
Appeal Decision

Site visit made on 15 July 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2025

Appeal Ref: APP/X1545/W/25/3360686

Beachway, 156 Goldhanger Road, Heybridge, Essex CM9 4QS

- 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 Mr Robert King against the decision of Maldon District Council.
 - The application Ref is FUL/MAL/24/00434.
 - The development proposed is the erection of a single dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An updated Flood Risk Assessment¹ (FRA), referring to the revised National Planning Policy Framework (the Framework) December 2024 and Environment Agency flood maps published earlier in 2025, was submitted with the appeal. The Council and interested parties have had the opportunity to review the updated FRA as part of the appeal process. I have also had regard to it and am satisfied that no prejudice would arise to any party as a result of my having done so.

Main Issue

3. The main issue is whether there are reasonably available sites appropriate for the proposed development in areas at lower risk of flooding and whether the sequential test has been met.

Reasons

4. The appeal site is a vacant parcel of land, currently grassed, with hedged and fenced boundaries. Although previously linked to 156 Goldhanger Road, it is now a separate plot. The surrounding area includes a variety of houses and bungalows fronting Goldhanger Road and a housing estate to either side of Coopers Avenue. There is a detached house facing the appeal site, of similar appearance and siting to the proposed development, which appears to be a relatively recent addition.
5. In the Maldon Local Development Plan (MLDP) adopted in 2017, Policy D5 sets out the Council's approach to directing strategic growth towards lower flood risk areas. It includes that all development must demonstrate that the Sequential Test (ST) and, where necessary, Exception Test has been satisfactorily undertaken in accordance with national planning policy. The policy goes on to require that development proposals maximise opportunities to reduce the causes and impacts of flooding, including through measures such as sustainable drainage systems,

¹ GeoSmart Information Ltd Flood Risk Assessment dated 2024-05-02 (sic)

flood resilient design, safe access and egress and flood response plans. However, this is in addition to, not instead of, application of the ST.

6. National planning policy includes an over-arching principle in the Framework that development should be directed away from areas at highest risk of flooding. To that end, a sequential, risk-based approach is to be taken to individual applications in areas known to be at risk now or in the future from flooding. Planning Practice Guidance (PPG) confirms that this means avoiding, so far as possible, development in current and future medium and high flood risk areas. The PPG furthermore confirms that the underlying purpose includes placing the least reliance on measures like flood defences, flood warnings and property level resilience features. Therefore, even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the ST still needs to be satisfied.
7. It is for the decision-maker to consider whether the ST is passed, with reference to information held on land availability and an appropriate area of search. The latter should be determined by the planning authority. However, it is for the applicant to identify whether there are any other 'reasonably available' sites within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing and/or economic land availability assessments, such as sites currently available on the open market. The PPG also highlights that the applicant may need to check on the current status of relevant sites to determine if they can be considered reasonably available.
8. There is no dispute that the appeal site is within Flood Zone 3a, being at high risk of both river and sea flooding. The area benefits from flood defences and, taking that into account, based on a site-specific analysis, the level of risk from river and sea flooding is categorised in the FRA as medium. However, the PPG confirms that the presence of existing flood risk management infrastructure should be ignored when carrying out the ST, other than in the limited circumstance of comparing varied levels of risk within medium or high-risk areas.
9. A Sequential Test Report² (STR) was submitted with the planning application. In the apparent absence of any published guidance from the Council on the area to be covered, the STR proposes the main residential areas of Heybridge as being the appropriate search area. An appeal decision³ is cited in justification, although that decision related to a different geographical area and dates back to 2017, since when there have been several updates to national planning policy. In any case, the STR does not confine itself to the residential area of Heybridge, since the sites which have been examined all have addresses in other settlements and none appear to be in Heybridge itself.
10. The only data source cited in the STR is a Strategic Housing Land Availability Assessment (SHLAA) dated 2015. There is no mention of sites currently on the open market and nor is it clear whether the evidence drawn from the 2015 SHLAA has been updated with reference to current sources. Although there is reference to a Housing and Economic Land Availability Assessment published by the Council in 2022, that was not used to identify alternative sites, on the grounds that it did not encompass sites for fewer than 5 dwellings. For similar reasons, allocated housing sites were excluded.

² Landmark Town Planning Services Sequential Test Report

³ Appeal ref: APP/N0410/W/17/3170643

11. The Council's Officer Report gave limited attention to the Council's concerns about the methodology in the STR, although the report clearly states the case officer's view that the ST was not met. In support, reference was made to a previous appeal decision for a similar development on the same site, which also considered whether an appropriate sequential approach had been adopted. That decision has not been provided in full, but a relevant extract is reported in the evidence, in which the Inspector highlights that there are other areas allocated for residential development further north in Heybridge in Flood Zone 1 with a significantly lower probability of flooding.
12. The STR does not include any evidence that the sites mentioned in the earlier appeal decision have been investigated. The PPG makes clear that 'reasonably available' sites may include part of a larger site if it would be capable of accommodating the proposed development. It also says that lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'. Therefore, the exclusion of those allocated sites lacks justification, in light of the previous appeal decision.
13. Even if the allocated site(s) in Heybridge are no longer available, the Inspector's comments reveal that parts of the settlement are at lower risk of flooding, being within Flood Zone 1. The STR states that no sites were found within Heybridge, but there is no evidence detailing how, or even whether, the availability of such sites was investigated, drawing on current data. Nor has it been clearly established that there is a current lack of reasonably available sites at lower risk of flooding in the other settlements mentioned in the STR, given the apparent reliance on a ten year old SHLAA. The PPG also confirms that absence of a five year housing land supply is not a relevant consideration for the sequential test for individual applications. Taking all the above factors into account, the STR falls considerably short of following the approach set out in the PPG.
14. The appeal site is in an existing residential area, where there are many other existing dwellings at similar risk of flooding, currently protected by flood defences. Some of these appear recently developed, although the evidence does not establish whether they pre-date the current development plan and national policy. In any case, while national policy does not preclude the development of any housing in areas at risk of flooding, it does set out a clear two-step approach, which aims in the first instance to avoid increasing the population at risk of flooding and the consequential increased pressure on flood management resources. Only where necessary does the approach go on to consider the management and mitigation of flood risk, including through application of the Exception Test.
15. The appellant's evidence purports to demonstrate that the development could be made safe for its lifetime and not increase flood risk elsewhere, which are elements of the Exception Test. However, the effectiveness of the proposed measures is disputed in the Council's Officer Report, with reference to an outstanding objection from the Environment Agency (EA). While the updated FRA maintains that reliance on existing flood defences is justified in this particular location, and that the development could be made safe, the site-specific measures do not fundamentally differ from those considered at application stage.
16. In any case, the PPG is explicit that the Exception Test should only be applied when, following application of the ST, it has been demonstrated that it is not possible for development to be located in areas with lower risk of flooding.

