



Appeal Decision

Site visit made on 17 December 2024

by Jonathan Price BA(Hons) DipTP DMS MRTPI
an Inspector appointed by the Secretary of State

Decision date: 06 January 2025

Appeal Ref: APP/W1525/W/24/3351899

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Sunbury (Country Homes) LLP against the decision of Chelmsford City Council.
 - The application Ref is 24/00358/FUL
 - The development is the demolition of the existing residential dwelling and a proposed four dwellings with associated car parking, private amenity space and widening of existing access.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing residential dwelling and the proposed four dwellings with associated car parking, private amenity space and widening of existing access at 116 Maldon Road, Danbury, Chelmsford, Essex CM3 4RA in accordance with the terms of the application, Ref 24/00358/FUL, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. I have not sought further submissions from the parties over this, as the policy revisions have no material effect on the determinative matters in this case.
3. Following the Council's decision on this proposal, an appeal decision was made over the refusal of a very similar scheme for four dwellings on this site¹. This appeal was dismissed on two grounds. The first was over a harmful effect on living conditions at neighbouring Hyde House, due to back garden overlooking from a rear bedroom window in the adjacent Plot 2 dwelling. The second ground for dismissal, over inadequate arrangements for the storage and collection of household waste, has subsequently been addressed. The Inspector had not upheld refusal reasons in respect of either character and appearance or biodiversity and protected species. I have taken account of the previous appeal decision as this relates to the main issues in this case.

¹ Appeal Ref: APP/W1525/W/23/3335751. Demolition of existing residential dwelling and replacement with four dwellings with associated car parking and private amenity space at 116 Maldon Road, Danbury, Chelmsford, Essex CM3 4RA – dismissed 6 September 2024.

4. The appeal proposes an amendment (reference 21-1024-610 Revision B) to recess the bedroom window in the Plot 2 house adjacent the back garden to Hyde House. The Council confirms that this would not overcome its refusal reason over loss of privacy and requests the amendment be rejected. However, having applied the tests in the 'Holborn Studios' judgement², I consider that this does not involve a substantial difference nor makes a fundamental change to the scheme determined by the Council. The drawing was published on the Council's website as part of the appeal information. Neighbours had earlier been notified of the appeal, with no representations made. 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 that opportunity, given the minor nature and extent of the changes proposed. Therefore, my decision relates to the proposals as amended.

Main Issues

5. The effect of the proposal on
- the character and appearance of the area, and
 - the living conditions of surrounding residential occupiers, with particular regard to those at Hyde House in respect of privacy.

Reasons

Character and appearance

6. The appeal relates to the relatively large garden of a detached bungalow situated within the residential frontage on Maldon Road. Rear parts of the site abut Cherry Gardens Lane and the boundaries of two dwellings fronting it. There are small differences to the scheme considered in the previous appeal. These include reduced roof heights on plots 2 and 4, to address the impacts on the adjacent Hyde House and 114 Maldon Road respectively. A single-storey rear projection has been removed from the Plot 2 house, with the garage roof height reduced by deleting living space above. Other than a degree of variation in external treatments, this scheme is little different in design, scale and layout to that before the previous Inspector.
7. The Council's first reason for refusal was over the proposed number, scale and layout of new dwellings not reflecting the surrounding residential pattern and character of houses, by creating a cramped and an uncharacteristic back land development with shared and overlapping driveways and parking. Moreover, the reason included the proposed dwellings being too uniform in style and of excessive height, form and scale, not reflecting the existing eclectic and individual character of the surrounding street scene.
8. As the previous Inspector concluded over a near identical scheme, 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. Likewise, I agree that the proposed retention of boundary vegetation would soften the visual prominence of the proposal. I share the view that the proposed density would not be at odds with the built surroundings, with the scheme marking an appropriate transition from the higher density housing fronting Maldon Road to the

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

west and the more spacious development east and to the rear of the site. Within an area of varied house plot sizes, I also concur that that this comparable scheme would appear neither out of keeping nor uncharacteristically cramped. This scheme includes some minor reductions from the previous one. I similarly find that the dwellings would not be excessive in scale and height and visually acceptable in relation to the site area and the surrounding housing.

