



Appeal Decision

Site visit made on 1 July 2024

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2024

Appeal Ref: APP/X1545/W/23/3334253

Crown Lodge, Crown Road, Cold Norton, Essex CM3 6JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by SLA Property Company Limited against the decision of Maldon District Council.
 - The application Ref is OUTM/MAL/23/00220.
 - The development proposed is outline planning application with all matters reserved apart from access, for residential development (up to 14 dwellings), vehicle circulation and parking, hard and soft landscaping and associated development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought with details of access to be considered at this point, and with details of appearance, landscaping, layout and scale reserved for future consideration. Notwithstanding this, parameter plans have been submitted which would inform certain aspects of the scheme. I have taken the access plan (drawing reference DR1) and the parameter plans into account in making the decision, and treated the other plans as illustrative.
3. The National Planning Policy Framework (Framework) was revised in December 2023. The appellant and the Council have been able to comment on any alleged implications of this during the appeal process.
4. In an attempt to address some of the Council's refusal reasons, the appellant has provided an Appeal Transport Statement, a Great Crested Newt District Level Licensing Impact Assessment and Conservation Payment Certificate, and a Unilateral Undertaking (UU). I have taken these into account as I am satisfied prejudice does not arise in doing so, and the Council no longer wishes to defend refusal reasons 2 to 6 as a result. However, the Council has highlighted that it has outstanding surface water drainage concerns, which were not included on the decision notice. The main issues below relate to the Council's remaining objections to the scheme.
5. Following the submission of final comments and my site visit, the appellant highlighted that an appeal decision¹ had been made which addresses similar considerations to this proposal in some respects. I have taken this evidence into account, having first given the Council an opportunity to comment on any purported implications arising from it.

¹ Reference: APP/X1545/W/23/3331398

Main Issues

6. The main issues are:

- whether the site is an appropriate location for housing, having regard to the Council's spatial strategy including the character and appearance of the site and the surrounding area; and
- whether the proposal would make satisfactory provision for surface water drainage.

Reasons

Location

7. The site is adjacent to but outside the settlement boundary of Cold Norton as defined by the Maldon District Approved Local Development Plan (LP) and therefore in the countryside. LP policy S8 supports development within defined settlement boundaries, but states that permission will only be granted for development in the countryside in prescribed circumstances and where its intrinsic character and beauty is not adversely impacted. None of those circumstances are present, and so the proposal is in conflict with the policy. Otherwise, LP policies S1, D1 and H4 are multifaceted but largely consistent in promoting accessibility and connectivity and requiring local context and character to be considered. Additionally, while not stated on the decision notice, LP policy S2 specifies similar considerations in the context of the Council's strategic growth aims.
8. Cold Norton principally features residential properties along Latchingdon Road and roads roughly perpendicular to it, with some extending beyond the settlement boundary. These include Crown Road, from which the site has two vehicular access points, Cherry Blossom Lane to the west and Victoria Road to the east. The age and design of development is somewhat varied, which reflects the growth of the area over time. The Landscape and Visual Impact Assessment (LVIA) highlights that Cold Norton is a rural village with outlying open countryside, with the site located in the East Hanningfield Wooded Farmland landscape character area. Amongst other things, this is characterised by large arable fields delineated by mature treed field boundaries and ditches and pockets of pasture and paddocks.
9. The site includes the existing property at Crown Lodge, which comprises a detached dwelling and associated garden, and an open field to the north. The site is bounded largely by vegetation, but its northern boundary with a public footpath is mostly enclosed by post and wire fencing, beyond which is a paddock featuring a small, dilapidated building. Rear gardens to residential properties back on to the southern and western parts of the site. A field enclosed by vegetation is on the opposite side of Crown Road.
10. The dwellings on Crown Road within the settlement boundary have a clear physical and visual relationship with Cold Norton, but Crown Lodge appears as the end of a line of development leading out of the settlement. Critically, the openness and spaciousness of the site beyond the dwelling, as perceived from its accesses, the road and the public footpath, provide a sense of transition to countryside that is reflective of the landscape character area's characteristics. This is reinforced by an apparent absence of built form opposite the site and north of the public footpath other than the dilapidated building, and only

occasional glimpses of roofs to the west and east. Although there is a group of properties including some relatively recent development further north, this is physically distinct from the settlement and appears within the countryside. I therefore find that the site provides a rural setting to the settlement and contributes positively to the character and appearance of the area.

