



Appeal Decision

Site visit made on 9 October 2024

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 21st October 2024

Appeal Ref: APP/X1545/W/24/3339416

Land rear of Springwood, Rectory Lane, Latchingdon, Essex CM3 6HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Mr P Wells, Woodhill Estates Ltd against the decision of Maldon District Council.
- The application Ref FUL/MAL/23/00585 was approved on 25 August 2023 and planning permission was granted subject to conditions.
- The development permitted is revised application for the erection of five detached three-bedroomed bungalows with associated access, parking and landscaping, together with ancillary works.
- The conditions in dispute are Nos 5, 6, 7, 8, 16 and 17 which state that:

No. 5: *'No development shall take place until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:*

- a) Risk assessment of potentially damaging construction activities.*
- b) Identification of "biodiversity protection zones".*
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements) including a precautionary method statement for Great Crested Newt.*
- d) The location and timing of sensitive works to avoid harm to biodiversity features.*
- e) The times during construction when specialist ecologists need to be present on site to oversee works.*
- f) Responsible persons and lines of communication.*
- g) The role and responsibilities on site of an ecological clerk of works (ECow) or similarly competent person.*
- h) Use of protective fences, exclusion barriers and warning signs.*

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority. The CEMP (Biodiversity) shall be implemented as approved in writing.'

No. 6: *'Prior to any works above slab level a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:*

- a) Purpose and conservation objectives for the proposed enhancement measures;*
 - b) detailed designs or product descriptions to achieve stated objectives;*
 - c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;*
 - d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;*
 - e) persons responsible for implementing the enhancement measures;*
 - f) details initial aftercare and long-term maintenance (where relevant).*
- The works shall be implemented in accordance with the approved details prior to*

occupation and shall be retained in that manner thereafter.'

No. 7: *'Prior to occupation of the dwellings hereby approved, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting plans, drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.'*

No. 8: *'Prior to their use in the development hereby approved, samples of the materials to be used in the construction of the external surfaces, including windows and doors, shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.'*

No. 16: *'None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.'*

No. 17: *'Prior to commencement of the development a detailed Sustainable urban Drainage Scheme as specified in the Essex Sustainable Drainage Systems Design Guide shall be submitted to and approved in writing by the local planning authority. This must be conducted by a competent person and include written explanation of any data provided. The scheme shall include, but not be limited to: Discharge rates/location; Storage volume; Treatment requirement; Detailed drainage plan. Where the surface water drainage strategy proposes the use of soakaways the Scheme shall include details of the design and the results of a series of percolation tests carried out upon the subsoil in accordance with DG 365 2016, and shall include details of the area to be drained, infiltration rate (as determined by BRE Digest 365), proposed length, width and depth of soakaway, groundwater level and whether it will be rubble filled.'*

Where discharging to a watercourse the proposed scheme shall include details of the destination and discharge rates equivalent to "greenfield runoff" up to and including a 1 in 100 year rainfall event inclusive of climate change. The discharge rate should be restricted with long term storage (minimum rate 1l/s). It must be demonstrated that the system is an appropriate point of discharge for the site. The discharge hierarchy should be used to determine discharge location. Where discharge to an adopted sewer network is proposed, it will be necessary to provide written confirmation from the statutory undertaker that the discharge will be accepted.

The scheme shall include a maintenance plan detailing the maintenance arrangements including responsibility for different elements of the surface water drainage system and the maintenance activities/frequencies.

The scheme shall be implemented prior to occupation of the development.'

- The reasons given for the conditions are:

No. 5: *'In accordance with Policy N2 of the adopted Local Plan and to conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species).'*

No. 6: *'In accordance with Policy N2 of the adopted Local Plan and to enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the NPPF 2021 and s40 of the NERC Act 2006 (Priority habitats & species).'*

No. 7: *'In accordance with Policy N2 of the adopted Local Plan and to allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species).'*

No. 8: *'To ensure that the appearance of the development integrates with the existing in a visually satisfactory manner and is fully implemented, in accordance with Policy D1 of the adopted Local Plan.'*

No. 16: *'To avoid the risk of flooding and pollution.'*

No. 17: *'To avoid the risk of flooding and pollution.'*

Decision

1. The appeal is allowed and the planning permission Ref FUL/MAL/23/00585 for revised application for the erection of five detached three-bedroomed bungalows with associated access, parking and landscaping, together with ancillary works at land rear of Springwood, Latchingdon, Essex, CM3 6HB granted on 25 August 2023 by Maldon District Council, is varied by deleting conditions 5, 6, 7, 8, 16 and 17.

Applications for costs

2. An application for costs is made by Mr P Wells, Woodhill Estates Ltd against Maldon District Council. This application is subject to a separate decision.

