
Appeal Decision

Site visit made on 7 February 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2024

Appeal Ref: APP/X1545/W/23/3319552

Land North of Willow Grove, Maldon Road, Mundon, Essex CM9 6NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr A Bishop against the decision of Maldon District Council.
 - The application Ref is FUL/MAL/22/00409.
 - The development proposed is erection of two detached bungalows with integral garages, new access driveway and garden offices.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A revision to the National Planning Policy Framework (the Framework) was published on 19 December 2023. The main parties were given an opportunity to comment on the effect of the revision on the appeal and their comments have been taken into account in my decision.

Background and Main Issues

3. The Council's decision notice includes a reason for refusal relating to trees. An arboricultural report was submitted with the appeal, which was prepared to support a subsequent outline planning application at the appeal site. The Council's statement of case acknowledges the arboricultural report and confirms it now finds no arboricultural reason why the appeal proposal cannot progress. I therefore find the main issues to be:
 - whether the proposal would comprise suitable development in the countryside;
 - the effect of the proposal on the character and appearance of the area;
 - whether the proposal would provide suitable living conditions for prospective occupiers; and
 - the effect of the proposal on ecology and biodiversity.

Reasons

Development in the countryside

4. There appears no dispute between the main parties that the site lies outside of a settlement and therefore in the open countryside. Policy S8 of the Maldon District Approved Local Development Plan 2014-2029 – July 2017 (the LDP) states that outside of defined settlement boundaries, the Garden Suburbs and

Strategic Allocations, planning permission will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon, and where the proposal meets one of several criteria listed a) to m).

5. None of criteria a) to m) relate specifically to development such as the appeal proposal. Criterion m) notes suitable development could include other development proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance.
6. In this regard, Policy H4 of the LDP seeks to optimise the use of land having regard to considerations including accessibility to local services and facilities, and proximity to public transport. Policy H4 also states that infill development will be considered on a site-by-site basis to take into account local circumstances, context and the overall merit of the proposal. Such development will be supported if it complies with 4 specific criteria which, in relation to this issue, include circumstances where the land is currently significantly under-used and the development would make more effective use of it.
7. Although the site lies within the open countryside, it sits adjacent to various forms of built development including the adjacent Desch Plantpak factory to the north and east. The residential property of Willow Grove (also referred interchangeably in the submitted evidence as 'Willowgrove') lies to the south. Accordingly, it is not in an isolated location. Nevertheless, despite the adjacent land uses and the site's current lack of built form, it does not appear to be significantly under-used. The sporadic nature of development in the vicinity means the site retains an inherently rural character. Moreover, it serves a useful purpose by visually and functionally separating the residential use to the south from the industrial use to the north and east.
8. Although there are bus stops with reasonably regular services close to the site, they are not accessible from the site by public footpaths. Whilst some public footpaths exist further from the site, potential occupiers using public transport would be required to walk along the grass verges adjacent to the road, which at the time of my visit, were muddy and slippery in places. The same considerations would apply to those choosing to walk to the nearest settlements and services. Furthermore, although the road fronting the property is not an 'A' road, it has a speed limit of 60mph and my observations on site suggest some vehicles travel at speed along this stretch of road.
9. The site may be reasonably close to services and employment opportunities, but for the reasons outlined above it would not be particularly accessible other than by private vehicle. Moreover, I find no compelling evidence to support the case either as a suitable development in the countryside or as infill development, when assessed against the requirements of the development plan.
10. I acknowledge the reference in the submitted evidence to several other sites in the area, including where planning applications and appeals have been granted, and sites with comparable pedestrian and public transport infrastructure. However, I must determine the appeal based on its individual merits and I do not find any compelling reasons within this evidence to depart from my previous findings.

11. For the reasons given above, the proposal would be in an unsuitable location for residential development and would conflict with Policies S1, S8, D1, H4, T1 and T2 of the LDP. Together these policies seek, in respect of this issue, to resist development outside settlements other than in specific circumstances, to promote the effective use of land having regard to the site's context, to support infill development where specific criteria are met, to prioritise pedestrians, wheelchairs, cyclists and public transport over private vehicles, and to ensure all new developments are well connected to existing public transport routes. The proposal would also conflict with the relevant provisions of the Framework, which have similar aims.