Therefore, even if it were agreed that the development could be made safe, and that the other requirements of the Exception Test had been passed, that would not overcome the failure to apply a sufficiently justified sequential approach. Nor does any intention by the current Government to increase investment in flood resilience negate the need to apply national planning policy as currently articulated.

17. For the reasons given above, based on the evidence before me, it has not been established that there are no reasonably available sites appropriate for the proposed development in areas at lower risk of flooding. The Sequential Test has not been met, and the development would conflict with relevant requirements in Policy D5 of the MLDP and the Framework and PPG, as summarised above.

Habitats Sites

18. The appeal site is within a Zone of Influence for Essex Coast Habitats Sites, designated in accordance with the Conservation of Habitats and Species Regulations 2017. These sites are recognised for their value as coastal habitats and support internationally important populations of breeding and non-breeding bird species. They have been identified as being vulnerable to harm as a result of recreational disturbance, which would be exacerbated by an increase in the local population resulting from new residential development, including the cumulative effect of small-scale developments. On that basis, the proposed development would have a likely significant effect on the qualifying features of the Habitats Sites, in combination with other development.
19. The Habitats Sites are covered by the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This sets out an agreed approach to mitigation of in-combination effects of additional residential development, on a coordinated basis, supported by Natural England. A financial contribution is required for each new dwelling (the RAMS contribution), to fund measures to protect the sites from increased recreational disturbance.
20. Although the appellant's statement expresses willingness to pay the RAMS contribution before the appeal is determined, no documentation has been provided to confirm that the payment has been made. Nor has any legal mechanism been proposed to secure payment of the RAMS contribution. Had I been minded to allow the appeal, this is a matter which I could have raised with the parties. It would also have been necessary for me to complete an Appropriate Assessment to determine whether the proposal would have any adverse effect on the integrity of the Habitats Sites. However, since I am dismissing the appeal for other reasons, it is not necessary to address the effect on Habitats Sites in any further detail.

Other Considerations

21. The Council's housing land supply position has changed since the application was determined. A supply of around 2.7 years is quoted by them, representing a considerable shortfall against the five year requirement. Consequently, paragraph 11d of the Framework is applicable.
22. The proposal would deliver a family dwelling, in a built-up area, where future occupiers would have access to a range of local services and facilities and need not be entirely reliant on travel by car. There would be some limited economic benefit from the construction process and expenditure by future occupiers. A single home could be delivered quickly, contributing to the supply of housing on

small sites and more efficient use would be made of a currently vacant plot. However, since there are no buildings on the site, and it was formerly garden land in a built-up area, the proposal does not involve the use of previously developed land as defined in the Framework.

23. Ecological enhancements are alluded to briefly, but no supporting evidence is offered and an exemption from the statutory requirement for biodiversity net gain has been claimed on the grounds that the proposal would be for self-build/custom build housing. However, since no mechanism is proposed to ensure that the property would ultimately be occupied on a self-build basis, any contribution to the strategic supply of self-build and custom-build housing can be given little weight.
24. The Council did not allege any harm in terms of the design of the dwelling, living conditions for neighbouring occupiers, traffic or car parking. While I have had regard to the representations both objecting to and supporting the application, based on the evidence before me I have no reason to reach a different view. There would also be no harm to heritage assets. However, these are neutral considerations and weigh neither for nor against the proposal. Since the site is already well integrated into the streetscape, being similar to the surrounding gardens, the introduction of a new dwelling would not amount to a positive enhancement in visual terms.
25. Taking into account the scale of the proposed development, the benefits of the proposal are inherently modest and, even when considered collectively, in the context of the significant housing land supply shortfall, they carry modest weight.

Planning Balance and Conclusion

26. The proposal would conflict with Policy D5 of the MLDP for the reasons given above. While conflict with a single policy may not, in all circumstances, indicate conflict with the development plan as a whole, in this case the relevant requirements are consistent with national planning policy and carry significant weight. Even if other policies of the MLDP are satisfied, the conflict with Policy D5 brings the proposal into conflict with the development plan as a whole.
27. The flaws in the STR are significant and the flood risk evidence read as a whole fails to establish adequate grounds for locating additional housing in Flood Zone 3a. That is a strong reason for refusing the development based on the application of the policies identified in paragraph 11di and footnote 7 of the Framework. The test in paragraph 11dii is not applicable and the proposal does not benefit from the presumption against sustainable development as defined in paragraph 11d.
28. The proposal would conflict with the development plan and no material considerations, including the provisions of the Framework and the modest benefits of the proposal, indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, the appeal should be dismissed.

Jane Smith

INSPECTOR