



Appeal Decision

Site visit made on 14 February 2025

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2025

Appeal Ref: APP/X1545/W/24/3348669

Land North of Captains Wood Road, Great Totham, Essex, CM9 8PU

- 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 Michael Cork, Mr Terry Jenkins and Ms Sue May against the decision of Maldon District Council.
 - The application Ref is OUT/MAL/23/01193.
 - The development proposed is described as 'two self build custom designed dwellings'.
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Decision

1. The appeal is allowed and planning permission is granted for two self build custom designed dwellings at Land North of Captains Wood Road, Great Totham, Essex CM9 8PU in accordance with the terms of the application, ref OUT/MAL/23/01193, subject to the conditions set out in the schedule below.

Application for Costs

2. An application for costs has been made by the appellants against Maldon District Council. That application is dealt with under a separate decision.

Preliminary Matters

3. The appeal seeks outline planning permission with all matters reserved. I have therefore considered any drawings which relate to matters of access, layout, scale, landscaping or appearance as illustrative.
4. The appeal is accompanied by a Unilateral Undertaking dated 12 December 2023 (the UU), which relates to a financial contribution for mitigation for effects on habitat sites. This has been taken into account in the determination of the appeal.
5. During the course of the appeal a new National Planning Policy Framework has been published (the Framework). The main parties have been invited to comment on the implications of the document to the appeal and the responses received have been taken into account.

Main Issues

6. As part of its comments on the new Framework, the Council confirmed that it would no longer pursue its first reason for refusal, which relates to the location of the development outside the settlement boundary. As this matter is no longer in dispute I have dealt with it under the planning balance, rather than as a main issue.
7. Accordingly, the main issues to the appeal are the effects of the proposal on:

- the character and appearance of the area, and;
- designated habitat sites.

Reasons

Character and Appearance

8. Captains Wood Road extends from the village into the countryside to the west. At its eastern end the road is characterised by residential properties of varying age and design, generally set back from the road behind landscaped front gardens and areas of parking. The green spaces around those properties contribute positively to the village's rural character.
9. The site is located at the point where the footpath ends and the speed limit changes from 30mph to the national speed limit. There is a notable change in character at this point as the highway narrows to a single carriageway tightly enclosed by hedgerows, giving a distinctly rural character beyond this point. While there are some homes further west along Captains Wood Road, these are set within generous plots and read as developments in the countryside, rather than as an extension to the village.
10. While all matters are reserved at this stage, the proposal would nonetheless see the domestication of the appeal site by two new houses, with associated residential paraphernalia likely to include private gardens and parking. As a result it would cause the creep of residential character away from the village edge and into the countryside. The Inspector of the earlier appeal¹ considered the proposal would result in visual and physical encroachment of the countryside on the northern side of the road and I find that would continue to be the case.
11. For these reasons the proposal would cause harm to the character and appearance of the area, and conflict with policies S8 and D1 of the Maldon District Local Development Plan 2017 (the LDP), insofar as they require development to respect and enhance landscape and townscape setting and the protection of the intrinsic character and beauty of the countryside. Insofar as this main issue is concerned, I do not find conflict with Policy GTO2 of the NP, since I have no strong reason to believe that its requirements could not be achieved at the reserved matters stage.

Habitat Sites

12. The site is located within the zone of influence for the Blackwater Estuary Special Protection Area (SPA) and Ramsar sites, Dengie SPA and Ramsar sites. The Essex coast is home to a number of internationally important breeding and non-breeding birds and their habitats and they are recognised by the Conservation of Habitats and Species Regulations 2017 as areas of international importance. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) 2020, describes the coastline as being a major destination for recreational use particularly for people who live in Essex. By introducing additional residents to the area, the proposal would have a likely significant effect, in combination with others, on the specific qualifying features of the SPAs.

