



Appeal Decision

Site visit made on 13 June 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2024

Appeal Ref: APP/W1525/W/23/3335751

116 Maldon Road, Danbury, Chelmsford, Essex CM3 4RA

- 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 James Barnes, Sunbury (Country Homes) Ltd against the decision of Chelmsford City Council.
 - The application Ref is 23/00682/FUL.
 - The development proposed is demolition of existing residential dwelling and replacement with four dwellings with associated car parking and private amenity space.
-

Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by the appellant against Chelmsford City Council and a counter claim was made by Chelmsford City Council against the appellant. These are the subjects of separate decisions.

Preliminary Matters

3. I have had regard to the Written Ministerial Statement and draft National Planning Policy Framework published on 30 July 2024. Whilst national policies relating to housing land supply are proposed to change as part of this consultation, these changes can only be given limited weight at this stage. Even if the proposed changes were to be accepted, it would not materially affect the outcome of my decision since I have identified conflict with the development plan in respect of other main issues. Therefore, in this instance it has not been necessary to consult the parties on these changes.
4. The appeal submission includes a revised drawing¹ which details the location of refuse storage positions, including the use of a visitor parking space for refuse storage. The Council indicate that the Highways Authority has not been consulted on the revised drawing.
5. I have considered whether it would be appropriate to accept the drawing, having regard to the guidance in the 'Procedural Guide: Planning Appeals – England (2024)', and the tests given in the 'Holborn Studios' judgement². Whilst the drawing does not result in significant changes to the site layout and form of development, it would involve the introduction of a reversing waste collection vehicle into the site across the lanes of traffic on Maldon Road. This would be a fundamental change to the application that results in a different scheme than

¹ Enclosure 7 of the appellant's Statement of Case

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

the one which was before the Council. As such, it would not be appropriate for the drawing to be accepted, as it could unacceptably prejudice those who should have been consulted, in particular the Highways Authority. For this reason, I have determined the appeal using the original Refuse Strategy that was considered by the Council and upon which the views of interested parties have been sought.

6. The appellant has requested that amended plans be accepted for determination through the Appeal which show the addition of green roofs to Plots 2, 3 and 4, native hedgerow planting and provision of neutral grassland. A Biodiversity Net Gain Metric was also submitted. It is considered that the introduction of these plans constitutes neither a substantial difference nor a fundamental change to the scheme determined by the Council. I am satisfied that it would not be unfair not to reconsult on the changes or that my acceptance of the revisions would deprive those who were entitled to be consulted on the changes that opportunity, given the minor nature and extent of the changes proposed.
7. Furthermore, a Badger Survey Report and a Great Crested Newt District Level Licensing Impact Assessment & Conservation Payment Certificate were submitted with the appeal. The ecological evidence provides additional detail in relation to the effect on protected species, rather than any amendments to the proposal. For this reason, I consider that there would be no prejudice to any party by considering the additional information. I have therefore determined the appeal on the basis of the additional information.

Main Issues

8. The main issues are:

- the effect of the proposal on the living conditions of occupiers of neighbouring properties, with particular regard to privacy, overshadowing and outlook for the occupiers of Hyde House;
- whether the proposal would provide satisfactory provision for the storage and collection of waste;
- the effect of the proposal on biodiversity net gain and protected species, with particular regard to badgers and great crested newts; and
- the effect of the proposal on the character and appearance of the area.

Reasons

Neighbouring occupiers

9. Plot 2 would be located close to the shared boundary with Hyde House. The proposal would introduce a house with limited set back from this shared boundary. Plot 2's rear elevation would have a bedroom window at first floor level, which would provide views towards Hyde House's rear garden, albeit at an angle.
10. Typically, the garden area immediately outside the rear of a house is often the area that is in most frequent use by the occupiers. At present, the part of the garden immediately to the rear of Hyde House is not overlooked from the direction of the appeal site and provides a good level of privacy for the neighbouring occupiers.