9. The dwellings would have a coherent architectural character, with some variety in external finishes. I find the designs to be entirely appropriate in this regard and do not share the Council's concerns over undue uniformity of design and street scene incompatibility. The Council acknowledges that the previous Inspector had not supported its reasons over the scheme's failure to integrate positively into this area. It is recognised that the current proposals are very much the same as previously, with modest amendments to size, scale, appearance and layout.
10. Regarding this very similar scheme, I find no grounds to depart from the conclusions of the previous Inspector. The proposal would comply with Policy DM23 of the Chelmsford Local Plan 2013-2036 (LP). This requires a high standard of design which positively contributes to the existing character, appearance and context of the area. Equally, the proposal would satisfy paragraph 135 of the Framework requiring development to be visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Living conditions

11. Replacing a single bungalow with four houses would inevitably reduce the open and spacious appearance of the site and lead to an increase in the levels of household activity. However, as in the earlier appeal, I do not find this would create unacceptable living conditions for any surrounding occupiers, in terms of overbearing impacts on outlook, any loss of sunlight or harmful noise levels.
12. The Plot 2 dwelling has a first-floor bedroom window which would provide sideways views towards the back garden of adjacent Hyde House. Despite the views being angled, the previous appeal Inspector found the potential for overlooking that part of the garden area immediately outside the rear of the house likely to be most frequently use by the occupiers. As this part of the garden was not currently overlooked from the appeal site, providing it a good level of privacy, the Inspector concluded that the views from the Plot 2 house bedroom window would result in unacceptable harm to living conditions.
13. In this scheme, the distance of the Plot 2 dwelling to the boundary remains unaltered, despite some reduction in its volume and roof height. However, the line-of-sight diagram provided demonstrates to my satisfaction that a recessed bedroom window would avoid incidental overlooking of the garden area immediately at the back of Hyde House. With this small amendment, this proposal would not cause a significant loss of privacy to these neighbouring occupiers and there would no longer be sufficient grounds to dismiss the appeal for this reason.
14. I conclude that the proposed development would not be overbearing, nor result in unacceptable overlooking, overshadowing or excessive noise, activity or vehicle movements. As such, it would safeguard the living environments of nearby occupiers and comply with LP Policy DM29. The proposal would also satisfy

paragraph 135 of the Framework requiring the creation of places with a high standard of amenity for existing and future users.

Other Matters

Demand for the size of homes proposed

15. The Parish Council's Housing Needs Assessment, supporting the emerging Danbury Neighbourhood Plan, prioritises the supply of smaller or mid-sized dwellings over larger homes already well provided for. The Council confirms the principle of housing on this site, given it is within the Defined Settlement of Danbury. Although this proposal would not meet a requirement for smaller homes, LP Policy DM1 only requires a mix of housing types and sizes to meet identified needs in proposals of 10 or more dwellings. Therefore, the proposal is policy compliant in this respect.

Access and parking

16. As with the previous appeal scheme, the local highway authority has raised no objections to this proposal. The previous Inspector had not raised any highway safety concerns and access arrangements in this scheme are not materially different. The two parking spaces for the plot 4 dwelling are placed side by side, which I agree is preferable to the previous tandem arrangement.
17. The two car parking spaces per dwelling meet the Council's adopted standards and LP Policy DM27 is satisfied. The Council raises concerns about the usability of the car parking and manoeuvring space, suggesting this would limit the ability for cars to turn and exit onto the highway in a forward gear. No such concern had been raised by the local highway authority. The appellant's tracking diagrams show that the space provided, whilst designed not to over-dominate the site with hard surfacing, is functionally adequate to meet day-to-day vehicle parking and turning needs.

Refuse collection and other occasional access arrangements

18. A Refuse Collection Strategy plan provided by the appellant addresses the dismissal reason in the previous appeal decision. This demonstrates that refuse collection vehicles would reverse into the site access to allow operatives to then collect the bins from the two communal collection points. The Council confirms that this arrangement meets its refuse collection requirements and overcomes the refusal reason in the previous scheme, complying with LP Policy DM26 in providing suitable recycling and waste storage arrangements.
19. As with refuse collection vehicles, it would not be proportionate to the scale of the proposal to require a layout with turning space for occasional visits by similarly large vehicles, such as fire tenders or home removal vans. These would also reverse into the site. There are no reasonable grounds for considering an ambulance would be unable to get in and out of the site in the case of an emergency.

Relationship between the plot 1 and 2 houses

20. The front facing window of the third bedroom of the proposed Plot 2 house would overlook the garden and ground-floor patio doors to the rear of the Plot 1 house. The Council's standards recommend at least a 25m back to front separation

between houses. In this case the front to side distance would be just 18m, and the edge of the garden just 7.2m from the Plot 2 front elevation. This was not an issue raised with the previous appeal scheme, although I am looking at all matters afresh. However, I do not consider the degree of overlooking now found by the Council to be a significant planning concern. It would not alter my overall findings that the proposed scheme would function adequately and provide good quality living conditions for future occupiers.