¹ Appeal APP/X1545/W/22/3313956 – 16 August 2023

13. The new residents of the development could visit the SPAs for recreational purposes, and this could take place throughout the duration of the development's life, causing adverse effects on the designated features of those habitat sites. The RAMS accordingly seeks to strike a balance between new residential development and mitigating additional recreational pressures on these habitat sites associated with growth.
14. The RAMS sets out a strategic approach to mitigation that can be secured in the form of a developer contribution which would fund measures including education and communication as well as habitat based measures including fencing and waymarking, habitat creation and site monitoring. Based on the information before me, I have no strong reason to believe that a contribution towards those measures would not be successful in mitigating the effects of the proposal.
15. The UU would secure a financial contribution for each new dwelling, payable prior to commencement of development and the payment would relate to mitigation for habitat sites under the RAMS. The document appears fit for this purpose and would meet the relevant tests for a planning obligation. The UU would not secure a monitoring fee and it is not apparent that one has already been paid. While such a fee is often expected to oversee compliance with an obligation, based on the information before me as part of this appeal, it is not apparent that the fee is necessary, or that it would meet the other relevant tests for an obligation. I therefore find the absence of a monitoring fee acceptable here.
16. For these reasons the proposal would be acceptable in terms of its effects on the designated habitat sites, and would avoid adverse effects on the designated features of the SPAs and their conservation objectives. The proposal would comply with policies D1, N1 and N2 of the LDP and the objectives of the Framework insofar as they relate to protection of habitat sites and biodiversity, as well as LDP Policy I1 which relates to developer contributions to mitigate impacts of development.

Planning Balance

17. The Council have accepted during the course of the appeal that, as a result of the provisions of the new Framework, it can no longer demonstrate a five year land supply for housing. It reports a supply of just 2.7 years including a 5% buffer.
18. The appeal site is located outside the settlement boundary of Great Totham which is defined by the LDP. While the Council no longer wish to defend its reason for refusal relating to the site's location outside the boundary, there is nonetheless conflict with Policy S8 of the LDP. Policy GT01 of the Great Totham Neighbourhood Plan 2022 (the NP) gives criteria where development outside the settlement boundary will be supported, and states that all those criteria should be met. Despite its proximity to the settlement, the appeal site does not share a boundary with the settlement boundary on at least one side. Therefore, even if the other criteria were met, the proposal would still conflict with the provisions of Policy GT01. Despite this, given the reported significant shortfall in land for housing in the District, I give the conflict with these policies, which restrict development outside the settlement boundaries, limited weight.
19. As a consequence of the position on the housing land supply, paragraph 11d) of the Framework is engaged. The application of policies in the Framework that

protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed and it is therefore necessary to turn to part ii).

20. The adverse impact of granting planning permission has been found to be harm to the character and appearance of the area through encroachment of housing into the countryside. The principal benefit of the scheme would be the provision of two new homes, which would contribute to the national objective to boost the supply of homes, and would also contribute to the supply in the District. This is particularly important given the very significant undersupply of land for homes reported by the Council. While the proposal would make only a modest contribution to the identified shortfall, it would nonetheless make a positive contribution with some tangible effect. Given the severity of the situation, I ascribe this benefit significant weight. Other benefits may arise from the proposal which attract some weight, including the economic benefit associated with the construction process and ongoing expenditure into the local economy by future residents.
21. While the proposal is described as self-build homes, there is not a mechanism before me to ensure that the proposal would be secured and developed in accordance with the definition of self build housing. This creates uncertainty as to whether the development would be truly self build, and I have not afforded weight in favour of the development for providing self build units.
22. Having regard to the policies in the Framework which direct development to sustainable locations, despite its separation from the defined boundary, the site is well related to the village of Great Totham which is defined by the LP as a Larger Village and which includes a number of services and facilities. There is an existing footpath which runs along the southern side of Captains Wood Road and although this terminates close to the appeal site, it would nonetheless provide a safe and attractive walking route for future occupants of the proposal to access the services and facilities in the village. The site can therefore be considered to be in a sustainable location and would offer a choice of transport modes for its occupants. This would adhere to the relevant policies of the Framework listed in the footnote in this regard.
23. There would be a degree of conflict with paragraph 135 of the Framework, insofar as it requires development to be sympathetic to the surrounding built environment and landscape character, due to the encroachment into the countryside. Nonetheless, I see no reason why a development which was sympathetic to the surrounding built environment, and its edge of settlement location, could not reasonably be achieved at the reserved matters stage. Overall, when assessed against the policies in the Framework as a whole, and having particular regard to the key policies listed, I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. Accordingly, the proposal would benefit from the presumption in favour of sustainable development set out in the Framework.

Conditions

24. The Council have provided a list of conditions which it considers would be appropriate in the event that the appeal were allowed. I have considered these in light of the relevant tests for conditions and amended some of their wording to comply with the Planning Practice Guidance (PPG).

25. Standard conditions are imposed relating to the submission of the reserved matters and also relating to relevant timescales for reserved matters and implementation. Given the observed uses on the site and adopting a precautionary approach to ensure the site is safe for future occupiers, conditions relating to land contamination are necessary. For reasons of visual amenity and local character, details of trees to be retained, and their protection, are also conditioned. These matters need to be addressed prior to commencement to ensure they are addressed at an early stage. To ensure appropriate drainage on the site, details are conditioned, as are biodiversity enhancements to meet the policy requirement.
26. Matters relating to boundary treatments, parking and the details of planting would fall to be considered at the reserved matters stage. As such it is not apparent that additional conditions are needed to secure those matters at this stage. Given the scale of the development and its relationship to the highway and nearby properties, it is not apparent that a construction management plan meets the test of necessity. There is not evidence to suggest that a condition relating to foul drainage means is necessary for the purpose of the planning permission and given the ecological findings and the scale and location of the development, a condition relating to external lighting would also not be necessary to make the development acceptable.

Conclusion

27. The proposal would conflict with parts of the development plan. However, there are material considerations of sufficient weight to indicate that a decision should be made other than in accordance with it. For the reasons given, the appeal is allowed.

C Shearing

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Applications for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until an Arboricultural Method Statement and associated tree protection plan have been submitted to and approved in writing by the local planning authority. These shall detail the trees to be retained on the site, particularly those at the front of the site, and the working methods by which they will be protected during construction, including a timetable for implementation of those protection measures. The development shall be carried out only in accordance with the approved details and timescales.

- 5) No development, other than site clearance, shall take place until details of a site investigation and risk assessment have been submitted to and approved in writing by the local planning authority. This shall include:
 - A survey of extent, scale and nature of contamination, and;
 - Potential risks to human health and property including livestock, crops, woodlands and pipes, adjoining land, groundwater and surface water and ecological systems.
- 6) If identified as necessary, no development other than site clearance shall take place until details of a remediation scheme have been submitted to and approved in writing by the local planning authority. This shall demonstrate how the site shall be brought to a condition suitable for its intended purpose and include a time table of works and site management procedures. The development shall not be occupied until the measures approved have been implemented in full.
- 7) If identified as necessary, following completion of any remediation works, a verification report shall be submitted to and approved in writing by the local planning authority. This shall demonstrate the effectiveness of the remediation carried out.
- 8) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 9) No development above the damp proof course of the new houses shall take place until details of a Sustainable Urban Drainage Scheme have been submitted to, and approved in writing by the local planning authority. Those details shall include:
 - Discharge rates/ locations;
 - Storage volumes;
 - Treatment required;
 - Detailed drainage plans;
 - A written report of the drainage strategy, and;
 - A plan for future maintenance including details of who is responsible for it.

The approved scheme shall be implemented in full prior to the first occupation of any part of the development.
- 10) Prior to the first occupation of each new house, a scheme for providing biodiversity enhancements on that part of the site shall be submitted to and approved in writing by the local planning authority. Those enhancements shall be installed in full accordance with the approved details not later than 6 months after the date of their approval.

End of Schedule