



Appeal Decision

Site visit made on 10 December 2024

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2025

Appeal Ref: APP/X1545/W/24/3343115

Land north west of Willow Grove, Maldon Road, Mundon CM9 6NT

- 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 Mr Bishop against the decision of Maldon District Council.
 - The application Ref is OUT/MAL/23/00440.
 - The development proposed is Outline planning application for up to two dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline with approval sought for access. The appearance, landscaping, layout and scale are reserved for future approval. Therefore, insofar as they make any indication of appearance, landscaping, layout and scale, I have considered the submitted plans as indicative only.
3. Since the appeal was lodged the National Planning Policy Framework (2024) (the Framework) was revised. I have allowed the Council and appellant the opportunity to comment on the revised Framework and taken the submissions into account in determining this appeal.
4. There was a previous appeal¹ at the appeal site for the erection of two dwellings. I have noted the findings of the Inspector for that appeal, however, I am not bound by them, and I have considered this appeal scheme on its own merits based upon the submitted evidence before me.
5. The effect of the proposed development upon the living conditions of the future occupiers was not a reason the Council refused this proposal. However, having regard to the evidence before me and the views of interested parties, I sought substantive views from the Council and appellant in respect of this matter. This is reflected in my setting out of the main issues below.

Main Issues

6. The main issues are:
 - whether or not the proposal would provide satisfactory living conditions for its future occupiers;
 - the effect of the proposal upon the character and appearance of the area;

¹ Ref. APP/X1545/W/23/3319552.

- whether or not the proposal would be a suitable location having regard to policies for the location of development and the accessibility of services and facilities; and,
- the effect of the proposal upon designated habitats sites.

Reasons

Living conditions

7. Paragraph 198 of the Framework requires decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions. Paragraph 200 seeks to ensure that new development can be integrated effectively with existing businesses, which should not have unreasonable restrictions imposed due to development permitted after their establishment. Where the operation of a business could have a significant adverse effect on new development, the applicant should be required to provide suitable mitigation before the development is completed.
8. The appeal site is adjoined on two sides by a sizeable industrial premises that I understand manufactures horticultural packaging. Despite the grassland and landscaping buffer, the operational hardstanding and buildings are a short distance from the appeal site. The industrial site operates 24 hours a day 7 days per week and I am not told of any specific planning restrictions upon it. The operator has emphasised processes require operation of machinery and movement of items (raw materials, goods, and by-products) during all hours of the operation.
9. The Appellant's Noise Impact Assessment (NIA) explains the parameters of the unattended survey over 5 – 9 January 2023 and 3no 1-hour periods of attended survey. These indicate the dominant noise source during the day and evening was traffic noise. Later at night it was mechanical fans at industrial premises. My site visit can only represent a brief snapshot in time. I observed that dominant noise sources varied from road traffic noise when vehicles passed, but when there was no traffic, the industrial premises was clearly audible at the rear of the appeal site.
10. The Inspector for the previous appeal noted the NIA was not prohibitive of that scheme. However, they explained some its perceived limitations in terms of the early January duration and scope of survey², and it was unclear if the monitoring period was typical of activity at the site over the whole year. The appellant has not explained if noise levels recorded are typical of the year as a whole. There was also a question of future growth or changes to commercial activities and processes.
11. I note the Council's adviser has not objected, but there were initially concerns that the 3no 1-hour periods of attended monitoring may not be representative of the extent and frequency of noise generating activities. The NIA referred to forklift movements, but there was little reference to HGVs, which from manoeuvres and audible reversing devices could be a significant noise source. There may also be periods of high vehicle activity at staff shift turnover. I am unclear if more building openings may be open in warmer months to moderate internal temperatures.
12. I have concerns that the scope of the NIA alone does not give sufficient assurances over the nature and effects of operations. The Council's adviser states that given

² Paras 19 – 20 of the decision letter for Ref. APP/X1545/W/23/3319552.

- the proximity of the factory, any future occupiers may be exposed to noise and other nuisances which would be very difficult to control, and the factory may have an 'Agent of Change' defence against any complaints. The further discussion between the Council's and Appellant's specialists gives some degree of assurance. This refers to the effect of a potential doubling of noise, how this could be mitigated internally and a potential for mechanical ventilation at night in the worst-case.
13. However, I am not fully convinced that mechanical ventilation and closed windows would provide satisfactory living conditions. Even were I to set this aside, it is not fully explained how noise in the rear gardens could be mitigated were it to be found unacceptable, while ensuring adequate daylight and outlook. Therefore, despite the scope for suitably worded planning conditions, I have some concerns in respect of the outdoor space, which it is unclear how a scheme could address.
 14. Odour was highlighted in the Inspector's consideration of the previous scheme. I note the observations and concerns in that regard. While it only represented a brief snapshot in time, I noted a distinct odour on my visit which based upon the wind direction, appeared attributable to the industrial premises. The operator implies odour could come from heating plastic for recycling. It is not certain whether the odours would be regarded as offensive or a nuisance by future occupiers.
 15. There is no formal technical assessment of odour before me. Typical emissions and the potential effects are not adequately addressed by the appellant. The National Atmospheric Emissions Inventory and other information appears to be in respect of general air quality and composition. While this might be regarded as 'good', it is not an adequate assurance that odour would not result in unsatisfactory living conditions or significantly adverse effects upon the future occupiers.
 16. Noise and pollutant emissions from industrial operations may well be reducing going forward through technological advances and legislation. However, there is little certainty reductions or applied measures would have a meaningful effect on noise or odour in the short to medium-term. Were any needed to be installed at the manufacturing site due to the new dwellings, their effectiveness, or the effects upon its viability are unclear. Therefore, these matters attract limited weight.
 17. External illumination exists throughout much of the industrial site. However, I have limited substantive evidence regarding the locations and levels of illumination, or the potential effects upon the living conditions of future occupiers. The tall Cypress hedge H11 along the boundaries may be an effective screen if it remains of sufficient health and vigour. However, this is not within the control appellant, and it is unclear this would be secured to remain. This further adds to my concerns.
 18. I understand the manufacturing premises seeks to ensure good relations with its neighbours. The appellant informs me there are no issues to residential amenity to The Grove and highlights that Willow Grove is a similar distance away as the appeal site. However, the influence of the manufacturing premises layout and the prevailing winds is not clear. For example, The Grove is closer to the boundary, but to the north. Willow Grove is in a similar broad direction as the appeal site, but the appeal proposal would be closer to some buildings and is adjoined on two sides. Therefore, their circumstances are not directly comparable, and do not offer sufficient assurances.
 19. The appellant is prepared to accept conditions including in respect of surveys and enhanced mitigation and I have noted the conditions suggested. However, internal

measures, even were they regarded as satisfactory, would not mitigate adverse effects upon the private external spaces which are of significant importance to the living conditions of future occupiers. In granting an outline permission, it is accepting the principle is acceptable in that location, and that adverse effects can be mitigated. I am not satisfied I have reasonable assurance this is the case. Due to the implications for the living conditions of future occupiers, and the viability of a sizeable established business, these are matters of fundamental importance and a high order.

20. Therefore, for the reasons set out above, I am not satisfied the proposal would provide satisfactory living conditions for the future occupiers of the new dwellings, with reference to noise and disturbance, or odour, or artificial lighting. This would conflict with paragraph 135f) of the Framework which states that planning decisions should ensure that development creates places with a high standard of amenity for the future occupiers. It would also conflict with the aims of paragraphs 198 and 200 of the Framework, the relevant provisions of which I have set out above.