11. The boundary is made up of mature vegetation which is tall and dense, and screens ground level views between the two properties. The Proposed Block Plan - Boundary Vegetation³ states that the existing hedge on the boundary is to be 'retained as much as possible'. As I cannot be certain how much of this vegetation in the area adjacent to the proposed bedroom window would be retained, it may provide limited screening of views. I note that there are also trees positioned along the boundary, however, it seems to me that some, if not all of these, may lose their leaves during winter and therefore would not provide screening of views throughout the whole year.
12. Due to its height and proximity to the shared boundary, the bedroom window would allow views directly into the garden of Hyde House, which would result in a harmful loss of privacy for the neighbouring occupiers. The window in question would be the sole window to the bedroom. A condition requiring obscure glazing to be used for this window would not be appropriate in this instance as it would remove any outlook from the room.
13. Whilst there is no formal test identified to assess the impact on outlook and a subjective assessment is required, during my site visit I was able to view the proposals from within the appeal site adjacent to Hyde House. Although the proposal would create additional built form which would be visible from Hyde House, this would be located at an angle from the neighbouring property's nearest windows.
14. Views from the rear windows of Hyde House are directed towards the rear of its garden. Whilst the built form of Plot 2, in particular its two storey component, would be visible above the boundary screening from the garden and rear windows of Hyde House, it would be at an approximately 45 degree angle from the neighbouring property's rear elevation. The annotated block plan⁴ within the appellant's Statement of Case identifies that the closest part of Plot 2 would be 14.4 metres from the closest corner of Hyde House. As this part of the building at Plot 2 would be single storey it would have minimal impact on the neighbouring occupiers' outlook. The ridge of Plot 2's two storey element would be 20 metres from the nearest part of Hyde House, which would be a generous separation distance. Overall, due to the separation distance and orientation of the dwelling within Plot 2 it would not be overly oppressive to the extent that it would significantly harm the level of outlook for occupiers of Hyde House.
15. The Overshadowing Study⁵ submitted by the appellant illustrates the impact of overshadowing caused by existing boundary vegetation in comparison to the overshadowing effect from the proposal. This illustrates that the proposal's built form would not result in a significant increase in overshadowing of Hyde House's garden. Overall, in the absence of substantive evidence to demonstrate otherwise, and due to the height and proximity of existing boundary screening to Plot 2, I find that the proposal, would not result in a harmful level of overshadowing to Hyde House's garden.
16. Three additional dwellings within a residential area would be unlikely to cause harmful noise and disturbance as a result of the additional comings and goings, or recreational use of the properties by future occupiers and visitors.

³ Enclosure 4 of the appellant's Statement of Case

⁴ Page 20 of the appellant's Statement of Case

⁵ Enclosure 5 of the appellant's Statement of Case

17. However, I have found that the proposal would cause harm to the living conditions of neighbouring occupiers, with particular regard to privacy for the occupiers of Hyde House. I therefore find that the proposal would not comply with Policy DM29 of the Chelmsford Local Plan (2020) (CLP) and the Framework. Collectively, these require that development safeguards the living environment of occupiers of nearby residential properties by, amongst other things, ensuring that it does not result in unacceptable overlooking.

Storage and collection of waste

18. The appellant's Refuse Strategy⁶ indicates that occupiers of the dwelling would store their bins in their rear gardens and pull their bins to the front of the property on collection day.
19. The driveway and turning head would be tight. The illustration within the appellant's Refuse Strategy shows that, in order to exit in a forward gear, drivers of the waste collection vehicle are likely to override the soft landscaping area within the site. Furthermore, no details have been provided to confirm the size of the waste collection vehicle used within the illustration. Therefore, in the absence of substantive evidence to demonstrate otherwise, the refuse collection vehicle would be unable to safely enter, turn and exit the site in a forward gear.
20. Policy DM26 of the CLP relates to, amongst other things, recycling and waste storage. In this respect the policy requires developments to accord with the standards set out within Appendix B of the CLP. Appendix B states that bin stores should be as close as possible to the highway and collection operatives should not have to wheel or carry receptacles further than 20 metres. As Plots 2, 3 and 4 would be located more than 20 metres away from the road, and as it has not been demonstrated that a refuse vehicle could safely enter, turn and exit the site, these distances would be excessive for refuse collection operatives to wheel or carry the refuse. I therefore find that the proposal would not make satisfactory provision for the storage and collection of waste.
21. I note that the Recycling & Waste Collection Services did not provide any comments either in support or in objection to the proposal. In any event, the above factors combined suggest that there is uncertainty that the proposed arrangement would be feasible, and this is likely to lead to waste collection vehicles being unable to safely enter and exit the site.
22. The proposal would fail to comply with Policy DM26 of the CLP, which requires that new development must be in accordance with the standards set out within Appendix B of the CLP unless it can be demonstrated that the particular site circumstances allow for a lower provision.

Protected species and biodiversity net gain

23. The appellant's Preliminary Ecological Appraisal (PEA) confirms that the habitats on-site have potential to support nesting birds, reptiles, foraging bats, hedgehog, badger and Great Crested Newts (GCNs).
24. Natural England has issued a Great Crested Newt District Level Licensing Impact Assessment & Conservation Payment Certificate ('the Certificate') for

⁶ Page 39 of the Design and Access Statement

the proposed development, a copy of which was submitted with the appellant's appeal statement. This was found to be acceptable by the Council.