Character and appearance

12. The appeal site's history is understood to include use as part of a factory and a fruit farm, and it has most recently been used for grazing donkeys associated with the adjoining residential property of Willow Grove. Nevertheless, although it is not an isolated site, it is separated by mature trees and vegetation from neighbouring development, from which it appears distinct. The site currently provides a visual break between differing forms of development, thus lending an inherently rural feel to its character.
13. The proposed dwellings would be accessed via a single vehicular access point to the public highway and would be set back from the road to a comparable degree to that of the neighbouring property at Willow Grove. Although the dwellings' overall height and massing would be smaller than that of Willow Grove, they would occupy a comparably larger portion of the plot and extend across a comparably greater proportion of the plot width. Accordingly, although a degree of screening would be afforded from the road, the proposals would appear unduly cramped within the plot and at odds with the prevailing form of development in the area.
14. Further to the south of the site is an area of denser residential development formed by a cluster of dwellings along both sides of the road. This area is not a significant distance from the appeal site but is separated by a wide buffer of undeveloped land. Accordingly, it bears limited visual or functional relationship to the appeal site and its immediate surroundings and development in this area, including any schemes granted planning approval, are of limited weight in my decision.
15. I note the appellant's statement that the proposal would comply with relevant technical standards. However, this would be expected for any good quality development and offers limited weight in favour of the proposal. I also note the appellant's reference to the provisions of the Essex Design Guide with regard to density, but I am provided with limited substantive evidence relating to this guidance. In any event, Policy H4 of the LDP seeks, with regard to density, for development to be design-led and to optimise the use of land, having regard to, among other factors, the location and setting of the site and the existing character and density of the surrounding area. For the reasons set out previously, the proposal would conflict with the development plan in this regard.
16. For the reasons given above, the proposal would result in a cramped and incongruous form of development that would harm the character and appearance of the area and conflict with Policies S1, S8, D1 and H4 of the LDP. Together these policies seek, in relation to this issue, to respect and enhance

character and local context, to be of appropriate height, size, scale, form, massing and proportion, to be of appropriate density, to promote the effective use of land, and for development in the countryside to only be supported in specific circumstances. It would also conflict with the relevant provisions of the Framework in respect of this issue, which have similar aims.

Living conditions

17. A Noise Impact Assessment (NIA) has been submitted with the appeal. Although this was not before the Council when determining the planning application, it does not seek to alter the proposal, only to address matters relating to it. The NIA sets out the results of unattended and attended noise surveys at the site. It concludes that the measured noise levels from the adjacent factory at the proposed residential receptors meet all appropriate and reasonable guidance and the relevant noise criteria, subject to the scheme incorporating appropriate mitigation.
18. Nevertheless, I have had regard to paragraph 193 of the Framework. This establishes that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.
19. The Desch Plantpak property occupies a large site that effectively wraps around the appeal site to the north and east. I understand it operates on a 24/7 basis and I am not aware of any current restrictions on its permitted hours of use or the types of activity that could take place as part of its operations. Whilst the results of the NIA surveys were not prohibitive to the proposed development, I have concerns with the scope of the surveys, particularly given they took place over a concentrated period of several days in early January, which is a popular time for holidays and could have resulted in quieter operations than normal.
20. In any event, even if surveys at other times were to demonstrate the proposal could be acceptably accommodated based on current noise levels, I remain concerned, given the unrestricted nature of the industrial use and its relationship to the appeal property, that even moderate changes to its future commercial activities could result in adverse noise effects for prospective residents. Although I acknowledge the NIA allows for a small degree of uncertainty, this appears to be based on the calibration of equipment rather than future operational changes. Accordingly, I am not persuaded that the proposal could be accommodated without placing unreasonable restrictions on the operations of an existing business in terms of noise.
21. No technical assessments relating to the effects of light or odour from the adjacent factory have been provided. I note that external illumination exists throughout the site to cater for its 24 hour operations, but I am provided with limited substantive evidence regarding the location and level of such illumination, or its potential effects on the living conditions of neighbouring occupiers.
22. I understand the factory produces packaging for horticultural products. The appellant advises that the factory has no chimneys and the manufacturing process does not produce smoke. Nevertheless, at my site visit there was a

noticeable odour in the air in the vicinity of the factory and the appeal site which, to my mind, was clearly linked to the manufacturing process and has the potential to adversely affect the living conditions of future occupiers.

23. Accordingly, based on my findings above, I do not find the proposal gives sufficient consideration to the effects of noise, lighting or odour emanating from the neighbouring industrial use. Given the uncertainty regarding the effects of these matters and whether they could be appropriately mitigated, I am not persuaded the proposal would deliver suitable living conditions for future occupiers. Moreover, based on the available evidence, it would not be reasonable and may not be enforceable to secure details to mitigate these effects by condition.
24. Because I must assess the proposal on its own merits, the proximity of existing dwellings to residential premises in the area does not alter my findings in relation to the matters relating to noise, lighting and odour.
25. Regarding matters of overlooking and overshadowing, the front and rear elevations of the two dwellings would be offset from one another, which the appellant states is to maximise available amenity space whilst presenting an interesting and individual facade to the front, emphasising views of the pond for both plots, whilst still providing privacy and minimising shade to the rear.
26. Plot 2 would sit further to the rear than Plot 1. Accordingly, part of the built form of Plot 1 would, in all likelihood, be visible from the front-facing windows of Plot 2. Conversely, part of the built form of Plot 2 would, in all likelihood, be visible from the rear-facing windows of Plot 1. Due to the trajectory of the sun, it is also likely that some overshadowing to the rear-facing windows of Plot 1 would be caused by the built form of Plot 2.
27. Nevertheless, the respective plots would be reasonably separated from one another and both would feature large windows which would provide acceptable levels of outlook and retain an appropriate degree of sunlight. Accordingly, although the built form of the neighbouring properties may be visible from one another, this would not cause harm to the living conditions of prospective occupiers.
28. For the reasons given above, although I find no harm in respect of outlook or overshadowing, the proposal provides insufficient evidence to demonstrate that the effects of the neighbouring industrial use would not cause harm to the living conditions of prospective occupiers in terms of noise, lighting or odour. The proposal would therefore conflict with Policies D1 and H4 of the LDP, which seek, in respect of this issue, to protect the amenity of surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight, and the location and setting of the site. It would also conflict with the relevant provisions of the Framework in respect of this issue, which have similar aims.

Ecology and biodiversity

29. The Council's statement of case outlines that a Reptile Survey Report (T4 Ecology, May 2023) was submitted in support of a subsequent outline planning application at the appeal site, and this survey should be submitted in support of the appeal to provide certainty of likely impacts to protected species, specifically great crested newts.

30. This document, along with several others not before the Council when determining the planning application, has been provided. The survey concludes that no reptiles were found during the visits and it is therefore considered unlikely that any reptile population is present within the boundaries of the proposed development site. A signed 'Great Crested Newt District Level Licensing Impact Assessment & Conservation Payment Certificate' has also been submitted, securing a financial contribution payable to Natural England to create habitat for great crested newts.
31. Accordingly, based on the available evidence, the proposal would not result in harm to ecology on or within close proximity to the site and would secure net gains in biodiversity. It would therefore accord with Policies S1, S8 and N2 of the LDP which seek, in respect of this issue, for development to conserve and enhance the natural environment, to deliver net biodiversity and geodiversity gain where possible, and to avoid harm to protected or priority species.

Other Matters

32. The site is within the zone of influence of one or more of the European Sites scoped into the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). Mitigation of recreational impacts on European Sites is required for all developments resulting in a net gain of residential units within the zone of influence. The Council's decision notice refers to the absence of a completed legal agreement to secure the necessary financial contribution to provide the required mitigation.
33. The appeal submission has sought to address this matter by providing a completed unilateral undertaking to secure a financial contribution towards the RAMS. In the event that I was minded to allow the appeal, it would be necessary to consider this matter within an Appropriate Assessment.

Planning Balance and Conclusion

34. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
35. My findings above demonstrate the proposal would comprise unsuitable development in the countryside, that it would harm the character and appearance of the area, and that it would provide unsuitable living conditions for prospective occupiers. These considerations carry significant weight against the proposal.
36. Paragraph 11 d) ii. of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
37. Footnote 8 of the Framework states that relevant policies should be considered out of date where the local planning authority cannot demonstrate a five year supply (or a four year supply, in specific circumstances) of deliverable housing sites. Although there is some disagreement between the main parties regarding the Council's current supply of deliverable housing sites, I shall consider the proposal against the balance set out by paragraph 11 d) ii.

38. The appellant notes the sustainability credentials of the proposal, including seeking to maximise solar gain, electric car charging points, sustainable drainage, rainwater harvesting, sedum roofs and air source heat pumps. These factors all carry moderate weight in favour of the proposal in terms of its contribution of two sustainably designed dwellings to the supply of housing.
39. Nevertheless, even if I was to find that paragraph 11 d) ii. was engaged, the adverse impacts of granting the proposal established through my conclusions on the main issues above would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
40. Having found the proposal unacceptable for reasons other than those concerning its effect on European Sites, it is not necessary to consider this matter further within an Appropriate Assessment.
41. For the reasons given above, having regard to the development plan as a whole, the Framework, and all other material considerations, I conclude that the appeal should be dismissed.

P Storey

INSPECTOR