Character and appearance

21. The appeal site is designated within the Countryside. The character and appearance of the area can be characterised as inherently rural, verdant and also with a part open agricultural landscape. The area has some rows and groups of trees and is punctuated by residential and industrial buildings. The appeal site is surrounded by a dwelling in a large, landscaped plot to the south, a landscaped area around the industrial premises to the north and east, and a relatively open agricultural landscape to the west of Maldon Road.
22. The appeal site includes a part wooded, scrub and grassland areas, bound by various styles and heights of fencing and high cypress hedges. Whether or not it could be defined as waste ground or brownfield land, it has undergone colonisation by vegetation over several years. Due to the continuity with landscaping at the industrial plant and Willow Grove, while it might be considered as infill under Policy H4, it does not have this appearance from outside the site. By virtue of its verdant informal appearance, relative absence of built form and its partial screening function to part of the large industrial premises, the appeal site makes a positive contribution to the character and appearance of the area and the countryside.
23. I don't have reason to dispute the appellant's view that though the reserve matters, the built development could comply with many aspects of design policies and screening could be maintained and enhanced. New dwellings would not necessarily be incongruous with the wider surrounds. However, it is inherent that the development of the appeal site with up to two dwellings would result in sizeable new built development, the installation of a new formal access, urbanisation, paraphernalia, boundary treatments and some tree removal. There would be a significant extent of new footway over part of a wide grass verge that contributes to the rural character and appearance of the area.
24. The trees to be lost are generally quite young and of the lower value categories, but nevertheless, they do have some positive value in respect of their contribution to character and appearance. The proposal would erode the appeal site's verdant characteristics and the positive contribution it makes to character and appearance and the intrinsic character and beauty of the countryside, and the new footway would suburbanise a significant section of highway verge.

25. While the reserved matters provide opportunities including for a high-quality design and further landscaping as indicated by the appellant, this proposal would still have a discernible adverse effect upon intrinsic character and beauty of the countryside and the character and appearance of the area, which could not be fully or adequately mitigated. The harm would be visible from around the appeal site frontage, for a moderate section north and south of it on Maldon Road when passing the site, and from parts of Willow Grove.
26. In the approval³ of fencing at the industrial premises an Inspector found an overall benefit to the character and appearance of the area, because of the proposed degree of screening to the premises. That was for a significantly different scheme to that proposed in this appeal, and in-light of my findings above, its circumstances and effects are not directly comparable to this appeal scheme.
27. For the reasons set out above, the proposal would be harmful to the character and appearance of the area. It would conflict with Policies S1, S8, D1 and H4 of the Maldon District Approved Local Development Plan (2017) (the LDP). Amongst other things these seek to ensure the intrinsic character and beauty of the countryside is not adversely affected, development does not involve the loss of any important landscape features, and it respects and enhances local character and context. It would also conflict with Framework paragraphs 139c) and 187) which expect development to be sympathetic to local character including the landscape setting and recognises the intrinsic character and beauty of the countryside.

Location

28. The appeal site is approximately 1km from the settlement boundary of Mundon and approximately 1.2km from the boundary of Latchingdon. Amongst other things, Policy S8 of the LDP states outside of defined settlement boundaries permission will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and where a proposal meets one criteria a) to m). In-light of my findings in respect of the main issue of character and appearance, the appeal scheme could not fully satisfy the former policy element referred to.
29. The appeal scheme is not for a development type that falls within criteria a) to l). Criterion m) is for other proposals compliant with policies within the LDP, neighbourhood plans and other local guidance. Policy H4 of the LDP seeks to optimise the use of land having regard to considerations including accessibility to local services and facilities, and proximity to public transport. LDP Policy S1(13) applies the principle of minimising the need to travel and where it is necessary, prioritising sustainable transport modes and improving access for all. Being outside a settlement alone, may not conflict with sustainable transport objectives.
30. The closest services and facilities to the south appear mainly employment uses and light industrial services, with facilities such as a petrol station and shop, supermarket, post office, pub, estate agent, primary school, church and hall over around 1.2km away. Mundon, amongst other things has a village hall and pub. There are also a limited number of what appear to be primarily home-based enterprises. Latchingdon may well be appropriately regarded as a Larger Village⁴. However, future occupiers would need to travel further to visit most professional services, larger food stores, shops for non-food goods, access post primary age

³ Ref. APP/X1545/W/21/3267041.

⁴ Maldon District Rural Facilities Survey and Settlement Pattern (January 2022).

education, certain medical facilities and a wider range of leisure facilities and other employment opportunities.