11. The proposal would entail the demolition of the existing dwelling and provide up to 14 new dwellings on the site. Single storey dwellings and green space would be provided near Crown Road and two storey dwellings are otherwise proposed. The illustrative plan shows that the detailed scheme could broadly reflect newer parts of the settlement such as the housing along Victoria Road. In addition, other than its northern boundary, the site is generally well contained, and existing landscaping could be supplemented and thereby reinforce the landscape character area's characteristic field boundaries.
12. Notwithstanding this, the proposal would not represent infilling of a gap between the housing in the settlement and the group of properties to the north as it would remain physically and visually distinct from the northern grouping. Rather, up to 14 dwellings, plus associated vehicular circulation areas, parking facilities and boundary treatments would result in a significant proportion of the site being developed. This would constitute a marked change to the site's baseline characteristics, by replacing its open and spacious qualities and so the rural setting of the settlement with a comparatively dense, sub-urban feeling cul-de-sac extending from Cold Norton. The loss of these qualities would thus undermine the site's contribution to the character of the local landscape.
13. Furthermore, in respect of visual effects, the LVIA suggests that even in the summer months 15 years post development and with supplementary landscaping, the impacts on views from Crown Road and the public footpath would be of medium to high significance. Views of the development would inevitably be more harmful in winter months from the proposed vehicular access, the road and the public footpath between, above and in gaps in the vegetation. The impacts from properties towards the south of the site would also reportedly be highly significant. In any case, the visual effects would be significant overall and, more broadly, the character and appearance of the site and the surrounding area would be adversely affected. The development would be contrary to the abovementioned LP policies in that respect. Consequently, the development would not be sympathetic to local character and would harm the intrinsic character and beauty of the countryside in conflict with paragraphs 135 and 180 of the Framework.
14. Part of the site was included in the Council's Call for Sites process and is identified in the Housing and Economic Land Availability Assessment as potentially suitable for 20 dwellings. An associated summary indicates that there would be a minimal impact from its development on the wider landscape and townscape provided that boundary treatments are retained. The field opposite is also identified as potentially suitable for development. While the assessment is a relevant consideration, it is an evidence base document that does not formally allocate land or indicate that proposals relating to land identified as potentially suitable for development should be permitted. Although it suggests that there may be scope for development from a strategic perspective as a logical extension to Cold Norton, that is principally a matter for the Council to consider as part of its plan-making and site allocation

processes. As such, it does not obviate the need for a detailed appraisal of the effects of the scheme or indicate that the harm found should be disregarded.

15. Cold Norton is designated as a 'smaller village' by LP policy S8. Nonetheless, there are services, facilities and transport options sufficiently near the site, and the Council has no accessibility objections. Further, paragraph 83 of the Framework sets out that housing should be located where it will enhance or maintain the vitality of rural communities, while paragraph 109 highlights that significant development should be focused on locations which are or can be made sustainable. The development would accord with these objectives due to the site's accessibility. However, conflict with the aforementioned LP policies and the Framework would nevertheless remain for the reasons identified.
16. I conclude that the site is not an appropriate location for housing having regard to the Council's spatial strategy including the character and appearance of the site and the surrounding area. The proposal thereby conflicts with LP policies S1, S2, S8, D1 and H4, the purposes of which are summarised above.

Drainage

17. Surface water is proposed to be collected in an attenuation basin in the site's north-eastern corner, then discharged at a restricted rate to a ditch on neighbouring land via a piped or open conveyance. No technical objections have been lodged by the Council, but there are concerns about the reliance on third party land to discharge surface water. However, there is nothing before me which indicates that there is no prospect that such an arrangement cannot be delivered. Furthermore, even if permission to use the ditch was withheld, there is scope for alternative arrangements to be put in place, such as by increasing storage capacity within the site.
18. There is a reasonable prospect of a satisfactory surface water drainage scheme being delivered and maintained through a planning condition. The proposal would therefore make satisfactory provision for surface water drainage. In this respect, there is no conflict with LP policies S1 and D5, which require that development mitigates against flooding.

Other Matters

19. The scheme is supported by evidence which indicates that subject to general precautions during construction and sensitive lighting, ecological impacts would likely be limited to the loss of potential great crested newt habitat and effects on habitats sites as defined by Annex 2 of the Framework. If I were minded to grant permission, I would need to consider whether the development would be unlikely to be licensed by Natural England or adversely affect the integrity of the habitats sites. In doing so, I would need to consider the mitigation intended to be secured by the UU. However, even if a licence was granted and there would be no adverse effects on habitats sites, these matters would constitute neutral considerations rather than benefits weighing in favour of the scheme. However, there would be modest benefits arising from ecological enhancements detailed in the appellant's Preliminary Ecological Appraisal, having regard to the scale of the development.
20. The Five Year Housing Land Supply Statement 2022/23 states that the Council can currently demonstrate 6.35 years of deliverable housing sites, though the late evidence indicates that the Council considers this to have fallen to 5.97

years. While the figure may depend on the delivery of a small number of strategic sites, and windfall sites may have been an important source of housing supply in the district in recent years and continue to be so, particularly as the Council's review of the LP is at an early stage, substantive evidence indicating that there is less than 5 years supply has not been submitted, and I do not have compelling reasons to question the latest position.

