



# Appeal Decision

Site visit made on 24 April 2024

by **David Smith BA(Hons) DMS MRTI**

an Inspector appointed by the Secretary of State

Decision date: 2 May 2024

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**Appeal Ref: APP/X1545/W/23/3332515**

**Bickleigh Mead, Loamy Hill Road, Tolleshunt Major, CM9 8LS**

- 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 J King against the decision of Maldon District Council.
  - The application Ref is FUL/MAL/23/00127.
  - The development proposed is for the construction of a replacement dwelling.
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## Decision

1. The appeal is allowed and planning permission is granted for the construction of a replacement dwelling at Bickleigh Mead, Loamy Hill Road, Tolleshunt Major, CM9 8LS in accordance with the terms of the application, Ref FUL/MAL/23/00127, subject to the conditions in the attached schedule.

## Applications for costs

2. The application for costs made by the appellant against the Council is the subject of a separate decision.

## Preliminary Matter

3. The Council has advised that it is no longer able to defend two of the reasons for refusal. These relate to the alleged non-compliance with Policy H4 of the Maldon District Local Development Plan and to the urbanising impact of the proposed development. Given the nature of the existing mobile home and the attached porch, the proposal would accord with the policy on replacement dwellings. Its design would be in keeping with the character of the area and that reason was inserted on the decision notice unintentionally.

## Main Issue

4. This is therefore whether a sequential test is required and whether the occupiers of the proposed replacement dwelling would be at risk of flooding.

## Reasons

5. Due to the risk of fluvial flooding from Penny's Brook, the Environment Agency's maps show the appeal site to be located within flood zone 3a. The modelling undertaken as part of the appellant's Assessment concludes that it is within flood zone 2. Either way, the proposed dwelling would be within an area with a medium or high probability of flooding. The National Planning Policy Framework establishes that inappropriate development in such areas should be avoided by directing development away from areas at highest risk.

6. As part of this approach, a sequential test should be applied to avoid, where possible, flood risk to people and property and to manage any residual risk. This aims to steer new development to areas with the lowest risk of flooding from any source. Policy D5 of the Local Development Plan confirms that this test should be undertaken in accordance with national planning policy.
7. The Framework establishes that some minor development should not be subject to the sequential test but the examples given at footnote 60 do not include replacement buildings. Furthermore, this type of proposal is not included in the list of minor development in the Planning Practice Guidance (PPG) on *Flood risk and coastal change*. This does include reference to development that does not increase the size of buildings but in the context of alterations. The proposal, on the other hand, is for a new building in a different location to what is existing.
8. The PPG also refers to taking a pragmatic approach for proposals involving comparatively small extensions to existing premises where it might be impractical to accommodate the additional space elsewhere. However, the proposal does not fall into that category. Furthermore, that advice relates to the application of the sequential test but one has not been done. If the need for this test were always set aside because it would not allow an owner to redevelop an existing use, that would defeat the broad objective of national policy which is to minimise the adverse consequences of flooding.
9. The application was validated without a request for a sequential test to be undertaken. Neither was one required for the previous application for a replacement dwelling. The reasons for refusing this scheme did not allude to the absence of a sequential test. Outline planning permission was given for a replacement dwelling at Mill Cottage, Heybridge in flood zone 2 or 3 but without any mention of a sequential test in the officer report. However, whilst it is evident that the Council's approach has been inconsistent, the requirement for a sequential test is set nationally.
10. The precise circumstances of the appeal are not covered by Government policy or the associated guidance. Nevertheless, when judged against the Framework and the PPG, a sequential test is not excluded for cases involving replacement buildings. That said, the reality is that if the appeal were dismissed for that reason, a lawful dwelling would remain within an area at risk of flooding. Therefore, the actual consequences for future occupiers should be examined.
11. The proposal would have a slightly smaller footprint than the existing dwelling and associated storage units. The finished floor level would be 22.95m AOD. This is above the 1% annual probability flooding level including an allowance for climate change and therefore the property would be dry in this event. The ground floor would also be above the 0.1% annual probability level and therefore there would be safe refuge. The Flood Risk Assessment includes recommendations as to how occupiers could respond effectively during a flood event. The Environment Agency raise no objection and also confirm that compensatory storage is not required.
12. A building used as a dwellinghouse is classed as 'more vulnerable' by Annex 3 of the Framework. If the site is treated as falling within flood zone 3a then an exception test is required to comply with national policy. To that end, it has been shown that the development would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.

Furthermore, as it would replace living accommodation that is 'highly vulnerable' there would be a wider sustainability benefit to the community that outweighs the flood risk. Indeed, overall flood risk would be reduced. This test is therefore passed.

13. The PPG indicates that 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. That is not so here but this is a case where other considerations are at play. In particular, there is already a legitimate residential use on the land. The proposal would lead to a lessening in the risks from flooding because its superior construction compared to the mobile home, the raising of the floor level by 0.65m above ground level and the ability to put in place emergency plans.
14. In conclusion, the occupiers of the proposed replacement dwelling would not be at risk of flooding. Furthermore, the existing risks would be significantly reduced. This benefit outweighs the absence of a sequential test as required by a strict application of national policy and the consequent conflict with Policy D5. Indeed, the proposal is acceptable in terms of the risk from flooding.

### **Other Matters**

15. Other objections have been raised in representations, including those from the Parish Council. Any future applications to replace caravans in the area would be judged against Policy H4 and the outcome of this appeal does not set a precedent in this respect. Although Bickleigh Lane is also a bridleway, the proposal would be unlikely to lead a significant increase in traffic given that a single dwelling already exists at the site. Similarly, there would be no unacceptable impact on road safety at the junction with Loamy Hill Road.
16. The use of the lane for construction traffic would be short-lived as would any resulting disturbance. The scale of development is not so large that it should be prevented due to the nature and surfacing of the access to the site. There is no technical evidence that mains water pressure would be adversely affected. The proposed dwelling would be single storey and sufficiently removed from neighbouring properties to avoid a loss of privacy.

### **Conditions**

17. The plans should be confirmed in the interests of certainty. In view of this, there is no need to stipulate that the materials used should be as approved since they are shown on the drawings. The existing dwelling and storage building should be removed within a prescribed time period as the scheme has been considered as a replacement rather than as an additional dwelling. To ensure a satisfactory appearance, details of the treatment of the external areas should be secured, including any landscaping.
18. Given the scale of the project, the separation from nearby properties and the provisions of other legislation, a full construction management plan is not required. However, to safeguard living conditions, the hours of construction should be limited. Details of the contents of an evacuation plan should be agreed and made available to occupiers in order to minimise any residual risk from flooding.
19. According to the application form, surface water and foul sewage would be disposed of by connecting to the mains sewer. The Environmental Health

officer requested that informatives be attached to any permission but there is no indication that further drainage details are required. Passage along the bridleway is protected by other legislation and there is therefore no need for a planning condition to secure free and unobstructed access.

### **Conclusion**

20. Because of the lack of a sequential test, the proposal would not accord with the development plan. However, this conflict is outweighed by the fact that the safety of residential occupiers at the site would be greater than it is at present. Future residents would not be at risk of flooding. Material considerations therefore indicate that the appeal should be decided other than in accordance with the development plan. So, for the reasons given, the proposed replacement dwelling is acceptable and the appeal should succeed.

*David Smith*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawings nos 22-0055-001 REV A, 22-0055-002 REV A, 22-0055-003 REV A and 22-0055-004.
- 3) No development above slab level shall take place until a scheme to demolish and completely remove the mobile home and storage and stable building shown on drawing no 22-0055-004 from the site has been submitted to and approved in writing by the local planning authority. The mobile home and storage and stable building shall be demolished and completely removed from the site in accordance with the approved scheme and with a timetable previously agreed in writing by the local planning authority.
- 4) No development above slab level shall take place until a soft and hard landscaping scheme has been submitted to and approved in writing by the local planning authority. This shall include details of:
  - a) Species of trees and shrubs to be planted, planting layouts with stock sizes and planting numbers/densities;
  - b) A planting scheme implementation programme, including ground protection and preparation, weed clearance, stock sizes, seeding rates, planting methods, mulching, plant protection, staking and/or other support;
  - c) An aftercare and maintenance programme;
  - d) Hard surfacing including materials, finishing and edgings; and
  - e) A timetable for implementation.

The approved landscaping scheme shall be carried out in accordance with the timetable for implementation. Any trees or other plants approved as part of the landscaping scheme which die, are removed or become seriously damaged or diseased within five years of planting shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

- 5) Demolition or construction works shall only take place between 0730 and 1800 hours on weekdays; between 0800 hours and 1300 hours on Saturdays and not at any time on Sundays or Public Holidays.
- 6) No development above slab level shall take place until an emergency evacuation plan in the event of a flood has been submitted to and approved in writing by the local planning authority. The plan shall be based on the recommendations in the Flood Risk Assessment by Evans Rivers and Coastal July 2022 (Ref 2558/RE/08-20/01 Revision A). The agreed evacuation plan shall be provided to the first occupiers of the dwelling hereby permitted within one month of their occupation.