Preliminary Matters

3. I have taken the site address above from the appeal form, adding the postcode provided on the Council's decision notice, as it more clearly identifies the location of the appeal site.
4. Since the Council determined the planning application, a new version of the National Planning Policy Framework (the Framework) came into effect. However, as the Framework's policy content, in so far as it relates to the main issues has not been significantly altered there is no requirement for me to seek further submissions on this latest version. I am satisfied that no party would be prejudiced by the appeal being determined accordingly.
5. I have dealt with two other appeals¹ that relate to adjacent sites to this appeal site. However, given the issues related to each are different, I have dealt with them individually, rather than combining decisions.

Background and Main Issues

6. Planning permission² was granted on appeal in March 2023 at the appeal site for the erection of 5 detached three-bedroom bungalows with associated access, parking and landscaping.

¹ APP/X1545/W/24/3341657 and APP/X1545/W/24/3337592

² APP/X1545/W/22/3293818

7. The planning application subject to this appeal was submitted by the appellants in June 2023 in order to make minor revisions to the previously approved scheme including slight alterations to the siting of dwellings and the inclusion of garages attached to two of the dwellings where previously only parking spaces were identified.
8. Three conditions (5, 6 and 7) relating to biodiversity matters were imposed on the planning permission subject to this appeal which were not imposed on the previously approved planning permission. The appellant asserts that it is inconsistent to impose these conditions given the planning history at the appeal site.
9. Additional information was submitted with the planning application subject to this appeal to resolve matters covered by planning conditions under the previously approved scheme, including but not limited to a schedule of materials and a Surface Water Drainage and SuDS Strategy Report, which relate to disputed conditions 8, 16 and 17.
10. The main issues are therefore:
 - whether conditions 5, 6 and 7 are reasonable and necessary having regard to biodiversity matters;
 - whether condition 8 is reasonable and necessary in the interests of the character and appearance of the area; and
 - whether conditions 16 and 17 are reasonable and necessary in the interests of ensuring appropriate foul and surface water drainage.

Reasons

11. The Council has confirmed that conditions 5, 6 and 7 relating to a construction environmental management plan regarding biodiversity, biodiversity enhancement and lighting should not have been imposed, given the similarities between the proposal and the previous scheme granted on appeal and due to the fact that similar conditions were not imposed on that previous permission.
12. Given the limited time between the appeal decision and the submission of the application subject to this appeal and that no significant changes to the policy context have been made in relation to biodiversity matters, I have no reason to disagree with the Council's view on this matter.
13. The Ecological Survey and Assessment dated June 2021 prepared by John Dobson BSc, Essex Mammal Surveys, concludes that the proposal will not have a detrimental effect on the local bat population or on protected species.
14. Based on the evidence before me and the specific details of the planning history at the appeal site, if conditions 5, 6 and 7 were not imposed, I do not find that there would be significant impacts contrary to Policy N2 of the Maldon District Approved Local Development Plan 2014-2029 July 2017 (LDP). This policy seeks, amongst other things, that mitigation measures are required if any protected species and/or priority habitats/species or significant local wildlife are found on site. Therefore, I find that conditions 5, 6 and 7 are not necessary or reasonable.
15. It has been confirmed by the Council that a schedule of materials, titled 'Springwood Close – Rear Development – External Finishes – Plots 1-5' was

submitted with the planning application. These details were assessed by the Council as being acceptable. I have reviewed the submitted material schedule and can find no reason to disagree with the Council's view on this matter.

16. The Council suggest that condition 8 could be amended to require the development to be undertaken in accordance with the external materials detailed in the schedule of materials. However, condition 2 already requires that the development is carried out in accordance with a list of approved plans and documents, including the schedule of materials.
17. I therefore find that condition 8 is not necessary or reasonable and without it, the development would remain in compliance with Policy D1 of the LDP, which seeks that developments respect and enhance the character and local context of an area.
18. With regard to conditions 16 and 17, it is confirmed by the Council that a Surface Water Drainage and SuDS Strategy Report was submitted with the planning application which provided sufficient detail in relation to the disposal of sewage and surface water drainage, which was acceptable. Condition 2 requires that the development is carried out in accordance with a list of approved plans and documents, including the Surface Water Drainage and SuDS Strategy Report.
19. I therefore find that conditions 16 and 17 are not necessary or reasonable and by not imposing them it would not lead to an increased risk of flooding or pollution.

Other Matters

20. An interested party has raised concerns about the disruption caused as a result of the building works, the position of a garage to the rear of their property, the smell of sewage, the flooding of roads and the increase in traffic around the bend at high speed and the likely increase in traffic as a result of additional houses. The Parish Council also objects to the revised scheme due to it being outside the settlement boundary.
21. However, given this appeal relates to a scheme that was granted by the Council subject to conditions, the principle of development and the proposed siting of built form was accepted by the Council in this case. As stated above, the appellant has submitted a Surface Water Drainage and SuDS Strategy Report which the Council considers acceptable, and I can find no substantive evidence to the contrary on this matter. The Highways Authority did not object to the scheme, subject to the imposition of conditions. The conditions that are disputed do not relate to highways matters and the Council has not raised any issues in this regard. I note that building works can be disruptive, but this is only a temporary effect and is not sufficient to warrant refusal of the scheme.

Conclusion

22. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed conditions.

G Dring
INSPECTOR