31. The route to Latchingdon includes unlit roads with some sections without paths and some verges with limited opportunity for comfortable traffic refuge. Walking to and from most facilities is unlikely to be regarded as attractive or convenient for future occupiers, particularly during darker months. The distance and relatively straight road alignment means cycle journeys to and from local services and facilities may be of some appeal for future occupiers if sufficiently confident to cycle the route.
32. Nearby bus stops are a walk along grass verges which can be uneven and slippery. However, this appeal scheme proposes two new sections of footway between the appeal site and The Grove. So, the journey to the southbound stop, and up to the crossing point of the northbound stop would be along footways and over bound accesses. The appellant informs me of three bus services and informs me the No 31 is a major route providing regular, frequent and reliable bus services to these local settlements as well as the centres of Burnham, Maldon and Chelmsford.
33. Opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Based upon the evidence before me, connectivity to services and facilities via the local bus services can be regarded as good. Based upon the proposed pathway being secured by Grampian condition, the appeal scheme is proposing a significant measure to maximise the use of sustainable transport. It is likely the use of the bus would have a good deal of appeal to future occupiers, thereby limiting the potential for future private motorised vehicle journeys.
34. For the reasons set out above, while the proposal would not be a suitable location for housing having regard to the Council's policies for the location of development, it would be regarded as suitable having regard to the accessibility of services and facilities. The location would conflict with Policy S8 of the LDP, the relevant provisions of which I have set out above. However, the proposal would not conflict with the aims of Policies S1, D1, H4, T1 and T2 of the LDP, the Maldon District Design Guide (2017) and relevant policies of the Framework insofar as they seek that development secures provision for and maximises the use of sustainable transport and has a good level of accessibility to local services and facilities.

Habitats sites

35. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require that where a plan or project is likely to result in a significant effect on a European site (habitats site), a competent authority is required to make an Appropriate Assessment (AA) of the implications of it upon the integrity of the habitats site in view of its conservation objectives. Any likely significant effects (LSEs) need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
36. The appeal site is within Zones of Influence (Zols) of several habitats sites⁵. The coastal habitats at the designated sites support important populations of breeding, non-breeding, and migratory birds, and important assemblages of wetland plants, invertebrates, and wintering and migratory waterbirds (its qualifying features). The

⁵ The Dengie Special Protection Area (SPA) and Ramsar, the Crouch and Roach Estuaries Ramsar and SPA, the Blackwater Estuary SPA and Ramsar, the Foulness Estuary SPA and Ramsar, the Essex Estuaries Special Area of Conservation (SAC).

conservation objectives for the habitats sites are to maintain or restore their integrity by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features, and the population and distribution of the qualifying features within the sites.

37. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (2020) (the RAMS SPD) confirms that outdoor recreational activities by visitors result in disturbance to the qualifying features. New housing in the Zols is likely to result in increased visitors to the habitats sites, resulting in recreational disturbance to the qualifying features. By introducing new dwellings and occupiers within the Zols, this scheme alone and in combination with other development would have LSEs on the habitats sites.
38. The RAMS SPD outlines a package of strategic mitigation measures, including education and communication, access management, enforcement, habitat creation and monitoring, delivered by partnership arrangements. These are funded by a per dwelling tariff for developments within Zols secured against each new development, which is endorsed by Natural England (NE). NE has been consulted and is of the view that subject to a payment being secured against this appeal scheme, and that it is paid by the commencement of the development, the measures would mitigate the LSEs upon the habitats sites.
39. The signed and dated Unilateral Undertaking (UU) is for an index linked contribution, a checking and monitoring fee. The Council confirms it has the signed UU and monitoring fee. Based upon the evidence before me I am satisfied the UU secures provision for the payment of the contribution to mitigate the effects of this proposal upon habitats sites. I see no reason why the sum would not be directed in the manner intended towards the mitigation and would enable the delivery of effective mitigation required by the RAMS SPD. I am therefore satisfied, following an AA, that the mitigation is appropriately secured and would be delivered in a timely manner, to mitigate the LSEs.
40. For the reasons set out above the proposal would accord with Policies S1, D1, N1 and N2, which require development ensures that it conserves and protects the natural environment and areas of biodiversity interest including designated sites. The proposal would be compliant with paragraph 193a) of the Framework which seeks that significant harm to biodiversity is avoided and adequately mitigated.