21. Even so, neither the development plan or the Framework impose a cap to housing supply, and a net increase of up to 13 additional dwellings of a range of sizes and tenures to meet the district's housing needs in this accessible, edge of settlement location attracts moderate weight. I also have no reason to doubt that the scheme could be delivered quickly. Small benefits would also arise from proposed safety improvements to Crown Road through the potential provision of a footway and signage, the prospective occupiers contributing to the vitality of rural communities, economic benefits from the construction process, and the appellant's support for the development to attain the highest possible standards of energy efficiency and environmental sustainability.
22. The UU intends to secure 40 percent of the dwellings as affordable housing, with 70 percent of those for affordable rent and the rest of intermediate tenure, unless otherwise agreed by the main parties. In addition, the Council confirms that there is a substantial shortfall in affordable housing delivery. In that context, the delivery of the affordable homes specifically would be a significant benefit even though a small number would be provided in absolute terms. The UU also intends to secure a financial contribution towards healthcare in line with the amount indicated to be necessary by the Council. However, this is a neutral consideration, as the contribution would be needed to address the increase in demand for healthcare arising from the occupiers of the development.
23. The appellant puts forward that the Council's housing supply position is principally the result of it being calculated against local housing need (which is lower than the LP's housing requirement) as strategic policies are more than 5 years old. It is argued that the most important policies for determining the proposal are out-of-date as a consequence. Further, it is alleged that the Council's spatial strategy is inconsistent with the Framework's objectives to significantly boost housing supply. I have also been referred to a briefing paper to the Council's Overview and Scrutiny Committee in July 2022 which indicates that the LP overly constrains housing growth, with settlement boundaries having contributed to insufficient supply previously.
24. LP policies S1, S2, S8, D1 and H4 are fundamental to the suitability of the site's location for housing and so the principle of the development and are therefore the most important ones for determining this proposal. I acknowledge the alleged shortcomings of the spatial strategy and that LP policy S8 is particularly restrictive compared to the balanced approach to housing set out by paragraph 83 of the Framework. Importantly, however, I have identified harm in respect of character and appearance considerations in the particular circumstances of this case, and these LP policies are consistent with the Framework insofar as they reflect the need for schemes to be sympathetic to local character and recognise the intrinsic character and beauty of the countryside.

25. Additionally, there is nothing in the Framework which prevents the designation of settlement boundaries and, given that there is more than a 5 year supply of deliverable housing sites, I do not have compelling reasons to conclude that such boundaries in the district are wholly incompatible with the Framework's objectives to boost housing supply. Therefore, having regard to the specific conflicts with the LP policies in this case in the context of paragraph 225 of the Framework, the most important policies are not out-of-date. Accordingly, paragraph 11(d) of the Framework is not applicable.
26. Both main parties refer in detail to a previous appeal decision² for outline planning permission for 4 bungalows on part of the site. While I have undertaken my own assessment of the scheme before me, this is consistent with that decision insofar as it is relevant to the site's suitability for housing having regard to character and appearance considerations.
27. In addition to the late evidence, the appellant has also referred to other decisions³ which allegedly offer support for the scheme. While I have not been provided with full details of the circumstances that applied for those cases, it is clear from the decisions that they involve different locations, development and thus impacts to those applicable for my consideration. For example, comparable issues arising from proximity to a public footpath are not reflected in the other decisions. Furthermore, in respect of the late evidence, it was concluded that the site in that case was perceived in the urbanised context of a modern edge to a settlement, and the scheme would improve how the settlement edge relates to surrounding countryside. These matters are thus not comparable to my assessment of this proposal. Therefore, those cases do not lead me to alter my conclusions.

Planning Balance and Conclusion

28. The benefits of the development identified above weigh moderately in favour of granting permission when taken together. Although the harm arising from the conflict with the Council's spatial strategy is limited insofar as the site is in an accessible, edge of settlement location, the benefits of the development do not outweigh the harm to the character and appearance of the site and the surrounding area, and the consequent conflict with the LP policies and the Framework in that respect.
29. For the above reasons, the proposal is contrary to the development plan taken as a whole. The material considerations identified do not outweigh the conflict or thus indicate that a decision should be taken other than in accordance with the development plan. The appeal should therefore be dismissed.
30. Consequently, it is not necessary that I consider whether a license would be granted in respect of works affecting great crested newts or the effect of the proposal on habitats sites, as such assessments would not alter the outcome of the appeal.

Mark Philpott

INSPECTOR

² Reference: APP/X1545/W/17/3191345

³ References: APP/X1545/W/22/3303355; APP/X1545/W/22/3293818; 23/00201/OUT