



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: 24th January 2025

Appeal Ref: APP/X1545/W/24/3341920

Land at 22 Steeple Road, Mayland, Essex CM3 6BB

- 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 Mrs S Gallagher against the decision of Maldon District Council.
 - The application Ref is OUT/MAL/23/00666.
 - The development proposed is the erection of one bespoke self-build single storey dwelling.
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Decision

1. The appeal is allowed, and outline planning permission with all matters reserved is granted for the erection of one bespoke self-build single storey dwelling at Land at 22 Steeple Road, Mayland, Essex CM3 6BB in accordance with the terms of the planning application Ref. OUT/MAL/23/00666, dated 3 July 2023, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Council's decision notice refers to the proposal as being for one detached single storey dwelling. While the act of development is the erection of a single storey dwelling, the appellant has expressly stated that it did not agree to the change in description. Therefore, in the decision paragraph, while I have added reference to being in outline with all matters reserved as set out in the application form, I have retained the appellant's description from the application form.
3. The application is made in outline with all matters reserved for future approval with the position of the access point to the public highway set out before me. Insofar as they relate to access detail, appearance, layout, scale and landscaping, I have considered the submitted plans as indicative only.
4. 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.
5. While the effect upon designated habitats sites was not a reason for refusal in the Council's decision notice, having regard to the evidence before me, I sought the views of the Council and the appellant upon this matter. This is reflected in my setting out of the main issues below.

Main Issues

6. The main issues are:
 - the effect of the proposal upon habitats sites; and,

- whether or not the proposal would be in a suitable location having regard to the Council's policies for the location of new development.

Reasons

Habitats sites

7. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require where a plan or project is likely to result in a significant effect on a European site (a 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) arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
8. The appeal site is within Zones of Influence (Zols) of a number of habitats sites¹. 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 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.
9. 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 causing LSEs upon them. New housing and occupiers within the Zols are likely to result in increased visits to the habitats sites, resulting in recreational disturbance to the qualifying features. Therefore, by introducing new dwellings and occupiers within the Zols, this appeal scheme alone and in combination with other development would have LSEs upon the habitats sites and their qualifying features.
10. 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.
11. The Council did not object to the appeal scheme subject to a planning obligation or financial contribution being provided. The Council and appellant agree that a contribution of £163.86 is the required amount for the RAMS SPD mitigation. The Council confirms the payment has been received. Therefore, it has been secured by the Council. While the RAMS SPD sets out a preference for a planning obligation, having sought the main parties' views upon the acceptability of the payment, neither party disputes that the payment mechanism is an appropriate method to secure and ensure the provision of the required mitigation.

¹ The Dengie Special Protection Area (SPA) and Ramsar, the Crouch and Roach Estuaries SPA and Ramsar, the Blackwater Estuary SPA and Ramsar, the Foulness Estuary SPA and Ramsar, and the Essex Estuaries Special Area of Conservation (SAC).

12. Based upon the evidence before me, I see no reason why the sum would not be directed by the Council and partner organisations in the manner intended towards the RAMS SPD mitigation. Therefore, although payments do not bind the Council, based on the specific evidence before me, the payment is a sufficient mechanism to enable the delivery of proportionate mitigation in accordance with 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 from the appeal scheme.
13. Therefore, for the reasons set out above, the proposal would not have an adverse effect upon the integrity of habitats in view of their conservation objectives. The proposal is compliant with the Regulations and is also compliant with paragraph 193a) of the Framework which seeks to ensure that significant harm to biodiversity from new development is avoided and adequately mitigated.

Location

14. The appeal site lies within the countryside, outside but adjacent to the settlement boundary for Mayland. Policy S1 of the Maldon District Approved Local Development Plan (2017) (the LDP) states applications that accord with the LDP policies and where relevant, with policies in district neighbourhood plans, will be approved, unless material considerations indicate otherwise. It also sets out the presumption in favour of sustainable development in accordance with the Framework, which is a material consideration.
15. Policy S8 of the LDP states the countryside will be protected for its landscape, natural resources, ecological value and its intrinsic character and beauty. Outside defined settlement boundaries, Garden Suburbs and Strategic Allocations, permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and where a proposal meets one of criteria a) to m). Based upon the evidence before me, the proposal does not fall within the criteria listed. Therefore, it would conflict with Policy S8.
16. For the reasons set out above, the proposal would not be in a suitable location having regard to the Council's policies for the location of new development. This would conflict with Policy S8 of the LDP, the relevant provisions of which I have set out above. I have not concluded against Policy S1 of the LDP, because the Council has not explained any conflict with criteria 1) – 14), and the application of the presumption in favour of sustainable development requires a judgement to be made upon the scheme taking into consideration the development plan as a whole and other material considerations. I return to this matter below.

Other Matters

17. An interested party has objected to the appeal scheme because of its view the proposal would dangerously add traffic via the Steeple Road access and there would be no footway or passing points. The public highway access links to footways, there is good visibility into the public highway, and this scheme would result in a very limited level of additional activity. The Highway Authority and Council do not object to the proposal in respect of the access, the detailed specification for which would be considered as a pre-commencement reserved matter and require the Council's approval. Therefore, allowing this appeal would not result in harm to highway safety, and it could be ensured the proposal would not be detrimental to highway safety, compliant with LDP Policy T2.

18. An interested party provides little substantiation of its view of a conflict with LDP Policy H4 in respect of effective use of land and backfill development. I see no reason why the scheme is considered to conflict with the density considerations. The scheme would make a more effective use of what appears significantly under-used land and could ensure no unacceptable material impact upon the living conditions of neighbouring occupiers. There would be no unacceptable loss of land of local social, economic, historic or environmental significance and would not require the loss of important landscape or heritage features, or ecology interests.
19. The Council does not object to the appeal scheme in respect of the effects upon the character and appearance of the area. Subject to the submission of suitably high-quality schemes under the reserved matters conditions, including landscape enhancements, I am satisfied this scheme for an additional single storey dwelling would be in keeping with, and not be harmful to the character and appearance of the area or the intrinsic character and beauty of the countryside.
20. The appeal site is generously sized and the Council does not object to it in respect of the living conditions of neighbouring or future occupiers. The appeal site is bound by quite a low-level wall on one side which would allow direct views into and between a neighbouring garden. However, boundary treatments and other hard landscaping features are considered under the reserved matters submissions of layout and landscaping. Therefore, I am satisfied the appeal scheme could ensure satisfactory living conditions for neighbouring and future and occupiers.

Planning Balance

21. The Council advises that in-light of changes to the Framework, it cannot demonstrate a 5-year Housing Land Supply (HLS), having a revised position of around 2.7-years, down from around 6.35-years previously. 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 policies in the Framework taken as a whole, having particular regard to key policies directing development to sustainable locations, the effective use of land, and securing well-designed places. For this reason, the Council is no longer pursuing its reason for refusal in respect of Policies S1 and S8 of the LDP.
22. The proposal would result in a limited temporary economic benefit during construction, and once occupied a small benefit to the local economy, as well as some support to local services and facilities. Based upon the HLS figures set out by the Council, there is a significant shortage of housing to meet needs. The provision of a single additional dwelling would be a small contribution to supply, however, in-light of the current shortage in HLS, the social benefits of this additional dwelling attract limited weight in favour of the appeal scheme.
23. The proposal could be designed and landscaped in a manner to provide a high-quality scheme that ensures that overall, there would be no adverse effect upon the character and appearance of the area or the intrinsic character and beauty of the countryside. Compliance with policies in respect of matters such as habitats sites, the living conditions of future and neighbouring occupiers, highway safety, and accessibility, are neutral matters in the balance.
24. The appeal scheme conflicts with policies in respect of its location outside the settlement. However, it is adjacent to the settlement, would be viewed in the

context of the built form of the adjoining settlement, could be of a suitably high-quality design, would be in a similarly sustainable location with very good bus access and good accessibility to services and facilities. It would also result in a more effective use of the appeal site. Having regard to these matters and the HLS shortage, I attribute the conflict with policies in respect of the location outside a settlement, limited weight against the scheme.

25. The scheme makes a more effective use of the land having regard to its context and the character and appearance of the area and the intrinsic character and beauty of the countryside, and conditions would ensure it is well designed. Having regard to Policy S1 of the LDP and paragraph 11d) of the Framework, for the reasons set out, the adverse impacts of granting permission do not significantly and demonstrably outweigh the benefits of the development when assessed against the policies in the Framework taken as a whole.

Conditions

26. I have considered the Council's suggested planning conditions in the context of the advice in the Framework and Planning Practice Guidance (PPG). Conditions 1 – 3 in the schedule are standard conditions for the submission and approval of reserved matters, the time limits in which they be submitted, and the commencement of the development, which are all necessary in the interests of certainty. A condition (4) is necessary to ensure the materials are of a suitable high-quality finish in the interests of the character and appearance of the area.
27. In the interests of avoiding the risk of flooding and pollution a condition (5) is necessary to require the submission and approval of a scheme for surface water drainage design and infrastructure. To ensure appropriate foul water drainage infrastructure is available, a condition (6) is necessary to require the submission and approval of foul water drainage details. In the interests of the living conditions of neighbouring occupiers and the protection of the root protection area of a nearby Oak tree, a condition (7) is necessary to require the development be carried out in accordance with the submitted Construction Method Statement and Appendix MRF2 of the Planning Statement.
28. In-light of the substantive submissions before me it appears there is not a shortage of suitable self-build plots within the district. While the absence of a restriction or condition for a self-build scheme does not prevent the scheme being a self-build dwelling, is it not necessary to make the development acceptable. So, it would not meet the test of necessity. I also have concerns about whether a restriction in the form of a planning condition could effectively secure a self-build dwelling.
29. A condition for a detailed planting specification and retention as suggested, is not necessary, as such details would be secured under the landscaping reserved matter. The Council has not advanced that conditions are necessary respect of cycle parking or a residential travel pack. Cycle parking would be secured under the reserved matters of access, scale and layout. The appeal site is very close to a stop served by several bus services and footway access to Mayland. The appellants are aware of their proximity. Based upon the very limited evidence before me, it is not demonstrated the travel pack would improve the uptake of sustainable transport modes, or referenced in the Policy T2 of the LDP, or is necessary to make this scale and specific location of development acceptable.

30. Informative advice cannot be used in the place of planning conditions. However, provision for the storage of refuse and recycling would be addressed under the reserved matter of layout and the adequacy of the access for collection vehicles is considered under the reserved matter of access. As the site is a residential garden it would appear very unlikely there is any contamination of note, and the appellant will be aware of the Council's advice if any is found. Preventing the discharge of surface water onto the highway would be considered under the surface water drainage condition and reserved matter of access, and the appellant will be aware of the advice in respect of Highway Authority authorisations.

Conclusion

31. The proposal conflicts with the development plan read as a whole. However, there are material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal is allowed.

Mr D Szymanski

INSPECTOR

--- Schedule of Conditions ---

- 1) Applications for the approval of the reserved matters of access, appearance, landscaping, layout and scale shall be made to the Local Planning Authority, before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be begun within two years from the date of the final approval of the reserved matters. The development shall be carried out as approved.
- 3) The development shall be carried out in accordance with the approved plans for the reserved matters of access, appearance, landscaping, layout and scale for the site, for which approval shall have been obtained from the Local Planning Authority in writing, before any development is commenced.
- 4) No works above ground level shall take place until samples of the materials to be used in the construction of the external surfaces, including windows and doors, of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) No development works above ground level shall take place until details of the surface water drainage scheme to serve the development have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the development and maintained thereafter. The scheme shall ensure that as a minimum:
 - i) The development shall be able to manage water on site for 1 in 100-year events plus 40% climate change allowance.
 - ii) Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1 year event) inclusive of climate change shall be no higher than 10/l/s and no lower than 1/l/s. The rate shall be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield).

To satisfy soakaway requirements, details will be required of the area to be drained, the infiltration rate (as determined by BRE Digest 365), the length, width and depth of soakaway, groundwater level and whether it will be rubble filled. Where the Local Planning Authority accepts discharge to an adopted sewer network, written confirmation from the statutory undertaker shall be provided that the discharge will be accepted.

- 6) No development above ground level shall take place until details of the foul drainage scheme to serve the development have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved prior to the first occupation of the development.

- 7) Construction works shall be carried out in accordance with the Construction Method Statement and Appendix MRF2 of the Planning Statement (July 2023) provided with the application.

End of Schedule.