Other Matters

41. I note the appellant's dissatisfaction of aspects of the Council's consideration and determination of the proposal, and that this was subject of subsequent complaints procedures. I have had regard to the findings and commentary provided to me only insofar as they relate to the planning merits of the appeal proposal.

Planning Balance

42. The appellant has provided evidence explaining that in-light of the changes to the Framework, the Council cannot demonstrate a 5-year Housing Land Supply (HLS). Therefore, the policies most important for determining the proposal are deemed out of date. Permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, having particular regard to matters

including key policies directing development to sustainable locations, the effective use of land, and securing well-designed places.

43. There would be a limited temporary economic benefit during construction, and once constructed a small on-going benefit to the local economy and support to local services and facilities. The scheme would help to meet the Framework objective of significantly boosting the supply of homes in an area where I am informed that affordability ratios are widening. Planning conditions could secure them being of a size most in demand and built to an accessible specification. The appellant puts it to me latest HLS position is either around 2.9-years or 2.55-years, which the Council has not disputed. Upon either measure the HLS situation is such that need should be regarded as acute. So, while only proposing up to two dwellings, the benefit to supply should be regarded as an overall moderate social benefit.
44. Proposed biodiversity enhancements could be secured by a condition on any consent. The evidence suggests that these could overall be benefits attracting limited weight in favour of the scheme. It possible there might be some minor overall benefit in respect of drainage. While some wider use is likely, the new footway would also serve the new dwellings, an existing dwelling to the south and employees of the industrial premises. As a benefit, this should attract moderate weight. The appeal scheme would also reduce the risk of anti-social behaviour and the evidence suggests some degree of local support for the proposal.
45. I note the Great Crested Newt (GCN) District Level Licencing Impact Assessment & Conservation Payment Certificate and contribution for habitat delivery, monitoring, and condition suggesting a copy of the GCN District Level Licence is provided. Mitigating the effects upon protected species and securing a contribution towards the RAMS SPD are neutral matters in the balance. Compliance with policies in respect of matters such as flood risk, arboricultural methods, the living conditions of future occupiers not referenced above and neighbouring occupiers, highway design specifications, parking provision would also be neutral matters in the balance.
46. The appellant advocates Policy S8 is out of date because the LDP does not provide for up-to-date development needs, and I am referred to the finding by another Inspector⁶ that S8 has limited consistency with the Framework, which can only be resolved by a new local plan or permitting development outside settlement boundaries. I am also referred to a considerable number of other approved schemes at sites despite their location outside settlement boundaries and reference to their proximity to services and facilities in the Council area⁷. However, limited detail is provided for me to come to my own view upon the comparability of these sites with the appeal proposal.
47. As I have found the site to be in a suitable location for access to services and facilities, compliance with those policies, is a neutral matter. In seeking to direct development of specified types, to sustainable specified settlements and locations, Policy S8 still has some consistency with Framework policies in this regard. Based upon the evidence before me, including the other decisions, current development needs and HLS, I attribute the conflict with S8 in respect of the location of the proposal, limited weight against the scheme.

⁶ Ref. APP/X1545/W/22/3304219.

⁷ Refs. 23/00952, 23/00894, 23/00145/OUT, FUL/MAL/22/00896, APP/X1545/W/19/3222468, APP/X1545/W/21/3282659, APP/X1545/W/20/3258926, 15/00039/FUL and 15/01361/FUL, 23/01212/FULM, 3331398, 22/00071/FUL, APP/X1545/W/22/3293818.

48. However, it has not been demonstrated the proposal could ensure satisfactory living conditions to the future occupiers. This is a matter of fundamental importance and attracts very significant weight against this scheme. The proposal would also result in an adverse effect upon the character and appearance of the area. Having regard to the scope of suitably worded reserved matters submissions and other planning conditions, this is a matter that attracts moderate weight against the appeal scheme.
49. Overall, the policy conflicts and the harm from the appeal scheme, significantly and demonstrably outweighs the benefits of the proposal when assessed against the policies of the Framework taken as a whole. Therefore, the appeal should not succeed.

Conclusion

50. The proposal is contrary to the development plan read as a whole, and the Framework taken as a whole. There are no considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR