the Environment Agency's comments³ on the FRA and noted that the flood risk vulnerability classification annex in the Framework classifies the residential component of the proposal as 'more vulnerable' and the commercial element as 'less vulnerable'.
13. The requirement to satisfy the sequential test exists even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere. The situations in national guidance⁴ where the test will not be required do not apply in this case.
14. Specifically on bullet point 1 of the guidance, the Appellant cannot rely on the location of the site within the Maldon and Heybridge Central Area, including the Causeway Regeneration Area. From the evidence provided, the central area has been designated as a location for development activity. However, this does not amount to allocation of land in the same sense as may be anticipated from a site specific housing or employment land designation, where the detailed use permitted and site specific policy criteria that must be met are set out.
15. Even if the Appellant's argument that the site is allocated were accepted (which I don't), I have no detailed evidence on which to assess the terms on which the sequential test was carried out at the plan making stage. This includes whether the proposed development is consistent with the use for which the site was allocated and whether any changes in levels of risk may affect the outcome.
16. In response to final comments, the Appellant appears to accept that the site does not have any distinct identification for commercial or residential use in the Maldon and Heybridge Central Area Masterplan SPD.

² Flood Risk Assessment, Evans Rivers and Coastal Ltd, June 2022

³ 01 November 2022

⁴ 027 Reference ID: 7-027-20220825

17. This adds further weight to the view that the site is not allocated in the sense expressed in national guidance and, even if it were, any sequential test carried out at the plan making stage (which I do not have sight of in any event) was not relatable to the proposal.
18. The extracts from the Council decisions referenced 13/00488/OUT and 15/01621/OUT do not assist as they were made prior to the adoption of the current Local Plan, with limited evidence demonstrating a comparable policy environment.
19. I do not agree that the proposal is an allocation in the Causeway Regeneration Area. However, even if it were, paragraph 5.13 of the Appellant's cited report would have been referring to a sequential test carried out prior to the current Local Plan. The details and outcome of the test have not been provided. In these circumstances, I attribute very limited weight to these decision extracts. It is not for this appeal to examine the correctness of the Council's approach in these cases which, in any event, I am not bound by.
20. In the relevant appeal decisions⁵ the Inspector was responding to a separate Sequential and Exception Test Report that had been submitted. No such report has been provided in the present appeal and the question is, instead, whether sequential testing is required at all. The circumstances can therefore be distinguished as the Inspector was not asked to conclude on the same question.
21. I do not have evidence to confirm that the proposal satisfies the sequential test, in circumstances where it should be applied. National guidance⁶ sets out that avoiding flood risk through the sequential test is the most effective way of addressing flood risk. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. The exception test is to be applied where suitable sites at lower risk of flooding are not available following application of the sequential test.
22. Application of the sequential test has not occurred in this case and I see nothing in the evidence that entitles the Appellant to skip it and move directly to the exception test.
23. The proposal would have a harmful effect when regard is paid to flood risk. There is conflict with the development plan, specifically Policies S1, S5 and D5 (Local Plan) in relation to managing flood risk, including the requirement to demonstrate that the sequential test has been satisfactorily undertaken in accordance with national planning policy and ensure new development is either located away from high flood risk areas or is safe and flood resilient when it is not possible to avoid such areas.

⁵ 3200797 and 3202191

⁶ Paragraph: 023 Reference ID: 7-023-20220825

Town centres

24. It is common ground that the site falls within the Causeway Regeneration Area and is part of the Maldon and Heybridge Central Area for the purposes of Policy S5 (Local Plan).
25. The commercial use and location outside a town centre means that it is necessary to consider sequential testing in accordance with the Framework, as required by Policy E2 (Local Plan). Even if it were regarded as a mixed-use proposal, rather than 2 separate uses, it would still trigger the requirement.
26. It is for the Appellant to demonstrate compliance with the test, which should be proportionate and appropriate to the scale and nature of the given proposal, which in this case is a minor development.
27. It is unlikely that testing would identify negative effects justifying refusal of planning permission. Nevertheless, the Appellant has provided limited information on which to base such a conclusion. As such, in the absence of evidence, there is conflict with Policy E2 (Local Plan). This in turn results in an absence of evidence to confirm whether Policy S5 (2) in relation to the promotion of Maldon Town Centre would be accorded with.
28. The proposal would improve the supply of commercial floorspace of a range of sizes within the Causeway Regeneration Area and be designed to meet modern standards, leading me to conclude that it would be high quality. It would also increase employment. The proposal would therefore accord with Policy S5(3).
29. The Council have provided limited explanation of the role of the Maldon and Heybridge Central Area SPD, the implications of the site not being specifically identified for development, or how they have paid regard to it. As such, the SPD attracts limited weight and I do not find conflict with Policy S5(1).
30. I see nothing within Policy S5 to suggest that the residential component of the proposal, within the settlement boundary of Maldon, results in policy conflict.
31. Accordance with Policy S5(3) does not remove the requirement for sequential testing under E2. Nor is there internal inconsistency or a lack of policy coherence in requiring a proposal that would support the renewal of the Causeway Regeneration Area to also demonstrate its impacts on the town centre.
32. In the absence of sequential testing, the proposal would have a harmful effect when regard is paid to town centre impacts. There is conflict with the development plan, specifically Policies E2 and S5 (Local Plan) which require sequential testing in accordance with the Framework and promotion of Maldon Town Centre as a market town.

Highways

33. Car parking provision for the commercial element of the proposal would be below the minimum standards set out in the Parking Standards SPD. Whether bathroom and kitchen facilities are included in the calculation, or not, the deficit would be marginal. Whilst I note that the SPD acknowledges accessibility, it is material that the site is within a location that is well served by public transport. This needs to be balanced against the busy Causeway and the potential impact of promoting additional on street parking.
34. Taking a rounded view of the issue, the degree of conflict with the SPD is limited and other aspects of the proposal discussed do not lead me to conclude that there is conflict with the development plan.
35. The response from the County Council highways team has not influenced my view one way or the other. The local highway authority provide advice, and it is for the local planning authority to make a decision on an application, providing adequate reasons and paying regard to any specialist advice received.
36. The proposal would not have a harmful effect when regard is paid to highways, specifically parking provision. There is no conflict with the development plan, specifically Policies T2 and D1 (Local Plan) which require sufficient, safe and secure parking facilities having regard to parking standards.

Conclusion

37. The proposal would result in harmful effects when regard is paid to character and appearance, flood risk, and town centre impacts. The conflict with the development plan is with the plan as a whole.
38. The Council can demonstrate 6.35 years of housing land supply, an improvement on the position since the planning application was decided. 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, therefore Paragraph 11 (d) is not engaged.
39. Looking elsewhere in the Framework, the proposal would make a modest contribution to the Government's objective of significantly boosting the supply of homes. It would promote an effective use of land in meeting the need for homes and other uses, although in circumstances where whether it would support the role of town centres or the role of the planning system in taking full account of flood risk is unevidenced.

40. 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.

41. For these reasons, the appeal is dismissed.

D R McCreery

INSPECTOR

