



Appeal Decision

Site visit made on 29 November 2024

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th December 2024

Appeal Ref: APP/X1545/W/24/3342289

Land at Carters Lane, Wickham Bishops, Essex CM8 3NB

- 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 Nicola Gardener against the decision of Maldon District Council.
 - The application Ref is OUT/MAL/23/01016.
 - The development proposed is "development of existing garden with a new detached dwelling".
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The appeal seeks outline planning permission with all matters reserved. The proposal is accompanied by illustrative plans showing a possible design, layout and landscaping, and I have paid regard to these in reaching my decision.
3. The appeal site comprises a rectangular, grassed area, said to form part of the curtilage of the dwelling 'Chantry'. The existing dwelling is accessed from Tiptree Road, but the appeal site has its own separate access from Carters Lane.

Main issues

4. Planning law¹ requires that the appeal be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. In the present case, the development plan comprises the Maldon District Local Development Plan (the LDP), adopted in July 2017, and the Wickham Bishops Neighbourhood Plan (the WBNP), made in June 2021.
5. in the light of the submissions made, I find that the main issues in the appeal are:
 - whether the proposed development would accord with the relevant development plan policies relating to new housing in the countryside;
 - whether the development would be suitably located with regard to access to local facilities;
 - and the development's effects on the area's character and appearance.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004

Reasons for decision

Countryside policy

6. The strategy for development in Maldon District is set out in the LDP. Policy S2 seeks to ensure that housing and other development are to be focussed at the main settlements of Maldon, Heydon and Burnham-on-Crouch, which are seen as the most accessible and sustainable locations. Development in the District's villages and smaller settlements is to be related to the size of the village and its role in the LDP settlement hierarchy, to avoid creating unsustainable development patterns.
7. Alongside this, the adopted Policies Map defines settlement boundaries around the towns and villages. For the purposes of planning policy, all the areas outside these boundaries are regarded as countryside. LDP Policy S8 states that development outside the settlement boundaries will be limited to that which, firstly, preserves the countryside's character and beauty; and secondly, which also falls within one of the exceptions allowed within criteria (a) to (m). These exceptions include, amongst other things, (a) development identified in neighbourhood plans, (g) agricultural workers' dwellings, (h) 'rural exception' sites for affordable housing, and (m) proposals that comply with other relevant policies or guidance.
8. This approach, embodied in the combination of Policies S2 and S8, seems to me entirely consistent with the most relevant provisions in national policy as set out in the National Planning Policy Framework (the NPPF). These include paragraph 109 which requires growth to be managed in order to ensure sustainable patterns of development, and paragraph 180 which seeks to protect the intrinsic character and beauty of the countryside.
9. In the present case, Wickham Bishops is classified as a 'larger village', where in principle under Policy S2 small developments within the settlement boundary may be acceptable. But the appeal site at Carters Lane is well outside the defined boundary, and thus in policy terms is in an area treated as countryside. As such, the proposed development falls to be considered under Policy S8 rather than S2.
10. Having regard to the various types of exceptions specified in Policy S8, the appeal site is not allocated for development in the WBNP, and the proposed new dwelling does not appear to be intended as either an agricultural dwelling or for affordable housing. The remaining exceptions from criteria (a) to (l) are clearly inapplicable, and no submissions appear to have been made regarding criterion (m). Consequently, in the light of the evidence before me, I am satisfied that the appeal proposal fails to fit within any of the exceptions allowed for by Policy S8. The question of whether the development would also preserve the intrinsic qualities of the countryside will be addressed elsewhere in this decision, but in the light of the above, this does not alter my conclusion, because the policy requires compliance with at least one of the specified exceptions in any event.
11. I note the appellant's view that the village boundary, as currently drawn, fails to reflect the reality on the ground, and I fully understand the reasons for that view. But the Policies Map is an integral part of the adopted development plan, and any change to the existing boundaries could only be made through a formal review of the LDP or WBNP. I am therefore satisfied that the Policies

Map in its current form provides the proper basis for applying the relevant LDP policies, including Policy S8.

12. For the above reasons, I conclude that the appeal proposal would fail to accord with the most relevant development plan policies relating to housing development in the countryside, due to its conflict with LDP Policy S8.

Access to local facilities

13. In addition to the above locational policies, LDP Policy T2 also requires all developments to be located so as to be accessible, and to provide for safe and direct walking and cycling routes to nearby services, facilities and public transport. Again, this policy seems to me consistent with the relevant advice in NPPF paragraph 109, as identified above.
14. In the present case, the appeal site is within walking distance of Wickham Bishops' shops and facilities at Witham Road. It is also a similar distance from the bus stop at Kelvedon Road, which is on the No 90 Maldon-Witham route, with half-hourly services through most of the day.
15. But nevertheless, I saw on my visit that the most likely walking and cycling routes to these facilities, via Carters Lane and Tiptree Road, are rural roads with no footways or lighting, for at least the first 300m or so. The verges to these sections of road are narrow at best, and some parts are banked or overgrown, so that pedestrians would have little choice but to walk on the carriageway. Cyclists too would be potentially vulnerable in these conditions.
16. I appreciate that a 30 mph speed limit applies, but even so, traffic moving at that speed can cause serious injury. Although Carters Lane is quite quiet, it is not disputed that Tiptree Road is significantly busier.
17. I note the appellant's comments regarding the WBNP's proposal for a network of 'walkable verges'. However, neither Carters Lane nor Tiptree Road appears to feature in that proposal.
18. I therefore find that neither of the roads serving the appeal site can be said to provide for reasonably safe connections for regular use, either on foot or by bicycle. In this regard the development would be contrary to the aims of Policy T2 with regard to ensuring that developments benefit from safe and convenient opportunities for sustainable travel.

Effects on the area's character and appearance

19. The majority of Carters Lane is flanked by residential development. In the southern section, around the appeal site, this comprises mainly low density development within extensive grounds, interspersed with small areas of paddock, woodland or scrub. Further along the lane, the houses are more closely spaced and more prominent in the street scene. Overall, the area's predominant character is one of a rural or semi-rural housing enclave, albeit set within the surrounding countryside.
20. The appeal site itself is set between the existing dwelling Chantry on one side, and Middle Chantry on the other. The proposed new plot would be at least equal in size with most others nearby. The illustrative scheme demonstrates that it would be easily capable of accommodating a dwelling of a size and design commensurate with the surroundings, together with the necessary

parking, garaging and gardens. Access already exists, and would appear to need little more than minor alterations. There seems no reason to doubt that the majority of the site's boundary trees and hedging could be retained.

21. I appreciate the Council's concern to resist creeping urbanisation, and coalescence between settlements. but on this particular site it seems to me that the development now proposed would be capable of being carried out in a manner that would be visually in keeping with the site's existing surroundings. And as it would be contained within the existing rural housing enclave, it would not decrease the gap between this and the main village. In these circumstances, the character and appearance of the area would not be significantly affected.
22. In this regard I find no conflict with the relevant provisions of LDP Policy S1, which sets out key principles for all developments, or Policy D1 relating to the quality of the built environment. Nor do I find any conflict in this regard with the relevant provisions of Policy S8 relating to the character of the countryside.
23. But nevertheless, for the reasons already explained, this does not alter my earlier finding with regard to the scheme's lack of compliance with Policy S8 as a whole, or the conflict that I have identified with that policy in terms of the principle of the development.

Other matters

District-wide housing requirements

24. There is no doubt that the country as a whole has a serious housing shortage, and to that extent I agree that the benefit of providing an additional dwelling should carry some weight. But that benefit would only be likely to be sufficient to outweigh a conflict with other planning policies if there were evidence that the provision of new sites in the District, through the planning system, was not keeping pace with the required rate.
25. In this case the Council states that an assessment in May 2024 showed a forward supply sufficient for 6.3 years. This assessment appears to have been calculated using the national 'standard method', as required by the December 2023 version of the NPPF which was current at the time. The target figure used was different from that which would have applied if the calculation were based solely on the figures in the LDP, but the LDP was more than five years old. In these circumstances, I am satisfied that the use of the standard method as the basis for the May 2024 assessment was in accordance with the most relevant national policy and guidance.
26. In the present appeal, no other evidence has been advanced by either party, and, as far as I am aware, the May 2024 assessment remains the latest and best information available. On the evidence before me therefore, I find no reason to doubt that the District has a sufficient supply of deliverable sites. Consequently, the weight that attaches to the provision of the new dwelling now proposed is limited.

Housing need in Wickham Bishops

27. I also note the appellant's evidence regarding housing needs within Wickham Bishops itself. However, the extract from the Rural Community Council's

housing needs survey is dated January 2017, suggesting that this information was available prior to the adoption of the LDP, and would therefore have been taken into account at that time. Although the LDP is supportive of housing development within the village boundary, none of the adopted policies appears to contain any specific requirement or target figure as to the number of dwellings required in the parish. The subsequent WBNP does not change this position. I have also had regard to the extract from the later survey carried out in 2021, but this does not appear to contain any information specific to Wickham Bishops. Consequently, I find nothing in the evidence before me to support the contention that the village's housing needs cannot be met without setting aside the adopted planning policies that I have identified.

Planning permissions granted on other sites

28. In this context I have paid due regard to the various planning permissions that have been drawn to my attention relating to other sites in the area which were outside the settlement boundary, including some granted on appeal. However, the permissions in question go back over a 10-year period, and over such a length of time, it is not unusual for planning circumstances to change. Some of the sites evidently pre-date the present development plan and NPPF, and it also appears that during that period the supply of housing land has fluctuated.
29. From the material presented it is clear that all of the developments in question were found acceptable in terms of their character and appearance, just as I have found the present proposal to be, although that issue will always be specific to the individual site. In none of these cases however is there any clear evidence that the circumstances were similar to those that apply now, especially with regard to the land supply issue. In the particular case of 'Site A', which is close to the present appeal site, there is also no evidence that the question of access to local facilities was raised as an issue, or indeed whether any view was expressed on that point.
30. Whilst I fully appreciate the desirability of consistency in decision-making, I must also have proper regard for the planning policies and circumstances that apply now. On the evidence before me, these previous permissions do not outweigh the considerations set out elsewhere in this decision that have led me to my conclusions.

PDL and effective use

31. The appeal site is separated from the main part of Chantry's garden by trees and hedges, and appears visually distinct from that area due to its lack of ornamental planting or domestic paraphernalia. However, the Council does not appear to dispute that the site forms part of the residential curtilage, and therefore falls within the NPPF's definition of previously developed land (PDL). Although the evidence is somewhat inconclusive, it seems to me appropriate in this case that the benefit of the doubt should go to the appellant. In any event, there is no doubt that the development now proposed would make more efficient and effective use of the land than at present.
32. The scheme therefore derives some support from LDP Policies S1 and H4, which amongst other things encourage optimisation in the use of land, with priority for PDL. These policies are consistent with NPPF paragraph 123, which contains similar advice. But there is nothing in any of these to suggest that

maximising the use of land should take precedence over other important policies such as those relating to housing location. In the absence of a proven and pressing need for more housing land in the District, these considerations carry only limited weight in the present appeal.

Other potential benefits of the development

33. The development would make a modest, but beneficial contribution to the local economy, and to the vitality of the existing rural community. It would also be possible, through conditions, to require that it resulted in a net gain to biodiversity (although there is no automatic requirement for such a gain in this case). These benefits count in favour, but again in the circumstances of the case, the weight that can be attributed to them is relatively minor.
34. The scheme would potentially assist the appellant in her stated desire to downsize from her existing property, without having to look outside the area. But planning policies are geared towards the needs and priorities of the community at large rather than those of individual occupiers. In the absence of any further details regarding the appellant's circumstances or any specific needs, I am unable to give any significant weight to what would be essentially a private benefit.
35. If the resulting new dwelling were designed to the appellant's own specification, and occupied by her for the requisite period, it would meet the definition of a self-built or custom-built dwelling. But there is no evidence that the appellant is on the local self-build register, and therefore the Council's legal obligations and policy requirements in respect of such development would remain unaltered. And in any event, in the absence of any legal undertaking or other binding obligation, there is no certainty as to who the occupier would be, or that the requirements for self- or custom-built housing would be met. In all the circumstances, I can give little weight to these matters.
36. I note the appellant's desire for the dwelling to achieve 'Passivhaus' levels of energy efficiency and sustainability. But the application is for outline permission only. And in the absence of any relevant development plan policies, it seems unlikely that energy standards above those of the Building Regulations could be secured by condition. No weight therefore attaches to this consideration.

Conclusion

37. For the reasons set out above, I have found that the appeal proposal would be in conflict with LDP Policies S8 and T2, with regard to its location outside the settlement boundary and its lack of safe or convenient pedestrian and cycle links. In the context of this appeal, these are clearly the most important policies, and hence the conflict with them means that the scheme would fail to accord with the development plan as a whole.
38. Despite the LDP's age, the most relevant policies are consistent with the NPPF, and there is no evidence of a shortage of land for housing. The relevant LDP policies therefore carry full weight. As already noted, I must determine the appeal in accordance with the development plan unless material considerations indicate otherwise.

39. The development would bring some economic and social benefits to the local area, and would increase the housing stock. It would also provide an effective use for land which is arguably PDL, and an opportunity for biodiversity gains. But all these benefits would be minor, carrying no more than modest or limited weight.
40. I have found no particular harm to the area's character or appearance. But this weighs only neutrally. None of the other matters raised adds any significant weight either for or against the development.
41. Taking everything into account, the development's potential benefits do not outweigh the clear conflict that I have identified with the development plan. Consequently, the appeal must fail, and is hereby dismissed.

J Felgate

INSPECTOR