



Appeal Decisions

Site visit made on 16 November 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/X1545/W/22/3310203

The Old Dairy, Broad Street Green Road, Great Totham, Essex CM9 8NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the "Act") against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission following the failure of the applicant to submit further information, plans, drawings or other evidence required by a direction made by the local planning authority under section 62 of the Act and Regulation 4 of the Town and Country Planning (Applications) Regulations 1988.
 - The appeal is made by JAP Contracts against Maldon District Council.
 - The application Ref: 22/00753/FUL is dated 22 June 2022.
 - The development proposed is described as an 'extension of existing office building to form an attached 2 bed dwelling unit'.
 - The information alleged by the Council to be necessary is:-
 - i) existing and proposed elevation plans including the extant permission depending on whether the works have been implemented or not;
 - ii) existing and proposed floor plans including the extant permission depending on whether the works have been implemented or not;
 - iii) block plan including the extant permission depending on whether the works have been implemented or not.
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Decision

1. The appeal is dismissed and planning permission for the extension of existing office building to form an attached 2 bed dwelling unit is refused.

Procedural Matters

2. A planning obligation by way of a Unilateral Undertaking (UU) made under Section 106 of the Act has been submitted. This provides for a contribution towards mitigation to protected habitats sites. I shall return to this matter below.

Main Issues

3. The main issues are whether the planning application as originally submitted is valid and, if so, whether the proposed development would be acceptable having particular regard to:-
 - i) whether the appeal site is a suitable location for development having regard to the Council's spatial strategy and the effect on the character and appearance of the countryside and surrounding area;
 - ii) whether the proposed development would provide adequate living conditions for future occupiers having regard to noise and disturbance and the provision of adequate private amenity space; and

- iii) the effect of the proposed development on the integrity of habitats sites.

Reasons

Whether the planning application as submitted is valid

4. The Planning Practice Guidance (PPG) sets out at paragraph 16 what is required to make a valid planning application for planning permission. It includes a completed application form, compliance with national information requirements, the correct application fee and the provision of local information requirements.
5. National information requirements include, among other things, plans and drawings and as a minimum this includes a 'location plan' that shows the application site in relation to the surrounding area. Additional plans and drawings will in most cases be necessary to describe the proposed development as required by Article 7(1)(c)(ii) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 (the "DMPO"). Article 7(1)(c)(ii) of the DMPO explains that an application for planning permission must be accompanied by any other plans, drawings and information necessary to describe the development which is the subject of the application. These may be requested by the local planning authority through their local list of information requirements, where it is reasonable to do so.
6. A local list is prepared by the local planning authority to clarify what information is usually required for applications of a particular type, scale or location. The information requirements must be reasonable having regard, in particular, to the nature and scale of the proposed development and may require particulars of, or evidence about, a matter only if it is reasonable to think that the matter will be a material consideration in the determination of the application¹.
7. In this case, the Council have an adopted Local List for Validating Planning Applications. An extract of the Council's Validation List has been produced by the Council. It sets out that, in respect of an application proposing operational development, elevation plans require '*Full Elevations: Existing and proposed, or original and existing where permission is sought for a development which is already complete or has begun*'. It also sets out the information required:
 - Scale 1:50 or 1:100 (metric) and should clearly show the proposed works in relation to what is already there;
 - a written scale and/or a scale bar and written dimensions to show overall size of any new buildings or extensions;
 - a unique drawing number;
 - all sides of the proposal;
 - where a proposed elevation adjoins or is in close proximity to another building, drawings should clearly show the relationship between the buildings and detailed positions of the openings on each property.
8. In June 2022 a planning application was submitted to the Council. The proposed development is described in the application as an extension of office

¹ Section 62 (4A) of the Act.

building to form an attached 2 bed dwelling unit. On the 8 July 2022 the Council wrote to the appellant stating that a number of items were required in order to validate the application. In particular, it set out that the application would not be treated as valid until:-

'1. The application needs to be supported by existing elevation and floor plan drawings, which should include the following:-

- scale 1:50 or 1:100 (metric) and clearly showing the proposed works in relation to what is already there

- a written scale, a scale bar and written dimensions to show the overall size of any new buildings or extensions

- a unique drawing number

- all sides of the proposal

- where a proposed elevation adjoins or is in close proximity to another building, drawings should clearly show the relationship between the buildings and detailed positions of the openings on each property

please provide clearly stated external dimensions of the proposed development on the submitted elevation plans

2. If the approved development has not been commenced at the site then either the application will need to include the development subject of the previous approval(s) or they should be removed from the proposed elevation, floor and block plans'.

9. The appellants' response explained that the submitted drawings contained the information set out in point 1 of their letter. This issue does not appear to have been continued any further by the Council. The issue in question that the Council considered to remain unresolved was explained by email of the 16 September 2022 in which it set out that the existing plans did not include a scheme for an extension to the office building to provide a first floor live/work unit which had been granted planning permission² in 2021 (the "Approved Extension") and for which the appellant had advised that works on the Approved Extension had commenced. The Council advises that the extant Approved Extension should form part of the existing development, or alternatively, it should be included as part of the development proposed which would necessitate an amendment to the description of development and the inclusion of the floor plan for the Approved Extension. In the absence of doing either of these matters, the Council explained that they required the existing plans to show the Approved Extension.
9. The appellant disputed the need for the information sought by the Council and followed the process set out in Article 12 of the DMPO for dealing with such disputes. Article 12(1)(b) states that the applicant can serve a notice of a validation dispute to the LPA when they consider any particulars or evidence requested do not meet the requirements set out in Article 34(6)(c). Article 34(6)(c) states that the particulars or evidence the LPA require to be included in the application must be, firstly, reasonable having regard in particular to the nature and scale of the proposed development; and, secondly, are about a

² Planning Reference: FUL/MAL/20/00927

matter which it is reasonable to think will be a material consideration in the determination of the application.

10. On the 27 September 2022, the appellant served a notice on the Council under Article 12 of the DMPO (the "Article 12 Notice"). The Council state that the Article 12 Notice failed to contain the requisite information. Despite this, the Council took account of the email correspondence between the parties, and it subsequently issued a non-validation notice in respect of the application.
11. The appellant lodged an appeal, and the appeal form confirms the basis on which the appeal has been submitted is that the Council has failed to give notice of its decision within the appropriate period because of a dispute over the provision of local list documentation.
12. The following plans were submitted to the Council as part of the application:-
 - site plan;
 - drawing 1097/06 - Existing Floor Plan and Elevations (the "Existing Plan");
 - drawing 1097/GH/01DPlan - Proposals (the "Proposals Plan").
13. The Existing Plan includes the elevations and floorplan of the building as it existed at the time of the application which concurred with my observations at the site visit. The existing plan does not include the development approved by the 2021 Permission. Notwithstanding that the appellant advises that a technical start has been made to implement the Approved Extension, in my view, this differs to a built scheme or one that is substantially completed. The Existing Plan correctly reflects the built development that existed at the time of the application being made and thus, to have included the Approved Extension, would have failed to properly reflect the existing circumstances.
14. Turning to the Proposals Plan, this includes the elevations and floor plan of the proposed development and the existing building together with the elevations of the Approved Extension. An extant planning permission can be taken into account when determining a planning application and therefore the Approved Extension is a material consideration in the assessment of the current appeal. However, the development for which planning permission is sought is described as an 'extension of office building to form an attached 2 bed dwelling unit', the Council have failed to show why the additional information is required to describe the proposed development as required by Article 7(1)(c)(ii) of the DMPO. The description of development and plans need to be read together and to my mind, the submitted information was adequate in describing the development that was proposed.
15. The Council point to their local list information in requiring additional information to be included on the plans. In particular, my attention has been drawn to the reference '*original and existing where permission is sought for a development which is already complete or has begun*'. However, little information has been submitted that demonstrates the appeal scheme has been begun. Whilst works may have been undertaken which amount to the planning permission of the Approved Extension being implemented, the Proposals Plan indicates the 'hallway' element forms part of the Approved Extension rather than the appeal proposal. No other part of the Council's Local List has been drawn to my attention as being relevant to the Council's request for information.

16. The Council also point to there being anomalies between the fenestration shown on the plan of the Approved Extension and the Proposal Plan. However, even if this is the case, the hallway in which those windows are situated form part of the Approved Extension scheme and any such change would likely need a variation of that planning permission. Nevertheless, I do not find that this causes any ambiguity with understanding the development proposed as part of the appeal scheme.
17. Furthermore, in the event of planning permission being granted, it would be possible to set out, for the avoidance of any doubt, that notwithstanding what was shown on the Proposal Plan, any planning permission being granted would relate solely to the attached 2 bed dwelling unit.
18. To my mind, whilst the approved development is a material consideration in the determination of the application, to require the application and plans to include a scheme of development that already has the benefit of planning permission would not have been reasonable having regard to the DMPO and the information and plans submitted with the application.
19. Issues about the conduct and willingness of the parties are not relevant to my determination of whether the application was valid or not.
20. Accordingly, I conclude that the application submission included the necessary detail and was therefore valid as made. The effect of my finding is that the appeal is one against the non-determination of the application by the Council. Accordingly, I shall proceed to consider the planning merits of the case.

Spatial strategy and character and appearance

21. The appeal site is located outside of the defined development boundary for Great Totham and for planning purposes it is therefore located within the countryside.
22. Policy S8 of the Maldon District Local Development Plan 2014 - 2029 (2017)(LP) states that planning permission for development within the countryside will only be granted in specified circumstances and where the intrinsic character and beauty of the countryside is not adversely impacted. It has not been put to me that the proposed development would meet one of the exceptional categories of development that is specified within LP Policy S8.
23. The appeal site consists an existing single storey building with a shallow pitched gabled end roof together with an attached double garage and areas of hardstanding. The appeal building lies within a wider area of land that comprises a large warehouse building comprised of steel walls and brick plinth with a corrugated roof, several metal containers and extensive areas of hardstanding. To the rear of the site is an extensive area of paddock land containing a number of donkeys. Open fields are located to the side of the site beyond the access road. A shared vehicular access from Broad Street Green Road runs north-south along the eastern edge of the site.
24. Broad Street Green Road is characterised by a scattered ribbon pattern of development predominantly consisting of a variety of residential properties that are interspersed with open fields. In my view, the area displays a rural character.

25. The appeal scheme would introduce a new dwelling which would be attached to the existing single storey building via a shared hallway. It would be sited on an area of open land between the side of the existing building and the vehicular access.
26. The existing single storey building is a simple rectangular structure with a shallow pitched roof. Planning permission³ was refused on appeal in March 2019 for an extension to the office building to form an attached live/work/unit. Having had regard to the previous appeal decision⁴ (the 2019 Appeal) and the plans forming part of that application, I note that the previous scheme is broadly identical to the scheme forming part of this appeal. I have had regard to the findings of the previous Inspector in the 2019 Appeal and note their comments with regards to the development being poorly related to the existing building and wider commercial site such that harm would have been caused to the character and appearance of the area. I see no reason to reach a different view and thus would reach a likewise decision in the appeal before me.
27. However, I also note that there have been a number of circumstances that have changed since the 2019 Appeal. In particular, outline planning permission⁵ was granted in January 2021 for the replacement of a commercial building with up to three dwellings, which I am advised refers to the large warehouse building. However, as an outline scheme there are limited details before me to explain the appearance and layout of those new dwellings.
28. Planning permissions⁶ for two alternative schemes of development to provide a first floor extension to the appeal building for a live/work unit were approved in 2021. It is the appellants' case that the extant planning permissions would alter the appearance of the single storey building. In particular, with regard to the approved scheme FUL/MAL/20/00927 (the 2020 Scheme), the appellant suggests that the appeal proposal should be considered as acceptable in character and appearance terms.
29. Whilst the 2020 Scheme had not been constructed at the time of my visit, it is a material consideration for the purposes of this appeal. Plans of the 2020 Scheme have been provided. As such, I shall therefore have regard to this matter, which was not before the previous Inspector in the 2019 Appeal.
30. The existing building together with the 2020 Scheme would result in a two-storey building consisting of a pitched roof with gables and a number of gabled dormer windows. In contrast, the roof structure of the proposed dwelling would be split thus resulting in dual heights which would be part hipped and part pyramidal. Its convoluted appearance would be markedly different to the simple roof form of the two-storey building and it would be unlike other roof structures found within the wider site and the surrounding area. Albeit the proposed roof ridge and apex would be lower in height than the roof structure of the 2020 Scheme, the chimney features would project above it. The inclusion of several tall chimneys would appear as inharmonious features that are not characteristic of the host building and the locality, thus adding visual clutter to the roof structure and serving to draw the eye towards it.

³ Planning Reference: FUL/MAL/17/01272

⁴ Appeal Ref: APP/X1545/W/18/3207980

⁵ Planning Reference: 20/01000/OUT

⁶ Planning References: FUL/MAL/19/01233 and FUL/MAL/20/00927

31. Consequently, the appeal scheme would appear as an unsympathetic and incongruous addition that fails to assimilate with the host building and the character and appearance of the area. It would be read as an urbanisation of this part of the site and a visual intrusion into the rural countryside surroundings. Although the proposed dwelling would be constructed in brick with plain tiles for the roof that would match the roof material of the 2020 Scheme, this would be insufficient to remedy the harm that would be caused and the proposed building would nonetheless appear dominant and unrelated and bolted on to the host building.
32. The proposed dwelling would occupy a highly visible and prominent position towards the site entrance and as a consequence it would be readily visible in views from the highway and from a number of neighbouring dwellings and their gardens.
33. Accordingly, I therefore conclude that the proposed development would cause significant harm to the character and appearance of the area and fails to respect the intrinsic character and beauty of the countryside. There would be conflict with Policies D1, S1, S8 and H4 of the Maldon District Local Plan and Policy GT01 of the Great Totham Neighbourhood Development Plan Referendum Version (March 2022)(NP). Among other things, these policies require a high quality design and layout that respects and enhances the character and local context. In addition, the proposal would be contrary to the aims of the Framework insofar as it is recognised that good design is fundamental to high quality new development. The proposal would also conflict with the guidance of the Maldon District Design Guide (2017)(DG) which requires high quality design and appropriate layout, scale and detailing of development.

Living conditions of future occupiers - noise and disturbance

34. The proposed dwelling would be positioned to the side of the existing access road from Broad Street Green Road. A number of windows serving the habitable rooms such as the living/dining area and a bedroom are positioned within the side and front elevation of the proposed dwelling. The proposed rear courtyard garden, which would be modest in size, would also be sited close to the access road. There would be no significant buffer space between the access road and the proposed dwelling and garden area.
35. It has not been put to me that the use of the host building would change. There is limited information regarding the number of employees that are engaged in working from the single storey commercial building. However, I note from consideration of the submitted plans that the existing building contains four rooms labelled as offices and a number of these are shown to contain more than one desk, which concurred with what I observed at the site visit. In my view, the size and layout of the existing building leads me to the view that it could accommodate a considerable number of employees and as such, it is likely that there would be multiple vehicular movements to and from the site, particularly given that the wider site is shown to be set out with approximately ten car parking spaces. In my view, given the proximity of passing and manoeuvring vehicles to the windows serving habitable rooms and the private outdoor amenity space, this would be likely to compromise the useability of the indoor and outdoor space and give rise to a serious adverse

effect by way of noise and disturbance to the occupiers of the proposed dwelling.

36. In the event of the appellant implementing any, or all, of the schemes for which planning permission has already been granted within the wider site, it is likely that there would be additional traffic using the access road and an increase in the number of vehicles passing along its length such that the extent of noise and disturbance likely to be experienced by future occupiers would be further exacerbated.
37. It has been drawn to my attention by the appellant that the previous Inspector considered the effect of noise and disturbance on the future occupants of the first floor live/work dwelling. However, in that instance, the scheme proposed as part of the 2019 Permission was intended for occupation by an employee of the ground floor business, and that individual(s) was deemed likely to be more tolerant of noise and disturbance. No similar restriction on the occupation of the proposed dwelling has been advanced by the appellant as part of this appeal. Although the proposed dwelling could be occupied by an employee of the business, in the absence of an occupation restriction, as an open market dwelling there would be no restriction to preclude occupation of the unit by any individual(s) unrelated to the business operation and such an individual(s) would not be likely to share the same degree of tolerance to noise and disturbance of the existing employment use.
38. The appeal scheme is not comparable to the dwelling approved by the 2019 Permission given that the dwelling would be positioned further from the access road and it includes a different layout of rooms.
39. It has been put to me that the 2019 Scheme was not expressly refused on the grounds of noise and disturbance. However, in determining the effect on the future operation of the warehouse building, the previous Inspector acknowledges that the proposal would be located immediately adjacent to the vehicular access to the site and windows to habitable rooms within the scheme would face directly onto the access and that this arrangement would not provide suitable living conditions for future occupants.
40. For the reasons explained above, I conclude that the appeal scheme would provide inadequate living conditions for future occupiers of the dwelling. The scheme would therefore be contrary to LP policies D1 and H4 insofar as they require a high quality development that optimises the use of the land and makes a positive contribution to providing sufficient and usable private amenity spaces. There would also be conflict with design principle C17 of the DG insofar as it recognises that noise can be a significant source of aggravation for residents and requires that buildings are orientated so that habitable rooms and amenity space do not face noise sources.

Living conditions of future occupiers – provision of amenity space

41. Reference is made by the Council to a planning permission⁷ for the construction of a stable block within the wider site (the Stables Permission). I have had regard to the plan accompanying the Stables Permission and, as advised by the Council, I note that access for the approved Stables scheme partly coincides

⁷ Planning Reference: 23/00229/FUL

with land that is proposed to form the private amenity space for the appeal scheme.

42. Although the appellant has suggested an additional area of amenity space could be provided to the east of the proposed dwelling, this is not shown on the submitted plans and, even if it were included, given that it would be in close proximity to the access road and also Broad Street Green Road, which, notwithstanding it is limited to 30mph, is a busy road which is also likely to generate a high level of noise and disturbance, I do not consider that this would offer a suitable alternative.
43. Nevertheless, whilst the Council are concerned that the proposed garden area would not be deliverable and there would be insufficient private amenity space for future occupiers of the dwelling, in my view, it is valid for overlapping permissions to be granted and whilst the implementation of one can affect the other, it does not affect the granting of planning permission. It would therefore be for the landowner to decide which permission they should decide to implement. Accordingly, there would be no conflict with LP policies S1, D1 and H4 insofar as they require the provision of well-designed and quality housing. Similarly, it would not be contrary to the aims of the Framework insofar as it requires developments to have a high standard of amenity for future users. The Council also indicated that there would be conflict with the guidance of the DG, however, it did not specify which part of the DG the appeal scheme would fail to accord with.

Protected Species

44. A number of European Designated Sites are located within Maldon District including Essex Estuaries Special Area of Conservation, Blackwater Estuary Special Protection Area (SPA) and Ramsar site, Dengie SPA and Ramsar site, Crouch and Roach Estuaries SPA and Ramsar site. Given that the appeal site lies within the combined zones of influence of these habitats sites, by reason of the nature of the development proposed, the development could potentially have a significant effect on the sensitive interest features of these European designated sites, through increased recreational pressure. Planning permission may only be granted after having ascertained that the proposed development would not affect the integrity of these protected sites.
45. The appellant has submitted a signed UU dated 24 August 2023 which would secure the payment of a financial contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy. Given that the contribution would secure mitigation measures and adequately mitigate the proposal's effect on the integrity of the protected sites, there would be no conflict with LP Policies S1, D1, I1, N1 and N2, NP Policy GT05 and the Framework insofar as these seek to protect and enhance biodiversity.

Other Matters

46. No adverse harm has been identified in respect of the living conditions of neighbouring occupiers with regards to their outlook or loss of privacy, the loss of floor area or site area for commercial purposes or the accessibility of the site's location having regard to sustainable transport options. Similarly, subject to the imposition of appropriately worded conditions, no adverse harm to highway safety has been identified. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.

Planning Balance

47. Whilst I have found the appeal scheme to be acceptable in terms of the effect upon protected species, I have identified that the proposed development would be contrary to the Council's spatial strategy for new development given that there would be significant harm caused to the character and appearance of the countryside and surrounding area together with harm to the living conditions of future occupants having regard to noise and disturbance.
48. There would be economic benefits from the construction of the appeal scheme and spending within the locality which would contribute to the local economy and the vitality and vibrancy of the rural area. Social benefits from community engagement would also arise. The appeal scheme would be constructed on brownfield land, which the government are supportive of, and it would contribute an additional dwelling to housing supply. These matters weigh in favour of the appeal scheme, however, the benefits associated with the construction of an additional dwelling would be modest given the scale of development proposed and therefore attract limited weight.
49. There is dispute between the parties as to whether the Council are able to demonstrate an adequate five year housing land supply (5YHLS). Where a relevant 5YHLS cannot be demonstrated, relevant policies for the supply of housing are not deemed to be up-to-date and the Framework indicates at paragraph 11(d) that planning permission should be granted unless, d(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefit, when assessed against the policies in the Framework taken as a whole.
50. However, even if I were to accept an absence of an adequate 5YHLS, and the 'tilted balance', as set out in paragraph 11 of the Framework were engaged, I consider that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The proposal would therefore not benefit from the presumption in favour of sustainable development provided by Paragraph 11 of the Framework.

Conclusion

51. For the reasons given, the proposal would conflict with the development plan, taken as a whole. I afford significant weight to this conflict. Material considerations, including the Framework, do not indicate that this appeal should be decided other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed and planning permission for the extension of existing office building to form an attached 2 bed dwelling unit should be refused.

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INSPECTOR