25. A countersigned Certificate confirms that the scheme is suitable for District Level Licensing, meets the favourable conservation status test and secures adequate compensation for any impact. The payment of the Conservation Payment will suffice to allow the impacts on GCNs to be adequately compensated; and therefore, from the evidence before me, the proposed development would not be detrimental to the maintenance of the population of GCNs at a favourable conservation status in their natural range.
26. The PEA recommended that a Badger Survey be undertaken. The survey submitted with the appeal identified one disused badger sett on-site and another disused sett offsite within an accessible woodland strip to the south. A 21-night survey using cameras and manual survey visits were also undertaken to seek signs of use, but no further badger field signs were identified.
27. The survey concludes that both badger setts are disused and as the sett on the appeal site showed no sign of activity, it can be removed without licence. The survey recommends the works are carried out following precautionary mitigation measures, to be detailed within a Construction Environmental Management Plan (CEMP): Biodiversity. Had the appeal proposal been acceptable, a condition could have been imposed requiring the management plan, and including details such as a method statement relating to badgers.
28. On the evidence before me in respect of protected species, I am satisfied that the risks identified are low and that the proposed mitigation measures would suitably address these risks, such that the favourable conservation status of both badgers and GCNs is maintained.
29. The appellant has provided amended drawings detailing green roofs to Plots 2, 3 and 4, native hedgerow planting, and provision of neutral grassland. The Biodiversity Net Gain (BNG) calculations submitted with the appeal demonstrate that this would achieve a BNG of 23% for habitat units, and 46.5% for hedgerow units. Policy DM16 of the CLP requires all developments to deliver a net gain in biodiversity where possible. Whilst the policy does not set a specific percentage target, the additional information demonstrates that the proposal would exceed 10% BNG, and I consider the proposal would deliver an acceptable level of BNG.
30. I therefore conclude that the proposal would ensure that the ecological value of the site would be preserved and that satisfactory on-site BNG would be achieved. No conflict therefore arises with Policy DM16 of the CLP which seeks to conserve and enhance biodiversity and protected species or with the related aims of the Framework to protect and enhance biodiversity.

Character and appearance

31. The appeal property is a small bungalow within a relatively large plot, located within the defined settlement boundary of Danbury. The site is verdant with tall, dense and mature vegetation along each of its boundaries. This part of Maldon Road is defined by linear residential development, with properties which are set back from the highway behind car parking areas and driveways.
32. To the west of the site are semi-detached houses with hipped roofs which are relatively uniform in design, albeit they have individual alterations such as

porch projections and different styles of fenestration. To the west of the site are a mixture of detached chalet bungalows and two storey houses within more spacious plots. There is variation in the height, design and materials across these properties.

33. To the rear of the appeal site the layout of dwellings accessed from Cherry Garden Lane and Hyde Lane is looser and more informal, with dwellings positioned in plots of varying size and shapes, without a discernible building line. Again, there is variation in the design of these dwellings.
34. The existing bungalow is located further to the rear of its plot than the prevailing building line. Plot 1 would be positioned further forward than the existing building so that it would address Maldon Road and would join the building line of existing dwellings. Plot 1's built form closest to the boundary would be one and a half storeys in height, creating a visual transition to the lower height of the neighbouring chalet bungalow to the east.
35. The construction of four houses and associated driveways and turning head would inevitably give the site a more developed and built-up appearance compared to the existing situation. The appellant indicates that the proposal's density would be 14 dwellings per hectare and has provided a comparison of the density of the proposed development and existing adjoining developments. This illustrates that, whilst the densities in the area vary, the density of properties to the west fronting Maldon Road is greater. Whilst there may be lower density housing to the east and rear of the site, I find that the appeal proposal allows a transition in density from the more spacious dwellings to the east and rear of the site, to the semi-detached properties to the west. Furthermore, the submitted evidence indicates that the majority of mature vegetation along the length of the site's boundaries and principle trees within the site would be retained. This would significantly filter views of the proposal's built form from adjoining sites which would prevent the dwelling's from being unusually prominent features. Accordingly, the proposal's density would not be at odds to the character of the area.
36. The houses within Plots 2, 3 and 4 would be positioned closer to the rear of the site than the existing bungalow. Locally, there is variation in the size of plots between the larger plots to the east and rear, and the semi-detached properties to the west. Variety and difference do not necessarily lead to harm. Whilst the gardens and plots may be slightly smaller than some nearby properties they would not appear manifestly at odds with the prevailing form of development and would not create an awkward appearance within the wider street scene. Equally, the spacing between properties within the proposal, and to adjoining existing properties, would not appear unusually tight or cramped. The staggered position of the dwellings within the appeal site, combined with the separation distance to the site's rear boundary would prevent them from looming over the adjoining properties. In this regard, the proposal would successfully assimilate with the built context, and I note that Paragraph 135 of the Framework states that developments should be sympathetic to local character and history, including the surrounding built environment, while not preventing or discouraging appropriate innovation or change such as increased densities.
37. The proposed dwellings consist of a mix of single storey, one and a half and two storey elements which mediate their height across each plot, and avoids large two storey elements in close proximity to the site boundaries.