Ecology and biodiversity

Protected species

21. Adequate protected species surveys have been provided. No active use of the site by badgers was found. The potential presence of great crested newts is addressed under Natural England's district level licencing arrangements, to comply with the Conservation of Habitats and Species Regulations 2017 (as amended) – the Habitats Regulations.

Biodiversity Net Gain (BNG)

22. The proposal does not constitute major development and was submitted before April 2024, so is exempt from a statutory requirement for BNG. However, the BNG Design Stage Report and associated calculations demonstrate that a positive habitat change of 28.54% and a positive hedgerow unit change of 51.89% can be achieved through the landscaping proposed with the development. To my mind, this is satisfactory in respect of BNG.

Habitats Regulations Assessment

23. The appeal site lies within the Zone of Influence established in the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy³ (RAMS). In that location, new housing would have a likely significant effect upon the notified interest features of the European designated sites along the adjacent Essex coast, either alone or in combination with other plans or projects. This is due to the further households leading to increased recreational pressure, which can then impact negatively upon the condition of these site features, such as from bird disturbance by dog walkers and boat users. The RAMS provides a strategic approach to off-setting the effects of development by securing payments towards mitigatory measures, in amounts commensurate with the scale of proposal. The appellant has made the required RAMS payment. This allows me to conclude that the proposal would not have an adverse effect upon the integrity of the protected areas along the Essex coast and therefore complies with the Habitats Regulations.
24. Along with the protected species and BNG measures, the proposal is compliant with LP Policy DM16 regarding ecology and biodiversity.

Conditions and conclusion

25. I have considered the conditions recommended by the Council against the tests set out in paragraph 57 of the Framework and the advice in the Planning Practice

³ Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) May 2020

- Guidance⁴. Some of those found to be necessary have been amalgamated or amended for conciseness, enforceability or to follow the national model conditions.
26. In accordance with Section 91(1) of the Town and Country Planning Act 1990, a condition applies a three-year time limit for commencement (1). For certainty, a condition is necessary setting out the plans this decision is based upon (2).
 27. To safeguard retained trees, a condition (3) is necessary to ensure construction follows the submitted arboricultural report and method statement. These set out tree protection measures, including barriers and excavation methods, meaning the further tree-related conditions suggested are not needed.
 28. For certainty over safeguarding protected species, the development shall adhere to the Preliminary Ecological Appraisal and Badger Survey Report (4).
 29. Some pre-commencement conditions are suggested by the Council. These require clear justification, meeting requirements so fundamental it would otherwise be necessary for me to dismiss the appeal. Agreement to a Construction Method Statement is required to be pre-commencement, in view of highway safety considerations (5), as are finished floor levels (6), given the relationship with neighbouring dwellings. The same applies to landscaping (7), to address character and appearance and deliver the agreed BNG. To comply with protected species legislation, a pre-commencement condition is necessary in respect of applying the terms of the Great Crested Newt mitigation (8).
 30. BNG is not a statutory requirement, due to the timing of the application. Therefore, pre-commencement conditions over implementing both an agreed BNG Plan and Habitat Management and Monitoring Plan, which seem overlapping requirements anyway, are not justified.
 31. Further matters can be addressed by post-commencement conditions. In the interests of character and appearance, conditions require agreement over external materials (9) and means of enclosure (10). For highway safety, conditions are necessary to secure both adequate parking and turning space provision (11) and access visibility onto Maldon Road (12). A single condition governing the design and construction of the private access (13) can address various matters, including preventing loose material and surface water running onto the public highway and accommodating a 26-tonne dust cart where required. The proposal otherwise meets the Council's car parking standards and so a condition requiring garages to be kept clear for this purpose is unnecessary. The appellant has already supplied an agreed refuse collection strategy, so this no longer needs to be required by condition.
 32. Conditions are necessary to secure the ecological enhancements (14), household waste and recycling storage (15), electric vehicle charging points (16) and water conservation measures (17). The two conditions suggesting obscure glazed/non-opening windows are unnecessary. I am content the first-floor bathroom for Plot 3 will be fitted with this as a matter of course. There is no evidence that the first-floor front window on Plot 4 will harmfully overlook 114 Maldon Road. Given its orientation and the retained boundary planting, a condition requiring this to be obscure glazed/non-opening does not meet the test of necessity.

⁴ Use of planning conditions - GOV.UK

33. Subject to the conditions found to be necessary, this proposal would comply with the development plan when considered as a whole. As I have found no material consideration to indicate otherwise, I must determine this case in accordance with this and so conclude that the appeal be allowed.

Jonathan Price

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

Plans conditions and other compliance requirements

- 2) The development hereby permitted shall be carried out in accordance with the following drawing numbers:
- 21-1024-401_Site Location Plan - Rev A
 - 21-1024-510_Proposed Block Plan - Rev A
 - 21-1024-600_Plot 01 - Plans, Sections & Elevations - Rev B
 - 21-1024-610_Plot 02 - Plans Sections & Elevations - Rev B
 - 21-1024-630_Plot 04 - Plans, Sections & Elevations - Rev B
 - 21-1024-620_Plot 03 - Plans, Sections & Elevations - Rev B
 - 21-1024-511_Proposed Block Plan - Boundary - Rev A
- 3) The construction of the development shall only be carried out in accordance with the submitted arboricultural report/method statement (reference no. 7393, EC, AR, AIA, TC, RF, KL,16-01-24 V2).
- 4) The development hereby permitted shall only be carried out in accordance with the details contained in the approved Preliminary Ecological Appraisal Report (reference no. 7393, EC, AR, PEA, EB, TC, RF, KL,17-04-23 V1) and Badger Survey Report (7971, Badger EC, AS, KL,16-01-24 V2).

Pre-commencement conditions

- 5) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
- i. the parking of vehicles of site operatives and visitors,
 - ii. loading and unloading of plant and materials,
 - iii. storage of plant and materials used in constructing the development,
 - iv. wheel and underbody washing facilities.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed dwellings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 7) No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. Subsequently these works shall be carried out as approved prior to the first occupation of any part of the development or in the first available planting season following such occupation. The landscaping details to be submitted shall include: a) hard surfacing including pathways and driveways, other hard landscape features and materials; b) existing trees, hedges or other soft features to be retained; c) planting plans including specifications of species, sizes, planting centres, number and percentage mix; d) details of planting or features to be provided to enhance the value of the development for biodiversity and wildlife; e) management details and a five-year maintenance plan.
- 8) No development shall take place until a copy of a European Protected Species (EPS) Licence and a heads of terms mitigation strategy for great crested newts has been submitted to and approved by the local planning authority. The approved strategy shall thereafter be carried out.

Pre-occupancy and other staged conditions

- 9) No development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
- 10) Prior to the occupation of the development hereby permitted, details of the positions, height, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed in accordance with the approved details before the dwellings are occupied.
- 11) None of the dwellings hereby approved shall be occupied until the parking spaces and vehicle turning areas have been laid out within the site in accordance with the approved plans. These areas shall thereafter be retained solely for the parking and turning of vehicles.
- 12) None of the dwellings hereby approved shall be occupied until the vehicular access from Maldon Road at its centre line has been provided with clear to ground visibility splays with dimensions of 2.4 metres by 120 metres in both directions, as measured from and along the nearside edge of the carriageway and as shown in the Additional Visibility Splay Plan, drawing no. DRD087_4-7-001 Revision B. These vehicular visibility splays shall thereafter be retained free of any obstruction at all times.
- 13) None of the dwellings hereby approved shall be occupied until the private access serving them has been constructed, surfaced and drained in accordance with details that shall have had the prior written approval of the local planning authority. The access shall thereafter be retained as approved.

- 14) Prior to the occupation of any of the proposed dwellings, details of ecological enhancement works shall be submitted to and approved in writing by the local planning authority. The details shall include integrated bat roosts, bird boxes (including provision for house sparrows), management details and a five-year maintenance plan. Subsequently these works shall be carried out as approved prior to the first occupation of any part of the development and shall thereafter be retained.
- 15) Prior to the first occupation of the dwellings hereby permitted, details of the facilities for the storage of refuse and recyclable materials shall be submitted to and approved in writing by the local planning authority. The development shall not be occupied until the facilities for the storage of refuse and recyclables are provided.
- 16) Prior to the first occupation of the dwellings hereby permitted, one charging point for electric vehicles per dwelling shall be installed.
- 17) The development hereby permitted shall not be occupied until the Building Regulations optional requirement of a water consumption rate of no more than 110 litres per person per day has been complied with.