Furthermore, the proposed dwellings would have a traditional design with gabled roofs, and would be constructed using a mixture of traditional materials and details. These include red brick, weatherboarding elements, including dormers, red roof tiles and gallows bracket timber porches. Whilst the ridge height of the houses would be taller than other properties fronting Maldon Road, this is as a result of the 50 degree roof pitch which the appellant advises is encouraged by the Essex Design Guide.

38. The dwellings have two house types, providing variation and visual interest. Whilst the dwellings would be clearly identifiable as part of a unified development, this would be similar to the semi-detached properties to the west which share visual uniformity. Consequently, I find that the new dwellings would be finished in a style that would complement the existing housing nearby and which would ensure that the proposal would not be out of keeping with the residential character of the area.
39. Overall, given the mixed grain of the properties within the surrounding area, the proposed dwellings would have a sufficiently sympathetic visual relationship with their surroundings.
40. For the above reasons, I conclude that the proposal would not cause harm to the character and appearance of the area. I therefore find that it would comply with Policy DM23 of the CLP which requires development of a high standard of design which positively contributes to the existing character, appearance and context of the area. Equally, the proposal would comply with paragraph 135 of the Framework which requires that development is visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Other Matters

41. The Framework seeks to significantly boost housing supply and indicates the value of using suitable land within settlements for homes. It also encourages the optimal use of underutilised land. Similarly, the CLP seeks to optimise use of previously developed land, particularly within defined settlements.
42. The proposal would make more efficient use of previously developed land within the settlement of Danbury, and as the appellant is a locally-based housebuilder could be developed quickly to use land efficiently. The proposal would provide three (net) dwellings towards the supply of housing in a settlement with access to services and public transport. These matters weigh in favour of the development. The Council currently has a housing land supply exceeding the five years required by the Framework. This tempers the weight I have attached to housing delivery, notwithstanding that it is still a benefit to be factored into the planning balance.
43. The appellant indicates that the CLP makes provision for 805 dwellings per annum, that this figure is a minimum, and suggests that Chelmsford's current minimum local housing need is higher. Whilst at an early stage of its preparation, and therefore afforded limited weight, the Council's new Local Plan acknowledges that a larger housing requirement in the borough is required. Furthermore, the Danbury Neighbourhood Plan is also at a relatively early stage. However, it seeks to deliver new homes through allocations and the balance is anticipated to come forward through windfall development on smaller sites. I have afforded limited weight to these factors.

44. Construction works would generate short term employment opportunities and economic activity. Occupiers would support local facilities and services and contribute to the local economy. The appellant indicates that the proposal is accompanied by a contribution towards the planting of trees within the borough. Water and energy could be used efficiently in accordance with Building Regulations. EV charging points could reduce carbon emissions. However, taken together, the economic, social and environmental benefits of the appeal proposal would be small given its scale, and they attract only modest weight in its favour.
45. I acknowledge that residential development in this general location is acceptable in principle, the proposal may be compliant with various other provisions of the development plan, and the site is not within the Green Belt, the countryside, or an area at risk of flooding. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.
46. The proposal is within the Zone of Influence for one or more of the European designated sites scoped into the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2020 and, as such, would have potential impacts on one or more of them. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.
47. I understand that the appellant undertook pre-application discussions with the Council in advance of the submission of the planning application. However, the concerns expressed regarding the Council's conduct during the processing of the planning application are outside the remit of this appeal decision.

Planning Balance and Conclusion

48. I have found harm to the living conditions of neighbouring occupiers which is a planning harm which attracts considerable weight. I have also found harm arising from the proposal's failure to make satisfactory provision for the storage and collection of waste. The delivery of housing and the economic, social and environmental benefits are all afforded weight, but this is not of sufficient magnitude to outweigh my overall conclusion on the main issues.
49. The proposal would be contrary to the development plan and the Framework taken as a whole. There are no other material considerations which indicate that the decision should be determined other than in accordance with the development plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR